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. 44 OF 2019 (G.R.No.- 6425/2018) Barpeta P.S. Case No. 2574 of 2018

State of Assam

-versus-

Rakibul Islam @ Rakibul Ali S/O Abdul Latif @ Kadam Ali Resident of Galabil, P.S. Tarabari, District — Barpeta, Assam

District – Barpeta, Assam <u>Accused.</u>

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned

Public Prosecutor, Barpeta.

For the Accused : Talebar Rahman, learned

Counsel, Barpeta.

CHARGE FRAMED UNDER SECTIONS 365 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 20.05.2019,

Date of Prosecution evidence : 30.07.2019 & 12.09.2019,

Date of Argument & Judgment : 12.09.2019.

J U D G M E NT

1). The prosecution case, in brief, is that Barpeta P.S. Case No 2574 of 2018 under Sections 365 of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Rahijuddin, father of the victim.

In the aforesaid **F.I.R**. dated 29.11.2018, the informant Rahijuddin (P.W.3), who is the father of the victim girl, alleged interalia, that on 28.11.2018 at about 6:30 PM, the accused person namely Rakibul Islam kidnapped his minor daughter aged about 14 years, from the courtyard of the informant in a scooty bearing No. AS-01-D-N-6098 and took her at unknown place. Victim girl informed through mobile phone No. 8473028111 that accused kept her at Jagiroad.

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 2574/2018** under Section 365 of IPC read with added Section 4 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the victim girl was recovered and medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the accused Rakibul Islam @ Rakibul Ali under Sections 365 (A) of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.89/2019, dated 28.02.2019.

- **2).** In due course, copy was furnished to accused by the undersigned.
- 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, charges were framed by undersigned against the accused under Sections 365 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, **03 [three]** number of witnesses including the informant, medical officer and victim were examined on behalf of

the prosecution to prove the charge under Sections 365 of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

- 5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Talebar Rahman**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 365 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 accused on 28.11.2018 at about 6:30 PM within the jurisdiction of Barpeta P.S., District Barpeta, kidnapped Pinki Parbin, aged about 14 years, minor daughter of informant Rahijuddin, from her home, in a scooty (No AS-01-D-N-6098) with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC ?
- (ii) Whether accused on the aforesaid date or thereafter at Jagiroad or any other unknown place, committed penetrative sexual assault upon minor victim, of the above named informant and thereby committed an offence punishable under Section 4 of the Protection of Children From Sexual Offences 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.

Dr. Renuka Rangpharpy [P.W.1] deposed that on 01.12.2018, she

was working as Associate Professor, Department of Forensic Medicine, FAAMCH, Barpeta. On that day, she examined one girl namely Pinky Parbin, aged 14 years, D/O Rahiz Uddin of village Palhazi under Barpeta PS, on police requisition, in connection with Barpeta P.S. Case No. 2574/2018, on being escorted by Arati Das and found as follows:

History:-

As per alleged victim girl, on 28.11.2018 one Rukibur Islam took her forcefully from home in a scooty and then they went to Dimapur by train. On 29.11.2018 he had forceful sexual intercourse with her for 1 episode. In Dimapur she met one of her relative and brought her back home and she was brought to FM deptt. for medical examination.

Physical Examination:

Identification marks:-

1. A pin head size black mole on right 2cm away from the inner centtus.

2. A pin head size black mole on left 2.5 cm below the outer centtus of her eye

Height: 144 cm,

Weight: - 45 Kg.

Chest girth at nipple level: - 89 Cm. Abdominal girth at navel level: - 79 Cm.

General built & appearance: - Average.

Voice :- Feminine

Teeth: Total:

Temporary:

Permanent:

Hairs: Axillary/Body: 0.5-1 cm, black and scanty in distribution.

Breasts:- Hemispherical in shape, soft to firm in consistency. Nipple and areola developed.

Puberty (as told by the individual) :- 3 years back.

Menstruation(as told by the individual): Regular, duration 3-4 days.

LMP (as told by the individual): 01.11.2018.

Mental Condition: Nothing abnormality detected at the time of examination.

However referred to psychiatry deptt.

Gait: Normal

Intelligence: Average.

Wearing garments & any suspected stains present: Not detected.

Bodily Injuries: Nil.

Genital Examination:-

Pubic hairs: Shaved.

Vulva(Labia majora & minora):- Developed and healthy.

Hymen: Old tears at 3,6,9 O'clock.

Vagina:- Rugosed.

Cervix & Uterus: Uterous - per abdomen not palpable

Fourchette & Perineum: Developed.

Result of vaginal swab smear examination: Vaginal smears does not show

spermatozoa under microscope.

Result of X-Investigation:

Wrist Joint: Epiphyseal union around wrist joint not completed.

Elbow Joint:-Epiphyseal union around elbow joint is completed.

Shoulder Joint :- Epiphyseal union around shoulder joint is completed.

Pelvis: Epiphyseal union around iliac crest and tuberosity not completed.

Final Opinion:-

- (1) No evidence of recent sexual intercourse detected on her person.
- (2) No evidence of injury detected on her body and private parts except the old hymen tear.
- (3) She is above 16(sixteen) years and below 18(eighteen) years of age.

She exhibited her **medical report as Ext.1 and Ext.1(1) & 1(2) are her signatures.**

During her cross-examination, she stated that The age of the victim might be 17 years.

8). Pinki Parbin [P.W.2] deposed in her evidence that informant is her father and she knew the accused. She stated that incident took place before 7/8 months. She was having love affairs with the accused for last one year. She

went to the house of accused alone without informing anybody and stayed in the house of accused for 3/4 days. She slept with the mother of accused.

She further stated that accused did not do any bad work with her. Thereafter, her father lodged the case. Police brought her to than a from the house of accused and accused fled away from his house.

After that, Police examined her and sent her for her medical examination. Police also got her statement recorded u/s 164 CrPC by the learned Magistrate.

She exhibited her statement recorded u/s 164 CrPC as Ext.2 and Ext.2(1), 2(2) & 2(3) are her signatures.

In her cross-examination, she stated that accused did not do any bad work with her. She gave her statement before the learned Magistrate, as tutored, by others. Accused did not kidnap her.

9). Rahijuddin [P.W.2] who is the informant of this case has deposed that victim is his daughter and he knows the accused person after lodging of this case. Incident took place before 7/8 months. Accused took her victim daughter after having love affairs with her. He stated that he lodged this case after 2/3 days of the incident, when he did not get his victim daughter. Police recovered his victim daughter on the next day of lodging the FIR. Victim told him that she went with the accused after having love affairs with him. He put his thumb impression in the FIR and he do not know the contents of the FIR.

In his cross-examination, he stated that accused did not force his victim daughter to go with him.

10). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.2) as well as the informant (P.W.3) who is the father of the victim girl, that they did not support the alleged incident, in their evidence.

The Victim (P.W.2), who is star witness of the instant case deposed in her evidence that she was having love affairs with the accused for last one year and she went to the house of accused alone without informing anybody and stayed there for 3/4 days. She further stated in her evidence that accused did not do any bad work with her. The victim girl clearly stated in her cross-examination

that accused neither kidnapped her nor do any bad work with her. She gave her statement before the learned Magistrate as tutored by others.

Moreover, the informant (P.W.3) stated in his cross-examination that accused did not force his victim daughter to go with him.

Thus, it is clearly indicated that victim girl had love affairs with the accused person and she voluntarily went to the house of accused. Her conduct clearly shows that the alleging incident narrated in the FIR is totally false.

The conduct of victim clearly shows that she was a willing party and the conduct of the victim is not found natural had she been abducted or kidnapped by the accused person by force.

There is no material on record to hold that the accused kidnapped and committed rape on the victim, to constitute offence under Sections 365 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

- 11). To bring home the guilt of the accused under Section 365 of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.
- **12).** On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim and committed rape on her. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.
- **13).** In the result, accused **Rakibul Islam @ Rakibul Ali** is **acquitted** of the charge **under section** 365 of IPC read with Section 4 of

Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

The bail bond stands discharged.

14). Given under my hand and seal of this Court on this 12th day of September, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Dr. Renuka Rangpharpy, the M.O.,

P.W.2 = Pinki Parbin, the victim,

P.W.3 = Rahijuddin, the informant.

(B) Prosecution Exhibits:

Ext.1 = Medical Report,

Ext.1(1) & 1(2) = Signature of the M.O.,

Ext.2 = Statement of the victim recorded u/s

164 CrPC,

Ext.2(1), 2(2)

& 2(3) = Signatures of the victim.

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

(D) <u>Defence Exhibits</u>: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.