## IN THE COURT OF THE SPECIAL JUDGE, BARPETA

# Special POCSO Case No. 50/2019 U/S 376/457 I.P.C. R/W section 4 of POCSO Act, 2012

PRESENT: Sri V. K. Chandak, M.A., M.Com, LLB., AJS,

Special Judge,

Barpeta.

#### State of Assam

- Vs -

Shajamaluddin

# **Charge framed on: 19.03.2019**

Date of Recording Evidence on - 30.03.2019 & 11.04.19

Date of Hearing Argument on - 12.04.2019.

Date of Delivering the Judgment on - 12.04.2019.

### Appearance:

Advocate for the State----- Mr. Lalit Nath, Learned P.P. Advocate for the Accused----- Md. Lukman Ali, Learned Advocate.

#### JUDGMENT

- 1. The prosecution case, in brief, is that, on 06.01.2019 one Bahadur Ali lodged an FIR in Barpeta P.S. alleging inter alia that on 05-01-2019 at about 10 pm accused persons named in the FIR by allegedly taking advantage of absence of family members committed lurking house trespass by entering illegally in to the dwelling house of the Shamejuddin, by cutting the rope of the bamboo door of the house and committed rape on minor girl Asmina Parbin aged about 15 years. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta P.S. case No. 38/19 u/s 457/376 I.P.C. R/W section 4 of POCSO Act, 2012 and investigated the case.
- 3. On completion of investigation, police finally laid the charge

sheet against accused Shajamaluddin u/s 457/376 I.P.C. R/W section 4 of POCSO Act, 2012 with a view to stand trial.

- 4. In due course, when accused entered his appearance in court vide order dated 19.03.2019 all the particulars relating to the case were furnished to accused. Thereafter, having heard the learned counsel and on perusal of the record having found a prima facie case, charge u/s 457/376 I.P.C. R/W section 4 of POCSO Act, 2012, were framed. The substance of the offences on being read over and explained, accused pleaded not guilty and claim to stand trial.
- 5. During the course of trial, the prosecution examined 4 witnesses namely the alleged victim Asmina Parbin as PW-1, Bahadur Ali as PW-2, Samej Ali as PW-3 and Rabiya Begum as PW-4. However, considering the nature of evidence adduce by these witnesses and after hearing the learned P.P. further prosecution evidence stands closed.
- 6. The accused was examined u/s 313 Cr.P.C. 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 05.01.2019 at about 10 pm accused committed lurking house trespass by entering illegally in to the dwelling house of the Shamejuddin, by cutting the rope of the bamboo door as alleged and thereby liable for committing an offence u/s 457 IPC?
- .2. Whether on the same day and time accused committed penetrative sexual assault on the victim girl as alleged and thereby committed an offence u/s 4 of POCSO Act?
- .3. Whether on the same day and time accused committed rape on the victim girl age about 15 years as alleged and thereby committed an offence u/s 376 IPC?

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

I have heard the learned lawyers appearing for both Spl. POCSO

Act./103/2018 sides and also carefully scanned the prosecution evidence available on record.

- 9. The learned counsel appearing for the State Sri Lalit Nath submitted that though the prosecution examined 4 witnesses but the court may pass judgment after assessment of evidence in view of poor quality of evidence adduce by the prosecution witnesses.
- 10. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely no evidence at all implicating the accused person for recording conviction for the offences u/s 457/376 I.P.C. R/W section 4 of POCSO Act, 2012. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the aforesaid offences. 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 the charge sections against accused person.
- **"376. Punishment for rape.** Whoever, except in the caswes provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both."
- "457. Lurking house trespass or house-breaking by night in order to commit offence punishable with imprisonment. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any ofence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine and if the offence intended to be committed is theft, the term of the imprisonment may be extended

to fourteen years.

- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 12. Now, on perusal of the offence u/s 376/457 I.P.C. R/W section 4 of POCSO Act and having heard the learned counsels appearing for both sides and on careful perusal of the evidence available on record particularly the evidence of the alleged victim PW-1 it transpires that she brought the accused mobile phone to make telephone to her father, who was working at Guwahati at that time. She brought the mobile phone from the accused and telephoned to her father and she kept the mobile phone on her table. She thought that she will return the mobile phone in the next day morning. But after some time her mother enquired about the mobile phone she told that the mobile phone belongs to the accused person. At that time village people came and the case was lodged. She is unable to speak anything about the incident not to speak of commission of the penetrative sexual assault against her. From her evidence nothing can even be inferred even remotely that accused had committed the offence u/s 376/457 I.P.C. R/W section 4 of POCSO Act.
- 13. In her statement u/s 164 Cr.P.C. also (Exhibit 1) she was tutored by police to give her statement.
- 14. In his evidence PW-2 stated that he reside at a distance of 4 Kms from the house of the victim. On getting the information over phone he went to the place of incident and came to know that accused went to the room of the victim on previous night and seeing him accused person fled away from the place. Accused person was suspected to be involved in this case as his mobile phone was found in the room of the victim. Nobody told him that they identified the accused person.
- 15. PW-3 the father of the victim alleged that he was not present in the house on the day of incident.

- 16. PW-4 the step mother of the alleged victim girl could not say that anything as to what had happened with her daughter.
- 17. Therefore, after appreciation of evidence of the star witnesses namely the alleged victim girl, the informant, her parents this court was of the considered view that proceeding further with the case for recording evidence of remaining prosecution witnesses would be the sher waste of valuable time and energy of the court which would in the estimation of the court would bring no fruitful result in the final count.
- 15. The above being the position, this court has no option but to acquit the accused Shajamaluddin from the charges u/s 376/457 I.P.C. R/W section 4 of POCSO Act, 2012 on the ground of benefit of doubt and set him at liberty forthwith.
- 16. 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.
- 17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let case record be consigned to record room as per procedure.
- 19. Given under my hand and seal of this Court on 12th day of April, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri V. K. Chandak) Special Judge, Barpeta. Sd/-(Sri V. K. Chandak) Special Judge, Barpeta.

### **APPENDIX**

1. The prosecution has examined the following 4 nos. of witnesses:-

PW-1 = is Miss Asmina Parbin, the victim girl.

PW-2 = is Bahadur Ali, the informant.

PW-3 = is Samej Ali.

PW-4 = is Rabiya Begum.

2. The prosecution has exhibited only one document :-

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

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

Sd/-

(Sri V.K. Chandak) Special Judge, Barpeta.