

Present: Shri C. Das

Judge, Special Court Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.30/2018(OLD NO.78/17)

u/s 4 of POCSO Act

State

-versus-

Md. Abdul Mazid

.... Accused

Appearance:

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. T. Sarma, Advocate

Date of evidence recorded: 9.7.18, 9.8.18, 13.9.18, 14.11.18, 6.3.19

3.7.19

Date of argument

: 31.8.19

Date of judgment

: 13.9.19

JUDGMENT

Judge Spi Court Baksa Mushalour

1. The case of the prosecution briefly, is that on 29.5.17, the complainant Ms. Sayera Bibi lodged the FIR before Officer-in-charge of Barama police station, alleging inter-alias that on 28.5.17, at about 6.30 pm., the accused took away her 13 years old daughter/ victim girl forcibly from in front of her house by gagging the mouth. The accused thereafter, took the victim girl towards under a bamboo bush after crossing a paddy field and committed sexual intercourse with the victim girl at the night and on next day at about 3.30 am, the accused dropped the victim girl near her house.

The police accordingly, registered the Barama PS. Case No.78/2017 and started the investigation. During the investigation, the I/O visited the place of occurrence, drew up its sketch map, examined the witnesses and sent the victim girl for medical examination as well as, for recording her statement u/s 164 CrPC. I/O arrested the accused person. Further, I/O collected the medical report of the victim girl. At the end of the investigation, I/O having found a prima-facie case well established, submitted the charge-sheet against the accused to face trial in the court.

- 3. The accused when appeared in the court in response to issue of summons, he was furnished with the relevant copy of the case. After hearing of the parties, the charge u/s 4 of POCSO Act, was framed against the accused. The charge is read over and explained to the accused person who pleaded not guilty and claimed to be tried.
- 4. The prosecution during the trial, examined as many as, 6(six) witnesses including M/O and I/O to support its case. The accused in his statement recorded u/s 313 CrPC., denied all incriminating circumstances appeared against him in the evidence. However, the accused declined to adduce any evidence in defence. The argument of the parties was heard at length.

POINT FOR DETERMINATION:

5, Whether on 28.5.17 at about 6.30 pm., at Mahkharia under Barama police station, the accused committed penetrative sexual intercourse with the victim girl (name withheld) who is the minor daughter of the informant Ms. Sayera Bibi;

DECISION AND REASON THEREFORE:

Judge Spi Court Baksa Mushalbur 6. Learned Public Prosecutor during the argument, submitted that in the case sexual offence, the testimony of the victim is important for just decision of the case as well as, for recording a conviction order and there cannot be a ground to disbelieve the version of the victim person since she is not an accomplice with the accused. He submitted further that in the case, the evidence of the victim is corroborated by other prosecution witnesses and they have able to bring home the charge against the accused. Therefore, the accused is liable to be punished as per



law, he maintained.

- 7. Per contra, learned counsel for the accused submitted that there are several contradictions appeared in the evidence of the prosecution witnesses and as such, their credibility is under doubt. He submitted that in criminal trial, the duty of the prosecution to adduce good and reliable evidence of the witnesses to prove the facts of the case by discarding all sorts of doubt. If there is doubt, the accused is bound to get benefit thereof. He submitted that it is a fact that the prosecution could not prove its against beyond all sort of reasonable doubt. Hence, the accused is entitled to get the benefit of doubt.
- 8. After hearing the above submissions from the learned counsel of both sides, it is necessary to go through the evidence on record. It appears that PW1 is the informant Ms. Sayera Bibi who filed the ejahar. She stated that the victim girl is her daughter. The victim girl was 12 years old at the time of occurrence. She stated that on the fateful day, she went to the house of her neighbour to bring back her daughter. But she could not trace out her daughter. In the meantime, she came to know that the accused was also, missing from the house. She came to know that the accused took away the victim girl. But the parents of the accused denied the same. Accordingly, she went to the Secretary of the village to lodge a complaint. But the Secretary refused to consider her complaint in a local bichar. Hence, she filed the ejahar before the police. The police recovered the victim girl and arrested the accused. The victim was taken to the court to record her statement and also, medically examined.
- 9. In the cross-examination, PW1 stated that she did not see the accused taking away her victim daughter. She denied the suggestion of the defence that she did not state to the police earlier that when her daughter was missing, she went to the house of the accused and on denial of the parents of the accused, she went to the Secretary for a bichar.



