IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 11 OF 2017

Under 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-1. Sukur Ali,

2. Jahidul Islam

...... Accused.

APPEARANCE

For the Prosecution : Sri Lalit Ch. Nath, learned P.P.

For the accused : Anowar Hussain, learned Advocate.

Evidence recorded on : 10.05.2018,12.06.2018,

Argument heard on : 12.06.2018,

Judgment delivered on : 12.06.2018.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 06.02.2016 one Fajar Ali lodged an FIR with the O/C of Tarabari Police Station, alleging interalia that he is running a tea-stall on the bank of the river. On 30.01.2016 at

about 6:30 PM his minor daughter, the victim, was returning home from his tea-stall. On her way to home, the accused persons Sukur Ali, Jahidul Islam and another(name not known) gagged her mouth with a gamocha, dragged her to a paddy field, committed rape on her and left her in unconscious state. Returning home from the shop, he did not find the victim at home and then, on search, the victim was found in unconscious state in naked condition. The victim was taken home and while she regained sense, she reported the matter to him. The village headman assured that they would settle the matter, but they failed to settle the matter as the accused persons did not appear.

- 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 persons Sukur Ali & Jahidul Islam under section 457 IPC R/W section 4 of POCSO Act.
- 3. The accused persons appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against accused persons Sukur Ali & Jahidul Islam under section 4 of POCSO Act. Charge was read over and clearly explained to the accused persons to which they pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined only 3(three) witnesses including the medical officer and the victim. Examination of the accused persons under section 313 Cr.P.C. is dispensed with as no incriminating materials found against them.

5. **Point for determination**:-

Whether on 30-01-2016 at about 6:30 PM at village Roumari Gaon within the jurisdiction of Tarabari PS, District Barpeta, committed penetrative sexual assault on Ramela Parbin, aged about 14 years, who is the daughter of the informant Fazar Ali. ?

Discussion, decision and reasons thereof

- 6. According to the FIR, the alleged occurred took place on 30.01.2016 at around 6:30 PM. The FIR was lodged on 06.02.2016 and the victim was examined by the Medical Officer On 08.02.2016. The Medical Officer as PW1 has opined that-----"(1) There is no recent sign of sexual intercourse. (2) There is no violence mark on her private parts. (3) According to X-ray report her age is above Twelve(12) years & below fourteen(14) years at present."
- 8. The informant **Fajar Ali as PW2** has deposed that the victim is his daughter. At the time of occurrence the age of the victim was above 18 years. On the date of occurrence at evening time, the victim had gone to the bank of the river to bring their goat. At that time the accused persons were present on the bank of the river. The victim returned home weeping. On being asked, the victim reported him that the accused persons made a quarrel with her. He was not willing to lodge any FIR for that quarrel. But at the instigation of village people, he had to lodge the FIR. Police came and took the victim. The victim was examined by the Medical Officer and her statement was recorded by the magistrate. After 15 days of the occurrence, accused Sukur married the victim. Out of their wedlock a female child is born.

In cross examination, he has stated that accused Sukur Ali and the victim loved each other. Accused Jahidul was a friend of Sukur. To compel accused Sukur to marry the victim, as per advice of the village people, he lodged the FIR. The FIR was written by one advocate. But he does not know what was written in the FIR as the same was not read over to him. The FIR was lodged after 3/4 days of the occurrence.

9. **Ramela Parbin, the victim as PW4** has mentioned her age as 21 years at the time of deposition. She has stated that accused Sukur Ali is her husband. About 2 years ago one evening, she had gone to the shop. In the shop an altercation took place in between her and the

accused persons regarding some family matters. She returned home weeping and informed the matter to her father. Then her father as per advice of the village people lodged the FIR. She was examined by the Medical Officer and her statement was recorded by the magistrate. After some days accused Sukur Ali married her and she is now the mother of a 6 months old baby.

In her cross examination, she has stated that she made the statement before the magistrate as tutored by the villagers. It was told to her that if she failed to make such statement, no case would be instituted and would not be married by accused Sukur. In fact, no such occurrence took place as narrated in the FIR and in her statement recorded u/s 164 CrPC.

- 10. From the above discussions of the evidences of the prosecution witnesses, it is found that except the informant, none of the prosecution witnesses, even the victim, has made a single whisper regarding the commission of the rape by the accused persons on the victim. They have categorically stated that a quarrel took place in between the accused and victim and then as per instruction of the villager, the FIR was lodged by the father of the victim. After about 15 days of lodging the FIR accused Sukur Ali married the victim. The medical evidence is also quite negative to the prosecution case. Under such circumstances, the ocular evidence is also quite silent regarding commission rape by the accused persons on the victim.
- 11. Under the above facts and circumstances, it is clear that both medical and ocular evidences are quite negative regarding commission of rape on the victim by the accused persons. The evidence of the prosecution witnesses makes it clear that prosecution has failed to bring home the guilt of the accused persons for any offence. Therefore the accused persons are acquitted and set at liberty.
- 12. Bail bond executed by the accused persons and the surety are extended for another period of 6(six) months from the date of this

judgment under section 437-A Cr.P.C.

- 13. 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.
- 14. Given under my hand and seal of this Court on this 12th day of June, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Medical Officer Dr. Anima Boro,

P.W.2 = Fazar Ali, the informant, P.W.3 = Ramela Parbin, the victim,

(B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) = Signature of the M.O., Ext.1(2) = Signature Dr. S.K. Bhuyan,

Ext.2 = Statement of the victim u/s 164 CrPC,

Ex.2(1)&2(2) = Signatures of the victim.

- (C) **Defence witnesses**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) Court Exhibits: Nil.

Sd/-

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