IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

SPL. POCSO CASE NO. 09 OF 2015.

Under Section 457 I.P.C. r/w section 4 of the P.O.C.S.O. Act, 2012 I.P.C.

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

State of Assam.

-versus-

Kumar Ali ... Accused.

APPEARANCE

For the Prosecution : Mr. A. Kayem, learned P.P.

For the accused : Mr. H.Rizuwani, learned Advocate.

Evidence recorded on : 15-10-2015,10-12-2016, 06-01-2016,21-01-2016,

05-02-2016 & 05-04-2016.

Argument heard on : 06-04-2016

Judgment delivered on : 21-04-2016.

JUDGMENT

1. The prosecution case in brief, is that on 18-08-2015 at about 11.30 P.M., while Asmina Begum aged about 14 years was sleeping on their verandah, accused Kumar Ali entered into her house and gagged her mouth and committed rape on her. Hearing the shouting of the victim her parents came with a lamp and they saw the commission of rape by the accused on the victim. Then the parents of the victim made hue and cry and the neighbouring people arrived at the place of occurrence and caught hold the accused person. Then they informed the matter to accused Habibar Rahman and the villagers assured that they will settle the matter by holding a village bichar. In the mean time, accused Habibar Rahman, Kismat Ali, Kad Bhanu and Jinnat Ali kept accused Kumar Ali away from the

house. But till date no village bichar was held. Accordingly father of the victim Akbar Ali lodged an F.I.R. at Barpeta P.S. on 24-08-2015.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against the accused Kumar Ali under section 120(B)/448/506 I.P.C. read with section 4 of Protection of Children from Sexual Offences Act, 2012.
- 3. The accused person appeared before the court and faced trial.
- 4. Charges were framed against the accused person under section 457 I.P.C. and section 4 of Protection of Children from Sexual Offences Act, 2012. Charges were read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.
- 5. In course of hearing the prosecution has examined as many as nine witnesses including the M/O and I/O. The accused person is examined under section 313 Cr.P.C. He declines to adduce evidence.

6. **Points for determination:**-

- (1) Whether the accused person on 18-08-2015 at 10.00 P.M. at village Radhakuchi under the jurisdiction of Barpeta Police Station, District Barpeta, Assam committed lurking house trespass by night by entering into the house belonging to the victim Asmina Begum, the daughter of the informant Akbar Ali and used as a human dwelling, after sunset and before sunrise, in order to commit an offence of rape ?
- (2) Whether the accused on the same date, time and place, committed penetrative sexual assault on Asmina Begum, aged about 14 years a minor girl, daughter of Akbar Ali ?

Decision and reasons thereof:

7. The allegation as narrated in the F.I.R. is that on 18-08-2015 at about 10.30 P.M., the accused person committed house trespass into the

dwelling house of the informant Akbar Ali and committed rape on the victim who is aged about 14 years.

8. As both the points are inter-related, for the sake of convenience both the points are discussed and decided jointly.

The victim is examined as P.W.1. She has stated that on the date of occurrence at about 11.30 P.M. the accused person entered into her house by breaking the door and committed rape on her. Hearing her shouting her parents arrived and caught hold the accused. Thereafter, the village Head man was called and the other villagers also appeared at their home. The villagers fixed a date and asked the accused to marry her, but the accused was not agree with the decision. So her father lodged the F.I.R.

But in her re-examination she has stated that as the accused was not agreed to marry her, her father filed the case. But about 2 months ago the accused person married her. It is not a fact that the accused person committed rape on her gagging her mouth. Now her age is above 18 years. She is now living with the accused as husband and wife in his house.

9. The mother and father of the victim who were examined as P.W.2 and P.W.3 respectively have also in their further cross examination admitted that as the accused was not agree to marry the victim they filed the case. But as now the accused person married the victim they are not willing to proceed the case. The victim is now staying at the house of the accused as husband and wife. She is now about 19 years old. The accused person did not do any illegal act with the victim.

The other witnesses are not the eye witnesses of the occurrence. They only heard about the occurrence from the informant and they saw the accused person in the house of the informant.

10. The Medical Officer P.W.6 in her cross examination has admitted that in case of forceful sexual intercourse there must be injury on her private parts. But the same was nil in case of the victim. She opined the age as above 14 years below 16 years on the basis of Ossification Test. But the both Ossification Test Report

and X-ray Report are also not available in the case record.

11. From the above discussions of the prosecution evidences it is found that none of the prosecution witnesses are reliable. The evidences adduced by them can not be relied upon.

Though according to the medical evidence the age of the victim was above 14 years and below 16 years. But the same was not supported by ocular evidence. According to the victim and her parents at the time of occurrence, the age of the victim was above 18 years.

Further more, all the material witnesses i.e. the victim and her parents in their evidences have clearly stated that they have filed the case as the accused person was not agree to marry the victim and they have also stated that the accused person did not do any illegal act with the victim. They are also not willing to proceed the case as the accused person already married the victim.

Thus the prosecution has failed to prove its case beyond all reasonable doubt, either under Section 457 I.P.C. or section 4 of Protection of Children from Sexual Offences Act,2012, the accused person is acquitted and set at liberty.

- 12. Bail bond executed by the accused person and the surety is 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 21st day of April, 2016. Dictated & corrected by me.

Sd/- Sd/-

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

APPENDIX.

(A)Prosecution Exhibits:

Ext.1. :Statement under section 164 Cr.P.C.

Ext.1(1)&

Ext.1(2) :Sigs. of P.W.1

Ext.2 :Ejahar

Ext.2(1) &

Ext.2(2) :Sigs. of P.W.3

Ext.3 : Medical Report

Ext.3(1) :Sig. of P.W.6

Ext.4 :Sketch Map

Ext.4(1) :Sig. of P.W.10

Ext.5 :C/S

Ext.5(1) : Sig. of P.W.10

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 :Asmina Begum

P.W.2 :Saleman Begum

P.W.3 :Akbar Ali P.W.4 :Sontar Ali

P.W.5 :Akul Ali

P.W.6 :Dr. Bharati Das, M.& H.O.-I, F.A.A. Medical College &

Hospital, Barpeta

P.W.7 :Kuddus Ali P.W.8 :Saheb Ali P.W.9 :Lukman Ali

P.W.10 :Sri Amulya Talukdar, Inspector of police.

- (F)Defence witnesses:Nil.
- (G)Court witnesses:Nil.

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