## 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 CASE NO. 58 OF 2017 (G.R. Case 4186 of 2017) Barpeta Road P.S. Case No. 357 of 2017

State of Assam

-versus-

Gopal Saha, S/O Lt. Jugal Ch. Saha, Resident of Krishna Nagar (Hartakitola), P.S. Barpeta Road, District – Barpeta ...... Accused.

#### **APPEARANCES:**

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta. For the Accused : Faizur Rahman, learned Advocate, Barpeta.

# CHARGE FRAMED UNDER SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 27.02.2018,

Date of Prosecution evidence : 16.05.2018, 28.05.2018 & 08.08.2018,

Date of Statement of accused : 07.09.2018, Date of Argument : 15.03.2019, Date of Judgment : 27.03.2019.

# J U D G M E N T

The prosecution case, in brief, is that Barpeta Road P.S. Case No 357 of 2017 under section 6 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Sri Tupi Saha, mother of the victim (hereinafter referred to as 'X').

In the aforesaid F.I.R. dated 30.08.2017 (**Exhibit -1**) the informant Tupi Saha (P.W.1), who is the mother of the victim girl, alleged interalia that on 15.08.2017 at about 6:30 PM the accused person committed penetrative sexual assault on her minor daughter namely Namamita Saha, aged about 7 years. The victim allegedly disclosed the incident to the informant on 22.08.2017. As the people of society cold not settle the matter, so she has filed this case.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Barpeta Road Police Station, the same was registered as Barpeta Road P.S. Case No 357/2017 under section 6 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Sri Gopal Saha under section 12 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.196, dated 30.10.2017.

- 2. My learned Predecessor-in-office received the case record alongwith the case diary of the case. Accused was summoned. On appearance of accused, copy was furnished to him by my learned Predecessor-in-office.
- **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, charge was framed against the accused u/s 4 of the Protection of Children From Sexual Offences Act, 2012, which was read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.
- **4.** During the court of trial, **05(five)** number of witnesses including the victim, her parent, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge u/s 4 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused was recorded u/s 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He also disclosed that he had enimity with the father of the victim as he stole away his 'karahi'. Argument also took place for that reason between both side. He denied to adduce evidence in his defence.

- I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as Mr. Faizur Rahman, learned Defence Counsel for the accused, who is facing trial for commission of offence u/s 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether on 15.08.2017 at about 6:30 PM at village Krishna Nagar within the jurisdiction of Barpeta Road Police Station, the accused committed penetrative sexual assault on minor daughter of the informant Topi Saha and thereby committed an offence punishable u/s 4 of the 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.
- 8. **PW-1, Smt. Topi Saha**, who is the informant of this case, deposed in her evidence that daughter of the accused is tutor of victim. Incident took place on 15 th august of the year 2017. Victim went to the house of accused for her tuition. The daughter of accused was not present.

PW1 told that the accused told the victim to touch his penis.

Then he took the victim to another room by telling that he will give her a

chocolate. He laid the victim on floor and opened her penty. He also threatened to kill her if she raise any "hullah". Then accused inserted his male organ into the private part of the victim and then some white materials came out.

PW1 disclosed that victim told her about the incident after 06 day of the incident. She disclosed the matter to people of society. She also deposed that accused wanted to give 8 lac, but she has filed this case for the future of the victim. She also disclosed that the victim was aged only 7 ½ years at the time of alleged incident.

She exhibited the FIR as Ext.1 and Ext.1(1) is her signature.

**During cross-examination** PW1 deposed that victim told about the incident after 6/7 days. That then she gave 'bichar' to people of society like Mahila Samity, club etc. she asserted that all the nearby people knew the incident.

She denied the suggestion of defence side that she did not state before the police about the incident as told above in her statement.

PW2- the victim Namanita Saha deposed in her evidence that on the relevant day she went to the house of the accused in the evening for doing tuition. Her Miss was absent. Accused made her lie on his bed and told her to touch his penis after removing his towel. Then accused took her to a nearby room and made her lie on a floor mate and opened her pant. She wore the pant for about 100 times. Then accused inserted his male organ into her private part. Some white materials came out. Accused kissed on her face, chest. She told that she told about the incident to her mother after 4/5 days as accused frightened her. She also told that PW1 called people after hearing the incident. She also claimed to have stated the people about the incident.

**During her cross-examination** she admitted that she deposed in the court as told by police she also deposed that she met her Miss on the way, after coming out from the house of accused, after the incident. But she did not tell her anything. She also stated that on the next day of incident, she went for doing her tuition.

**PW3-Naba Kumar Saha** is the father of the victim, who repeated the same statement as given by PW1 & PW2.

In his cross-examination he deposed that PW2 told the incident to PW1 and not him. He assured that village people, women and persons from club came to him as he called them. He could not say as to whether police examined him or not. He also denied defence suggestion that a "bichar" was held against his family for stealing a 'karahi' from the house of accused.

**Dr. Mamata Devi (PW4)**, the M.O. Of this case, deposed that she did not find any injury on the person of victim, whom she examined on 31.08.2017. She also could not detect evidence of recent sexual intercourse. Ext.2 is her report and Ext.2(1) is her signature. In her report she has written that she found the hymen of victim intact.

PW4, in her **cross-examination**, deposed that alleged history was made by the mother of victim.

**Sri Bidhan Singh Basumatary (PW5)** is the I.O. of the case, who took routine steps in the case.

**During his cross-examination** he clearly stated that PW1, PW2 & PW3 did not state before him as they deposed in their evidence before the court.

- 9. From the close perusal of the evidence on record, it is seen that the victim allegedly went for taking her tuition from the daughter of the accused on the date of incident i.e. 15.08.2017. It is alleged by the informant, who is the mother of the victim, that the victim told her about the incident after 6/7 days. Then she gave 'bichar' to the people of the society like Mahla Samity, club etc. She also asserted in her evidence that all the nearby people knew about the incident.
- **10.** The version of the informant has been corroborated by her husband(PW3) that the victim disclosed the incident to her mother.

- 11. The victim deposed in her evidence that she told the incident to her mother after 4/5 days of the incident as the accused frightened her. She also stated that her mother called the people after hearing the incident. She also claimed to have stated the people about the incident.
- 12. However, the prosecution side has not been able to examine a single witness to corroborate the evidence of the informant as well as the victim that the incident was told to the nearby people or to the members of club or to members of Mahila Samity. The non-production/non-examination of the witnesses, who heard about the incident, is serious drawback to the prosecution case.
- 13. Moreover, it is seen that the incident took place on 15.08.2017 and if it is believed that the victim told the incident to her mother after 7 days of the incident, then the family members of the victim should have lodged this case after coming to know about the incident from the victim. However, the FIR (Ext.1) shows that it was lodged only on 30.08.2017. Though it is mentioned in the FIR that people of the society could not settle the matter, so there was delay in lodging the FIR, but the facts and evidence of the witnesses goes in favour of the accused, who claimed that false case has been lodged against him by the parents of the victim due to previous enmity.
- 14. It may be mentioned here that the victim vividly described how she was raped by the accused, but she did not tell the incident to her Miss (daughter of the accused) whom she found met immediately after the alleged incident. The victim also claimed that she went for taking tuition on the next day of the incident, in her cross examination. Thus, the conduct of the victim is not found natural.
- **15.** Learned defence counsel submits that the whole story is false and concocted. That is why the informant lodged the case after 15 days of the alleged incident. Moreover, the doctor (PW4) did not find any evidence of recent sexual intercourse. The M.O. even found the hymen of

the victim intact. Even the father of the victim, during his crossexamination, deposed that he could not say as to whether police examined him or not.

**16.** It is well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the case of Dattu Ramrao Sakhare-versus-State of Maharastra, reported in [1997] S SCC 341, the Hon'ble Apex Court has held that- "A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered under Section 118 of Indian Evidence Act, provide that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the court should near in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored".

- 17. In another case, i.e., Pancchi- versus- State of Uttar Pradesh, AIR 1998 SC 2726, the Hon'ble Apex Court has held that "It is not the law that if a witness is a child, his/her evidence shall be rejected, even if it is found reliable, The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what other tell them and his child witness is easy prey to tutoring".
- **18.** The ratio as laid down in the above case is that the testimony of a child witness is attributed the same kind of credibility that it attached to the statement any other witness if the testimony is consistent. In the

present case, the victim and other witnesses have been found inconsistent on the material particulars with regard to the incident. Further, it is very unlikely that if any girl at the age of 8 years is raped by a mature person, she will not complain anything to her mother immediately after the incident or doctor will not find anything regarding the incident, on her person.

- 19. On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Gopal Saha to warrant his conviction u/s 4 of The Protection of Children From Sexual Offences Act, 2012 beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal on benefit of doubt, which I accordingly do.
- **20.** In the result, accused **Gopal Saha** is **acquitted** of the charge under section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

Accused is no bail. The bail bond of accused is extended for another 6(six) months from today as per provision of 437-A CrPC.

**21.** Given under my hand and seal of this Court on this 27th day of March, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta Sd/-Special Judge, Barpeta.

Typed by me

(Kavery Das, Stenographer)

## APPENDIX

## (A) **Prosecution witnesses**:

P.W.1 = Smt. Topi Saha, the informant,

P.W.2 = Namanita Saha, the victim,

P.W.3 = Naba Kumar Saha,

P.W.4 = Dr. Mamata Devi, the M.O.,

P.W.5 = Sri Bidhan Singh Basumatary, the I.O.,

## (B) **Prosecution Exhibits**:

Ext.1 = Ejahar,

Ext.1(1) = Signature of Topi Saha,

Ext.2 = Medical Report,

Ext.2(1) = Signature of Dr. Mamata Devi, the M.O.,

Ext.2(2) = Signature of Dr. Manoj Kumar Singha,

Associate Prof., Deptt. of Forensic Medicine,

FAAMCH, Barpeta.

Ext.3 = Sketch Map,

Ext.3(1) = Signature Sri Bidhan Singh Basumatary,

Ext.4 = Charge Sheet,

Ext.4(1) = Signature of Sri Bidhan Singh Basumatary,

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

Sd/-

Special Judge, Barpeta.