IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 22 OF 2017

Under Section 376 I.P.C R/W Section 4 of P.O.C.S.O. Act,2012

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

State of Assam.
-versusSanowar Hussain Accused.

APPEARANCE

For the Prosecution : Mr. A. Kayem, learned P.P.

For the accused : Faizur Rahman, learned Advocate.

Evidence recorded on : 05.04.2018,

Argument heard on : 10.05.2018,

Judgment delivered on : 10.05.2018.

<u>JUDGMENT</u>

1. The prosecution case, as narrated in the FIR, is that on 30.03.2015 one Badsha Mia lodged an FIR alleging interalia that his daughter i.e. the victim was a student of Class VII and she is a singer. She performed functions in different places and accused Golap Robbani and Sanowar Hussain accompanied her in those functions. On 27.03.2015 at about 6 PM accused Sanowar Hussain, with the help of accused Golap

Robbani, kidnapped the victim.

- 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 Golap Robbani and Sanowar Hussain under section 366(A) I.P.C. R/W section 4 of POCSO Act.
- 3. The accused persons appeared before this court, copies were furnished to them and after hearing both the parties charge was framed against accused Sanowar Hussain under section 366(A) IPC read with section 4 of POCSO Act. Charge was read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial. Accused Golap Robbani was discharged as no material was found against him to frame any charge.
- 4. In course of hearing the prosecution has examined only 2(two) witnesses. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5. **Point for determination**:-

That you on 27-03-2015 at about 6.00 P.M. at 3 No. Bhat Kuchi, within the jurisdiction of Barpeta P.S., District Barpeta, kidnapped Eliza Parbin, the minor daughter of Badsha Mia, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and committed penetrative sexual assault on her?

Discussion, decision and reasons thereof

6. In this case, the allegations against the accused is that, he kidnapped the victim on 27.03.2015 at about 6:00 PM. Accordingly Badsha Mia, who is examined as PW1, lodged the FIR. Said Badsha Mia as PW1

has deposed that at the time of occurrence the victim was 14 years old. About 3 years ago one day the victim was missing. Then he lodged the FIR. Police recovered the victim and the accused at Dhirghat, Dhubri. The victim is a singer. In his cross examination he has stated that both the accused and the victim performed their function jointly. Sometimes the victim did not return home after the function. She had gone to perform a function alongwith the accused at Dhubri. She had gone at her own will. The victim loved the accused and so he performed their marriage socially. Now they are living as husband and wife. The accused is not guilty.

- 7. The said victim as PW2 has corroborated the statement of PW1 by stating that about 3 years ago she had gone alongwith the accused to perform a function. Thereafter, she left alongwith the accused and they already got married. As her father lodged the FIR, police produced her before the doctor for medical examination and also before the magistrate for recording her statement. In her cross examination she has stated that she was not forcibly taken by the accused. She had gone at her own will. Her father lodged the FIR out of suspicion. As she and the accused loved each other, her father performed their marriage. She made the statement before the magistrate as tutored by police.
- 8. From the above discussions of the evidences of the prosecution witnesses, it is found that the victim had gone alongwith the accused at her own will. She was not forcibly taken by the accused. None of the PWs has made a single whisper regarding the commission of rape by the accused person on the victim, rather they have stated that the accused and the victim loved each other and her father performed their marriage.
- 9. 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 for any offence either under section 366(A) I.P.C or under section 4 of POCSO Act, 2012.

Therefore, the accused person is acquitted and set at liberty.

- 10. 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.
- 11. 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.
- 12. Given under my hand and seal of this Court on this 10th day of May, 2018.

Dictated & corrected by me.

Sd/-

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

Sd/-

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Badsha Mia, the informant,

P.W.2 = Eliza Parbin, the victim,

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

Ext.1(1)&1(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.