IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 43 OF 2016

Under Section 376/417 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.
-versusRakibul Islam Accused.

APPEARANCE

For the Prosecution : Sri Lalit Ch. Nath, learned P.P.

For the accused : A. Salam, learned Advocate.

Evidence recorded on : 22.02.2018,11.03.2018,

Argument heard on : 05.06.2018,

Judgment delivered on : 05.06.2018.

J U D G M E N T

1. The prosecution case, as narrated in the FIR, is that accused Rakibul Islam, assuring to marry, made sexual intercourse with the victim as a result of which she became pregnant for 7 months. Though the victim informed the accused about her pregnancy and asked him to marry her, but he did not pay heed to it. The village headman informed the matter to

the father of the accused and the father of the accused assured the village headman that he would settle the matter. On 19.02.2014 the accused person took the victim to his house assuring to marry her, but in the house, the accused, his brothers and other relatives confined her in a room and tried to administer her some medicine with intention to terminate her pregnancy. As the victim refused to take medicine, they tried to kill her by providing poison. Hearing her shouting, the neighbouring people arrived at the place of occurrence and rescued the victim. On 20.02.2014 a village mel was held in the house of the accused and in that mel, the father of the accused refused to accept the victim as their daughter-in-law. Accordingly, the father of the victim lodged the FIR on 21.02.2014.

- 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 persons Nur Hussain, Rashidul Islam, Nur Alom, Sukurjan Nessa, Baila Khatun, Abdur Rahim & Rakibul Islam under section 4 of POCSO Act.
- 3. The accused persons appeared before this court, copies were furnished to them and after hearing both the parties charges were framed against accused Rakibul Islam under section 376/417 I.P.C read with section 4 of POCSO Act. Charges were read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial. However considering the materials available in the case record, I find no prima facie case against accused Abdur Rahim, Nur Hussain, Nur Alam, Rashidul Islam, Shukurjan Nessa and Baila Khatun to frame any charge against them and hence they are discharged and set at liberty.
- 4. In course of hearing the prosecution has examined only 2(two) witnesses including the medical officer. Examination of the accused

person under section 313 Cr.P.C. is dispensed with.

5. **Points for determination:**-

Whether the accused person on 17.02.2014 at Barbala, within the jurisdiction of Howly P.S. District Barpeta-----

- I) committed rape on the victim Jeleka Khatun, daughter of the informant Talebar Rahman, committing penetrative sexual assault on her?
- ii) intentionally induced to commit sexual intercourse and so deceived the aforesaid victim or cheated by not marrying her which caused or is likely to cause damage or harm to her in body, mind, reputation or property?

Discussion, decision and reasons thereof

- 6. In course of hearing, prosecution has examined 2(two) witnesses including the Medical Officer. The informant i.e. the father of the victim already expired.
- 7. PW1 is the victim and PW2 is the M.O.. In the history, the M.O. has mentioned that the victim was sexually assaulted by Rakibul Islam 8 months before and they have love affair since last 1 ½ years. The opinion of the M.O. is as follows --- "(1) There is no recent sign of sexual intercourse. (2) According to X-ray Report her age is above 18(Eighteen) at present. (3) She is pregnant for 26 week of gestation. (4) There is no violence mark on her private parts."
- 8. The victim as PW1 as mentioned her age as 22 years. According to her, the occurrence took place about 2/3 years ago. She and the accused Rakibul Islam loved each other. She had gone to the house of her grand mother alongwith the accused at her own will. As she had gone without informing at home, her father lodged the FIR. She returned home

alone from the house of her grand mother. Police took her to the police station. Magistrate recorded her statement and Ext.1 is said statement. In cross examination she has stated that after filing of the case her father expired. She got married with another boy and she had one male child aged about 2 ½ years. Accused Rakibul did not kidnap her. She had gone to the house of her grand mother at her own will. As she could not be find out, her father lodged the FIR. While she returned home, her father told that as he had already lodged the FIR she had to make statement as tutored by him. So she made statement before the magistrate as tutored by her father. She has no grievance against the accused person.

- 9. From the above discussions of the evidences of the prosecution witnesses, it is found that though according to the medical evidence and the contents of the FIR, the victim was carrying pregnancy at the time of lodging of the FIR, but the victim has not made a single whisper that the accused person made any sexual intercourse with her. Rather she has stated that the accused person did not kidnap her. She had gone to the house of her grand mother at her own will alongwith the accused and she returned alone and she had no grievance against the accused person. She had not made a single whisper regarding her pregnancy. She has stated that she got married with another boy and out of their wedlock a male child is born, who is aged about 2 ½ years.
- 10. Under the above facts and circumstances, it is clear that the accused person cannot be held guilty for any offence either under section 376 IPC or under section 417 IPC or under section 4 of POCSO Act, 2012. Therefore the accused person is acquitted and set at liberty.
- 11. 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.

- 12. 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.
- 13. Given under my hand and seal of this Court on this 5th day of June, 2018.

Dictated & corrected by me.

Sd/-

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

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

APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Jeleka Khatun, the victim,

P.W.2 = Medical Officer Dr. Anima Boro,

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

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

Ext.2 = Medical report,

Ex.2(1) = Signature of the M.O.

Ext.2(2) = Signatures of Professor & HOD of Forensic

Medicine, FAAMCH, Barpeta.

- (C) **<u>Defence witnesses</u>**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) Court witnesses:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

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