## IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

## Special P.O.C.S.O. Act CASE NO. 44 OF 2016

Under Section 376(2)(i)/511 I.P.C R/W Section 8 of P.O.C.S.O. Act,2012

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

State of Assam.
-versusAjmal Haque ..... Accused.

## **APPEARANCE**

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

For the accused : 1. Sri D. Talukdar, Ld. Senior Advocate

2. Karabi Das, learned Advocate.

Evidence recorded on : 30.06.2017,

Argument heard on : 28.06.2018,

Judgment delivered on : 28.06.2018.

# J U D G M E N T

1. The prosecution case, as narrated in the FIR, is that on 14.09.2016 at about 6:00 PM while the victim, aged about 12/13 years, was washing her hands in their tube-well, accused Ajmal Haque, coming from backside, tied her mouth with a gamocha and dragged her to a

nearby house and attempted to commit rape on her. The victim somehow removed the gamocha and started shouting. While the neighbouring people rushed to the place of occurrence, the accused person fled away. The matter was informed to accused Habeluddin, the father of accused Ajmal Haque but he rebuked them in filthy language and threatened to kill them. Accordingly the father of the victim Abdul Mazid lodged the FIR on 16.09.2016.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation the I/O submitted the charge sheet against accused Ajmal Haque u/s 376(2)(i)/511 I.P.C R/W Section 8 of P.O.C.S.O. Act,2012
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against accused Ajmal Haque under section 376(2)(i)/511 I.P.C R/W Section 8 of P.O.C.S.O. Act,2012. 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 only 2(two) witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

#### 5. **Points for determination**:-

Whether the accused person, on 14.09.2016 at about 6:00 PM, at Kachumara NONK, Baguribari at Barbala, within the jurisdiction of Kachumara P.S. District Barpeta, attempted to commit sexual assault on Abida Khatun, aged about 12/13 years, the daughter of the informant Md. Abdul Mazid?

## Discussion, decision and reasons thereof

6. According to the FIR, on 14.09.2016, the accused person tied the mouth of the victim from backside, dragged her to a nearby house

and attempted to commit rape on her. Father of the victim Abdul Mazid lodged and FIR. Said **Abdul Mazid as PW1** has deposed that on the day of occurrence, to watch football match many people gathered at the field. The victim also went to that field. She went to take water to a nearby tube-well. The accused also went there. Then the villagers instigated him to lodge the FIR against the accused person. So, as per direction of the villagers he filed the case.

In cross examination he has stated that he is an illiterate person and he does not know who wrote the FIR and what was written there. He only took his thumb impression there. At the time of occurrence he was not present. He heard it later.

7. The victim **Abida Khatun as PW2** has corroborated the statement of PW1 by saying that on the day of occurrence, she had gone to watch football match in the field. She had gone to the tube-well to take water and there an altercation took place with the accused and some other persons. Saiful and Sakina asked her father to file a case. Then the village people wrote the FIR and her father lodged the same. She was examined by the M.O. and her statement was recorded by the magistrate.

In cross examination he has stated that as tutored by Sariful and Sakina she made the statement before the magistrate. She does not know what was written in the FIR. The accused person did not do any illicit act with her.

Except these two prosecution witnesses, prosecution has not examined any other witness in support of the prosecution case.

8. From the above discussions of the evidences of the prosecution witnesses i.e. PW1 & PW2, it is revealed that neither the informant nor the victim has supported the prosecution case. None of them has made a single whisper regarding the attempt to commit rape by the accused person. Rather, the victim has clearly stated that the accused did not do any illicit act with her. Only an altercation took place in between her and the accused person.

- 9. Under the above facts and circumstances, it is clear that the accused person cannot be held guilty for any offence either under section 376(2)(i)/511 I.P.C or under Section 8 of P.O.C.S.O. Act,2012. Therefore the accused person is acquitted and set at liberty.
- 10. 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.
- 11. 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.
- 12. Given under my hand and seal of this Court on this 28th day of June, 2018.

Dictated & corrected by me.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta Sd/-

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

# APPENDIX

# (A) **Prosecution witnesses**:

P.W.1 = Abdul Mazid, the informant,

P.W.2 = Abida Khatun, the victim,

# (B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

Ext.1(1)&1(2) = Signature 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.