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. 140 OF 2019 (G.R.No.- 3722/2017) Barpeta P.S. Case No. 1331 of 2017

State of Assam

-versus-

Firoj Ali Sikder S/O Niyamat Ali Sikder, Resident of Jalkara, P.S. Barpeta,

District – Barpeta, Assam <u>Accused.</u>

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned

Public Prosecutor, Barpeta.

For the Accused : Abdul Kayem, learned

Defence Counsel, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365/376/506 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge: 16.08.2019,Date of Prosecution evidence: 11.09.2019,Date of Argument & Judgment: 11.09.2019.

J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 1331 of 2019 under Sections 366/506 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 Md. Subur Ali, father of the victim.

In the aforesaid **F.I.R**. dated 02.08.2017, the informant Subur Ali (P.W.2), who is the father of the victim girl, alleged interalia, that on 28.07.2017 at about 8:00 PM, the accused person namely Firoj Ali Sikder kidnapped his minor daughter aged about 15 years, from her home when she went to toilet and took her to the house of accused . It is alleged in the FIR that accused person forcibly committed sexual intercourse with her and threatened her not to disclosed the matter to anyone. After that, accused person returned her to her residence at about 3:00 AM on next day.

On receipt of the aforesaid F.I.R. by the In-charge Kalgachia Police Outpost, the same was entered vide Kalgachia O.P. GDE No. 20 dated 02.08.2017 and forwarded it to O.C. Barpeta PS for registration of a case. The Officer-Incharge, Barpeta Police Station registered the same as Barpeta P.S. Case No 1331/2017 under Sections 366/506 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 Firoj Ali Sikder **under Sections** 365/376 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.731/2019, dated 06.08.2019.

- **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 365/376/506 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, **02 [two]** number of witnesses including the informant and victim were examined on behalf of the prosecution to prove the charge under Sections 365/376/506 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

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. Lalit Ch. Nath,** learned Public Prosecutor of Barpeta, for the State as well as **Mr. Abdul Kayem,** learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections** 365/376/506 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 on 28.07.2017 at about 08:00 PM within the jurisdiction of Barpeta P.S., District Barpeta, kidnapped Eyatan Nessa, minor daughter of informant Subur Ali, from 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 on same date and thereafter at his home, accused committed rape on minor daughter of the above named informant and thereby committed an offence punishable under Section 376 IPC?
- (iii) Whether accused on same date and place, committed criminal intimidation by threatening the above named victim to kill her if she discloses the offence committed to her by accused and thereby committed an offence punishable under Section 376 IPC?
- (iv) Whether accused on same date and thereafter at your home, committed penetrative sexual assault upon the minor victim, 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.

Eyaton Nessa [P.W.1] has deposed in her evidence that informant is her father and she knew the accused person. She stated that incident took place before 2 years. On the relevant day, at about 8 PM, she went to the house of accused to bring one book from his sister and stayed there for 2/3 hours. She further stated that the house of accused is just on the backside of her house. Her mother started shouting when she did not find her in her residence. Then, parents of the accused brought her to her house at about 11 PM.

Then, People of society also quarreled with her mother as to why she (P.W.1) went to the house of accused, at late night. She deposed that her father came in the morning and lodged this case.

P.W.1 stated that police examined her and sent her for her medical examination and also got her statement recorded under Section 164 CrPC by the learned Magistrate.

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

During her cross-examination, she stated that she gave her statement before the learned Magistrate as tutored by the villagers. She deposed that no incident took place with her.

8). Sabur Ali [P.W.2] deposed in his evidence that he had lodged the ejahar and he knew the accused person. Victim is his daughter. He stated that incident took place before 2 years. At the time incident, he was at Guwahati. His wife informed him over phone that his victim daughter went to the house of accused. On coming home, his wife and villagers told him about the incident. Then, he lodged the case against the accused alleging rape on being asked by

the villagers. He found his victim daughter at his home. After that, accused was arrested by police.

P.W.2 stated that he did not ask anything to his victim daughter. He did not know as to whether police asked his victim daughter or not.

In his cross-examination, he stated that he did not know the contents of the ejahar and the same was written by villagers and he put his thumb impression thereon. He further stated that the ejahar was lodged after delay of 3 days.

9). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.1), who is star witness of this instant case that deposed in her evidence that on the day of alleged incident, she went to the house of accused to bring one book from his sister and stayed there for 2/3 hours. After that, her mother raised shouting as she did not find her daughter. Then, parents of the accused brought her to her house at about 11 PM. In the meantime, villagers quarreled with her mother as to why she went to the house of accused at late night and her father lodged this case.

But the victim girl clearly stated in her cross-examination that no incident took place with her as alleged in the FIR and clearly stated that she gave her statement before the learned Magistrate as tutored by the villagers.

Thus, it is clearly indicated that victim girl went to the house of accused person voluntarily as she did not make any hue and cry in the said house. 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 did not know the content of the FIR as stayed by him in his cross-examination.

The conduct of victim clearly shows that she was a willing party and she voluntarily went with the 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 365/376/506 IPC read with Section 4 of the Protection

of Children From Sexual Offences Act, 2012.

- **10).** To bring home the guilt of the accused under Section 365/376/506 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.
- **11).** 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.
- **12).** 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.
- **13).** In the result, accused **Firoj Ali Sikder** is **acquitted** of the charge **under section** 365/376/506 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

The bail bond stands discharged.

14). Given under my hand and seal of this Court on this **11**th **day of September, 2019.**

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Eyaton Nessa, the victim, P.W.2 = Subur Ali, the informant.

(B) Prosecution Exhibits:

Ext.1 = Statement of the victim recorded u/s

164 CrPC,

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

- (C) <u>Defence witnesses</u>:Nil.
- (D) Defence Exhibits: Nil.
- (E) Court witnesses: Nil
- (F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.