IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act case No. 38 OF 2016

Under section 366(A)/325 IPC read with section 4 of P.O.C.S.O. Act,2012

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.

-versus-

Saddam Hussain ... Accused.

APPEARANCE

For the Prosecution : Mr. A. Kayem, learned P.P.

For the accused : Mr. A. Mannan, learned Advocate.

Evidence recorded on : 04-08-2017

Argument heard on : 04-08-2017

Judgment delivered on : 04-08-2017

JUDGMENT

1. The prosecution case in brief is that on 01-05-2016 one Sonaruddin lodged an FIR alleging that accused Saddam Hussain pretended to love the victim Jesmina Khatun, aged about 15 years. But the other accused persons named in the FIR arranged the marriage of Saddam Hussain with other girl and then he assuring to marry her called her on 30-04-2016 at 7.0 PM. Accordingly the victim went to the house of

the accused at about 7/7.30 PM. Then taking her to a room, accused Saddam Hussain committed rape on her. On the same day at about 9.00 PM other persons named in the FIR coming to know about the staying of the victim with accused Saddam Hussain dragged her from the room and physically assaulted her. She was recovered by the informant with the help of the village people. But surprisingly on 01-05-2016 at about 6.40 PM, accused Saddam Hussain again kidnapped the victim. But the other persons named in the FIR again physically assaulted her and dragged her to the paddy field.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against accused Saddam Hussain under section 120(B)/ 366(A)/ 325 IPC read with section 4/17 of POCSO Act.
- 3. Accordingly the accused person appeared before this court and faced trail. Copies were furnished to him and after hearing both the parties charges were framed against the him under section 366(A)/325 IPC read with section 4 of POCSO Act. Charges were read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined only two witnesses. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Points for determination:**-

(1) Whether the accused person on 30.04.2016 at about 7/7.30 P.M. at Mandia Pathar within the jurisdiction of Baghbar Police Station, District Barpeta, kidnapped Jesmina Khatun, aged about 15 years, the minor daughter of informant Sonaruddin, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other

person, and on 01-05-2016 at about 6.30 PM committed penetrative sexual assault on her?

(2) Whether the accused person on the same date, time and place voluntarily caused grievous hurt to Jesmina Khatun, daughter of informant Sonaruddin?

Decision and reasons thereof:

- 6. The accused persons assuring to marry called the victim to his house and committed rape on her and on 01-05-2016 at about 6.30 PM. The victim was kidnapped by the accused person and she was voluntarily caused grievous hurt on both the dates. Accordingly father of the victim Sonaruddin lodged the FIR.
- 7. Said Sonaruddin as PW1 has deposed that at the time of occurrence he was not at home. The victim was missing from his house. The accused had a visiting terms in his house and so out of suspicion he lodged the FIR. At that time the victim was aged about 14/15 years. While he returned home he came to know that she had gone to attend a marriage ceremony. The case was filed due to some misunderstanding and the village people amicably settled the matter.

In his cross examination he has stated that he has no grievances against the accused person. The accused person kidnapped the victim.

8. The victim as PW2 has deposed that about one year ago without informing to her family members she had gone for a pleasant trip. Without knowing anything her father lodged the FIR. While police visited their house she was at home. The medical officer examined her and her statement recorded by the Magistrate.

In her cross examination she has stated that she made the statement before the Magistrate as tutored by the police. In fact the accused did not kidnap her. Her father lodged the FIR out of suspicion.

9. Except these two witnesses the prosecution has not examined any other witness to prove the case. The victim and her father i.e. PW2 and PW1 respectively have clearly stated that the accused person did not

kidnap her. They have not made a single whisper regarding the commission of rape and also the causing of injury.

- 10. Under such circumstances it is clear that the prosecution has failed to prove any case against the accused person. Therefore the accused is acquitted and set at liberty.
- 11. Bail bond executed by the accused person and the surety are extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 12. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.

Given under my hand and seal of this Court on this 4th day of August, 2017.

Dictated & corrected by me.

Sd/- Sd/-

(Smti. C. R. Goswami) (Smti. C. R. Goswami) Special Judge, Barpeta Special Judge, Barpeta

APPENDIX

(A)Prosecution Exhibits:

Ext.1 :FIR.

Ext.1(1),(2)

& (3) :Sig. of Sonaruddin

Ext.2 :Statement under section 164 CrPC

Ext.2(1) :Sig. of Jesmina Khatun

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Sonaruddin.

P.W.2 :Miss Jesmina Khatun

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta