IN THE COURT OF SPECIAL JUDGE, BARPETA

<u>Special POCSO Case No. 45/2017</u> (<u>Arising out of Barpeta P.S. Case No.2355 of 2015</u> U/S 18 of Protection of Children from Sexual Offence Act, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 11.01.2018

State of Assam

- Vs -

Samejuddin.....Accused.

Date of Recording Evidence on - 28.02.2018, 21.05.2018, 20.03.2019

Date of Hearing Argument on - 12.06.2019

Date of Delivering the Judgment on - 19.06.2019

Appearance:

Advocate for the State------Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. Norain Hussain, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 04.09.2015 one Zakir Hussain lodged a complaint in the court of learned Chief Judicial Magistrate, Barpeta stating inter alia that the mother of informant performed her second marriage with accused Samejuddin named in the complaint petition. After she married for second time, the two daughters of informant who were living with the mother of accused subsequently, used to live with him. However, due to illness of the second husband of his mother he sent his two daughters to the house of his mother who stayed with her rendering assistance in domestic affairs. But as alleged, accused person hatch a conspiracy to thrown his two daughters out of his house and for this purpose he employed various illegal means. Accused even passed sexual comments against his daughters who being minor ignored the same. But one day accused tried to commit rape on his daughter at 12 'O' clock at night by shutting her mouth but she somehow save herself. This fact was informed to him by his daughter. Hence this case.
- 2. The said information was however, forwarded to the learned JMFC, Barpeta for disposal who in turn forwarded the same to police station for submitting report in Final Form.

- 3. Based on the said information, police registered a case being Barpeta P.S. case No.2355/15 u/s 18 of Protection of Children from Sexual Offences Act, 2012 and investigated the case.
- 4. During the course of investigation, police recorded the statement of the victim girl u/s 161 Cr.P.C. along with other witnesses. The victim girl was also forwarded to court for recording her statement u/s 164 Cr.P.C. Medical examination of the victim girl was also done. Thereafter, on conclusion of investigation police finally laid the charge sheet against accused u/s 4 of POCSO Act with a view to stand trial.
- 5. During the course of time, when accused entered his appearance in court, the then Special Judge, Barpeta vide order dated 11.01.2018 having heard the learned lawyers appearing for both sides and perusing the materials available on record having found a primafacie case framed charge u/s 18 of POCSO Act. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution altogether examined 7 witnesses including the M/O and I/O as well as the victim girl.
- 7. Concluding prosecution evidence accused was examined u/s 313 Cr.P.C. to which accused denied the prosecution evidence as false and misleading. However, on being asked, accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

8. Now point for determination ;-

1. Whether on 26.08.2015 at about 12 pm accused tried to commit sexual assault on the victim girl (X) aged about 10 years as alleged?

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

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

10. The learned counsel Smti. Priti Das appearing for the State contended that in this case, charge was framed u/s 18 of POCSO Act which prescribed punishment to accused who attempts to commit any offence punishable under the POCSO Act. In the instant case, it is the allegation in the FIR corroborated by the victim girl in her statement u/s 164 Cr.P.C. that the victim girl used to stay with her paternal grand mother but about 20 days back at about 12 pm while she was sleeping, her grand father by shutting her mouth with a gamocha committed penetrating sexual assault. However, when she told that she will disclose this fact to the neighbors in the morning accused threatened her of dire consequences at the point of dagger. Thereafter, in the morning her father was called and she was sent along with him. Therefore, the learned counsel for the state submitted that the statement of the victim girl recorded by Magistrate u/s 164 Cr.P.C. clearly disclose that accused even committed penetrating

sexual assault on her. Therefore, the offence against accused is proved. Even though, the victim is a minor girl her evidence inspire confidence which can be trusted. In the nature of this case, finding corroborative evidence from other prosecution witnesses is a herculean task and if the court insist for corroborative evidence no such evidence will be available. Therefore, the evidence of the victim girl cannot be discarded and accused can be punished on the basis of such evidence.

