### IN THE COURT OF SPECIAL JUDGE ::::::: BILASIPARA

Present:- Shri J. Borah, AJS

Special Judge,

Bilasipara

# Special (POCSO) Case No- 10 of 2017

u/s 448/376(I)/313/323/506 Indian Penal Code & u/s 4 of Protection of Children from Sexual Offences Act

#### State of Assam

-Vs-

#### **Motin Ali**

..... accused person

Date of framing charge :- 04-08-2017

Date of recording evidence :- 16-05-2018

01-06-2018

21-07-2018

29-09-2018

04-12-2018

13-03-2019

Date of Argument :- 24-05-2019

06-06-2019

Date of Judgment :- 17-06-2019

### **Advocates Appeared:**

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P

for the State of Assam

For the defence :- Mr. R. Dasgupta,

Ld. Advocate for the accused.

## **JUDGMENT**

- 1. This case is u/s 448/376(I)/313/323/506 Indian Penal Code, I.P.C in short and u/s 4 of Protection of Children from Sexual Offences Act, in short POCSO Act. So, the name of the victim is not mentioned here and she is referred to, hereinafter, as 'x'.
- 2. The prosecution case, in brief, is that Haidar Ali, the informant lodged an ejahar with the Bilasipara police station on 20-03-2017 informing that 'x' is the daughter of the informant. She is minor girl aged about 13 years old and she is also deaf and dumb. The accused Motin Ali entered into the informant's house and had sexual intercourse with 'x'. As a result of such sexual intercourse, 'x' became pregnant. The accused Motin Ali administered medicine on 'x' to cause damage of the pregnancy. The accused Motin Ali threatened her not to divulge the occurrence to none. 'x' set fire on herself for the act of the accused Motin Ali.

So, the informant prayed for taking necessary action against the accused Motin Ali.

- 3. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 257/2017 u/s 447/448/313/326 I.P.C r/w section 4 of POCSO Act. The case was investigated and having found prima facie u/s 447/448/313/326/506 I.P.C and section 4 of POCSO Act against the accused Motin Ali, prepared the chargesheet and laid the same before the court for trial.
- 4. The accused Motin Ali, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed u/s 448/376(I)/313/323/506 I.P.C and section 4 of POCSO Act. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined 10 (ten) witnesses, namely-

1.	Haidar Ali	PW-1
2.	Kolsom Bibi	PW-2
3.	`x'/ the victim	PW-3
4.	Nabab Ali	PW-4
5.	Ahmed Ali	P.W-5

6. Dr. Md. Laskar Ali P.W-67. Mainul Hoque P.W-7

8. Ghutu Seikh P.W-8

9. Indreswar Pathak P.W-9

10. Dr. Muskura Ahmed P.W-10

6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations leveled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.

7. Heard argument for both sides.

## 8. **POINTS FOR DETERMINATION**

- i. Whether accused three months back from the date of lodging ejahar on 20-03-2017 at village Chatapara under Bilasipara police station criminally trespassed into the house of informant to commit rape on 'x'?
- ii. Whether accused three months back from the date of lodging ejahar on 20-03-2017 at village Chatapara under Bilasipara police station committed rape on 'x' who is deaf and dumb girl?
- iii. Whether accused three months back from the date of lodging ejahar on 20-03-2017 at village Chatapara under Bilasipara police station committed penetrative sexual assault on 'x'?
- iv. Whether accused after two months of committing rape on 'x' at village Chatapara under Bilasipara police station voluntarily caused simple hurt to 'x'?
- v. Whether accused after two months of committing rape on 'x' at village Chatapara under Bilasipara police station voluntarily caused 'x' then being with child to miscarry without her consent, such miscarriage not being caused by accused in good faith for the purpose of saving the life of the 'x'?
- vi. Whether accused after two months of committing rape on 'x' at village Chatapara under Bilasipara police station threatened 'x' and informant to kill them?

## **DECISION AND REASONS THERE OF**

- 9. In this prosecution case P.W-1 Haidar Ali is the informant, P.W-2 Kolsom Bibi is the wife of the informant, P.W-3 'x' is the alleged victim, P.W-4 Nabab Ali, P.W-5 Ahmed Ali, P.W-7 Mainul Hoque, P.W-8 Ghutu Seikh are independent witnesses. P.W-6 Dr. Laskar Ali and P.W-10 Dr. Muskura Ahmed are Medical & Health Officers and P.W-9 Indreswar Pathak is the investigating officer.
- 10. In this case P.W-1 Haidar Ali is the informant and P.W-3 'x' is the alleged victim. So both are the prime witnesses in this case. Now, let us see the evidence of this two witnesses.
- 11. P.W-1 Haidar Ali has stated in his evidence that he is the informant in this case. 'x' is his minor daughter and she is deaf and dumb. 'x' was the student of Kalipara Janapriya L.P. School. On the day of occurrence, he was not at his house. When he came to his house, his daughter 'x' showed him by signal that accused committed rape on her. Accordingly, he lodged the ejahar against the accused. 'x' was examined by Medical & Health Officer.

In his cross P.W-1 has stated that he was working in Guwahati as rickshaw puller. He came home after five days from the day of occurrence and heard about the occurrence. Moinul, Ahad Ali, Bera Kata are his close neighbour. But he did not disclose the matter to them.

12. P.W-3 'x' has stated in her evidence that the accused Motin Ali embraced her and committed rape on her. He made her nude. After committing rape, the accused left their house. Her statement was recorded, Ext-1 is the said statement.

In her cross P.W-3 has denied that the accused did not perform the ill act on her. She made statement before the Magistrate as it was tutored.

13. Thus, minute scrutiny of evidence of Haidar Ali and P.W-3 'x' shows that the occurrence took place when P.W-1 Haidar Ali was in Guwahati. He came to his house after seven days of the occurrence. When he returned to house, he got to know form his daughter that she was committed rape by the accused.

But in the ejahar Ext-1, P.W-1 Haidar Ali scribed that as a consequence of sexual act on 'x' by accused, she became pregnant. The accused administered medicine on her for destruction of her pregnancy.

So, there found variation between the content of the ejahar and the

evidence of P.W-1. P.W-1 in Ext-1 ejahar has stated that 'x' became pregnant as a result of sexual act on her, but in his evidence P.W-1 has stated that after seven days from the day of occurrence he came to his house, got to know about the occurrence and he lodged the ejahar. So, there is distinct gulf between the content of the ejahar and the evidence adduced by P.W-1 in the court.

Secondly, P.W-1 has stated nowhere in his evidence that 'x' became pregnant and she was administered medicine by the accused.

Thirdly, P.W-1 Haidar Ali has stated in the ejahar that he tried to solve the matter in the village, but fails. But in his evidence P.W-1 has stated that he did not discuss the matter with Moinul, Ahad Ali, Bera Kata who are his neighbour.

So, there is vital contradiction between the evidence of P.W-1 and his previous statement in the ejahar. The evidence of P.W-1 is found not free from the doubt. His evidence is imbibed with many contradictions.

14. The evidence of P.W-3 'x' shows that the evidence of P.W-3 'x' was recorded with the help of one Anjali Das, a teacher of deaf and dumb school.

P.W-3 'x' has stated that she was committed ill deed by the accused. She has also stated that her statement recorded u/s 164 Cr.P.C was tutored. P.W-3 'x' has stated in her written evidence that the accused Motin Ali has outraged her modesty.

There is no evidence that she became pregnant or she was administered medicine by the accused.

15. If the evidence of P.W-3 'x' is accepted to be true, let us see the evidence of P.W-10 Dr. Muskura Ahmed, the Medical & Health Officer.

P.W-10 Dr. Muskura Ahmed has stated in her evidence that she had medically examined 'x' and found as follows-

The child is unable to talk and dumb; examination of injuries- whole left leg upto below and left elbow is burnt with an old scar and slub. So, refer to surgery; local examination of genital parts-normal; external genitalia- normal; Hymen- normal; vagina & cervix-normal. According to her clinical opinion patient was not consistent with recent sexual intercourse/assault. Ext-4 is the medical report and Ext-4(1) is her signature.

P.W-10 in her opinion stated she found that the patient was not consistent with sexual intercourse or assault. So, the evidence of P.W-10 shows that she found no sign of rape on 'x'.

Secondly, if there was sexual intercourse on 'x', the hymen of P.W-3 'x' would have torn. But medical report Ext-4 shows that hymen of P.W-3 was normal.

Thus, the evidence of P.W-10 Dr. Muskura Ahmed shows that 'x' is not supported by P.W-10 that there was rape on P.W-3 'x'.

16. Now let us see the evidence of P.W-2 Kolsom Bibi, the mother of the alleged victim.

P.W-2 Kolsom Bibi has stated in his evidence that 'x' is her daughter. The occurrence took place one year ago (from the date of adducing evidence on 16-05-2018). Her husband was not at their house and she herself went to the house of her sister. When she returned to her house, 'x' showed her by signal that the accused committed rape on her. In connection with the occurrence her husband lodged the ejahar against the accused.

In her cross P.W-2 has stated that there was village meeting, but the matter was not solved.

17. The evidence of P.W-2 shows that there was a village meeting. The accused was present in the meeting.

Let us see the evidence of other witness is to support the evidence of P.W-2.

P.W-4 Nabab Ali has stated in his evidence that there was altercation between the informant and the accused and a village meeting held in connection with it. He was present in the meeting. The meeting was held in his court yard.

P.W-5 Ahmed Ali has stated in his evidence that there was a meeting in the court yard of Nabab Ali. There was discussion regarding personal dispute.

P.W-6 Moinul Hoque has stated in his evidence that there was meeting in the hosue of Nabab Ali. But he did not know the subject matter of the discussion.

P.W-8 Ghutu Seikh has stated in his evidence that there was meeting in the house of Nabab Ali. But he did not know the subject matter of the meeting.

18. Thus, the evidence of P.W-4, P.W-5, P.W-6 and P.W-8 shows that they are neighbour to P.W-2 Kolsom Bibi. All the said witnesses have categorically stated in their respective evidence that there was a village meeting in the court yard of Nabab Ali. But P.W-4 Nabab Ali and the other witnesses have denied that the meeting was held to discuss for committing rape on 'x'. Rather they have stated that the meeting was held for personal dispute. The witnesses namely P.W-4, P.W-5, P.W-6 and P.W-8 are neighbour to P.W-2. If the occurrence of rape would have happened, they would have aware of it. At least they would have heard of it. But the said witnesses have categorically denied to have discussion in the meeting in the subject matter of rape.

Thus, the evidence of P.W-2 is not supported by the witnesses namely P.W-4, P.W-5, P.W-6 and P.W-8.

- 19. The evidence of P.W-9 Indreswar Pathak is mere official. P.W-9 Indreswar Pathak has stated in his cross that the ejahar was lodged after three months from the date of occurrence. According to P.W-1 Haidar Ali, he lodged the ejahar after seven days from the date of occurrence. But according to P.W-9 it was lodged after 3(three) months. The content of the ejahar Ext-1 also shows that the ejahar was lodged after three months. There was no proper explanation why it took time to lodge the ejahar. It is the principle of law that the ejahar must be lodged promptly. If there is any inevitable cause, the same must be duly explained. In this instant case, the delay is not explained. It may also affect the prosecution case.
- 20. Considering all aspects, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offences as alleged against the accused. The prosecution evidence is found dearth of merit.
- 21. The prosecution, thereby, failed to prove its case u/s 448/376(I)/313/323/506 I.P.C and section 4 POCSO Act against the accused beyond all reasonable doubt.
- 22. Held, the accused is not guilty u/s 448/376(I)/313/323/506 I.P.C and section 4 POCSO Act.
- 23. Accordingly, the accused is acquitted and set at liberty.

The bail bond of accused stands cancelled and bailor is discharged from liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 17<sup>th</sup> day of June 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

# **APPENDIX**

#### **PROSECUTION WITNESS:-**

PW-1 Haidar Ali

PW-2 Kolsom Bibi

PW-3 'x'/ the victim

PW-4 Nabab Ali

P.W-5 Ahmed Ali

P.W-6 Dr. Md. Laskar Ali

P.W-7 Mainul Hoque

P.W-8 Ghutu Seikh

P.W-9 S.I Indreswar Pathak

P.W-10 Dr. Muskura Ahmed

### **PROSECUTION EXHIBIT:-**

Ext-1 Ejahar,

Ext-2 Statement of 'x'/the victim recorded u/s 164 Cr.P.C,

Ext-3 Radiological report,

Ext-4 Medical Examination report,

Ext-4 Sketch Map,

Ext-5 Charge Sheet.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara