IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. Act CASE NO. 35 OF 2017

Under Section 366(A) I.P.C R/W 4 of P.O.C.S.O. Act, 2012

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

State of Assam.

-versus-

Safiur Rahman ... Accused.

APPEARANCE

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

For the accused : Mr. H. Rizuwani, learned Advocate.

Evidence recorded on : 22.08.2017.

Argument heard on : 22.08.2017.

Judgment delivered on : 22-08-2017.

<u>JUDGMENT</u>

1. The prosecution case in brief, is that on 10-04-2015 at about 3-30 P.M., accused Safiur Rahman kidnapped Barasha Das aged about 13 years in the house of Mukul Das of village Niz damka. Accordingly elder brother of the victim Tapan Das lodged an F.I.R on 13.04.2015.

On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against the accused Safiur Rahman under section 366 A I.P.C R/W 6 of POCSO Act.

2. The accused person appeared before this court. copies were furnished to him and after hearing both the parties charge was framed against him under section 366A I.P.C R/W 4 of POCSO Act. Charge is read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.

3. In course of hearing the prosecution has examined as many as three witnesses including the M.O. Examination of the accused person under section 313 Cr.P.C. is dispensed with. The accused person declines to adduce evidence.

4. **Point for determination:**-

Whether the accused person on 10-04-2015 at about 3.30 P.M.at Niz Damaka within the jurisdiction of Sorbhog Police Station District Barpeta kidnapped Barasha Das, aged about 13 years, sister of Tapan Das, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person by committing penetrative sexual assault on her?

Decision and reasons thereof:

- 5. The allegation against the accused person is that on 10.04.2015 at about 3.30 P.M., the accused person kidnapped the victim aged about 13 years and committed rape on her. After recovery, the said victim was examined by the Medical Officer on 18.05.2015. The said medical officer in the case history has stated that the victim had stated before her that she had loved affairs with Safiul Islam for last 3 years. But her family members did not allow for it. After examination she has opined that
- (1) There is no sign sign of sexual intercourse.
- (2) No mark of any injury on her body parts.
- (3) She is carrying pregnancy of 08 wks 04 days of GA.
- (4) Age is above sixteen and below eighteen years.

In her cross examination, she has stated that she does not know whether the age of the victim may differ 2 years in either side.

6. The informant Tapan Das i.e PW2 has stated that the victim is his brother as she loved with the accused he lodged the F.I.R and after recovery she was given in his custody. But after some days she again went with the accused person so he performed the marriage of the victim alongwith the accused person . Now out of their wedlock a male child is born. So he is not willing to proceed the case. At the time of

the occurrence the age of the victim was 18 (eighteen) to 19 (nineteen) years.

7. The victim as PW3 has deposed that she had gone along with the accused person without informing anybody so his elder brother Tapan Das filed the case. Police recovered her. But after some days she again went to the accused person then her elder brother performed her marriage with the accused. Now a male child is born to her. She is living with the accused person as husband and wife. Her statement was recorded by the magistrate and Ext. 3 is her statement.

In her cross examination she has stated that she was not forcibly taken by the accused person. She had gone along with the accused person at her own will as she loved her.

- From the evidences of the prosecution witnesses it is found that according to the medical evidence the age of the victim was about 16 (sixteen) and below 18 (eighteen) years. The victim and her elder brother i.e the informant have stated that at the time of occurrence the age of the victim was about 18 (eighteen) to 19 (nineteen) years. According to the medical evidence on the date of examination i.e. on 18.05.2015 the victim was carrying pragnancy of 8 weeks 4 days. The victim and her elder brother have stated that the F.I.R on the basis of which the present case is started was lodged by the elder brother on 13.04.2015 when the victim left the house on 10.04.2015. Thereafter the victim again had gone with the accused person and then he did not lodge any F.I.R rather he performed their marriage. The victim in her statement recorded under section 164 CrPC and also in her deposition as PW3 has stated that she loved the accused prior to the occurrence and so she had gone along with him at her own will. The accused person did not kidnap her. The victim has not made any single whisper that the accused person committed rape on her.
- 9. Under such circumstances it is found that the prosecution has failed to prove either the case of section 366 (A) I.P.C or of section 4 of POCSO Act. Hence, 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.

10. 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 22nd day of August,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 : Medical Report.

Ext.1(1) : Signature of Dr. Bharati Das.

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Dr. Bharati Das,M & HO at Barpeta CH at Kalgachia.

P.W.2 : Tapan Das.

P.W.3 : Barasha Das.

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta