HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special Case No- 04 of 2017

u/s 366(A) and 4 of POCSO Act

STATE

Versus

Kabil Sk.

Accused person

(Corresponding to GR case No- 1757/16 u/s 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 :- 26-11-16

Date of Framing charge :- 25-05-17

Date of prosecution evidence :- 15-09-17,05-01-18,21-06-18, 13-09-18,

02-11-18

Statement of accused recorded on :- 26-11-18

Date of Argument :- 26-11-18

Judgment delivered :- 07-12-18

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that informant on 26-11-16 informant Puran Baraik lodged written ejahar before O/C Chapar PS inter alia citing that on 15-11-16 at about 07.00 pm his daughter Miss X (name changed) visited Chaibari Tea Estate Nispolli Line field to attend *Birsa Jayanti* festival. From that place accused Kabil Sk kidnapped informant's daughter Miss X and taken her in a car and after kidnapping her committed sexual intercourse with Miss X. Informant further alleged that other accused persons Ramjan Ali was also involved in the commission of kidnapping of his daughter.

Investigation

2. Officer in charge Chapar PS, on receipt of ejahar from informant Puran Baraik registered a police case vide Chapar PS case no. 455/16 u/s 366(A)/34 I.P.C r/w section 4 of POCSO Act and SI Nirod Ch. Das was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused Kabil Sk u/s 366(A) r/w section 4 of POCSO Act and cognizance taken.

<u>Charge</u>

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 366A r/w section 4 of POCSO Act was framed against the accused Kabil Sk and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

<u>Trial</u>

4. In order to prove the prosecution charges against the accused person, prosecution adduced evidence of all together 10 number of witnesses and exhibited 6 nos. of documents. PW-1 Dr. Mahammad Laskar Ali (M.O), PW-2 Bittu Nayak, PW-3 Dara Sing Barman, PW-4 Birbal Lohar, PW-5 Dr. Muskura Ahmed (M.O), PW-6 Daneswar Tati, PW-7 Rajesh Swachi, PW-8 Puran Baraik, PW-9 Miss X, PW-10 SI Debraj Kalita(I.O). Ext-1 Radiological report, Ext-2 Medical report, Ext-3 statement of victim recorded u/s 164 Cr.P.C, Ext-3 Ejahar, Ext-4 Charge sheet, Ext-5 Sketch Map. 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 15-11-16 at about 07.00 pm induced informant's daughter Miss X from her house with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with accused or with other persons?
- ii) Whether accused on 15-11-16 at about 07.00 pm at Chaibari Tea Estate under Chapar PS committed penetrative sexual assault on informant's daughter Miss X?

ARGUMENT

6. I have heard ld. counsel for both sides. It has been argued by the ld. defence counsel that informant as well victim of this case did not supported the prosecution case and from their evidence 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 Dr. Mahammad Laskar Ali is the M.O. His evidence is that on 30-11-16 in the morning he did x ray of left wrist joint, left elbow joint and left iliac crest to determine the radiological age of the patient Miss X, victim of this case and on examination found- lower end epiphysis of radius not completely fused. Approximate age is equal or less than $16 \frac{1}{2}$ years; lower end epiphysis of ulna is not fused. Age is less than 17 years; radial head epiphysis is fused. Approximate age more than 14 years; Iliac crest epiphysis is not fused. Approximate age less than 17 years. According to his opinion- approximate radiological age is 16-17 years. **In cross** he stated radiological age given in his medical report is age range of the patient Miss X, as per x ray report.
- 8. PW-2 Bittu Nayak deposed incident was took place on 15-11-16 on the day of Birsa Munda Jayanti Divas and he heard that one Muslim boy kidnapped Miss X. **In cross** he stated he heard from villagers that one Muslim boy kidnapped victim girl Miss X.
- 9. PW-3 Dara Sing Barman deposed on the next day of Birsa Munda Jayanti Divas, police came to their village and from police he came to know that, daughter of informant Puran Baraik eloped with someone. Defence declined to cross examine PW-3.

- 10. PW-4 Birbal Lohar deposed on the next day of incident he heard that daughter of Puran Baraik eloped with one boy. Defence declined to cross examine PW-4.
- 11. PW-5 Dr. Muskura Ahmed is M.O. Her evidence is that on 30-11-16 she had medically examined Miss X, Victim of this case. She deposed patient narrated history before her as- The boy did physical assault with sexual assault on Tuesday and on medical examination she found- General Physical examination- No abnormality detected; Examination of injuries- No abnormality detected; Local examination of genital parts- External Genitalia No abnormality detected; Hymen- Torn; Vagina & Cervix- No abnormality detected. Anus- No abnormality detected; Urine for pregnancy test report negative; vaginal swab sent for clinical examination. No spermatozoon found. According to her opinion patient was not consistent with recent sexual intercourse at the time of examination. **In cross** she stated she did not find recent sign of sexual assault on patient at the time of examination as per history stated by the patient.
- 12. Evidence of PW-6 Daneswar Tati is that he knows informant Puran Baraik but he has no knowledge about the incident. Defence declined to cross examine PW-6.
- 13. Evidence of PW-7 Rajesh Swachi is that he knows informant Puran Baraik and his daughter Miss X and when informant lodged ejahar, informant took him to the police station but he has no knowledge about the incident. **In cross** he stated he cannot say what allegation made by the informant in his ejahar against the accused.
- 14. PW-8 Puran Baraik is the informant of this case. He deposed victim girl Miss X is his daughter and he knows accused. He further deposed at the time of incident his daughter is 18 years old and she had love affairs with accused Kapil and eloped with accused. He was not aware of the fact of love affairs and therefore he lodged ejahar. **In cross** he stated his daughter did not disclose him any fact after her return from home. He cannot say the content of ejahar.
- 15. PW-9 is victim girl of this case. She deposed she knows accused Kabil Sk. and she has love affairs with accused Kabil Sk. but as accused is muslim boy, her guardian did not agree their love affairs and refused to give her marriage with accused and therefore her father lodged the case. She deposed except the love affairs, no other relationship was present in between her and accused. She deposed after lodging of ejahar, she was produced before the

Magistrate wherein she made her statement and she was also medically examined by doctor at Dhubri Civil Hospital. **In cross** she stated she does not know why her father lodged case against accused and she cannot recollect what statement she made earlier before the Magistrate.

16. PW-10 SI Debraj Kalita is IO of the case. His evidence is that on 01-03-17 O/C Chapar PS endorsed him Chapar PS Case no. 455/16 u/s 366A/34 I.P.C r/w section 4 POCSO Act to complete the investigation. After taking charge of the investigation and scrutiny of the C.D he found that investigation is completed and only left to submit the charge sheet. Accordingly he have submitted charge sheet against the accused Kabil SK. u/s 366(A) I.P.C r/w section 4 of POCSO Act for trial. He deposed his predecessor IO SI Nirod Ch. Das investigated the case and he had recorded statement of the witnesses, produced victim before the doctor at Dhubri Civil Hospital for medical examination and produced her before the Ld. Magistrate to record her statement u/s 164 Cr.P.C and he had visited place of occurrence and drawn sketch map of the place of occurrence. **In cross** he stated guardian of victim brought victim at the police station on 26-11-16 and in the ejahar it is alleged that victim was missing from 15-11-16.

DISCUSSION, DECISION & REASON THERE OF:-

- 17. Prosecution allegation leveled against accused Kabil Sk. is that on 15-11-16 at about 07.00 pm accused had induced informant's daughter Miss X from her house with intent that she might be forced or seduced to illicit intercourse with accused and after kidnapping Miss X, victim of this case, accused Kabil Sk. had committed penetrative sexual assault on her.
- 18. In this case prosecution adduced evidence of informant, victim girl and other 8 numbers of witnesses including MO and IO. PW-9 is the victim of this case and she, being victim, is star witness of this case. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of kidnapping and charge of penetrative sexual assault by accused Kabil Sk.
- 19. PW-2 stated he heard that one Muslim boy had kidnapped Victim girl. In cross PW-2 stated he heard from villager that one Muslim boy kidnapped victim girl. Evidence of PW-3 and PW-4 is that they heard that daughter of Puran Baraik eloped with one boy. On perusal of evidence of PW-2, PW-3 and PW-4 it is seen that they did not specifically stated from whom they heard about the incident. Their evidence does not pointed that they had seen the

incident or they had heard about the incident from informant or victim. Thus, it is seen that evidence of PW-2, PW-3 and PW-4 is totally hearsay evidence. Further evidence of PW-2, PW-3 and PW-4 does not connect any link with the accused Kabil Sk. that it is the accused Kabil Sk. who had kidnapped the victim girl and after kidnapping her, committed forceful sexual assault on victim girl.

- 20. PW-6 and PW-7 stated they do not have any knowledge regarding incident. Thus, their evidence does not help the prosecution case.
- 21. PW-8 is the informant of this case and PW-9 is the victim girl. On scrutiny of evidence of PW-8 it is reveal that victim girl had love affairs with accused and victim girl eloped with accused out of love affairs. PW-8 while adducing before the court did not alleged that accused had kidnapped his daughter and after kidnapping her, committed forceful sexual intercourse with his daughter. Thus, it is seen that PW-8 did not support his statement made in ejahar and he totally overturn the prosecution story by bringing new story before the court.
- 22. Evidence of PW-9 pointed she had love affairs with accused Kabil Sk. but her quardian did not agree their love affairs and refused to give her in marriage with accused Kabil Sk and therefore her father lodged ejahar against the accused. PW-9 while adducing before the court also did not alleged that accused Kabil Sk had kidnapped her and after kidnapping her committed forceful sexual intercourse with her. Rather while adducing before the court she stated except love affairs, no other relationship was present in between her and accused and medical report also tally her statement. In cross PW-9 stated she cannot recollect what statement she made earlier before the Magistrate. Thus it again goes to show that PW-9 victim girl not supported and corroborated her statement which she made before the magistrate u/s 164 Cr.P.C and Ext-3 does not make any improvement in the case against the accused person in absence of the corroboration from her evidence and statement u/s 164 Cr.P.C is not substantive piece of evidence to hold accused guilty in absence of corroboration from the maker of the statement.
- 23. Thus, from the evidence of PWs and more specifically from the evidence of PW-9, victim girl of the case it is seen that not a single ingredient of section 3 of POCSO Act and 366A IPC appear against the accused Kabil. Further evidence of PW-8 and PW-9 pointed that they did not support the prosecution case and they bring different story before the court which goes in favour of accused Kabil Sk.

- 24. Therefore, in view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution totally failed to bring home charge u/s 366(A) and section 4 of POCSO Act against the accused person Kabil Sk. Accordingly accused Kabil Sk is acquitted from the charge of section 366(A) and section 4 of POCSO Act and set at liberty.
- 25. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 26. Given under hand and seal of this Court on this 07th day of December, 2018 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 Dr. Mahammad Laskar Ali (M.O),

PW-2 Bittu Nayak,

PW-3 Dara Sing Barman,

PW-4 Birbal Lohar,

PW-5 Dr. Muskura Ahmed (M.O),

PW-6 Daneswar Tati,

PW-7 Rajesh Swachi,

PW-8 Puran Baraik,

PW-9 Miss X,

PW-10 SI Debraj Kalita (I.O).

PROSECUTION EXHIBIT:-

Ext-1 Radiological report,

Ext-2 Medical report,

Ext-3 statement of victim recorded u/s 164 Cr.P.C,

Ext-3 Ejahar,

Ext-4 Charge sheet and

Ext-5 Sketch Map

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara