IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM.

Special P.O.C.S.O. Act CASE NO. 13 OF 2017

Under Section 376 I.P.C. Read with section 4 of P.O.C.S.O. Act,2012

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

State of Assam.

-versus-

Khanindra Nath Accused.

APPEARANCE

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

For the accused : Mr. B.Roy, learned Advocate.

Evidence recorded on : 05-09-2017 & 12-02-2018

Argument heard on : 12-02-2018

Judgment delivered on : 12-02-2018

<u>JUDGMENT</u>

- 1. The prosecution case in brief, is that on 27-07-2016 one Bhanita Nath lodged an FIR alleging that about 2 ½ months ago one day at about 11.00 AM, she had gone to the shop of accused Khanindra Nath to purchase some articles. Then taking the advantage of absence of other persons the accused person dragged her inside his shop by gagging her mouth and made cohabitation with her. He had threatened that if she disclose the matter then her brother and father would be killed. Now she is carrying 2 months pregnancy. At the time of occurrence she was aged about 15 years.
- 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 Khanindra Nath under section 4 of POCSO

Act,2012.

- 3. Accordingly the accused person appeared before this court, copies are furnished to him and after hearing both the parties charges are framed against the accused person under section 376IPC read with section 4 of POCSO Act. Charges were read over and clearly explained to the accused person to which he pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as three witnesses including the medical officer. Examination of the accused person under section 313 Cr.P.C. is dispensed with.

5 **Points for determination**:-

Whether the accused person prior to 2 ½ months from the date of filing FIR on 28-07-2016 at about 11.00 A.M. at village Uttar Bherbheri, within the jurisdiction of Sorbhog P.S.,District Barpeta, committed rape on informant-victim Bhanita Nath, aged about 15 years, daughter of Manendra Nath by committing penetrative sexual assault on her?

Decision and reasons thereof:

- 6. The allegation as narrated in the FIR is that the accused person committed rape on the victim who was aged about 15 years at the time of occurrence. The victim herself lodged the FIR after 2 ½ months of the occurrence. At the time of lodging the FIR she was carrying 2 months pregnancy.
- 7. PW1 the medical officer who examined her on 28-07-2016 has opined that on the date of occurrence her age was above 14 years and below 16 years and she was pregnant for 15 weeks 5 days.

But the victim who is examined as PW2 has not supported the case of the FIR. She has deposed that on the date of occurrence at about 11.00 AM she had gone to the shop of the accused. Relating to the purchasing of some articles the accused made an altercation with her. At that time many other persons were present in that shop. Those persons asked her to file a case against the accused person. Then she filed the case. She made the statement before the police also.

In her cross examination she has stated that the FIR was written by somebody else and she put her signature. She does not know what is written in the FIR. No occurrence took place with the accused person.

8. The father of the victim Manendra Nath as PW3 has deposed that about 2 years ago a quarrel took place in between accused and the victim in the shop of the accused. Then the neighboring people asked the victim to file the case and accordingly she lodged the FIR. But later on the village people amicably settled the matter. So they are now not willing to proceed the case.

in his crossed examination he has stated that he has no objection if the accused is acquitted. After 2 $\frac{1}{2}$ months of the occurrence the victim lodged the FIR. He does not know about the occurrence.

- 9. Except these three witnesses prosecution has not examined any other witness to succeed in the case. In this case PW2 the victim who is also the informant of this case is the vital witness. But she has not supported the case of the FIR. She has clearly stated that no such occurrence took place with the accused. She has stated that only an altercation took place in between her and the accused person in the shop of the accused. She has not made a single whisper regarding the commission of rape by the accused person on her.
- 10. Under such circumstances, it is clear that the prosecution has miserably failed to prove any guilt against the accused person. Therefore the accused person is acquitted and set at liberty.

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.

Given under my hand and seal of this Court on this 12th day of Feb,2018.

Dictated & corrected by me.

Sd/-

Sd/-

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

APPENDIX

(A)Prosecution Exhibits:

Ext.1 : Medical Report

Ext.1(1) : Signature of Dr. Anima Boro.

Ext.2 : Ejahar

Ext.2(1) : Signature of Sri Bhanita Nath

Ext.3 : Statement of victim under Section 164 CrPC

Ext.3(1) : Signature of Sri Bhanita Nath Ext.3(2) : Signature of Sri Bhanita Nath

(B)Defence Exhibits:Nil.

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Dr. Anima Boro, Lady M/O at FAA Medical College &

Hospital, Barpeta

P.W.2 : Ms Bhanita Nath

P.W.3 : Sri Manendra Nath

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

(Smti. C. R. Goswami)

Special Judge, Barpeta