## IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 23/2018
U/S 448 IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

**Charge framed on:-** 07.09.2018

State of Assam

- Vs -

Mokibul Islam

Date of Recording Evidence on – 12.03.2019

Date of Hearing Argument on – 12.03.2019.

Date of Delivering the Judgment on – 12.03.2019.

# **Appearance:**

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused----- Mr. Peerjahan Ali Ahmed, Learned Advocate.

#### JUDGMENT

- 1. The prosecution case, in brief, is that, on 07.05.2018 one Dewan Lal Mamud lodged an FIR in Barpeta Road P.S. alleging inter alia that accused person named in the FIR has allegedly been causing disturbance to his minor daughter while going to school and also hurled abusive language towards her and due to his consistent disturbance the girl was force to admit in another school. It is alleged that on 05-06-2018 at about 11 pm accused again entered in to the house of the informant and tried to commit rape on his daughter while she was sleeping, but accused was caught by the neighbors hearing the hue and cry of his daughter. Accused then admitted his guilt in presence of neighbors. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta Road P.S. case No. 195/18 u/s 4/12/18 of POCSO Act and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Mokibul Islam u/s 4/12/18 of POCSO Act with a view to stand trial.

- 4. In due course, when accused entered his appearance in court. Thereafter, hearing the learned lawyers appearing for both sides and perusing the materials available on record and after due compliance of section 207 Cr.P.C. vide order dated 07-09-2018 charge u/s 448 IPC and 8 of POCSO Act were framed. The substance of the offence on being read over and explained accused pleaded not guilty and claim trial.
- 5. During the course of trial, the prosecution examined 2 witnesses namely the informant and Hasina Khatun as PW-1 and PW-2 respectively who are parents of the alleged victim girl. During the course of recording their evidence both the witnesses however, negated the prosecution case. Therefore, considering the futility of proceeding further with the case giving an opportunity of hearing to 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 plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

### 7. **Now point for determination** ;-

.1. Whether on 06.05.2018 at about 11 pm accused committed criminal house trespass and tried to commit sexual assault on the victim girl as alleged ?

#### 8. Discussion, Decision and reasons for such decision :-

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

- 9. The learned counsel appearing for the State Smti. P. Das submitted that two prosecution witnesses are examined from the side of the prosecution, but given the quality of their evidence it would be a futile exercise to go ahead for recording evidence of other witnesses including the alleged victim. Therefore, it is submitted that the court may pass judgment after assessment of evidence of PW-1 and PW-2 on record.
- 10. On the other hand, the learned counsel appearing for the accused person arduously contended that there is absolutely nothing in the evidence of the prosecution witnesses which constitute the ingredients of the offences u/s 448 IPC and section 8 of POCSO Act. According to the learned defence counsel, the prosecution has failed to bring home the guilt of

accused for sustaining conviction for the offence u/s 448 IPC and section 8 of POCSO Act. As such, the learned counsel prays to acquit the accused person.

- 11. In the context of the submission of the learned counsel appearing for both sides it would be in the fitness of things to refer to section 448 IPC and section 8 as defined in the POCSO Act 2012.
- **"448. Punishment for house trespass** Whoever commits house trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to 1000/- rupees or with both."
- "8. **Punishment for sexual assault**. Whoever commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less then 3 years but which may extend to 5 years , and shall also be liable to fine."
- Now, on perusal of the offences u/s 448 IPC and the evidence of PW-1 12. and PW-2 it appears that contrary to the allegation in the FIR both PW-1 and PW-2 describe a completely different story in court by stating that informant had taken electricity connection in his residence over the land of the accused for which he disconnected the line and due to this reason there was quarrel between them for which case was filed. Both the witnesses no where stated that accused had committed any sexual assault against their daughter (the alleged victim girl). So, on consideration of the evidence of PW-1 and PW2 the ingredients of the offences u/s 448 IPC and section 4 of POCSO Act appears to have not been attracted for sustaining conviction of accused person. Given the nature of evidence adduce by PW-1 and PW2 proceeding further for recoding evidence of remaining witnesses as rightly contended by the learned counsel appears to be useless formality except waste of valuable time and energy of court. Even if we go for recording evidence of alleged victim nothing positive will come out. evidence PW-1 and PW-2 nothing can be inferred even remotely that it was the accused who committed the offence u/s 448 IPC and section 4 of POCSO Act.
- 13. In the result, this court has no option but to acquit the accused Mokibul Islam from the charges u/s 448 IPC and Section 8 of POCSO Act on the ground of benefit of doubt and set him at liberty forthwith.
- 14. The terms of bail bond of accused is extended for a period of 6 (six) months from to-day as provided U/S 437(A) of 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.
- 16. Let case record be consigned to record room as per procedure.
- 17. Given under my hand and seal of this Court on 12th day of March, 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 = is Dewan Lal Mamud, the informant.

PW-2 = is Hasina Khatun.

2. The prosecution has exhibited only one document:

Ext. 1 = is the FIR.

Ext.1(1) = is the signatures of informant Dewan Lal Mamud.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.