IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. CASE NO. 29 OF 2017

Under Section 366(A)/376(2)(1) I.P.C.

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

State of Assam.

-versus-

Md. Rafigul Islam ... Accused.

APPEARANCE

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

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

Evidence recorded on : 21.12.2017,06.01.2018,06.02.2018

Argument heard on : 06.02.2018

Judgment delivered on : 06.02.2018.

<u>JUDGMENT</u>

1. The prosecution case in brief, is that on 11-04-2016 at about 9.00 P.M., accused Rafiqul Islam kidnapped Jesmina Khatun aged about 15 years assuring to marry her and made co-habitation with her. Coming to know about the occurrence Manik Uddin father of accused Rafiqul armed with a dagger attempted to kill the victim. Out of fear the victim took shelter in the house of one Mayej Uddin but in his house also Manik Uddin assaulted her. Hearing the shouting neighboring people arrived at the place of occurrence and they rescued the victim and handed over to her father. Accordingly the father of the victim Asim Uddin lodged an F.I.R on 18.04.16.

- 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. Rafiqul Islam U/S 366-A/376(2)(1) I.P.C read with section 4 of POCSO Act.
- 3. The accused person appeared before this court and faced trial. copies are furnished to him. Charges are framed against the accused person U/S 366-A/376(2)(1) read with section 4 of POCSO Act. Charges are 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 three witnesses including the M/O. Examination of the accused person under section 313 Cr.P.C is dispensed with. The accused person declines to adduce evidence.

5. **Points for determination**:-

- (1) Whether the accused person on 11-04-2016 at about 9.30 P.M. at Dimarpur, within the jurisdiction of Kalgachia Police Station, District Barpeta, kidnapped Jesmina Khatun, daughter of informant Asim Uddin 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 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 ?
- (2) Whether the accused person on the same date, time and place committed rape on the victim Jesmina Khatun, aged about 15 years, daughter of informant Asim Uddin by committing penetrative sexual assault?

Decision and reasons thereof:

6. The allegation against the accused person as narrated in the FIR is that on 11.04.2016 at about 9 P.M., he kidnapped the victim aged about 15 years assuring to marry her and keeping her in his house made sexual intercourse with her. The victim was recovered on the same night and handed over to her guardian on the next morning. The Medical Officer who has examined the victim on 19.04.2016 has opined that:-

There is no sign of sexual intercourse, but the victim is accustomed to sexual intercourse.

There is no sign detected.

There is no injury mark on her private parts.

Victim is not suffering from any physical or mental disability.

There is no foreign particle on her cloth/body.

The Medical Officer has not framed any opinion regarding the age of the victim.

7. The father of the victim who is the informant of this case as PW3 has mentioned her age as 18 years at the time of occurrence. He has deposed that without informing him the victim had gone to the house of the accused. They loved each other. Thereafter the victim returned home alone. Out of suspicion he lodged the F.I.R against accused person. After the occurrence the victim got married with another boy. The matter was already settled by the ,Samaj'. He is not willing to proceed the case.

In his cross examination he has admitted that at the time of occurrence he was not at home. He was at Udmari. The F.I.R was written by somebody else. He put his signature only. He does not know what is written in the F.I.R.

8. The victim as PW1 has corroborated the statement of her father by stating that on the date of occurrence she had gone to the house of the accused without informing her father. But the accused and his parents did not allow her to stay there. Without knowing the real fact her father lodged the F.I.R. However, later on he came to know the actual fact.

In her cross examination she has stated that just after the occurrence she was married by Mufa Sheikh Ali by executing Kabinnama. In the Kabinnama her age was mentioned as 18 years. Prior to the occurrence she had love affairs with Rafiqul and she had gone with him at her own will. The accused person did not do any illicit act with her. She made the statement before the magistrate as tutored by the police. At the time of occurrence her father was at Udmari and

without knowing the real fact he lodged the F.I.R. In fact no occurrence took place as narrated in the F.I.R. Accused Rafiqul is not guilty.

- 9. On the basis of above facts and circumstances and the evidences on record it is found that none of the prosecution witnesses has supported the case of the F.I.R. Both the informant and the victim have stated that at the time of occurrence her age was 18 years and love affairs was going on in between the accused and the victim. The victim has clearly stated that she had gone to the house of the accused at her own will and accused did not do any illicit act with her. Hence, it is crystal clear that the prosecution has failed to bring home the guilt of the accused person for any offence. 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.

Given under my hand and seal of this Court on this 6th day of February,2018.

Dictated & corrected by me.

Sd/- Sd/-

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

APPENDIX

(A)Prosecution Exhibits:

Ext.1 :Statement of the victim recorded u/s 164 CrPC.

Ext.1(1), Ext.1(2)

& Ext.1(3) :Sigs. of Jesmina Khatun..

Ext.2 : Medical Report.

Ext.2(1) :Sig. of Dr. A. Boro.

Ext.3 : Ejahar.

Ext.3(1): Sig. of Asimuddin.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Jesmina Khatun.

P.W.2 : Dr. Anima Boro.

P.W.3 : Ashimuddin

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

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