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. 55 OF 2019 (G.R.No.- 3543/2015) Baghbar P.S. Case No. 191 of 2015

State of Assam

-versus-

Gazibor Rahman S/O Joshan Ali, Resident of Mandia Gaon, P.S. Baghbar, District – Barpeta

..... Accused.

APPEARANCES:

For the State : Mr. Malek Ali Ahmed,

learned Addl. Public Prosecutor,

Barpeta.

For the Accused : Mr. Shafigul Islam, learned

Counsel, Barpeta.

CHARGE FRAMED UNDER SECTION 18 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 14.06.2019

Date of Prosecution evidence : 22.07.2019; 13.09.2019

& 03.10.2019

Date of Statement of accused : 03.10.2019
Date of Argument & Judgment : 03.10.2019

J U D G M E N T

1). The prosecution case, in brief, is that Baghbar P.S. Case No 191 of 2015 under Section 376 (2) (I) IPC read with Sections 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Sahida Parbin elder sister of the victim.

In the aforesaid **F.I.R**. dated 26.05.2015, the informant Shahida Parbin (P.W.5), who is the elder sister of the victim girl, alleged interalia, that the accused person committed rape on her minor sister namely Amina Begum, aged about 13 years, when she went to paddy field to cut grass for their cattle. It is alleged in the FIR that accused tried to commit sexual-intercourse with the victim girl, on several times, in their house, in her absence.

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 191/2015 under Section 18 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 **Gazibor Rahman** under Section 18 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.23/19, dated 28.02.2019.

- **2).** On production of accused, copy was furnished to accused by the undersigned.
- 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 18 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, **05** [five] number of witnesses including the victim, informant and M.O. were examined on behalf of the prosecution to prove the charge under Section 18 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above

named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He also disclosed that informant has lodged false case against him (accused).

- 5). I have heard **Mr. Malek Ali Ahmed**, learned Addl. Public Prosecutor of Barpeta, for the State as well as **Mr. Shafiqul Islam**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Section 18 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 10.05.2015 at about 1:00 PM at Mourigaon, within the jurisdiction of Baghbar P.S., District Barpeta, attempted to commit penetrative sexual assault upon Miss Amina Begum, aged 13 years who is the younger sister of informant Shahida Parbin, and in such attempt, caught the victim, after following her to her paddy field and thereby committed an offence punishable under Section 18 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.
- **Dr. Amina Boro (P.W.1)** deposed in her evidence that on **11.01.2019**, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, in connection with Baghbar P.S. case No.191/2015, victim **Amina Khatun**, aged about 15 years, D/O Muksed Ali of Mourigaon under Baghbar P.S., District Barpeta on being identified by WHG, was produced before her for her medical examination, but the victim refused to

undergo her medical examination at her own will.

She exhibited her medical report as Ext.1 and Ext.(1) & 1(2) are her signatures.

Her cross-examination was declined by the defence side.

8). Jeherul Islam [P.W.2] has deposed that he knows the informant and victim as well as accused of this case. Incident took place about 2-3 years ago. He was called by police of Mandia OP. They examined the victim of this case in his presence. The victim told that accused pulled her as well as her cloths.

He was declared hostile on the prayer of Ld. Public Prosecutor.

He denied that he stated before police that before 25 days, wife and daughter of Mokshed Ali came to his house and informed that accused raped her younger daughter when she went to cut grass in the field. He raped her forcibly in the middle of the field. They told him to do justice to them. Then, he told them to lodge a case in the police station.

He denied that he had deposed falsely before the Court to defend the accused.

In his cross-examination, he deposed that Police examined him before one and half year.

He denied that he did not state before police that he was called by police of Mandia OP. They examined the victim of this case in his presence. The victim told that accused pulled her as well as her cloths; that police examined him on 06-06-2015.

He stated that at the time of incident, he was not gaonburrah. The house of victim is after 15-20 houses from his house.

He denied that he had deposed falsely before the Court as victim is related to him and she lived near his house.

9). Safiran Nessa [P.W.3] has stated that informant and victim are her daughter and she knows the accused person of this case. Incident took place about 2-3 years ago. She was not at her house. After coming to her home, she heard that accused threatened her daughter Amina when she went to cut grass.

Victim did not tell her anything regarding the incident. She had given marriage of her victim daughter.

Her cross-examination was declined by the defence side.

Anima Khatun [PW4] has deposed that she knows the accused person and Informant is her elder sister. Incident of this case took place in the year 2015. On the relevant date, at about 11/12 noon, she went out to paddy field to cut grass. Accused came towards her. When she saw him, she started crying, out of fear. Then, accused went away. Accused did not do any harm to her. There were many people present at the time of incident and she also returned home. She did not tell the incident to anybody. She did not tell the incident to her elder sister. Accused did not touch her, at the time of incident.

Police examined her and sent her to doctor for her medical examination and also brought her before the learned Magistrate for recording her statement under Section 164 CrPC.

She exhibited her statement as Ext.2 and Ext.2(1) is her signature recorded under Section 164 CrPC.

She further stated that accused did not belong to their village.

In her cross-examination, she stated that Police brought her to the court for recording her statement in the month of July, 2019. She cried out of fear after seeing the accused coming forward to her at the time of incident. Accused did not do any bad work or gave any bad indication to her.

Shahida Parbin (PW5) has deposed that victim is her younger sister and she knows the accused person. She stated that accused frightened her victim sister on the relevant day, at the time of incident. This was stated by her victim sister to her. So, she lodged this case through petition writer. She did not know the contents of the FIR. Accused did not do any harm to her victim sister. She put her LTI in the FIR. She further stated that Police did not examine her.

In her cross-examination, she has deposed that she told the petition writer to write the FIR for her. Accused did not do any bad work or gave any bad indication to her victim sister at the time of incident. she do not know the contents of the ejahar.

12). From a close perusal of the statement of the victim (PW4), who is star witness of this instant case, it is seen that she has deposed that On the relevant date, she went out to paddy field to cut grass and suddenly accused came towards her. Then, she started crying out of fear. After that, accused went away. She clearly stated in her evidence that accused did not do any harm to her. Accused did not do any bad work or gave any bad indication to her.

The informant (PW.5), who is the elder sister of the victim has filed this case clearly stated in her evidence that accused did not do any bad work or gave any bad indication to her victim sister at the time of incident and she also did not know the content of the FIR.

Moreover, mother of the victim girl (P.W.3) deposed in her evidence that victim did not tell her anything regarding the incident. She heard that accused threatened her daughter Amina when she went to cut grass.

Hence, there is no material on record to hold that the accused attempted to commit rape on the victim by catching her to constitute offence under Section 18 of Protection of Children from Sexual Offences Act, 2012.

- 13). In the result, 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 18 of the Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the accused Gajibur Rahman beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Gajibor Rahman is acquitted on benefit of doubt under Section 18 of the Protection of Children from Sexual Offences Act, 2012, which I accordingly do.
- **14).** In the result, accused **Gajibor Rahman** is acquitted of the charge under Section 18 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stands discharged.

15). Given under my hand and seal of this Court on this **03**rd **day of October, 2019**.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta.

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Dr. Anima Boro, The Medical Officer,

P.W.2 = Jeherul Islam, P.W.3 = Safiran Nessa,

P.W.4 = Anima Khatun, the victim, P.W.5 = Shahida Parbin, the informant

(B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

Ext.1(1) & 1(2) = Signature of M.O.,

Ext.2 = Statement of the victim recorded

under Section 164 CrPC,

Ext.2 (1) = Signature of Anima Khatun.

- (C) **<u>Defence witnesses</u>**:Nil.
- (D) **Defence Exhibits**: Nil.
- (E) **Court witnesses**:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.