IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 06/2018
(Arising out of G.R. Case No. 2523/2016)
U/S 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge,

Barpeta.

Charge framed on:- 10.05.2018

State of Assam

- Vs -

Mofizur Rahman

Date of Recording Evidence on - 14.06.2018, 08.11.2018,

22.01.2019 & 27.02.2019

Date of Hearing Argument on – 27.02.2019.

Date of Delivering the Judgment on – 27.02.2019.

Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P. Advocate for the Accused----- Mr. Faijur Rahman, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 12.05.2016 one Haidar Ali lodged an FIR in Kalgachia P.S. alleging inter alia that on 10.05.16 at about 11 am his 16 years old daughter disappeared from his residence, but after a discrete search one Manowara Khatun informed on 11-05-16 that her husband Mojibar Rahman kidnapped her. Hence the case.
- 2. Acting on the information police got a case registered being Kalgachia P.S. case No. 403/16 u/s 366(A) IPC and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Mofizur Rahman u/s 366(A) IPC and section 4 of POCSO Act with a view to stand trial.
- 4. In due course, when accused entered his appearance in court vide order dated 10-05-18 all the particulars relating to the case were furnished with accused. Thereafter, having heard the learned counsel and on perusal of the record having found a prima facie case charge u/s 4 of POCSO Act

was framed. The substance of the offence on being read over and explained accused pleaded not guilty and claim trial.

- 5. During the course of trial, the prosecution examined 6 witnesses namely Dr. Anima Boro as PW-1, Sahidul Islam as PW-2, Afjal Hussain Choudhury as PW-3, Guljar Choudhury as PW-4, Makmida Khatun as PW-5 and Tarun Chandra Boro as PW-6.
- 6. Hearing to the learned Addl. 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 plea of the accused 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 10.05.2016 at about 11 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 prosecution evidence available on record.

- 10. The learned counsel appearing for the State Smti. P. Das submitted that though the prosecution examined 6 witnesses but the court may pass judgment after assessment of evidence.
- 11. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely nothing in the evidence of the prosecution witnesses which constitute the ingredients of the offences u/s 4 of POCSO Act. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the offence u/s 4 of POCSO Act. As such, the learned counsel prays to acquit the accused person.
- 12. In the context of the submission of the learned counsel appearing for both sides it would be in the fitness of things to refer to section 4 as defined in the POCSO Act 2012.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."

- 13. Now, on perusal of the offence u/s 4 of POCSO Act and having heard the learned counsels appearing for both sides and on careful perusal of the evidence available on record particularly the evidence of the alleged victim it transpires that she is unable to speak anything about the incident not to speak of commission of the penetrative sexual assault against her. From her evidence nothing can even be inferred even remotely that it was the accused who committed the offence u/s 4 of POCSO Act.
- 14. In her statement u/s 164 Cr.P.C. also (Exhibit 2) she has not stated anything regarding any sexual assault on her by accused person. The medical officer PW-1 on examination of the victim also found no evidence of any penetrative sexual assault on the victim. The evidence of PW-2, PW-3 & PW-4 also not supporting the prosecution case in any manner. The evidence of alleged victim also does not inspire any confidence in the mind of the court regarding commission of the alleged offence by accused person. Form the evidence on record it transpires that the prosecution fail to establish the age of the alleged victim girl also by way of proving her date of birth or by way of any other credible manner. In the absence of any such documentary proof no inference can be drawn that the girl was minor at the relevant time. There is absolutely no evidence on behalf of the prosecution to show that any offence u/s 4 of POCSO Act has been committed by accused. In fact, no ingredients of section 4 of POCSO Act have been found established.
- 15. In the result, this court has no option but to acquit the accused Mofizur Rahman from the charges u/s 4 of POCSO Act on the ground of benefit of doubt and set him at liberty forthwith.
- 16. The terms of bail bond of accused is extended for a period of 6 (six) months from to-day as provided U/S 437(A) of 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 case record be consigned to record room as per procedure.
- 19. Given under my hand and seal of this Court on 27th day of February,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 6 nos. of witnesses:-

PW-1 = is Dr. Anima Boro.

PW-2 = is Sahidul Islam.

PW-3 = is Afjal Hussain Choudhury

PW-4 = is Guljar Choudhury

PW-5 = is Makmida Khatun, the alleged victim girl

PW- 6 = is Tarun Chandra Boro, the IO

2. The prosecution has exhibited only one document :-

Ext. 1 =is the medical report.

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

Ext. 2 = is the statement of victim girl u/s 164 Cr.P.C.

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

Ext. 3 = is the FIR

Ext. 3(1) = is the signatures of officer in-charge Pushparaj Singh

Ext. 4 = is the sketch map.

Ext. 4(1) = is the signature of IO Tarun Chandra Boro

Sd/-

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