## IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

## Special P.O.C.S.O. Act CASE NO. 32 OF 2017

Under Section 376 I.P.C R/W Section 4 of P.O.C.S.O. Act,2012

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

State of Assam.
-versusAbdullah ..... Accused.

#### **APPEARANCE**

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

For the accused : Abdul Mannan, learned Advocate.

Evidence recorded on : 28.08.2017,07.05.2018,,

Argument heard on : 07.05.2018,

Judgment delivered on : 07.05.2018.

# JUDGMENT

1. The prosecution case, as narrated in the FIR, is that on 04.10.2015 one Jarzina Khatun lodged an FIR alleging interalia that on 28.08.2015 at about 7:00 PM, taking advantage of absence of other family members, accused Abdullah, armed with a dagger, entered into the house of the victim and forcibly took her to the paddy field and committed rape on her. While she informed the matter to her parents, her father informed the matter to other accused persons named in the FIR, but they

attempted to assault him.

- 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 Abdullah under section 448/376/506 I.P.C. R/W section 4 of POCSO Act.
- 3. The 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 376 I.P.C read with section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 4(four) witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

#### 5. **Point for determination**:-

Whether the accused person on 28.08.2015 at about 7:00 P.M. at Uzirar Char, within the jurisdiction of Alopatichar Police Station District Barpeta, committed rape on the informant/victim Jarzina Khatun, aged about 14 years, D/O Ali Akbar, committing penetrative sexual assault on her?

#### Discussion, decision and reasons thereof

- 6. According to the FIR-Ext.1, the alleged occurrence took place on 28.08.2015 at about 7:00 PM. The FIR was lodged on 04.10.2015 and the victim was examined by the M.O. on 05.10.2015. The M.O. opined that "there is no sign detected, there is no injury marks on her private parts. Victim is not suffering from any physical or mental disability. There is no foreign body on her cloths/body."
- 7. The said victim as PW4 has stated that she is the informant as well as the victim of this case. On the date of occurrence, her parents

were not at home. The cultivation of the accused was damaged by their cow. Then the accused rebuked her. Then her maternal uncle took her to the police station. She lodged the FIR-Ext.2. Her statement was recorded by the Magistrate and Ext.3 is the said statement. M.O. examined her. In cross examination, she has stated that she does not know by whom the FIR was written by her maternal uncle. She does not know what was written in the FIR. The same was not read out to her. As tutored by her maternal uncle she made the statement before the Magistrate. A quarrel took place relating to damage of paddy and the accused tied their cow. The accused person did not do any illicit act with her.

- 8. PW2-Ali Akbar and PW3- Aimona Khatun are the father and mother of the victim respectively. Both of them have clearly stated that on the date of occurrence they were not present at home. Returning home they came to know that a quarrel took place between the accused and the victim relating to damage of paddy of the accused by their cow. Then the maternal uncle of the victim took her to the police station and lodged the FIR. In fact, only a quarrel took place between the accused and the victim. The accused did not do any illicit act with her. They do not know as to why the case was filed by the maternal uncle of the victim.
- 8. From the above discussions of the evidences of the prosecution witnesses, it is found that according to the victim, on the very date of occurrence she was taken by her maternal uncle to the police station and she lodged the FIR. But the FIR disclosed that the occurrence took place on 28.08.2015 and the FIR was lodged on 04.10.2015 and the victim was examined by M.O. on 05.10.2015. So it creates a doubt regarding the alleged date of occurrence. Furthermore, PW2 & PW3 i.e. the father and mother of the victim respectively were not present at the time of occurrence. Both the them have categorically stated that the accused person did not do any illicit act with the victim. Only a quarrel took place relating to the damage of paddy by their cow. PW2 & PW3 are corroborated by the victim/PW4 by saying that on the date of occurrence

her parents were not present at home and the accused person rebuked her as his paddy was damaged by their cow. The accused person did not do any illicit act with her. She made the statement u/s 164 CrPC as tutored by her maternal uncle.

- 9. Under the above facts and circumstances, it is clear that none of the prosecution witnesses had made a single whisper regarding the commission of rape by the accused person on the victim. Under such circumstances, the accused person cannot be held guilty for any offence either under section 376 I.P.C or under section 4 of POCSO Act, 2012. Therefore the accused person is acquitted and set at liberty.
- 10. 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.
- 11. 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.
- 12. Given under my hand and seal of this Court on this 7th day of May, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

# A P P E N D I X

### (A) Prosecution witnesses:

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

P.W.2 = Ali Akbar,

P.W.3 = Aimona Khatun

P.W.4 = Jargina Khatun, the informant.

# (B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) = Signature of the M.O.,

Ext.2 = Ejahar,

Ex.2(1) = Signature of the informant,

Ext.3 = Statement of the victim u/s 164 CrPC,

Ext.3(1)&3(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.