IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 08 OF 2017

Under Section 448 IPC R/W Section 4 of P.O.C.S.O. Act, 2012

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

State of Assam.
-versusAnowar Hussain Accused.

APPEARANCE

For the Prosecution : Mr. Lohit Nath, learned P.P.

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

Evidence recorded on : 02-06-2017, 15-07-2017, 28-07-2017

15-05-2018.

Argument heard on : 12-06-2018,

Judgment delivered on : 26.06.2018.

I U D G M E N T

1. The prosecution case, as narrated in the FIR lodged on 03.12.2016 is interalia that his daughter, here-in-after called as "X", whose date of birth is 23.03.2001, was a student of class IX. On 01.12.2016 at night the victim alongwith her brother Sanidul Islam were sleeping in separate beds in the same room. Sanidul Islam came out from the room for his natural call. In the meantime, taking advantage of

opening door, accused Anowar Hussain, armed with dagger, entered into the house and showing the dagger, restrained the victim from creating hulla and committed rape on her. Her mouth was tied with cloths. As the electrical light was lighting, the accused person could be identified specifically. The victim was out of the room tying her mouth with an intention to kill her thinking that the victim may call bichar in the samaj. Removing the cloths from the mouth, while she shouted, the father of the victim woke up and went to the place of occurrence along with the witnesses named in the FIR and rescued the victim. But the accused person snatched away the gold chain from the neck of the victim. While she prevented it, she was assaulted causing injury on her face and neck. In the samaj bichar, it was assured that the accused would marry the victim on 03.12.2016, but in the meantime he married another girl.

- 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 Anowar Hussain under section 448/506 I.P.C. R/W section 4 of POCSO Act.
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against the accused person under section 448 IPC R/W section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as 8(eight) witnesses including the medical officer. Accused was examined under section 313 Cr.P.C. wherein he has taken the plea of total denial and declined to adduce any evidence.

5. **Point for determination**:-

Whether the accused person on 01-12-2016 at night at Dakhin Chapra, Jania under the jurisdiction of Barpeta Police Station, committed house trespass into the house belonging to "X", aged about 16

years, the daughter of informant Ibrahim Ali and committed penetrative sexual assault on her?

Discussion, decision and reasons thereof

- 6. The prosecution story, as narrated in the FIR, is that the accused person, armed with dagger, illegally entered into the house of the informant and committed rape on the victim.
- 7. Now let us examine the evidences of the prosecution witnesses. In this case prosecution has examined as many as 8(eight) witnesses including the M.O. and I.O. PW1 Ibrahim Ali is the informant of this case. According to the FIR lodged by him, the occurrence took place at night on 01.12.2016. On that night, the victim and her brother Sanidul Islam were sleeping in the same room in separate beds. While Sanidul came out from the room for natural call, taking advantage of opening the door, the accused person armed with dagger entered into the house and committed rape on her. The said informant as PW1 has deposed that on 01.12.2016 at about 1:00 O'clock midnight, the accused person broke the door of the room of the victim by an iron "sabul". He went to the bed of the victim armed with a dagger and kept the dagger on her neck. He asked the victim not to raise hulla, otherwise she would be killed. The mouth of the victim was tied by a gamucha and thereafter he committed rape on her. After committing rape, the accused took the victim on his shoulders to the courtyard. Then the victim removed the gamucha from her mouth and shouted. Hearing her shouting, he and his son Sanidul rushed to the accused and then the accused snatched away the gold chain from the neck of the victim. While the victim resisted the accused, she was felt down and the accused fled away. He, Sanidul and the village people chased the accused to his house and informed the matter to the father of the accused. The father of the accused assured that he would call a bichar on 03.12.2016, but on 02.12.2016 the parents

of the accused person performed his marriage with another girl. At the time of occurrence, the victim was aged about 15 years 6 months. The house wherein the victim was sleeping, is consisting of three rooms, one is for the victim, another is for his son Sanidul and the middle room in between the victim's room and Sanidul's room is their store room. After lodging of the FIR, police produced the victim for medical examination and also for recording her statement u/s 164 CrPC.

In cross examination he has stated that the victim is the daughter of his first wife Sakina Khatun. He married Sakina about 25 years ago. After one year of the marriage, the victim was born. While Sakina committed suicide by taking poison, a case was registered against him. Now he is living at Lucknow alongwith his third wife Tasiran Nessa. His elder brother Hamid, Sattar Ali, Naya Mia, Atowar, Manirul and Ajahar Ali are his neighbours. If any hue and cry takes place in his house, then those persons must know it. At the time of occurrence the victim was sleeping in the room alone and his son Sanidul was also sleeping in another room. The accused knew the room of the victim prior to the occurrence. The accused entered into the room of the victim by breaking the 'sitkini' of the door. The victim closed the door by 'sitkini' from inside. Police found the broken door and 'sitkini' during investigation and police took the 'sitkini' and the gamocha of the accused. The maxi of the victim was torn. The same was shown to the police. But the police did not seize those cloths. There was only one bed in the room of the victim. He informed about the occurrence at the police station on the third day. He has denied that he stated before the I/O that the occurrence took place at about 11:00 PM, the accused took the victim to the courtyard on his shoulder after committing rape, Police took the 'sitkini' and the gamocha, he informed about the occurrence to the father of the accused and the father assured that a bichar would be held on 03.12.2016, but on 02.12.2016 another girl was married by the accused. He has further stated that his house is situated at a distance of $\frac{1}{2}$ km from the house of the accused person.

Mahibul is his nephew-in-law. He has denied that Mohibul made a proposal before the father of the accused for the marriage of the victim with jthe accused person, but as the parents of the accused refused the said proposal, this false case is filed against the accused person.

8. Corroborating the statement of PW1, the victim 'X' **as PW2** has deposed that on 01.12.2016 at night the accused person damaged the door of her room by an iron 'sabul' and came to her bed, armed with a dagger, and threatened her that if she would shout, then she would be stabbed. He tied her mouth by a white gamocha and committed rape on her. Thereafter he took her on his shoulder to the courtyard. She removed the gamocha from her mouth and shouted and then her brother, father and the village people rushed to the place of occurrence. While the accused person tried to flee away, she hold his jacket and then the accused snatched away her gold chain from her neck. The accused person fell down her and fled away. Her father, brother and the villagers went to the house of the accused and the father of the accused assured that he would call a bichar on 03.12.2016, but on 02.12.2016 the parents of the accused performed the marriage of the accused with another girl. Then her father lodged the case at the police station.

In cross examination she has stated that Abdul Hamid, Abdul Sattar, Ajahar, Manowar, Atowar, Monirul, Naya Mia are her neighbours and if any occurrence takes place in her house, then those people must know it. She has admitted that while her mother committed suicide by consuming poison, then a case was registered against her father. Besides her mother, her father married another two wives. There are three rooms in the house wherein she was sleeping. She was sleeping in the room alone. She slept at about 09:00 PM by closing the door from inside. The occurrence took place at 1:00 AM. The door of her room and the 'sitkini' were broken by the accused with an iron 'sabul'. At the time of commission of rape, the accused torn away her maxi, penty and bra. She sustained injury on her neck by dagger. Blood was oozing out from the

injury and the same was stained on her wearing maxi. Due to commission of rape, she suffered from bleeding. She could not tolerate the suffering. So, immediately she was treated by the doctor. On the night of occurrence police was not informed, but she narrated the matter to the doctor and doctor informed the matter to the police. The police of the hospital got the information about the occurrence. Police seized her wearing clothes and the 'sitkini' of the door during investigation. Relating to the case lodged by her father, police produced her before the medical officer for examination and before the magistrate for recording her statement. Police tutored her what to be stated before the magistrate. She has denied that she had stated before the I/O that on the night of occurrence she and her brother Sanidul were sleeping in the same room. While hue and cry took place in their house, the neighbouring people came and they knew about the occurrence. She denied that she stated before the police that the occurrence took place at about 1:00 AM. She has denied that the fact of injury on her neck by dagger, blood stains on her cloths, bleeding on her private parts are all false. She has further stated that prior to six months of the occurrence, the accused persons did not visit their house.

- 9. The M.O. Dr. Mamata Devi as PW3 has stated that on 03.12.2016, she examined the victim on police requisition. She has stated that, on examination she found bodily injuries on the person of the victim as follows-
- (1) An abrasion of size 1 Cm \times 0.6 Cm over right side of arm 2Cm lateral and above to right elbow joint and red in colour.
- (2) A contusion of size 2 Cm x 1Cm over medial side of right arm, red in colour.
- (3) Multiple contusion of size varying from 0.1Cm x 0.1 Cm to 1.2 Cm x 1.2 Cm present over anterior and lateral aspect of left arm, red in colour.

She opined that---- (1) Her age is above 16(sixteen) years and below 18(Eighteen) years. (2) Injuries are detected as described under bodily injuries. (3) Evidence of recent sexual intercourse is not detected on her person. (4)Foreign particles like,hair,semen blood etc. are not detected on her person at the time of examination. In cross examination she has stated

that Hymen was found old tear, she did not find any injury in the private parts. She has further stated that the time of bodily injury and colours are not mentioned in Ext.3 i.e. her report.

10. One Akkash Ali, who is a neighbour of the informant, as PW4 has deposed that the occurrence took place about 6/7 months ago. One discussion was held as the accused gave a proposal to marry the victim. Receiving the summon of this case, he came to know about the filing of this case against the accused person.

In cross examination he has stated that the informant is staying at Lucknow alongwith his third wife.

11. One Monowar Hussain who is also a neighbour of the informant as PW5 has deposed that getting the summons of this case, he came to know about the filing of the case.

In cross examination, he has stated that on the night of 01.12.2016 he did not hear any sound in the house of the informant Ibrahim Ali. He heard that on that night informant Ibrahim Ali was at Lucknow.

12. One Mohamad Ali as PW6 has corroborated that the versions of PW4 & 5 by saying that after getting the summons of this case, he came to know about the filing of this case. One day police asked him in the market about the occurrence. But he replied that he does not know anything.

In cross examination, he has stated that he is a neighbour of the informant. On the night of 01.12.2016 no occurrence took place in the house of Ibrahim Ali. He does not know whether on that day Ibrahim Ali was at Lucknow or at home.

13. The brother of the victim Sanidul Islam as PW7 has deposed that on 01.12.2016 at about 1:00 AM he was sleeping in a separate room and the victim was sleeping in another room. In between their two rooms their kitchen was there. Breaking the door of the room of the victim, the accused person entered into her room armed with a dagger. He

threatened the victim showing the dagger that if she would make hue and cry, she would be killed. The mouth of the victim was tied by a gamocha and she was raped by the accused. Thereafter, the accused took the victim on his shoulder to the courtyard. While the victim removing the gamocha started shouting, he, his father and the village people came and then the accused assaulted the victim on her mouth and snatched away the gold chain from her neck. They followed the accused to his house and reported the matter to his parents. They assured that a bichar would be held on 03.12.2016, but on 02.12.2016 they performed the marriage of the accused with another girl.

In cross examination he has stated that his father is an educated person. He knows the date and time of the occurrence. The FIR was written by police. Neither he nor his father read out the FIR. Police asked his father to put the signature and accordingly his father put his signature. His elder sister i.e. the victim was sleeping by closing the door from inside. The door was made of wood. If the 'sitkini' was not opened, then nobody can enter into the room of the victim from outside. The door of their all the rooms are made of wood and if those are broken forcefully, then they all must hear the sound of it. But prior to the shouting of her elder sister they did not hear any sound of breaking of the door. He has denied that he stated before the police that on the night of occurrence, at about 11:00 PM he and the victim were sleeping in the same room in separate beds, that at about 11:00 PM he came out from the room for natural call and had gone to his grand mother's house for some work, that after some time he rushed to his house hearing the shouting of the victim. He has further stated that Chandu Mia, Manowar and Mohammad Ali are his neighbours and if any hue and cry took place, then they must know it. On the night of occurrence i.e. on 01.12.2016 his father informed the police about the occurrence over phone. The door and 'sitkini' of the room of the victim were broken by iron 'sabul'. Police seized those things. He has admitted that he did not state before the police that on 01.12.2016

the accused, armed with dagger, entered into the house of the victim by breaking the door, tied her mouth with gamocha and committed rape on her, thereafter, she was taken out by the accused on his shoulder, he removed the clothes and started shouting, then the accused assaulted her on her mouth and snatched away the gold chain from her neck, he alongwith his father and the village people went to the house of the accused and informed the matter to his parents, they assured that a bichar waould be held on 03.12.2016 but on 02.12.2016 they performed the marriage of the accused with another girl. He has denied that no such occurrence took place on the night of 01.12.2016.

14. The I/O S.I. Babu Singh is examined as PW8. In cross examination he stated that on the night of occurrence the informant did not report about the occurrence over telephone. The FIR was lodged on 03.12.2016 at about 12:45 PM. He did not record the statement of the writer of the FIR. He did not make any enquiry regarding the age of the victim. He has admitted that according to the FIR the victim and her brother Sanidul were sleeping in the same room in separate beds. He did not find that the door and 'Sitkini' of the room of the victim were broken. The wearing maxi, gamocha, blouse, bra, penty were not shown to him and he did not seize those articles. Informant Ibrahim Ali told him that the occurrence took place at about 11:00 PM. Ibrahim Ali did not state before him that the accused person took the victim to the courtyard on his shoulder after committing rape, they reported the matter to the father of the accused, he assured that a bichar would be held on 03.12.2016, but on 02.12.2016 they performed the marriage of the accused with another girl. He produced the victim before the medical officer on 03.12.2016. He did not receive any record regarding the examination of the victim by medical officer on the night of occurrence. On the night of occurrence, medical officer did not give any information at the police station after examining the victim. He did not seize the blood stained clothes from the bed of the victim. He has further confirmed that witness Sanidul stated

before him that on the night of occurrence he and the victim were sleeping in the same room in different beds and at about 11:00 PM he came out from the room for natural call and had gone to the house of his grandmother and after some time hearing the shouting of his sister, he rushed to his house. He has further stated that though the names of two other persons were mentioned as accused in the FIR, but he could not collect any evidence against them.

15. In course of argument, the learned defence counsel has submitted that though in the FIR as well as in the deposition the informant has stated that at the time of occurrence the age of the victim was 15 $\frac{1}{2}$ years and her date of birth is 23-03-2001, but to substantiate the same, the prosecution has failed to produce any document. The I/O even failed to make any investigation in the school, wherein the victim was allegedly studying at the time of occurrence, to ascertain her age. But from the cross examination from the informant, it is revealed the mother of the victim was married by the informant about 25 years ago and the victim was born after one year of their marriage. Being that situation, the age of the victim, at the time of occurrence, was about 23/24 years. The learned defence counsel has further submitted that the allegations which are narrated in the FIR are totally contradicted by the informant, victim and her brother. According to the FIR, at the time occurrence, the victim and her brother Sanidul were sleeping in the same room in separate beds. Sanidul Islam came out from the room for natural call and taking advantage of opening door, the accused person entered into the room. But in their depositions they have stated that the victim and her brother Sanidul were sleeping in two separate rooms and the victim slept in her room by closing the door from inside and the accused person entered into the room by breaking the door and "sitkini" with an iron "sabul". This contradictory statement has clarified that the allegations which are narrated in the FIR are totally false and as no such occurrence took place, they have contradicted their own versions. In fact, a proposal was made

before the parents of the accused to marry the victim, but as the parents refused the same, this false case is filed against the accused person.

After going through the relevant case record, it is found that 16. the FIR is guite silent regarding the breaking of the door of the room of the victim. According to the FIR, at the time occurrence the door of the room of the victim was opened. Though the informant, the victim and her brother have stated that the door and the "sitkini" were broken by the accused and those were seen and taken by the police official, but the police officer PW8 has denied it. He has clearly stated that he did not find any broken door and "sitkini" and he was not shown any cloths, such as maxi, gamocha, blouse, bra, penty and he did not seize any article. Furthermore, according to the informant, he lodged the FIR on 03.12.2016 and the I/O has also confirmed the same, but according to the victim, on the night of occurrence, as her suffering was intolerable, she was treated by a medical officer and the medical officer informed the matter to the police. But the I/O has denied the same and no medical document was produced before him regarding the medical examination of the victim on the night of the occurrence. Contradicting all this statements, the brother of the victim, Sanidul Islam, has stated that on the night of occurrence i.e. 01.12.2016 at night the informant over phone informed the matter to the police, police came and produced the victim before the medical officer for examination. The informant, victim and the brother of the victim Sanidul Islam, are being family members, are the interested persons. But all the three witnesses, though claimed themselves as surprisingly present at a time of occurrence, have contradicted each other. So, without any corroboration evidence their evidences can not relied upon. There are three other independent witnesses who are examined as PW4,5 & 6. All are neighbours of the informant. The informant, victim and her brother have admitted that if any occurrence such as shouting takes place in their house, then obviously those persons much hear it. But all the three witnesses have categorically stated that on the night of occurrence they did not hear about any occurrence or sound in the house of the informant and they only came to know above the filing of the case after receiving the summons as witnesses from the court. Furthermore, according to the informant, the accused person fell down the victim and fled away, the victim also corroborated the same. She has further stated that she sustained injury on her neck by the dagger of the accused, blood was oozing from that injury. According to Sanidul, the accused person assaulted the victim on her mouth. But the medical officer, who examined the victim on 03.12.2016, did not find any injury either on the mouth or in the neck of the victim. She only found abrasion and contusion on the arm of the victim, but she did not mention the age of those injuries. She did not find any evidence of recent sexual intercourse on the person of the victim. Therefore, it could not be ascertained how and when those bodily injuries occurred on the person of the victim. Furthermore, according to Sanidul Islam, the FIR was written by police, Police asked his father to put his signature and accordingly his father i.e. the informant put his signature. But neither he nor his father read out the same. But the Ext.1 i.e. the FIR does not support the same. The FIR reveals that the same was written by advocate Rubi Das.

17. From the above discussions of the evidences of the prosecution witnesses, it is found that regarding the allegations of commission of rape, the medical evidence is negative. The prosecution has failed to produce trustworthy and reliable evidence regarding the commission of sexual intercourse by the accused person with the victim. None of the independent witnesses have supported the prosecution case. Without corroboration, only on the basis of testimony of the victim an accused can not be punished for an offence of commission of rape if her testimony are not found trustworthy. But in this case in hand, neither the victim nor her father and brother are found trustworthy. Their evidences can not be relied upon as the same are not corroborated by any other witnesses. Hence, on the basis of such unreliable evidence, no one can be

held guilty for any offence.

- 18. In view of the above discussions of the evidences of the prosecution witnesses, it is found that prosecution has failed to establish beyond all reasonable doubt that the accused person entered into the house of the informant illegally and committed rape on the victim.
- 19. Under the above facts and circumstances, it is clear that prosecution has miserably failed to bring home the guilt of the accused either under section 448 I.P.C or under section 4 of POCSO Act, 2012. Therefore the accused person is acquitted and set at liberty.
- 20. 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.
- 21. 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.
- 22. Given under my hand and seal of this Court on this 26th day of June, 2018.

Dictated & corrected by me.

Sd/-

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

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

A P P E N D I X

(A) **Prosecution witnesses**:

P.W.1 = Ibrahim Ali, P.W.2 = Elima Ahmed, the victim, P.W.3 = Dr. Mamata Devi, P.W.4 = Akkash Ali. P.W.5 = Monowar Hussain, = Mahammad Ali, P.W.6 = Sanidul Islam, P.W.7 = Sri Babu Singh, S.I. of Police. P.W.8

(B) Prosecution Exhibits:

Ext.1 = FIR,

Ext.1(1),1(2)1(3)&1(4) = Signature of Ibrahim Ali,

Ext.2 = Statement u/s 164 CrPC, Ex.2(1),Ext.2(2) = Signature of Elima Ahmed,

Ext.3 = Medical Report,

Ext.3(1) = Signature of Dr. Mamata Devi,

Ext.4 = Charge sheet,

Ex.4(1) = Signature of S.I. Babu Singh,

Ext.5 = Sketch map,

Ext.5(1) = Signature of S.I. Babu Singh,

- (C) **Defence witnesses**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) Court witnesses:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

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