IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, BAJALI, PATHSALA

Spl. POCSO Case No. 16 of 2018

U/S - 457 and 366/511 IPC.

State

- Versus -

Iunab Ali

: Accused person.

Present: Sri L.K. Saikia, AJS, Additional Sessions Judge, Bajali, Pathsala.

Appearance & particulars :-

For the State : Smti. Dhira Devi Ld. Addl. P. P.

For the accused persons : Sri Giridhar Choudhury, Ld. Advocate.

Dates of recording evidences: 21-11-2019.

Date of recording statements u/s 313 Cr.P.C. : 21-11-2019.

Date of Argument : 21-11-2019
Date of Judgment : 21-11-2019.

JUDGMENT

- 1. The prosecution case in brief, is that, one Amir Hamza lodged an ejahar on 06/08/2018 with the I/C Dhumarpathar Out Post alleging, *inter-alia*, that on 01/08/2018 at around 12.30 am one Junab Ali entered into his house and committed rape on his daughter Anisa Khatun. At the time when the incident occurred his daughter is a minor aged about 15 years. The incident was caught red handed by the village people and villagers advised him to settle the matter amicably and made an agreement where it is mentioned that Junab Ali is to marry his daughter when she attain the age of majority but the family members of Junab Ali had refused it. Hence, this case.
- **2.** On receipt of the ejahar, Dhumarpathar OP registered a

GD Entry No. 80 dated 06/08/2018 and forwarded the same to Patacharkuchi Police Station to register a case under proper section of law and accordingly it was registered as Patacharkuchi P. S. Case No. 522/18 u/s 457 IPC R/W section 4 of POCSO Act.

- During investigation police visited the place of occurrence, prepared sketch map of the place of occurrence, recorded the statements of witnesses including the victim girl, conducted medical examination of the victim, produced her before the Court wherein the Ld. Magistrate recorded her statement u/s 164 Cr.P.C, and after completion of investigation, having been found *prima-facie* case, the I/O filed charge sheet u/s 457 IPC r/w Sec. 4 of POCSO Act, 2012 against the accused person. Thereafter, the accused was arrested and sent before the Trial Court.
- 4. On being summoned the accused person entered his appearance and copies were furnished to him and after hearing the learned Addl. P. P. appearing for the State and the learned defence counsel and after perusal of materials available on record u/s 173 Cr.P.C., having been found sufficient grounds for presuming that the accused person has committed the offence, framed the formal charge 457/366/511 IPC. The charge so framed was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried. Hence, the trial.
- The prosecution in order to prove its case examined altogether 2 (two) PWs i.e. the informant and the victim. The Ld. Addl. PP submits that the vital material witnesses have already been examined and there is no chance of further development of the prosecution story and hence, prays to close the prosecution evidence.
- **6.** Heard the Ld. Addl. PP appearing for the state. Perused the case record and considering the submission put forwarded by the Ld. Addl. PP the evidence of prosecution side is closed.
- 7. The defence plea is of total denial. The accused person was examined u/s 313 of Cr. P. C. wherein he denied all such allegations leveled against him by the prosecution witnesses. The

defence side has not adduced any defence evidence.

8. Heard argument of learned Addl. P. P. and the learned defence counsel.

9. **POINTS FOR DETERMINATION**

- (i) Whether the accused person on 01/08/2018 at about 12.30 night entered the house of the informant and thereby committed an offence punishable u/s 457 IPC?
- (ii) Whether the accused person on the same, date and place tried to kidnap the victim/daughter of informant while she was sleeping at her house with intent that she maybe compelled to marry against her will and thereby committed an offence punishable u/s 366/511 IPC

EVIDENCE OF THE WITNESSES

PW 1 Amir Hamja deposed that on the day of the incident a marriage ceremony was also going on in front of their house and heard hue and cry on the road. Hearing it he came from home and went to the courtyard of their house and saw that his son Sanowar gave a slap to his daughter and thereafter took her back to home. After some time he came to know from villagers that Junab was standing in the dark along with his daughter on the road for that he convened a village mel at their house. In the mel Junab and his parents were also present and in the said village mel Junab was asked to marry with his daughter as they had love affairs. But jonab had refused to marry his daughter. As the accused person had refused to marry with his daughter so, after 4 to 5 days he lodged the FIR against him.

