

Present: Shri C. Das

Sessions Judge Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.24/2018(OLD NO.5/16)

u/s 4 of POCSO Act r/w Section 366(A)/506/109 IPC

State

-versus-

1. Md. Sahar Ali

2. Ms. Jahanara Khatun

... Accused

Appearance:

For the State: Mr. R. Chetry, Public Prosecutor, Baksa For the accused: Mr. A. Kayum, W. Rahman, Advocates

Date of evidence recorded: 21.11.16, 21.2.17, 18.5.17, 31.5.17, 18.7.17

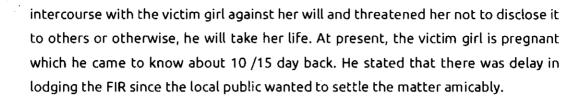
Date of argument: 5.7.19, 17.8.19, 31.8.19

Date of judgment: 7.9.19

JUDGMENT

1. The case of the prosecution briefly, is that on 8.8.16, the complainant Md.Abdul Rahman Khan lodged a FIR before the Officer-in-charge of Salbari police station, alleging inter-alias that about 5 /6 months back, at the conspiracy and assistance of the accused Ms. Jahanara Khatun, the accused Sahar Ali eloped his 11 years old daughter/victim girl(name is withheld) by inducement to the river bank of 'Palla' river where her mouth was gagged and under threatening, the accused Sahar Ali committed sexual intercourse with her against her will. After two days, the accused Ms.Jahanara Khatun called the accused Sahar Ali to her home and after keeping him inside her home, the accused Ms.Jahanara Khatun called the victim girl to her house and locked the door of her house after putting the victim girl inside. The accused Sahar Ali on that day also, committed sexual

Judge Spi Court Baksa Mushall



- 2. Accordingly, the police registered the Salbari PS. Case No.76/2016 and started its investigation. During the investigation, I/O visited the place of occurrence, drew up its sketch map and examined the witnesses. Further, I/O sent the victim girl for medical examination and for recording her statement u/s 164 CrPC. At the end of investigation, I/O submitted the charge-sheet against the accused Sahar Ali to face trial in the court. During the trial, the accused Ms. Jahanara Khatun was arrayed as an accused in the case by invoking Section 319 CrPC due to material found against her and summons was issued against her.
- 3. The accused persons when appeared in the court, they were furnished with the copy of the case immediately. After hearing of both parties and on perusing the material on record, the charge u/s 366(A)/506 IPC r/w Section 4 of POCSO Act was framed against the accused Sahar Ali while the charge u/s 366(A)/109 IPC was framed against the accused Ms. Jahanara Khatun. The charge so framed, was read over and explained to the accused persons who pleaded not guilty and claimed to be tried.
- 4. The prosecution during the trial, examined as many as, 8(eight) witnesses including I/O and M/O to support its case. The accused persons in the statement recorded u/s 313 CrPC., denied all incriminating circumstances appeared against them in the evidence. The accused persons however, declined to adduce any evidence in defence. The argument of the parties was heard at length and the evidence on record was perused. Also, the written argument of the defence was perused.

POINTS FOR DETERMINATION:

5. Whether on or about 5/6 months back before lodging the ejahar on 8.8.16, at Dhekiyajani gaon under Salbari police station of Baksa district, the accused Sahar Ali kidnapped the victim girl and daughter of informant Md. Abdul Rahman Khan, a minor girl under the age of 18 years with intent that the said victim may be or knowing that it is likely that, the said victim will be forced or seduced to illicit intercourse with another person;

Judgo A de Baksa Mush.

- 6. Whether on same date, time and place as above, the accused Sahar Ali committed criminal intimidation by threatening the victim girl with threat to cause death;
- 7. Whether on same date, time and place as above, the accused Sahar Ali committed penetrative sexual assault on the victim girl;
- 8. Whether on same date, time and place as above, the accused Ms. Jahanara Khatun abated to kidnap the victim girl, a minor girl under the age of 18 years with the intent that the said victim girl will be forced or seduced to illicit intercourse with another person;

DICISION AND REASON THEREFORE:

- 9. Learned Public Prosecutor initiating the argument of the case, submitted that it is a case of sexual assault upon a victim girl who is apparently, a minor girl. Hence, the version of the victim girl ought to be relied upon since she is not an accomplice of the offence with the accused persons. He further submitted that the evidence of the victim couple with the evidence of other prosecution witnesses including the complainant and medical evidence ,makes it clear that the accused persons are involved in the crime as alleged against them. Therefore, the accused persons may be convicted under the proper provisions of law, he urged.
- 10. Per contra, learned counsel appearing for the accused persons submitted inter-alias that the very notion of the POCSO Act requires the investigation agency to follow the legal norms that the victim being a minor, should not be exposed to what was happened to her in a case of sexual assault and to abstain from calling the victim to police station to ask question in absence of her parents or relative and further an ASI can not investigate such a heinous offence if he is not authorized by Govt., of Assam. He alleged that on the basis of statement u/s 164 CrPC., the I/O covered up all the allegations but did not ask any question regarding Ms. Jahanara Khatun and did not prepare sketch map of the place of occurrence where it occurred and time of occurrence was not ascertained. I/O threw the whole case to the victim to prove her case and there is serious lapse on the part of I/O by willfully avoided to follow the mandate of law. It is submitted that gross negligence committed by M/O by not expressing any opinion of pregnancy of 11 years old victim girl and without determining her age. There was

Judge Opt Court Baksa Mushalpur no effort to prove the paternity of the child of the victim girl and thus, 5/6 months of pregnancy of the victim is very doubtful without any DNA test. The accused Ms. Jahanara Khatun was unnecessarily dragged into the case and the charge u/s 366-A/109 IPC is not at all proved against her. He submitted that the accused Ms. Jahanara Khatun is the own aunt of the victim girl but as because said accused did not support the allegation labeled against the accused Sahar Ali in the local bichar, she was falsely implicated into the case on the ground that she assisted the accused Sahar Ali amidst the denial by other 3/4 Pws. There is also, denial by I/O that the informant and the victim in their statement u/s 161 CrPC., did not depose all the allegations made. It is submitted that there is no evidence on record to support the case of victim, only one solitary evidence is given by victim is barred u/s 134 of Evidence Act as there is a comment that evidence has a ring truth is cogent and trustworthy but in this case, the victim failed to give a date of occurrence and at and when she was rapped. As the informant and the victim produced a false birth certificate from Barpeta Municipal Board although they are permanent residents of Baksa district under BTAD but not under Barpeta district. It is just to conceal her age and brought a false case.

11. Further, learned counsel for the accused persons submitted that the prosecution is to make out a clear case against the accused persons so that after hearing the parties, the court can take reasonable view for ends of justice that offence u/s 4 of POCSO Act was committed against the victim girl. It is submitted that I/O of the case violated all the norms and procedure of law while conducting the investigation and due to irregularity committed by I/O, the case of the prosecution is hit by section 461 CrPC., and as such, the accused persons cannot be convicted. He further submitted that the FIR was lodged after 5/6 months without explaining the reasonable cause. The whole story of false allegation arises only when a village meeting was arranged against the informant of the case and his son regarding theft of money from the house of the accused Sahar Ali and then, the informant under instruction of some conspirators, made out this false and concocted case and later on, tried their level best to involve the accused persons. It is pointed out that in the FIR, it was mentioned that none was present when the victim girl went to river side to take bath at about 2 pm and on her return, the accused Sahar Ali caught her hand and committed rape on her in the jungle. But in the sketch map, I/O denied that there was any jungle on the both side of the river 'Palla'. Due to old grudge, the victim tried her level best to prove presence of the accused Ms. Jahanara Khatun at the river bank. He submitted that the informant and the victim brought out an absurd story that at the period of 6 months of

