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. 31 OF 2019 (G.R. Case 4253/2018) Kalgachia P.S. Case No 735 of 2018

State of Assam

-versus-

Ashraful Alom @ Dulal S/O Altaf Hussain, Resident of Pachim Moinbari, P.S. Kalgachia, District - Barpeta

...... Accused.

APPEARANCES:

For the State : Mr. Lalit Ch. Nath, learned Public

Prosecutor., Barpeta.

For the Accused Mr. Golap Hussain, learned

Advocate, Barpeta.

<u>Charge framed under Section 354(c)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012, read with Section 67/67(a)/67(b) Information Technology Act</u>

Date of Charge : 29.03.2019,
Date of Prosecution evidence : 17.06.2019,
Date of Judgment : 17.06.2019.

<u>JUDGMENT</u>

1). The prosecution case, in brief, is that one Abdul Barek (P.W.3) lodged an FIR with the Officer-In-charge of Kalgachia Police Station, alleging interalia, that dating back four months from the date of FIR (that is 17.08.2017), accused Ashraful Alom @ Dulal captured adulterous image of the daughter of the informant and threatened her

to publish in the electronic form and committed rape on her.

On receipt of the aforesaid FIR by the Officer-In-charge, Kalgachia Police Station, the same was registered as **Kalgachia P.S.** Case No 735/2018 under Section 342/354(C)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012 and read with Section 67/67(A)/66(C) IT Act, 2000.

During the course of investigation, the victim was sent for her medical examination by the doctor, her statement under station 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Ashraful Alom @ Dulal under Section 342/354(C)/376(N)/506 IPC read with Section 4 of POCSO Act, 2012 and read with Section 67/67(A)/66(C) IT Act, 2000.

- 2). In due course, learned Judicial Magistrate, First Class, Barpeta summoned the accused. Copy was furnished to him by learned Judicial Magistrate, First Class, Barpeta, who, thereafter, committed the case to this court, the same being exclusively triable by the court of Sessions.
- 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 against the accused under Section 354(C)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012, read with Section 67/67(A)/67(B) Information Technology Act by the undersigned. The charges 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 victim, medical officer were examined, on behalf of the prosecution, to prove the charge under Section 354(C)/376(n)/506 IPC

read with Section 4 of POCSO Act, 2012, read with Section 67/67(A)/67(B) Information Technology Act by the undersigned. Then prosecution evidence was closed, as prayed, by learned Public Prosecutor, Barpeta.

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, Barpeta as well as Mr. Golap Hussain, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 354(C)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012, read with Section 67/67(A)/67(B) Information Technology Act by the undersigned.
- **6).** Now the points for determination before this court are as follows ---
- (1) Whether the accused dating back four months from the date of F.I.R (that is 17.08.2017) at your house, at North Moinbori, within the jurisdiction of Kalgachia P.S., District Barpeta, captured the image of Baspriya Hasan Sultana, the minor daughter of the informant Abdul Barek Ahmed, engaging herself in a private act in circumstances she had expected of being not observed either by you or by any other person or you disseminated such image and thereby committed an offence punishable under Section 354 (C) of the Indian Penal Code?
- (2) Whether the accused on the same date, place and thereafter, committed rape on Baspriya Hasan Sultana, the minor daughter of the Informant Abdul Barek Ahmed and thereby committed an offence punishable under Section 376 (n) of the Indian Penal Code ?

- (3) Whether the accused on the same date & place as mentioned above, committed criminal intimidation by threatening Baspriya Hasan Sultana, the minor daughter of the informant Abdul Barek Ahmed and thereby committed an offence punishable under Section 506 of the Indian Penal Code?
- (4) Whether the accused on the same date, place and thereafter, committed penetrative sexual assault on Baspriya Hasan Sultana, the minor daughter of the informant Abdul Barek Ahmed and thereby committed an offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 ?
- (5) Whether the accused, on the same date and thereafter published or transmitted or caused to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if 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 contained or embodied in it and thereby committed an offence punishable under Section 67 of the Information Technology Act?
- (6) Whether the accused, thereafter, published or transmitted or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct and thereby committed an offence punishable under Section 67-A of the Information Technology Act ?
- (7) Whether the accused, on the same date and thereafter publishes or transmits or distributed or causes to be published

or transmitted or distributed or created text material in any electronic form which depicts children engaged in sexually explicit act or conduct or recorded in any electronic form own abuse pertaining to sexually act with children and thereby committed an offence punishable under Section 67-B of the Information Technology Act?

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. Anima Boro [P.W.1], who is the **Medical Officer** of this case, deposed in her evidence before the court that on **20.08.2018**, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, she examined one **Baspriya Hassan Sultana**, aged 16 years, D/O Abdul Barek Ahmed of village Uttar Moibori under Kalgachia PS, in connection with Kalgachia P.S. Case No. 735/2018 and found as follows:

History:- According to the alleged victim, she is in love with a boy named Ashraful Alam from last 1 years, 4-5 months back he call her to his home when no one was at his home. He had physical relation with her and had taken some naked photographs of her. On 15 th August he send all the photographs in social media and so she registered a case against him and so police caught them and brought her today for medical examination.

Physical Examination:

Identification marks:- 1. A black mole over right cheek.

2. A pin head size black mole over front of right ear.

Height:-

Weight:- 45 Kg. Chest girth at nipple level:- 73 Cm.Abdominal girth at navel level:- 62 Cm.

General built & appearance:- Average.

Teeth: Total:30 Temporary: Nil. Permanent: 30.

Hairs: Axillary/Body: 1-2 cm in length, black in colour.

Breasts:- Hemispherical in shape, soft in consistency. Nipple and areola

brown in colour

Menstruation(as told by the individual):

LMP (as told by the individual): 25.07.2018. Mental Condition: No abnormality detected.

Gait: Normal

Intelligence: Average.

Wearing garments & any suspected stains present: Intact, stain absent.

Bodily Injuries: Not detected at the time of examination.

Genital Examination:-

Pubic hairs: 0.5-1 cm in length, black in colour.

Vulva(Labia majora & minora):- Labia minora exposed in lithotomy position.

Hymen: Old, tear at 7 'O' clock position.

Vagina:- Healthy.

Cervix & Uterus: Cx- Healthy. Uterus not palpable per abdominally.

Fourchette & Perineum: Healthy.

Result of vaginal swab smear examination: Microscopic examination of vaginal smear reveal no spermatozoa.

Result of X-Investigation: Plate No. 170 Dated 27.08.2018.

Wrist Joint: Epiphyseal union around wrist joint is not completed

Elbow Joint:-Epiphyseal union around elbow joint is completed.

Shoulder Joint :- Epiphyseal union around shoulder joint is not completed.

Pelvis: Epiphyseal union around iliac crest and ischial tuberosity is not completed.

Opinion:-

(1) Her age is above 14(fourteen) years and below 16(sixteen) years.

- (2) Evidence of recent sexual intercourse is not detected on her person.
- (3) No injury or violence mark is detected.
- (4) Foreign particles like hair, blood, semen etc are not detected on her person at the time of examination.

P.W.1 exhibited the **medical report vide Ext.1** wherein **Ext.1(1)** is **her signature**

Her cross-examination was declined by the defence side.

8). Baspriya Hasan Sultana (PW-2), who deposed that she knew the accused person and her father lodged this case. She stated that the incident took place before 9-10 months. At the time of incident, she was at her home as a student of HS final year. On the relevant day, she went to the house of accused Ashraful, without informing anyone. Accused person resided near her house. After having tea, she returned to her home. As she went to the house of accused, without inform to anyone, her father lodged the FIR before Kalgachia PS.

Police sent her to doctor for her medical examination and also sent to learned Magistrate for recording her statement under Section 164 CrPC. Ext.2 is her statement and Ext.2(1),(2),(3),(4) & (5) are her signature. She has admitted in the evidence that accused did not do any bad work with her and accused did not capture obscene naked photograph.

In her cross-examination, she deposed that she has good friendship with the accused person. Her father lodged this case because she went to the house of accused, without informing anyone. She gave her statement before Magistrate on being tutored by police. No incident, as alleged, in this case even took place. She has no objection if the accused person is acquitted from this case.

9). Abdul Barek (P.W.3) stated that he knew the accused person and victim is his daughter. He (PW3) stated that the incident took place before 10 months. At the time of incident, victim went to the house of accused without informing him. He lodged the FIR before Kalgachia PS. Ext.3 is FIR and Ext.3(1) is his signature. Accused did not do bad work with his victim daughter and did not capture obscene photograph by the accused person.

In his cross-examination, he stated that he lodged this case without asking his victim daughter. I have no objection, if the accused person is acquitted from this case.

10). From the perusal of evidence of the victim, it is seen that victim had good relation with the accused person. She (victim) admitted that her father lodged this case because she went to the house of accused, without informing anyone. The victim further admitted that accused did not do any bad work with her and accused did not capture obscene naked photograph. In her cross-examination, she categorically admitted that she has no objection if the accused person is acquitted from this case.

Thus, there is no question of rape as per evidence of victim of this case.

Moreover, informant Abdul Barek (P.W.3) admitted in his evidence that Accused did not bad work with his victim daughter and did not capture obscene photograph by the accused person.

11). Thus, there is no material on record to hold that the accused committed criminal trespass or raped the victim forcefully or published or transmitted sexually explicit act or conduct of victim in the electronic form.

It is cardinal principal of criminal Law that prosecution case has to stand on its own leg. The alleged offence have not been

proved against the accused beyond all reasonable doubt by the prosecution side.

- 12). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused **Ashraful Alom @ Dulal** to warrant his conviction under Section 354(C)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012, read with Section 67/67(A)/67(B) Information Technology Act beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal, at least, on benefit of doubt, which I accordingly do.
- 13). In the result, accused Ashraful Alom @ Dulal is acquitted of the charge under Section 354(C)/376(n)/506 IPC read with Section 4 of POCSO Act, 2012, read with Section 67/67(A)/67(B) Information Technology Act, levelled against him, on benefit of doubt. His bail bond stand discharged.
- **14).** Given under my hand and seal of this Court on this **17**th **day of June, 2019**.

Sd/-

Special Judge, Barpeta

A P P E N D I X

(A) **Prosecution witnesses**:

P.W.1 = Dr. Mamata Devi, the M.O,

P.W.2 = Baspriya Hasan Sultana, the victim,

P.W.3 = Abdul Barek, the informant.

(B) **Prosecution Exhibits:**

Ext.1 = Medical Report,

Ext.2 = Statement of the victim,

Ext.3 = Ejahar.

- (C) Defence witnesses:Nil.
- (D) Defence Exhibits:Nil.
- (E) **Court witnesses:Nil**
- (F) Court Exhibits:Nil.

Sd/-

Special Judge, Barpeta.