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. 34 OF 2017 (G.R.No.- 5012/2016) Barpeta P.S. Case No. 1818 of 2016

State of Assam

-versus-

Bulu Das S/O Late Jogin Das, Resident of Pathbaushi Na-satra, P.S. Barpeta, District - Barpeta

...... Accused.

APPEARANCES:

For the State : Mr. Lalit Ch. Nath, learned

Public Prosecutor, Barpeta.

For the Accused : Mr. Makibur Rahman,

learned Counsel, Barpeta.

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

Date of Charge : 18.08.2017

Date of Prosecution evidence: 28.05.2018; 08.08.2018;

25.03.2019; 14.05.2019

& 25.06.2019

Date of Statement of accused: 25.06.2019
Date of Argument : 25.06.2019
Date of Judgment : 25.06.2019

J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 1818 of 2016 under section 4/6 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Smti Fulpa Das, mother of the victim.

In the aforesaid **F.I.R**. dated 30.09.2016 **(Exhibit -2)** the informant Smti Fulpa Das (P.W.3), who is the mother of the victim girl, alleged interalia that the accused person committed penetrative sexual intercourse on her minor daughter namely Kankana Das, aged about 14 years. It is seen in the FIR that the alleged incident occurred in the shop and bath room of the accused. The victim girl stated before her mother and neighborers that accused Bulu Das committed sexual intercourse for 4/5 days.

It is also alleged in the FIR that accused once again tried to committee sexual intercourse with the victim girl at 9:30 AM on the date of F.I.R., that is on 30.09.2016.

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 1818/2016 under Section 4/6 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 above named accused **Bulu Das** under Section **4 of the Protection of Children From Sexual Offences Act, 2012** vide charge sheet **No.10/17**, dated **23.01.2017**.

- **2).** My learned Predecessor-in-office received the case record alongwith the case diary of the case. Accused was summoned. On appearance of accused, copy was furnished to him by my learned Predecessor-in-office.
- **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, charge was framed by the then Sessions Judge, Barpeta against the

accused under Section 4 of the Protection of Children From Sexual Offences Act, 2012, which was 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, **07** [Seven] number of witnesses including the victim, her parent, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge under Section 4 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He also disclosed that informant has lodged false case against him (accused).

- 5). I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta, for the State as well as Mr. Makibur Rahman, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 376 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 for last several days before September 2016 at Patbaushi Na-satra, within the jurisdiction of Barpeta Police Station, District Barpeta, accused committed rape on Kankana Das, aged about 14 years, daughter of informant Smti Fulpa Das by committing penetrative sexual assault on her 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. Mamata Devi (P.W.1), deposed in her evidence that

on 01.10.2016, she examined the victim brought by Barpeta PS in

connection with Barpeta P.S. Case No. 1818/2016 under section 4/6 of

POCSO Act on being identified by WPC UB 54 Rina Das and

accompanied by her mother Fulpa Das and found as follows:

History:-

According to alleged victim and the mother of the victim Sti Fulpa Das,

Bulu Das, a shopkeeper who is neighbour aged about 60/65 years,

used to call her daughter to his shop from last 2/2½ months and used

to had sexual intercourse with her. According to her mother, her

daughter's mental condition is below average and so she did not know

or tell anyone what is happening. Now, she is 2 month pregnant. And

so her mother registered the case against the person and Police

brought her today for medical examination.

Physical Examination:-

Identification marks:- 1. A pin head size mole over right side of chin.

2. A pin head size mole over left side cheek.

Height: 137 cm,

Weight:- 40 Kg.

Chest girth at nipple level:- 75 Cm. Abdominal girth at navel level:- 68

Cm.

General built & appearance: - Average.

Teeth: Total:28:

Permanent: 14/14

Temporary: Nil.

Hairs: Axillary/Body: 0.5-0.6 cm in length scanty.

Breasts:- Hemispherical, soft in consistency. Nipple and avola dark brown in colour.

Puberty(as told by the individual): 2 years back.

LMP (as told by the individual): Not remember.

Mental Condition: No abnormality detected.

Gait: Normal

Intelligence: Below average.

Wearing garments & any suspected stains present: Intact, stain absent.

Bodily Injuries: Not detected at the time of examination.

Genital Examination:-

Pubic hairs: 0.5-0.5 cm in length, black in colour.

Vulva(Labia majora & minora):- Labia minora exposed in lithotory position.

Hymen: Old tear at 7 and 5 'O'clock position.

Vagina:- Healthy.

Cervix & Uterus: C- Soft, Uterus not palpable per abdominally.

