IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. Act CASE NO. 39 OF 2016

Under Section 4 of P.O.C.S.O. Act, 2012

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

State of Assam.

-versus-

Anowar Hussain @ Anowar Ali ... Accused.

APPEARANCE

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

For the accused : Mr. Faijur Rahman, learned Advocate.

Evidence recorded on : 13-06-2017

Argument heard on :13-06-2017

Judgment delivered on : 13-06-2017.

<u>JUDGMENT</u>

1. The prosecution case in brief, is that on 18-07-2016 one Rubina Khanom Ali lodged an FIR alleging that at about 3.30 P.M., keepping her daughter (victim) aged about 13 years at home she had gone to see water of river Brahmaputra along with the wife of Anowar Hussain. Taking advantage of her absence accused Anowar Hussain called the victim to his house to do some work and while she came, accused Anowar Hussain keepping her inside the house along with accused Ajijul @ Aju closed the door from outside. Accused Ajijul @ Aju committed rape on the victim. While she made hue and cry accused Ajijur threatened her to kill and gagged her mouth with cloths. Hearing shouting of the victim, out of fear accused Anowar Hussaim called the informant and took her to his house. While Anowar opened the door she found accused Ajijul @ Aju and the victim in naked position.

- 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 Ajijul Ali @ Aju as Juvenile Conflict with Law and accused Anowar Hussain @ Anowar Ali U/S 4 of POCSO Act 2012.
- 3. Accused Anowar Hussain @ Ali is appeared before this court, copies were furnished to him and after hearing both the sides charge was framed against him under section 4 of P.O.C.S.O. Act, 2012. Charge was 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 only two witnesses. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Point for determination:**-

Whether on 16-07-2016 at about 3.30 P.M. the accused person committed penetrative sexual assault on the victim who is the minor daughter of the informant?

Decision and reasons thereof:

- 7. In this case the prosecution has examined only two witnesses. One is the informant and other is the victim.
- 8. The informant as PW1 has deposed that on the day of occurrence she has gone to see water of river Brahmaputra. The victim was in the house of the accused person. The father of the accused is her maternal uncle. After seeing the water she had gone to the house of the accused and saw several persons gheraowed his house. On being asked the father of the accused replied that nothing was happened. But the villagers demanded to file the case. Before arrival of the victim the villagers wrote an F.I.R and took her signature. After sometime while she asked the victim about the occurrence she replied that nothing was happened. Police produced the victim before the Magistrate for recording her statement and also medically examined her. Accused Ajijul already married the victim.
- 9. The victim as P.W.2 has deposed that on the date of occurrence her mother had gone to see water and she had gone to the house of her grand father Jainal. Accused Anowar is the son of Jaynal. While she was in the house of the accused some people gheraowed his house. She could not talk with her

mother. The villagers compelled her mother to file the case. Later on, she informed her mother that no occurrence took place. Police came and took her before the Magistrate. The Magistrate recorded her statement. She was examined by the medical officer also. She made the statement before the Magistrate as tutored by the police. Ext.2 is the said statement. Now she got married with accused Ajijul. Anowar did not do any offence.

- 10. After going through the evidences of the prosecution witnesses, and the statement of the victim recorded U/S 164 Cr.P.C it is found that no way the victim has stated that the accused person committed rape on her. In her statement recorded U/S 164 Cr.P.C she has stated that the accused Ajijul @ Azijur committed rape on her. The victim has not made a single whisper that accused Anowar committed any rape or sexual assault on her. In her statement recorded u/s 164 Cr.P.C also she has not stated that accused Anowar committed rape on her. She made the allegation against Ajijul. But now Ajijul married her and the charge-sheet was also submitted against accused Ajijul showing him Juvenile Conflict with Law.
- 11. Under such circumstances it is clear that the prosecution has failed to prove the guilt of the offence against Anowar Hussain. Therefore, the accused person is acquitted and set at liberty.
- 12. 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.
- 13. 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 13^{th} day of June, 2017.

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 :FIR

 $\operatorname{Ext.1}(1)$, $\operatorname{1}(2) \& \operatorname{1}(3)$: Signatures of Rubina Begum.

Ext.2 :Statement under section 164 Cr.P.C.

Ext.2(1) :Sig. of Rinki Khanam.

Ext.2(2) :Sig. of Rinki Khanam.

Ext.2(3) :Sig. of Rinki Khanam.

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Miss. Rubina Begum.

P.W.2 : Miss Rinki Khanam.

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-(Smti. C. R. Goswami)

Special Judge, Barpeta