IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 40/2018
U/S 376(DB) IPC and section 4 of POCSO Act

PRESENT : Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:- 08.05.2019

State of Assam

- Vs -

1. Abbash Ali

2. MoynuddinAccused

Date of Recording Evidence on - 28.05.2019 & 21.06.19

Date of Hearing Argument on – 21.06.2019.

Date of Delivering the Judgment on – 21.06.2019.

Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P.

Advocate for the Accused------ Mr. Dharani Talukdar, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 26.01.2018 one Somesh Uddin lodged an FIR in Moinbari outpost alleging inter alia that on 23.01.2018 at about 6 pm while his 9 years old niece was returning from the house of Soleman Ali of the same village accused restrained her on her way and by pulling her to the bushes committed penetrating sexual assault on her, but when she made hue and cry accused ran away. Hence the case.
- 2. Acting on the information police Moinbari outpost entered the same in the general diary vide GDE No 417 dated 26.01.2019 and forw3arded the same to Kalgachia P.S. which registered a case being Kalgachia P.S. case No. 61/18 u/s 4 of POCSO Act and S.I. Hazarat Ali Ahmed undertook investigation. During the course of investigated police visited the place of occurrence, recorded the statement of the witnesses, sent the victim girl for medical examination, forwarded her to court for recording her statement u/s 164 Cr.P.C.

- 3. On completion of investigation, police finally laid the charge sheet against accused Abbash Ali and Moynuddin u/s 6 of POCSO Act with a view to stand trial.
- 4. In due course, when accused persons entered their appearance in court, hearing the learned lawyers appearing for both sides and perusing the materials available on record and after due compliance of section 207 Cr.P.C. vide order dated 08.05.2019 framed charges u/s 376(DB) IPC and 4 of POCSO Act. The substance of the offences on being read over and explained accused pleaded not guilty and claim trial.
- 5. During the course of trial, the prosecution examined 3 witnesses namely the informant Somesh Uddin as PW-1, the victim girl as PW-2 and investigating officer as PW-3 respectively. However, considering the futility of proceeding further with the case giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

7. Now point for determination ;-

- .1. Whether on 23.01.2018 you in further hence of your common intention committed gang penetrative sexual assault on the victim girl (X) age about 9 years as alleged?
- .2. Whether on the same day and time you in further hence of your common intention committed gang rape on the victim girl (X) age about 9 years by force under the bushes and thereby committed u/s 376(DB) IPC as alleged ?

8. <u>Discussion, Decision and reasons for such decision</u>:-

I have heard the learned lawyers appearing for both sides and also carefully scanned the prosecution evidence available on record.

9. The learned counsel appearing for the State Smti. P. Das submitted that three prosecution witnesses are examined by the prosecution, but

given the quality of their evidence it would be a futile exercise to go ahead for recording evidence of other witnesses. Therefore, it is submitted that the court may pass judgment after assessment of evidence of PW-1, PW-2 and PW-3 on record.

- 10. On the other hand, learned defense counsel contended that in the evidence of PW-1 and PW-2 nothing have emerged for sustaining conviction of accused persons u/s 376 (DB) IPC and section 4 of POCSO Act as in the course of their evidence. They pained a different picture for which accused are clearly entitle to acquittal.
- 11. Having heard the rival contention and on perusal of the evidence of PW-1 and PW-2 it appears that in their evidence PW-1 and PW-2 painted a different picture as against the statements made by them in the FIR. PW-2 the victim girl also depose diametrically opposite evidence by saying that whatever she stated before Magistrate u/s 164 Cr.P.C. is totally under the influence of others and no such incident had ever happened with her.
- 12. PW-1 also contrary to his allegation in the FIR depose in his evidence that there was a quarrel with accused persons regarding not constructing the house received by mother of the victim from government. Therefore, after careful consideration of the entire evidence on record this court find no reason to go ahead with further proceeding as it will serve no purpose other then waste of valuable time and energy of court. None of PW-1 and PW-2 had stated anything in court to show that accused persons in further hence of their common intention committed penetrating sexual assault on the victim girl as alleged attracting punishment u/s 376(DB) IPC and section 4 of POCSO Act 2012.
- 13. In the result, this court has no option but to acquit the accused Abbash Ali and Moynuddin from the charges u/s 376(DB) IPC and Section 4 of POCSO Act on the ground of total lake of evidence and set them at liberty forthwith.
- 14. The terms of bail bonds of accused persons are extended for a period of 6 (six) months from to-day as provided U/S 437(A) of Cr.P.C.

- 15. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 16. Let case record be consigned to record room as per procedure.
- 17. Given under my hand and seal of this Court on 21^{st} day of June, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. (Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 3 nos. of witnesses:-

PW-1 = is Somesh Uddin, the informant.

PW-2 = is the victim girl (X).

PW-3 = is Hazarat Ali Ahmed, the investigating officer.

2. The prosecution has exhibited only one document:

Ext. 1 = is the FIR.

Ext.1(1) = is the signatures of informant Somesh Uddin.

Ext. 2 = is the statement before Magistrate u/s 164 Cr.P.C.

Ext.2(1), 2(2) & 2(3) = are the signatures of the victim girl.

Ext. 3 = is the sketch map.

Ext.3(1) = is the signatures of I.O.

Ext. 4 = is the charge sheet.

Ext.4(1) = is the signatures of S.I. Hasim Ali.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.