HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

<u>Special Case No- 18 of 2017</u>

u/s 448/323 I.P.C and 4 of POCSO Act

STATE

Versus

Mongla Tudu @ Marang Tudu

Accused person

(Corresponding to GR case No- 2487/15 u/s 448/354/323 IPC r/w section 8 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 :- 25-12-15

Date of Framing charge :- 10-07-18

Date of prosecution evidence :- 24-07-18, 07-08-18,01-09-18

Statement of accused recorded on :- 17-09-18

Date of Argument :- 17-09-18

Judgment delivered :- 01-10-18

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 25-12-15 at about 03.00 pm accused Mongla Tudu entered into the house of complainant and by holding hand of the complainant's sister Miss X (name changed) taken her to a room and after closing the door of said room started kissing her forcefully. Thereafter, Miss X raised hue and cry. Hearing the same, when complainant went inside the room, accused Mongla pushed complainant as a result complainant fell down and sustained injury on her hand and chest. Thereafter complainant called her husband and when husband of complainant arrived at the place of occurrence, accused Mongla also assaulted her husband.

Investigation

2. O/C Chapar PS on receipt of ejahar from informant Sushmita Tudu registered the police case vide Chapar PS case no. 717/15 u/s 448/354/323 IPC r/w section 8 of POCSO Act and ASI Jakir Hussain was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused person named herein above u/s 448/323 I.P.C r/w section 8 of POCSO Act and cognizance taken.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 448/323 IPC r/w section 4 of POCSO Act was framed against the accused person Mongla Tudu @ Marang Tudu 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 6 number of witnesses and exhibited 3 nos. of documents. PW-1 Susmita Tudu, PW-2 Kadam Tudu, PW-3 Miss X(name changed), PW-4 Sohen Urao, PW-5 Raju Singh, PW-6 SI Pranjal Hati Barua (I.O) of the case. Ext-1 Ejahar, Ext-2 Sketch Map, Ext-3 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 25-12-15 at about 03.00 pm at village Krishna Kali tea garden under Chapar PS committed house trespass by entering in the house of informant Sushmita Tudu in order to commit rape on victim girl?
- ii) Whether victim girl was below the 18 years of age at the time of incident i.e on 25-12-15?
- iii) Whether accused on 25-12-15 at about 03.00 pm at village Krishna Kali tea garden under Chapar PS committed penetrative sexual assault on informant's victim sister Miss X?
- iv) Whether accused on 25-12-15 at about 03.00 pm at village Krishna Kali tea garden under Chapar PS voluntarily caused hurt to informant Sushmita Tudu and Kadam Tudu?

ARGUMENT

6. I have heard ld. counsel for both sides. It has been argued by the ld. defence counsel prosecution miserably failed to establish the prosecution charge leveled against the accused as all the PWs 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 Susmita Tudu is the informant of the case. Her evidence is that victim girl is her sister and accused Mongla Tudu is her brother law. She deposed one year back she called her victim sister to her house as her daughter Bipasa was sick. While her victim sister came to her house and was in the bedside of her sick daughter, accused Mongla called her victim sister to play ludo game. To that her victim sister refused to play ludo with accused but accused repeatedly insisted her victim sister to play ludo with him. She deposed at that time she came to the room and restrained accused to play ludo with her victim sister as accused was under the influence of alcohol but accused quarreled with her and therefore she lodged ejahar vide Ext-1. **In**

cross she stated she cannot say the content of the ejahar. No untoward incident took place with her victim sister.

- 8. Evidence of PW-2 Kadam Tudu is that informant is his wife, victim girl is his sister in law and accused is his younger brother. He deposed one year back when his daughter Bipasa was sick, his wife called victim girl to look after their daughter. Accordingly victim girl came to their house. While victim girl is sitting with her ailing daughter, accused came to the room and called victim girl to play ludo with him. To that victim refused to play but accused insisted her to play ludo with him and hold her hand. At that moment his wife came to the room and restrained accused to play ludo with victim girl as accused Mongla Tudu was under the influence of alcohol. To that accused quarreled with his wife and at that time he was repairing bamboo fencing of his kitchen and thereafter his wife lodge ejahar. **In cross** he stated he did not see the incident. He stated earlier when victim girl visited their house, she played ludo with accused. She further stated except quarrel for not playing ludo by victim girl with accused, no other incident was took place.
- 9. PW-3 is the victim of this case. Her evidence is that informant Susmita is her sister and accused Mongla Tudu is brother in law of her sister Susmita. She deposed about one year back, her sister Susmita called her to her house to take care her ailing daughter. Accordingly she visited her house and when she was present in the room with her ailing nice, accused Mongla came and insisted her to play ludo with him to that she refused but accused did not listen to her and repeatedly asked her to play ludo with him. She deposed to that quarrel took place with accused and her sister lodged ejahar. She further deposed she did not sustain any injury and earlier she was not produced before the Magistrate. **In cross** she stated no incident was took place with her.
- 10. PW-4 Sohen Urao deposed he knows informant and accused but he does not know the victim girl. He deposed he has no knowledge about the incident. Defence declined to cross examine PW-4.
- 11. PW-5 Raju Singh deposed he knows informant and accused but he does not know the victim girl. He deposed he heard that accused had an altercation with his brother Kadam Tudu. Defence declined to cross examine PW-5.
- 12. PW-6 SI Pranjal Hati Barua is I.O of the case. His evidence is that on 07-05-2017 ASI Zakir Hussain I/O of Chapar PS Case No. 717/2015 u/s

448/354/323 I.P.C R/W Section 8 of POCSO Act hand over Case Diary to him on his transfer. He deposed on scrutiny of the case diary he find that then I/O of the case ASI Zakir Hussain recorded statement of the victim and witnesses under Section 161 Cr.P.C., medically examined victim and collected medical report of the victim, arrested accused person and the investigation is almost completed. As such after finding material against accused person, he had submitted Charge-Sheet against the accused person u/s 448/323 I.P.C R/W Section 8 of POCSO Act vide Ext-3. **In cross** he stated as per ejahar incident was took place on 24-12-15 and ejahar was lodged on 25-12-15 and there is no explanation of delay in filing ejahar. He stated victim was sent to doctor for medical examination on 25-12-15.

DISCUSSION, DECISION & REASON THERE OFF:-

- 13. Prosecution allegation against accused is that accused Mongla Tudu on 25-12-15 at about 03.00 pm criminally trespassed into the house of complainant and committed penetrative sexual assault on informant's minor sister Miss X and thereafter voluntarily caused hurt to informant Susmita Tudu and her husband Kadam Tudu. In this case prosecution side has examined total 6 no. witnesses including complainant, victim girl and IO of the case and PW-3, victim of the case is star witness of the case.
- 14. Prosecution allegation is that victim was minor at the time of incident. But prosecution to prove the age of the victim did not produce any kind of documents or birth certificate of the victim. In the Ext-1 ejahar it is mentioned that at the time of incident age of the victim girl was 13 years old. Victim at the time of recording her statement u/s 161 Cr.P.C statement also stated her age to be 13 years. Victim Girl adduced her evidence before the court on 24-07-18. Before the court she stated her age as 15 years. Age of the victim girl is not disputed by the accused.
- 15. Thus, from the ejahar and statement of victim it is established that victim was minor at the time of incident and age of victim is not disputed by defence side. Now let me scrutinize evidence on record whether prosecution evidence able to establish the prosecution charge framed against the accused or not.
- 16. PW-1 is the informant of the case who is the elder sister of victim girl. Evidence of PW-1 pointed accused under the influence of alcohol came to her house and forced victim girl to play ludo with him and when she restrained accused to play ludo with victim girl, accused guarreled with her and case

was lodged. Evidence of PW-1 pointed taking place of quarrel with accused. Her evidence does not pointed that accused had illegally entered into her house, then committed sexual assault on victim girl and thereafter she was assaulted by accused. She did not whisper sustaining of any injury on her body.

- 17. PW-2 is the husband of PW-1. His evidence also pointed taking place of quarrel with his wife with regard to the playing of ludo. His evidence pointed accused came to his house under the influence of alcohol and forced victim girl to play ludo with him and when his wife i.e PW-1 restrained accused, altercation took place in between accused and his wife. PW-2 did not state that accused had illegally entered into his house and committed penetrative sexual assault on the victim girl. PW-2 also not stated that accused had assaulted him.
- 18. PW-3 is the victim girl. Evidence of PW-3, victim girl confined to the fact that accused came to her sister's house under influence of alcohol and forced her to play ludo with him and when her sister i.e PW-1 restrained accused, altercation took place in between accused and her sister PW-1. PW-3 while adducing before the court did not alleged that accused had illegally entered into the house of PW-1 and committed penetrative sexual assault on her. PW-3 in her cross stated that no incident took place with her.
- 19. Evidence of PW-4 shown total ignorance about the incident. PW-5 stated he heard taking place of altercation in between accused and Kadam Tudu. Which is totally hearsay evidence. Thus, evidence of PW-4 and PW-5 also not help the prosecution si9de.
- 20. From the scanning of evidence of PW-1, PW-2 and PW-3 victim it is seen that their evidence totally overturn the prosecution case and from their evidence not a single ingredient of section 4 of POCSO Act coming out against the accused Mongla Tudu. From their evidence not a single ingredient of section 323 and 448 I.P.C also comes out.
- 21. In view of my discussion, and on scrutiny of the evidence on record, I come to my definite finding that prosecution totally failed to bring home charge u/s 448/323 I.P.C r/w section 4 of POCSO Act against the accused person Mongla Tudu @ Marang Tudu . Accordingly he is acquitted from the charge of section u/s 448/323 I.P.C r/w section 4 of POCSO Act and is set at liberty.

- 22. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 23. Given under hand and seal of this Court on this $01^{\rm st}$ day of October, 2018 at Bilasipara.

(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 Susmita Tudu,

PW-2 Kadam Tudu,

PW-3 Miss X(name changed),

PW-4 Sohen Urao,

PW-5 Raju Singh,

PW-6 SI Pranjal Hati Barua (I.O) of the case.

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2 Sketch Map,

Ext-3 Charge sheet

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara