IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 02/2018

(Arising out of Alopatichar P.S. Case No. 131/2015)

U/S 366(A)/376(1) IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:- 05.09.2018

State of Assam

- Vs -

Kayom Uddin......Accused

Date of Recording Evidence on – 03.02.2019, 20.05.2019,

25.07.2019 & 19.11.2019

Date of Hearing Argument on – 19.11.2019.

Date of Delivering the Judgment on – 19.11.2019.

Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused----- Abdul Mannan, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 30.10.2015 one Sahera Khatun lodged a complaint in the court of CJM, Barpeta which was transferred to learned JMFC, Barpeta for disposal, but eventually said complaint was forwarded to police for investigation and report. On the basis of which police registered a case being Alopatichar P.S. case No 131/15 u/s 447/366(A)/376/34 IPC R/W section 4 of POCSO Act.
- 2. The allegation of the complaint that the 13 years old daughter complaint was subjected sexual torture by the accused persons named in the FIR on her way to school and back home also threaten her to dire consequences and one day she was forcefully kidnapped by the accused persons in bike and took her to bank of Brahmaputra near Kopahtuli village and forcefully committed rape on her by accused

No 1 and left her there. The girl was later recovered in unconscious state and a village meeting was called regarding the matter. But the accused refuse to oblige the village meeting. Hence the case.

- 3. Acting on the information police got a case registered being Alopatichar P.S. case No 131/15 u/s 447/366(A)/376/34 IPC R/W section 4 of POCSO Act and investigated the case.
- 4. On completion of investigation, police finally laid the charge sheet against accused Kayem Uddin and Rafiqul Islam u/s 447/366(A)/376/34 IPC R/W section 4 of POCSO Act with a view to stand trial.
- 5. In due course, when accused entered their appearance in court vide order dated 05.09.2018 having found a prima facie case charges u/s 366(A)/376(1) IPC and section 4 of POCSO Act was framed against accused Kayem Uddin. The particulars of the offence on being read over and explained accused pleaded not guilty and claim trial. However, accused Rafiqul Islam is discharged in view of lake of implicating materials.
- 6. During the course of trial, the prosecution examined only 4 witnesses including the victim girl. However, considering the quality of the evidence of the star witnesses namely the informant and the alleged victim giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is dispensed with in view of lack of implicating materials.
- 8. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

9. **Now point for determination** ;-

- .1. Whether on 28.10.2015 at about 4 pm the minor daughter of the informant was kidnapped by accused as alleged ?
- .2. Whether on the same day, time and place accused person committed rape on the victim girl as alleged ?

.3. Whether on the same day, time and place accused person committed penetrative sexual assault on the victim girl as alleged ?

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

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

11. Before discussing the evidence on record it is apposite to refer section 366(A)/376(1) IPC and section 3 and 4 as defined in the POCSO Act 2012.

"Section 366(A) procuration of minor girl :- Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do any act with intend that such girl may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to 10 years, and shall also be liable to fine."

"Section 376 Punishment for rape :- (1) Whoever, except in the cases provided for by sub-section(2), commits rape shall be punished with imprisonment of either description for a term which shall 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:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years."

- **"3. Penetrative sexual assault**. A person is said to commit "penetrative sexual assault" if -
- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

- "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 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d).
- 13. From the evidence available on record particularly the evidence of the alleged victim girl PW-4 it transpires that no such incident took place as alleged because according to her due to abuse and maltreatment of her mother regarding her poor study. She left the house and went to the house of Kayem on her own. But her mother filed the case on wrong impression. Whatever stated by her before police and Magistrate were as tutored/forced by police. The other prosecution witnesses namely the informant (PW-1) also fail to say anything regarding commission of any sexual offence against her daughter. Rather in her cross examination she stated that her daughter has love affairs with accused and she voluntarily went with accused without any force or influence on the part of accused. The evidence of PW-2 & PW-3 is inconsequential. The evidence of PW-3 the medical officer also does not help the prosecution case as the victim on being produce refuse her genital examination by doctor.
- 14. Considering the evidence of the alleged victim and other prosecution witnesses it appears that none of the ingredients of the offence u/s 376(1) IPC or u/s 3 of POCSO Act has not been established to sustaining conviction u/s 376(1) IPC and section 4 of POCSO Act. It is also seen that the elements of offence u/s 366(A) IPC is also not at all established by prosecution with any credible and trust worthy evidence.
- 15. This being the position, this court is of the considered view that prosecution failed to establish the case against accused Kayem Uddin u/s 366(A)/376(1) IPC and section 4 of POCSO Act as there was absolutely no materials emerged for having found the accused person guilty for sustaining conviction for the aforesaid offences. Therefore, this court has no option but to acquit the accused Kayem Uddin from the offence u/s 366(A)/376(1) IPC and section 4 of POCSO Act on the ground of

insufficient evidence 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 forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let the case record be consigned to record room after completing the formalities.
- 19. Given under my hand and seal of this Court on this 19^{th} day of November, 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 4 nos. of witnesses:-

PW-1 = Sahera Khatun, the informant.

PW-2 = Ruhul Amin.

PW-3 = Dr. Anima Boro, the medical officer.

PW-4 = Rohitan Nessa, the victim girl.

2. The prosecution has exhibited the following document:-

Ext. 1 = is the medical report.

Ext. 1(1) = is the signature of doctor.

Ext. 2 = is the statement of the victim u/s 164 Cr.P.C.

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

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