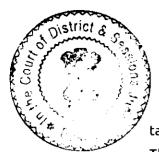
Judge Court Baksa Mushalo r



pregnancy, her mother with grand mother asked about her bulky belly when she disclosed about the story of 6 months old incident. Thus, till 6 months of pregnancy, the victim did not disclose the incident to anybody. The mother is the best person to notice health condition of her daughter but till 6 months, she never asked her victim/ daughter regarding illegal pregnancy of the victim. This will indicate that they all knew well about the man who was responsible for her illegal pregnancy but just to save themselves from the offence of theft of the case of accused Sahar Ali, the informant and victim made out this false and concocted case against the accused persons. If the evidence of other prosecution witnesses is perused, it will show that they stated that after arising of theft case, it was come to know regarding pregnancy of the victim in the village meeting. PW3 and 4 did not support the case of the informant and the victim. The very circumstances proved that the case of the victim is false and concocted against the accused persons as none of the villagers and family members of the informant supports the informant and even they do not know the illegal pregnancy of the victim girl by whom she got pregnant. The statement of the victim as PW2 u/s 161/164 CrPC seemed to be tutored by some other person just to make out a false and concocted case against the accused persons. The victim girl claimed herself as 11 years old at the time of occurrence and she along with other family members kept silence which indicates that some other was responsible for pregnancy and there may be a secret conspiracy not to disclose his name rather try to involve accused Sahar Ali since the informant and his son involved in theft case filed by the accused Sahar Ali and his father. Besides, it is submitted that the parents of the victim were well aware of the fact as it is a general perception that mother is the first person to notice change of figure of the victim's body, her menstrual period and pregnancy if any, within 2/3 months but herein, till 6 months of the pregnancy of the victim, why the informant as well as, the mother or grand mother of the victim did not disclose the fact to the society, is not known. The evidence of the victim is not reliable to believe since her house was at a distance of 50 meters from her house while her house inmates did not support her version. PW2 the victim girl omitted to mention vital part of her case before I/O. PW3, 4, 5 and 6 does not lend support to the

Judge Spi Court prosecution case. Hence, he urged to acquit the accused persons. Baksa Mushalour

12. After hearing the above submissions advanced by learned counsel for the parties, it is proper to go through the evidence on record. It appears that the prosecution examined the complainant Md. Abdul Rahman Khan as PW1. He is admittedly the father of the victim girl. He stated that on the fateful day reported him that about 5/6 months back, one day, while she was returning home after



taking a bath at Palla river, the accused Sahar Ali called her but she did not hear it. Then, the accused Jahanara Khatun told her that the accused Sahar Ali called her. Thereafter, the accused Sahar Ali came and gagged her mouth and forcefully took her into nearby jungle and committed sexual intercourse with the victim. He stated further that after 2 days, the accused Jahanara Khatun called the victim girl to her home and dragged into her house in a room and closed the door from outside. In the room the victim girl found the accused Sahar Ali was sitting. When the victim raised hue and cry, the accused Sahar Ali threatened her to cut off her neck and thereafter, the accused Sahar Ali again committed sexual intercourse with the victim forcefully. After 5/6 months, the victim reported the incident to his wife and mother-in-law. Hence, he came to know about the incident. He called a local bichar before village headman; Jaharuddin and others. The village headman called a bicher but the accused and his father did not pay any attention. Thereafter, as per village headman instruction, he reported the matter to some elderly persons of the village who asked the accused and father to come to bichar but they did not response to it. So he was advised to file a case. According to PW1, the victim girl was studying in LP school at the time of occurrence and as per her birth certificate, her date of birth was 1.3.2005, the victim girl gave birth to a male child one month back.

- 13. In the cross-examination, PW1 stated that the river 'Palla' is situated at a distance of 100 meters from his house. He did not mention that date and time when the victim went to take bath on the river. On way to river, from his house and the house of the accused, there is no house of any person since on the both sides, it was paddy field. He came to know about the incident from the victim girl. He filed the case after 15 days, after knowing the incident from victim girl. He had not filed any document to show that village headman and elderly persons of his village who made endevour to settle the matter.
- 14. PW2 is the victim girl. She is the daughter of PW1. She stated interalias that the house of the accused Sahar Ali can be reached after crossing 4 houses. She stated further that on the fateful day, at about 2 pm., she went alone to take a bath at 'Palla' river. While she was returning there from, the accused Sahar Ali called her. At that time, the accused Jahanara was working nearby. Hence, the Baksa Mushalpur accused Jahanara asked to go near to the accused Sahar Ali. In the meantime, the accused came near her and caught her hand. The accused Sahar Ali forcibly took her towards nearby jungle. She started to shout to her mother and as such, her mouth was gagged by the accused Sahar. The accused Sahar committed sexual intercourse

