HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special Case No- 07 of 2017

u/s 366(A) and 4 of POCSO Act

STATE

Versus

Sajmal Ali Sk. @ Masmal Ali

Accused person

(Corresponding to GR case No- 361/14 u/s 366(A) I.P.C r/w section 4 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 :- 09-05-14

Date of Framing charge :-10-11-17

Date of prosecution evidence :- 23-02-18, 03-08-18, 01-09-18

Statement of accused recorded on :- 08-10-18

Date of Argument :- 29-10-18, 31-10-18

Judgment delivered :- 12-11-18

JUDGMENT

Prosecution Case

1. Prosecution case as reveal from Ext-2 ejahar is that accused Sajmal Ali Sk being relative of informant, on 20-10-13 taken informant's daughter Miss X to his house in order to visit his house as guest and there accused Sajmal Ali Sk committed forceful sexual intercourse with Miss X for several times but Miss X out of fear, did not disclose the incident to her parents. Thereafter, after passing of 8 month of rape incident, seeing physical appearance of Miss X, informant asked to Miss X and incident of forceful sexual intercourse came into light. After coming to know about the incident, when informant asked to accused Sajmal Ali Sk, then other accused persons named in the ejahar forced Miss X to abort the child but Miss X did not abort. As Miss X did not abort the child, on 04-05-14 at about 05.00 pm all the accused persons kidnapped informant's daughter Miss X and hide her in an unknown place. To this fact, informant Noser Ali lodged written ejahar before O/C Bilasipara PS.

Investigation

2. Officer in charge Bilasipara PS, on receipt of ejahar from informant Noser Ali registered a police case vide Bilasipara PS case no. 361/14 u/s 366A I.P.C r/w section 4 of POCSO Act and SI Uttam Goswami was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet 366(A) r/w section 4 of POCSO Act against the accused Sajmal Ali Sk. @ Masmal Ali and cognizance taken.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 366A r/w section 4 of POCSO Act was framed against the accused Sajmal Ali Sk. @ Masmal 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 6 number of witnesses and exhibited 4 nos. of documents. PW-1 Dr. Anjumanara Ahmed (M.O), PW-2 Noser Ali, PW-3 Miss X (name changed), PW-4 Mohamod Ali, PW-5 Sarif Ali @

Jorif Ali, PW-6 SI Bitu Murmi (I.O). Ext-1 Medical report, Ext-2 Ejahar, Ext-3 Sketch Map, Ext-4 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 04-05-14 at about 05.00 pm at village Kajaikata Pt VI under Bilasipara PS induced Miss X (name changed) aged about 16 years old to go from her house with intent that said Miss X may be forced or seduced to illicit intercourse with accused or with other persons?
- ii) Whether accused on 20-10-13 at village Kajaikata Pt VI under Bilasipara PS committed penetrative sexual assault on Miss X, daughter of informant?

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 Dr. Anjumanara Ahmed is the M.O. Her evidence is that on 13-05-14 she had medically examined Miss X, victim girl of this case and during examination found vaginal bleeding and on 13-05-14 pregnancy test was positive; on vaginal swab examination no spermatozoa seen. According to her opinion- victim girl was not consisted with recent sexual intercourse/ assault on patient but pregnancy test was found positive. In cross she stated at the time of examination of Miss X, victim girl, her age was 16 years as per her statement. She stated no radiological examination was done to find out radiological age of the victim girl. She stated as per statement of victim girl before her, she was pregnant and her pregnancy was terminated about 1 week back and same is mentioned in the column of history as stated by Miss X, victim girl.

- 8. PW-2 Noser Ali is the informant of this case. His evidence is that victim girl is his daughter and accused is his son in law. He deposed his victim daughter Miss X, used to stay at her maternal uncle's house and accused wanted to marry his daughter Miss X and gave proposal to marry his daughter Miss X. But it hurts him and lowered his respect as accused already married his daughter. He told the same to the villagers and as per advice of villagers he lodged ejahar against the accused. **In cross** he stated subsequently he gave his daughter marriage with accused after lodging of case and now his daughter Miss X, gave birth of one child.
- 9. PW-3 is the victim girl of this case. Her evidence is that about 4 years back from the date of deposing her evidence before the court accused wanted to marry her but at that time she did not want to marry accused and as accused wanted to marry her, her father lodged case. She deposed after lodging of ejahar, police produced her before doctor for her medical examination and thereafter she was produced before Magistrate to record her statement and she made statement before the Magistrate. Thereafter she married with accused with her consent. **In cross** she stated after lodging of ejahar she married with accused and at present she is leading happy conjugal life with accused and they are blessed with one daughter.
- 10. Evidence of PW-4 Mohamod Ali is that he has no knowledge about the incident and he does not know why Noser Ali lodged case against the accused. Defence declined to cross examine PW-4.
- 11. PW-5 Sarif Ali @ Jorif Ali deposed he has no knowledge about the incident and does not know why Noser Ali lodged case against the accused. Defence declined to cross examine PW-5.
- 12. PW-6 SI Bitu Murmi is I.O of the case. His evidence is that on 25-09-15 O/C Bilasipara PS handed over case diary of Bilasipara PS case No. 361/14 u/s 366(A)/34 I.P.C r/w section 4 of POCSO Act and directed him to made further investigation of the case but as he was transferred he again handed over the case diary of said case to O/C Bilasipara PS. He deposed SI Uttam Goswami on being endorsed by O/C Bilasipara PS conducted the investigation. SI Uttam Goswami recorded statement of informant, victim and other witnesses, produced victim girl before the doctor for medical examination, produced victim girl before the court to record her statement u/s 164 Cr.P.C; drawn sketch map of place of occurrence, arrested accused and produced accused before the court. He further deposed in this case SI