In cross-examination, PW 1 deposed that he does not know the contention of the FIR. He had lodged the FIR as instructed by the police. As a marriage ceremony was going on in front of their house and there so many boys and girls were enjoying the marriage even his daughter too. The accused person did not do any bad works with his daughter. Nothing had happened as written in the FIR.

11. PW 2 victim girl deposed that before 6 (six) months of the

happening of the incident she got introduced with the accused Md. Junab Ali. On the day of the incident she was in a marriage ceremony which was going on in front of their house. On that night at about 12 midnight while she was talking with the accused Md. Junab Ali in front of the marriage hall then her brother Soleman noticed them and seeing them together, her brother gave her a slap and took her to the house from there and her father had also seen the occurrence. On that night a village mel was going on wherein accused Junab Ali and his parents had refused to take her as she was about 16 years. So, villagers advised Junab to take her when she get the age of majority. Thereafter her father lodged an FIR and after that police recorded her statement, sent her to FAAMCH, Barpeta for medical examination and thereafter produced her before the Court wherein the Magistrate had recorded her statement. Ext. 1 is her statement and Ext. 1(i) & Ext. 1(ii) are her signatures.

In cross-examination, PW 2 stated that she had love affairs with accused Junab Ali so, they were talking while she met him in the marriage ceremony. Accused Junab Ali did not do any misbehave to her. On the day of the incident Junab did not come to their house to meet her even he did not tell her to go with him except talking nothing had happened in between them. Her father lodged the FIR as instigated by the villagers.

DISCUSSIONS, DECISIONS, AND REASONS THEREOF

- **12.** Perused the case record and also gone through the provision of law.
- there was nothing happened so he has no objection if the accused person would be released from this case. The victim PW 1 in her evidence stated that she has a love affairs with accused Junab Ali and so they were talking while they met in a marriage ceremony in front of her house. Accused Junab Ali did not do any misbehave to her. On the day of the incident accused Junab did not come to her house to meet her even he did not tell her to go with him except talking. Nothing had happened between them as stated in the FIR. Her father lodged the FIR as instigated by the villagers.

- 14. On precise analysis and scrutiny of evidence on record, it is found that the instant case has been arisen due to misunderstanding of the fact. On the day of incident the victim met with the accused voluntarily as she loves the accused since long prior to this incident. The FIR was lodged by the informant as per instigation of the villagers. He has no any personal knowledge about the contention of the FIR. The informant also stated that he has got no any objection, if the accused person would be released from the liability of the case. The entire case is based upon misunderstanding of the fact.
- **15.** In view of above, it can be safely concluded that the prosecution has failed to prove its case against the accused person as required under the law.
- **16.** Accordingly, the accused Junab Ali is acquitted of the offences charged u/s 457 and 366/511 IPC and set him at liberty forthwith.
- **17.** The bail bond of the accused person is extended for further period of another 6 (six) months u/s 437 (A) Cr.PC.C
- **18.** A copy of this judgment be given to the District Magistrate, Barpeta u/s 365 Cr.P.C.
- **19.** The Sessions Case is disposed of accordingly.
- **20.** Judgment is pronounced and delivered in the open Court in presence of both the parties and I put my hand and seal of this Court on this 21st day of November, 2019.

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

Dictated & Corrected by me

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.

APPENDIX:-

Oral evidences:-

PW-1 Md. Amir Hamja

PW-2 victim.

Documentary evidence:-

Ext. 1 - Statement.

Defence evidence.

NIL

(L.K. Saikia) Addl. Sessions Judge Bajali, Pathsala.