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. 68 OF 2019 (G.R.No.- 2247/2016) Barpeta P.S. Case No. 907 of 2016

State of Assam

-versus-

Hasen Ali S/O Late Soban Ali, Resident of Garemari Gaon, P.S. Barpeta, District - Barpeta, Assam

...... Accused.

APPEARANCES:

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

For the Accused : Mr. Hussain Rizwani, learned

Advocate, Barpeta.

CHARGE FRAMED UNDER SECTION 18/8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 19.06.2019
Date of Prosecution evidence : 30.07.2019
Date of Statement u/s 313 CrPC : 30.07.2017,
Date of Argument & Judgment : 30.07.2019

J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 907 of 2016 under section 18 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Jakir Ali, father of the victim.

In the aforesaid **F.I.R**. dated 30.04.2016, the informant Jakir Ali (P.W.3), who is the father of the victim girl, alleged interalia that that on 29.04.2016 at about 04:30 PM, the accused person namely Hasen Ali committed penetrative sexual assault on his minor victim daughter, aged about 06 years. It was also alleged that accused worked in his house as a painter and forcefully took the victim to the bath room of the house of the informant and indulged in sexual activity with the victim. On hearing hue and cry of victim, her mother and others workers came and rescued the victim, when she was being abused by the accused.

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 907/2016 under Section 18 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 Hasen Ali under Section 18 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.351/2016, dated 24.07.2016.

- **2).** On receipt of the case record alongwith the case diary of the case, accused was summoned. On appearance of accused, copy was furnished to him by the undersigned.
- 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 undersigned against the accused under Section 18/8 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, **03** [Three] number of witnesses including the victim and informant were examined on behalf of the prosecution to prove the charge under Section 18/8 of the Protection of Children From Sexual Offences Act, 2012.

On completion of Prosecution Witnesses, statement of the above named accused person was recorded under Section 313 CrPC. Accused person denied alleged incriminating materials against him and claimed himself to be innocent. Accused person declined to adduce evidence in his defence.

- 5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Hussain Rizwani**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Section 18/8 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 29-04-2016 at about 4:30 PM within the jurisdiction of Barpeta P.S., District Barpeta, attempted to commit rape on Shahnaz Akhtara, minor daughter of informant Jakir Ali and in such attempt you removed her undergarment and tried to commit penetrative sexual assault upon the minor victim girl, in the bathroom of informant house and thereby committed an offence punishable under Section 18 of the Protection of Children From Sexual Offences Act, 2012?
- (ii) Whether on the same date, time and place, committed sexual assault on aforesaid minor victim, daughter of the above named informant and thereby committed an offence punishable under Section 8 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.

Nilima Ahmed [P.W.1] has deposed that informant is her husband and victim is her daughter. She has stated that victim age is about 9 years at present. Incident took place before 4 years. At the time of alleged incident, she was doing her household works. Accused was doing painting work at her house.

She stated that drop of colour fell on the person of her daughter, for which she cried. She rushed to her and found that colour fell on her body in good quantity. She entered into altercation with the accused person. People gathered and assaulted the accused. She stated that accused did not touch body of her victim daughter. After that, her husband lodged this case.

In her cross-examination, she stated that the matter is settled between both the sides at present. Accused did not open cloth of her victim daughter.

8). The Victim [P.W.2] deposed in her evidence that she knew the accused person. Accused did painting works at her house. She stated that accused threw colour on her and she cried.

She further stated that accused did not open her cloth and did not touch her body. She narrated the whole incident to her mother.

She gave her statement recorded under Section 164 CrPC by learned Magistrate.

P.W.1 exhibited her statement as Ext.1 and Ext.1(1), 1(2) and 1(3) are her signatures.

During her cross-examination, **she deposed that** she gave her statement as told by Police.

9). Jakir Ali [P.W.3] deposed in his evidence that he lodged this case. Victim is his daughter. He stated that he was not present at the time of incident and came to his house after the incident. He found hue and cry in his house and on being asked, he was informed that painting colour fell on her victim daughter when the accused was doing painting works at her bathroom. Then, her daughter cried.

He stated that accused did not do any bad work with her daughter and he did not open her cloth. Public threatened the accused and he lodged the case.

He exhibited the FIR as Ext.2 and Ext.2(1) and Ext.2(2) are his signature.

In his cross-examination, he stated that he lodged this case due to the pressure put on her by the public.

10). From a close perusal of the evidence, it is seen that all the witnesses including victim deposed clearly in their evidence that accused did not touch her body and did not do any bad work with the victim girls.

Thus, it is clear from the version of the all witnesses, that accused did not attempt to commit rape on the victim girl. This case was lodged with a false story by her father against the accused person.

Moreover, the informant namely Jakir Ali (P.W.3) also deposed in his cross-examination that **he lodged this case due to the pressure put on him by the public.**

All the witnesses did not support the content of the FIR of this case and simply stated that accused had fallen colour on the victim girl when he (accused) was doing painting works at her bathroom.

11). Hence, 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 18/8 of the Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the accused Hasen Ali beyond all

reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Hasen Ali is acquitted on benefit of doubt under Section 18/8 of the Protection of Children from Sexual Offences Act, 2012.

12). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Hasen Ali to warrant his conviction under Section 18/8 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.

13). In the result, accused **Hasen Ali** is **acquitted** of the charge under Section 18/8 of the Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

14). Given under my hand and seal of this Court on this 30th day of July, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Nilima Ahmed,

P.W.2 = Shahnaz Akhtar, the victim,

P.W.3 = Jakir Ali, the informant.

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim,

Ext.1(1),1(2) & 1(3) = Signatures of the victim,

Ext.2 = Ejahar,

Ext.2(1) & 2(2) = Signature of Jakir Ali, the informant.

(C) **<u>Defence witnesses</u>**:Nil.

(D) **Defence Exhibits**: Nil.

(E) **Court witnesses**:Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.