Fourchette & Perineum : Healthy.

Result of vaginal swab smear examination: Microscopic examination of vaginal swab reveal no spermatozoa.

Result of X-Investigation: Plate No. 162 Dated 04-10-2016.

Wrist Joint: Epiphyseal union around wrist joint is not completed

Elbow Joint:-Epiphyseal union around elbow joint is completed.

Shoulder Joint :- Epiphyseal union around shoulder joint is not completed.

Ultrasonography advised & result:- USG lower abdomen (04/10/16): Impression:

Single live pregnancy at 8 weeks 3 days of GA. Single gestational sac noted in the uterus. Normal yolk sac is present. Amniotic fluid is normal. CRL was 18.7 cm. FHR- 169 b pm DD-15.05.2017

Final Opinion:-

- (1) Her age is above 14(Fourteen) and below 16 (Sixteen) years.
- (2) Evidence of pregnancy is detected on her person and duration of pregnancy is 8 week 3 dyas.

- (3) Evidence of recent sexual intercourse is not detected on her person.
- (4) Evidence of injury or violence mark is not detected on her person.
- (5) Evidence of foreign particles like hairs, semen, blood etc are not detected on her person.
- (6) For peri No.9 advised to take the victim girl to Psychiatry Department FAAMCH for evaluation.

She exhibited her medical report as Ext.1 is the medical report and Ext.1(1) is her signature and Ext.1(2) is the signature of Monoj Kr. Sinha, I/C HOD & Associate Professor.

In her cross-examination, PW1 deposed that according to mother of the victim, mental condition of the victim is not normal. So, she advised her to attend the Psychiatry Department, FAAMCH, Barpeta.

8). Smti Barnali Das [P.W.2] has deposed in her evidence that she knows the accused as well as the victim girl. Accused is her neighborer. The incident took place before one year. She heard from the village people that accused did sexual intercourse with the victim girl and she became pregnant. She deposed that she did not know what happened after her (victim) pregnancy.

Her cross-examination was declined by defence side.

9). Fulpa Das [P.W.3] who is informant of this case and mother of the victim girl. She has deposed that she knows the accused person who belongs from same village. The age of the victim was 16 years 3 months at the time of alleged incident.

She further deposed that when she asked the victim about stoppage of her mensuration cycle from last 3 months, then she (victim) stated before her that accused Bulu Das raped her and she became pregnant.

She deposed that the mental condition of the victim was not healthy. After that, she filed this case and police sent her for medical examination and recorded her statement before the learned Magistrate. PW3 further has deposed that Victim has forgotten the alleged incident when someone asked about the said incident.

He exhibited the ejahar as Ext.2 and Ext.2(1) & Ext.2(2) are her signature.

In her cross-examination by defence side, she deposed that victim girl has been suffering from psychiatric problem from the age of 3 years and has forgotten the incident. Accused came into her(informant) house at the time of alleged incident. PW3 admitted in her cross-examination that the victim girl was psychiatric patient when alleged incident occurred.

She stated that she has filed this case against the accused on suspicion as he (accused) frequently came to her house and talked with the victim girl.

She deposed before the Doctor that victim girl talked illogically. She informed her husband about the alleged incident but the police did not interrogate him though he was at home. The neighborer namely Barnali, Joytika also knew the alleged incident.

PW3 stated that victim gave her statement after 4 days of the alleged incident. She instructed her (victim) what should she state before the Court. She further stated that she has filed this case on suspicion.

10). Kankana Das [PW4] is the victim of this case and has deposed that she knows the accused and informant Fulpa Das is her mother. She further has deposed that she became pregnant but did not know how she became pregnant. She further stated that miscarriage occurred when she was in Hospital. She stated that she was at home and could not remember anything else.

Her cross-examination was declined by the defence side.

11). Latika Das (PW5) has deposed that she knows the informant as well as the victim. She stated that incident took place about 3 years ago. The house of the informant is near to his house. One day, she heard that mother of the victim was abusing accused Bulu Das at the evening. On being asked, she came to know that victim has stated against accused to her mother

In her cross-examination, she has deposed that victim is her grand-daughter. She has admitted that victim has got some mental problem for the last seven years. She did not know as to what allegation, informed lodged this against the accused person.

She further stated that she did not ask anything to the mother of the victim. She did not know about the alleged incident.

12). Babu Singh [PW6] is the investigation officer of this case and has deposed that on 30.09.2016, one Fulpa Das lodged the FIR before the OC Barpeta PS which was registered as a Barpeta PS Case No.1818/2016, unde Section 4/6 of POCSO Act.

On the same day, he examined victim and informant in thana and then proceeded at the place of incident. He also examined the relevant witnesses. He has exhibited the sketch map as Ext.3 and Ext.3(1) is his signature.

On 01.10.2016,he sent the victim for medical examination and recorded her statement under Section 164 CrPC before the learned Magistrate. PW5 further stated that he arrested the accused person on 01.10.2016 and forwarded to the Hon'ble Court.

After that, he collected the medical report of the victim and submitted charge-sheet against the accused person after completion of investigation.

He has exhibited the charge-sheet as Ext.4 and Ext.4(1) and Ext.4(2) are the signature of O.C. Binay Kalita, which he knows.

In his cross-examination, PW6 has deposed that living facility is not available in the shop of accused as per his sketch map. He deposed that he did not find mental disorder of the victim at the time of incident.

He has exhibited **charge-sheet as Ext.4(1)** is his signature which contains dated 23.01.2016 due to slip of pen.

13). Jyotika Das [PW7] has deposed that he knows the accused person as well as the informant and victim of this case. Victim is her niece. She deposed that incident took place more than one year ago. She heard that due to illicit relation with the accused, victim became about 2/3 months pregnant. She did not ask the victim as well as her mother in this regard.

In her cross-examination, PW7 has deposed that her resident is a distance of about 10 houses from the house of the victim. She did not ask the victim as well as her parent about the alleged incident. She has stated that victim is having some mental disorder from her childhood. She (victim) sometime speaks nonsense.

14). From a close perusal of the statement of the victim (PW4), who is star witness of this instant case, it is seen that she has deposed that she did not know how she became pregnant. She, further stated that she was at home and could not remember anything else.

It is interesting to note here that witness Dr. Mamata Devi had examined the victim and found her pregnancy which duration was 8 week 3 days but recent sexual-intercourse or violence mark was not detected. The victim (PW4) stated in her evidence that miscarriage occurred when she was in Hospital.

The witness Fulpa Das (PW.3) who is the mother of the victim has filed this case on suspicion. She (P.W.3) deposed that victim girl has been suffering from psychiatric problem from the age of 3 years and has forgotten the incident. PW3 admitted in her cross-examination that the victim girl was psychiatric patient when alleged

incident occurred. She stated that she filed this case against the accused on suspicion as he (accused) frequently came to her house and talked with the victim girl. Moreover, P.W.3 instructed her (victim) what should be stated before the Court.

PW2 namely Barnali Das and PW7 namely Jyotika Das stated same story before the court as they heard that due to illicit relation with the accused person, victim girl became pregnant. P.W.7 admitted in her cross-examination that victim has been suffering from mental disorder from her childhood and sometime speaks nonsense.

PW5 namely Latika Das has deposed in her crossexamination that victim has got some mental problem for the last seven years. **She did not support this allegation as she did not have personal knowledge about the incident.**

PW6 namely Babu Singh is the I.O. of this case has deposed in his cross-examination that he did not mention that there was living facility in the shop of accused which was alleged by the informant that accused raped her daughter in his shop. Moreover, I.O. of the case (PW6) did not find mental disorder of the victim at the time of investigation. Thus I.O. has contradicted the evidence of informant and other witnesses that victim happened to be a mentally disorder girl.

Moreover, victim has clearly stated in her evidence that she does not know as to how she became pregnant. Prosecution side has also not produced any material to show that anybody saw the victim and accused in close or compromising relation at any place to draw presumption against accused that he raped the victim and made her pregnant.

adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently, the charge under Sections 376 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the

accused Bulu Das beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Bulu Das is acquitted on benefit of doubt under Section 376 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.

- **16).** On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Bulu Das to warrant his conviction under Section 376 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012 beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal on benefit of doubt, which I accordingly do.
- **17).** In the result, accused **Bulu Das** is **acquitted** of the charge under Section 376 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.
- **18).** Given under my hand and seal of this Court on this **25**th **day of June, 2019**.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Dr. Mamata Devi, The Medical Officer,

P.W.2 = Smti Barnali Das,

P.W.3 = Fulpa Das, the informant, P.W.4 = Kankana Das, the victim,

P.W.5 = Latika Das,

P.W.6 = Babu Singh, the I.O.,

P.W.7 = Jyotika Das.

(B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.2 = Ejahar,

Ext.3 = Sketch Map, Ext.4 = Charge-sheet

(C) **Defence witnesses**:Nil.

(D) Defence Exhibits: Nil.

(E) **Court witnesses**:Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.