IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 17/2018 U/S 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge,

Barpeta.

Charge framed on: 16.08.2018

State of Assam

- Vs -

Jahidul Islam

Date of Recording Evidence on - 11.02.2019, 18.02.19 & 15.03.19

Date of Hearing Argument on – 15.03.2019.

Date of Delivering the Judgment on – 15.03.2019.

Appearance:

Advocate for the State----- Mrs. P. Das, Learned Addl. P.P.

Advocate for the Accused----- Mr. Dharani Talukdar, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 06.03.2018 one Jahedul Islam lodged an FIR in Alopatichar P.S. alleging inter alia that on 04.03.2018 at about 8 pm his sister (herein after referred to as X) was forcefully taken away by accused person while she went outside of her house in response to natural call and then accused person allegedly committed rape on her. While coming to know about the incident the family members asked for the girl accused persons named in the FIR abused them and then meeting of the society was called, but having found no response case was filed. Hence the case.
- 2. Acting on the information police got a case registered being Alopatichar P.S. case No. 16/18 u/s 376 IPC and section 4 of POCSO Act and investigated the case.
- 3. On completion of investigation, police finally laid the charge sheet against accused Jahidul Islam u/s 4 of POCSO Act, 2012 with a view to stand trial.

- 4. In due course, when accused entered his appearance in court vide order dated 16-08-18 all the particulars relating to the case were furnished to accused as provided u/s 207 Cr.P.C. 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 was framed. The substance of the offence on being read over and explained accused pleaded not guilty and claim trial.
- 5. During the course of trial, the prosecution examined 4 witnesses namely Jahedul Islam as PW-1, Tasmina Parbin the victim girl as PW-2, Dr. Anima Boro as PW-3, Jalal Uddin Ahmed as PW-4.
- 6. On conclusion of evidence hearing to the learned Addl. P.P. further prosecution evidence stands closed.
- 7. 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.

8. Now point for determination ;-

.1. Whether on 04.03.2018 at about 8 pm accused committed penetrative sexual assault on the victim girl as alleged ?

9. 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.

- 10. The learned counsel appearing for the State Smti. P. Das submitted that though the prosecution examined 4 witnesses but the court may pass judgment after assessment of evidence.
- 11. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely no evidence in the mouth of the prosecution witnesses which constitute the ingredients of the offences u/s 4 of POCSO Act. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the offence u/s 4 of POCSO Act. As such, the learned counsel prays to acquit the accused person.
- 12. 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."
- Now, on perusal of the offence as defined 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 has not spoken anything regarding the offence of commission of penetrative sexual assault by accused against her. She in her deposition stated that accused was supposed to marry her but when he refuse she went to the house of the accused but she was thrown out. She no where stated that there was any sexual assault not to speak of penetrating sexual assault committed by accused on her. So, from her evidence nothing can be inferred even remotely as provided u/s 29 of the POCSO Act, 2012 that accused committed the offence against the victim girl. The PW-1 who is the informant also does not support the prosecution version as alleged in the FIR Exhibit - 1. The evidence of doctor PW-3 that the victim girl was found to be accustomed to sexual intercourse does not prove the case that on the particular date accused committed penetrative sexual assault on her because the victim herself denied any such offence being committed on her by accused person. The evidence of PW-4 investigating officer also cannot be relied on in view of the evidence of the alleged victim which totally negated the prosecution case. It is the settle law that statement of the victim recorded before Magistrate u/s 164 Cr.P.C. is not a substantive peace of evidence but corroborative in nature. So, in the absence of credible evidence in the mouth of the victim in court the statement of victim u/s 164 Cr.P.C. Exhibit 2 cannot be the basis of conviction.
- 14. Form the evidence on record it transpires that the prosecution fail to establish the age of the alleged victim girl also by way of proving her date of birth or by way of any other credible manner. In the absence of any such documentary proof no inference can be drawn that the girl was minor at the relevant time. There is absolutely no evidence on behalf of the prosecution to show that any offence u/s 4 of POCSO Act has been committed by accused. In fact, no ingredients of section 4 of POCSO Act have been found established.

- 15. In the result, this court has no option but to acquit the accused Jahidul Islam from the charges u/s 4 of POCSO Act on the ground of benefit of doubt and set him at liberty forthwith.
- 16. 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.
- 17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let case record be consigned to record room as per procedure.
- 19. Given under my hand and seal of this Court on 15th day of March, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta. (Sri C.B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 6 nos. of witnesses:-

PW-1 = is Jahedul Islam, the informant.

PW-2 = is Tasmina Parbin, the alleged victim girl.

PW-3 = is Dr. Anima Boro, the MO PW-4 = is Jalal Uddin Ahmed, the IO

2. The prosecution has exhibited only one document:

Ext. 1 = is the FIR

Ext.1(1) = is the signatures of informant.

Ext. 2 = is the statement of victim girl u/s 164 Cr.P.C.

Ext. 2(1) = is the signatures of the victim girl.

Ext. 3 = is the medical report.

Ext. 3(1) = is the signatures of medical officer Dr. Anima Boro.

Ext. 4 = is the sketch map.

Ext. 4(1) = is the signature of IO Jalal Uddin Ahmed.

Ext. 5 = is the charge sheet.

Ext. 5(1) = is the signature of OC Irfan Khan.

Sd/-

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