IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM. SPL. POCSO CASE NO. 53 OF 2016.

Under Section 366(A)/511 I.P.C. r/w section 18 of the P.O.C.S.O. Act, 2012 & section 67 Information Technology Act, 2000.

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

State of Assam.

-versus-

Sabdel Ali @ Sabdel Ahmed ... Accused.

APPEARANCE

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

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

Evidence recorded on : 01-04-2017

Argument heard on :01-04-2017

Judgment delivered on : 01-04-2017

<u>JUDGMENT</u>

- 1. The prosecution case in brief, is that on 04-11-2016 one Sekan Ali lodged an FIR alleging that his daughter the victim, aged about 15 years was reading in Class X at Chenimari Azad Memorial High School. For last 6/7 months on her way to school, accused Sabdel Ali teased her and took her photograph by mobile phone. On 02-11-2016, while she was returning home from school, accused person tried to kidnap her. But seeing her maternal uncle the accused person fled away. There after the accused person took her photograph by mobile phone and up loaded the same in the Face-Book. Though he informed the matter to the guardian of the accused, but they did not respond to it.
- 2. On the basis of the FIR police registered a case, started investigation and after completion of investigation submitted charge

sheet against the accused person under section 366(A)511 IPC read with section 18 of POCSO Act and read with section 67 Information Technology Act,2000.

- 3. The accused person was produced before this court and faced trial.
- 4. Charges were framed against the accused person under section 366(A)511 IPC read with section 18 of POCSO Act and read with section 67 Information Technology Act,2000. 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 two witnesses. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

6. **Points for determination**:-

- (1) Whether the accused person on 04-11-2016 at 6.30 P.M. at Malipara, Chenga within the jurisdiction of Tarabari Police Station, attempted to kidnap the victim, aged about 15 years the daughter of the informant Sekan Ali, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person, attempted to commit sexual assault on her?
- (2) Whether the accused on the same date, time and place, attempted to commit sexual assault on the victim, aged about 15 years the daughter of the informant Sekan Ali?
- (3) Whether the accused on the same date, time and place, publish or transmit or cause to be published or transmitted in the electronic form i.e. through Face-book taking photograph of the victim by mobile phone, any material which is lascivious or appeals to the purient interest or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances to read, see or hear the matter embodied in it?

Decision and reasons thereof:

- 7. In this case the prosecution has examined only two witnesses one is the informant and the other is the victim.
- 8. Informant Sekan Ali as P.W.1 has deposed that the occurrence took place about ¾ months ago. At that time his daughter the victim was a student of Class X. On her way to school somebody disturbed her int ending to love her. Then he reported the matter to the guardian of the accused,but they did not respond to it. Then he lodged the FIR.

In his cross examination he has stated that due to some misunderstanding he lodged the FIR. But later on they have settled the matter outside the court.

9. The victim as P.W.2 has stated that about 5/6 years ago on her way to school some boys disturbed her. Then she informed the matter to her father and her father filed the case against the accused person out of suspicion. Police produced her before the Magistrate and the Magistrate recorded her statement.

In her cross examination she has stated that her father did not see any occurrence. He lodged the FIR out of suspicion. She made the statement before the Magistrate as tutored by the police. But later on the village people settled the matter.

From the depositions of the informant and the victim it is revealed that on the way to school somebody disturbed the victim. But the witnesses have not disclosed how the victim was disturbed. They have not stated anything regarding the attempt of kidnap or taking photograph of the victim and up loading the same in the Face-Book by the accused person. The informant did not see any occurrence. He only heard from the victim. The victim does not know who disturbed her. According to her her father lodged the FIR out of suspicion.

10. Under such circumstances, it is found that the prosecution has failed to bring home the guilt of the accused person for any of the offence either under section 366(A)/511 I.P.C. read with section 18 Protection of Children from Sexual Offences Act, 2012 or under section 67 of the Information Technology Act, 2000. Therefore, the accused person is acquitted and set at liberty forthwith.

- 11. 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.
- 12. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and to the District Magistrate, Barpeta under section 365 Cr.P.C.
- 13. Given under my hand and seal of this Court on this 1^{st} day of April, 2017.

Dictated & corrected by me.

Sd/-

Sd/-

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

APPENDIX.

(A)Prosecution Exhibits:

Ext.1. :F.I.R.

Ext.1(1): Sig. of Sekand Ali

Ext.2 : Statement recorded under section 164 Cr.P.C.

Ext.2(1)&

Ext.2(2) :Sigs. of Sabina Yasmin

(B)Defence Exhibits:Nil.

- (C)Exhibits produced by witnesses:Nil.
- (D)Court Exhibits:Nil.
- (E)Prosecution witnesses:

P.W.1 :Sekand Ali P.W.2 :The victim

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

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