IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

<u>Special POCSO Case No. 77 of 2018.</u>
(In connection with Sorbhog P.S. Case No.29/17)
U/S 4 of POCSO Act.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on: - 05.03.2019

State of Assam

- Vs -

Amzad Ali.....Accused person.

Date of Recording Evidence on - 03.07.2019

Date of Hearing Argument on - 03.07.2019.

Date of Delivering the Judgment on - 03.07.2019.

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. A. Mannan, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that one Mujafor Ali lodged an FIR in Baghbor police station alleging inter-alia that accused No.1 Amzad Ali named in the FIR proposed his love to his 17 years old daughter and finally taking advantage of her loneliness, visited his house and committed rape on her on the promise of marriage, Thereafter, accused again committed rape on his daughter after about 20 days of the first incident. When his daughter shouted accused again promised to marry her.
- 2. Following the information, Baghbor police station registered a case being Baghbor P.S. case No. 29/2017 u/s 4 /17 of POCSO Act, 2012 and investigated the case.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses, forwarded the victim girl to court for recording her statement and also sent her for medical examination. On conclusion of investigation, police finally laid the charge sheet against accused u/s 4/17 of POCSO Act with a view to stand trial.
- 4. During the course of time, when accused entered his appearance in court to face trial, the then Special Judge, Barpeta vide order dated 26.09.2018 transferred the case record to this court for disposal.
- 5. Receiving the case record on transfer and hearing the counsel appearing for

both sides, this court vide order dated 05.03.2019 framed charge u/s 4 of POCSO Act but discharged the accused u/s 17 of POCSO Act. The substance of the offence on being read over and explained accused person pleaded not guilty and claimed trial.

- 6. During the course of trial, the prosecution examined only 2 witnesses namely-the informant and the alleged victim. However, considering the quality of evidence adduced by prosecution witnesses considering the futility of going further with the case, giving an opportunity to learned Addl. P.P. further prosecution evidence stands closed.
- 7. 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 declined to adduce defence evidence.

8. Now point for determination ;-

1. Whether on 01.10.2017 accused committed penetrative sexual assault on the victim taking advantage of her loneliness in her house as alleged ?

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

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

- 10. Contrary to the allegation in the FIR, the informant in his evidence deposed that accused has love affairs with his daughter. The FIR was lodged by him written by his brother. He being an illiterate person do not know the contents of the FIR. He simply put his thumb impression in the FIR.
- 11. Considering the nature of evidence adduced by PW-1 hearing learned Addl. P.P. the witness is declared hostile. He has not support the prosecution case. On the other hand, the alleged victim girl PW-2 in her deposition stated that at the time of incident she was a student of H.S. 1st year and had been in love affairs with accused who used to visit her house frequently but denied that she had physical relation with accused. Now she is married having children.
- 12. Now, on perusal of the evidence of the alleged victim and complainant it transpires that there was no such physical relation of accused with the alleged victim but she has love affairs with accused which goes to show that the victim has intimacy with accused because of her affairs with him. She nowhere in her evidence stated that accused committed penetrative sexual assault on her. Therefore, the ingredients of the offence u/s 3 of POCSO Act punishable u/s 4 of POCSO Act have not been attracted.
- 13. In the result, this court has no option but to acquit the accused person from the offence u/s 4 of POSCO Act, 2012 on the ground of insufficient evidence and set him at liberty forthwith.
- 14. The bail bond of the accused person is, however, 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 sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 16. Let the case record be consigned to record room after completing the formalities.
- 17. Given under my hand and seal of this Court on this 3rd day of July, 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 Mozafar Ali, the informant.

PW-2 = is victim(X).

2. The prosecution has exhibited following document :-

Ext.1 = is the FIR.

Sd/-

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