IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 31 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.
-versusChan Mia Accused.

APPEARANCE

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

For the accused : Anish Khan, learned Advocate.

Evidence recorded on : 28.05.2018,29.06.2018,

Argument heard on : 29.06.2018,

Judgment delivered on : 29.06.2018.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 06.08.2016 one Rahiz Mia lodged an FIR alleging that on 25.07.2016 at about 11:00 AM accused Chand Mia took his minor daughter aged about 9 years assuring to show fishing, but he attempted to make sexual assault on her. Hearing her shouting some people rushed to the place of occurrence and then the accused fled away.

- 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 Chand Mia 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 Chand Mia 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 as many as 4(four) 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 25-07-2016 at about 11:00 AM at Haripur, Chenga within the jurisdiction of Tarabari PS, District Barpeta, committed penetrative sexual assault on Jesmina Begum, aged about 9 years, daughter of the informant Rahij Mia?

Discussion, decision and reasons thereof

- 6. According to the FIR, on 25.07.2016 the accused person attempted to make sexual intercourse with the victim. At the time of occurrence the victim was aged about 9 years. The FIR was lodged on 06.08.2016. The said victim was examined by the medical officer on 08.08.2016
- 7. **The Medical Officer is examined as PW1**. She has opined that the age of the victim was above 9 years and below 12 years. Regarding sexual assault the medical evidence is quite negative.
- 8. The informant **Rahiz Miya as PW2** has deposed that about 2 years ago one day the accused took the victim for fishing. Then he asked the accused with whose permission he took the victim. Then he denied the taking of victim for fishing. He told that the victim had gone

alongwith other children. Regarding to that matter an assault took place in between him and the accused. Thereafter, as per direction of his wife one writer wrote the FIR and he put his signature.

In cross examination, he has stated that he does not know what is written in the FIR as the same was not read out to him. He lodged the FIR after 15 days of the date of occurrence. He lodged the FIR as altercation and assault took place in between him and the accused person.

- 9. **Majeda Begum, mother of the victim, as PW3** has deposed that about 1½ years ago one day, keeping the victim at home, she had gone to hospital. At that time the victim was aged about 12 years. The victim alongwith her friends had gone for fishing. The accused person accompanied them. So, she rebuked the accused as to why he took the victim. Then the accused made quarrel with her and so her husband lodged the FIR.
- 10. The victim as PW4 has deposed that on the date of occurrence, she had gone for fishing alongwith her friends. The accused accompanied them. Coming to know about that fact her parents made quarrel with the accused. Police examined them. Magistrate recorded her statement and medical officer examined her.

In cross examination, she has stated that she made statement before the Magistrate as tutored by police. The other children had also gone alongwith her for fishing.

11. From the above discussion of the evidences of the prosecution witnesses, it is revealed that none of prosecution witnesses, even the informant has supported the case of the FIR. They have simply stated that a quarrel took place in between the accused and the father of the victim as he took the victim for fishing. None of them 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.

- 12. 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.
- 13. 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.
- 14. 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.
- 15. Given under my hand and seal of this Court on this 29th day of June, 2018.

Dictated & corrected by me.

Sd/-

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

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

APPENDIX

(A) Prosecution witnesses:

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

P.W.2 = Rahiz Miya, the informant,

P.W.3 = Majeda Begum,

P.W.4 = Jesmina Begum, the victim.

(B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) = Signature of the M.O.

Ext.1(2) = Signature of Dr. S.I. Barbhyan,

Ext.3 = Statement of victim Jesmina Begum u/s 164

CrPC,

Ext.3(1), 3(2),3(3)

& 3(4) = Signature of Jesmina 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.