#### IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

# JUDGMENT IN SPECIAL POCSO CASE NO. 21 OF 2017 (G.R.No.- 669/2015) Barpeta P.S. Case No. 2670 of 2015

#### **State of Assam**

-versus-

(i) Amir Ali, S/O Didar Ali, Resident of Datirbari, P.S. Barpeta, District – Barpeta

(ii) Hafizur Rahman @ Habu, S/O Madhu Miya, Resident of Bhairaguri (Jalka), P.S. Barpeta, District – Barpeta

**APPEARANCES:** 

For the State : Mr. Lalit Ch. Nath, learned

**Public Prosecutor, Barpeta.** 

..... Accused.

For the Accused : Mr. Ayen Uddin Ahmed,

learned Counsel, Barpeta.

# CHARGE FRAMED UNDER SECTION 366 (A) IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 01.07.2017,

**Date of Prosecution evidence** : 22.09.2017; 08.06.2018;

09.07.2018 & 11.09.2019,

**Date of Statement of accused** 

recorded u/S 313 CrPC : 25.09.2019, Date of Argument : 25.09.2019, Date of Judgment : 04.10.2019.

# J U D G M E N T

1). The prosecution case, in brief, is that Barpeta PS Case No 2670 of 2015 under Sections 366(A) of IPC read with Sections 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by the victim.

In the aforesaid **F.I.R**. dated 21.10.2015 **(Exhibit -1)**, the informant (P.W.1), who is the victim of this case, alleged interalia, that on 18.10.2015 at about 5:00 PM, accused Hafizur Rahman called her infront of her house and stated that her (P.W.1) friend has come to his house and she wanted to meet her (victim). Then, she proceeded to his house in a vehicle alongwith Jamal Uddin and two other persons. After that, victim girl was kidnapped by the accused persons and Jamal Uddin raped her forcefully. Accused left her on 20.10.2015, in the evening, on the Barpeta-Howly road. She then telephoned her father, who brought her back to her house.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Barpeta Police Station, the same was registered as Barpeta P.S. Case No 2670/2015 under Sections 120(B)/366(A)/506 of IPC read with section 4 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, her statement was recorded under station 164 of CrPC by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the accused **Amir Ali and Hafizur Rahman @ Habu under Sections 366(A)/34 of IPC read with Sections 4 of the Protection of Children From Sexual Offences Act, 2012** vide charge sheet **No.795/16**, dated **31.12.2016**.

- **2).** On production of accused, copy was furnished to them by the predecessor-in-office.
- **3).** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for

the accused and the prosecution in this behalf, charge was framed by the predecessor-in-office against the accused under **Sections 366(A) of IPC read** with **Section 4 of the Protection of Children From Sexual Offences Act, 2012**, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **08** [**Eight**] number of witnesses including the victim, medical officer, her parent and the I/O were examined on behalf of the prosecution to prove the charge under **Sections 366(A)** of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 against accused.

On completion of prosecution evidence, statement of the above named accused were recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against them. They claimed themselves to be innocent. They also disclosed that victim went, with them, as per her own consent.

- 5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Ayen Uddin Ahmed**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 366(A) of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012,**
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether on 18.10.2015 at about 5:00 PM, at Bhairaguri, within the jurisdiction of Barpeta Police Station, District Barpeta, accused kidnapped Abeda Begum, aged about 16 years, 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 and committed penetrative sexual

assault on her and thereby committed an offence punishable under Sections 366(A) of IPC read with Section 4 of POCSO Act, 2012?

#### **DISCUSSION, DECISIONS AND REASONS THEREOF:**

**7).** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

**Abeda Begum (P.W.1),** who is informant and star witness of this case deposed in her evidence that at the time of incident, Jaman forced her to go alongwith him in a vehicle. Then, she (P.W.1) raised hulla for which Jaman dropped out her from his vehicle. After that, she informed the alleged incident to her mother and filed this case. Then, Police took her to thana and sent her for medical examination. Police also got her statement recorded under Section 164 CrPC by the learned Magistrate.

P.W.1 exhibited the FIR as Ext.1 and Ext.1(1), 1(2) and 1(3) are her signatures. P.W.1 also exhibited her statement recorded under Section 164 CrPC as Ext.2 and Ext.2(1) is her signature.

In her cross-examination, she stated that she married Hayet Ali. She further deposed that Jaman did not forcefully put her in a vehicle and she willingly went with him. Then, a quarrel took place between the accused persons and her for a mobile handset. After that, she filed this case as tutored by village people. She gave her statement as tutored by Police before the learned Magistrate and further, she do not want to proceed with this case.

**8). Abdul Sattar [P.W.2]** has deposed that victim is his daughter and incident took place before two years. At the time of incident, he was not at home. P.W.2 heard that his daughter was kidnapped by someone. Then, victim filed this case. After that, Police recovered his daughter from road. After that, Police came to his house for investigation of the case. Police seized her birth certificate from him (P.W.2) and he put his signature in the seizure list. He stated that the date of year of the birth of victim was 2002.

In his cross-examination, he stated that he did not see the alleged incident and he stayed at Barerbhitha. He came to his house on next day of the incident. P.W.2 did not see whether victim went with accused voluntarily or not? Victim had filed this after 2 days of the alleged incident and at that time, he did not go with the victim as he was at his house. P.W.2 further stated that he had given marriage of his victim daughter at Paharpurkatuli.

9). Abdul Hanif Ali @ Hanif Ali [P.W.3] deposed that victim is his niece and he knows the accused persons. Incident took place before two years. P.W.3 heard that victim was kidnapped by Amir Ali alongwith others. He further deposed that accused persons stayed in a road and victim proceeded alongwith the accused in a vehicle and her age was about 17/18 years. After two days of the alleged incident, victim called her father from 'Howly Tel Dipo', then she was recovered by her father. He further deposed that he asked her about the alleged incident but she did not reply about the incident. At that time, she married with another boy and settled the matter through mutual understanding between accused, informant and the victim.

In his cross-examination, he deposed that at that time of incident, he was at Guwahati and he did not see by whom and how, victim was kidnapped. He did not see the exact place from where, victim was recovered from Howli as he did not go, at that time. He returned to his home from Guwahati after 3 days of the alleged incident. Victim got married after  $1 \frac{1}{2} / 2$  months of the incident at Jadabpur. He stated that victim stayed in her matrimonial house and her age was 17/18 years, at the time of incident.

He further stated that police did not examine him about the alleged occurrence. The statement recorded by the Police was not his statement as he was not present at his home when Police came to his house for his examination.

**Sahjahan Ali [PW4]** has deposed that informant is his cuisine sister and he knows the accused Hafizur Rahman but he did not know other accused person. He heard that Abida was missing from her home but the in the next day, he saw her in her house. He did not know by whom and how, Abida

was kidnapped.

**In his cross-examination,** he has stated that her residence is 100 meters far away from the house of Abida and he do not know anything about the alleged incident.

**11). Hafijur Rahman [P.W.5]** has deposed that victim is his sister and he knows the accused persons. At the time of incident, he worked at Guwahati as a driver. He heard over telephone that accused persons took his sister. After two days of the alleged incident, his victim sister was recovered by her father from 'Howly Tel Depo'. When he returned to his house, he came to know that FIR was lodged against the accused.

In his cross-examination, he stated that he did not see by whom and how, her victim sister was kidnapped. He did not go to Howly to recover his sister. He heard that a bichar took place but he did not see. He stated that they had given marriage of her sister at Paharpurkatuli and Hayat Ali is the name of his brother-in-law. They have given marriage of her sister after 2 years of the incident. Police did not take her statement as he was not present at his home at the time of incident.

**12). Dr. Anima Boro [P.W.1]** deposed that on 23.10.2015, she was working as Lady Medical Officer at F.A.A.M.College & Hospital, Barpeta. On that day, in connection with Barpeta PS Case No. 2670/2015 under Sections 366(A)/506/34 of IPC read with 4 of POCSO Act, 2012, she examined victim Abdia Begum, aged about 16 years, daughter of Abdul Sattar of village Bhairaguri, under Barpeta Police Station, District Barpeta on being identified by WPC/674 Rehena Begum and found as follows:

History:- History of alleged kidnapped by Hafizur on last Sunday i.e. 17.01.2015 and history of alleged sexual act by Jaidul and kept her for 2 days.

## **Physical Examination:-**

Identification marks:- One black mole on right cheek.

Height: - 148 Cm. Weight: - 39 Kg.

Chest girth at nipple level: - 65 Cm.

Abdominal girth at navel level :- 64 Cm.

Teeth: 28.

Hairs: Axillary :- Present.

Breasts:- Developed.

Puberty(as told by the individual):- at 12 years.

Menstruation(as told by the individual):- Regular.

L.M.P.(as told by the individual):- 20 days before.

Mental condition: - Stable

Gait:- Normal

Intelligence:-Average.

Wearing garments and any suspected stains present: - No stain detected.

Bodily injuries: - No injury detected.

#### **Genital Examination:-**

Pubic hairs:- Present.

Vulva(Labia majora & minora):- Normal

Hymen:- Tear

Vagina: - admits 2 fingers.

Cervix and Uterus:- Uterus not palpable per abdominally.

Fourchette and Perineum:-Normal

Vaginal swab collected:-

Result of vaginal swab smear examination:- No Spermatozoa is seen on microscopic examination of vaginal swab slide.

#### **Opinion:-**

- (1-5) There is no recent sign detected.
- 6) There is no injury marks on her private parts.
- 7) Victim is not suffering from any physical or mental disability.
- 8) There is no foreign particle on her clothes/body.
- 9) According to X-ray report, her age is above 18 (Eighteen) years and

## below 20 (twenty) years at present.

She exhibited her **medical report** as **Ext.3 and Ext.3(1)** is her the signature. **Ext.3(2)** is the signature of **Dr. S.K.Barbhuyan**, Professor and Head, Department of Forensic Medicine, FAAMCH, Barpeta.

Her cross-examination was declined by the defence side.

**13). Hashim Ali [P.W.7]** deposed that on 20.03.2016, he was working at Barpeta PS as an Attach Officer. On that day, he received one case being Barpeta PS Case No.2670/2015 under Section 366(A)/506/34 IPC read with 4 of POCSO Act and investigated the case. He deposed that the earlier I.O. namely Chandrakanta Kalita almost completed the investigation of the case. P.W.7 did not arrest accused Hafizur Rahman and he filed charge-sheet against Amirul Ali along with absconder Hafizur Rahman under Section 366(A)/34 IPC read with Section 4 of POCSO Act.

He exhibited the charge-sheet as Ext.4 and Ext.4(1) is his signature.

**In his cross-examination,** P.W.7 deposed that there is no mention in the ejahar as to why they have filed this case lately. He did not take statement of any of the witnesses in this case.

**14). Chandan Kr. Kalita [P.W.8]** deposed that on 21.10.2015, he was working at Barpeta PS as SI of the police. On that day, officer in charge of Barpeta PS Sri Amrit Kalita received and registered one case being Barpeta PS Case No.2670/2015 under Section 120(B)/366(A)/506 IPC read with 4 of POCSO Act and entrusted him to investigated the case.

Ext.1 is the FIR and Ext.1(4) is the then signature of Officer in Charge Sri Amrit Kalita with his endorsement.

P.W.8 stated that after taking the charge, he investigated the case and sent the victim for her medical examination. During investigation, he seized birth certificate of the victim and gave the same into her zimma. He recorded her statement under Section 164 CrPC. Then, he visited the place of occurrence and drew sketch map. P.W.8 exhibited the **sketch map** as **Ext.5 and Ext.5(1)** is **his signature**. He recorded the statement of other witnesses. P.W.8

arrested accused Amir on 16.11.2015 and produced before the court. After he collected the medical examination report of the victim, P.W.8 haded over the case diary to O.C.Barpeta on his transfer on 29.12.2015.

**In his cross-examination,** P.W.8 deposed that the FIR was lodged after 3 days of the incident but there was no explanation in the FIR which was received at 5:00 PM by the O.C. He went to place of occurrence on 27.10.2015.

P.W.8 recorded the statement of witnesses near the place of occurrence and witness Hanif Ali (P.W.3) was examined by him.

He denied that he did not record the statement of witness Hafizur Rahman; that he did not investigate the case properly.

**15).** From a close perusal of the statement of the victim (P.W.1), who is star witness of this instant case, it is seen that Jaman did not force her to go with him in a vehicle and she willingly went with him. Then, a quarrel took place between the accused persons and her in respect of a mobile handset. After that, she filed this case as tutored by village people. She (P.W.1) clearly deposed that she gave her statement before the learned Magistrate as tutored by Police. Besides, she did not want to proceed this case.

At this point, she indicated the name of the accused person is Jaman in her evidence as well as in her ejahar. She did not clearly indicate the name of the main accused for whom, Police had filed the charge-sheet against them.

P.W.2 namely Abdul Sattar who is the father of the victim has stated that he did not see the alleged incident and he stayed at Barerbhitha, at the time of incident. P.W.2 did not see whether her daughter forceful went with accused or not?

P.W.3, P.W.4 and P.W.5 deposed in their cross-examination that at that time of incident, they were at Guwahati and they did not see by whom and how, victim was kidnapped.

Hence, other witnesses of this case stayed at Guwahati and they did not see the alleged incident.

Moreover, Medical Officer (P.W.6) did not find any injury marks on

her body and P.W.6 admitted in medical examination report that victim was not suffering from any physical or mental disability.

Thus, it is crystal clear that she willingly traveled with the accused persons in a vehicle. The aforesaid Jaman also did not force her to go with him in a vehicle and she willingly went with them.

Moreover, victim has not supported even the FIR (Ext.1) lodged her herself.

- In the result, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently, the charge under Sections 366(A) of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the accused **Hafizur Rahman @ Habu and Amir Ali** beyond all reasonable doubt. Accordingly, the accused are found entitled to get benefit of doubt, for which, the accused **Hafizur Rahman @ Habu and Amir Ali** are acquitted on benefit of doubt under Section 366(A) of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.
- Do scrutiny of the evidence on record, it is seen that no case has been made out against the accused **Hafizur Rahman @ Habu and Amir Ali** to warrant his conviction under Section 366 (A) IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012 beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal on benefit of doubt, which I accordingly do.
- 18). In the result, accused **Hafizur Rahman @ Habu and Amir Ali** are acquitted of the charge under Section 366(A) of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

Their bail bond stand discharged.

**19).** Given under my hand and seal of this Court on this **04**<sup>th</sup> day of October, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

# APPENDIX

# (A) Prosecution witnesses:

P.W.1 = Abed Begum, the victim/informant,

P.W.2 = Abdul Sattar,

P.W.3 = Abdul Hanif Ali @ Hanif Ali

P.W.4 = Sahjahan Ali,

P.W.5 = Hafijur Rahman,

P.W.6 = Dr. Anima Boro, the M.O.,

P.W.7 = Hashim Ali, the I.O.,

P.W.8 = Chandra Kr. Kalita, the I.O.,

# (B) Prosecution Exhibits:

Ext.1 = Ejahar,

Ext.2 = Statement of the victim recorded under

Sections 164 CrPC, Seizure list

Ext.3 = Medical Report,

Ext.4 = Charge sheet,

Ext.5 = Sketch Map

(C) **<u>Defence witnesses</u>**:Nil.

(D) **Defence Exhibits**: Nil.

(E) **Court witnesses**:Nil

(F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.