IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

JUDGMENT IN SPECIAL POCSO CASE NO. 103 OF 2019 (G.R. Case 816/2018) Barpeta P.S. Case No 368 of 2018

State of Assam

-versus-

Mannan Ali S/O Pasan Ali, Resident of Garemari, P.S. Barpeta,

District – Barpeta Accused.

APPEARANCES:

For the State : Mr. Mr. Malek Ali Ahmed, learned

Addl. Public Prosecutor., Barpeta.

For the Accused : Mr. N.M.H. Rahman, learned

Counsel, Barpeta.

<u>Charge framed under Section 354(c) IPC read with Sections 4/8 of</u> <u>POCSO Act, 2012</u>

Date of Charge : 26.06.2019,

Date of Prosecution evidence : 09.07.2019; 19.07.2019;

02.08.2019 & 17.09.2019

Date of Statement recorded

under Section 313 CrPC : 24.09.2019
Date of Argument : 27.09.2019
Date of Judgment : 04.10.2019.

JUDGMENT

1). The prosecution case, in brief, is that Barpeta P.S. Case No 368 of

2018 under Sections 500/506 of IPC read with Section 4/8 of POCSO Act, 2012 was registered on the basis of a F.I.R. lodged by the father of the victim.

In the aforesaid **F.I.R.**, the informant Asman Ali, who is the father of the victim, alleged interalia, that on 13.02.2018, one Amela Khatun called her minor daughter aged about 12 years in her house and accused Mannan Ali committed sexual assault upon her and one Jahurul Islam photographed the sexual assault in his mobile. It is alleged in the FIR that accused threatened her to kill if she disclosed the matter to anyone. In the mean time, accused publicized/made viral her adulterous images through WhatsApp application.

On receipt of the aforesaid FIR by the Officer-In-charge, Barpeta Police Station, the same was registered as **Barpeta P.S. Case No 368/2018** under Section 500/506 of IPC read with Section 4/8 of POCSO Act, 2012.

During the course of investigation, the victim was sent for her medical examination by the doctor, her statement under station 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused **Mannan Ali** under **Sections 500/506 of IPC read with Section 4/8 of POCSO Act, 2012** vide charge sheet **No.302/19**, dated **30.04.2019**.

- **2).** On production of accused, copy was furnished to him by the undersigned.
- 3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed against the accused under Section 354(C) IPC read with Section 4/8 of POCSO Act, 2012 by the undersigned. The charges were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.
- **4).** During the course of trial, **07[seven]** number of witnesses including the victim, medical officer, I.O. were examined, on behalf of the

prosecution, to prove the charge under Section 354(C) IPC read with Section 4/8 of POCSO Act, 2012. Then prosecution evidence was closed, as prayed, by learned Public Prosecutor, Barpeta.

On completion of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed that victim and informant has lodged a false case against him.

- 5). I have heard Mr. Malek Ali Ahmed, learned Addl. Public Prosecutor, Barpeta as well as Mr. N.M.H. Rahman, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 354(C) IPC read with Section 4/8 of POCSO Act, 2012.
- **6).** Now the points for determination before this court are as follows --
- (1) Whether the accused on or about 13-02-2018 at morning within the jurisdiction of Barpeta P.S., District Barpeta, captured the image of Jesmina Khatun, minor daughter of informant Asman Ali, engaging herself in a private act in circumstances she had expected of being not observed either by accused or by any other person or accused disseminated such image by whatsApp and thereby committed an offence punishable under Section 354 (C) of the Indian Penal Code?
- (2) Whether the accused on the aforesaid date time and place, committed penetrative sexual assault upon minor victim, daughter of above named informant and thereby committed an offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012?
- (3) Whether the accused on the aforesaid date time and place, committed sexual assault on aforesaid minor victim, of the above named informant and thereby committed an offence punishable under Section 8 of

Protection of Children from Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). To decide the above point and sections of law, let us examine,

analyze and appreciate the evidence of the witnesses alongwith the relevant

documents.

Dr. Mamata Devi [P.W.1], who is the Medical Officer of this

case, deposed in her evidence before the court that on 26.02.2018, she was

working as Medical Officer on duty at Fakhruddin Ali Ahmed Medical College and

Hospital, Barpeta. On that day, she examined one **Jesmina Khatun**, aged 12

years, D/O Asman Ali of village Goroimari under Barpeta PS, in connection with

Barpeta P.S. Case No. 368/2018, on being identified by WHG Hazera Khatun and

found as follows:

History:-

According to the alleged victim, on 13.02.2018 at around 8:00 AM one of her

neighboure Amela call her to her house on the way to school as her daughter is

also in the same school alongwith the victim. When the victim entered her house,

two boys were already there named Manna & Jehrul. Manna had physically

abused her and Jehrul had recorded all in camera. Then they upload the video in

Internet. When her parents came to know from his friend and saw the video, he

registered a case against the two boys.

