IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 44 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.
-versusMoti Ali @ Motiar Rahman...... Accused.

APPEARANCE

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

For the accused : A. Salam, learned Advocate.

Evidence recorded on : 20.04.2018 & 19.06.2018,

Argument heard on : 19.06.2018,

Judgment delivered on : 19.06.2018.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 11.04.2017 at about 4:00 PM one Yamin Ali sent his daughter Yasmin Sultana and the victim, who is aged about 9 years, to call Saiful Ali, the son of the accused. Then the accused, taking advantage of absence of other family members, tried to make sexual assault on her. Accordingly, Tarafun Nessa, the mother of the victim lodged the FIR on the same day i.e. on 11.04.2017.

- 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 Moti Ali @ Motiar Rahman 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 Moti Ali @ Motiar Rahman 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 only 3(three) 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 11.04.2017 at about 4:00 PM at vilage Tengagaon (Alubari) within the jurisdiction of Sorbhog PS, District Barpeta, committed penetrative sexual assault on Nitumoni Begum, aged about 9 years, daughter of the informant Tarafun Nessa?

Discussion, decision and reasons thereof

- 6. The allegation as narrated in the FIR is that on 11.04.2017 at about 4:00 PM, the accused person tried to make sexual assault on the victim. The said victim was examined by the medical officer on 12.04.2017.
- 7. **The Medical Officer is examined as PW1**. She has opined that----- "(1) According to X-ray report her age is above 8 (eight) years and below 10 (ten) years at present. (2) There is no injury marks on her private parts. (3) There is no recent sign of sexual intercourse but tenderness on pubic area is there."

In cross examination, the MO has stated that except one

tenderness no other injury was found on the private parts of the victim. If anything is put in the private part of the victim of aged about 9 years, then there must be some injury.

8. The informant Tarafun Nessa **as PW2** has deposed that about one years ago on the day of occurrence, the victim had gone to the house of Yamin Ali to play with his daughter. At that time, the age of the victim was 9 years. Saiful, the son of the accused person, was doing clothes business along with Yamin. Yamin sent the victim and his daughter to the house of the accused to call Saiful. At that time, Saiful was not at home. The accused called both the victims to his house. Then out of fear, both of them ran out from the house of the accused. Then she asked as to why they were running. Then they told that out of fear of the accused, they ran out from his house. The villager heard that matter and then as per direction of the villagers, she had to lodge the FIR. She does not know who wrote the FIR. She only put her signature. She made the statement before the police as tutored by the villagers.

In cross examination, she has stated that the victim and the daughter of Yamin ran out of fear of the accused. She does not know what is written in the FIR. Police asked only her name and address. Other statement was given by the village people.

9. **The victim as PW3** has corroborated the statement of PW2 by staying that on the day of occurrence, she was playing in the house of Yamin alongwith his daughter. Yamin sent them to the house of the accused to call his son. But the son of the accused was not present at home. The accused called both of them and then out of fear they shouted and ran out from the house of the accused. Her mother asked her what happened and then she reported the matter. Her statement was recorded by the Magistrate and she made the statement as tutored by the police and village people. She made the statement before the police as stated today, but the police asked her to say before the Magistrate as tutored by him.

- 10. From the above discussion of the evidences of the prosecution witnesses, it is revealed that none of prosecution witnesses, even the informant and the victim have supported the case of the FIR. They have simply stated that the victim i.e. PW3 ran out of the house of the accused out of fear. None of the prosecution witnesses has made a single whisper regarding sexual assault on the victim. Under such circumstances, it is clear that the prosecution has failed to prove beyond all reasonable doubt any case against the accused person.
- 11. Under the above facts and circumstances, it is 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.
- 12. 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.
- 13. 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.
- 14. Given under my hand and seal of this Court on this 19th day of June, 2018.

Dictated & corrected by me.

Sd/-

Sd/-

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

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

APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Medical Officer Dr. Anima Boro, P.W.2 = Tarafun Nessa, the informant, P.W.3 = Nitumoni Begum, the victim.

(B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) = Signature of the M.O. Ext.1(2) = Signature of Dr. P.Das,

Ext.2 = Ejahar,

Ext.2(1) = Signature of Tarafun Nessa.

Ext.3 = Statement of the victim Nitumani Begum,

Ext.3(1),3(2)

& 3(3) = Signature of victim Nitumani Begum

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

Sd/-

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