with her forcefully after removing her cloths. Hence, she told that she will report to her mother. In reply, the accused Sahar told that he will kill her if she disclosed it. Hence, she returned to her home. Out of fear of the accused Sahar Ali, she did not disclose the incident to anybody. After two days of the said occurrence, while she was standing in front of her house, the accused Jahanara called her to the house. When she entered into the house, the accused Jahanara closed the door of the house. She saw the accused Sahar Ali inside the house of the accused Jahanara Khatun. On that day, the accused Sahar Ali committed forceful sexual intercourse with her. Thereafter, the accused Sahar Ali left her there. Later on, the accused Jahanara Khatun opened the door of the house and she reported the incident to Jahanara. But the accused Jahanara Khatun told her that the accused Sahar Ali will be made son-in-law by her mother and to enter to quarrel as well as, she will be beaten up and so, she did not disclose it to anybody. After 4/5 months, her mother , and grand mother asked her why her belly was inflated and changed of her health. Then, she disclosed the entire incident to them. The informant also, came to know it. Thereafter, her parents informed the incident to local head men who examined her also. Local called the accused Sahar Ali and Sadique Ali but they did not turn up. Hence, her father filed the case. About 5 months back, she gave birth to a male child. Due to sexual intercourse committed by the accused, she became pregnant. She was born in 2005. Ext.1 is her birth certificate. She was medically examined by the police. Her menstrual period was continued till sexual intercourse committed by the accused Sahar Ali. She did not submit the certificate of birth of her child.

- 15. In the cross-examination, PW2 stated that 'Palla' river was existed at a distance of 50 meters from her house. There was no house in between her house and 'Palla' river. While she was taking bath, there was none present near her. Local people cultivated near the river. She could not raise alarm due to gagging of her mouth by the accused Sahar Ali. She had a brother namely; Shahjahan. A local bichar held in her villager in connection with theft of money of accused Sahar Ali by Shahjahan.
- The evidence of PW3 Musstt, Hasina Khatun @ Hasna is that she has 16. no know anything about the alleged occurrence. Thus, the evidence of this witness Ksa Mushalpur does not come to help the prosecution.
 - 17. PW4 Sekandar Ali deposed that he did not know anything about the alleged occurrence. After filing of this case, he heard from local villagers that the accused Sahar Ali committed sexual intercourse with PW2 and as a result, she



became pregnant and delivered a child. Hence, the evidence of PW4 needs no any attention. He simply supports the prosecution case.

- 18. PW5 Md. Rahmat Ali Khan was also, declared hostile. But he stated that on the day of occurrence, he heard that there was a sexual relation between the accused Sahar Ali and PW2. At present, PW2 is residing at her parental home. Thus, the evidence of PW5 is found to be hearsay type.
- 19. PW6 Dr. Anima Boro deposed inter-alias that on 10.8.16, at FAAMCH, Barpeta, she examined PW2 with reference to this case being escorted by police and found the history that PW2 was sexually assaulted by Sahar Ali and she also, alleged 5 months pregnancy. On physical examination, she found that no stain detected on her wearing garments and no injury detected. On genitalia examination, she found that hymen was torn, vagina admitted two fingers and uterus palpable for 5 months pregnancy, fourchetee and perineum-normal. Vaginal swabs collected from posterior formix. Result of vaginal swab smear examination shows no spermatozoa is seen on microscopic examination of vaginal swab slides. X-ray report found. Ultrasonography advised and result shows pregnancy for 28 weeks 2 days.

Opinion of PW6 is that 1. There was no recent sign of sexual intercourse, but victim is accustomed to sexual intercourse:

- There was no sign detected as regards to any sign of penetration of penis into vagina/ mouth/ urethra/ anus;
- 3. There was no sign of insertion of any object or any part of body into vagina/mouth/urethra/anus;
- 4. There was no sign of manipulation of body of the victim so as to cause penetration into vagina/ urethra/ anus or any part of the body of the victim;
- 5. There was no sign detected as to application of mouth into vagina/ urethra or anus of the victim;
- 6. There was no injury found on the body of the victim;
- 7. the victim was found not suffering from any disability;
- 8. There was no foreign particle like semen, blood, hair etc., found on the body of the victim;
- 9. As there was no x-ray report, actual age of the victim could not be ascertained;

dge 🕤 Court 10. The victim was found pregnant for 24 weeks gestation.

Baksa Mushalbur

20. Accordingly, PW6 submitted the medical report of PW2 vide Ext.1 with her signature. Thus, the evidence of PW6 that she examined PW2 is found not in dispute neither her finding on PW2 is challenged. Apparently PW2 was medically



found pregnant for 24 weeks gestation at the time of examination and surprisingly, PW2 was found accustomed to sexual intercourse. Thus, it means that PW2 had sex habitually.

- 21. The evidence of PW7, I/O of the case is that on 8.8.16, the informant filed a FIR before Salbari police station and after register of a case, he was endorsed to investigate the case. Accordingly, he visited the place of occurrence and vide Ext.2, he drew up its sketch map. He examined PW2 and sent her for medical examination and for recording her statement u/s 164 CrPC vide Ext.3. he could not find out the accused.
- 22. In the cross-examination, I/O stated that as per Ext.2, the place of occurrence was jungle at the bank of 'Palla' river. Both the sides of the river was covered with jungle. There was no house near the house of the informant. He denied that PW2 stated to him earlier that she went alone to take bath and the accused Jahanara was working near the river and asked to go as accused Sahar Ali called her and her cloths were removed and if she tell the incident to her parents the accused Jahanara will enter into quarrel and after 4/5 months, when her belly was inflated, her mother and grand mother asked her about it and she told them the incident. He did not cause for DNA test.
- 23. Further, another I/O, PW8, deposed inter-alias that on 8.8.16, while he was working at Salbari police station, he received the FIR from PW1 through SDPO, Salbari and accordingly, he registered the case no.76/16 u/s 120-B/376/506 IPC r/w section 4 of POCSO Act and he endorsed the investigation to PW7. Ext.4 is the said FIR with thump impression of PW1. After investigation, PW7 handed over the case diary to him. He perused the case diary and again, he visited the place of occurrence led by PW1 and 2. At the place of occurrence, he noticed that other sides of river was easy to see and as such, he searched and recorded statement of other witnesses from other side of the river. He collected the medical report of the victim who was carrying 24 weeks pregnancy. He arrested the accused Sahar Ali.

 After completion of the investigation, he filed the charge-sheet against the accused persons vide Ext.5 with his signature. He did not collect the original birth certificate of the victim.

24. In the cross-examination, PW8 stated that he did not seize anything during the investigation. Except the LP school certificate, no other document was found relating to age of the victim. He did not examine Head master of school of



the victim.

- 25. Thus, from the evidence of the prosecution witnesses so tendered in the case, it appears that there is no dispute that the victim girl was pregnant for 24 weeks gestation at the time of medical examination. Admittedly, the medical examination was performed after 4/5 months of the occurrence. Apparently, the evidence of PW1 is not direct evidence and as such, his evidence cannot be place reliable. Further the evidence of PW3 does not lend any support to the prosecution case. Although PW4 lends support to the prosecution story, his evidence is hearsay type and as such his evidence cannot be taken into consideration. Similarly, PW5 tenders hearsay evidence about the occurrence and as such, such evidence does not come to help the prosecution case.
- 26. Hence, PW2 is the most important prosecution witness. In case of offence of sexual assault, Hon'ble Supreme Court in respect of appreciation of evidence of the victim, observed in AIR 1996 SC 1393 State of Punjab vs. Gurmit Singh & ors., that The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon

Je - Court Baksa Mushale



corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.

