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- 09 of 2018

u/s 447/354(A) and 8 of POCSO Act

STATE

Versus

Ahed Ali

S/O Ld. Abdul Rahim
R/O vill- Suapata Pt III,
PS- Bilasipara, Dist- Dhubri, Assam

Accused person

(Corresponding to GR Case No- 1045/18 u/s 120(B)/451 I.P.C r/w section 8 of POCSO Act)

Advocate appeared:-

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

For the accused:- Smt. Syeda Afroza Akhtar, Advocate.

Date of institution of the case :- 26-06-18

Date of Framing charge :- 14-12-18

Date of prosecution evidence :- 18-01-19, 06-03-19, 08-03-19, 11-03-19

Statement of accused recorded on :- 25-03-19

Date of Argument :- 25-03-19

Judgment delivered :- 30-03-19

JUDGMENT

Prosecution Case

1. Prosecution case as reveal from Ext-2 ejahar is that accused Ahed Ali on 24-06-18 at about 05.00 pm, taking advantage of absence of informant and his wife, criminally trespassed into the house of informant and made attempt to commit rape on informant's daughter Somiran Nessa 12 years old and accused undressed her, hold her forcefully while she was present near tube well. Hearing her cry, nearby people rushed to the place of occurrence and seen accused running away from the place of occurrence. To this fact, informant Somer Uddin lodged written ejahar before O/C Bilasipara PS.

Investigation

2. Officer in charge Bilasipara PS, on receipt of ejahar from informant Somer Uddin registered a police case vide Bilasipara PS case no. 731/18 u/s 120(B)/451 IPC r/w section 8 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 u/s 451/354(A) IPC r/w section 8 of POCSO Act against the accused Ahed Ali and cognizance taken.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 447/354(A) IPC and section 8 of POCSO Act was framed against the accused Ahed 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 9 number of witnesses and exhibited 6 nos. of documents. PW-1 Miss X (victim girl), PW-2 Samiruddin, PW-3 Dr. Madhumita Das (M.O), PW-4 Sanowar Hussain, PW-5 Montu Ali, PW-6 Sumar Ali, PW-7 Nur Islam, PW-8 Mazid Ali, PW-9 SI Indreswar Pathak (I.O). Ext-1 Statement of PW-1 recorded u/s 164 Cr.P.C, Ext-2 Ejahar, Ext-3 Medical examination report, Ext-4 Seizure list, Ext-5 Sketch Map and Ext-6 Charge sheet.

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 24-06-18 at about 05.00 pm at village Suapata Pt III under Bilasipara PS, committed trespass by entering into the compound of informant Somer Uddin with intent to sexually assault informant's daughter Miss X?
- ii) Whether accused on 24-06-18 at about 05.00 pm at village Suapata Pt III under Bilasipara PS, committed physical contact and advanced involving unwelcome and explicit sexual overtures with Miss X and made demand for sexual favour from Miss X against her will?
- iii) Whether accused on 24-06-18 at about 05.00 pm at village Suapata Pt III under Bilasipara PS, committed sexual assault on Miss X aged about 12 ½ years old by touching on her chest and private parts?

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 Miss X is the victim girl. She deposed about 6-7 months back accused Ahed Ali sent one person as marriage ghatak and through said messenger (ghatak) accused Ahed Ali sent his marriage proposal for her but her father disagreed the marriage proposal as she is minor girl and altercation took place in between her parents and accused Ahed Ali and her father lodged the case. She deposed after lodging the case, police recorded her statement, medically examined her by doctor and produced her before the court to record her statement u/s 164 Cr.P.C and police arrested accused Ahed Ali after lodging of ejahar by her father. **In cross** she stated accused Ahed Ali did not misbehave with her nor he indecently act with her. She stated she did not witness the

incident of altercation that took place between her parents and accused Ahed Ali. She further stated presently she cannot recollect what statement she made earlier before the Ld. Magistrate u/s 164 Cr.P.C.

- 8. PW-2 Samir Uddin is the informant of the case. He deposed about 7 months back altercation took place with accused Ahed Ali on account of his refusal to accused Ahed Ali's marriage proposal for his daughter Samiran. At that time as his daughter was minor, so he lodged the case and except the incident of altercation, no other incident was took place with accused Ahed Ali. He deposed Ext-2 is ejahar and he had put his thumb impression on Ext-2. **In cross** he stated he is illiterate person. Ejahar was not read over to him after writing and he is unable to say what was actually written in the ejahar. He stated accused Ahed Ali did no indecent act with his daughter.
- 9. PW-3 Dr. Madhumita Das is M.O. She deposed on 26-06-18 at about 05.30 pm she had examined Miss X, aged about 12 ½ years old under reference Bilasipara PS medical requisition number 954/18 dated 26-06-18 and on examination she found- no injury. She deposed Ext-3 is medical examination report and Ext-3(1) and 3(2) are her signatures. Defence declined to cross examine PW-3.
- 10. PW-4 Sanowar Hussain deposed about 4 5 months back while he was coming from the collage and went to Bilasipara police station to make enquiry of his land dispute, police took his signature on a paper and signature was taken at about 01:00 PM on that day. He deposed Ext-3 is seizure list and Ext-3(1) is his signature. Defence declined to cross examine PW-4.
- 11. PW-5 Montu Ali deposed about one year back he put his signature on Ext-4 seizure list and Ext-4(1) is his signature. **In cross** he stated he used to visit police station and write ejahar at the police station whenever he was asked to write ejahar by the person concerned and therefore police know him. He stated police took his signature on white paper.
- 12. PW-6 Sumar Ali deposed about 6 7 months back he heard that there is some "bhejal" and "kechal" between the girl and boy that is in between accused and victim girl. PW-6 is declared hostile by the prosecution. **In cross by prosecution** he denied he made statement before the police that on 26-06-2018 Sumer Uddin of Suapata Pt-III informed him that on 24-06-2018 accused

Ahed Ali of the same village who was hiding near the tube well of his (sumeruddin) house came out suddenly, hold sumeruddin's daughter Miss X, aged about 12 years while she went to wash utensil in the tube well and touch her body, touch her private parts, breast and tortured her(sexually assaulted her) and accused did video and he had seen the video of the same in the mobile of Mojid Ali of Suapata Pt-III and Ahed Ali send the video to the mobile of Mojid Ali and when he asked Miss X, she disclosed the incident to him. He stated after knowing the true incident he had suppressed the fact of the incident to save accused Ahed Ali from his guilty. **In cross by defence** he stated he did not made statement before the police as read over to him by the Ld. Special P.P. He stated he did not hear incident from informant Somer Uddin. He heard taking place of "kechal" between accused Ahad Ali and victim Samiran Nessa but he does not know the subject matter of the "kechal".

13. PW-7 Nur Islam deposed he knows informant and Miss X, victim daughter of informant. Incident was took place about 6 months back and police recorded his statement. PW-7 is declared hostile by the prosecution. In cross by **prosecution** he denied he made statement before the police that on 26-06-2018 Sumer Uddin of his village informed him that on 24-06-2018 taking advantage of absence of the other family members of the house at about 5:00 PM accused Ahed Ali entering into the tube-well site (compound) hold his 12 years old daughter Miss X and subjected sexual assault on her and made attempt to commit rape on her touch her body and when the girl made hue and cry accused run away from the place of occurrence but accused videographed whole incident in his mobile and send the same to the mobile of Majid Ali and other persons. He had seen the incident in the mobile of Majid Ali and on being ask, Miss X disclosed him that on 24-06-2018 at about 5:00 PM when she was cleaning utensils in the tube-well accused Ahed Ali forcefully hold her, touch her body and she restrain but accused did not leave her and she made hue and cry to that accused Ahad Ali run away from the place; to save accused Ahad Ali he deposed falsely before the court. In cross by defence he stated he did not made statement before the police as read over to him by the Ld. Special P.P. He stated police only took his name and address.

