HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special (POCSO) Case No- 07 of 2018

u/s 376(2)(i) of IPC and section 4 of POCSO Act

STATE

Versus

Fayzuddin

S/O Ahar Ali,

R/O vill- Chinamari,

PS- Bilasipara, Dist- Dhubri, Assam

Accused person

(Corresponding to GR Case No- 1214/18 (arising out of Bilasipara PS case no. 847/18) u/s 4 of POCSO Act added section 376(2)(i) of I.P.C.

Advocate appeared:-

For the state:- Mr. T. Kr. Bhattacharya, Special P.P.

For the accused: Mr. Rabiul Islam, Advocate.

Date of institution of the case :- 18-07-18

Date of Framing charge :- 15-12-18

Date of prosecution evidence :- 12-03-19, 19-03-19

Statement of accused recorded on :- 06-04-19

Date of Argument :- 06-04-19

Judgment delivered :- 20-04-19

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 18-07-18 prosecutrix lodged written ejahar before i/c Lakhiganj Watch Post inter alia citing that on 14-07-18 at about 10.00 pm, in absence of her mother, accused Fayzuddin called her and when she opened the door, accused dragged her towards the tubewell and committed sexual intercourse with her against her consent gagging her mouth and seeing incident Ali Akbor And Ajidul apprehend accused Fayzuddin.

Investigation

2. On receipt of ejahar from prosecutrix, i/c Lakhiganj Watch Post forwarded the same to O/C Bilasipara PS for registration of the case and O/C Bilasipara PS registered a police case vide Bilasipara police case No. 847/18 under section 4 of POCSO Act and section 376(2)(i) of I.P.C. and SI Bijoy Kumar Das was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused Fayzuddin u/s 376(2)(i) I.P.C and section 4 of POCSO Act and cognizance taken.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 376(2)(i) of I.P.C and section 4 of POCSO Act was framed against the accused Fayzuddin and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

Trial

4. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 4 number of witnesses and exhibited 2 nos. of documents. PW-1 Prosecutrix, PW-2 Ajidul Ali, PW-3 Ali Akbor and PW-4 Sanjab Ali. Ext-1 Ejahar, Ext-2 Statement of prosecutrix recorded u/s 164 Cr.P.C. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is denial, however declined to adduced evidence in support of the plea of denial.

5. **POINTS FOR DETERMINATION:-**

- i) Whether accused on 15-07-18 at about 10.00 pm at village Chinamari, under Bilasipara PS committed rape on prosecutrix under the age of 16 years?
- ii) Whether accused on 15-07-18 at about 10.00 pm at village Chinamari, under Bilasipara PS committed penetrative sexual assault on prosecutrix?

ARGUMENT

6. I have heard ld. counsel for both sides. It has been argued by the ld. defence counsel that prosecution case is not supported by either prosecutrix or other PWs of the case and from the prosecution witnesses it is reveal that no such incident was took place as alleged in the ejahar and therefore accused entitled acquittal.

PROSECUTION EVIDENCE

7. PW-1 is the prosecutrix. She deposed accused Fayzuddin hails from her village and about 6-7 months back at about 09.00- 10.00 pm while she came out from her room, she noticed one boy in their compound. Seeing him she shouted out of fear. Hearing her cry neighbouring people arrived at their home and nabs the boy and the boy was Fayzuddin. Thereafter they came to know that accused Fayzuddin came to their house to charge his mobile phone and at that time there is solar light in her house and accused have neither electricity connection nor solar light. She deposed on the next day village people took her to police station and took her signature on a paper and submitted the same before the police station. Thereafter police recorded her statement, taken her to Dhubri Civil Hospital for medical examination and produced her before Ld. Magistrate wherein she made statement before the Ld. Magistrate. She further deposed presently she cannot recollect what statement she made before the Ld. Magistrate. She deposed accused Fayzuddin did nothing with her and ejahar was not written by her. She only put her thumb impression in the ejahar. **In cross** she stated the content of ejahar was not read over to her before taking her thumb impression. Accused did not misbehave with her; accused did not touch her.

- 8. PW-2 Ajidul Ali deposed prosecutrix and accused is his close neighbour. About 3-4 months back at about 07.00- 08.00 pm accused came to charge his mobile in the house of prosecutrix and hearing hue and cry in the house of prosecutrix, he went there and found several persons present in the informant's house and heard that accused came to charge his mobile handset. He further deposed he did not ask prosecutrix what happened to her and prosecutrix did not disclose her any incident. **In cross** he stated he did not witness the incident and he has no actual knowledge about the incident.
- 9. PW-3 Ali Akbor deposed prosecutrix and accused is his neighbour and on the day of incident at about 09.00 pm, accused came to the house of prosecutrix to charge his mobile and noticing this some people apprehended him and there took place hue and cry. Hearing hue and cry, he went to the house of prosecutrix and came to know that some people apprehended accused, when accused came to the house of prosecutrix to charge his mobile. Defence declined to cross examined PW-3.
- 10. PW-4 Sanjab Ali deposed prosecutrix and accused is his neighbour and about 2-3 months back about 08.00- 09.00 pm he heard hue and cry in the house of prosecutrix. Hearing the same he went to the house of prosecutrix and heard that accused came to the house of prosecutrix to charge his mobile. **In cross** he stated he had stated before the police whatever he stated before the court.

DISCUSSION, DECISION & REASON THERE OF:-

- 11. Prosecution allegation leveled against accused Fayzuddin is that on 15-07-18 at about 10.00 pm at village Chinamari, under Bilasipara PS accused Fayzuddin committed penetrative sexual assault on prosecutrix under the age of 16 years.
- 12. Admittedly in the case in hand, prosecutrix is aged about 13 years old at the time of incident i.e she was under the age of 16 years at the time of incident. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of penetrative sexual assault on prosecutrix by accused Fayzuddin or not.

- 13. PW-1 is the prosecutrix. Prosecutrix in her ejahar alleged that on 14-07-18 at about 10.00 pm, in absence of her mother, accused Fayzuddin called her and when she opened the door, accused dragged her towards the tubewell and committed sexual intercourse with her against her consent gagging her mouth.
- 14. PW-1 while adducing her evidence before the court stated on the day of incident at about 09.00- 10.00 pm while she came out from her room, she noticed one boy in their compound. Seeing him she shouted out of fear. Hearing her cry neighbouring people arrived at their home and nabs the boy and the boy was Fayzuddin. Thereafter they came to know that accused Fayzuddin came to their house to charge his mobile phone.
- 15. Evidence of prosecutrix pointed she subsequently changed her statement and bring different story before the court. Evidence of PW-1 made before the court did not substantiate her statement which she made in her ejahar. PW-1 while adducing before the court, not made any single statement against the accused Fayzuddin of his involvement in the alleged offence. Thus seen that PW-1 prosecutrix did not support the prosecution case and she totally overturn the prosecution case.
- 16. Prosecutrix in her ejahar further alleged that alleged incident was seen by Ali Akbor and Ajidul and they apprehend accused Fayzuddin. Said Ali Akbor and Ajidul were examined by the prosecution as PW-3 and PW-2 respectively. Evidence of PW-2 and PW-3 also pointed hearing hue and cry in the house of prosecutrix, they went there and found several persons present in the house of prosecutrix and later on they came to know that accused came to charge his mobile handset in the house of prosecutrix. Evidence of PW-2 and PW-3 not pointed that they had seen accused Fayzuddin committing penetrative sexual assault on prosecutrix and seeing this they held accused Fayzuddin. Thus, it is seen that evidence of PW-2 and PW-3 did not substantiate the statement of Prosecutrix made by her in her ejahar and evidence of PW-2 and PW-3 does not point any single incriminating material against the accused Fayzuddin.
- 17. Evidence of PW-4 is that hearing hue and cry in the house of prosecutrix, he went there and heard that accused came to the house of prosecutrix to charge his mobile. Evidence of PW-4 pointed he did not see any incident. He only heard that accused came to the house of prosecutrix to charge his mobile. Thus, from the evidence of PW-4 nothing appear against the accused Fayzuddin.

- 18. From the scrutiny of entire evidence on record, I find that prosecution failed to bring home a single material against the accused that on the day of incident accused committed forceful penetrative sexual assault on PW-1. It is also seen that in the instant case prosecutrix did not supported her statement made in the ejahar and before the court she changes her statement and her statement before the court totally overturn the prosecution case. PW-1, the alleged victim girl also resile from her earlier statement and she made different story before the court which makes her statement u/s 164 Cr.P.C not believable beyond all reasonable doubt. Therefore, I come to my definite judicious finding that prosecution failed to bring home single ingredient of section 375 I.P.C and section 3 of POCSO Act against the accused Fayzuddin.
- 19. Therefore, in view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution miserably failed to bring home charge u/s 376(2)(i) I.P.C and section 4 of POCSO Act against the accused Fayzuddin. Accordingly accused Fayzuddin is acquitted from the charge of section 376(2)(i) I.P.C and section 4 of POCSO Act and is set at liberty.
- 20. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 21. Given under hand and seal of this Court on this 20th day of April, 2019 at Bilasipara, Dist- Dhubri.

(Smti S. Bhuyan)

Special Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan) Special Judge, Bilasipara

Typed by, Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

PW-1 Prosecutrix,

PW-2 Ajidul Ali,

PW-3 Ali Akbor and

PW-4 Sanjab Ali.

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2 Statement of prosecutrix recorded u/s 164 Cr.P.C

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara