# IN THE COURT OF SPECIAL JUDGE:::::BARPETA, ASSAM.

## Special P.O.C.S.O. Act CASE NO. 40 OF 2017

Under Section 376 I.P.C R/W Section 12 of P.O.C.S.O. Act, 2012

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

> State of Assam. -versus-1. Md. Abdul Haque,

2. Md. Sarap Ali,

3. Must. Saniara Khatun

..... Accused.

#### **APPEARANCE**

For the Prosecution : Mr. Lolit Ch. Nath, learned P.P.

For the accused : N.M.H. Rahman, learned Advocate.

Evidence recorded on : 18.01.2018,07.03.2018,24.04.2018,

16.05.2018,

Argument heard on : 21.06.2018,

Judgment delivered on : 02.07.2018.

# <u>JUDGMENT</u>

1. The prosecution case, in brief, is that on 14.10.2016 one Momtaz Khatun lodged an FIR alleging interalia that on the same day at about 2:00 PM while the victim, aged about 14 years, was returning home from her school, accused Abdul Haque attempted to commit rape on her

near his house. As a result, she sustained injury on different parts of her body. Hearing her shouting, while she rushed to the place of occurrence, accused Abdul Haque, Sarap Ali, Abalit and wife of Sarap Ali physically assault her and snatched away an amount of Rs.3000/- from her. They also torn her wearing cloths and caused injury on her person.

- 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 Md. Abdul Haque, Md. Sarap Ali & Must. Saniara Khatun under section 341/323/354/34 IPC R/W section 8 of POCSO Act, 2012.
- 3. The accused persons appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against accused Md. Abdul Haque, Md. Sarap Ali & Must. Saniara Khatun person under section 376 I.P.C read with section 12 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 as many as 8(eight) witnesses in all. The accused persons are examined u/s 313 CrPC wherein they have taken the plea of total denial and declined to adduce any evidence.

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

Whether the accused persons on 14.10.2016 at 2:00 PM at Jania, within the jurisdiction of Barpeta P.S. in District Barpeta, voluntarily caused hurt to Runia Khatun, aged about 14 years, daughter of the informant and committed sexual harassment on her?

# **Discussion, decision and reasons thereof**

6. The allegation as narrated in the FIR is that on 14.10.2016 at about 2:00 PM accused Abdul Haque attempted to commit rape on the victim and the other accused persons physically assaulted the informant

and snatched away Rs.3000/- from her.

- 7. To succeed in the case, the prosecution has examined as many as 8(eight) witnessed including the M.O. & I.O.
- 8. The M.O. Dr. Samad Ali is examined as PW1. He has deposed that on 14.10.2016 he examined victim Runia Khatun and one Momtaz Khatun i.e. the mother of the victim. On examination of Runia Khatun he found as follows---

Injury:- Pain complained of head ache, back pain, leg pain and general weakness.

The patient was completely stable during examination.

Impression:- Simple injury. No any weapon found.

On examination of Momtaz Khatun he found as follows---

Injury:- Swelling on upper lip, neck pain and body ache. Patient was found completely stable during my examination.

Impression:- Simple injury. No any weapon found.

In cross examination, he has stated that he examined both the injured at his private chamber. He did not know the injured persons prior to examination. The injured were not identified to him by anybody. He issued prescriptions to both the injured, but he does not find any prescription alongwith his report in the case record. He maintained one register regarding the examination of patient, but he has not produced the same before the court. The complaints which are made by Runia may occur for any reason. He did not mention in his report how Momtaz sustained injury. Neck pain may be caused due to spondylitis. Swelling of upper lip may be caused due to allergy. He did not mention the weapon which was used for injury.

9. The informant Mamtaz Khatun as PW2 has deposed that about  $1\frac{1}{2}$  years ago one day at about 2:00 PM while the victim was returning home, she saw their goat in the paddy field of the accused persons. While she drove out the goat, accused Abdul Haque physically assaulted her. Thereafter, accused Sarap Ali, Saniara and Abu Alit

assaulted her. Hearing hue and cry, she rushed to the place of occurrence and then she was also assaulted by holding her hair and torn her wearing clothes. They also torn the wearing cloths of Runia and took away her books. Runia sustained injury on her back and head. Then she lodged the FIR. They took treatment by their own.

In cross examination, she has stated that she could not remember the date of occurrence. The FIR was written by police at Barpeta PS. She only put her signature. She does not know what was written there. The occurrence took place near the house of one Saheb Ali. At a distance there was the house of Golap. She does not know whether they knew about the occurrence or not. Their goat was in the paddy field of the accused. Police did not produce the victim before the medical officer.

10. Victim Runiya Khatun as PW3 has deposed that about  $1\frac{1}{2}$  years ago one day at about 2:00 PM while she was returning home from school, her father asked her to take their goat to home. While she was taking the goat, accused Sarap Ali asked her as to why she had taken the goat. Accused Abdul Haque, Sarap Ali, Abali and Saniara physically assaulted her and torn her clothes. As a result, she sustained injury on her person. She took treatment from medical officer. Abdul Haque and Sarap Ali tried to do illicit act with her. While she made hue and cry, her parents arrived at the place of occurrence. While they rescued her, they also assaulted by the accused persons. Her mother lodged the FIR at police station.

In cross examination she has stated that the occurrence took place at Jania Road near the house of one Saheb Ali. There were other houses also. While she made hue and cry, nobody came out to the place of occurrence. She took the goat from the house of Sarap Ali. They kept their goat in their house as their paddy field was damaged by the goat. Sarap Ali is the cousin brother of Abdul Haque, Abalit is the son of Sarap Ali. On the day of occurrence at about 3:30 PM her mother lodged the FIR.

Thereafter, police took her to the medical officer for examination. After 1½/2 months of the occurrence police produced her before the magistrate and magistrate recorded her statement. The people nearer to the place of occurrence knew about the occurrence. She sustained injury on her left leg. She has denied that she did not state before the magistrate that Sarap Ali and Abdul Haque tried to make illicit act with her. Her father Sukur Ali did not come to the place of occurrence. He arrived after the occurrence. She could not remember whether she had stated before the police that accused Abdul Haque and Sarap Ali tried to commit illicit act with her.

11. The father of the victim Sukur Ali as PW4 has deposed that on the day of occurrence, at about 2:00 PM he was at his own paddy field. He could not find out his goat. He took the goat from the house of the accused persons and gave his daughter to take home. Thereafter he left the place. After some time, he heard that Abdul Haque, Sarap Ali, Abali and wife of Sarap Ali physically assaulted his wife and daughter. He resisted them, but the accused persons showed knife to him and then out of fear, he left the place. An amount of Rs.3000/-, which was with him, was taken by the accused persons. His daughter and wife sustained injury. The wearing clothes of the wife and daughter were torn by the accused persons. They were examined by the medical officer.

In cross examination he has stated that he was called by one boy named Sajidul. If Sajidul did not call, he would not be able to know about the occurrence. The accused kept his goat in their house as the goat damaged their paddy. The mother of Sarap Ali gave him the goat and then he took the same. Saheb Ali knew about the occurrence. His wife and daughter did not know regarding missing of an amount of Rs.3000/- and showing of dagger by the accused persons. His daughter sustained injury on abdomen and right hand. He handed over the torn clothes to police. He has denied that he did not state before the police that while a boy informed him, he came to the place of occurrence, the accused showed

dagger to him and an amount of Rs.3000/- was missing from his kpocket. He had admitted that he did not state before the police that Abalit assaulted him. He has admitted that prior to his appearance, the occurrence took place. Relating to the same occurrence, the accused persons also lodged an FIR against him

- 12. One Jainuddin as PW5 has deposed that at the time of occurrence he was not at home, but lateron he heard that a quarrel took place in between the husband of the informant and the accused persons.
- 13. One Julhas Ali as PW6 has deposed that he heard that a quarrel took place relating to the damage of paddy of the accused persons by the goat of the informant.
- 14. One Anowar Hussain as PW7 has deposed that relating to the damage of paddy of the accused persons by the goat of the informant a quarrel took place.
- 15. Sri Pradip Kr. Barman, the I/O of this case, as PW8 has deposed that on 14.10.2016 the informant lodged the FIR and on 15.10.2016 he visited the place of occurrence. He sent the victim for medical examination and also produced her before the magistrate for recording her statement.

In cross examination he has stated that in the FIR names of 4 persons were mentioned as accused, but he could not collect any evidence against accused Abali. He has stated that he did not produce the victim for medical examination. The victim took treatment by herself. He has stated that the victim did not state either in her statement u/s 161 CrPC or u/s 164 CrPC that accused Sarap Ali and Abdul Haque attempted to cause illicit act with her. He has confirmed that PW Sukur Ali did not state before him that he was informed by his son and then he came to the place of occurrence and the accused persons showed dagger to him and snatched away an amount of Rs.3000/- from his pocket.

16. From the above discussions of the evidences of the prosecution witnesses, it is found that though three independent

witnesses are examined as PW 5,6 & 7, but they did not support the prosecution case. They simply stated that relating to the damage of paddy of the accused persons by the goat of the informant, a quarrel took place in between them. The informant has also not made a single whisper regarding the attempt of sexual assault by the accused persons on the victim. She has simply stated that the accused persons physically assaulted the victim and her and the victim sustained injury on her back and head. According to the victim, she sustained injury on her left leg. In her examination-in-chief, she has stated that accused Abdul Haque and Sarap Ali tried to commit sexual assault on her, but she has not made such statement either under section 161 CrPC or under section 164 CrPC and according to the FIR accused Abdul Haque tried to commit rape on the victim. According to her, her father was not present at the time of occurrence. He arrived at the place of occurrence while the occurrence was over. But her father claimed himself as present at the time of occurrence and according to him, he resisted the accused persons, but the accused persons showed dagger to him and also snatched away an amount of Rs.3,000/- from his pocket. According to him, the victim sustained injury on her abdomen and right hand. He also does not state that the accused persons tried to commit sexual assault on the victim. The I/O has confirmed that this witness did not state before him that the accused persons showed dagger to him and snatched away an amount of Rs.3,000/- from his pocket. The snatching away of Rs.3,000/- from the pocket of Sukur Ali i.e. PW4 is contradicted with the statement of the FIR. According to the FIR, an amount of Rs.3,000/- was taken form the informant Momtaz Khatun. Regarding injury, all the three witnesses have contradicted each other. According to PW4, the victim sustained injury on abdomen and right hand, according to the informant, the victim sustained injury on back and head and according to the victim she sustained injury on her left leg. But the medical officer did not find any injury on the person of the victim. The victim only complained of pain of headache,

general weakness, back pain and leg pain. No weapon was used for those complaints. Therefore, it is found that all the three witnesses i.e. PW2, 3 & 4, who are the victim and her mother and father, are the most interested witnesses, but yet they have contradicted each other. PW2 and 4 i.e. the mother and father of the victim have not made single whisper regarding the sexual assault on the victim. Though the victim has stated in her examination-in-chief as PW3, but she has not stated regarding sexual assault in her statement either under section 161 CrPC or under section 164 CrPC. Hence, her evidence is not trustworthy and reliable. So, her statement which is made in the court is not corroborated by any of the witnesses, even her parents. So her evidence can not be relied upon and on the basis of such unreliable and untrustworthy evidence, no one can be convicted for any offence.

- 17. Under the above facts and circumstances, it is clear that the prosecution has failed to bring home the guilt of the accused persons for any offence either under section 376 I.P.C or under section 12 of POCSO Act, 2012. Therefore the accused persons are acquitted on benefit of doubt and set at liberty.
- 18. 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.
- 19. 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 2nd day of July, 2018.

Dictated & corrected by me.

Sd/-

Sd/-

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

#### APPENDIX

### (A) **Prosecution witnesses**:

P.W.1 = Medical Officer, Dr. Samad Ali, P.W.2 = Mamtaz Khatun, the informant, P.W.3 = Miss Runia Khatun, the victim, P.W.4 = Md. Sukur Ali. P.W.5 = Jainuddin, P.W.6 = Julhas Ali, P.W.7 = Anowar Hussain. P.W.8 = Pradip Kr. Barman, the I/O.

#### (B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) = Signature of Dr. Samad Ali,

Ext.2 = Ejahar,

Ext.2(1),2(2), = Signature of Miss Mamtaz Khatun, Ext.3 = Statement of victim u/s 164 CrPC,

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

Ext.4 = Seizure list,

Ext.4(1) = Signature of SI Pradip Kr. Barman,

Ext.5 = Sketch Map,

Ext.5(1) = Signature of SI Pradip Kr. Barman,

Ext.6 = Charge sheet,

Ext.6(1) = Signature of SI Pradip Kr. Barman

#### (C) **Defence witnesses**:Nil.

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

## (E) **Court witnesses**:Nil

(F) <u>Court Exhibits</u>: Nil. Sd/-

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