

IN THE SPECIAL COURT ::::::::::::::::::::: BAKSA AT MUSHALPUR

Present : Shri C. Das,  
Judge, Sepcail Court,  
Baksa, Mushalpur



**JUDGMENT IN SPECIAL POCSO CASE NO.46/2018**

U/S 4 of POCSO ACT

State

-versus-

Mahammad Ali

.... Accused

Appearance :

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. A.C. Azad, Advocate

Date of recording evidence : 19/5/15, 10/9/15, 22/12/15, 10/2/16, 19/3/16,  
17/6/16, 11/6/18

Date of argument : 4/10/18, 31/10/18, 14/11/18

Date of judgment : 26/11/18

**JUDGMENT**

1. The case of the prosecution briefly, is that on 01/10/14, the complainant Md. Rahim Ali lodged a FIR before the In-charge of Kaurbaha PP., alleging inter-alia that on 29/9/14, at about 2 pm., while his 12 years old daughter (name is withheld) was returning home after attending a marriage ceremony, the accused called her to his house from the road and offered to eat apple and biscuit at his home. Thereafter, the accused committed penetrative sexual assault upon her by gagging her mouth. Later on, the victim came home weeping and reported the incident. Hence, he called for a local bichar twice in the village. But the accused did not accept the decision of the bichar. The accused is a married person. Since he was waiting for the decision of local bichar, there is delay in lodging the FIR.

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2. The police upon receipt of the above FIR, registered the Kaurbaha PP GDE No.22 dated 2/10/14 and forwarded the same to the Officer-in-charge, Tamulpur police station for formal registration of a case. Accordingly, the Officer-in-charge, of Tamulpur PS. Case No.164/14 and started the process of the investigation. During the investigation, the I/O visited the place of occurrence, recorded the statement of the witnesses including the victim girl and prepared the sketch map of the place of occurrence. The I/O sent the victim girl for medical examination and recording her statement u/s 164 CrPC. The accused was also, arrested by the I/O. At the end, the I/O having found a prima-facie case well established, filed the charge-sheet against the accused to face trial in the court.
  
3. The accused when appeared in the court after receive of summons, was furnished with the relevant copy of the case immediately. After hearing both the sides and on perusal of the material on record, the charge u/s 4 of POCSO Act was framed against him. The charge so framed, was read over and explained to the accused who pleaded not guilty and claimed to be tried.
  
4. The prosecution during the trial, examined as many as, eight(8) witnesses including the I/O and M/O to support its case. Thereafter, during examination of the accused u/s 313 CrPC., he denied all the incriminating circumstances appeared against him in the evidence. The accused however, declined to adduce any evidence in his defence. The argument of the parties was heard at length.

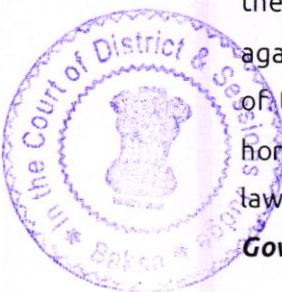
**POINT FOR DETERMINATION :**

5. Whether on 29/9/14 at around 2 pm., at village; Niz-Kaurbaha, committed penetrative sexual assault upon the victim girl, aged about 12 years ;

**DECISION AND REASON THEREFORE :**

6. Initiating the argument, learned Public Prosecutor submitted that the evidence of the victim girl along with the evidence of other prosecution witnesses clearly supported its case and proves that the accused committed the offence as alleged by the prosecution. He submitted that there may some discrepancies here and there in the evidence but it must be taken note that the victim is a minor girl and as such, such discrepancies cannot take away her credibility in any manner. Further he submitted that in the cases of sexual assault,

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the evidence of the sole victim is sufficient enough to record a conviction order against the accused. Thus, from the instant case, it is well established on the basis of the evidence of the sole minor victim that the prosecution has been able to bring home the charge against the accused and as such, he is liable to be punished as per law. He relied on the decision reported in **(2003) 11 SCC 367 Sunil Kumar vs. State (Govt. of NCT of Delhi)** which held that *As a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But, if there are doubts about the testimony the courts will insist on corroboration.*

7. He further placed on record the view expressed in **(2014) 12 SCC 406 Sujit Biswas vs. State of Assam** that *Reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.*

8. Countering the above submissions of learned Public Prosecutor, learned counsel for the accused submitted that it is true that in cases of sexual assault offence, it is hardly required corroboration of sole victim by other witnesses of the prosecution. But her evidence must be reliable wholly. However, in the present case in hand, it does not appear that reliance can be placed upon the testimony of the victim though she was a minor girl, since her testimony itself shows serious discrepancies relating to the occurrence which renders her evidence unreliable to believe. He submitted that the victim cannot be below 18 years of age in the light of number of teeth, she possessed. The I/O did not send the blood of the victim for FSL examination neither he seized any garments of the victim to prove sexual assault on the victim. Therefore, serious doubts crept up in the evidence of the prosecution witnesses for which the accused is entitled to get the benefit of doubt. He relied on the decision reported in **(2011) 1 SCC (Cri) 688 Alamelu & ors. vs. State represented by Inspector of Police** wherein it was held that In case of rape of minor, *benefit of doubt when available that doubtful facts and circumstances being ; (1) though fact of abduction of PW2 (victim girl) on 31.7.93 was immediately brought to notice of PW1 (father of victim), PW1 lodged FIR on 2.8.93 (2) false implication by father not being ruled out because victim girl could have run away to avoid an arranged marriage (3) there being no evidence of previous involvement of A-1 with victim (4) important witnesses of important witnesses of abduction and forced marriage not having been examined, (5) there being no evidence of victim being forcibly*

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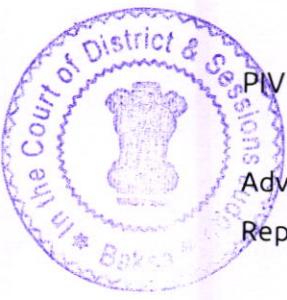


*taken in car, (6) close relations of girl witnessing alleged forced marriage in temple not lodging a complaint with police or rescuing girl, (7) victim not even raising a cry in temple when she was being married forcibly, (8) there being contradiction in evidence of victim's father and victim, (9) evidence of victim being wholly unreliable and contrary to evidence, and (10) it not being conclusively established that girl was minor.*

9. Learned counsel for the accused further submitted that there is delay in lodging the FIR which ought to have been explained by the complainant satisfactorily. He relied on the decision reported in **Ravinder Kumar vs. State of Punjab decided on 31/8/2001**, which observed categorically that *Off course a prompt and immediate lodging of the FIR is the deal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version.*
10. In **2008 (3) GLT 55 Ajahar Ali vs. State of Assam**, it was held that *Delayed lodging of FIR without satisfactorily explanation also casting doubt on veracity of prosecution case.*
11. In the instant case, there is a delay of about 6 days which is explained by the complainant that it was local meeting to decide the matter held for twice but no such proceeding of the such meetings is submitted in the case to prove its veracity and therefore, it cannot be held that delay in lodging the FIR is satisfactorily explained by the prosecution. Thus, delay in filing the FIR is main cause of doubt in the prosecution story, he maintained.
12. Upon hearing the learned counsel for both sides relating to appreciation of evidence of sole victim and result of unexplained delay in lodging the FIR and to consider the elements of doubt in the evidence as laid down as above in law, it is proper to go through the evidence on record.

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13. It appears from the record that the prosecution examined the medical officer as PW1. It is the evidence of PW1 Dr. Dali Gogoi that on 2/10/14, at SMK Civil Hospital, Nalbari, she examined the victim girl and found as follows ; General Examination - Height- 4ft. 5" (app) teeth -7/7—7/7. no injury marks on her private parts and body. Secondary sex character not developed.



PW - Vagina, vulva- healthy. Hymen – absent. Tip of the little finger could not be inserted into the vagina. No injury on her private part.

Adv- X-ray for age determination. Swear from vulva for sperm.

Report- As per x-ray report, the skeletal age from radiological evidence is estimated below 18 years. Sperm from vulva no sperm seen.

Impression- There is no evidence of recent sexual intercourse. There is no sign of injury on her private parts. The actual age of the victim from radiological evidences is below 18 years. She examined the victim on 2/10/14 and after perusing of the radiological report and the report of sperm from vulva, she submitted her report on 14/10/14 vide Ext.1 with her signature. Ext.2 is the radiological report. Ext.3 is the report of laboratory technician.

14, The above evidence of PW1 that she examined the victim girl in the hospital, is corroborated by the I/O. There is no dispute over the finding given by PW1 on the medical examination of the victim girl. Thus, it can safely be come to conclusion that the victim did not suffer any injury on her private part and tip of little finger cannot be inserted into her private part.

15. Apart from above, the prosecution examined the complainant of the case Md. Rahim Ali as PW5. He is the father of the victim girl. He deposed in the court that on the fateful day at about 1.30 pm., he went Goreswar for some works. He returned to his home at about 7 pm., when he heard from his wife that on that day, a marriage ceremony was held at his village where the accused called the victim. After return from the marriage, the victim girl was watching fishing by local public in a pond in front of his house. At that time, the accused showed her a video uploaded in his mobile set near a bamboo bush. The accused took the victim to his house. There is a house in between his house and the house of the accused. The victim went to the house of the accused with her 3 years old cousin. The accused offered biscuit and apple to the victim and her cousin. Thereafter, the victim wanted to return to home, the accused gagged her mouth and pulled her down into bed and committed penetrative sexual assault. The victim girl came out by making hue and cry and reported the incident to her mother and aunt. His wife showed him blood stained under garment(jangia) of the victim. On his inquiry about the incident, the victim admitted it as true. He asked his wife to wash up the jangia of the victim or to throw it away. He went to the police station and reported the incident to the police verbally. Accordingly, the police informed him to decide the matter locally on next day. But in the local meeting, the accused denied the allegation and hence, he filed the FIR vide Ext.4 with his signature.

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16. PW1 further stated that the victim was sent for medical examination and recording her statement u/s 164 CrPC. He stated that the victim girl was 12 years of age at the time of occurrence and she was a student of Class-VI. In the cross-examination, PW5 denied the suggestion of the defence side that the victim was a major at the time of occurrence. Apparently, PW5 is a reported witness of the occurrence. But he narrated the occurrence in support of the prosecution and proved the FIR so filed by him.

17. It is the evidence of PW4; the victim that on the fateful day, at about 2 pm., the accused came to her home and took her to a marriage ceremony at her village. The accused again called to her house from the marriage function. At that time her mother was present at home at that time. The accused took her sister to hospital since her sister met with an accident while returning from school. After coming from hospital, the accused called her near her home and showed her obscene film in his mobile phone. At that time her mother was present near a pond while her sister was with her. After showing such film, the accused called her to his home. The accused gave her some biscuit and apple inside his house and again, showed her film. Her sister was present with her but the accused drove her out. When she wanted to come to her home, the accused gagged her mouth and committed penetrative sexual assault upon her. The accused pulled her down on the floor and opened her pant and pushed her private part into her private part. As a result, blood oozed out from her private part. Thereafter, the accused removed her onto a bed and put a head-phone into her ear. Then she returned to her home and reported the incident to her mother with crying. Her mother informed about her incident to PW5 when returned to home at night. She also, reported the incident to PW5. Her father called for a local bichar before the Kazi on the next day. Since the accused did not admit anything in the local bichar, PW5 filed the case. She tendered her statement vide Ext.4 with her signatures before the Magistrate. She was taken for medical examination also.

18. In the cross-examination, PW4 stated that prior to the occurrence, she and the accused used to visit the houses of each other. The accused is a married person. At the time of occurrence, all the relatives of the accused went to the marriage ceremony. Initially, the accused put her on bed and showed her film for about half an hour. He showed film for sometime under tree. Then her mother called to come back to home but she did not go home. Hence, her mother went home. Thereafter, the accused took her into his home. The accused hogged her by

his hand. The accused torn her garments which contained her blood. Her wearing was not given to the police. She was a minor at the relevant time.

19. PW2 Smti. Monowara Begum is the aunt of the victim girl. She stated in the court that on the fateful day at about 2 pm., the victim went to attend a marriage ceremony. At that time, the victim(PW4) was 12 years old. While the victim was returning from marriage ceremony, the accused took her to his home from the road. The accused offered biscuit and apple to PW4 in his house and thereafter, the accused by gagging the mouth, committed rape on PW4. After that PW4 returned home weeping and reported the incident to the mother in her presence. She saw bleeding from the vagina of PW4. When PW5 came to home from work, the matter was informed to him who called for a village meeting. Since the accused did not attend the said meeting, PW5 was advised to approach the police.

20. In the cross-examination, PW2 stated that she did not see the occurrence neither she saw PW4 called by the accused. PW5 had visiting terms with the accused. The accused is a married person. She did not visit the house of the accused on the fateful day. The victim is an idiot like person, having abnormal head but her limbs are small. She did not find any injury on the body of PW4. Thus, PW2 was a reported witness of the occurrence. But some parts of her evidence is direct.

21. PW3 Smti. Mafida Khatun is the mother of the victim girl. She deposed in the court that the victim(PW4) was 12 years old at the time of occurrence. On the fateful day, the accused came to her home and took PW4 to village marriage ceremony. At about 11 am., the accused brought back PW4 to home. In the meantime, a daughter of her relatives, suffered injury in an accident and as such, the accused took the injured to hospital. After returning from hospital, the accused took PW4 near to bamboo bush adjacent to her home. The accused showed some film to PW4 in his mobile phone. After some time, she returned to her home. Later on, PW4 came to home in imbalance state and crying. PW4 reported her that the accused took PW4 to his home from bamboo bush and committed rape on PW4. She saw bleeding from private part of PW4 and accordingly, she washed it up. PW4 also, reported the incident to PW2. When PW5 returned home, she reported the incident to her husband. Subsequently, a village meeting was held where the accused was present. But the accused denied the allegation. Hence, as per advice of public, the case was filed.

*Subd. Smti. S. Mafida Khatun  
Baksa, Jdg. B. D. N. P. R.*

22. In the cross-examination, PW3 stated that she has five children and her second daughter is in class-X. PW4 is a physically handicapped child. A three years old child Taher was with PW4 when she was watching film. Thereafter, she did not see where PW4 had gone. After knowing the incident, she went to the house of the accused but she found the aunt of the accused only. PW4 did not attain her puberty at the time of occurrence since she suffered from illness. The garments of PW4 was not seized by the police. She did not tutor the victim at the time of recording her statement. The accused had visiting terms with her prior to the occurrence. Thus, PW3 corroborates the version of PW2, 4 and 5 on the material points.

23. The evidence of PW6 Akbar Ali is that the occurrence took place on the fateful day, at about 12 noon. On next day, a local meeting was held in connection with the incident, called by PW5. The incident was narrated by PW5 in presence of the accused. But the accused denied the allegation. Hence, some local villagers were deputed to know the incident from PW4 at her house. PW4 also, disclosed same incident as stated by PW5 that the accused raped the victim. Again, the accused refused to accept the allegation. Accordingly, the public advised PW5 to help of police. Thus, the evidence of PW6 relates more to the proceedings of local meeting consequent upon the incident of the case.

24. PW7 Safur Ali deposed that he heard that the accused by calling the victim to his house, committed rape on the victim. A local meeting was held on next day in his presence. But the accused denied the allegation. Again he went to PW4 to inquire who reported him that the accused committed rape on her. Similar to PW6, the evidence relates to proceeding of local meeting.

25. The I/O PW8 Nirod Sarma disclosed in his evidence that on 1/10/14 while he was working at Kaurbaha PP, on that day, he received the FIR lodged by PW5 and accordingly, he registered GDE and forwarded the same to the Officer-in-charge of Tamulpur police station vide Ext.5 with his signature. Thereafter, the Officer-in-charge of Tamulpur police station entrusted him to investigate the case. He during the investigation, visited the place of occurrence and prepared its sketch map vide Ext.6 with his signature. He recorded the statement of the witnesses and sent the victim for her medical examination and recording her statement u/s 164 CrPC. He arrested the accused person. He collected the medical report of the victim and after completion of the investigation, he filed the charge-sheet against the



accused vide Ext.7 with his signature.

26. In the cross-examination, the I/O disclosed that the FIR was lodged on 1/10/14 while the occurrence took place on 29/9/14. He visited the place of occurrence on 2/10/14. The I/O controverted the statement of PW2 that she did not state before him earlier that the victim went to a marriage ceremony and on her return therefrom, the accused called her to his house from mid of the road and offered her biscuit and apple and the accused gagging the mouth, committed rape on her and the victim returned home with weeping and reported the incident to her mother and she heard the incident and she saw bleeding from the private part of the victim.

27. The I/O further disclosed in his cross-examination that he did not seize any cloth of the victim. Again the I/O controverted the evidence of PW4 that she did not state to him earlier that the accused gagged her mouth and she sustained bleeding due to rape by the accused and the accused raped her after he pulled her down on the ground.

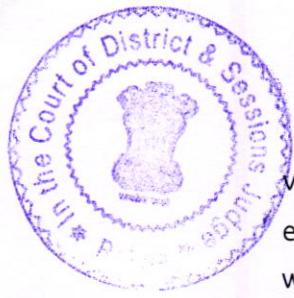
28. The I/O stated that PW5 did not state to him previously that after briefing up the incident from PW3, he again inquired about the incident from the victim girl. It is also, controverted by the I/O regarding the evidence of PW6 that PW6 that the victim reported him that the accused committed rape on her and when he went to inquire about the incident, the mother of the victim reported him about the incident. The I/O also stated that PW7 did not state to him previously that the accused committed rape on the victim.

29. Apparently from the evidence of the prosecution witnesses, it appears that the occurrence took place at the house of the accused. It is correct to say that the victim girl is a mildly physically handicapped person. There is no dispute that the victim girl went to the house of the accused on the fateful day with her 3 years old cousin. But the accused admittedly sent back the said cousin of the victim from his house. The evidence of PW5 who is the complainant of the case as well as, father of the victim girl, is not direct but he proved the Ext.4. He received the information of the incident from PW3 who is his wife and mother of the victim. So far his omission in his statement made previously to the I/O is concerned, it appears that he is a reported witness of the occurrence and as such, his omission to the I/O is not much of importance to disbelieve his claim.



30. It appears that the victim being PW4 first reported the incident to PW3 in presence of PW2. From the evidence of PW2 and 3, it appears that they saw that PW4 sustained bleeding from her private part. This fact is corroborated by PW4 herself in her version. However, PW2 omitted to say before the I/O previously that she saw bleeding from the private part of PW4 which significantly erodes her credibility. On the other hand, PW5 also, saw blood stained garments of PW4 as shown to him by PW3. The version of PW4 shows that her garments were torn by the accused before committing the offence to her. But surprisingly, these blood stained garments of PW4 was not produced by the I/O. Rather, it shows from the evidence of PW3 that she washed up the said garments of PW4 immediately. Thus, it appears that PW2 destroyed vital part of evidence of the prosecution case. Further, the medical evidence does not support anything of such blood oozing of PW4. Off course, the medical examination of PW4 was done much later on, due to delay caused by her parents. Therefore, situated above, it is difficult to believe that any bleeding was oozing out from the private part of PW4 due to lack of evidence in this regard.

31. The evidence of PW6 and 7 relates mainly to the happenings in the local bichar called by PW5 in connection with the incident. Hence, their evidence does not carry much weight in regard to the prosecution case. As far as the evidence of PW4 who is the sole victim of the occurrence, is concerned, it shows that the accused committed penetrative sexual assault upon her. There is no difficultly to accept if it is found reliable in the light of facts and circumstances of the case. On perusal of her evidence, it further discloses that the accused penetrated his private part into her vagina. Thus she sustained injury on her private part, leading to blood oozing out from her private part. But the medical evidence does not corroborate her such version. The medical officer found that even tip of little finger cannot be inserted into her private part and there was no injury found on her private part. Although the medical examination of PW4 was done after two days, even then, there must have some mark of injury on the private part of PW4. Absence of such injury as well as, intake private part of PW4, renders the version of PW4 unreliable to believe. Apart from that it appears that PW4 omitted to say before the I/O in her previous statement that the accused gagged her mouth and she sustained bleeding due to rape by the accused and the accused raped her after he pulled her down on the ground. These circumstances as narrated by PW4 in the evidence are vital sequences of the occurrence which cannot be omitted under any condition. As such, such omission shows that PW4 exaggerated the facts before the court to get undue benefit against the accused. It appears from such contradictory



version of PW4 that it is highly probable that she was tutored by someone to exaggerate the actual facts. In the above situation, it is difficult to accept that PW4 was subjected to forceful penetrative sexual assault by the accused.

32. The evidence of PW3 and 5 discloses that PW4 was 12 years of age at the time of occurrence. The defence disputed the age of PW4 that she was above 18 years of age. But the medical evidence makes it clear that PW4 was below 18 years of age at the relevant time. There is no other evidence produced in the trial by either to contradict such finding of doctor. Hence, there is no hesitation to accept that PW4 was a minor at the relevant time of occurrence within the meaning of provisions of POCSO Act.

33. As regards to delay in lodging the ejahar by PW5, it is admitted fact that he lodged it after two days of delay. Since there is delay in lodging the FIR, it is expected in the light of criminal jurisprudence that the delay must be explained properly to remove any element of doubt therein. It is not disputed that a local bichar was held to settle the matter with the accused. As the accused denied all allegation imputed against him before the local public, it was admittedly advised by public to seek help from the police and accordingly, PW5 approached the police. All these facts clearly explained the cause of delay in lodging the FIR by PW5. Hence it appears that the prosecution has able to place due explanation of delay of lodging the FIR. But as the version of the sole victim girl and PW2, 3 and 5 does not inspire confidence to believe due to major contradictions appeared in their testimony, it casts doubt on the reliability of the prosecution case. Accordingly, the accused is given the benefit of such doubt appeared in the evidence of the prosecution witnesses.

34. Under the above facts and circumstances of the case, the prosecution has not able to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 4 of POCSO Act and he is acquitted and set at liberty. His bail bond is however, remained in force u/s 437-A CrPC. The victim is entitled to get compensation and as such, this court recommends for payment of compensation to the victim girl by the DLSA, Muzalpur as per rules. Forward a copy of judgment to the District Magistrate, Baksa at Muzalpur.

35. Given under the hand and seal of this court on this 26<sup>th</sup> day of

Judge Spl. Court  
Baksa, Muzalpur



November 2018.

Dictated and corrected by :

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C. Das,  
**Judge Spl. Court**,  
Judge, Special Court,  
**Baksa, Muzalpur**,  
Baksa, Muzalpur

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**Judge Spl. Court**,  
Baksa, Muzalpur

Typed by :

P. Deka, Com. Typist

**ANNEXURE:****List of prosecution witness:**

- PW1 ... Dr. Dali Gogoi ... m/o
- PW2 ... Smti. Monowara Begum
- PW3 ... Msstt. Mafida Khatun @ Begum
- PW4 ... the victim girl
- PW5 ... Md. Rahim Ali ... informant
- PW6 ... Md. Akbar Ali
- PW7 ... Md. Safur Ali
- PW8 ... Sri Nirod Sarma ... I/o

**List of defence witness:**

Nil

**List of documents exhibited:**

- Ext.1 ... medical report
- Ext.2 ... radiological report
- Ext.3 ... laboratory report
- Ext.4 ... statement of victim u/s 164 CrPC.
- Ext.5 ... FIR
- Ext.6 ... sketch map
- Ext.7 ... charge-sheet

*[Handwritten signature]*  
26/11/18  
Judge Special Court  
Baksa, Muzalpur