

IN THE COURT OF THE SPECIAL JUDGE, BARPETA**Special POCSO Case No. 99/2018**
U/S 4 of POCSO Act**PRESENT : Sri Chatra Bhukhan Gogoi, AJS,**
Special Judge,
Barpeta.

Charge framed on:- 03.06.2019

State of Assam

- Vs -

Narahari Das..... Accused

Date of Recording Evidence on – 06.01.2020 & 04.02.2020

Date of Hearing Argument on – 04.02.2020

Date of Delivering the Judgment on – 04.02.2020

Appearance :

Advocate for the State----- Learned Addl. P.P.

Advocate for the Accused----- Deepjit Pathak, Learned Advocate

JUDGMENT

1. The brief fact, of the prosecution case, is that on 26.05.2017 one Sindu Ram Das lodge an FIR in Barpeta P.S. alleging inter alia that on 23.04.2017 at about 10 pm his minor daughter (X) age about 13 years was kidnapped by accused named in the FIR in Maruti Car while she was proceeding to the house of her aunt and committed sexual assault on her. Hence the case.

2. Based on the information a case was registered being Barpeta P.S. case No 937/17 u/s 365/34 IPC R/W **section 4 of POCSO Act** and investigated the case.

3. During the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim for medical examination, forwarded him to court for recording his statement before Magistrate u/s 164 Cr.P.C. and arrested the accused person.

4. Thereafter, on conclusion of investigation, I/O finally laid the charge sheet against

accused Narahari Das u/s 365 IPC and section 4 of POCSO Act with a view to stand trial.

5. During the course of time, when accused appeared in court after due compliance of section 207 Cr.P.C. this court vide order dated 03.06.2019 framed formal charge u/s 4 of POCSO Act. The particulars of the offence on being read over and explained, accused pleaded not guilty and claimed trial.

6. During the course of trial, the prosecution examined as 4 witnesses inclusive of the informant and alleged victim namely Sindhuram Das as PW-1, Durga Das as PW-2, Binita Das as PW-3, Pompe Das as PW-4 respectively. However, considering the nature and quality of the evidence emerged in the mouth of prosecution witnesses giving an opportunity of hearing to learned additional PP further prosecution evidence stands closed.

7. Examination of accused u/s 313 Cr.P.C. is dispense with in view of lack of implicating materials. His plea is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. Now point for determination :-

1. Whether on 24.05.2017 you committed penetrating sexual assault on the victim girl (X real name withheld) as alleged ?

9. Discussion, Decision and reasons for such decision :-

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

10. On perusal of the evidence of PW-1 who is the informant it appears that about 3 years back accused Narahari Das took his daughter to his residence but on the next day mother of Narahari Das return his daughter. So, he filed the case feeling loss of his reputation. On perusal of his evidence it appears that his evidence bears little significants for the prosecution case as he did not state anything that accused committed any penetrating sexual assault against his daughter.

11. On the other hand, PW-2 who is the alleged victim stated that while she was reading in Class VII and standing on the road accused took her away in a car and kept her

in the house of his maternal aunt. But on the next day she was returned to her parents by personal of child line office. She stated that during investigation police recorded her statement, produce her before Magistrate but now she stated that she married with another boy and living with him as husband and wife procuring a child. In her cross examination she stated that she has love affairs with the accused. So, she all together negated the prosecution case even though she happens to be the alleged victim.

12. PW-3 Binita Das is also a hearsay witness. According to whom the girl eloped with Narahari as a result of her affairs with him. But now she has been married with another boy and living as husband and wife. So, the evidence of PW-3 also carries little evidentiary value.

13. PW-4 Pompy Das also depose evidence in the same vein with that of the evidence of PW-3 as she also failed to adduce any such evidence which attracts the ingredients of the offence u/s 4 of POCSO Act.

14. Therefore, after scrutiny, this court comes to a definite findings that on the basis of the uncorroborated testimony of the prosecution witnesses accused person cannot be convicted u/s 4 of POCSO Act. Though the allegation against the accused is serious in nature, but on the basis of mere assumptions and presumptions and surmises no conviction can be sustain unless prosecution has been able to produce evidence worthy of credence.

15. This being the position, this court is of the considered view that prosecution miserably failed to establish the case against accused u/s 4 of POCSO Act. Therefore, this court has no option but to acquit the accused from the offence u/s 4 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.

16. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.

18. Let the case record be consigned to record room after completing the formalities.

19. Given under my hand and seal of this Court on this 4th day of February 2020, at Barpeta.

Dictated & Corrected my me

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

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

APPENDIX

1. The prosecution has examined the following 4 nos. of witnesses:-

PW-1 = Sindhu Ram Das, the informant.

PW-2 = Durga Das.

PW-3 = Binita Das.

PW-4 = Pompy Das

2. The prosecution has exhibited the following documents :-

Ext. 1 = is the FIR.

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

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

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

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