10. PW2 Meser Ali stated that PW1 is his wife while the victim is his daughter. At the time of occurrence, the victim girl was 13 years of age. He stated further that on the fateful day, at about 8.30 pm., when he came to his home, he saw that PW1 and his elder daughter were weeping. On his inquiry, PW1 stated him that the victim girl was missing from home. Accordingly, he searched for the victim but could not trace her out. On next day, at about 5 am., the victim girl came to his home. The victim reported to PW1 that the accused took her away by gagging her

mouth and raped by the accused. On hearing the occurrence, he went to the house of the accused and met the father of the accused. But the father of the accused denied any involvement of the accused. He could not find out the accused in the house. Hence, he went to the Secretary of the village; namely; Shariful but he could not settle the matter. Thereafter, he went to the police and filed the ejahar. The police sent the victim girl for medical examination and to record her statement in the court.

- 11. In the cross-examination, PW2 stated that the house of the accused is adjacent to his house and he used to go through the courtyard of the accused.
- 12. PW3 is the victim girl. Her name is withheld due to bar of law. She stated that the accused is resided near her house. On the fateful day, the accused called her to his house. Accordingly, in the evening, she went to the house of the accused. When she reached the house of the accused, he pulled her towards nearby bamboo bush by gagging her mouth. Then the accused after pulled her down on the ground, removed her under garments and committed rape on her. The accused kept her near the bamboo bush for the whole night and in the early morning, the accused dropped her near her house. PW1 saw her standing. She reported the entire incident to PW1. Hence, PW1 went to the house of the accused and inquired about the incident to the father of the accused. But the father of the accused misbehaved with PW1. Hence, PW1 filed the case before the police. The police inquired about the incident from her and sent her for medical examination and to record her statement in the court.
- 13. In the cross-examination, the victim girl stated that she did not use the courtyard of the accused for ingress and outgress. She denied the suggestion that she did not state to the police earlier that on the fateful day in the evening the accused called her to his house and when she reached the house of the accused, he pulled her towards a bamboo bush by gagging her mouth. She did not raise alarm at the place of occurrence as well as, when the accused pulled her towards a bamboo bush.
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- 14. The evidence of PW4 Hamid Ali is that on the fateful day, he heard that the accused committed rape on the victim girl. Accordingly, PW1 filed the case.
- 15. In the cross-examination, PW4 stated that PW1 used to go through the courtyard of the accused. The accused tried to prevent PW1 to use his



courtyard as a road for which quarrel took place between them. A local bichar was held for the same.

- 16. The evidence of I/O PW5 Dewan Rahijuddin Ahmed is that on 29.5.17 while he was posted at Barama police station, PW1 lodged the ejahar and accordingly, O/C registered a case and endorsed him to investigate the case. He proved the ejahar vide Ext.1. during the investigation, he examined the complainant and visited the place of occurrence and drew up its sketch map vide Ext.2. he sent the victim for her medical examination and to record her statement u/s 164 CrPC. Ext.3 is medical report of the victim. Ext.4 is the statement of the victim girl. He examined the accused and sent him to jail. He collected the medical report and statement of the victim. At the end of investigation, the charge-sheet was filed vide Ext.5 against the accused.
- 17. In the cross-examination, I/O stated that he did not seize the wearing cloths of the victim girl. He stated that in the previous statement, PW1 did not to him that PW1 went to the house of the accused and on denial of the parents of the accused, she went to the Secretary and PW3 did not state to him that the accused called her to his house in the evening of fateful day.
- 18. The medical evidence tendered by PW6 Dr. Urmi Devi Choudhury. She stated that on 30.5.17 at SMK civil hospital, Nalbari, she examined the victim girl on police requisition on in presence of Anjana Devi and PW1 and found that according to the girl, she was kidnapped by a known boy on 28.5.17 at about 2 pm and physical relation occurred with him by two times forcefully. On examination, her external genitalia was healthy, hymen was torn and healthy and vagina and cervix was healthy with vagina admits two fingers easily. Her last menstrual period is 29.5.17 and examining fingers is stained with menstrual blood. Vaginal swabs was sent for microscopic examination to see sperm. No sperm was seen as per laboratory report. X-ray was advised for age estimation. Skeletal age from radiological evidence, estimates above 14 years and below 16 years. USG of lower abdomen was advised. No significant finding was found.

Judge Spi Cont

Opinion: her impression was not consistent with recent sexual intercourse or assault. Accordingly, PW6 filed the medical report vide Ext.3 and x-ray report vide Ext.6.

