#### IN THE COURT OF SPECIAL JUDGE ::::::: BILASIPARA

Present:- Shri J. Borah, A.J.S

Special Judge,

Bilasipara.

# Special (POCSO) Case No- 07 of 2019

u/s 341/506 of Indian Penal Code & u/s 4 of Protection of Children from Sexual Offences Act.

## **State of Assam**

-Vs-

## **Mohir Uddin Talukdar**

..... accused person

Date of framing charge :- 12-03-2019

Date of recording evidence :- 26-03-2019

09-04-2019

22-05-2019

19-07-2019

08-11-2019

09-12-2019

Date of Argument :- 20-01-2020

Date of Judgment :- 27-01-2020

# **Advocates Appeared:**

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P

for the State of Assam.

For the defence :- Mr. R. Neogi & Mr. Topa Ghosh,

Ld. Advocate for the defence.

# **JUDGMENT**

- 1. This case is under section 341/506 Indian Penal Code and under section 4 of Protection of Children from Sexual Offences Act. So, the name of the victim is not mentioned and she is, hereinafter, referred to 'x'.
- 2. The prosecution case, in brief, is that Sayed Ali, the informant lodged an ezahar with the Salkocha police out post on 21-09-2016 informing that 'x' is the granddaughter of the informant. 'x' was only 14 years old. On 13-04-2018, 'x' went to the paddy field to bring back the goats. She went by the side of the house of the accused Mohir Uddin Talukdar. The accused Mohir Uddin Talukdar wrongfully restraint 'x', took her to his house, gagged her mouth and then had committed sexual intercourse on her. The accused Mohir Uddin Talukdar threatened 'x' not to divulge the incident to other.

So, the informant prayed for taking necessary action against the accused.

- 3. The Salkocha police out post received the ezahar vide GDE no. 351 dated 21-09-2018 and forwarded to the Chapar police station. The Chapar police station received the ezahar and registered vide Chapar police station case no. 379/2018 under section 341/34 Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act, 9/10 of Prohibition of Child Marriage Act. The case was investigated and having found prima facie under section 341 Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act against the accused Mohir Uddin Talukdar, laid the charge sheet before the court for trial.
- 4. The accused Mohir Uddin Talukdar, hereinafter called the accused, appeared in this case. Copy was furnished to the accused. Charge was framed under section 341/506 Indian Penal Code, I.P.C in short, and section 4 of Protection of Children from Sexual Offences Act, POCSO in short, against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined 10 (ten) witnesses, namely-

Sayed Ali
 'x'/the victim
 Kamar Ali Talukdar

P.W-1
P.W-2

4.	Moynal Talukdar	P.W-4
5.	Nozmul Hoque	P.W-5
6.	Malek Uddin	P.W-6
7.	Sopiya Talukdar	P.W-7
8.	Abdul Hamid Talukdar	P.W-8
9.	Sumanta Ch. Barman	P.W-9
10	. Dr. Rinku Ahmed	P.W-10

- 6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations levelled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

## 8. **POINTS FOR DETERMINATION**

- i. Whether accused on 13-04-2018 at about 04.00 P.M at village Kamardihi Part I under Chapar police station, wrongfully restrained 'x' when she went to bring goat from the field and thereby committed offence u/s 341 I.P.C?
- ii. Whether accused on 25-04-2018 at village Kamardihi Part I under Chapar police station, committed criminal intimidation by threatening 'x' to put her sign on kabin-nama form which she was not legally bound to do and thereby committed offence u/s 506 I.P.C?
- iii. Whether accused on 13-04-2018 at about 04.00 P.M at village Kamardihi Part I under Chapar police station, committed penetrative sexual assault on 'x', aged about 14 years old and thereby committed offence u/s 4 of POCSO Act?

#### **DECISION AND REASONS THERE OF**

9. In this prosecution case P.W-1 Sayed Ali is the informant. P.W-2 'x' is the alleged victim. P.W-3 Kamar Ali Talukdar, P.W-4 Moynal Talukdar, P.W-5 Nozmul Hoque, P.W-6 Malek Uddin, P.W-7 Sopiya Talukdar, P.W-8 Abdul Hamid Talukdar are independent witnesses. P.W-9 Sumanta Ch. Barman is

the investigating officer and P.W-10 Dr. Rinku Ahmed is the Medical & Health Officer.

