HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

<u>Special Case No- 12 of 17</u>

u/s 366(A) of I.P.C r/w section 4 of POCSO Act

STATE

Versus

Hasen Ali

Accused person

(Corresponding to GR case No- 748/17 u/s 120(B)/366(A) I.P.C. r/w section 4 of POCSO Act)

Advocate appeared:-

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

For the accused:- Mr. Shanti Uddin Sk., Advocate.

Date of institution of the case :- 25-05-17

Date of Framing charge :- 07-12-17

Date of prosecution evidence :- 28-02-18

Statement of accused recorded on :- 19-03-18

Date of Argument :- 19-03-18

Judgment delivered :- 04-04-18

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 22-05-17 at about 6.30 pm taking advantage of absence of informant at his house, accused Hasen Ali enticed informant's minor victim daughter on the pretext of marriage from his house. Thereafter they made search for both of them and on the same day at about 01.30 pm found them and after finding both of them were kept under custody of one Maldar Hussain of Suapata Pt. V and informed about the matter to guardians of accused Hasen Ali. To this fact informant Amzad Ali lodged the ejahar before Bilasipara PS.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from Amzad Ali registered a police case vide Bilasipara Police Case No. 488/17 under section 120(B)/366(A) IPC r/w section 4 of POCSO Act and SI Indreswar Pathak was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused person named herein above u/s 120(B)/366(A) IPC r/w section 4 of POCSO Act.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 366(A) IPC r/w section 4 of POCSO Act was framed against the accused person Hasen Ali 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 2 number of witnesses and exhibited 1 no of document. PW-1 Amzad Ali, PW-2 Victim. Ext-1 statement of victim 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 victim was minor(below 18 years of age) on 22-05-17?
- ii) Whether accused on 22-05-17 at about 06.30 pm at village Suapata Pt. IV under Bilasipara PS induced victim from her house with intent that she may be or knowing that she might be forced or seduced to illicit intercourse with accused?
- iii) Whether accused on 22-05-17 at about 06.30 pm at village Suapata Pt. IV under Bilasipara PS committed penetrative sexual assault on victim?

ARGUMENT

6. I have heard learned counsel for both sides. It has been argued by the ld. defence counsel prosecution miserably failed to establish the prosecution charge leveled against the accused as because according to victim no such incident took place as alleged in the ejahar and according to witnesses ejahar was lodged due to public pressure or as advised by the villagers. Therefore, prosecution case against accused is not at all proved and accused entitled acquittal.

DISCUSSION, DECISION & REASON THERE OFF:-

- 7. Prosecution allegation leveled against accused is that accused on 22-05-17 at about 06.30 pm at village Suapata Pt. IV under Bilasipara PS induced victim from her house with intent that she may be or knowing that she might be forced or seduced to illicit intercourse with accused and on the same day at village Suapata Pt. IV accused had committed penetrative sexual assault on victim. In this case prosecution adduced evidence of informant and victim only. PW-2, being victim of this case, she is the star witness of this case. Now let me analyze evidence on record.
- 8. PW-1 Amzad Ali is the informant of this case. His evidence is that victim is his daughter and accused hail from his village. He deposed there was love affairs in between his daughter and accused. On the day of incident he heard one incident of hue and cry took place with regard to the love affairs of his daughter and accused. Accordingly he came to home and one village mel was held to discuss it and as advised by villagers he lodged the ejahar wherein he put his thumb impression. **In cross** he stated at the time of incident his daughter was 18 years old and his daughter was in love with accused. He stated his daughter went to meet accused at his house but did not find him at his home and she told villagers that she came to meet

accused. He stated no physical relation was took place in between his daughter and accused and he lodged the ejahar as advised by the villager and subsequently his daughter married accused.

- 9. PW-2 is the victim of this case. She deposed informant is his father. She deposed she was in love with accused and she visited to the house accused and at that time as she was un-married, public held her and called for a meeting where her father was also called for. Thereafter as per resolution of said meeting her father lodged the case. She deposed after lodging of case she was medically examined and police produced her before the court where she made her statement vide Ext 1 and put her signatures on Ext 1 vide Ext 1(1) and 1(2). **In cross** she stated she can't recall the statement she made earlier before the magistrate. She stated after aforesaid incident she married accused and she is living with accused happy married life. She further stated no such incident as alleged in the ejahar took place with her and her father lodged ejahar due to public pressure.
- 10. As per radiological report approximate age of the victim is 17 to 18 years. PW-1 is father and he stated his victim daughter was 18 years old at the time of incident. Victim before court stated she is 19 years old. Her evidence recorded on 28-02-18. Incident was took place on 22-05-18. That shows victim was 18 years old on the day of incident. Radiological age is not conclusive proof of age of a person. Father of the victim claimed that his daughter was 18 years old. PW-1 being father of alleged victim must have concrete knowledge about his child. When statement of PW-1 and PW-2 read together, it shows PW-2 was major at the time of incident. Therefore from the evidence on record, I am constrained to hold that PW-2 was not a minor under the age of 18 years at the time of incident.
- 11. From the scanning of evidence of PW-1 informant and PW-2 alleged victim it is reveal that PW-2 and accused are in love affairs and as PW-2 being unmarried girl visited the house of accused, public held her and meeting was held in the village and as per meeting father of victim lodged the ejahar. Neither PW-2 nor informant whispered that accused had kidnapped her from her house and after kidnapping her sexually assaulted her or had any physical contact with her or sexual intercourse with her or did any act which is falls within the ambit of penetrative sexual act. More so, PW-2 was not a minor at the time of incident. Evidence of PW-2 further shown she could not recollect what statement she earlier made before the Magistrate. Therefore, it is apparent that victim did not supported and

corroborated the statements made by her u/s 164 Cr.P.C and Ext-1 does not make any improvement in the case against the accused in absence of the corroboration from the statement of the victim.

- 12. To prove charge u/s 366A IPC prosecution must bring on record following ingredient i. the accused induced a minor girl below the age of 18 years; ii. she was induced to go from any place or to do any act; iii. she was induced with the intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with another person and foremost ingredients of section 4 of POCSO Act is victim must be a minor below the age of 18 years. Here in this case PW-2 was 18 years of age at the time of incident. That means she was a major girl. Thus, evidence of PW-1 and PW-2 does not point any material against the accused person and from their evidence not a single ingredient of section 366 (A) of IPC and section 4 of POCSO Act coming out against the accused Hasen Ali.
- 13. In view of my discussion, and on scrutiny of the evidence on record, I come to my definite finding that prosecution totally failed to bring home charge u/s 366(A) I.P.C r/w section 4 of POCSO Act against the accused person Hasen Ali accordingly he is acquitted from the charge of section u/s 366(A) I.P.C r/w section 4 of POCSO Act and is set at liberty.
- 14. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 15. Given under hand and seal of this Court on this 04th day of April, 2018 at Bilasipara.

(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 Amzad Ali,

PW-2 Victim.

PROSECUTION EXHIBIT:-

Ext-1 Statement of victim recorded u/s 164 Cr.P.C

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITES :- NIL

COURT EXHIBITES :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara