# IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

### Special P.O.C.S.O. Act CASE NO. 48 OF 2017

Under Section 448 IPC & 8 of P.O.C.S.O. Act, 2012

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

State of Assam.
-versusAsaruddin ..... Accused.

### **APPEARANCE**

For the Prosecution : Mr. Lalit Nath, learned P.P.

For the accused : Mr. Abu Bakkar Siddique, learned Advocate.

Evidence recorded on : 13.07.2018, Argument heard on : 13.07.2018, Judgment delivered on : 13.07.2018.

# J U D G M E N T

1. The prosecution case, in brief, is that on 21.12.2015 at about 3:00 PM while the informant was fishing in their pond, his minor daughter was alone at home and she was working in her kitchen. Then suddenly the accused person entered into their kitchen and tried to commit rape on her. While the victim raised alarm, the informant and his neighbours Safura Khatun and Nurjahan rushed to the place of occurrence and then the accused person fled away. Accordingly, the father of the victim Manuruddin lodged the FIR on 22.12.2015.

- 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 Asaruddin under section 448/506 IPC read with section 8 of POCSO Act.
- 3. The accused person appeared before this court, copies were furnished to him and after hearing both the parties charges were framed against accused Asaruddin under section 448 IPC and 8 of POCSO Act. Charges were 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. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

#### 5. **Points for determination**:-

Whether on 21.12.2015 at about 3:00 P.M. at Sonpura, within the jurisdiction of Kalgachia P.S., District Barpeta, the accused person---

- I) committed house trespass into the house of Mamani Khatun, daughter of the informant Manuruddin, used as a human dwelling, in order to commit an offence?
- ii) had been committed sexual assault on Mamani Khatun, who is daughter of the informant Manuruddin?

### Discussion, decision and reasons thereof

- 6. According to the FIR, the accused person tried to commit rape on the victim on 21.12.2015 at about 3:00 PM. The FIR was lodged on 22.12.2015, but the victim was produced before the M.O. for examination on 29.02.2016. However, the victim refused for her physical examination.
- 7. The informant **Manuruddin as PW1** has deposed that the occurrence took place about  $2/2\frac{1}{2}$  years ago, but prior to the occurrence

dispute was going on in between him and the accused. One day at about 4: 00 PM while he was fishing in their pond, the victim was alone at home. At that time the accused person came to their house. Seeing the accused the victim started shouting and then he rushed to his house. After 2/3 days of the occurrence he lodged the FIR at the instigation of their Dewani. Ext.1 is the FIR, but no such occurrence took place as narrated in the FIR.

- 8. One independent witness **Safura Khatun as PW2** has deposed that both the accused and informant are her neighbours. She heard that a quarrel took place in between the accused and the informant. Except that no such occurrence took place in between them.
- 9. The victim **as PW3** has deposed that a land dispute was going on between her father and the accused. About 1/2 years ago one day at afternoon, her father was fishing in their pond. She was alone at home. At that time the accused came to their house in search of her father. Then out of fear she started shouting. Her father rushed to the place of occurrence. Her father rebuked the accused. The accused fled away. Her father lodged the case. Police produced her before the medical officer, but she refused to undergo medical examination. Her statement was recorded by the magistrate.

In cross examination, she has stated that she made statement before the magistrate as tutored by her father and police. In fact, no such occurrence took place and she has no objection if the accused is acquitted.

10. From the above discussions of the evidences of the prosecution witnesses, it is found that the victim is the vital witness in this case. Except her no other witness saw the occurrence. But the victim herself has not supported the case of the FIR. Rather, she has stated that the accused came to their house in search of her father and she shouted out of fear. She made the statement before the Magistrate as tutored by her father and the police. PW1 i.e. the informant/father of the victim and

PW2 who is an independent witness, have also supported the version of PW3 by saying that no such occurrence took place as narrated in the FIR. Both the them have categorically stated that no such occurrence took place as narrated in the FIR.

- 11. Under the above facts and circumstances, it is clear that none of the prosecution witnesses had made a single whisper regarding the commission of rape by the accused person on the victim. Under such circumstances, the accused person cannot be held guilty either under section 448 IPC or under section 8 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 13th day of July, 2018.

Dictated & corrected by me.

Sd/- Sd/-

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

## APPENDIX

(A) **Prosecution witnesses**:

P.W.1 = Manuruddin, the informant,

P.W.2 = Safura Khatun,

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

(B) **Prosecution Exhibits**:

Ext.1 = FIR,

Ext.1(1),1(2),&1(3) = Signature of the informant,

Ext.2 = Statement of victim u/s 164 CrPC.

Ext.2(1) & 2(2) = Signatures 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.