- 11. On the other hand, the learned counsel appearing for the accused person vehemently contended that in the instant case, there is absolutely no legal evidence against the accused for sustaining conviction u/s 18 or for that matter u/s 6 of POCSO Act as contended by the learned counsel for the state. If we reads the evidence of the informant and the victim, no evidence emerged in their mouth to show that accused did any misdemeanor or any act involving sexual assault against the victim girl.
- 12. In her evidence, the victim girl (PW-6) stated that she stayed in the house of accused at the relevant time. But there was a quarrel between her father and accused. So, one person by the name Bishu of their village wrongly informed her father about the commission of sexual assault by accused against her. In her evidence-in-chief she stated that whatever she said before Magistrate u/s 164 Cr.P.C. was under fear of police.
- 13. In her cross examination she stated that there was a quarrel between her father and accused for which her father went out to work in the brick knil. She do not know when her father filed the case.
- 14. On the other hand, the informant PW-2 stated that his daughter has been residing with his mother who married as second husband. But one villager informed him over phone that accused had been torturing his daughter. Then he came to Barpeta Bar directly from brick knil and filed the case against accused and then only he went to the village and asked his daughter about the incident. After three days, police called his daughter to police station and recorded her statement before Magistrate. She was also examined by doctor.
- 15. In his cross examination he stated that he do not know what was the contents of his case. It was written by a lawyer and before filing the case he did not enquire with the victim but filed the case on the basis of information given by one Bishu. However, when he asked his daughter, she told him that no such sexual assault was committed by accused against her.
- 16. Therefore, on perusal of the evidence of PW-2 and PW-6 who are the informant and the alleged victim it become crystal clear that prosecution case is based on total falsehood. There is no element of truth in their evidence to hold the accused person guilty u/s 18 of POCSO Act which reads as under:
 - **"Section 18. Punishment for attempt to commit an offence.-** whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any

description provided for the offence, for a term which may extent to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both".

- 17. So, in the context of the definition u/s 18 of POCSO Act, the evidence of PW-2 the informant and the victim PW-6 does not constitute any offence punishable u/s 18 of POCSO Act.
- 18. Moreover, on perusal of the evidence of doctor it appears that on examination she found no recent sign of sexual intercourse. No stain detected in her wearing garments. No bodily injury was found. No spermatozoa was seen on microscopic examination of vaginal swab slide.
- 19. The evidence of PW-3 and PW-4 are hearsay in nature.
- 20. PW-5 Hamida Begum who is the wife of accused also denied having any such incident ever happened.
- 21. The evidence of I/O Niva Phukan (PW-7) is also stereotype. Nothing can be inferred from her evidence that accused is guilty of committing the offence u/s 18 of POCSO Act.
- 22. Therefore, after careful and dispassionate analysis of the evidence available on record, this court is of the clear view that prosecution has miserably failed to establish the case against accused for sustaining conviction u/s 18 of POCSO Act. As submitted by the learned counsel there is absolutely no evidence forthcoming to show that accused committed the offence u/s 6 of POCSO Act. Therefore, the submission of the learned Addl. P.P. carries little force in the absence of any evidence. As such, this court has no option but to come to a conclusion that there is no legal evidence emerged for sustaining conviction of accused u/s 18 of POCSO Act.
- 23. In the result, the accused is acquitted from the alleged offence u/s 18 of POSCO Act, 2012 forthwith and set him at liberty forthwith.
- 24. 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.
- 25. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.
- 26. Let the case record be consigned to record room after completing the formalities.
- 27. Given under my hand and seal of this Court on this 19th day of June, 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 7 nos. of witnesses :-
- PW-1 = is doctor Anima Boro, M/O.
- PW-2 = is Zakir Hussain, the informant.
- PW-3 = is Rahima Begum.
- PW-4 = is Samiran Nessa.
- PW-5 = is Hamida Begum.
- PW-6 = is the victim girl (X).
- PW-7 = is Niva Phukan, the I/O.
- 2. The prosecution has exhibited following document :-
- Ext.1 = is the medical report.
- Ext.= 1(1) is the signatures of doctor Anima Boro.
- Ext.2 = is the statement of victim (X) u/s 164 Cr.P.C.
- Ext.2(1) & 2(2) = are the signatures of victim (X).
- Ext.3 = is the sketch map.
- Ext.3(1) = is the signature of S/I Niva Phikan.
- Ext.4 = is the charge sheet.
- Ext.4(1) = is the signature of S/I Niva Phukan.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.