- 14. PW-8 Mazid Ali deposed he knows informant Somer Uddin and victim daughter of informant Miss X. Incident was took place about 6 - 7 months back and police recorded his statement but he does not know the incident. PW-8 is declared hostile by the prosecution. In cross by prosecution he denied he made statement before police on 24-06-2018 at about 06:00 PM when he was present at home, Ahed Ali of his village called him to come to road and when he go there, accused show him one video on his mobile and after watching the video he find Ahed Ali hold 12 years old daughter of Sumer Uddin of their village at the tube-well site and touched her body for several hours and subjected sexual assault on her and tried to commit sexual intercourse with her and pull her dress and the incident was took place at about 5:00 PM on 24-06-2018 and accused sent the video to his mobile and he showed the video to the father of the girl. He stated accused is his friend. In cross by defence he stated he did not made statement before the police as read over to him by the Ld. Special P.P. He stated police only took his name and address. He further stated Miss X studied at Madrassa by staying at hostel.
- 15. PW-9 Indreswar Pathak is the I.O. He deposed on 26-06-2018 he was working as Attach Officer at Bilasipara P.S. On that day Somer Uddin lodged written ejahar before O/C Bilasipara PS alleging commission of sexual assault on 12 years 6 months daughter of informant by accused Ahed Ali in absence of parents and other family members of their house. On the basis of ejahar O/C Bilasipara PS registered Bilasipara PS Case No. 731/2018 u/s 120(B)/451 I.P.C. r/w Section 8 of the POCSO Act and endorsed him to investigate the case. After taking of the charge of investigation he had visited the place of occurrence, drawn sketch map of the place of occurrence, recorded statement of the informant and victim girl at the place of occurrence, also recorded statement of 3 other witnesses at the place of occurrence, produced victim girl before the doctor at Dhubri Civil Hospital for her medical examination. Thereafter on 04-07-18 he again visited place of occurrence and from place of occurrence he went to bow bazar market of the village and in the market he found accused Ahed Ali, search him and found one Samsung mobile handset vide Sim (mobile) No. 9365322093 and seized the same in presence of witnesses. After apprehending the accused finding material against him, he brought him to the Police station, arrested him

and produced him before the court. He deposed during investigation, he had seized one original school certificate of the victim girl on being produced by Informant Somer Uddin on 08-07-2018, produced victim girl before the Court to record her statement u/s 164 Cr.P.C, collected medical report of the victim girl from the Dhubri Civil Hospital and after completion of the investigation he had submitted charge-sheet against the accused Ahed Ali u/s 451/354(A) I.P.C. R/W Section 8 of the POCSO Act. **In cross** he stated ejahar was lodged on 26-06-2018 before the O/C Bilasipara P.S. and O/C Bilasipara P.S. endorsed him to investigate the case on 26-06-2018 and he went to the place of occurrence on 27-06-2018. He stated he had seized mobile handset from the possession of the accused on the date of arrest but he did not seize the cash memo of the mobile. He denied no such video clip is found in the mobile handset of the accused; he did not properly investigate the case and submitted charge-sheet on being influence by the informant.

DISCUSSION, DECISION & REASON THERE OF:-

- 16. Prosecution allegation leveled against accused Ahed Ali is that on 24-06-18 at about 05.00 pm at village Suapata Pt III under Bilasipara PS, accused committed criminal trespass by entering into the compound of informant did physical contact and advanced involving unwelcome and explicit sexual overtures with Miss X and made demand for sexual favour from Miss X against her will and committed sexual assault on Miss X by touching on her chest and private parts.
- 17. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of against the accused Ahed Ali.
- 18. PW-2 is the informant of this case. His evidence pointed altercation took place in between him and accused on account of his refusal to accused Ahed Ali's marriage proposal for his daughter Miss X and therefore he lodged ejahar against the accused. PW-2 while adducing evidence before the court did not alleged that accused Ahed Ali had criminally trespassed into his house, committed sexual assault on his daughter Miss X. Evidence of PW-2 shown he did not support his statement made in the Ext-2 ejahar and he totally overturn the prosecution case. His cross is that ejahar was not read over to him by the writer. Ext.2 ejahar pointed ejahar was written by other person.