19. Thus, from the above evidence so tendered by the prosecution

witnesses, it appears that there is no dispute that the accused was a neighbour of the informant and as such, the victim girl was known to the accused prior to the occurrence. PW1 knew that PW3 went to the house of her neighbour who is the accused and that is why she stated that she went to the house of her neighbour to bring back PW3. But on search, she could not trace out PW3 till next morning. Admittedly, PW1 and 2 are the parents of PW3. But both of them did not see the accused took away the victim girl towards a bamboo bush. PW4 is also, a hearsay witness of occurrence. Thus, reliance cannot be placed on PW1, 2 and 4.

- 20. It is therefore, important to scan the evidence of PW3 who is the sole victim of the alleged occurrence. PW1 stated her age as 12 years while PW2 said it as 13 years. No other reliable source is found to ascertain the correct age of the victim. PW3 stated that her age 13 years during deposition. Hence, turning to medical evidence is necessary. As per medical evidence, the age of PW3 was below 16 years. Thus, PW3 is found to be a child within the meaning of section 2(d) of POCSO Act.
- 21. The narration of PW3 about the occurrence is that on calling by the accused to his house, PW3 went to the house of the accused in the evening time. But when she reached the house of the accused, he pulled her towards bamboo bush by gagging her mouth. Thereafter, the accused committed rape on her under bamboo bush by removing her under garments. But I/O committed lapse not to seize the cloths of PW3 to see sperms thereon. According to her, the accused kept her whole the night under the bamboo bush and dropped her at her house in the morning. Admittedly, PW3 did not raise any alarm during the night even though initially the accused gagged her mouth. Thus, it casts doubt over the credibility of the evidence of PW3. Moreover, PW3 claims that she was forcefully raped by the accused. But the medical examination was conducted on 30.5.17 which means it was done after two days, shows negative test for any forceful intercourse with PW3. In other words, the claim of PW3 is not corroborated by medical evidence. Hence, doubt casts upon the evidence of PW3 on her trustworthiness. Further, PW3 omitted to state that she was called by the accused to his house. Such Court omission is significant and contradicts her version if she went to the house of the Judy Mushalour accused on his call.
 - 22. The offence u/s 3 of POCSO Act which is punishable u/s 4 of POCSO Act, requires main ingredient as penetration of sexual organ of the accused into the vagina, urethra or anus of the victim child. But from the medical evidence, it

does not appear that PW3 was subjected to such penetration by the accused to attract the offence u/s 4 of POCSO Act.

- Over her omission in her previous statement before I/O. She omitted to disclose earlier that she went to the house of the accused in search of PW3 and the father denied the same and she went to the Secretary of village. If she omitted to say earlier at the first instance, it significantly takes away her credibility since there is no need to say such facts before the court. Perhaps, PW1 wanted to exaggerate the story against the accused to derive benefit thereof. Such evidence does not pose for confidence to rely upon. In the result due to doubt appears in the evidence of the prosecution witnesses particularly, on the version of PW3 who is even though found to be minor girl, it cannot be held that she is less matured to understand the meaning of physical relation and to raise alarm if she was attacked sexually by the accused. Thus, on the above basis, the accused is entitled to get benefit of doubt. Accordingly, the accused is given benefit of doubt.
- 24. Under the above facts and circumstances of the case, the prosecution has not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 4 of POCSO Act. The accused is acquitted and set at liberty. His bail bond is extended to remain in force u/s 437-A CrPC. Forward a copy of judgment to the District Magistrate, Baksa, Mushalpur u/s 365 CrPC. This court recommends for payment of compensation to the victim of the offence u/s 357 CrPC by DLSA, Baksa.
- 25. Given under the hand and seal of this court on this 13th day of September 2019.

Dictated and corrected by:

District &

C. Das, Judge Spi Court Judge Special Court Baksa Mushalpur Baksa, Mushalpur

Judge Spr Court Baks Special Court Baksa, Mushalpur

Typed by :
P. Deka, Com. Typist



List of prosecution witness:

PW1 ... Ms. Sayera Bibi ... complainant

PW2 ... Meser Ali

PW3 ... victim girl (name withheld)

PW4 ... Hamid Ali

PW5 ... Dewan Rahijuddin Ahmed ... I/o

PW6 ... Dr. Urmi Devi Choudhury ... m/o

List of defence witness:

Nil

List documents exhibited:

Ext.1 ... FIR

Ext.2 ... sketch map

Ext.3 ... medial report

Ext.4 ... statement of victim u/s 164 Crpc

Ext.5 ... charge-sheet

Ext.6 ... x-ray report

Judge Spil Court Judge Special Court Baksa Mushalpur Baksa, Mushalpur