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. 19 OF 2019 (G.R. Case 6487 of 2015) Barpeta P.S. Case No 2590 of 2015

State of Assam

-versus-

Imran Hussain, S/O Lt Wahedur Rahman, Resident of Vill:- Palhaji, P.S. Barpeta, District - Barpeta

...... Accused.

APPEARANCES:

For the State : Mr. Malek Ali Ahmed, learned

Addl. Public Prosecutor, Barpeta.

For the Accused : Mr. Horaf Ali, learned Advocate,

Barpeta.

CHARGE FRAMED UNDER SECTION 366(A) OF THE INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 20.03.2019,
Date of Prosecution evidence : 20.05.2019,
Date of Argument : 20.05.2019,
Date of Judgment : 20.05.2019.

J U D G M E N T

1. The prosecution case, in brief, is that Barpeta P.S. Case No 2590 of 2015 under section 120(B)/366A of the Indian

Penal Code, Read with added section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Suleman Ali Ahmed, the father of the victim.

In the aforesaid F.I.R. dated 11.10.2015 (Ext.2) the informant Suleman Ali Ahmed (P.W.2), who is the father of the victim girl, alleged interalia that on 02.10.2015, at about 2:00 PM, when his victim daughter, aged about 16 years, went to tuition from Azad Nagar, the accused person alongwith others kidnapped his minor victim daughter, in a maruti vehicle from near the Saulkhowa bridge.

On receipt of the aforesaid F.I.R. by the Officer-incharge, Barpeta Police Station, the same was registered as Barpeta P.S. Case No 2590 of 2015 under section 120(B)/366A of the Indian Penal Code. Later on, section 4 of the Protection of Children From Sexual Offences Act, 2012 was added, as prayed, by the I.O. of the case.

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 Imran Hussain, under section 366(A) IPC Read with section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.709/18, dated 30.09.2018.

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, charges were framed against the accused under Section 366A IPC R/W section 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 course of trial, 02(two) number of witnesses including the victim, informant were examined on behalf of the prosecution to prove the charge under Section 366(A) IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused under Section 313 of CrPC was dispensed with, as neither victim nor informant implicated the accused.

- I have heard learned Additional Public Prosecutor of Barpeta, for the State as well as Mr. Mannan Alam, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 366(A) IPC R/W section 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 02.10.2015 at about 2:00 PM, at Azad Nagar, within the jurisdiction of Barpeta Police Station, District

Barpeta, kidnapped Khalida Ahmed, aged about 16 years, who was minor daughter of the informant Suleman Ali Ahmed, 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 thereby committed an offence punishable under Section 366(A) of the Indian Penal Code?

(2) Whether the accused committed penetrative sexual assault on the victim and thereby committed an offence punishable under Section 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.

PW. 1-Khalida Ahmed, who is the victim of this case, deposed that the incident took place three years before. She has stated that she had love affairs with the accused person and she voluntarily went with the accused person, at that time, from her hostel mess. She admitted that after 2/3 months, she came back to her parent house. She has further sated that the accused did not enter into physical relation with her. She made her statement before the police and magistrate out of ignorance. Now, she has been staying with the accused person as husband-wife and a girl child (aged about 13 months) was

born out of their wedlock. PW.1 further admitted that police sent her to Medical Officer for medical examination and she gave her statement under Section 164 CrPC before the Magistrate. Ext. 1 is her statement and Ext. 1(1) & 1(2) & 1(3) are her signatures.

PW-2 Suleman Ali Ahmed, who is the informant as well as the father of the victim, deposed that incident took place three years before. His daughter Khalida Ahmed went with the accused person from her mess. He has stated that they had love affairs at the time of incident. Now, she is staying with the accused person as husband and wife. He deposed before the court that he did not want to proceed with the case. PW2 exhibited his FIR as Ext.2 wherein Ext.2(1) & 2(2) are his signatures.

8. From a close perusal of evidence on record it is seen that victim knew the accused prior to the incident. Now coming to the charge under Section 366A IPC against the accused, the victim stated that on the relevant date, first time she was reluctant to go with the accused person but later on, she went voluntarily with the accused person from her hostel mess. PW2 Suleman Ali Ahmed submitted before the court in his evidence that he did not want to proceed the case as his daughter and accused Imran Hussain has been staying as husband and wife. P.W.2 also deposed that victim went with the accused voluntarily.

Thus, it is seen that victim voluntarily went with the accused person and now they have been living as husband-wife and a girl child has been born out of their wedlock.

- 9. Regarding the charge under Section 4 of POCSO Act, it is seen that the victim did not state before the court in her evidence that she was raped by the accused. She rather confirmed before the court that she went with the accused person voluntarily and he (accused person) did not enter into physical relation with her.
- 10. 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.
- 11. 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 kidnapped the victim or committed rape on the victim. Hence, accused is entitled to acquittal at least under the benefit of doubt, which I accordingly do.
- 12. In the result, accused Imran Hussain is acquitted of the charge under section 366(A) IPC read with section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.
- 13. Given under my hand and seal of this Court on this **20th day of May, 2019**.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta

Sd/-Special Judge, Barpeta.

ANNEXURE

1. Prosecution Witness:

PW-1: Khalida Ahmed, the victim

PW-2: Suleman Ali Ahmed, Informant.

2. Prosecution Exhibits:

Exhibit 1: Statement of the victim

u/S 164 CrPC

Exhibit 2: Ejahar

- ${\tt 3.\ Defence\ Witnesses:None}\\$
- 4. Defence Exhibits: None

Sd/-Special Judge Barpeta