IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

SPECIAL POCSO ACT CASE NO. 8 OF 2016.

Under Section 366 I.P.C. read with Section 4 of P.O.C.S.O. Act,2012

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

State of Assam.

-versus-

Nazrul Islam ... Accused.

APPEARANCE

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

For the accused : Mr. D.Pathak, learned Advocate.

Evidence recorded on : 25-04-2016, 18-05-2016, 16-06-2016

& 18-08-2016

Argument heard on : 19-09-2016

Judgment delivered on : 19-09-2016.

JUDGMENT

- 1. The prosecution case in brief, is that on 01-02-2016 one Basiran Nessa lodged an F.I.R. alleging that on 24-01-2016 accused Nazrul Islam, Ajmat Ali and Sahjahan Ali kidnapped his daughter Abeda Khatun. On 31-01-2016 she came to know that the victim was confined in the house of accused Nazrul Islam. While she had gone along with some villagers to take back the victim the accused persons attempted to attack them. There after the accused persons committed rape on the victim and left her at Barpeta Road.
- 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 Nazrul Islam under section 366(A) I.P.C. read with section 4 of Protection of Children from Sexual Offences Act, 2012.

- 3. Accordingly, the accused person appeared before this court. Copies were furnished to him and after hearing both the parties, charges were framed against the accused under section 366 I.P.C. read with section 4 of Protection of Children from Sexual Offences Act,2012. Charges were read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.
- 4. In course of hearing, the prosecution has examined as many as seven witnesses including the M/O and I/O. The accused person is examined under section 313 Cr.P.C. He declines to adduce evidence.

5. **Point for determination**:-

Whether the accused person on 25-01-2016 at 3.00 A.M.(i.e. Night of 24-01-2016) at village Bagariguri, Bijni within the jurisdiction of Sorbhog Police Station, kidnapped Abeda Khatun, the daughter of informant Basiran Nessa, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit sexual intercourse by means of criminal intimidation or by any other method to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and committed sexual assault on her?

6. **Decision and reasons thereof**:-

The allegation against the accused person is that on 25-01-2016 at 3.00 A.M. (night of 24-01-2016), the accused person kidnapped the victim and committed rape on her.

The said victim is examined as P.W.1. She has stated in her examination-in-chief that she is living in the house of the accused and the accused is her husband. She loved the accused and so she eloped with the accused about 4 months ago. She was produced before the Magistrate for recording her statement. But she is not produced before the doctor. She did not make any statement before the police. This witness is declared hostile by the prosecution.

In cross examination by the prosecution she has denied that she made the statement as recorded by the police under section 161 Cr.P.C.

She has stated in her cross examination by defence that prior to 3 years of the occurrence she had gone along with the accused. Then a village bichar was held. Then due to some problem their marriage was not performed. She never stated before her mother that the accused person kidnapped her. She made the statement before the Magistrate as tutored by the police. Police threatened her that if she did not state as tutored, she would be sent to the jail hajot. This time, while she had gone along with the accused again a bichar was held and in that bichar several persons were present including Hafijur, Nazrul and her maternal uncle. Her parents were also called, but they did not come. She was not examined by any Medical officer.

- 8. But the Medical officer as P.W.2 has stated that on 04-02-2016 she examined the victim and as per opinion the age of the victim was above 14 years and below 16 years.
- 9. The informant as P.W.3 has stated that at the time of occurrence the victim was 13 years old. While the accused kidnapped her she made hue and cray and there after lodged the F.I.R. Police recovered the victim from the house of the accused and now the victim is staying at her house. This witness is also declared hostile by the prosecution.

In her cross examination by defence she has stated that she did not lodge the F.I.R. She did not see the kidnapping of her daughter by the accused She could not say who came to her house hearing her shouting. She does not know when her daughter was recovered and when she was examined by the Medical officer. She does not know about the occurrence.

- 10. One Rehena Swaiji as P.W.4 has stated that about ¾ months ago one day as per request of the mother of the victim she took her to Sorbhog police station. The mother of the victim lodged the F.I.R. at Sorbhog P.S. But she does not know what was written in the F.I.R. and the mother of the victim also did not tell her anything.
- 11. One Sayed Ali as P.W.5 has stated that Abeda is living with the accused as husband and wife and due to some misunderstanding the case was filed against the accused person.

In his cross examination he has stated that the victim is his niece and the victim and the accused person loved each other.

12. One Hajera Begum as P.W.6 has stated that she did not know either the victim or the accused. One day the mother of the victim told her that the victim was eloped by one boy. After some time she heard some hue and cry outside her house. The mother of the victim was dragging one girl and told her that she recovered the victim. Then they handed over the girl at Barpeta Road police station.

In her cross examination she has stated that she does not know what was written in the F.I.R. She only handed over the victim at the police station.

13. P.W.7 is the I/O. He has confirmed the statement of the hostile witnesses.

In his cross examination he has stated that on 01-02-2015 the victim was handed over to her mother.

- 14. From the discussions of the prosecution witnesses, it is found that P.W.4 and P.W.6 have no knowledge about the occurrence. P.W.5 the paternal uncle of the victim has stated that the accused and the victim are living as husband and wife. They loved each other. The case was filed due to some misunderstanding. The informant i.e. the mother of the victim has also admitted that she did not see the occurrence and also does not know anything about the occurrence. The victim who is the vital witness has totally contradicted the case of the F.I.R. by saying that she and the accused loved each other and prior to this alleged occurrence also once she had gone along with the accused. That time also a village bichar was held, but due to some problem of the 'Samaj', their marriage was not performed. This time also a bichar was held, but her parents were not present in the bichar. She and the accused got married and now they are living as husband and wife. The accused person did not kidnap her.
- 15. Under these circumstances, it is clear that the prosecution has failed to prove beyond all reasonable doubt any offence against the accused person. Therefore, the accused person is acquitted and set at

liberty.

- 16. Bail bond executed by the accused person and the surety is extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 17. 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.
- 18. Given under my hand and seal of this Court on this 19th day of September, 2016.

Dictated & corrected by me.

Sd/-

Sd/-

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

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

APPENDIX.

(A)Prosecution Exhibits:

Ext.1. :Statement under section 164 Cr.P.C.

Ext.1(1) :Sig. of P.W.1

Ext.1(2) :Sig. of P.W.1

Ext.2 :Medical report

Ext.2(1) :Sig. of P.W.2

Ext.3 :Sketch Map

Ext.3(1) :Sig. of S.I. Sri Anil Kumar Das

Ext.4 :Sketch Map

Ext.4(1) :Sig. of S.I. Sri Anil Kumar Das

Ext.5 : Charge Sheet

Ext.5(1) :Sig. of S.I. Sri Anil Kumar Das

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.Ejahar

(E)Prosecution witnesses:

P.W.1 :Abida Khatun

P.W.1 :Dr.Anima Boro, Lady M.O., FAA Medical College Hospital,

Barpeta

P.W.3 :Basiron Nessa P.W.4 :Rehena Swaji

P.W.5 :Sayed Ali

P.W.6 :Mst.Hajera Begum

P.W.7 :Sri Anil Kumar Das,2nd officer at Sorbhog P.S.-S.I. of police.

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-(Smti.C.R.Goswami) Sessions Judge, Barpeta