# IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

## Special P.O.C.S.O. Act CASE NO. 36 OF 2017

Under Section 376 IPC read with Section 4 of POCSO Act,2012

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

State of Assam.

-versus-

Saiful Hoque ... Accused.

## **APPEARANCE**

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

For the accused : Mr.M. Zaman, learned Advocate.

Evidence recorded on : 04-09-2017 & 13-11-2017

Argument heard on : 21-12-2017

Judgment delivered on : 21-12-2017.

## <u>JUDGMENT</u>

1. The prosecution case in brief, is that on 03-03-2016 one Amir Hamja lodged an FIR alleging that about 14 days ago at about 8.00 PM accused Saiful Islam illegally entered into his house and kidnapped his daughter Hamida Khatun aged about 13 years. The accused person committed rape on her for 2/3 times at Nichuka Pathar and left her there. Coming to know about the occurrence the villager went to the house of the accused and informed the matter the to guardian of accused Abdul Islam. But instead of settling the matter the accused and his guardian attempted to physically assault them and also threatened to kill them.

- 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 Saiful Hoque under section 4 of POCSO Act, 2012.
- 3. Accordingly the accused person appeared before this court, copies are furnished to him and after hearing both the parties charge was framed against the accused person under section 376 IPC read with section 4 of POCSO Act, 2012. Charge was read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as three witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C.is dispensed with.

## 5. **Point for determination**:-

(1) Whether the accused person prior to 14 days from the date of filing the FIR on 03-03-2016 at about 8.00 PM at Nichuka, within the jurisdiction of Barpeta Road Police Station, District Barpeta, committed rape on Hamida Khatun, aged about 13 years, daughter of Amir Hamja and committed penetrative sexual assault on her?

### **Decision and reasons thereof:**

- 6. In this present case the allegation against the accused person is that on the date of occurrence at about 8.00 PM he committed rape on the victim who is aged about 13 years.
- 7. The father of the victim Amir Hamja, who is examined as PW2 lodged the FIR. But the first informant PW2 in his deposition has not supported the allegation which are made in the FIR. In his deposition he has stated that on the date of occurrence at about 8.00 PM he had sent the victim to grocery shop to purchase sugar and tea. As she delayed in returning home he also went to the shop and saw the victim was gossiping with the accused person. Then out of suspicion he lodged the FIR.

In his cross examination he has stated that he does not know what is written in the FIR. He only put his signature. At the instigation of the villagers he lodged the FIR.

8. Being a case of POCSO Act, the victim is the vital witness in this case. She is examined as PW2. Corroborating the statement of her father PW2 she has also deposed that on the date of occurrence at about 8.00 PM she has gone to the shop of the accused to purchase some article. As she was gossiping with the accused person out of suspicion her father lodged the FIR.

In her cross examination she has stated that she does not know who wrote the FIR and what is written in the FIR. The accused person did not do any illicit act with her. The FIR was lodged falsely. She knows the accused person since long back. She made the statement before the Magistrate as tutored by the Police.

- 9. The Medical Officer who is examined as PW3 has deposed that on 04-03-2016 she examined the victim. As per her opinion there is no recent sign of sexual intercourse but the victim accustomed to sexual intercourse. There is no violence marks on her private parts.
- 10. From the above discussions of the evidences of the prosecution witnesses, it is found that the victim and the first informant themselves have denied the allegation which are made in the FIR. According to them the FIR was written by somebody else and they do not know what is written in the FIR. The victim has clearly stated that the accused person did not do any illicit act with her. She was only gossiping with the accused person. Both of them have stated that the informant lodged the FIR out of suspicion.
- 11. Under such circumstances it is clear the prosecution has miserably failed to prove any offence against the accused person. Therefore the accused person is acquitted and set at liberty.
- 12. 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.
- 13. 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.

Given under my hand and seal of this Court on this 21st day of December, 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 :Statement under section 164 CrPC

Ext.1(1) &

Ext.1(2) :Sigs. of Hamida Khatun

Ext.2 : Medical Report

Ext.2(1) :Sig. of Dr. A Boro

(B)Defence Exhibits:Nil

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Hamida Khatun

P.W.2 : Amri Hamja

P.W.3 : Dr. Anima Boro, Lady Medical Officer at FAA Medical

College and Hospital, Barpeta

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

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