IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 54 OF 2017

Under Section 376 I.P.C 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. -versus-Kalam Khan Accused.

APPEARANCE

For the Prosecution : Mr. Lolit Ch. Nath, learned P.P. For the accused : Ajit Kr. Sarkar, learned Advocate.

 $\begin{array}{lll} \text{Evidence recorded on} & : 02.05.2018,09.07.2018, \\ \text{Argument heard on} & : 09.07.2018, \end{array}$

Judgment delivered on : 09.07.2018.

J U D G M E N T

1. The prosecution case, as narrated in the FIR, is that for last $1\frac{1}{2}$ years the victim, who was aged about 17 years, was studying by staying in the house of Somej Khan. During that period accused Kalam Khan, assuring to marry her, committed physical relation with her for about one year. As result, she was carrying pregnancy of 6 months. While her mother Yaton Nessa came to know about the incident, she called a

village bichar. Though accused Kalam Khan was willing to marry the victim, but the other accused persons named in the FIR did not allow him to marry the victim. Accordingly, the mother of the victim lodged an FIR on 02.08.2017.

- 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 Kalam Khan under section 376 IPC R/W section 4 of POCSO Act, 2012.
- 3. The accused person appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against accused Kalam Khan under section 376 I.P.C read with 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 4(four) 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 since one year back from the date of filing FIR on 02-08-2017 at Bilortari, within the jurisdiction of Kalgachia P.S., District Barpeta, committed rape on Miss Rashida Khatun, aged about 17 years, daughter of informant by committing penetrative sexual assault on her?

Discussion, decision and reasons thereof

6. The allegation as narrated in the FIR is that since one year back from the date of filing FIR on 02-08-2017, the accused person committed rape on the victim. The said victim was examined by the M.O. On 03.08.2017. The M.O., who is examined as PW1, has opined that----

- "(1) Her age is above 16(Sixteen) and below 18(Eighteen) years. (2) Evidence of pregnancy is detected on her person and duration of pregnancy is 27 weeks 1 days as per ultrasonography. (3) Evidence of recent sexual intercourse is not detected on her person. (4) No injury on violence mark is detected. (5) Foreign particles like hair blood, semen etc. are not detected on her person."
- 7. The informant **Yaton Nessa as PW2** has deposed that the victim and the accused loved each other and the victim became pregnant from the accused person. Initially the accused person did not accept the same. Then she lodged the FIR. Thereafter, the accused and victim amicably settled the matter and got married. A male child was born to her. At the time of occurrence the victim was aged about 19 years.

In her cross examination, she has stated that the accused and the victim are living peacefully and she has no objection if the accused is acquitted. She does not know what is written in the FIR as the same was not read out to her. She is an illiterate person. She lodged the FIR at the instigation of the villagers and thus she has committed the mistake.

8. The victim as **PW3** has corroborated the statement of PW2 by saying that initially the accused person refused to marry her and then the village people asked her to file the case against the accused person and accordingly her mother lodged the FIR. Then the accused married her and a male child is born to her.

In cross examination, she has stated that they made cohabitation at her own will and consent. As a result of their cohabitation she became pregnant. She made statement before the Magistrate as tutored by the villagers. Now, they are living as husband and wife and hence the accused may be acquitted.

9. One **Jakir Hussain** as **PW4** has deposed that as there was some illicit relation in between the accused and the victim, the mother of the victim lodged the FIR. But thereafter, the accused married the victim

and now they are living as husband and wife. Out of their wed-lock a male child is born.

In cross examination, he has stated that the victim is the daughter of his brother-in-law. Prior to their marriage, the accused and the victim loved each other. He visited the house of the accused and now the victim and the accused are living peacefully.

- 10. From the above discussions of the evidences of the prosecution witnesses, it is found that though according to the FIR at the time of occurrence, the victim was 17 years old but the informant i.e. the mother of the victim at her deposition has stated the age of the victim as 19 years at the time of occurrence. The victim at her depositions after one year of the occurrence has mentioned her age as 21 years. No documentary evidence is produced to show the age of the victim. According to the medical evidence the age of the victim was above 16 years and below 18 years. That being the position it can not be said that the victim was a minor at the time of occurrence. Furthermore the allegation, which is narrated in the FIR, is not supported either by the informant or by the victim. Both of them have clearly stated that the victim and accused loved each other and the victim became pregnant from the accused and as the accused initially refused to marry the victim, the informant lodged the FIR. PW2, PW3 & PW4 have categorically stated that both the victim and the accused have been now living peacefully as husband and wife.
- 11. Under the above facts and circumstances, it is clear that the prosecution has failed to bring home the guilt of the accused person for any offence either under section 376 I.P.C or under section 4 of POCSO Act, 2012. 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.

14. Given under my hand and seal of this Court on this 9th day of July, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Medical Officer Dr. Mamata Devi,

P.W.2 = Yaton Nessa, the informant,

P.W.3 = Rashida Khatun, the victim,

P.W.4 = Jakir Hussain.

(B) **Prosecution Exhibits**:

Ext.1 = Medical Report,

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

Ext.1(2) = Signature of Dr. Partha Pratim Das, Ext.2 = Statement of the victim U/S 164 CrPC,

Ext.2(1) & 2(2) = Signature of the victim.

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

Sd/-

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