10. Since P.W-1 Sayed Ali is the informant and P.W-2 'x' is the alleged victim, so, both are the prime witnesses in this case. Let see the evidence of this two witnesses, at first.

P.W-1 Sayed Ali has stated in his evidence that he is the informant in this case. 'x' is his granddaughter. The occurrence took place 7/8 months ago (from the day of adducing evidence on 26-03-2019). There is paddy land behind the house of the accused. On the day of occurrence, the father of 'x' was not at his house. He went to Guwahati for medical treatment. On the day of occurrence at about 03.00 P.M, 'x' went to the paddy filed behind the house of the accused. On her way when 'x' reached the house of the accused, he caught hold of her and dragged to his house where he committed rape on her. One Dagu Dewani informed him about the occurrence. Accordingly, he went to the house of his son. 'x' told him about the occurrence. There was discussion regarding the occurrence. The accused agreed to marry 'x'. But the family members of the accused did nothing to effect the discussion. Accordingly, he lodged the ezahar.

In his cross P.W-1 has stated that he lives at Goalpara district and his son lives at Chapar. Dagu Dewani informed him about the occurrence. 'x', her mother and her father did not inform him about the occurrence. Dagu Dewani informed him about the occurrence next day of the occurrence. He lodged the ezahar after 3/4 months from the day of occurrence. The village 'mel' was held next day. It was decided in the village meeting that the accused would marry when 'x' would be major. But the family members of the accused did not comply to it. P.W-1 denied that the accused did not drag his granddaughter and he did not commit rape on 'x'.

11. P.W-2 'x' has stated in her evidence that the informant is her grandfather and she is the victim. The occurrence took place one year ago (from the day of adducing her evidence on 26-03-2019). There is paddy land behind the house of the accused. On the day of occurrence, she went there to bring their goat. On her way, when she reached at infront of the house of the accused, she was caught hold by the accused, dragged her to his house and committed rape on her. The accused threatened her not to divulge the occurrence to other. After the occurrence one Salam Kazi took her signature

on paper. On the day of occurrence her mother went for NRC hearing and her father went to Guwahati for medical treatment. When her mother returned home, she told her about the occurrence. There was a village meeting and the accused agreed to marry her. But later on, he did not comply to it. Her grandfather lodged ezahar in connection with the occurrence. She gave her statement before the Magistrate, Ext-2 is the said statement, Ext-2(1)(2) are her signature.

In her cross P.W-2 has stated that their village is thickly populated. There are 10/12 houses nearby to their house. P.W-2 has denied that the accused did not drag her and commit rape on her. P.W-2 has also denied that there was no village 'mel' in connection with the occurrence. She had also denied that she has adduced false evidence. P.W-2 has also denied that her statement in Ext-2 is tutored.

12. Thus, careful scrutiny of evidence of P.W-1 Sayed Ali and P.W-2 'x' shows that P.W-1 is the grandfather of P.W-2. P.W-1 lives at Goalpara and P.W-2 lives at Chapar under Dhubri District. P.W-1 got to know about the occurrence from one Dagu Dewani. But this Dagu Dewani is not examined by the prosecution. So, it is a lapse on the part of the prosecution. Dagu Dewani is a vital witness as because how Dagu Dewani got to know about the occurrence, whether he saw to commit rape on 'x' or he heard from other. So non examination of Dagu Dewani affects the authenticity of evidence of P.W-1.

It appears from the evidence of P.W-1 and P.W-2 that the occurrence took place at day light at about 03.00/03.30 P.M. It also appears from the evidence of P.W-1 and P.W-2 that the place of occurrence is thickly populated. Moreover, there are 10/12 houses attached to the house of 'x'. If that is so, how the accused committed the offence is a matter of question. According to P.W-1, the accused person has his parents who are alive. The accused has also brother and sister. In such a position, the accused committed rape on 'x' cannot be acceptable easily.

13. Another aspect is that delay to lodge the ezahar. Perusal of the case record shows that the ezahar was lodged on 21-09-2018 and the occurrence took place 13-04-2018 i.e the ezahar was lodged after five months. There is no specific explanation either in the ezahar or in the evidence why it took time to lodge the ezahar. It is trite law that the ezahar should be lodged

immediately after the occurrence. If there is any inevitable cause, the same must be specifically explained. In our case instant, though there is sufficient delay to lodge the ezahar, the same was not properly explained. This unexplained delay may affect the prosecution case.

14. Now let see the evidence of other witnesses.

P.W-3 Kamar Ali Talukdar has stated in his evidence that the village headman told him that the accused refused to marry 'x' as she was minor.

In his cross P.W-3 has stated that the accused is not his relative.

15. P.W-4 Moynal Talukdar has stated in his evidence that there was a village meeting to discuss about the marriage between the accused and 'x'. But the marriage did not take place.

In his cross P.W-4 has stated that there was no discussion in respect of rape on 'x' by the accused.

16. P.W-5 Nozmul Hoque has stated in his evidence that he knows neither the informant nor the victim 'x'. He knows the accused. He knows nothing about the occurrence.

Cross examination of P.W-5 was declined by the defence.

17. P.W-6 Malek Uddin has stated in his evidence that he knows the informant, 'x' and the accused. But he knows nothing about the occurrence.

Cross examination of P.W-6 was declined by the defence.

18. P.W-7 Sopiya Talukdar has stated in his evidence that 'x' is his daughter and the informant is his father. He was in Guwahati when the occurrence was took place. His father, the informant told him that the accused committed rape on 'x'.

In his cross P.W-7 has stated that his father lives at Goalpara. He did not know when his father lodged the ezahar.

19. P.W-8 Abdul Hamid Talukdar has stated in his evidence that the informant is his brother and 'x' is his granddaughter. On the day of occurrence 'x' went to the grazing filed to bring goat. The accused dragged her to his house and committed rape on her. 'x' told him about the occurrence. There was village meeting where it was decided that the accused would marry 'x' when she would be major. But the accused did not marry her.

In his cross P.W-8 has stated that he lives at Goalpara. He was not with the informant when the ezahar was lodged. He was not in the village meeting.

20. Thus, careful scrutiny of evidence of P.W-3 to P.W-8 shows that except P.W-7 and P.W-8, the other witnesses have stated nothing to incriminate the accused. So, the evidences of P.W-3 to P.W-6 have little value for consideration.

P.W-7 is the father of 'x' and he is the son of the informant. P.W-7 was in Guwahati at the time of occurrence. He got to know about the occurrence from P.W-1. But P.W-1 was also at Goalpara at the time of occurrence. So, the evidence of P.W-7 is mere hearsay. The hearsay evidence has no value in the eye of evidence. P.W-8 is the brother of the informant. He got to know about the occurrence from the informant. P.W-8 also lives at Goalpara. The occurrence took place at Chapar under Dhubri district. In such a situation, the evidence of P.W-8 cannot be accepted.

- 21. P.W-10 Dr. Rinku Ahmed is a Medical and Health Officer. P.W-10 examined the health of 'x'. But she examined 'x' after five months from the date of occurrence. P.W-10 does not support the evidence of P.W-2 'x' that there was sexual intercourse on P.W-2 'x'. So, the evidence of P.W-10 is not considering.
- 22. P.W-9 Sumanta Ch. Barman is an investigating officer. His evidence is mere official. He, after investigation, filed charge sheet, Ext-5. The evidence of P.W-9 will not meliorate the prosecution case.
- 23. Taking all into consideration, it leads to conclusion that the prosecution evidence is not sufficient to prove the offences as alleged against the accused. The prosecution has failed to prove it's case u/s 341/506 I.P.C and section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 24. Held, the accused is not guilty u/s 341/506 I.P.C and section 4 of POCSO Act.
- 25. The accused is acquitted and set at liberty.

The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 27<sup>th</sup> day of January, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by, S. Brahma, Stenographer Gr. III.

#### **APPENDIX**

## **PROSECUTION WITNESS:-**

P.W-1 Sayed Ali

P.W-2 'x'/the victim

P.W-3 Kamar Ali Talukdar

P.W-4 Moynal Talukdar

P.W-5 Nozmul Hoque

P.W-6 Malek Uddin

P.W-7 Sopiya Talukdar

P.W-8 Abdul Hamid Talukdar

P.W-9 Sumanta Ch. Barman

P.W-10 Dr. Rinku Ahmed

# **PROSECUTION EXHIBITS:-**

Ext-1 Ezahar,

Ext-2 Statement of 'x' recorded u/s 164 Cr.P.C,

Ext-3 Sketch Map,

Ext-4 Seizure list,

Ext-5 Charge sheet,

Ext-6 Medical report.

DEFENCE WITNESS :- NIL
DEFENCE EXHIBITS :- NIL
COURT WITNESS :- NIL
COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara