#### **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. 141 OF 2019 (G.R.No.- 2433/2019) Baghbar P.S. Case No. 132 of 2019

State of Assam

-versus-

Marfat Ali S/O Md. Kuran Ali, Resident of Mouripam, P.S. Baghbar,

District – Barpeta, Assam ...... <u>Accused.</u>

#### **APPEARANCES:**

For the State : Sri Lalit Ch. Nath, learned

**Public Prosecutor, Barpeta.** 

For the Accused : Abdul Mannan, learned

Counsel, Barpeta.

# CHARGE FRAMED UNDER SECTIONS 365/376 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

*Date of Charge* : 22.08.2019,

Date of Prosecution evidence : 13.09.2019 & 24.09.2019,

Date of Argument & Judgment : 24.09.2019.

## J U D G M E NT

**1).** The prosecution case, in brief, is that Baghbar P.S. Case No 132 of 2019 under Sections 365 of IPC read with added Section 4 of the Protection of

Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Muzammel Ali, father of the victim.

In the aforesaid **F.I.R**. dated 12.05.2019, the informant Muzammel Ali (P.W.2), who is the father of the victim girl, alleged interalia, that on 23.04.2019 at about 8:30 PM, his victim daughter was kidnapped by unknown person when she came outside from her residence.

On receipt of the aforesaid F.I.R. by the In-charge Mandia Police Outpost, the same was entered vide Mandia O.P. GDE No. 220 dated 12.05.2019 and forwarded it to O.C. Baghbar PS for registration of a case. The Officer-Incharge, Baghbar Police Station registered the same as **Baghbar P.S. Case No. 132/2019 under Sections 365 of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012.** 

During the course of investigation, the victim girl was recovered and sent for medical examination, 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 accused **Marfat Ali under Sections** 365/376 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.105, dated 16.07.2019.

- **2).** On production of accused, copy was furnished to him by the undersigned, in due course.
- 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, charges were framed by undersigned against the accused under Sections 365/376 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012, which were 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 informant and victim were examined, on behalf of the prosecution, to prove, the charge under Sections 365/376 IPC read with Section 4 of the

Protection of Children From Sexual Offences Act, 2012.

The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

- 5). I have heard **Mr. Lalit Ch. Nath,** learned Public Prosecutor of Barpeta, for the State as well as **Mr. Abdul Mannan**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections** 365/376 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 23.04.2019 at about 08:30 PM within the jurisdiction of Baghbar P.S., District Barpeta, accused kidnapped minor daughter of informant Muzammel Ali, namely Jeshmina Khatun from her home with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC ?
- (ii) Whether on the aforesaid date, or thereafter you committed rape on the aforesaid minor victim, of the above named informant and thereby committed an offence punishable under Section 376 IPC?
- (iii) Whether on the aforesaid date or thereafter, committed penetrative sexual assault upon the minor victim, daughter of the above named informant and thereby committed an offence punishable under 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.

**Dr. Mamata Devi** [P.W.1] deposed that on 14.05.2019, she was working as Demonstrator, FAAMCH, Barpeta. On that day, victim Jesmina Khatun, aged 12 years, was produced before her for her medical examination, but said Jesmina Khatun refused to undergo her medical examination.

She exhibited her medical examination report as Ext.1 and Ext.1(1) is the signature of said Jesmina Khatun and Ext.1(2) and 1(3) are her signatures.

**In her cross-examination,** she deposed that as the patient refused to for her medical examination, so she did not disclose the history of offence.

**8). Muzammel Ali [P.W.2]** who is the informant of this case has deposed that he knows the accused person of this case and victim is his daughter, aged about 12-13 years. Incident took place before 4 months at about 10.00 PM. He stated that his victim daughter disappeared from his house. Then, he searched her but could not find her. After passing of 20-22 days, he informed police. Then, he received information from persons working at Guwahati, from his village, that victim has been kept by the accused and other persons at Guwahati.

After that, he brought back his victim daughter with the help of police. Police sent her for her medical examination and got her statement recorded under Section 164 Cr.PC.

In his cross-examination, he deposed that his victim daughter kept on missing from his house and she has got some mental problem. He stated that his victim daughter went herself to Guwahati and nobody took her to Guwahati. He further deposed that people from Guwahati informed him as to her where she stayed at Guwahati. He deposed that at present, she is missing from her house. Accused did not do any bad work with her.

**9). Jesmina Khatun** [P.W.3] deposed in her evidence that informant is her father and she knew the accused person of this case as he belongs from same village. She stated that her parents scolded her and then, out of anger, she went alone to Guwahati by bus and stayed at Adabari in the house

of her cousin brother Hajarat Ali for about 8 days. Then, her father came with Police and took her back to home. Accused did not do any bad work with her.

Police examined her and sent her for her medical examination but she refused to undergo medical examination. Police got her statement recorded under Section 164 CrPC by the learned Magistrate. Ext.2 is her statement and Ext.2(1) & 2(2) are her signatures. She gave her statement before the learned Magistrate as tutored by Police.

**During her cross-examination**, she stated that her father lodged this case after not finding her in his house. Accused did not take her and did not do any bad work with her.

**10).** From a close perusal of the evidence, it is seen from the statement of the victim (P.W.3), who is star witness of this instant case deposed in her evidence that accused did not do any bad work with her. She stated that her father lodged this case after not finding her in his house. P.W.3 deposed clearly in her cross-examination that accused did not take her and did not do any bad work with her. She voluntarily went to Guwahati when her parents scolded her. She (P.W.3) refused to undergo for her medical examination.

Muzzamel Ali (P.W.2) who is the informant as well as father of the victim girl stated in his cross-examination that his victim daughter voluntarily went herself to Guwahati and accused did not do any bad work with her.

Hence, the conduct of the victim clearly shows that the alleging incident narrated in the FIR is totally false.

The conduct of victim clearly shows that she voluntarily went to Guwahati at the time of incident. The conduct of the victim is not found natural had she been abducted or kidnapped by the accused person by force.

There is no material on record to hold that the accused kidnapped and committed rape on the victim, to constitute offence under Sections 365/376/506 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

**11).** To bring home the guilt of the accused under Section 365/376 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012,

it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.

- **12).** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has to be proved against the accused beyond reasonable doubt.
- **13).** On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim and committed rape on her. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.
- **14).** In the result, accused **Marfat Ali** is **acquitted** of the charge **under section** 365/376 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stands discharged.

**15).** Given under my hand and seal of this Court on this **24<sup>th</sup> day of September, 2019.** 

Dictated & corrected by me.

Sd/-Special Judge, Barpeta

## **APPENDIX**

# (A) Prosecution witnesses:

P.W.1 = Dr. Mamata Devi, the M.O., P.W.2 = Muzammel Ali, the informant, P.W.3 = Jesmina Khatun, the victim.

## (B) Prosecution Exhibits:

Ext.1 = Medical Report,

Ext.1(1) = Signature of the Victim Ext.1(2) & 1(3) = Signature of the M.O.,

Ext.2 = Statement of the victim recorded u/s

164 CrPC,

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

- (C) <u>Defence witnesses</u>:Nil.
- (D) Defence Exhibits: Nil.
- (E) Court witnesses: Nil
- (F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.