IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 104/2019 U/S 448/376(2)(n) IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:-06.11.2019

State of Assam

- Vs -

Alaluddin..... Accused

Date of Recording Evidence on – 13.11.2019

Date of Hearing Argument on – 13.11.2019

Date of Delivering the Judgment on – 13.11.2019.

Appearance:

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 01.03.2019 one Hamed Ali lodged an FIR in Tarabari P.S. stating alleging inter alia that on 26.02.2019 at about 7 pm taking advantage of absence of his wife in the residence accused entered in to his house and forcefully committed rape on his daughter. However, when the younger daughter knocked the door accused fled away leaving his MI mobile handset on the bed. Coming to know about this fact a village meeting was called. But no decision having been received present case has been filed. Hence the case.
- 2. Following the information a case being Tarabari P.S. case No 49/19 u/s 448/34 IPC and section 4 of POCSO Act was registered and investigated. During the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim girl for medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C. and arrested the accused person. On completion of investigation police finally laid the charge sheet against accused u/s 448/376(2)(n) IPC and section 4 of POCSO Act.

- 3. During the course of time, when accused appeared in court after due compliance of section 207 Cr.P.C. formal charges u/s 376(2)(n)/448 IPC and section 4 of POCSO Act were framed after perusing the materials on record and hearing both sides. The particulars of the offences on being read over and explained, accused pleaded not guilty and claimed trial.
- 4. During the course of trial, the prosecution examined only 2 witnesses namely- the informant Hamed Ali as PW-1 and the alleged victim girl as PW-2. However, considering the nature and quality of evidence adduced by both the star witnesses namely the informant and the alleged victim giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 5. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defense plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defense evidence.

6. **Now point for determination** ;-

- 1. Whether on 26.02.2019 at about 7 pm accused repeatedly committed rape on the victim by wrongfully entering in side the house as alleged?
- 2. Whether on the same day and time accused committed house trespass by entering in to the residence of the victim with intent to commit the offence of rape as alleged ?
- 3. Whether on the same day and time accused committed penetrating sexual assault on the victim girl or force her to do so with him as alleged?

7. <u>Discussion, Decision and reasons for such decision</u>:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

8. Before going to discuss the evidence on record it would be useful to refer section 448/376 IPC and and section 3 and 4 of POCSO Act, 2012.

"Section 448 IPC: Punishment for house trespass: `-Whoever commits house trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both"

"376. Punishment for rape. - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either

description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

- (2) Whoever, -
- (a) being a police officer, commits rape -
- (i) within the limits of the police station to which such police officer is appointed; or
 - (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer,or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remanded home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative , guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - (g) commits rape during communal or sectarian violence; or
 - (h) commits rape on a woman knowing her to pregnant; or
 - (i) commits rape on a woman when she is under sixteen years of age; or
 - (j) commits rape on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
 - (I) commits rape on a woman suffering from mental or physical disability; or
- (m)wile committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
 - (n) commits rape repeatedly on the same woman,

shall be punished with rigorous impression for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation – For the purpose of the sub-section -

(a)"armed forces" means the naval, military and air forces and includes

member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the statement;

- (b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);
- (d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected woman or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children."
- **"3. Penetrative sexual assault**. A person is said to commit "penetrative sexual assault" if -
- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 9. Now, on perusal of the offence u/s 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d) of POCSO Act.
- 10. In the present case PW-1 the informant in his evidence stated that he lodge the FIR Ext. 1 against accused but now accused married his daughter by executing registered Kabin.

Ext. 1(1) is his signature in FIR (Ext 1).

11. PW-2, the victim girl in her evidence deposed that she has love affaist with accused as a result of which she eloped with him but now she married with accused and living together as husband and wife. She stated in her cross that sexual intercourse by accused

with her was with her full consent and now she married and settle down with him.

12. As it appears none of the two prosecution witnesses have stated anything which

goes to show that accused did anything wrong against the alleged victim. There is no

evidence of commission of any offence by accused either u/s 376(2)(n)/448 IPC and section

4 of POCSO Act.

13. This being the position, this court is of the considered view that prosecution has

failed to establish the case against accused Alaluddin u/s 376(2)(n)/448 IPC and section 4

of POCSO Act as there was absolutely no materials emerged for having found the accused

person guilty for sustaining conviction for the aforesaid offences. Therefore, this court has

no option but to acquit the accused Alaluddin from the offence u/s 376(2)(n)/448 IPC and

section 4 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.

14. The terms of bail bond of accused person is however extended for a period of 6 (six)

months from to-day as provided u/s 437(A) Cr.P.C.

15. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta

as provided in section 365 Cr.P.C.

16. Let the case record be consigned to record room after completing the formalities.

17. Given under my hand and seal of this Court on this 13th day of November, 2019, at

Barpeta.

Dictated & Corrected my me

Sd/-(Sri C.B. Gogoi)

Special Judge,

Barpeta.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = Hamed Ali, the informant.

PW-2 = the victim girl(X)

2. The prosecution has exhibited the following documents:

Ext. 1 = is the FIR.

Ext.1(1) = is signature of informant.

Ext. 2 = is the statement recorded by Magistrate, u/s 164 Cr.P.C.

Ext.2(1) = is the signatures of the victim girl.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.