IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. Act CASE NO. 07 OF 2015

Under Section 366(A) 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-

Shahidul Islam ... Accused.

APPEARANCE

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

For the accused : Mr. L. Ali, learned Advocate.

Evidence recorded on : 12-10-2015, 21-01-2016, 18-02-2016

01-04-2016, 01-03-2017 & 13-07-2017

Argument heard on : 25-08-2017

Judgment delivered on : 08-09-2017.

<u>JUDGMENT</u>

1. The prosecution case in brief, is that on 09-07-2015 one Fazar Ali lodged an FIR alleging that accused Shahidul Islam for last one year loved the victim and assured her to marry. He even made cohabitation with her. On 06-07-2015 at about 3 AM,the accused forcibly took her assuring that he would marry her. On the same day also he made cohabitation with her. But on their way they were apprehended at Mandia Market by the local people and informed his father Haidar Ali and brother Jahurul Hogue.

Assuring to perform the marriage between the parties, they took accused Shahidul Islam. But they did not perform the marriage between accused Shahidul Islam and the victim. They even threatened to kill the victim and arranged the marriage of Shahidul Islam with other girl.

- 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 person Shahidul Islam under section 366(A)I.P.C read with section 4 of POCSO Act.
- 3. Accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against the accused person under section 366(A)I.P.C read with section 4 of POCSO Act. Charge was 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 as many as ten witnesses including the IO and MO. The accused person declines to adduce evidence.

5. **Points for determination:**-

- (1) Whether the accused person on 06.07.2015 at about 3.00 P.M. at 3 No. Bardalani L.P.School within the jurisdiction of Baghbar Police Station, kidnapped Musst. Nilima Khatun, aged about 16 years, a minor girl, the niece of the informant Fazar Ali with intent that she might be compelled to marry against her will or in order that she might be forced or seduced to illicit intercourse with any other person including the accused?
- (2) Whether the accused person on the same date, time and place committed penetrative sexual assault on the victim girl, Musst. Nilima Khatun, aged about 16 years?

Decision and reasons thereof:

7. The allegation against the accused person is that he kidnapped the victim at 3.00 AM of 06-07-2015 and committed rape on her. None of the prosecution witnesses had seen the occurrence. Hence the vital witness of this case is the victim herself. Though in the FIR it is stated that the victim

and the accused were apprehended at Mandia market by the local people, but the informant in his cross examination has stated that the victim was not recovered from the possession of the accused person. She was recovered near a bridge. He has no grievance against the accused person.

8. The victim as PW4 has in her cross examination has stated that accused Shahidul did not kidnap her forcibly. While she was going to the house of the accused she was restrained by Majibur and her maternal uncle took her from the house of Majibur. The accused person did not do any illicit act with her. At the time of occurrence she was aged about 18 years. She read upto LP School. She made the statement before the Magistrate as tutored by the villagers and the police. Their Samaj wanted to perform her marriage with the accused person. But as the accused refused, the Samaj people filed the case through her maternal uncle against the accused person. The statements which are made in the FIR are totally false.

The other prosecution witnesses have clearly stated that they do not know about the occurrence. They only heard that the victim was recovered at village Bhatkuchi.

- 9. From the above discussions of the evidences of the prosecution witnesses, it is found that the victim has not made a single whisper against the accused person. Rather she has stated that the allegation which are narrated in the FIR are totally false. She had further stated that the Samaj filed the case through her maternal uncle as the accused person refused the proposal of the Samaj to marry the victim.
- 10. That being the position it is clear that the prosecution has totally failed to prove any case against the accused person. Therefore the accused person 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 8^{th} day of September, 2017.

Dictated & corrected by me.

Sd/- Sd/-

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

APPENDIX

(A)Prosecution Exhibits:

Ext.1 :Medical Report

Ext.1(1) :Sign. of PW1.

Ext.2 :Statement of PW4 under section 164 Cr.P.C.

Ext.2(1)

& 2(2) :Signs. of PW4.

Ext.3 :GDE Entry(Extract copy).

Ext.3(1) :Sign. of Nripendra Sarmah

Ext.4 :Sketch map.

Ext.4(1) :Sig. of Nripendra Sarmah.

Ext.5 :Sketch map .

Ext.5(1) :Sig. of Nripendra Sarmah.

Ext.6 :Charge Sheet.

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 :Dr. Bharati Das M & HO-I, FAA Medical College & Hospital Barpeta

P.W.2 :Fazar Ali.

P.W.3 :Surjan Nessa. P.W.4 : Nilima Khatun.

P.W.5 : Munnaf Ali P.W.6 : Hazrat Ali.

P.W.7 : Sanidul Islam.P.W.8 : Majibar Rahman.P.W.9 : Md. Ashu Minya.

P.W.10 : Sri Nripendra Sarma Attached officer at Pathsala outpost.

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

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