- 27. On perusal of the evidence of PW2, it is clear that she did not disclose the incident for about 4/5 months to anybody. When her mother and grand mother noticed her inflated belly, she disclosed the entire story of sexual intercourse by the accused Sahar Ali. According to her, she was sexually assaulted by the accused Sahar Ali twice out of which the first incident was taken place at the river side jungle and secondly, in the house of the accused Jahanara Khatun. Her claim is that both the accused threatened her not to disclose the incident and as such, she remained mum till inquired by her mother and grand mother about her inflated belly. The evidence of PW2 discloses that she had menstrual period prior to the occurrence. Thus, it means that if she was pregnant after the incident caused by the accused Sahar Ali, her menstrual period will stop immediately after one month of the occurrence. But it was neither noticed by her mother or grand mother. Her mother and grand mother was not examined by the prosecution to clarify the same. The period of 4/5 months as stated by PW2, is found too long to notice of her pregnancy by her mother and grand mother to detect her pregnancy. Thus, on this respect, the evidence of PW2 does not pose confidence to rely upon.
- 28. Further, PW2 claims that she did not disclose the incident to anybody till detected by her mother and grand mother after 4/5 months, was due to threatening given by the accused Sahar Ali for taking her life and secondly, by the accused Jahananra Khatun for enter into quarrel with her parents. But at the first instance, the accused Jahanara Khatun did not threaten her. Inspite of that, she again visited the house of the accused Jahanara Khatun at her call after two days of first incident. At the same time, it comes to notice that the accused Jahanara was present at the time of first incident. In other words, both the accused threatened her at the first incident. Therefore, visiting for second time to the house of the accused Jahanara creates doubt over the version of PW2 if she was really threatened by the accused persons.

Judge Spr Court Raksa Mucha

29. If the sequence of event of the case continues, it comes to notice that PW2 got the second threatening from the accused Jahanara after second sexual intercourse by the accused Sahar Ali in her house. Therefore, PW2 remained silent for over 4 /5 months. From her version, if her mother and grand mother did not inquire about her inflated belly, PW2 would not disclose it anybody till possibly her delivery of a baby. But that was not happened. PW1, her father took up the

initiative to disclose the matter to local villagers instead of approaching to legal action. Further, it appears that PW2 in her version, did not say anything about the period in between the last incident or the second incident at the house of the accused Jahanara Khatun to her disclosure of incident as a whole to her parents. She neither said anything of meeting of accused persons during that period nor approached accused Jahanara Khatun to inform her pregnancy. But after knowledge of her parents about the incident of the case, PW2 could dare and regain her strength to disclose even to the village head men about the incidents. Thus, after going through the evidence of PW2 with PW1, it does not inspire confidence to rely their version.

30. PW2 stated that she gave birth to a child in the hospital. The medical evidence discloses that PW2 was found pregnant at the time of examination for 24 weeks gestation. Perhaps, after medical examination, PW2 delivered the child. It appears that PW2 claims that her child is belonged to the accused Sahar Ali. But I/O admitted that DNA test of the child of PW2 with the accused Sahar Ali was not conducted. Hence, it is a major lapse in the investigation. In absence of proper evidence, it is difficult to accept that the child of PW2 owned by the accused Sahar Ali. Moreover, PW2 claims that she was 11 years of age at the relevant time. She produced her birth certificate vide Ext.1. as per the birth certificate, the date of birth of PW2 was 1.3.2005. But it was obtained on 16.8.12 which is after 7 years. The occurrence took place in 2016 in the months of March/ April' 2016. hence, it does not seem that the birth certificate of PW2 in connection with the occurrence. Thus, from the birth certificate of PW2, it appears that PW2 was 11 years and more. But her evidence discloses that she started to have menstrual period prior to the incident. If the fact was that, then, PW2 got her puberty before she attained to 11 years of age which does not seem natural. In that case, to remove such confusion, medical examination report regarding the age of PW2 ought to have obtained. But the evidence of PW6 shows that she advised for x-ray of the victim girl but report was not submitted to ascertain the age of the victim girl. Apparently, the medical examination of PW2 confined only to her pregnancy test. Thus, in absence pf proper evidence, it is difficult to accept that PW2 was 11 years of age at the time of occurrence and she could able to give birth to a child at that age. Therefore, it could not be ascertained that if PW2 is a child within the meaning of Section 2(d) of POCSO Act due to lack of reliable evidence.

