IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge,Barpeta.

JUDGMENT IN SPECIAL POCSO CASE NO. 127 OF 2019 (G.R.No.- 791/2019) Barpeta P.S. Case No. 312 of 2019

State of Assam

-versus-

Sanowar Hussain S/O Samej Uddin, Resident of Bahmura, P.S. Barpeta,

District – Barpeta, Assam

...... Accused.

APPEARANCES:

For the State : Sri Malek Ali Ahmed, learned

Addl. Public Prosecutor,

Barpeta.

For the Accused : Sri Radhika Nanda Das, learned

Counsel, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365/506 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,

<u> 2012.</u>

Date of Charge : 24.07.2019,

Date of Prosecution evidence : 06.08.2019 & 25.09.2019

Date of Argument : 01.10.2019,
Date of Judgment : 04.10.2019.

J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 312 of 2019 under Sections 365/506/34 of IPC read with Section 4 of the Protection of

Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Nur Hussain, father of the victim.

In the aforesaid **F.I.R**. dated 12.02.2019, the informant Nur Hussain (P.W.3), who is the father of the victim girl, alleged interalia, that on 09.02.2019 at about 5:00 PM, the accused person namely Sanowar Hussain kidnapped his minor daughter, aged about 15 years, when she was returning from tutorial class towards her home and kept her at unknown place. It is alleged in the FIR that accused person forcibly committed sexual intercourse with her and threatened her to kill. Victim girl was recovered by child line on 12.02.2019.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Barpeta Police Station, the same was registered as **Barpeta P.S. Case No 312/2019** under Sections 365/506/34 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the accused **Sanowar Hussain under Sections** 365/506 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.583/2019, dated 30.06.2019.

- **2).** In due course, copy was furnished to accused by the undersigned.
- 3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed by undersigned against the accused under Sections 365/506 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **04 [four]** number of witnesses including the informant and victim were examined on behalf of the prosecution to prove the charge under Sections 365/506 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 against the accused.

The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

- 5). I have heard **Mr. Malek Ali Ahmed**, learned Addl. Public Prosecutor of Barpeta, for the State as well as **Mr. Radhika Nanda Das**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 365/506 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.**
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether the accused on 09.02.2019 at about 5:00 PM within the jurisdiction of Barpeta P.S., District Barpeta, kidnapped Almina Parbin, minor daughter of informant Nur Hussain, when she was returning from tuition towards her home with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC ?
- (ii) Whether the accused on 12.02.2019 and thereafter, committed criminal intimidation by threatening Almina Parbin, minor daughter of informant to kill her and thereby committed an offence punishable under Section 506 IPC?
- (iii) Whether the accused 09.02.2019 and thereafter, committed penetrative sexual assault upon minor victim, daughter of the above named informant and thereby committed an offence punishable under Section 4 of the Protection of Children From Sexual Offences Act, 2012

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Dr. Anima Boro [P.W.1] has deposed in her evidence that on 15.02.2019, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, in connection with Barpeta P.S. case No.312/2019, she examined victim Almina Parbin, aged about 15 years, D/O Nur Hussain of Medhirtari under Barpeta P.S., District Barpeta on being identified by Sabitri Bayan and found as follows:

<u>History:-</u> History of alleged kidnap by Sanowar Hussain, 20 years/male S/O Samejuddin of village Bahmura on 09.02.2019 at around 5 PM and recovered by Child Line Welfare on 11.2.19 at Sanowar's house.

Physical Examination:-

Identification marks:- One black mole on chest.

Height: - 141 Cm. Weight: - 46Kg.

Chest girth at nipple level: - 81 Cm.

Abdominal girth at navel level :- 74 Cm.

General built & appearance: - Average.

Voice: Feminine,

Teeth: 28.

Hairs: Axillary/Body :- Present.

Breasts:- Developed.

Puberty(as told by the individual):- At 12 years.

Menstruation(as told by the individual):- Regular.

L.M.P.(as told by the individual):- 20 days before.

Mental condition: Stable.

Gait:- Normal,

Intelligence : Average.

Wearing garments and any suspected stains present:- No stain detected at wearing garments.

Bodily injuries: - No injury on body.

Genital Examination:-

Pubic hairs:- Present.

Vulva(Labia majora & minora):- Normal.

Hymen:- Tear.

Vagina:- Admit 1 finger.

Cervix and Uterus:- Uterus not palpable per abdominally.

Fourchette and Perineum:-Normal

Result of vaginal swab smear examination:- No Spermatozoa is seen on

microscopic examination of vaginal swab slide.

Result of X-Investigation: Plate No. 29 MLC Dated-20.2.19

All Epiphyseal unions of writs joint, elbow joint & shoulder are completed.

Pelvis:-Epiphyseal union is not completed.

Ultrasonography advised and result: No USG report.

Opinion:-

- (1) There is no recent sign of sexual intercourse.
- (2) There is no injury on body of victim.
- (3) Victim is not suffering from any physical/mental disability.
- (4) At present, victim's age is above 16 years and below 18 years.

P.W.1 exhibited her medical report as **Ext.1 and Ext.1(1)** is her signature.

During her cross-examination, she stated that she opined the age of victim on the basis of X-report and has mentioned the X-ray plate No. in her report. But there is no X-ray plate before the court.

