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. 16 OF 2019 (G.R.No.- 2804/2017) Baghbar P.S. Case No. 273 of 2017

State of Assam

-versus-

Raiful Islam
S/O Late Dilchan Ali,
Resident of Mourigaon,
P.S. Baghbar,
District - Barneta, Assa

District - Barpeta, Assam <u>Accused.</u>

APPEARANCES:

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

For the Accused : Mr. Faizur Rahman, learned

Advocate, Barpeta.

CHARGE FRAMED UNDER SECTION 363 IPC READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 09.05.2019
Date of Prosecution evidence : 10.07.2019
Date of Argument & Judgment : 10.07.2019

J U D G M E N T

1). The prosecution case, in brief, is that Baghbar P.S. Case No 273 of 2017 under section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged

by Mojammel Ali, father of the victim (hereinafter referred to as 'X').

In the aforesaid **F.I.R**. dated 09.10.2017 the informant Mojammel Ali (P.W.2), who is the father of the victim girl, alleged interalia that that on 19.09.2017 at about 12:00 Noon, the accused person namely Raiful Islam along with others committed penetrative sexual assault on his minor victim daughter (X), aged about 10 years when she went, near by filed to bring one goat. It was also alleged that accused forcefully took the victim to the house of Tara Miah and indulged in sexual activity with the victim. On hearing hue and cry of victim, one Humaun Ali and Shahidul Islam came and rescued the victim, when she was being abused by the accused. After that, victim girl told about the whole incident before her parents.

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 273/2017 under Section 120(B)/376 of 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 above named accused Raiful Islam under Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.01, dated 17.01.2018.

- **2).** My learned Predecessor-in-office received the case record 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,

charge was framed by the undersigned against the accused under Section 363 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, **03** [Three] number of witnesses including the victim, informant etc were examined on behalf of the prosecution to prove the charge under Section **363** of 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. Faizur Rahman, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 363 of 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 19.09.2017 at about 12:00 PM within the jurisdiction of Baghbar Police Station, District Barpeta, kidnapped Jesmina Khatun, aged about 10 years, who is minor daughter of the informant Mojammel Ali, from nearby fiel of her home and thereby committed an offence punishable under Section 363 of IPC?
- (ii) Whether on the aforesaid date or thereafter at the house of Taramiya, committed penetrative sexual assault upon the minor victim, daughter 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 in her evidence that informant is her father. On the relevant date of the incident, one goat of the accused destroyed her paddy in the field, for which, she (P.W.1) went to bring back the goat of the accused and accused assaulted her. Then, she (P.W.1) reported the matter to her family members. After that, her father lodged the case. She further stated that accused did not touch her body and did not kidnap her. Police sent her for my medical examination. Police got her statement recorded under Section 164 CrPC by learned Magistrate.

P.W.1 exhibited her statement as Ext.1 and Ext.1(1) & 1(2) are her signatures.

During her cross-examination, she deposed that accused did not do any bad works with her and she gave her statement before the learned Magistrate as told by Police.

8). Mojammel Ali [P.W.2] deposed in his evidence that he lodged this case. He knew the accused, who is his nephew in relation. He further stated that incident took place before 2 years. His victim daughter went to field with his goats. His goats destroyed the paddy of accused. Then accused assaulted his victim daughter for which, he lodged the case. His victim daughter did not tell him that accused had touched her body. Accused did not kidnap his victim daughter.

His cross-examination was declined by the defence side.

9). Humaun Ali [P.W.3] who knew the informant, victim and accused of this case. He stated that incident took place more than $1\frac{1}{2}$

years go. The goat of the victim damaged the paddy of the accused person for which there was an altercation and assault by the accused. P.W.3 stated that he was standing near the place of incident and broke up their quarrel. Then, father of victim lodged the case.

In his cross-examination, he deposed that there was no other incident took place except what he had told in his evidence before the court.

10). 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 Raiful Islam assaulted her. But, she deposed clearly in her evidence that **accused did not touch her body and did not kidnap her.** Her father lodged the case.

Thus, it is clear from the version of the victim, that accused neither kidnapped nor raped her. This case was lodged with a false story by her father against the accused person.

Moreover, the informant namely Mojammel Ali (P.W.2) also deposed in his evidence that accused is his nephew in relation. P.W.2 further stated in his evidence that accused assaulted his victim daughter when she went to bring back her goat from the field of the accused. For which, he lodged the case. **He (P.W.2) further admitted that accused did not kidnap his victim daughter.**

P.W.3 did not support the content of the FIR of this case and simply stated that the goat of the victim damaged the paddy of the accused person for which there was an altercation and assault by the accused. He was standing near the place of incident and broke up their quarrel. Then, father of victim lodged the case.

11). 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 363 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 Raiful Islam beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Raiful Islam is acquitted on benefit of doubt under Section 363 of IPC read with Section 4 of the Protection of Children from Sexual Offences Act, 2012.

- 12). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Raiful Islam to warrant his conviction under Section 363 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.
- 13). In the result, accused **Raiful Islam** is **acquitted** of the charge under Section 363 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.
- **14).** Given under my hand and seal of this Court on this **10**th **day of July, 2019**.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

A P P E N D I X

(A) **Prosecution witnesses**:

P.W.1 = Jesmina Khatun, the victim, P.W.2 = Mojammel Ali, the informant,

P.W.3 = Humaun Ali.

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim,

Ext.1(1) & 1(2) = Signatures of Jesmina Khatun, the victim,

(C) **Defence witnesses**:Nil.

(D) **Defence Exhibits**: Nil.

(E) **Court witnesses**:Nil

(F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.