Bijoy Kumar Das submitted charge sheet against the accused u/s 366(A) IPC r/w section 4 of POCSO Act. **In cross** he stated as per ejahar incident was took place on 20-10-13 and ejahar was lodged on 09-05-14 after 10 months. He stated in the ejahar another date of incident shown as 04-05-14 and on that day victim was alleged to be kidnapped but CD revealed on 04-05-14 no written ejahar; no verbal information was given on 04-05-14 about the incident. He denied his earlier IO did not made proper investigation in this case and his successor IO submitted improper charge sheet against the accused person.

DISCUSSION, DECISION & REASON THERE OF:-

- 13. Prosecution allegation leveled against accused Sajmal Ali Sk. is that on 20-10-13 at village Kajaikata Pt VI under Bilasipara PS accused had committed penetrative sexual assault on Miss X, daughter of informant and again on 04-05-14 at about 05.00 pm at village Kajaikata Pt VI under Bilasipara PS accused had induced informant's daughter Miss X (aged about 16 years old) to go from her house with intent that said Miss X may be forced or seduced to illicit intercourse with accused or with other persons.
- 14. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of kidnapping and charge of penetrative sexual assault by accused Sajmal Ali Sk.
- 15. PW-2 is the informant of this case. His evidence pointed accused married his daughter and in relation accused is his son in law. He lodged the case against the accused Sajmal Ali Sk on being advised by villagers as accused had given proposal to marry his daughter Miss X and same lowered his respect in the society. His cross pointed now accused married his daughter Miss X and leading conjugal life with her. Evidence of PW-2 while adducing evidence before the court did not alleged that accused Sajmal Ali Sk had kidnapped his daughter and had committed forceful sexual intercourse with his victim daughter Miss X. Thus, it is seen that PW-2 did not support his statement made in the Ext-1 ejahar and PW-2 totally overturn the prosecution case.
- 16. PW-2 is victim girl of this case. PW-2 stated in similar line as stated by informant. She also stated her father lodged the case against the accused Sajmal Ali Sk as accused wanted to marry her. In cross she stated after lodging of the ejahar, her marriage was solemnized with accused and her father lodged the case due to mis understanding. PW-2 before the court did

not alleged that accused Sajmal Ali Sk had committed penetrative sexual assault on her or had kidnapped her from her house. Her evidence only pointed accused wanted to marry her but at that time she does not wanted to marry accused.

- 17. On conjoint reading of evidence of PW-2 informant and PW-3 victim girl it is reveal that their evidence does not pointed any single material against the accused Sajmal Ali Sk and from their evidence not a single ingredient of section 3 of POCSO Act and 366A appear against the accused Sajmal Ali Sk. Moreover, their evidence totally over turn the prosecution case and bring different story that goes in favour of the accused person.
- 18. Evidence of PW-4 and PW-5 pointed they do not have any knowledge regarding incident. Thus, their evidence does not help the prosecution case.
- 19. In view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution totally failed to bring home charge u/s 366(A) and section 4 of POCSO Act against the accused person Sajmal Ali Sk. @ Masmal Ali. Accordingly accused Sajmal Ali Sk. @ Masmal Ali is acquitted from the charge of section 366(A) and section 4 of POCSO Act and set at liberty.
- 20. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 21. Given under hand and seal of this Court on this 12th day of November, 2018 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 Dr. Anjumanara Ahmed (M.O),

PW-2 Noser Ali,

PW-3 Miss X (name changed),

PW-4 Mohamod Ali,

PW-5 Sarif Ali @ Jorif Ali,

PW-6 SI Bitu Murmi.

PROSECUTION EXHIBIT:-

Ext-1 Medical report,

Ext-2 Ejahar,

Ext-3 Sketch Map,

Ext-4 Charge sheet

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara