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IN THE COURT OF SESSIONS JUDGE, DARRANG, MANGALDAI.

Spl(POCSO) case No.38 of 2019

(U/S: 341/376(3) of I.P.C.

Read with Section 6 of POCSO Act).

State Versus

Md.Barek Ali @ Abdul Barek

S/O Md.Manoruddin Village- Nadirkash P.S- Dalgaon,Dist-Darrang, (Assam)

--Accused.

PRESENT: Sri P.K. Bora,A.J.S., Sessions Judge. Darrang,Mangaldai.

APPERANCE:

Learned advocate for the State: Mr. Premeswar Sarma.

AND

Learned advocate for the accused :Mr. Mirja Gias

Evidence recorded on : 08/06/19 and 08/07/19

Argument heard on : 29/07/2019

Judgment delivered on : 31/07/2019.

JUDGMENT:

- 1. The case of the prosecution in brief is that on 06/02/2019 the informant(real name is withheld hereinafter referred to as Miss X) aged about 14 years lodged an FIR before the I/C, Daipam Police Outpost under Dalgaon Police Station stating that on 05/02/2019 at about 8 p.m. while she was attending a religious ceremony an unknown person picked her by gagging her mouth and raped her in a place back side of the house of one Sahid Ali. She was left there after the incident. She also mentioned the name of the accused person as Barek Ali.
- Having received the FIR, Police registered a case, investigated the matter and got the statement of the victim recorded U/S 164 Cr.P.C. and finally, Police submitted charge sheet against the accused U/S 341/376(3) I.P.C. read with Section 6 of POCSO Act.
- 3. On his production before this Court, the written charge U/S 341/376(3) I.P.C. read with Section 6 of POCSO Act were explained and read over to the accused to which he pleaded not guilty.

4. Points for determination:

- (i)Whether on 05/02/2019 at 8 p.m. the accused person wrongfully restrained the victim Miss X?
- (ii)Whether on the same date and time the accused committed rape on Miss X?
- (iii) Whether the accused had committed an offence U/S 6 of the POCSO Act?

REASON AND DECISIONS THEREON:

- 5. In the course of trial, the prosecution examined PW1 Sukur Ali, father of the victim and the victim PW2 Miss X.
- 6. In his evidence PW1 has stated that one day he was informed by his son Muktar that his sister Miss X, while attending a religious ceremony she was picked by the

accused and she was left at Lalpool. He brought Miss X from Lalpool and he has not asked anything about the incident to Miss X.

- 7. PW2 victim Miss X has stated in her evidence that on the night of the incident while she was attending a religious gathering to see one Khaled Pir Baba, she noticed Barek there and one of the persons warned her that Barek was a notorious person and when the people gathered in that ceremony started to run near the Pir Baba at that time she was picked by someone to the back side of the house of Sahid and she was raped there. She failed to recognize the person who was committing rape on her. As guided by the village people, she put the name of Barek in the FIR. She by contradicting her own version she also stated that while deposing before the Court during investigation she told that it was Barek, who committed rape on her and she identified him. She proved Ext.1 as the FIR and Ext.2 as her statement recorded during investigation in the Court. She further stated that the house of the accused Barek falls in the village where her "Pehi's" (aunt's) house is situated. Again she also stated specifically that she cannot state the name of the person, who committed rape on her.
- 8. Therefore, it is seen that the victim, who is not a little girl deposed before the Court self contradictory evidence. The age of the victim is not such that she may be subjected to influence by the accused or any other person. The age of the victim is 15 years and in such an age a girl exposes to different situation. Therefore, she cannot be expected to become a victim of any force or coercion from the side of the accused. The self contradictory version of the victim is not inspiring.
- 9. In a catena of judgments the Hon'ble Apex Court held that --- 10. A criminal trial is not a fairy tale wherein one is free to give flight to one's imagination and fantasy. Crime is an event in real life and is the product of an interplay between different human emotions. In arriving at a conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by

the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case, in the final analysis, would have to depend upon its own facts. The court must bear in mind that "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions". Though an offence may be gruesome and revolt the human conscience, an accused can be convicted only on legal evidence and not on surmises and conjecture. The law does not permit the Court to punish the accused on the basis of a moral conviction or suspicion alone. "The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence." In fact, it is a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused. The fact that the offence was committed in a very cruel and revolting manner may in itself be a reason for scrutinizing the evidence more closely, lest the shocking nature of the crime induces an instinctive reaction against dispassionate judicial scrutiny of the facts and law. (Vide Kashmira Singh V. State of M.P., State of Punjab V. Jagir Singh, Shankarlal Gyarasilal Dixit V. State of Maharashtra, Mousam Singha Roy V. State of W.B. and Aloke Nath Dutta V. State of W.B.).

- 10. Therefore, the accused deserves benefit of doubt. Thus, the accused Barek Ali @ Abdul Barek is acquitted and set at liberty forthwith.
- 11. Given under my hand and seal of this Court this 31st day of July, 2019.

(P.K. Bora) Sessions Judge, Darrang,Mangaldai.

Dictated and corrected by me.

Sessions Judge, Darrang, Mangaldai.

APPENDIX

- (A) Prosecution witnesses:
- (i)PW1 Sukur Ali (ii)PW2 Miss X
- (B) Defense witness: Nil.
- (C)Exhibits:
- (i)Ext.1 FIR (ii)Ext.2 statement of victim.

Sessions Judge, Darrang, Mangaldai.