ปะเทาโดย Co Baksa Musha

31. So far as, the delay in filing of the FIR, PW1 admitted that he took about 15 days to file the FIR before police after knowing the incident as divulged by



PW2. It appears that PW2 already delayed to take the help of law. That apart, PW1 took another 15 days time. He discloses that he intimated the incident to local head men to a decision who called the accused Sahar Ali and examined PW2. Since the accused Sahar Ali did not turn up before local head men, he filed the FIR. This part of delay is duly explained but the previous part of delay caused by PW2 where she kept the entire incident under secret for long 4/5 months, is not reliable to believe. The ground of threatening as alleged by PW2 to her by the accused persons is also, not inspired confidence to rely upon since she inflated belly was noticed only after 4/5 months by her mother and grand mother. But her pregnancy could have discovered by her mother only in the first month of her pregnancy. Thus, due to such discrepancies in the evidence, it seems that PW1 and 2 conceals some real facts of incident and as such it is not safe to rely such evidence. Moreover, the evidence of PW2 does not disclose any material to hold that the accused Sahar Ali induced her to go from her home with the intent that she will be forced or seduced to illicit intercourse with another person. Similarly, since the offence u/s 366-A IPC., is not proved, the act of abetting the said offence by the accused Jahanara Khtun does not arise to attract the offence and to implicate her u/s 109 IPC. Apart from the above, from the previous discussion, it is already found that the evidence of PW2 does not inspire confidence to hold that she was threatened by the accused persons as provided u/s 506 IPC.

32. There is also, no direct reliable evidence to hold that the accused Sahar Ali is the father of the child of PW2. The medical evidence supports the claim of PW2 only to the extent of her pregnancy but not more about any sexual assault. It is true that since PW2 was found pregnant medically, she was subjected to sexual intercourse. But normal intercourse cannot be held as penetrative sexual assault upon her as medical evidence does not lend any support to it. Hence, there is doubt if PW2 was subjected to penetrative sexual assault. In absence of proper evidence, it cannot be ascertained the culpability of mental state of the accused Sahar Ali for committing the offence u/s 4 of POCSO Act. Due to discrepancies appears in the evidence of the prosecution witnesses particularly the version of PW2, the accused persons are entitled to get the benefit of doubt. Accordingly, the accused persons are given the benefit of doubt.

LudgeSpr Court Baksa Mushalbur

33. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused persons beyond all reasonable doubt. Accordingly, the accused persons are held not guilty u/s 366-A/109 IPC r/w Section 4 of POCSO Act and they are acquitted and set at liberty. The



bail bond of the accused persons shall however, remain in force u/s 437-A CrPC. Forward a copy of judgment to the District Magistrate, Baksa, Mushalpur. This court recommends payment of compensation to the victim person u/s 357 CrPC., by DLSA, Baksa district.

34. Given under the hand and seal of this court on this 7^{th} day of September 2019.

Dictated and corrected by:

Judge, Special Court

Belgradushelanela.

Judge, Special Court

Baksa Musishaiour

Typed by:

P. Deka, Com. Typist



ANNEXURE:

List of prosecution witness:

PW1 ... Md. Abdul Rahman Khan ... complainant

PW2 ... victim girl (name withheld)

PW3 ... Msstt. Hasina @ Hasna Khatun

PW4 ... Md. Sakendar Ali

PW5 ... Md. Rahmat Ali Khan

PW6 ... Dr. Anima Boro ... m/o

PW7 ... Sri Naren Bora ... I/o

PW8 ... Md. Rafiqul Hassan Choudhury ... I/o

List of defence witness:

Nil

List of documents exhibited:

Ext.1... medial report

Ext.2 ... sketch map

Ext.3 ... petition of I/o for statement of victim u/s 164 CrPC

Ext.4 ... FIR

Ext.5 ... charge-sheet

Judge, Special Coourt