IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 95/2018
(Arising out of Sarthebari P.S. Case No. 411/2018)
U/S 4 of POCSO ACT, 2012

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 21.01.2019

State of Assam

- Vs -

Haidar Ali....Accused person.

Date of Recording Evidence on – 30.03.2019 & 03.05.2019.

Date of Hearing Argument on – 03.05.2019

Date of Delivering the Judgment on - 03.05.2019

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused------Mr. A. Hussain, Ld. Advocate.

JUDGMENT

1. The prosecution case, in brief, is that on 02.09.2018 one Jalil Ali lodged an FIR in Sarthebari police station alleging inter-alia that on 24.08.2018 at about 8 pm while the old mother of informant and his minor daughter (X) were alone in the house, accused visited his house and by persuading his minor daughter, took her to the jungle behind the house of Dharani and allegedly committed penetrative sexual assault on her under threat and force and accused then took the victim girl to his house but the family members sent her back. Hence the case.

- 2. Acting on the information, Sarthebari police station entered the same in the general diary vide G.D.E. No.28 dated 02.09.2018 and registered a case being Sarthebari P.S. case No.411/18 u/s 376(B) IPC and Section 4 of POCSO Act and S/I Sanjoy Anand Mushehery was entrusted to investigate the case.
- 3. During the course of investigation, I/O visited the place of occurrence, recorded the statements of the victim girl and other witnesses, sent the victim girl to court for recording her statement by Magistrate u/s 164 Cr.P.C. The victim girl was also sent for medical examination. Thereafter, I/O collected the medical examination report and on conclusion of investigation finally laid the charge sheet against accused Haidar Ali u/s 376 IPC and Section 4 of POCSO Act with the view to stand trial.
- 4. During the course of time, when accused entered his appearance in court, after due compliance of Section 207 Cr.P.C. and hearing the learned lawyers appearing for both sides this court vide order dated 21.01.2019 framed charge u/s 4 of POCSO Act. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.
- 5. In the course of trial, prosecution, however, examined only 3 witnesses namely- the alleged victim girl as PW-1, one Jalil Ali, the informant as PW-2 and Rafiya Begum as PW-3 respectively. However, considering the quality of evidence adduced by the prosecution witnesses, learned Addl. P.P. submitted that proceeding further with the case would be nothing but a meaningless exercise, as the main witnesses are not supporting the prosecution case. Hence, hearing the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence plea is total denial of the prosecution case. As such, on being asked, accused person declined to adduce defence evidence.

7. Now point for determination ;-

1. Whether on 24.08.2018 at about 8 pm accused committed penetrating sexual assault on the victim girl namely-(X) and forced her to do so with him as alleged?

8. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the learned lawyers appearing for both sides and carefully scanned the

documents and evidence available on record for arriving at a just decision in the case.

- 9. On careful perusal of the evidence of prosecution witnesses it transpires that PW-1 is the alleged victim (X), who in her deposition negated the allegations in the FIR (Ext-1). According to her, she went along with accused Haidar Ali to the house of her colleague friend at Sarthebari as she has love affairs with Haidar Ali. Then her father without making inquiry filed the case against accused. Though she gave statement before Magistrate she tell lie as the accused did nothing against her.
- 10. In her cross examination she clarified that she had love affairs with accused Haidar Ali and her father filed the case under suspicion.
- 11. PW-2 Jalil Ali, the informant cum father of the alleged victim girl also deposed in the same vain. According to him, his daughter went with accused for outing but he filed the case under suspicion.
- 12. In his cross examination he stated that the contents of the FIR was written by other person and it was not read over and explained to him and he expressed his unwillingness to proceed further with the case.
- 13. PW-3 Rafiya Begum, the grand mother of the alleged victim is also not credible to substantiate the charge.
- 14. This being the prosecution evidence on record, this court has no option but to acquit the accused from the charge u/s 4 of POCSO Act on the ground of total lack of evidence. It is to be noted that given the nature of evidence of PW-1, PW-2 and PW-3 who are vital for the prosecution case, proceeding further with the case for recording the evidence of the remaining prosecution witnesses will not bring any positive result except waste of valuable time and energy of the court.
- 15. In the result, accused is acquitted from the charge u/s 4 of POCSO Act and set him at liberty forthwith.
- 16. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

- 17. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 18. Given under my hand and seal of this Court on this 3rd day of May, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-

Sd/-

(Sri C. B. Gogoi)

(Sri C. B. Gogoi)

Special Judge, Barpeta.

Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 3 nos. of witnesses :-

PW-1 = is the victim girl (X).

PW-2 = is Jalil Ali, the informant.

PW-3 = is Rafiya Begum.

2. The prosecution exhibited only one document :-

Ext.1 = is the 164 Cr.P.C. statement of victim girl.

Ext.1(1), 1(2) & 1(3)=are the signature of victim girl.

Ext.2 = is the ejahar.

Ext.2(1) = is the signature of informant.

Sd/-

(Sri C. B. Gogoi)

Special Judge, Barpeta.