IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 29/2019 U/S 376(2)(n) IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on: - 26.11.2019

State of Assam

- Vs -

Rashidul Islam..... Accused

Date of Recording Evidence on – 20.12.2019

Date of Hearing Argument on – 20.12.2019

Date of Delivering the Judgment on – 20.12.2019

Appearance:

Advocate for the State----- Learned Addl. P.P.

Advocate for the Accused----- Md. A. Salam, Learned Advocate

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 22.09.2018 one Joshmat Talukdar lodge an FIR in Howly P.S. stating inter alia that the daughter of accused who is perusing her studies in H.S. 1st year was persuaded by accused to visit his computer shop in the pretext of love affairs with her and allegedly committed forceful sexual intercourse with her and then threaten her not to disclose to others. Thereafter, again on 22.09.18 at about 3 pm accused in a preplanned manner took his daughter to his computer shop while returning from college and tried to commit physical relation with her, but could not succeed when she shouted. But she was assaulted by accused following which she had to be admitted in the hospital for treatment.
- 2. Based on the information a case was registered being Howly P.S. case No 429/18 u/s 120(B)/341/325 IPC and section 4 of POCSO Act and investigated the case.
- 3. During the course of investigation, police recorded the statement of the witnesses,

drew sketch map, sent the victim girl for medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C. and arrested the accused person.

- 4. Thereafter, on conclusion of investigation, I/O finally laid the charge sheet against accused u/s 341/323 IPC and section 4 of POCSO Act with a view to stand trial.
- 5. During the course of time, when accused appeared in court after due compliance of section 207 Cr.P.C. this court vide order dated 26.11.19 framed formal charge u/s 376(2)(n) IPC and section 6(I) of POCSO Act. The particulars of the offence on being read over and explained, accused pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution examined as 2 witnesses including the informant and the alleged victim however considering the quality of evidence of PW-1 and PW-2 giving an opportunity of hearing to learned additional P.P. further prosecution evidence stands closed as the examination of remaining witnesses will not being any fruitful result except waste of valuable time and energy of court.
- 7. Examination of accused u/s 313 Cr.P.C. is dispensed with in view of lake of implicating materials. His plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. Now point for determination ;-

- 1. Whether on 22.09.2018 accused committed rape on the victim girl against her will repeatedly as alleged ?
- 2. Whether on the same day and time accused penetrating sexual assault on the victim more than once or repeatedly as alleged ?

9. Discussion, Decision and reasons for such decision:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. On perusal of the evidence of PW-1 and PW-2 who are the star witnesses of the prosecution case it appears that they deposed evidence in court contrary to the allegations made in the FIR (Exhibit 1) and her statement u/s 164 Cr.P.C. (Exhibit 2). In her evidence the alleged victim stated about the incident of a simple quarrel with accused regarding repairing of her mobile handset and the price of repairing settle between them. She has

not spoken anything about any kind of sexual assault on her by accused person. As again her statement u/s 164 Cr.P.C. she stated in court that same was not given as per her own mind, but under influence only. So, her evidence contradict with her earlier version given by her before Magistrate. True it is that u/s 164 Cr.P.C. statement before Magistrate is not substantive evidence. So, in the absence of any corroborative evidence adduce by victim in court her earlier version before Magistrate bears no evidentary value more so her father the informant cum PW-1 also negated the allegations made in the FIR (Exhibit 1). He also spoken about a quarrel regarding repairing of mobile handset of his daughter.

- 11. So, given the quality of evidence of PW-1 and PW-2 it is nothing but waste of valuable time of court for no useful purpose to record the evidence of other prosecution witnesses.
- 12. Therefore, it is crystal clear that there is no truth in the allegation in the FIR. Though the alleged victim girl stated before Magistrate u/s 164 Cr.P.C. (Ext.1) that accused had committed penetrating sexual assault on her by calling her to his shop, but she at the time of her deposition in court painted a completely different story denying the story stated in the FIR. In the absence of any corroboration in the mouth of other prosecution witnesses the very credibility of her statement before Magistrate can not be the sole basis for sustaining conviction of accused person.
- 13. This being the position, this court is of the considered view that prosecution failed to establish the case against accused u/s 376(2)(n) IPC and section 6(l) of POCSO Act as there was absolutely no materials emerged for sustaining conviction of accused for the aforesaid offences. Therefore, this court has no option but to acquit the accused from the offence u/s 376(2)(n) IPC and section 6(l) on the ground of insufficient evidence and set him at liberty forthwith.
- 14. 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.
- 15. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.

- 17. Let the case record be consigned to record room after completing the formalities.
- 18. Given under my hand and seal of this Court on this 20th day of December, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = Joshmat Ali, the informant.

PW-2 = Jeshmina Parbin, the alleged victim

2. The prosecution has exhibited the following documents:

Ext. 1 = is the statement of the victim u/s 164 Cr.P.C.

Ext.1(1) & 1(2) = are the signatures of the victim girl.

Ext. 2 = is the FIR.

Ext. 2 (1) = is Signature of informant.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.