IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 43 OF 2017

Under Section 4 of P.O.C.S.O. Act, 2012

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.
-versusAnar Hussain Accused.

APPEARANCE

For the Prosecution : Sri Lalit Ch. Nath, learned P.P.

For the accused : A. Salam, learned Advocate.

Evidence recorded on : 20.02.2018,09.05.2018,12.06.2018,

Argument heard on : 12.06.2018,

Judgment delivered on : 12.06.2018.

IUDGMENT

- 1. The prosecution case, in brief, is that on 02.06.2017 at about 4:00 PM accused Anar Ali committed rape on the victim, aged about 11 years, in a jungle. Sahil Islam, son of the informant, saw the occurrence and then the accused person fled away. Accordingly, the mother of the victim Jeleka Begum lodged an FIR at Tarabari PS on 06.06.2017.
- 2. On the basis of the F.I.R. police registered a case, started

investigation and after completion of investigation submitted charge sheet against accused Anar Hussain under section 4 of POCSO Act.

- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against accused Anar Hussain under section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 5 (five) witnesses including the medical officer and the victim. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Point for determination:**-

Whether on 02-06-2017 at about 4:00 PM at Kaltoli, within the jurisdiction of Tarabari PS, District Barpeta, committed penetrative sexual assault on Saniara Begum, aged about 11 years, daughter of the informant Jeleka Begum?

Discussion, decision and reasons thereof

- 6. According to the FIR, the allegation against the accused is that on 02.06.2017 at about 4:00 PM, he committed rape on the victim in jungle. The FIR was lodged on 06.06.2017 and on the same day the victim was examined by Medical Officer.
- 7. **The Medical Officer is examined as PW1**. She has opined that "(1) There is no recent sign of sexual intercourse, but victim is accustomed to sexual intercourse. (2) There is no injury marks on her private parts. (3) According to X-ray examination her age is above 12 (twelve) years and below 14(fourteen) years at present." Therefore, now we have to analyse the ocular evidence adduced by the prosecution witnesses.
- 8. The informant **Jeleka Begum as PW2** has deposed that the occurrence took place about 5/6 months ago. At that time the victim was

a student of class VI and she was aged about 12 years. On the date of occurrence at about 4/5 PM, the accused person committed rape on the victim in the jungle on the bank of river of Brahmaputra. Her son Shahidul Islam saw the occurrence. While Shahidul created hulla, the accused person fled away. She called a village bichar, but as no bichar was held, she lodged the FIR after 2 days.

In cross examination, she has stated that the accused is her neighbour and her nephew. Prior to the occurrence an altercation took place in between her and the accused person.

9. **Shahidul Islam, son of the informant, as PW3** has deposed that the informant is his mother and the accused is his cousin brother i.e. the son of his paternal uncle. The victim is his sister. About one year ago, one day at afternoon a quarrel took place in between the victim and one Parul, niece of the accused. Then the victim returned home weeping and informed that she was assaulted by Parul. Then they lodged bichar before the family members of the accused, but they refused to accept the bichar. Then out of anger, as per direction of the villagers, the FIR was lodged by his mother. In fact the accused person did not do any illicit act with his sister.

In cross examination, he has stated that Parul and the victim are best friends and prior to this occurrence also the victim had gone to the house of the accused to play with Parul. On the day of occurrence a quarrel took place relating to their playing in between Parul and the victim. Parul physically assaulted the victim. So the victim returned home weeping. The allegations made in the FIR by his mother are totally false.

10. The victim as PW4 has deposed that the accused is her cousin brother. On the date of occurrence, at evening time, she had gone to the house of the accused to play with Parul. While they were playing, a quarrel took place in between them. Parul fell down her by holding her hair. She also assaulted Parul. The accused person is the maternal uncle of

Parul. As she assaulted Parul, the accused person assaulted her. Then she returned home weeping and reported the matter to her mother. Her mother called a bichar, but no bichar was held. So her mother lodged the FIR. She made statement before the police as deposed in the court. Magistrate recorded her statement. She was examined by Medical Officer.

In cross examination, she has stated that she made statement before the Magistrate as tutored by her mother and villagers. Except physical assault, no other act was done by accused with her.

11. One **Samad Miya, husband of the informant, as PW5** has deposed that the victim is his daughter and the accused is the son of his brother. About one year ago one afternoon while Parul and victim were playing assault took place in between them. Then on the day of occurrence his wife lodged the FIR. In fact, no occurrence took place in between the victim and accused.

In cross examination, he has stated that the quarrel in between Parul and the victim took place in the house of the accused. The accused is the maternal uncle of Parul. They lodged a bichar before the father of the accused, but he did not do it. So, as per advise of the village people the case was filed. But in fact no such occurrence took place as stated in the FIR.

12. From the above discussions of the evidences of the prosecution witnesses, it is found that except the informant, none of the prosecution witness has supported the case of the FIR. The victim, her brother, who claimed as eye witness, and the father of the victim have categorically stated that on the day of occurrence a quarrel took place in between Parul and the victim while they were playing. Parul physically assaulted the victim and the victim also assaulted Parul. Being the maternal uncle of Parul, the accused person physically assaulted the victim. Except this, nothing was happened on the date of occurrence. Under such circumstances, the ocular evidence is also quite silent regarding commission rape by the accused person on the victim.

- 13. Under the above facts and circumstances, it is clear that both medical and ocular evidences are quite negative regarding commission of rape on the victim by the accused person. The evidence of the prosecution witnesses makes it clear that prosecution has failed to bring home the guilt of the accused person for any offence. Therefore the accused person is acquitted and set at liberty.
- 14. Bail bond executed by the accused person and the surety are extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 15. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.
- 16. Given under my hand and seal of this Court on this 12th day of June, 2018.

Dictated & corrected by me.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta (Smti. C. R. Goswami) Special Judge, Barpeta.

A P P E N D I X

(A) **Prosecution witnesses**:

P.W.1 = Medical Officer Dr. Anima Boro,

P.W.2 = Jeleka Begum, the informant,

P.W.3 = Shahidul Islam,

P.W.4 = Saniara Begum, the victim,

P.W.5 = Samad Miya.

(B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) = Signature of the M.O.

Ext.2 = Statement of the victim u/s 164 CrPC,

Ex.2(1)&2(2) = Signatures of the victim.

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

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta.