IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

(G.R. Case 5676 of 2016) Sarthebari P.S. Case No 410 of 2016

State of Assam

-versus-

Ranjan @ Ramjan Ali, S/O Md. Sarbesh Ali, Resident of Bogsara, P.S. Sarthebari, District – Barpeta

...... Accused.

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned Public Prosecutor,

Barpeta.

For the Accused : Shamez Uddin Ahmed, learned Advocate,

Barpeta.

CHARGE FRAMED UNDER SECTION 376(2)(i)/511 OF THE INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 16.02.2017,

Date of Prosecution evidence : 16.05.2017, 28.05.2018, 17.07.2018

& 26.09.2018,

Date of Statement of accused : 11.10.2018,

Date of Argument : 19.03.2019 & 29.03.2019

Date of Judgment : 09.04.2019,

JUDGMENT

1. The prosecution case, in brief, is that Sarthebari P.S. Case No 410 of

2016 under section 376(2) of the Indian Penal Code, 1860 Read with section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Lalbanu Bhuyan, the mother of the victim (hereinafter referred to as 'X').

In the aforesaid F.I.R. dated 05.11.2016 (Exhibit-3) the informant Lalbanu Bhuyan (P.W.3) alleged interalia that on 29.10.2016 at about 6:00 AM, she sent her victim daughter Yasmin Begum, aged 8 years, to the house of the accused, giving mustard oil in her hand, seeking remedy for her stomach pain. When her victim daughter reached the house of accused, the accused made her laid on a bed and after applying mustard oil on her eyes and private parts, committed rape upon her.

The informant further alleged that victim told her about the incident after coming back to home. The nearby people of society also came to her house to settle the matter. But they were not satisfied with the decision of the people of the society. It is also stated that due to some domestic inconvenience as well as remaining busy for settlement, there was delay in lodging the FIR.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Sarthebari Police Station, the same was registered as Sarthebari P.S. Case No 410 of 2016 under section 376(2) of the Indian Penal Code read with section 4 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Ranjan @ Ramjan Ali under section 376(2)(i)/511 IPC Read with section 8 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.225, dated 30.12.2016.

- **2.** My learned Predecessor-in-office received the case record alongwith the case diary of the case. Accused was summoned. On appearance of accused, copy was furnished to him by my learned Predecessor-in-office.
- **3.** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the

accused and the prosecution in this behalf, charge was framed against the accused u/s 376(2)(i)/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012, which was read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4. During the course of trial, **06(six)** number of witnesses including the victim, informant, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge u/s 376(2)(i)/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused was recorded u/s 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He also stated that as he has got land disputes with the informant of the case, so he has lodged false case against him. He denied to adduce evidence in his defence.

- I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as Shamez Uddin Ahmed, learned Defence Counsel for the accused, who is facing trial for commission of offence u/s 376(2)(i)/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether on 29.10.2016 at about 6:00 AM at village Bhogchara within the jurisdiction of Sarthebari Police Station, District Barpeta, committed or attempted to commit sexual assault on the daughter of the informant Lalbanu Bhuyan and thereby committed an offence punishable u/s 376(2)(i)/511 of the Indian Penal Code read with section 8 of the Protection of Children From Sexual Offences Act, 2012 ?

DISCUSSION, DECISIONS AND REASONS THEREOF

7. To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Witness **Ashraf Ali (PW1)** is a hearsay witness. He has deposed in his evidence before the court that the victim told him that she was raped by the accused when she went to his house, in the moring hours, for taking treatment of her stomach pain.

During cross examination, PW1 stated that at thet ime of incident, the family members of accused were at his house. He also stated that he is the nephew of father of the victim.

He denied that he did not state before the police that victim went to the house of accused due to her illness of stomach.

Witness **Asmina Begum (PW2)**, who is the victim of the case, deposed that she went to the house of the accused in the morning hours with mustard oil for treatment of her stomach. She told that accused asked to come to his house at 6 AM on Saturday.

The victim further stated that accused called her in a room and put mustard oil on her eyes and nose. After that, accused closed the door and made her sleep on a bed. She also stated that he spitted on her private part and put his finger on her vagina. She got pain. The victim also deposed that accused after rubbing mustard oil on her vagina, climbed upon her. Then accused tried to open the chain of his pant. Then she made hue and cry and came out after opening the door of the room.

She told that she narrated the incident to her mother and the mother lodged the case. Thereafter, police sent her to doctor for her medical examination and also produce before the learned Magistrate for recording her statement. PW2 exhibited her statement as **Ext.1** wherein **Ext.1(1)**, **1(2)** & **1(3)** are her signatures.

During cross examination, PW2 has stated that there are 3/4 dwelling houses in between her house and the house of accused. The names of residents of those houses are Maku, Amir and Kasem. She also deposed that the wife and children of accused were sleeping at their house at that time. She also deposed that the people, nearby the market, heard her hue and cry. She also stated that Sahjahan, Kalu, Habel etc. came to her after hearing her hue and cry. She also stated that she got injury on her chest and her private part.

She denied that she did not state before the police that accused opened the chain of his pant after climbing upon her.

She admitted in her cross-examination that the family members of the accused has lodged a case upon her father and two other persons.

She denied the other suggestions of the defence side.

Witness **Musstt.** Lal Bhanu Bhuyan (PW3) is the informant as well as the mother of the victim. She narrated the same story as deposed by the victim. She also stated that after hearing the incident from the victim, she told the incident to a person named Nayan Ali, who resided near their house. She also deposed that they went to the house of elder brother of accused named Akbar Ali, where many people gathered. She deposed that accused confessed his guilt and he was assaulted by his father and elder brother with 'sandal'. Moreover, accused also apologized for his guilt.

During her cross examination, PW3 stated that the victim narrated the incident to her, then she called Nayan Ali and Akbar Ali. Moreover, her elder daughter Rahima Khatun was also present. She also deposed that accused and his parents resided in the same house. She admitted that there is no explanation in the FIR lodged by her, regarding delay, in lodging the same.

In her evidence she denied almost the entire evidence deposed by her in the court. But the I.O. **Sanjay Anand Mushahary (PW6)** confirmed in his cross-examination that the informant (PW3) did not give the statement, as deposited, by her in her evidence in the court.

- 8. In this case, it is seen that the victim was known to the accused and both the families resided in the same village at a short distance. Further, the prosecution side has not examined a single independent witness to corroborate the evidence of the victim to prove that accused raped her at his house.
- **9.** As stated above, witness has deposed that many people came to know about the incident. Moreover, informant (PW3) specifically deposed in her evidence that people like Akbar, Nayan Ali, Bakka Ali, Kasem Ali, Siyaj etc. came to the house of elder brother of the accused. The victim also told that Sahjahan, Kalu,

Habel etc. came immediately after the incident, but prosecution has not produced a single witness to corroborate the evidence of the victim. It is also proved that there was delay in lodging the FIR, as the incident allegedly took place on 29,10.2016, but the FIR was lodged on 05.11.2016. Moreover, the M.O. Did not find any injury or violence on the person of the victim.

10. It is also interesting to note here that, witness Abu Bakkar Siddique (PW5) demolished the case of prosecution side by deposing that there is land dispute between the father of the accused and the husband of the informant regarding boundary. He further contradicted the evidence of the victim and her parents by deposing that no such incident as alleged had either took place or seen or heard by the person.

Of course, the said witness (PW5) was declared hostile by the prosecution side. He even stated that police did not examine him and the statement suggested by learned Public Prosecutor in his cross-examination by prosecution side was not told by him to police.

- **11. PW6- Sanjay Anand Mushahary** is the I.O. of the case. He took the routine steps in the case and he exhibited the sketch kmap and charge-sheet vide Ext.4 nd Ext.5 respectively, whereon Ext.4(1) & Ex.t5(1) are his signatures. He clearly stated in his cross-examination that the victim did not tell before him that when accused opened his chain of pant after climbing upon her or accused sleeping in his house.
- 12. It is seen from the evidence of the prosecutrix, who is a minor girl of about 12 years of age, she is a child witness. It would be also relevant, at this stage, to note that evidence of a child witness has no be subjected to closest scrutiny and can be accepted only if Court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers.

It has been held in [2012] 8 SCC 73 — Venkateshwarlu Vs. State of Andhra Pradesh that ----- "As held in Venkateshwarlu (supra) a child witness, by reason of his tender age, is a pliable witness and therefore, he can to tutored easily by threat and coercion. Therefore, the Court must be

satisfied that the attended circumstances did not show that the child was acting under influence of someone or was under threat or coercion. It is also held that evidence of a child witness can be relied upon if the Court, with its expertise and ability to evaluate the evidence comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration from the evidence of a child witness from the other evidence on record. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

- 13. From the perusal of the case record it is seen that the victim is not found consistent in her evidence before police and the court. Her conduct is most unnatural and though she claimed that she got injury on her person, but the M.O. of the case, who examined her after the incident, did not find a single injury. Moreover, it is proved from the evidence of witnesses that there is previous enmity between both the sides due to their land dispute. It is also seen that though the FIR-Ext.3 contains that the accused raped the victim, but the victim in her statement herself never stated that she was raped by the accused. Rather, she stated that accused allegedly attempted to rape her, which is also very doubtful.
- **14.** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and alleged offence has not be proved against the accused beyond reasonable doubt.
- **15.** On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused attempted to commit sexual assault on the victim. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.
- 16. In the result, accused **Ranjan @ Ramjan Ali** is **acquitted** of the charge under section 376(2)(i)/511 of IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

Accused is on bail. The bail bond of accused is extended for another 6(six) months from today as per provision of 437-A CrPC.

17. Given under my hand and seal of this Court on this 9th day of April,2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta

Sd/-Special Judge, Barpeta.

Typed by me

(Kavery Das, Stenographer)

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Ashraf Ali,

P.W.2 = Asmina Begum, the victim,

P.W.3 = Lalbhanu Bhuyan, the informant,

P.W.4 = Dr. Mamata Devi, the M.O.,

P.W.5 = Abu Bakkar Siddique,

P.W.6 = Sanjay Anand Mushahary, the I.O.,

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

Ext.1(1),1(2) & 1(3)= Signature of victim,

Ext.2 = Medical,

Ext.2(1) = Signature of Dr. Mamata Devi,

Ext.2(2) = Signature of Dr. S.I. Barbhuyan, Professor,

& H.O.D., Deptt. of Forensic Medicine,

FAAMCH, Barpeta.

Ext.3 = Ejahar,

Ext.3(1) = Signature of O/C Rupam Hazarika,

Ext.4 = Sketch Map,

Ext.4(1) = Signature of Sanjay Anand Mushahary, the I.O.

Ext.6 = Charge Sheet,

Ext.6(1) = Signature of Sanjay Anand Mushahary, the I.O.

(C) **<u>Defence witnesses</u>**:Nil.

(D) **Defence Exhibits**: Nil.

(E) **Court witnesses**:Nil

(F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.