IN THE COURT OF SPECIAL JUDGE AT BARPETA.

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

JUDGMENT IN SPECIAL POCSO CASE NO. 115 OF 2019 (G.R.No.- 1630/2016) Baghbar P.S. Case No. 98 of 2016

State of Assam

-versus-

Mohibul Islam S/O Samez Uddin, Resident of 4 No. Bardoloni, P.S. Baghbar, District - Barpeta, Assam

...... <u>Accused.</u>

APPEARANCES:

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

For the Accused : Mr. Dipak Das, learned Advocate, Barpeta.

CHARGE FRAMED UNDER SECTIONS 448/376 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 09.07.2019
Date of Prosecution evidence : 22.07.2019
Date of Argument : 22.07.2019
Date of Judgment : 22.07.2019

JUDGMENT

1). The prosecution case, in brief, is that Baghbar P.S. Case No 98 of 2016 under Sections 448/376 IPC 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 Rup Bhanu, grandmother of the victim (hereinafter referred to as 'X').

In the aforesaid **F.I.R**. dated 29.03.2016, the informant Rup Bhanu (P.W.2), who is the grandmother of the victim girl, alleged interalia that on 26.03.2016 at about 9:00 PM, the accused person namely Mohibul Islam entered into her house and committed sexual intercourse on her minor victim daughter-in-law(X), aged about 12 years.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Baghbar Police Station, the same was registered as **Baghbar P.S.** Case No 98/2016 under Sections 448/376 (2) (i) IPC 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 accused Mohibul Islam under Sections 448/376 (2) (i) IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.87, dated 28.06.2019.

- 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, charges were framed by undersigned against the accused under Sections 448/376 IPC read with Section 4 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, **02 [Two]** number of witnesses including the informant and victim were examined on behalf of the prosecution to prove the charge under Sections 448/376 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

- 5). I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta, for the State as well as Mr. Dipak Das, learned Defence Counsel for the accused, who is facing trial for commission of offence under Sections 448/376 IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6).** Now the point for determination before this court are as follows ---
- (i) Whether on 26.03.2016 at about 9:00 PM within the jurisdiction of Baghbar PS, District Barpeta, committed house-trespass into the house of informant Rup Bhanu, used as a human dwelling, in order to commit an offence and thereby committed an offence punishable under Section 448 IPC ?
- (ii) Whether on same date, time and place, accused committed rape on Minuwara Parbin, minor grand daughter of the above named informant and thereby committed an offence punishable under Section 376 IPC?
- (iii) Whether on same date, time and place, committed penetrative sexual assault upon the minor victim, of the above named informant and thereby committed an offence punishable under Section 4 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.

The Victim [P.W.1] has deposed that informant is her grandmother. At the relevant time, accused went to her house about 3 years ago. She stated that accused pushed her.

She exhibited her statement recorded under Section 164 CrPC before the learned Magistrate as Ext.1 and Ext.1(1), Ext.1(2) and Ext.1(3) are her signatures. She gave her statement as tutored by others.

During cross-examination, she stated that she knew the accused person prior to the incident and he sometime visited her house. She stated that accused did not do any bad work with her and just caught her hand and pulled her. She gave her statement before the Magistrate as told by Police. She stated that no untoward incident occurred with her by the accused.

8). Rup Bhanu [P.W.2] has deposed in her evidence that incident took place three year before. On the relevant day, accused came to her house and pulled hand of the victim. She stated that accused did not do anything with the victim. Then, she lodged the case.

During her cross-examination, she stated that no bad incident took place to her victim grand daughter and the contents of the FIR was not read out to her. She further stated that there was an altercation between the accused and the victim on the date of incident.

9). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.1), who is star witness of this instant case

that accused did not commit any bad work with her and just caught her hand and pulled her. She stated in her cross-examination that no untoward incident took place with her and she gave her statement as tutored by Police.

Moreover, informant namely Rup Bhanu (P.W.2) **deposed almost same story as deposed by P.W.1. She stated that no bad incident took place to her victim grand daughter** and she did not go through the contents of the FIR. P.W.2 further stated that there was altercation between the accused and the victim on the date of incident.

Thus, from the above evidence, it is crystal clear that the victim alongwith the informant did not support the alleged incident, as per prosecution story.

- 10). Hence, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently, the charge under Sections 448/376 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the accused Mohibul Islam beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Mohibul Islam is acquitted on benefit of doubt under Sections 448/376 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.
- 11). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Mohibul Islam to warrant his conviction under Sections 448/376 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012 beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal on benefit of doubt, which I accordingly do.
- 12). In the result, accused Mohibul Islam is acquitted of the charge under Sections 448/376 IPC read with Section 4 of The

Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stands discharged.

13). Given under my hand and seal of this Court on this 22nd day of July, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Minuwara, the victim,

P.W.2 = Rup Bhanu, the informant.

(B) Prosecution Exhibits:

Ext.1 = Statement of the victim, recorded

under Section 164 CrPC,

Ext.1(1), 1(2)

& Ext.1(3) = Signatures of the victim.

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

(D) Defence Exhibits: Nil.

(E) Court witnesses:Nil

(F) Court Exhibits: Nil.

Sd/-

Special Judge, Barpeta.