IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. Act Case No. 13 OF 2015.

Under Section 457/376(2)(i) I.P.C. read with section 4 of P.O.C.S.O.Act,2012

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

State of Assam.

-versus-

Sahed Ali ... Accused

APPEARANCE

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

For the accused : Mr. N.M.H.Rahman, learned Advocate.

Evidence recorded on : 04-02-2016,07-04-201606006-2016

& 14-09-2016

Argument heard on : 03-12-2016

Judgment delivered on : 17-12-2016.

<u>JUDGMENT</u>

- 1. The prosecution case in brief, is that on 11-09-2019 one Rahimuddin lodged an F.I.R. alleging that on 09-09-2015 at about 12.00 mid-night, while he was sleeping accused Sahed Ali entered into his house cutting the rope of the door and committed rape on his daughter Sahida Begum. Then he raised hue and cry,got up and caught hold the accused person. In the mean time the neighbouring people arrived in his house and one Nandu Mia got release the accused person on bail. At that time the age of the victim was 12 years.
- 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 person under section 457/376(2)(i) I.P.C. read with section 4 of P.O.C.S.O. Act,2012.

- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties, charges were framed against the accused person under section 457/376(2)(i) I.P.C. read with section 4 of P.O.C.S.O. Act,2012.
- 4. 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 prosecution has examined as many as two 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 09-09-2015 at about 12.00 midnight at Kanara gaon under the jurisdiction of Barpeta Police Station, committed lurking house trespass by night by entering into the house belonging to Rahim Uddin and used as a human dwelling after sun set and before sunrise in order to commit an offence ?
- (2) Whether the accused person on the same date, time and place, committed rape on the victim Shahida Begum, aged about 12 years, daughter of the informant, Rahim Uddin ?
- (3) Whether the accused person on the same date, time and place, committed sexual assault on the victim girl Shahida Begum, aged about 12 years?

Decision and reasons thereof:

- 7. The allegation against the accused person is that on 09-09-2015 at 12.00 midnight he criminally entered into the house of informant Rahimuddin and committed rape on his daughter Sahida Begum who was aged about 12 years.
- 8. The informant as P.W.2 has deposed that about ¾ months ago on the date of occurrence the victim was sleeping in a separate bed. On that night the accused person entered into their house by cutting the rope of their door and committed rape on the victim by gagging her mouth. Hearing the shouting of the victim they got up from bed and

the accused was caught red handed by his wife. Hearing their hue and cry neighbouring people arrived in his house. Nandu Mia came and assuring to call a bichar on the next day took away the accused person. But there after no bichar was held. The victim reported him about the commission of rape.

In his cross examination he has stated that they have five children. Their all seven members are staying in the same house. They have only one room which is 10'ft x 15'ft. There are two beds and each bed is 3'ft x 6 1/2'ft. There was no electric connection in his house. The year of birth of the victim is 1997. The accused is not his co-villager. His village is at a distance of 20/30 K.Ms. from his village. He did not know the accused person prior to the occurrence. They wanted to take decision to settle the matter by giving marriage the victim and if the accused paid the money for marriage of his daughter he would not file the case. Nandu Mia is his neighbour. Abul Kalam and Nandu Mia knew about the occurrence. He does not know what is written in the F.I.R. As per saying of the police the F.I.R. was written. Police came to his house after 2/3 days of the occurrence. Police saw the door, but he does not know what was seized by the police. The 'Gamocha' was taken by the accused. The victim was sleeping in one bed and the remaining six persons were sleeping in one bed. He did not see the commission of rape on the victim.

- 9. According to the Medical officer, P.W.1 while the victim was examined he found one abrasion on right fore arm caused by blunt object which is simple in nature.
- 10. Corroborating the statement of P.W.2 his wife Jahiron Nessa as P.W.4 has also deposed that on the night of occurrence the accused person committed rape on the victim and she caught hold the accused person inside the house. At the time of occurrence the victim was 12 years old and her birth certificate was handed over to the police. .

In her cross examination she has corroborated the P.W.2 by saying that their house is 10'ft x 15'ft.and there are two beds, one is 3'ft x $6\frac{1}{2}$ ' ft. There was no electric connection. But contradicting P.W.2 she has stated that there are two rooms in their house, one is bedroom and the other is kitchen. She has further stated that the accused

never visited their house. He hails from the village which is situated at a distance of about 20/22 Kms. from her house. She did not see the commission of rape. The victim also did not see the accused prior to the occurrence. Police entered into the house and saw the door, but the door was not seized. Nandu, Kalam and Sayed knew about the occurrence. Victim was sleeping in one bed and the other six members were sleeping in another bed. If some unknown person enter into their house at night then he could not know who was sleeping where. Her husband demanded an amount of Rs. 20,000/- from the accused and if the amount is paid then he would not file the case.

11. The victim as P.W.4 has deposed that on the night of occurrence she was sleeping alone in a bed. Her parents and other family members were sleeping in another bed. At about 12 mid-night the accused entered into their house by cutting the rope of their door and committed rape on her gagging her mouth. When the accused released her she made hue and cray and then her parents caught hold the accused inside the house. In the mean time Nandu, Kalam and Sayed arrived in their house and then they came to know the name of the accused Sayed Ali. Assuring to hold a bichar Nandu Mia took away the accused person, but no bichar was held. Then her father filed the case. Police produced her before the medical officer for examination and also before the Magistrate for recording her statement under section 164 Cr.P.C. Her birth certificate was handed over to the police.

In her cross examination she has stated that they all the seven family members are residing in the same house. The said house is also used as kitchen. The house is very small, but she does not know the measurement of the house. Usually some other members of her family sleep with her. But on the night of occurrence she was sleeping alone. Prior to the occurrence the accused never visited their house. She did not know the accused even his name. He hails from different village. She does not know her date of birth. The accused did not know who were residing where inside their house. On the night of occurrence Nandu Mia, Kalam and Sayed came to their house. She does not know what is mean by 'rape'. The accused torn her wearing clothes. She

sustained injury on her back, chest and hand. The torn clothes and her injury were shown to her parents. The blood stained clothes were also shown to her mother and those clothes were taken by the police.But the bed-sheet with blood stain was not taken by the police. The police saw the door and the 'Gamocha' by which her mouth was gagged. But the same are still in their house. Her father did not demand any money from the accused in the bichar. While she was produced before the medical officer for examination blood was oozing from her private parts. The Medical officer saw her injuries on the body. But neither the bandage nor any medicine was provided to her.The occurrence was not taken place at 7.00 P.M., it took place at 12.00 midnight. She made the true statement before the Magistrate. She has denied that she has stated before the Magistrate that the occurrence took place at 7.00 P.M.

12. The Medical officer who examined the victim is examined as P.W.1 and she has opined that- (i)There was no sign of recent sexual intercourse.(ii) No mark of any injury on her body part and (iii) Her age is above 14 years and below 16 years.

In her cross examination she has admitted that the victim did not mention in her history regarding the rape on her by one Sayed Ali. She did not find any recent or past sign of sexual intercourse. 13. One Nandu Mia as P.W.5 has stated that the accused person is residing in his house. About 9 months ago one day at 7/7.30 P.M., the son of Rahimuddin called him to their house. The accused person purchased one buffalo for the informant on his zimma. Relating to that a quarrel took place and some villagers were also present there. He asked the informant to give the money to the accused and there is no necessity of any quarrel. There after Rahimuddin filed the case. After 2/2 ½ months police asked him about the occurrence. The accused stayed in his house to serve his buffalo. This witness is declared hostile the by prosecution.

In his cross examination by prosecution he has denied that the statement recorded under section 161 Cr.P.C. is his statement. In cross examination by defence he has stated that he has no enmity with the

informant. The accused purchased a buffalo for the informant taking at

his zimma. While the accused had gone to ask for the said money he was confined by the informant. While the accused had gone to ask for money his son and some villagers also accompanied him. As the informant assured to return the money they took the accused by settling the matter. But there after instead of returning the money the informant has filed the case. The statement which are recorded by the police under section 161 Cr.P.C. are not his statement. Those are the statement of the police.

14. Abul Kalam as P.W.6 has also corroborated the P.W.5 by saying that about 9 months ago one day at about 7/7.30 P.M. he was called by the son of Rahimuddin. Going to the house of the informant Rahimuddin he found the accused and his son. The accused and the informant were making altercation regarding the money of purchasing buffalo. He told that on the next day the bichar will be held. Then the accused returned with them. On the next day no bichar was held as the informant did not appear. This witness is also declared hostile by the prosecution.

In cross examination by prosecution he has denied that the statement which is recorded by the police under section 161 Cr.P.C. is his statement.

In his cross examination by defence he has stated that he has no enmity with the informant. The altercation took place when the accused had gone to recover the amount of purchasing buffalo. The son and some other persons were along with the accused. He and Nandu were called by the informant. As the informant assured that he would pay the money on the next day they took away the accused. But on the next day the informant instead of giving the money filed the false case. Except the statement that Rahimuddin had to give money to the accused no other statement was made by him before the police. This is a false case.

15. The Investigating officer as P.W.7 has exhibited the F.I.R. as Ext.3

and the charge sheet as Ext.4.

In his cross examination he has stated that he recorded the statement of informant Rahimuddin in connection with the G.D.Entry. The cause of delay in filing the F.I.R. is not explained either in G.D.Entry or in F.I.R. In the statement of the victim recorded under section 164

Cr.P.C. the victim has stated that the occurrence took place at 7.00 P.M. He did not seize any door, rope or any portion of bamboo at the place of occurrence as he did not find any door in damaging state He has mentioned in his Sketch map that he did not find any sign of commission of any occurrence at the place of occurrence. He did not seize any blood stained clothes as no such clothes were produced before him. The victim is an illiterate and he did not procure any birth certificate of the victim. There was no electric connection in the house of the victim. They have stated that they could identify the accused on the strength of Solar light. He did not show the presence of Solar light in his sketch map. He did not seize any Solar light. He did not mark the place wherein the accused was confined. The 'Gamocha' by which the mouth of the victim was gagged was not shown to him and so he did not seize the same. He has admitted that he did not paginate the case diary and he does not know whether statement of the witnesses can be recorded in the loose sheet according to Police Manual.

16. In course of argument the learned counsel for the defence has submitted that admittedly, the house of the informant is 10'ft. X 15'ft. and there are 2 beds in the said room measuring 3'ft x $6\frac{1}{2}$ ' ft.each. It is also admitted fact that the family of the informant is consisted of 7 ,members. In one bed the victim was sleeping alone. In another bed the remaining 6 members were sleeping. It cannot be believed that in a bed measuring 3'ft x $6\frac{1}{2}$ ' ft. 6 persons can sleep at the night. Further more, P.W.2,P.W.3 and P.W.4 i.e. the parents and the victim themselves have stated that they did not know the accused prior to the occurrence. They even did not know the name of the accused. The accused had no visiting term in their family. There was no electricity connection in their house. Then how an unknown person could identify

wherein the victim was sleeping. The version of P.W.2,P.W.3 and P.W.4 are not at all believable. Further more according to P.W.2,P.W.3 and P.W.4 hearing their shouting their neighbourers Abul Kalam, Nandu Mia and Sayed Ali arrived at the place of occurrence and assuring to settle the matter Nandu Mia took away the accused. But no meeting was held. But in their cross examination they have admitted that the informant demanded the amount from the accused. But as the accused refused to pay any amount the informant has filed this case.

- 17. The learned counsel for the defence has further submitted that Nando Mia and Abul Kalam who are the independent witnesses as P.W.5 and P.W.6 have totally denied the case of the prosecution. Both of them have categorically stated that on the day of occurrence at about 7/7.30 P.M. they were called by the son of the informant as an altercation took place in between the accused and the informant relating to the money in respect of purchase of a buffalo. Further more, the victim has also admitted in her statement recorded under section 164 Cr.P.C. that the occurrence took place at 7.00 P.M. Hence it is clear that prosecution has filed a false case against the accused person.
- 18. After going through the evidences on record and the submission of the learned defence counsel, it is found that the victim in her statement recorded under section 164 Cr.P.C. recorded on 14-09-2015 has stated that the occurrence took place at about 7.00 P.M. But in the deposition she has stated that the occurrence took place at 12.00 midnight and the same was corroborated by P.W.2 and 3 by saying that the occurrence took place at 12.00 mid-night. Further, according to P.W.2 mother of the victim the wearing clothes of the victim was not torn and there was no blood stain on the clothes of the victim. But contradicting the said version the victim has stated that the accused torn her wearing clothes. There was blood stain on her wearing clothes and the bed sheets. Police took her wearing clothes, but not the bed sheets. The gamocha by which her mouth was gagged was in their house. But police did not take the same. But the I/O has contradicted the version of P.W.3 by saying that no clothes with blood stain was shown to him and he did not seize anything from the house of the victim. The victim

has further stated that she sustained injury on her chest, back and hand and those injuries were shown to her parents. But her parents P.W.2 and P.W.3 have not stated anything regarding her injury and the medical officer(P.W.1) has also not supported the same. That being the position, it is found that P.W.2, P.W.3 and P.W.4 have concealed some material fact and so they have contradicted each other. Further more, the statement which are made by the victim in the court is not stated by her either in her statement recorded under section 161 Cr.P.C. or under section 164 Cr.P.C. Regarding the age according to the victim and her mother, the birth certificate was given to the police. But the I/.O has denied the same and he has not produced any birth certificate before the court. The neighbouring people who arrived at the place of occurrence Nandu Mia and Abul Kalam as P.W.5 and 6 have categorically stated that on the day of occurrence at about 7.00 P.M. the son of the informant called them to his house and coming there they saw an altercation was going on in between the accused and the informant relating to the money of purchasing a buffalo purchased on zimma of the accused. At that time the son of the accused and some other persons were also with the accused person. As the informant assured that he would make the payment on the next day they took away the accused person. But on the next day the informant in stead of making the payment has filed a case on the basis of some false allegation. Both these two witnesses are declared hostile witness. But their statements are not confronted with the I/O. Hence, the said evidence is to be prosecution. used against the 19. From the above discussions it is found that the allegation of the informant that occurrence took place at about 12.00 midnight is doubtful as the victim herself has stated that the occurrence took place at 7.00 P.M. and the same is supported by P.Ws.5 and 6. Further more, the P.W.2,3 and 4 themselves have stated that if the accused person had made payment as demanded by the informant he would not file the case. Further more, the story of P.W.2 and 3 that the accused person being an unknown person entered into their house at midnight and committed rape on the victim is also not believable. P.W.2,3 and 4 have themselves stated that the accused person hails from a different

village which is situated at a distance of 20/30 K.Ms. From their village.

- 20. Under such circumstances, it is clear that prosecution has failed to prove beyond all reasonable doubt that the accused person has committed any offence. Hence. The accused is acquitted and set at liberty.
- 21. 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.
- 22. 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.
- 23. Given under my hand and seal of this Court on this 17th day of December, 2016.

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. :Medical report.

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

Ext.2 :F.I.R.

Ext.2(1) :Sig. of S.I. Nripendra Sarmah

Ext.3 :Sketch Map

Ext.3(1) :Sig.of Nripendra Sarmah

Ext.4 :Charge Sheet

Ext. 4(1) :Sig. of S.I. Nripendra Sarmah

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 :Dr.Bharati Das, M.& H.O.-I, F.A.A.Medical College &

Hospital, Barpeta

P.W.2 :Rahimuddin

P.W.3 :Mst.Jahiran Nessa P.W.4 :Ms.Sahida Begum

P.W.5 :Nandu Minya P.W.6 :Abul Kalam

P.W.7 :Nripendra Sarmah,Attached officer at Pathsala Out Post

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

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