### **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. 11 OF 2016 (G.R.No.- 1136/2014) Barpeta P.S. Case No. 485 of 2014

#### **State of Assam**

-versus-

Lalchan Ali S/O Late Nayeb Ali, Resident of Puthimari, Keotkuchi, P.S. Barpeta, District - Barpeta, Assam

...... Accused.

# **APPEARANCES:**

For the State : Mr. Lalit Ch. Nath, learned Public Prosecutor, Barpeta.

For the Accused : Mr. Rafiz Uddin Dewan, learned

Advocate, Barpeta.

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

Date of Charge : 06.06.2016

Date of Prosecution evidence: 17.08.2016;23.09.2016;

31.03.2018;17.05.2018; 06.08.2018;15.05.2019

Date of Statement of accused: 03.06.2019
Date of Argument : 12.06.2019
Date of Judgment : 18.06.2019

# J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 485 of 2014 under Section 376 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 Majibar Rahman, father of the victim (hereinafter referred to as 'X').

In the aforesaid **F.I.R**. dated 24.02.2014, the informant Majibar Rahman (P.W.1), who is the father of the victim girl, alleged interalia that on 23.02.2014 at about 4:30 PM, the accused person namely Lalchan Ali committed penetrative sexual assault on his minor victim daughter (X), aged about 8 years when she was playing, near the house of the accused person. It was also alleged that accused lured the victim to his house and did sexual activity with the victim. On hearing hue and cry of victim, one Majar Ali and Habiya Khatun came and rescued the victim, when she was being abused by the accused. After that, victim girl told about the whole incident before her parents.

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 485/2014 under Section 376 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 above named accused Lalchan Ali under Section 376 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.1282/14, dated 23.12.2014.

- 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 my learned predecessor-in-office against the

accused under Section 376 IPC read with 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, **10 [Ten]** number of witnesses including the informant, victim, Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge under Section 376 IPC read with 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 borrowed money for his cancer treatment from the accused and did not repay the same. For this reason, informant has lodged false case against him.

- Prosecutor of Barpeta, for the State as well as Mr. Rafiz Uddin Dewan, 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 on 23.02.2014 at about 4.30 PM at village Puthimari, within the jurisdiction of Barpeta Police Station, District Barpeta, accused committed rape on Ranju Begum, aged about 8 years, daughter of informant Majibar Rahman whereby committing penetrative sexual assault and thereby committed an offence punishable under Section 376 IPC read with 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.

**Majibar Rahman [P.W.1]** who is informant of this case, deposed in his evidence that incident took place, at about 4.00 PM. The age of his victim daughter was 8 years at the time of incident. On that day, victim was playing near the house of the accused namely Lalchan Ali. Then, the accused dragged the victim into his house. After that, accused committed sexual assault with the victim girl. When the victim raised hullah, then one Majar Ali came from Masjid and rescued, the victim girl, where the accused was doing sexual activity.

PW1 disclosed that victim told the whole incident before her parents. PW1 further stated that when Majar Ali took the victim to her house, she became sick and so, they looked after for the night and on the next day, morning filed the ejahar at Barpeta Police Station. Police sent her for medical examination and got her statement recorded by the learned Magistrate.

**During cross-examination** PW1 deposed that he was at his home when incident took place. PW1 further deposed that there were several houses between the house of the accused and informant like Habi Ali, Makbar Ali and Abul Hussain. He admitted that he did not see the incident. He got his child in ill health condition and he (PW1) informed the incident someone of the village people. PW1 admitted that Badsha, Yunus, Hajarat Ali knew the incident.

He further stated that resident of Hares Ali and Ejahak Ali was situated in the south and west side of the house of the accused respectively. He admitted that no one were present in the said houses. PW1 stated that Lalchan have two sons as well as daughter-in-law and nephew and niece. But, Lalchan wife passed away at the time of

incident. PW1 stated that Ranju was admitted in a Hospital before five years.

He denied that he took Rs.7,000/- from the accused for the treatment of his daughter. He also denied that the dispute took place due to asking for repayment of the said amount. PW1 also denied that accused did not commit sexual assault with the victim.

He denied that he lodged the case and gave false evidence.

PW1 further stated that Majar and his daughter informed about the whole incident.

8). The victim [P.W.2] deposed in her evidence that incident took place one year before. On the relevant day, at about 4 PM, she was playing near Masjid and at that time, Lalchan called her but she refused to go. After that, Lalchan dragged her into his house and tied her hands and legs and opened her panty and committed penetrative sexual assault. PW2 also stated that when the accused inserted his penis into the private part of her then she raised hullah but accused did not want to release her. After hue and cry, Majar came and released her and took her to her house. She narrated the whole incident before her parents in her house.

PW2 stated that she was taken to thana on next day and sent her for medical examination and the learned Magistrate recorded her statement.

She exhibited her statement recorded under Section 164 CrPC as **Ext.1** and **Ext.1(1)** and **Ext.2(2)** are her signatures. She also admitted that she deposed the same story before the police.

**During her cross-examination**, she stated that she cried when the accused assaulted her. On hearing hue and cry, Majar Ali came but Major did not see the accused doing bad works with her. She deposed that accused tied her hand and leg by two separate Gamocha. She was playing alone near the Masjid and no one saw her, when the accused dragged her into his house.

She deposed that she did not raise hulla when Lalchan

dragged her because she did not know that Lalchan will do bad works with her. She further, stated that there were nobody in the house of Lalchan.

She denied that daughter-in-law, niece and nephew in the house of the accused were present. She denied that she stated before the court on being tutored by her parent. Lalchand did bad works in his bed.

She deposed that she did not know whether her father borrowed the money, from the accused or not and she did not know any dispute between the accused and her father.

She denied that Lalchan did not bad works with her; accused rebuked the victim to get back his money and then she started weeping and returned home.

**9). Rajesh Kumar Todi [P.W.3]** who is the then SDJM(S) of Barpeta deposed that on 26.02.2014, he recorded the statement of the victim namely Ranju Begum, aged 8 years. PW3 deposed that victim was minor and he tested the intelligence of the victim and being satisfied, he recorded the statement of the victim. PW3 also stated that he read over the statement to the victim and the victim put her signature thereon.

PW3 exhibited the statement as Ext.1 wherein Ext1.(3) is his signature.

His cross-examination was declined by the defence side.

10). Unush Ali [PW4] stated that he knows the informant and the victim. He deposed that about two years ago, police met him and told him that Lalchan committed bad works. But he told that he did not hear any such incident. Later on, he (PW4) heard that case was lodged against the accused Lalchan on alleged commission of rape upon the victim.

His cross-examination was declined by the defence side.

**11).** Mst. Habiya Khatun **(PW5)**, stated that she knows the accused and the victim. He stated that incident took place about 5/6 year ago. She heard from the victim that Lalchan did bad works with her. He caught her hands.

**In her cross-examination**, she deposed that she did not see the incident.

**12). Majar Ali (PW6)**, stated that he knows the accused and the victim. He stated that incident took place about 5/6 year ago. On the relevant day, at about 4:30 PM, he went to the Masjid for offering Namaj (prayer). At that time, he saw that victim was crying in the house of accused Lalchan. After that, he asked the victim as to why she was crying and then, accused Lalchan went out, from his house. Then, he (PW6) took the victim to her house as she was crying.

PW6 further deposed that he asked the victim as to why she was crying, then she told that Lalchan did bad works (rape) with her. The victim told the incident before her father. PW6 deposed the same story before th police.

In his cross-examination, he stated that Ranju was his niece. He denied that he told before the police that Lalchan was torturing the victim and assaulted her. He (PW6) did not see the victim when the accused tied her hand and leg but Ranju told him that accused tied her hand and leg. He further deposed that Ranju was a little girl and saw her dress properly. The age of the victim was 8 years.

He denied that he told before the police that victim did not tell him anything when he asked about the incident.

He denied that he did not state before the police that victim told him that accused did bad works with the victim.

He denied other suggestion of defence side.

**13). Dr. Anima Boro [P.W.7]**, who is the **Medical Officer** of this case, deposed in her evidence before the court that on **25.02.2014**, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day in

connection with Barpeta P.S. case No.485/2014, under Section 376 IPC R/W Section 4 of POCSO Act,2012, she examined victim Miss Ranju Begum, aged about 08 years, daughter of Mojibar Rahman, of village Puthimari, under Barpeta P.S., District Barpeta on being identified by WHG Namita Das and found as follows:

**<u>History</u>**:- History of alleged assault sexually on 23.02.2014 at 4:30 PM by Lalchan Ali, 55 years.

# **Physical Examination:**

Identification marks:- One black mole on right Chest.

Height :- 122 Cm. Weight:- 21Kg.

Chest girth at nipple level: - 58 Cm.

Abdominal girth at navel level :- 53 Cm.

General built & appearance :- Average

Voice :- Child.

Teeth: 28.

Hairs: Axillary :- Absent.

Breasts :- Not developed.

Puberty(as told by the individual):- Not attained.

Menstruation(as told by the individual):- No.

Mental condition: - Stable

Gait:- Normal

Intelligence:-Average.

Wearing garments and any suspected stains present:- No stain

detected.

Bodily injuries:- No injury detected.

# **Genital Examination:**

Pubic hairs:- Absent.

Vulva(Labia majora & minora):- Normal

Hymen:- Tear

Vagina:- Narrow.

Fourchette and Perineum:-Normal

Vaginal swab collected:-

Result of vaginal swab smear examination:- No Spermatozoa is seen on microscopic examination of vaginal swab slide.

#### **Opinion:**

- 1]. There is no recent sign of sexual intercourse.
- 2]. SI. No. (2 to 5), there is no sign.
- 3]. There is no injury mark.
- 4]. Victim is mentally and physically stable.
- 5]. There is no foreign particle in her body/cloths.

P.W.7 exhibited the **medical report vide Ext.2** wherein **Ext.2(1)** is **her signature** and **Ext.2(2)** is the **signature of Dr. S.K.** Bhuyan, Professor & HOD, Forensic Medicine, FAAMCH, Barpeta.

Her cross-examination was declined by the defence side.

**14). Dago Ali [P.W.8]**, stated that she knows the accused as well as the victim and the informant. He deposed that he does not know anything about incident.

His cross-examination was declined by the defence side.

**15). Hajarat Ali [P.W.9]**, stated that he knows the accused as well as the victim and the informant. He deposed that he does not know anything about incident as he has been lying on bed since last 4/5 years due to his illness.

His cross-examination was declined by the defence side.

**16). Manalisha Madhab Bhakta [P.W.10]**, who was working at Barpeta PS as attach officer on 24.02.2014 deposed that on the relevant day, one Majibar Rahman lodged the FIR before O/C Barpeta PS, which was registered as Barpeta PS Case No.485/2014, under Section 376 IPC R/W Section 4 of POCSO Act.

She deposed that she investigated the case and drew the sketch Map. Ext.3 is the Sketch Map and Ext.3(1) is her signature. She also examined the relevant witnesses including the victim.

She sent the victim for medical examination and got her statement recorded under Section 164 CrPC before the learned Magistrate. She deposed that she arrested the accused person on

26.02.2014 and forwarded him to Hon'ble Court.

On completion of investigation, she submitted charge sheet against the accused person under Section 4 of POCSO Act.

PW 10 exhibited the charge sheet vide Ext.4 and Ext.4(1) is her signature.

**In her cross-examination**, P.W.10 deposed that she did not examine Akbar Ali, Ishak Ali and Harej Ali who have been shown in the sketch map. She have not seized any birth certificate or school certificate of victim to prove her age.

She denied that witness Major Ali told her that Ranju stated before him that accused did bad work with the victim.

She denied that accused was not involved in the case; she have not done investigation the case properly.

17). From a close perusal of the evidence, it is seen from the statement of the victim (PW2), who is star witness of this instant case that accused Lalchan Ali took her inside the house when she was playing near the house of the accused and committed penetrative sexual assault upon her. She categorically stated that accused entered his penis into her private part for which she raised hulla. PW2 also deposed that Majar Ali (P.W.6) came to the place of incident on hearing her hue and cry.

The evidence of Majar Ali (PW6) is important because he was the first person who heard hue and cry of the victim girl and came to the spot. However, he did not see the accused tied hand and leg of the victim but victim allegedly told him that accused tied her hand and leg. He (PW6) further deposed in his cross-examination that victim was a little girl and her dress was found proper.

But the informant (P.W.1), in his FIR, (not exhibited by the prosecution) stated that witness Majar Ali (PW6) and one Habiya Khatun had seen the accused doing sexual-intercourse with the victim. It was alleged in the FIR that though, the witness Majar Ali and Habiya Khatun saw the accused having sexual-intercourse with the victim but the accused again proceeded to do sexual-intercourse with the victim

while her hand and leg were tied. It was written in the FIR that PW6 untied the hand and leg of the victim. But the witness, (PW6) did not support the FIR and simple deposed that he found, victim was crying, in the house of the accused Lalchan. It may be mentioned that victim is niece of the prime witness Majar Ali (PW6). Moreover, thought PW6 deposed that victim stated before him that accused had done bad works with her but I.O. of the case (Manalisha Madhab Bhakta) contradiction him by deposed that he did not tell her so.

Thus, version of the victim, that she was raped by the accused in his house became doubtful more so, when the prosecution witness Habiya Khatun did not support the case and FIR of this case.

The prosecution side has also not examined the mother of the victim, whom she, informed the incident immediately after occurrence of the incident. The non-examination of mother of the victim, creates the whole incident more doubtful.

The doubt is further strengthened of the fact that Medical Officer of this case, Dr. Anima Boro (PW7) did not find any sign of sexual-intercourse or injury mark on the body of the victim (PW2).

PW3 is formal witness. PW4 has not supported the prosecution case, defence side declined his cross-examination.

Witness Habiya Khatun (PW5) did not support the content of the FIR of this case and simply stated that she heard that accused caught the hand of the victim.

Witness Dago Ali (PW8) and Hajart Ali (PW9) did not support the prosecution case and the defence did not cross-examine them.

**18).** It is a well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the case of Dattu Ramrao Sakhare-versus-State of

Maharashtra, reported in [1997] 5 SCC 341, the Hon'ble Apex court has held that - "A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of child witness can be considered under Section 118 of Indian Evidence Act, provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored".

- 19). In another case, i.e., Pancchi versus State of Uttar Pradesh, AIR 1998 SC 2726, the Hon'ble Apex Court has held that "It is not the law that if a witness is a child, his/her evidence shall be rejected, even if it is found reliable, The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what other tell them and his child witness is easy prey to tutoring".
- **20).** The ratio as laid down in the above case is that the testimony of a child witness is attributed the same kind of credibility that it attached to the statement any other witness if the testimony is consistent.

In the present case, the victim has not been consistent on the material particulars with regard to the incident which is not supported vital witness like Majar Ali (P.W.6) apart from her own father. Moreover, Dr. Anima Boro (PW7) did not find any sign of sexual-intercourse or injury mark on the body of the victim (PW2).

- 21). Keeping in mind the above rational as laid down by the Hon'ble Apex Court, I am constrained to hold that the evidence 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 Lalchan Ali beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Lalchan Ali 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.
- **22).** On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Lalchan Ali 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.
- 23). In the result, accused **Lalchan Ali** 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.
- **24).** Given under my hand and seal of this Court on this **18**<sup>th</sup> **day of June, 2019**.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

### APPENDIX

#### (A) Prosecution witnesses:

P.W.1 = Majibar Rahman, the informant,
P.W.2 = Miss Ranju Moni Begum, the victim,
P.W.3 = Rajesh Kurmar Todi, the then SDJM(S),Barpeta
P.W.4 = Unush Ali,
P.W.5 = Mst. Habiya Khatun,
P.W.6 = Majar Ali,
P.W.7 = Dr. Anima Boro, the M.O.,

P.W.8 = Dago Ali, P.W.9 = Hajarat Ali,

P.W.10 = Manalisha Madhab Bhakta, the I.O.

#### (B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim,

Ext.1(1) & 1(2) = Signature of Ranju Moni Begum, Ext.1(3) = Signature of Rajesh Kumar Todi,

Ext.2 = Medical Report,

Ext.2(1) = Signature of Dr. Anima Boro, Ext.2(2) = Signature of Dr. S.K. Bhuyan,

Ext.3 = Sketch Map,

Ext.3(1) = Signature of S.I. Manalisha Madhab Bhakta

Ext.4 = Charge-sheet,

Ext.4(1) = Signature of S.I. Manalisha Madhab Bhakta

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

Sd/-

Special Judge, Barpeta.