IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 47/2018
(Arising out of Kalgachia P.S. Case No. 327/2018)
U/S 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on:- 02.08.2019

State of Assam

- Vs -

Sultan Ali.....Accused.

Date of Recording Evidence on – 04.09.2019

Date of Hearing Argument on – 04.09.2019.

Date of Delivering the Judgment on – 04.09.2019.

Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused----- Mr. M. Ali Ahmed, Learned Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that, on 27.04.2018 one Nabiran Nessa lodged an FIR in Kalgachia police station alleging inter alia that on 27.04.2018 at about 5 pm her five years old daughter was raped by accused while she was playing in the house of her younger sister Jahanara and coming to know about the incident accused was caught with the help of people and handed him over to police. Hence the case.
- 2. Having got the information police registered a case being Kalgachia P.S. case No. 327/18 u/s 4 of POCSO Act and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Sultan Ali u/s 4 of POCSO Act with a view to stand trial.
- 4. During the course of time, when accused entered his appearance in court the Hon'ble Special Judge, Barpeta registered a case being Special POCSO Case No.47/18 and vide order dated 10.10.2018 transferred the case

record to this court for disposal.

- 5. Having received the case record on transfer, hearing the learned lawyers appearing for both sides and perusing the material on record, having found a primafacie case this court vide order dated 02.08.2019 framed charge against accused 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, prosecution examined only 1 witness namely the informant. But considering the quality of her evidence, giving an opportunity of hearing to learned Add. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is also dispensed with in view of lack of implicating materials. The defence 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 27.04.2018 at about 5 pm accused committed penetrative sexual assault on the victim girl 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 materials available on record.

10. On perusal of the FIR (Ext.1) it appears that on 27.04.2018 at about 5 pm accused allegedly committed rape on (X) the minor daughter of the informant while she was playing in the house of her sister. But contrary to the allegations made in the FIR (Ext.1) the informant who is the mother of the victim girl negated the entire prosecution story. According to her, nothing had been done by accused against her daughter. She stated that though she filed the FIR its contents were not read over and explained to her when it was filed. She also stated in court that at the time of recording her statement before Magistrate u/s 164 Cr.P.C. she was also present along with her daughter, hence she put her signature in the said statement of her

daughter wherein her daughter clearly stated that she felt pain when she fall on the ground from bed while playing. Therefore, on consideration of the evidence of the informant who is the mother of the victim and star witness of the prosecution case, this court do not find any material against accused u/s 4 of POCSO Act. It is to be noted that the victim is extremely tender girl of 5 & 1/2 years old and even if she is examined in court nothing will emerge from her mouth as whatever she will speak she will speak as tutored by her parents. Therefore, there is no used of recording her evidence in court when her mother negated the prosecution case.

- Situated thus, going for recording evidence of other prosecution witnesses 11. would be nothing but cheer loss of time and energy of the court for no useful purpose. Therefore, this court is of the view that prosecution has miserably failed to prove the case against accused u/s 4 of POCSO Act.
- 12. In the result, accused Sultan Ali is acquitted from the charge u/s 4 of POCSO Act on the ground of insufficient evidence and set him at liberty forthwith.
- The term of bail bond of accused person is however, extended for a period of 6 (six) months from to-day as provided u/s 437(A) of Cr.P.C.
- Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 15. Let case record be consigned to record room after completing the formalities.
- 16. Given under my hand and seal of this Court on this 4th day of September, 2019 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 1 nos. of witness:-

PW-1 = Nabiran Nessa

2. The prosecution has exhibited following document documents:

Ext. 1 =is the FIR.

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

Ext. 2 = is the 164 Cr.P.C. statement of victim girl (X).

Ext. 2(1) & 2(2) = are the signatures of informant Nabiran Nessa.

Sd/-

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