8). The Victim [P.W.2] deposed in her evidence that informant is her father and she knows the accused person and he is not from her village. Incident took place about 9 months ago. She went for tuition at about 3 PM from her house. Then, she went to the house of accused situated at Bahmura. It took one hour to reach his house by tempo and she went alone and voluntarily to the

house of accused due to love affairs with him but at that time, he was not present at his house. Then, the family members of accused handed over her to Child Line. They recorded her statement. Commissioner, CWC recorded her statement. Then, her father brought her to their house from there after taking her zimma and her father lodged this case.

Police examined her and sent her to doctor for her medical examination. After that, Police brought her before the learned Magistrate for recording her statement under Sections 164 CrPC.

She exhibited her statement vide Ext.2 and Ext.2(1) & 2(2) are her signatures recorded under Section 164 CrPC

In her cross-examination, she stated that she had love affairs with the accused person prior to the incident. She went to the house of accused voluntarily. The family members of the accused handed over her to CWC as she was below 18 years of age. Accused does not know anything about the incident as he was not present at the time of incident, when she went there. She told before CWC that she was having love affairs with the accused and she gave her statement before learned Magistrate as tutored by her father and police.

She further stated that accused was not involved with the alleged offence of this case as he was not present at the time of incident.

9). Nur Hussain [**P.W.3**] who is the informant of this case has deposed in his evidence that victim is his daughter. Incident took place about 8/9 months ago. Victim was studying at Class IX, at the time of incident. She went for her tuition, but she did return home. Then, he searched her and heard at late night that she is staying at the house of the accused. After that, he went there and they handed over the victim to the Child Line office. Then, he took zimma of the victim from the office of Child Line. Thereafter, he lodged the case.

He exhibited the FIR as Ext.3 and Ext.3(1) & 3(2) are his signatures. He further stated that his victim daughter told that she was asked to go to the house of accused, but accused was not present at his house.

In his cross-examination, he lodged the case due to anger as his victim daughter went to the house of the accused without telling him. Victim did not tell him anything about the incident, but she narrated the incident to her

mother. He lodged the case due to suspicion against the accused.

10). Palu Khan [P.W.4] stated that he did not know the accused person but he knew the informant and victim of this case. Incident took place about 7/8 months ago.

P.W.4 deposed that he went to the Child Line office alongwith the informant to bring back the victim girl. Victim told that she went alone to the house of accused. From there she was handed over to Child Line.

In his cross-examination, he stated that he did not have personal knowledge about the incident except the fact that he went with the informant to bring back the victim from the office of Child Line.

11). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.2), who is star witness of this instant case deposed in her evidence that she had love affairs with the accused person prior to the incident and she went to the house of accused voluntarily, on the day of alleged incident. After that, the family members of the accused handed over her to C.W.C as she was below 18 years of age.

The victim girl (P.W.2) clearly stated in her cross-examination that accused did not know anything about the incident as he was not present at the time of incident, when she went there. She (P.W.2) asserted that accused is not involved with the alleged offence of this case.

Moreover, She (P.W.2) deposed the same statement before C.W.C that she was having love affairs with the accused. She gave her statement before learned Magistrate as tutored by her father and police.

Thus, it is clearly established that victim girl went to the house of accused person voluntarily as she did not make any statement against the accused before CWC. Her conduct clearly shows that the alleging incident narrated in the FIR is totally false.

Moreover, her father who is the informant of this case had lodged the case due to anger as his victim daughter went to the house of the accused without telling him. He lodged the case due to suspicion against the accused. Further, P.W.4 namely Palu Khan who is the independent witness of this case, deposed in his cross-examination that he did not have personal knowledge about the incident but he went with the informant to the Child line Office to bring the victim.

The conduct of victim clearly shows that she voluntarily went to the house of accused at the time of incident. The conduct of the victim is not found natural had she been abducted or kidnapped by the accused person by force.

There is no material on record to hold that the accused kidnapped and committed rape on the victim, to constitute offence under Sections 365/506 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

- 12). To bring home the guilt of the accused under Section 365/506 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.
- **13).** However, from to discussion made herein above, it is crystal clear that victim went to the house of accused person voluntarily. There is no evidence of inducement or threat to the victim at the relevant time of incident.
- **14).** On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim and committed rape on her. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.
- **15).** In the result, accused **Sanowar Hussain** is acquitted of the

charge under Sections 365/506 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stands discharged.

16). Given under my hand and seal of this Court on this **04**th **day of October, 2019.**

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Dr. Anima Boro, the M.O., P.W.2 = Almina Khatun, the victim, P.W.3 = Nur Hussain, the informant,

P.W.4 = Palu Khan.

(B) Prosecution Exhibits:

Ext.1 = Medical Report, Ext.1(1) = Signature of M.O.,

Ext.2 = Statement of the victim recorded u/s

164 CrPC,

Ext.2(1) & 2(2) = Signature of the victim,

Ext.3 = FIR,

Ext.3(1) & 3(2) = Signature of Nur Hussain.

- (C) Defence witnesses:Nil.
- (D) Defence Exhibits: Nil.
- (E) Court witnesses:Nil
- (F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.