IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 94/2018 U/S 366(A) IPC and section 4 of POCSO Act

PRESENT: Sri Chatra Bhukhan Gogoi, AJS,

Special Judge, Barpeta.

Charge framed on: -20.06.2019

State of Assam

- Vs -

Saddam Hussain...... Accused

Date of Recording Evidence on – 05.11.2019

Date of Hearing Argument on – 05.11.2019

Date of Delivering the Judgment on – 05.11.2019

Appearance:

Advocate for the State----- Learned Addl. P.P.

Advocate for the Accused----- Sahjahan Ali, Ld. Advocate.

JUDGMENT

- 1. The brief fact, of the prosecution case, is that on 03.04.2018 one Saijuddin lodged an FIR in Mandia out post alleging inter alia that on 02.04.2018 at about 9 am while his daughter reading in class X returning home from Satrakanara Adarsha Jatiya Vidyalay at about 3 pm accused No 1 at the ill advised of others kidnapped his daughter and kept in Tapajuli area under Kalgachia P.S. and allegedly committed penetrating sexual assault on her. Hence the case.
- 2. Acting on the information I/C Manida out post entered in the general diary being G.D.E No 50 dated 03.04.2018 and forwarded the same to the Baghbor Police station for registering a case. In the meantime he under took investigated the case.
- 3. Receiving the information a case was registered being Baghbor P.S. case No 74/18 u/s 366(A)/34 IPC and section 6 of POCSO Act and during the course of investigation, police recorded the statement of the witnesses, drew sketch map, sent the victim girl for

medical examination, forwarded her to court for recording her statement before Magistrate u/s 164 Cr.P.C.

- 4. On conclusion of investigation, I/O finally laid the charge sheet against accused Saddam Hussain u/s 366(A) IPC and section 4 of POCSO Act with a view to stand trial.
- 5. During the course of time, when accused appeared in court after due compliance of section 207 Cr.P.C. formal charge u/s 366(A) IPC and section 4 of POCSO Act were framed after hearing both sides. The particulars of the offence on being read over and explained, accused pleaded not guilty and claimed trial.
- 6. During the course of trial, the prosecution examined only 2 (two) witnesses namely the informant and the alleged victim. However, considering the nature and quality of evidence adduced by both the star witnesses giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.
- 7. Examination of accused u/s 313 Cr.P.C. is dispense with in view of lake of implicating materials. But on being asked accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

8. Now point for determination ;-

- 1. Whether on 02.04.2018 at about 3 pm the victim girl (X) was induced by accused with intent that she may be or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person including accused person as alleged?
- 2. Whether on the same day and time accused committed penetrative sexual assault on the victim girl as alleged ?

9. Discussion, Decision and reasons for such decision:

I have heard the learned lawyers appearing for both sides and also carefully scanned the entire prosecution evidence on record.

10. Before going to discuss the evidence on record it would be apposite to refer to section 366(A) IPC and section 3 and 4 of POCSO Act, 2012.

"Section 366-A IPC: procreation of minor girl: `-Whoever, by any means whatsoever, induces any minor girl under the age of 18 years to go from any place or to do

any act with intent that such girl may be, or knowing that it is likely that she will be, forced, or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to 10 years, and shall also be liable to fine."

- **"3. Penetrative sexual assault**. A person is said to commit "penetrative sexual assault" if -
- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- "4. **Punishment for penetrative sexual assault**. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less then 7 years but which may extend to imprisonment for life, and shall also be liable to fine."
- 11. Now, on perusal of the offence u/s 3 of POCSO Act it appears that section 3 defined the nature of the act/acts which constitutes the penetrative sexual assault and section 4 of the POCSO Act provides punishment for any of the act/acts done by accused as defined in section 3 (a) to (d) of POCSO Act.
- 12. From the evidence available on record particularly the evidence of the alleged victim girl PW-2 and the informant PW-1 it transpires that contrary to the allegations made in the FIR as well as the statement of the victim before Magistrate u/s 164 Cr.P.C. (Ext. 1). The victim in her deposition in court on oath deposed that she has love affairs with accused and on the day of incident she went to the house of her maternal uncle without the knowledge of her parents for which her father filed this case against accused on suspicion. But after filing the case by her father police recovered her and got her statement recorded before Magistrate u/s 164 Cr.P.C.. Exhibit 1 is the statement and Exhibit 1(1) and 1(2) are her signatures. In her cross examination she stated that accused never forced or induced her to go with him. She in fact, voluntarily went with accused Saddam

and she also stated to be 18 years. The PW-1 her father cum informant also deposed that he filed the case against Saddam only on suspicion.

- 13. The above being the evidence of the star witnesses namely the informant and alleged victim who are father and daughter dou, no implicating evidence/materials whatsoever indicating commission of offences u/s 366(A) IPC or section 4 of POCSO Act are made out because the victim in her deposition in court on oath, no where stated that accused subjected her any sort of sexual assault on her on any occasion or to forced to induced her to go with him. Admittedly the girl stated her age to be 18 years. If this the case the offence u/s 366(A) IPC is clearly not made out. As regards causing of penetrating sexual assault on victim by accused there is no such evidence emerged in the mouth of either victim or her father.
- 14. Therefore, it transpires that the two vital prosecution witnesses have failed to bring home the guilt of accused for sustaining conviction of accused u/s 366(A) IPC and section 4 of POCSO Act.
- 15. This being the position, this court is of the considered view that accused Saddam Hussain deserved to be acquitted from the offences u/s 366(A) IPC and section 4 of POCSO Act on the ground of insufficient evidence and as such he is set at liberty forthwith.
- 16. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.
- 17. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 18. Let the case record be consigned to record room after completing the formalities.
- 19. Given under my hand and seal of this Court on this 05^{th} day of November, 2019, at Barpeta.

Dictated & Corrected my me.

Sd/-

Sd/-

(Sri C. B. Gogoi) Special Judge, Barpeta. (Sri C. B. Gogoi) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = Saijuddin, the informant.

PW-2 = the alleged victim

2. The prosecution has exhibited the following documents:

Ext. 1 = the statement of the victim girl recorded by Magistrate, u/s 164 Cr.P.C.

Ext.1(1) & 1(2) = are the signatures of the victim girl.

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta.