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

# Special P.O.C.S.O. Act CASE NO. 48 OF 2016

Under Section 376 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.
-versusJamal Badsha ..... Accused.

#### **APPEARANCE**

For the Prosecution : Mr. Lolit Ch. Nath, learned P.P.

For the accused : Abdul Mannan, learned Advocate.

Evidence recorded on : 14.11.2017 & 25.06.2018

Argument heard on : 25.06.2018,

Judgment delivered on : 25.06.2018.

# JUDGMENT

- 1. The prosecution case, in brief, is that on 15.01.2015 at about 3:00 PM, while the victim, aged about 6 years, was playing in the field in back side of their house, accused Jamal Badsha took her to his house and committed rape on her. While the victim started shouting, the accused person fled away. The victim reported the matter to her mother. Accordingly her mother Hajera Khatun lodged the FIR on 27.01.2015.
- 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 Jamal Badsha under section 376(2)(i)IPC R/W section 4 of POCSO Act, 2012.

- 3. The accused person appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against accused Jamal Badsha under section 376 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. **Points for determination**:-

Whether the accused person on 15.01.2015 at 3:00 PM at Pathimari, under Kasumara PS in Barpeta district, committed rape on Halima Khatun, aged about 6 years, daughter of the informant, Hajera Khatun, and committed penetrative sexual intercourse on her?

#### Discussion, decision and reasons thereof

- 6. The allegation as narrated in the FIR is that on 15.01.2015 at 3:00 PM, the accused person committed rape on the victim. The FIR was lodged on 27.01.2015 and the victim was examined by the M.O. On 28.01.2015. The M.O., who is examined as PW1, has opined that---- "(1) Age of the victim is above 6(Six) and below 8(Eight) years. (2) There is no mark of any violence on her body parts. (3) There is no sign of recent sexual intercourse, however hymen is torn out. In cross examination, she has stated that she did not find any injury mark on the victim.
- 7. The informant **Hajera Khatun** is examined **as PW2**. She has stated that the occurrence took place about 3 years ago. At that time, the

age of the victim was 6 years. About 2:00/3:00 PM, the victim had gone to the field in search of 'Kesar'. Then the accused rebuked her and relating to that a quarrel took place in between her and the accused person. Then she lodged the FIR.

In her cross examination, she has stated that she lodged the FIR after 20 days of the occurrence. After 25 days of the occurrence, the victim was examined by M.O. and she was produced before the Magistrate. The accused also had gone to the field in search of 'Kesar'. The accused did not do any illicit act with the victim. She does not know who wrote the FIR. So, she does not know what was written in the FIR. She only put her signature. The FIR was lodged due to some misunderstanding.

8. One **Mofida Khatun** as **PW3** has deposed that on the date of occurrence, the victim and the accused had gone to the paddy field in search of 'Kesar'. The accused rebuked the victim and then the victim returned home weeping and informed her mother and then her mother lodged the case.

**In cross examination**, she has stated that she did not see the occurrence.

9. The victim as **PW4** has deposed that about 3 years ago, one day she had gone alongwith the accused to the paddy field in search of 'Kesar'. Then the accused rebuked her. She returned home weeping and reported her mother. Then her mother filed the case. She was produced before the Magistrate and also before the Medical Officer for her examination.

In cross examination, she has stated that the accused did not do any illicit act with her. She made the statement before the Magistrate as tutored by the police. Due to misunderstanding, her mother lodged the case.

10. From the above discussions of the evidences of the prosecution witnesses, it is found that admittedly at the time of

occurrence, the victim was minor. But the allegation, which is narrated in the FIR, is not supported either by the informant or by the victim. Both of them have clearly stated that at the time of occurrence, the victim had gone to the paddy field alongwith the accused in search of 'Kesar'. Then the accused person rebuked her and she returned home weeping. The victim has clearly stated that the accused did not do any illicit act with her.

- 11. Under the above facts and circumstances, it is clear that the prosecution has failed to bring home the guilt of the accused person for any offence either under section 376 I.P.C or under section 4 of POCSO Act, 2012. Therefore 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.
- 13. 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.
- 14. Given under my hand and seal of this Court on this 25th day of June, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

# APPENDIX

# (A) Prosecution witnesses:

P.W.1 = Medical Officer Dr. Bharati Das,

P.W.2 = Hajera Khatun, the informant,

P.W.3 = Mofida Khatun,

P.W.4 = Halima Khatun, the victim.

# (B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) = Signature of Dr. Bharati Das,

Ext.2 = Ejahar,

Ext.2(1) = Signature of Hajera Khatun.

- (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.