IN THE COURT OF SPECIAL JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 20 OF 2017

Under Section 354/376/511 I.P.C R/W Section 8 of P.O.C.S.O. Act, 2012

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

State of Assam.
-versusKarim Sheikh Accused.

APPEARANCE

For the Prosecution : Sri Lalit Ch. Nath, learned P.P.

For the accused : Faizur Rahman,

Evidence recorded on : **07.07.2017**, 08.05.2018, 14.08.2018,

Argument heard on : 14.08.2018,

Judgment delivered on : 14.08.2018.

<u>JUDGMENT</u>

1. The prosecution case, in a nut shell, is that on 02.07.2016 at about 5:00 PM the victim, aged about 15 years, was returning home from his parental uncle Shahjamal's house by the boat of the accused. While she got down from the boat, the accused forcibly dragged her to the midst of jute cultivation. But as she started shouting, the neighbouring people

arrived at the place of occurrence and then the accused person fled away. Accordingly, one Bodiuzzamal, the father of the victim, lodged the FIR on 12.07.2016.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation the I/O submitted the charge sheet against accused Karim Sheikh.
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charge was framed against accused Ajmal Haque under section 354/376/511 I.P.C R/W Section 8 of P.O.C.S.O. Act,2012. 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 only 3(three) witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Points for determination**:-

Whether the accused person, on 02.07.2016 at about 5:00 PM, at Khudnabari Pathar, within the jurisdiction of Sorbhog P.S. District Barpeta......

- i) assaulted or used criminal force to victim Buli Khatun, aged about 15 years, daughter of Badiuzzamal, intending to outrage her modesty?
- ii) attempted to committed rape on Buli Khatun?
- iii) committed sexual assault on Buli Khatun, aged about 15 years, daughter Badiuzzamal?

Discussion, decision and reasons thereof

6. The allegations against the accused is that on 02.07.2016 at about 5:00 PM he dragged the victim, who was aged about 15 years, to the midst of the jute cultivation, but failed to do any illicit act with her as the victim started shouting and neighbouring people arrived at the place of occurrence. The FIR was lodged on 12.07.2016 and the victim was examined by the medical officer PW1 on 14.07.2016. As per the opinion of the medical officer, at the time of occurrence the age of the victim was above 18 years and below 20 years. The said victim **Buli Khatun as PW2** has deposed in her examination-in-chief that on the date of occurrence, she had gone alongwith the accused to the jute cultivation. Inside the jute cultivation they hugged each other. Then the village people started shouting. She reported the matter to her parents. Then her father lodged the FIR. In the meantime, she got married with one Sayed Ali.

In cross examination she has stated that at the time of occurrence she was aged about 18 years. The accused person did not do any illicit act with her. She crossed the river in the boat of the accused. Then the village people created hulla. But in fact, the accused person did not do any act with her. She made the statement before the police as stated in the court. But she made statement before the magistrate as tutored by the police.

7. The father of the victim **Bodiuzzamal**, who is the informant of this case, **as PW3** has deposed that at the time of occurrence the victim was aged about 16 years. She is an illiterate girl. On the date of occurrence she returned home from her paternal uncle's house in the boat of the accused. Then, at the instigation of the villagers, he lodged the FIR. In the meantime, the victim got married with another boy.

In cross examination he has stated that the accused is his nephew. Due to some misunderstanding he lodged the FIR.

Except these two prosecution witnesses, prosecution has not examined any other witness in support of the prosecution case.

- 8. According to the FIR, at the time of occurrence the age of the victim was 15 years and according to the informant the age of the victim was 16 years, but the victim in her cross examination has admitted that at the time of occurrence she was aged about 18 years and according to the medical evidence, at the time of occurrence the age of the victim was above 18 years and below 20 years. Except these evidences no other documentary evidence is furnished by the prosecution to ascertain the age of the victim. Hence, on the basis of the version of the victim and the medical evidence, it can be held that at the time of the occurrence the age of the victim was 18 years. Regarding the other allegations, the victim has clearly stated that the accused did not do any illicit act with her. The victim and her father have admitted that at the instigation of the villagers the case was lodged against the accused person due to some misunderstanding. No such occurrence took place as narrated in the FIR and the victim had to make statement before the magistrate as tutored by police.
- 9. Under the above facts and circumstances, it is clear that the accused person cannot be held guilty for any offence either under section 354/376/511 I.P.C R/W Section 8 of P.O.C.S.O. Act,2012. Therefore the accused person is acquitted and set at liberty.
- 10. 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.
- 11. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta U/S 365 Cr.P.C.

12. Given under my hand and seal of this Court on this 14th day of August, 2018.

Dictated & corrected by me.

Sd/-

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

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

APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Dr. Bharati Das, the M.O.,

P.W.2 = Buli Khatun, the victim,

P.W.3 = Bodiuzzamal, the informant.

(B) **Prosecution Exhibits**:

Ext.1 = Medical report.

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

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

Sd/-

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