IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. Act CASE NO. 14 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.
-versusMd. Manirul Ali Accused.

APPEARANCE

For the Prosecution : Mr. A. Kayem, learned P.P.

For the accused : Mr. G.B.Das, learned Advocate.

Evidence recorded on : 04-07-2017,29-07-2017 & 20-12-2017

Argument heard on : 20-12-2017

Judgment delivered on : 20-12-2017.

<u>J U D G M E N T</u>

1. The prosecution case in brief, is that on 26-01-2015 at about 9.00 P.M. while the victim, who was a student of Class VII, was returning home from the house of Taibar Khan, accused Manir Ali restrained her on the road and gagging her mouth with a gamocha forcibly took her to tomato cultivation and committed rape on her. The accused threatened her to kill if she disclose the matter. Out of fear the victim did not disclose the matter to her mother. But after one month when the menstruation of the victim was stopped then on being asked she disclosed the fact to her mother. Hearing about the incident from the victim her mother reported the matter to the leading persons of her village and the leading persons called a village 'mel'. In that 'mel' the accused person admitted the

commission of rape on the victim and also assured that he would marry the victim. But later on he cheated the victim by denying to marry her. Thereafter the leading person of the village called the 'mel' for several times. But the guardian of the accused did not appear in that 'mel'. Due to those 'mels' she could not lodge the FIR in time. On 10-03-2015 informant Sahera Begum i.e. the mother of the victim lodged this FIR.

- 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 Manirul Ali under section 376/493/506 I.P.C. read with 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 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 three witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Point for determination**:-

Whether the accused person on 26-01-2015 at about 9.00 P.M. at Kajiamati gaon, within the jurisdiction of Gobardhana Police Station District Baksa, committed rape on Mafida Khatun,aged about 14 years, daughter of Sahera Begum and committed penetrative sexual assault on her?

Decision and reasons thereof:

6. According to the FIR on 26-01-2015 at about 9.00 P.M., the accused person committed rape on the victim and as a result she became pregnant. In the village 'mel' initially the accused person admitted the allegations which was alleged by the victim and assured that he would marry her. But later on he refused to marry her. According to the FIR at the time of occurrence the victim was a minor and a student of class VII.

The FIR was lodged on 10-03-2015 and the victim was examined on 15-10-2015. As per history recorded by the medical officer the victim had love affairs with the accused since last 3 years and she was sexually assaulted by the accused. She was aged about 18 years. According to the opinion of the medical officer her age is above 14(fourteen) years and below 16 (sixteen) years. The victim was pregnant for 11 weeks 3 days.

- 7. Contradicting the medical evidence the victim who is examined on 04-07-2017 has mentioned her age 21 as years. The date of occurrence is 26-01-2015 and on 04-07-2017 the victim is 21 years. So admittedly on the date of occurrence the age of the victim was above 18 years. The victim in her deposition has stated that she had love affairs with the accused person and so she had gone along with the accused at her own will. She got married with the accused and out of their wedlock a child was born. They are leaving peacefully. As she had gone along with the accused without the informing her mother, her mother filed the case.
- 8. Corroborating the statement of the victim Sahera Begum who is the informant of this case as PW1 has deposed that the accused and the victim loved each other. As she did not know the fact she lodged the FIR. The accused and the victim got married and they are now living as husband and wife. She will not proceed the case. She has prayed to release the accused otherwise the victim will be in danger.
- 9. From the above discussions of the evidences of the prosecution witnesses, it is revealed that on the date of occurrence the age of the victim was above 18 years. The victim who is the vital witness has clearly stated that she had gone along with the accused as she loved him and they already got married. Her mother the informant has also corroborated the same by saying that the accused and the victim love each other and they have already performed their marriage. None of them has made a single whisper that the accused person committed rape on the victim.
- 10. Under such circumstances the prosecution has failed to prove the guilt of the accused 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.

- 11. 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.
- 12. 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.

Given under my hand and seal of this Court on this 20th day of December, 2017.

Dictated & corrected by me.

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta

Sd/-

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

APPENDIX

(A)Prosecution Exhibits:

Ext.1 : Statement under section 164 Cr.P.C.

Ext.1(1) : Signature of Mafida Khatun.

Ext.2 : Medical Report

Ext.2(1) :Sig. of Dr. A Boro.

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Sahera Begum. P.W.2 : Mafida Khatun.

P.W.3 : Dr. Anima Boro, Lady M.O., FAA Medical College & Hospital,

Barpeta

- (F)Defence witnesses:Nil.
- (G)Court witnesses:Nil.

Sd/-

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