- 19. PW-1 is victim girl of this case. PW-1 stated in similar line as stated by informant. She also stated her father lodged the case against the accused Ahed Ali as accused wanted to marry her. PW-1 while adducing her evidence before the court did not alleged that accused Ahed Ali had committed sexual assault on her or made demand for sexual favour from her against her will on the day of incident. Evidence of PW-1 only pointed accused wanted to marry her but at that time she was minor. So her parents refused to give her in marriage. Cross of PW-1 further pointed she cannot recollect what statement she made earlier before the Ld. Magistrate. PW-1 does not substantiate her earlier statement and there is inconsistent statement of PW-1 is found. Thus, prosecution exhibited document Ext-1 cannot be acted upon in absence of corroboration from the evidence of PW-1.
- 20. Evidence of PW-1 and PW-2 does not pointed any single material against the accused Ahed Ali and their evidence say good bye to the prosecution case and their evidence bring different story that goes in favour of the accused person.
- 21. PW-4 and PW-5 are seizure witness. Their evidence only pointed they put their signature in the seizure list Ext-3 and Ext-4 respectively. PW-4 and PW-5 while adducing their evidence before the court except stating that they had put their signature in the seizure list, does not stated anything against the accused Ahed Ali. Vide Ext.3 IO of the case seized mobile handset Samsung and vide Ext.4 IO of the case PW-9 seized one original School certificate. PW-4 and PW-5 in their evidence did not made statement that either of them seen the video clip present in the seized mobile. Accused in his 313 Cr.P.C denial seizure of Samsung mobile from him and he shown his total ignorance. Thus their evidence does not made any improvement in the prosecution case.
- 22. PW-6, PW-7 and PW-8 are declared hostile by the prosecution. Evidence of PW-7 and PW-8 is that they do not know anything about the incident. PW-6 before declaring hostile by the prosecution, stated 6-7 months back he heard that there was some bhejal and kechal between the accused and victim girl. Evidence of PW-6 does specifically pointed what was specifically took place in between accused and victim girl and rather his evidence is totally ambiguous and

does not disclosed what was the actual incident that took place. More so he did not witness any incident and his evidence amounted to total hearsay evidence. PW-6 did not disclose from whom he heard about the incident of bhejal and kechal. That being so his evidence is inadmissible piece of evidence.

- 23. From the scrutiny of entire evidence on record, I find that Prosecution failed to bring home a single material against the accused that accused without illegally entered into the property of PW-2 to commit an offence or he was remain in the property of PW-1 after entering into the property of PW-1 to do an offence that amounted to trespass into the property of PW-1. In the instant case PW-1, the alleged victim girl 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. More so her and her father's statement being as record totally different story that goes against the prosecution and I come to my definite judicious finding that when prosecution failed to bring home single ingredient of section 447/354(A) IPC and section 7 of POCSO Act against the accused Ahed Ali. Moreover, the prosecution story on which prosecution relied on does not supported by the informant and victim girl of the case.
- 24. 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 447/354(A) IPC and section 8 of POCSO Act against the accused Ahed Ali. Accordingly accused Ahed Ali is acquitted from the charge of section 447/354(A) IPC and section 8 of POCSO Act and is 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. Seized mobile phone vide Ext-3 seizure list (MR No. 112/18) be disposed off in accordance with law.

27. Given under hand and seal of this Court on this 30th day of March, 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 Miss X (victim girl),

PW-2 Samiruddin,

PW-3 Dr. Madhumita Das (M.O),

PW-4 Sanowar Hussain,

PW-5 Montu Ali,

PW-6 Sumar Ali,

PW-7 Nur Islam,

PW-8 Mazid Ali and

PW-9 SI Indreswar Pathak (I.O).

PROSECUTION EXHIBIT:-

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

Ext-2 Ejahar,

Ext-3 Medical examination report,

Ext-4 Seizure list,

Ext-5 Sketch Map and

Ext-6 Charge sheet

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara