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

#### Special P.O.C.S.O. Act CASE NO. 12 OF 2017

Under Section 457 I.P.C R/W Section 4 of P.O.C.S.O. Act,2012

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

State of Assam.
-versusMd. Makbul Ali ..... Accused.

#### **APPEARANCE**

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

For the accused : Abdul Based, learned Advocate.

Evidence recorded on : 25.04.2018,

Argument heard on : 02.05.2018,

Judgment delivered on : 02.05.2018.

# JUDGMENT

1. The prosecution case, as narrated in the FIR, is that on 05.09.2016 one Hurmuj Ali Ahmed lodged an FIR alleging interalia that his nephew Marjina Parbin, aged about 15 years, was a student of Class X of B.H. School. For last one year, accused Makibul Ali had been disturbing her on her way to her school. On 02.09.2016 at about 10:30 PM, the accused person entered into her reading room by cutting the rope of the door, gagged her mouth with clothes and committed rape on her. Hearing

the sound, the father of the victim came forward and caught the accused red handed. At that time the lamp was lighting in the reading room of the victim. The father of the victim informed the matter to village people and the village people informed the guardian of the accused and in presence of those persons, the accused person admitted his guilt. The guardian of the accused assuring to settle the matter took away the accused person.

- 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 Makibul Ali under section 457 I.P.C. R/W section 4 of POCSO Act.
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against the accused person under section 457 I.P.C read with section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 4(four) witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

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

Whether the accused person on 02.09.2016 at about 10:30 P.M. at Garemari Pathar, within the jurisdiction of Barpeta Police Station District Barpeta-----

- I) committed lurking house-trespass by night, or housebreaking by cutting the rope of door of reading room of the victim Marjina Parbin, aged about 15 years, niece of the informant Hurmuj Ali Ahmed in order to commit sexual assault on her?
- ii) committed penetrative sexual assault on Marjina Parbin, aged about 15 years, niece of the informant Hurmuj Ali Ahmed?

#### Discussion, decision and reasons thereof

- 6. According to the FIR-Ext.1, the alleged occurrence took place on 02.09.2016 at about 10:30 PM. The victim was examined by the medical officer on 06.09.2016, but the said medical officer, who is examined as PW1, has stated in the history of the case that the victim alleged assault sexually by Makibul Rahman on 31.08.2016 at about 10:30 PM. The said medical officer examined the victim and opined that there is no recent sign detected. There is no injury marks on her private parts. Victim is not suffering from any physical or mental illness. There is no foreign particle on her body/cloths and as there is no X-ray report hence actual age of victim could not be ascertained. In her cross examination she has stated that the age of the victim could not be ascertained due to unavailability of X-ray report.
- From the contents of the FIR it is clear that the victim as well 8. as her maternal uncle i.e. the informant Hurmuj Ali Ahmed are the most vital witnesses in this case. The informant Hurmuj Ali Ahmed caught red handed the accused while he was committing rape on the victim. The said informant is examined as PW2. He is the maternal uncle of the victim and he has deposed that the mother of the victim informed him that some body entered into the room of the victim at night. Then out of suspicion he lodged the FIR against the accused person. At that time the victim was a student of Class IX and her age was above 18 years. Police took the victim to the police station, medical officer examined her and the Magistrate recorded her statement. In cross examination he has stated that his house is situated at a distance of  $1\frac{1}{2}$  kms from the house of the victim. He himself did not see the occurrence. The victim already got married. Her present age is 20 years. He lodged the FIR without asking the victim as per direction of her mother.
- 9. The mother of the victim Jahanara Begum as PW3 has stated that the victim informed her that somebody entered into her room. She

did not see herself. Then some body lodged the FIR and the victim was taken by police. As she is a deaf woman, none wanted to talk with her. Police asked her about the occurrence, but as she could not say, police did not ask her anything later. She did not inform about the occurrence to her brother. In cross examination she has stated that the victim already got married and she is now living peacefully. She does not know as to why her brother lodged the FIR. In fact, no occurrence took place.

- 10. The victim as PW4 has deposed that the occurrence took place 1½ years ago. A quarrel took place between her and the accused person. Then she informed about the quarrel to her maternal uncle over phone. Then her maternal uncle took her to the police station and lodged the FIR. Police produced her before the Magistrate who recorded her statement-Ext.3. The medical officer examined her. The accused did not do anything with her except the quarrel. In her cross examination she has deposed that without knowing the real fact, her maternal uncle lodged the FIR. She made the statement before the Magistrate as tutored by police. No any untoward incident took place between her and the accused person. Her maternal uncle lodged the FIR due to some misunderstanding.
- 11. From the above discussions of the evidences of the prosecution witnesses, it is found that according to the medical evidence there was no sign of recent sexual intercourse and no injury was also found on her private parts. Though the medical evidence could not ascertain the age of the victim, but according to the oral evidence adduced by the victim and the informant, at the time of the occurrence the age of the victim was above 18 years. Furthermore, none of the prosecution witnesses has made a single whisper either regarding the commission of rape on the victim or commission of lurking house-trespass by night by the accused person. The victim has clearly stated that a quarrel took place in between her and the accused person and she reported that matter to her maternal uncle. Then her maternal uncle taking her to the police station lodged the FIR. The accused person did not

do any illicit act with her. She made the statement u/s 164 CrPC as tutored by the police. PW2/informant and PW3/the mother of the victim did not see the occurrence. According to PW2 he was informed about the occurrence by the mother of the victim, but according to the mother of the victim, she did not inform anything to her brother and she does not know as to why her brother lodged the FIR.

- 12. Under the above facts and circumstances, it is clear that prosecution has miserably failed to bring home the guilt of the accused either under section 457 I.P.C or under section 4 of POCSO Act, 2012. Therefore the accused person is acquitted and set at liberty.
- 13. 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.
- 14. 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.
- 15. Given under my hand and seal of this Court on this 2nd day of May, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

### A P P E N D I X

#### (A) Prosecution witnesses:

P.W.1 = Medical Officer Dr. Anima Boro,

P.W.2 = Hurmuj Ali Ahmed, the informant,

P.W.3 = Jahanara Begum,

P.W.4 = Marjina Parbin, the informant.

### (B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) = Signature of the M.O.,

Ext.2 = Ejahar,

Ex.2(1) = Signature of the informant,

Ext.3 = Statement of the victim u/s 164 CrPC,

Ext.3(1),3(2)&3(3) = Signatures of the victim.

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

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta.