IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 56/2018
U/S 376(AB) and section 4 of POCSO Act, 2012

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on: 12.02.2019

State of Assam

- Vs -

Gobinda Shill @ Gobinda Sarkar

Date of Recording Evidence on – 28.02.2019

Date of Hearing Argument on – 28.02.2019.

Date of Delivering the Judgment on – 28.02.2019.

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 12.07.2017 one Gita Dutta lodged an FIR in Barpeta P.S. alleging inter alia that on the same day at abot 4:30 pm accused persons named in the FIR by allegedly taking advantage of absence of family members committed raped on her minor daughter by offering Bhujiya, but she was somehow rescued by her. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta P.S. case No. 1213/17 u/s 4 of POCSO Act, 2012 and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Gobinda Shill @ Gobinda Sarkar u/s 4 of POCSO Act with a view to stand trial.
- 4. In due course, when accused entered his appearance in court vide order dated 12.02.2019 all the particulars relating to the case were furnished to 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 and 376(AB) IPC were framed. The substance of the offences on being read over and explained accused pleaded not guilty and claim trial.

- 5. During the course of trial, the prosecution examined 3 witnesses namely the alleged victim as PW-1, Gita Dutta as PW-2 and Amal Dutta as CW-1. However, considering the nature of evidence adduce by these witnesses hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 6. 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.

7. **Now point for determination** ;-

- .1. Whether on 11.07.2017 at about 4:30 pm accused committed penetrative sexual assault on the victim girl (herein after referred to as X) as alleged?
- .2. Whether on the same day and time accused committed rape on the victim girl (herein after referred to as X) under the age of 12 years as alleged ?

8. 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.

- 9. The learned counsel appearing for the State Smti. P. Das submitted that though the prosecution examined 3 witnesses but the court may pass judgment after assessment of evidence in view of poor quality of evidence adduce by the prosecution witnesses.
- 10. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely no evidence at all implicating the accused person for recording conviction for the offences u/s 4 of POCSO Act and 376(AB) IPC. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the aforesaid offences. As such, the learned counsel prays to acquit the accused person.
- 11. 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."

- 12. 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 accused had committed the offence u/s 4 of POCSO Act or u/s 376 (AB) IPC.
- 13. In their evidence of PW-2 and PW-3 who are the father and mother of the alleged victim in no uncertain terms stated that they have a frequent quarrel with the accused regarding land and for this accused threw waste materials into their land for which there was heated exchange of words accompanied by filthy language against each other. Moreover, PW-2 was not present in the house on the day of incident. PW-1 the alleged victim girl could not say that anything had happened with her which clearly shows that the minor girl was used as a shield by her parents to settle score. Their evidence shows that they had a difference regarding land, but they used the minor daughter to take revenge against accused by filing false and concocted case against the accused person. Therefore, after appreciation of evidence of the star witnesses namely the alleged victim girl, her parents this court is of the considered view that proceeding further with the case for recording evidence of remaining prosecution witnesses would be the cheer waste of valuable time and energy of the court which would in the estimation of the court would bring no fruitful result in the final count. The informant the mother PW-1 deposed that she do not know how to read and write and the contents of FIR was written by another person in the police station. So, filing of FIR with misguided connotation cannot be ruled out. Since ignorance is a curse, and considering the foolishness of the informant this court do not propose to proceed against the informant for perjury as provided u/s 193 IPC.
- 14. The above being the position, this court has no option but to acquit the accused Gobinda Shill @ Gobinda Sarkar from the charges u/s 4 of POCSO Act and 376(AB) IPC on the ground of benefit of doubt and set him at liberty forthwith.
- 15. 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.

- 16. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 17. Let case record be consigned to record room as per procedure.
- 18. Given under my hand and seal of this Court on 28th 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 3 nos. of witnesses:-

PW-1 = is the victim girl.

PW-2 = is Gita Dutta.

CW-1 = is Amal Dutta

2. The prosecution has exhibited only one document:

Ext. 1 = is the FIR.

Ext.1(1) = is the signatures of Gita Dutta.

Sd/-

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