Physical Examination:-

Identification marks:- 1. A pin head size black mole over right eyebrow on lateral

side.

2. A black mole over 1.2 cm below right eyebrow.

Weight: - 37 Kg.

Chest girth at nipple level: - 72 Cm. Abdominal girth at navel level: - 67 Cm.

General built & appearance: - Average.

Teeth: Total:28

Temporary: Nil. Permanent: 28.

Hairs: Axillary/Body: 0.5-1 cm in length, black in colour.

Breasts:- Hemispherical in shape, firm in consistency. Nipple and areola brown in

colour. On gentle squeezing discharge absent.

Mental Condition: No abnormality detected.

Gait: Normal

Intelligence: Average.

Wearing garments & any suspected stains present: Intact, stain absent.

Bodily Injuries: Not detected at the time of examination.

Genital Examination:-

Pubic hairs: 0.5-1 cm in length, black in colour.

Vulva(Labia majora & minora):- Labia minora covered by majora in lithotomy

position.

Hymen: Intact.

Vagina:- Healthy.

Cervix & Uterus: Cx- Healthy. Uterus not palpable per abdominally.

Fourchette & Perineum: Healthy.

Result of vaginal swab smear examination: Microscopic examination of vaginal

smear reveal no spermatozoa.

Result of X-Investigation: Plate No. 19 Dated 26.02.2018.

Wrist Joint: Epiphyseal union around wrist joint is not completed

Elbow Joint:-Epiphyseal union around elbow joint is not completed.

Shoulder Joint :- Epiphyseal union around shoulder joint is not completed.

Pelvis: Epiphyseal union around iliac crest and ischial tuberosity is not appeared

yet.

Final Opinion:-

- (1)Her age is above 12(twelve) years and below 14(fourteen) years.
- (2) Evidence of recent sexual intercourse is not detected on her person.
- (3)No injury or violence mark is detected.

(4)Foreign particles like hair, blood, semen etc are not detected on her person at the time of examination.

P.W.1 exhibited the **medical report vide Ext.1** wherein **Ext.1(1)** is **her signature**

In her cross-examination, deposed that she gave her opinion regarding medical examination of the victim based upon medical, dental and radiological examination of the victim. She performed the dental examination of the victim. The X-ray plates is not available alongwith the report. The report of the radiologist is not available alongwith the Ext.1, though she have written the same under radiological report.

8). Jesmina Khatun (PW-2), who is the victim of this case deposed that she knew the accused person and her father lodged this case. She stated that before 5/6 months, one day, she was getting ready to go to school in the morning hours. Then, the aunt of accused namely Amela called her to their house saying that her daughter namely Rubida Khatun will also go to school with her. After that, P.W.2 went to her house. When she entered into their house, the aunt of accused locked the house of the accused from outside. Accused and the son of Amela namely Jahurul were only present inside the house. Accused did bad works with her on the floor of the house and she tried to resist him, but he did not listen to her protest. Jahurul took obscene photo of both of them. Then accused threatened her not to disclose the incident to her family members, otherwise, she will be killed. After that, she was allowed to come back to her house and she narrated the incident to her family members and her father lodged the case.

Police examined her. Police sent her to doctor for her medical examination and also sent to learned Magistrate for recording her statement **under Section**164 CrPC. Ext.2 is her statement and and Ext.2(1) & 2(2) are her signatures.

In her cross-examination, she deposed that her house and house of Amela are adjacent and one cannot hear any hue and cry if made in her house or in the house of Amela. She has stated that Amela is a mentally

disturbed lady for last 4/5 years. There are 8 members in the family of Amela and they all stay together in the same house. One boy and two girls are there from the first wife of her father. Three children of her stepsister Nazima also stay with them. She deposed that there were 7 member in her family and they all stay together.

She further has stated that she is a student of Goroimari School and her school starts at 10 AM which is located at a distance of 5/6 kms from her house. Rubida is her classmate and they start to go for school at about 7:30/8:00 AM.

She sustained injury on her body after the incident. Blood did not come out from her private part and no injury was caused there also. She did not show the injury, so sustained, to the doctor, at the time of examination.

Police came after 7 days of the incident. Thereafter, she was sent for her medical examination. Police recorded her statement after 7 days of the incident. Police got photocopy taken by Jahurul. Rubida and family members knew that she was called by Amela. Her family members also knew the occurrence.

She denied that she has deposed falsely.

She raised hulla at the time of incident. She denied that her father has lodged this case after hatching conspiracy with Shahjahan and Raihan; that she has given false evidence today as told by them; that no incident took place as alleged by her.

9). Asman Ali (P.W.3) who is the informant of this case stated that he knew the accused as well as victim of the case and victim is his daughter. Incident took place about 1½ years ago. He was at market. At that time, He saw some obscene photographs in facebook, in the mobile of Sahidul, involving her victim daughter, with accused person. Then, he came back to his house and enquired about the incident to his victim daughter. The incident of this case took place on 2/3 days before he saw the photos.

He stated that on being asked, the victim told that she could not disclose the matter as accused, threatened her that she will be assaulted. She

further stated that mother of Jahidul called her to their house and asked to go inside the house. Then accused caught her. Jahidul captured her obscene photographs with accused. She also told her mother that accused raped her. Later on, he informed her mother about this incident. Then, he lodged this case against the accused.

He exhibited the FIR as Ext.3 and Ext.3(1) is his signature.

In his cross-examination, he stated that he lodged this case after one and two day of the incident. He lodged only one ejahar for this incident. He stated that no case was lodged for kidnapping by Sahjahan. His house is adjacent to the house of Amela. His family members consists of 7/8 persons. He stated that the house of Amela is made of tin and they can hear hulla made from each other house. The contents of FIR was written on the basis of the version of his victim daughter. After lodging this case, girl was examined by the police. He deposed that his victim daughter did not go to her school, at the time of incident. No visible injury mark was noticed in the body of his victim daughter. Sahidul was cutting earth when he saw in his mobile. He had not mentioned the fact in the FIR or in his statement before the police. Mother of Jahidul remains some time mentally disturb. The distance between the house of accused Mannan from his house will be 3-4 Bighas of land.

He denied that his victim daughter did not narrate anything of this incident before him and he had deposed falsely before the Court.

10). Sahjahan Ali (P.W.4) stated that he knew the informant and accused of this case. He also knew the victim of this case. Incident took place less than 2 years ago.

Father of the victim Ashman Ali informed him that accused took his victim daughter to his house and has done bad work with her. He also told him that accused had given obscene photos of his daughter in the Facebook. P.W.4 also saw those photos in the mobile of other people in the market.

In his cross-examination, he stated that his house is near to the house of informant. The distance between her house and accused may be less than half kilometer. He did not have any personal knowledge about the incident.

He denied that he stated before police that father of the victim Ashman Ali informed him that accused took his victim daughter to his house and has done bad work with her. He also told him that accused had given obscene photos of her daughter in the Facebook. He also saw those photos in the mobile of other people in the market.

Police did not examine her.

He denied that he has deposed falsely before the Court.

11). Raham Ali (P.W.5) stated that he knew the informant and accused as well as victim of this case.

He heard that victim had lodged this case. He did not know anything about the incident.

His cross-examination was declined by the defence side.

12). Niva Phukan (P.W.6) stated that on 24-02-2018, he was working at Barpeta PS as W.S.I. of women cell. On that day, OC Barpeta PS received FIR from one Asman Ali. The then O.C. Sri Binay Kalita, inspector of police received and registered the same as Barpeta PS case No. 368/18 under Section 500/506 IPC R/W Section 08/12 of POCSO Act. The O.C Barpeta PS directed her to investigate the case. Ext. 3 is the FIR and Ext. 3(2) is the signature of then O.C. Barpeta PS with endorsement.

She examined the informant and her victim daughter at police Station and sent the victim daughter to F.A.A.M.C.H for her medical examination. She also got her statement recorded under Section 164 Cr.PC before the learned Magistrate.

She also visited the place of occurrence and drew sketch map. She exhibited the sketch map as Ext. 4 and Ext. 4(1) is her signature.

She also recorded the statement of relevant witnesses on the spot. She did not find accused though she tried to arrest him. During investigation, she seized the birth certificate of victim girl vide seizure list Ext. 5 and Ext. 5(1) is his

signature. She recorded the statement of all the witnesses and collected the medical examination report of the victim.

On 11-02-2019, she handed over the case diary to the OC, Barpeta PS on her transfer.

In her cross-examination, she deposed that Incident of this case took place on 13-02-2018 but FIR was lodged on 24-02-2018. She stated that there is no mention of cause of delay in lodging FIR. She found victim and informant on 24-02-2018 and recorded the statement of informant on that day. She did not record the statement of victim on that day as she was sent for her medical examination.

She stated that as per Ext. 5, the date of birth of victim is 15-02-2006 which was issued on 30-12-2012 by the issuing authority.

She did not investigate regarding the authenticity of the birth certificate of the victim by visiting the office of issuing authority. She had not mentioned the village of place of occurrence in Ext. 4. She had not given the details of house of place of incident in Ext. 4 and she had not mentioned the name of person who showed her the place of occurrence in Ext.4.

She further deposed that she could not trace out during investigation as to on whose whatsapp, the alleged naked photo of the victim was uploaded. She did not seize hard copy of those photos.

Monalisha M. Bhakta (P.W.7) stated that on 09.04.2019, she was working at Barpeta P.S. as Women S.I. On that day, O/C of Barpeta PS handed over the case diary of this case for completion of the investigation of the case.

After taking charge of investigation, she arrested the accused on 26.04.2019 and forwarded him to the Hon'ble Court. After that, she found that investigation of the case is completed. Hence, she submitted the Charge-sheet against the accused under Sections 500/506 IPC R/W section 8/12 of Special POCSO Act.

She exhibited the charge sheet as Ext.6 and Ext.6(1) is her

signature.

In her cross-examination, she deposed that three persons were accused as per the FIR including the present accused Mannan Ali. She did not made Amela Khatun & Jaharul Islam as accused in this case.

14). Amela Khatun (D.W.1) has stated that she knows the accused person and informant as well as victim of this case. At the time of incident, accused was working at Andhra Pradesh and he came before 5 months to cast his vote. Police arrested him after his arrival. She stated that no incident took place in her residence as alleged in the FIR of the case. Her house is built with 'Pat Khari' and tin. The house of victim is at a distance of about 2 bighas from her house. Police did not go to their village in connection of this case.

D.W.1 stated that this case lodged falsely by Jesmina. Her son also did not take obscene photo of the accused and victim. She has further stated that they are having 8 nos of family members in her house and they are stay all together.

In her cross-examination, she stated that she did not give evidence in this case earlier. D.W.1 stated that victim has deposed falsely before the Hon'ble Court that accused did bad work with her.

She denied that she has lodged false evidence before the Court to defend the accused.

who is the victim of this case deposed that the aunt of accused namely Amela called her to their house saying that her daughter namely Rubida Khatun will also go to school with her. When, she went to her house then the aunt of accused locked the house from outside. At that time, accused did bad works with her on the floor of the house and she tried to resist him, but he did not listen to her protest. She stated that one Jahurul took obscene photo of both of them at that time. After that, accused threatened her to kill if she disclose the incident to her family members. P.W2 stated in her cross-examination that Amela who is the mother of the accused is a mentally disturbed lady for last 4/5 years and there

are 8 members in the family of Amela and stayed together in the same house. But the said Amela Khatun clearly deposed in her defence witness that accused was working at Andhra Pradesh when the alleged incident occurred. Her deposition did not indicate that she is a mentally disturbed lady as deposed by the victim in her deposition.

Victim (P.W.2) deposed in her cross-examination that she sustained injury on her body after the incident but she did not show the injury, so sustained, to the doctor, at the time of examination.

Moreover, incident of this case took place on 13-02-2018 but FIR was lodged on 24-02-2018. There is no mentioned of cause of delay in lodging the FIR. Further, Investigating Officer namely Niva Phukhan (P.W.6) deposed in her evidence that she could not trace out during investigation as to on whose whatsapp, the alleged naked photo of the victim was uploaded, as alleged. She did not seize hard copy of those photos.

Thus, the entire Prosecution case, seems to be doubtful. The statement of the victim is not found to be believable and trustworthy. There is no corroboration to the prosecution story that accused raped the victim on the alleged date of incident at the house of D.W.1. Moreover, Prosecution side did not examine the vital witness of it namely Amela Khatun, who allegedly called the victim to her house, at relevant time, and pushed her inside her house where accused allegedly raped her.

However, the said witness has been examined by the defence side as D.W.1 and she has clearly deposed that accused was not even present, when the said alleged incident took place. She further deposed that accused was working at Andhra Pradesh at that time.

16). On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused captured the obscene photo of the victim and committed rape on her. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.

- **17).** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has to be proved against the accused beyond reasonable doubt.
- **18).** In the result, accused **Mannan Ali** is **acquitted** of the charge **under section** 365(C) of IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

His bail bond stands discharged.

19). Given under my hand and seal of this Court on this **04**th **day of October, 2019.**

Sd/-

Special Judge, Barpeta

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Dr. Mamata Devi, the M.O, P.W.2 = Jesmina Khatun, the victim,

P.W.3 = Asman Ali, the informant,

P.W.4 = Sahjahan Ali,

P.W.5 = Raham Ali,

P.W.6 = Niva Phukan,

P.W.7 = Monalisha M. Bhakta,

(B) **Prosecution Exhibits:**

Ext.1 = Medical Report,

Ext.2 = Statement of the victim,

Ext.3 = Ejahar,

Ext.4 = Sketch Map,

Ext.5 = Seizure list.

(C) **Defence witnesses**:

D.W.1 = Amela Khatun,

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

Sd/-

Special Judge, Barpeta.