IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 61/2019 U/S 365/376 I.P.C. R/W section 4 of POCSO Act, 2012

PRESENT: Sri V. K. Chandak, M.A., M.Com, LLB., AJS,

Special Judge,

Barpeta.

State of Assam

- Vs -

Baharul Islam

Charge framed on:- 02.04.2019

Date of Recording Evidence on - 11.04.2019.

Date of Hearing Argument on - 12.04.2019.

Date of Delivering the Judgment on - 12.04.2019.

Appearance:

Advocate for the State------ Mr. Lalit Nath, Learned P.P. Advocate for the Accused------Md. Ayen Uddin Ahmed, Learned Advocate.

JUDGMENT

- 1. The prosecution case, in brief, is that, on 10.02.2019 at about 10 A.M. the minor daughter of informant namely (X) went to school with her friend Rajina Khatun on the occasion of Sarswati Puja. At about 11 P.M. on the way accused named in the FIR kidnapped the victim and brought her to Basbari forest and raped her. Thereafter, nearby people caught them and handed over them to police. Hence the case.
- 2. Acting on the information police got a case registered being Barpeta Road P.S. case No. 103/19 u/s 366(A)/376 I.P.C. R/W section 4 of POCSO Act, 2012 and investigated the case.

- 3. On completion of investigation, police finally laid the charge sheet against accused Baharul Islam u/s 365/376 I.P.C. R/W section 4 of POCSO Act, 2012 with a view to stand trial.
- 4. In due course, when accused entered his appearance in court vide order dated 02.04.2019 all the particulars relating to the case were furnished to accused. Thereafter, having heard the learned counsel and on perusal of the record, having found a prima facie case, charge u/s 365/376 I.P.C. R/W section 4 of POCSO Act, 2012, were framed. The substance of the offences, on being, read over and explained to the accused he pleaded not guilty and claim to stand trial.
- 5. During the course of trial, the prosecution examined 3 witnesses namely the alleged victim as PW-1, Dr. Anima Boro as PW-2, and Saban Ali as PW-3 respectively. However, considering the nature of evidence adduce by these witnesses and after hearing the learned P.P. further prosecution evidence was closed.
- 6. The accused was examined u/s 313 Cr.P.C. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

7. Now point for determination ;-

- .1. Whether on 10.02.2019 at about 11 A.M. kidnapped the minor daughter of informant, when she was returning from Barpeta Road Block High School towards her home with intent to cause the said victim to be secretly and wrongfully confined and thereby committed an offence u/s 365 IPC?
- .2. Whether on the same day and time accused committed rape on the victim girl as alleged and thereby committed an offence u/s 376 IPC ?
- .3. Whether on the same day and time accused committed penetrative sexual assault on the victim girl as alleged and thereby committed an offence u/s 4 of POCSO Act?

8. <u>Discussion, Decision and reasons for such decision</u>:-

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

- 9. The learned counsel appearing for the State Sri Lalit Nath submitted that though the prosecution examined 3 witnesses but the court may pass judgment after assessment of evidence in view of poor quality of evidence adduce by the prosecution witnesses.
- 10. On the other hand, the learned counsel appearing for the accused person vehemently contended that there is absolutely no evidence at all implicating the accused person for recording conviction for the offences u/s 365/376 I.P.C. R/W section 4 of POCSO Act, 2012. According to the learned defence counsel, the prosecution has failed to bring home the guilt of accused for sustaining conviction for the aforesaid offences. As such, the learned counsel prays to acquit the accused person.
- 11. In the context of the submission of the learned counsel appearing for both sides it would be in the fitness of things to refer to the charged sections against accused person.
- **"365. Kidnapping or abducting with intent secretly and wrongfully to confine person.-** Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment or either discription for a term which may extend to seven years, and shall also be liable to fine."
- **"376. Punishment for rape.** Whoever, except in the caswes provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment

of either description for a term which may extend to two years or with fine or with both."

- "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."
- Now, on perusal of the offence u/s 365/376 I.P.C. R/W section 12. 4 of POCSO Act and having heard the learned counsels appearing for both sides and on careful perusal of the evidence available on record particularly the evidence of the alleged victim PW-1 it transpires that on the occasion of Saraswati Puja, she went to her school at 10 A.M. along with her friend Marjina Khatun. Thereafter, the victim called the accused by telephone and when accused came, she told him to take her for traveling. When they reached the Fatemabad Tea Stall three boys caught them and handed over to police. Thereafter, her father lodged the case against accused. Police sent her to the learned court for recording her statement u/s 164 Cr.P.C. before Magistrate. Ext.1 is her statement recorded u/s 164 Cr.P.C. and Ext.1(1) & 1(2) are her signatures. She did not speak anything about the incident not to speak of commission of the penetrative sexual assault against her. From her evidence nothing can even be inferred even remotely that accused had committed the offence u/s 365/376 I.P.C. R/W section 4 of POCSO Act.
- 13. PW-2, the Medical officer, in her evidence stated on 27.02.2019 she was working as Lady Medical Officer, at FFAMCH, Barpeta. On that day the victim was brought before her for medical examination but victim refused her medical examination. Ext.2 is her report and Ext.2(1) is her signature.
- 14. PW-3 Saban Ali, the father of the victim deposed that on that day he was at in his shop. On the day of incident police telephoned him that his daughter was at police station. While he reached the

police station his daughter told him that she was having love affairs with accused. Ext.3 is the FIR and Ext.3(1) is his signature.

- 15. Therefore, after appreciation of evidence of the star witnesses namely the alleged victim girl, the informant, this court was of the considered view that proceeding further with the case for recording evidence of remaining prosecution witnesses would be the sherer waste of valuable time and energy of the court which would in the estimation of the court would bring no fruitful result in the final count.
- 16. The above being the position, this court has no option but to acquit the accused Baharul Islam from the charges u/s 365/376 I.P.C. R/W section 4 of POCSO Act, 2012 on the ground of insufficient evidence and set him at liberty forthwith.
- 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 case record be consigned to record room as per procedure.
- 19. Given under my hand and seal of this Court on 12th day of April, 2019, at Barpeta.

Dictated & Corrected my me

Sd/-(Sri V. K. Chandak) Special Judge, Barpeta. Sd/-(Sri V. K. Chandak) Special Judge, Barpeta.

APPENDIX

1. The prosecution has examined the following 4 nos. of witnesses:-

PW-1 = is the victim.

PW-2 = is Dr. Anima Boro.

PW-3 = is Saban Ali, the informant.

2. The prosecution has exhibited certain documents :-

Ext. 1 = is the statement u/s 164 Cr.P.C. of victim.

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

Ext.2. = is the medical report.

Ext.2(1) = is the signature of Dr. A. Boro.

Ext.3. = is the Ejahar.

Ext.3(1) & 3(2) = are the signatures of informant.

Sd/-

(Sri V.K. Chandak) Special Judge, Barpeta.