# **HEADING OF JUDGMENT IN SPECIAL CASE**

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

# Present:- Smti S. Bhuyan, AJS Special Judge, Bilasipara Special Case No- 03 of 2018

# u/s 447/366(A) IPC and 4 of POCSO Act

### **STATE**

### **Versus**

### 1. Meher Jamal

S/O Sopior Rahman, R/O Vill- Haldibari,

PS- Sapatgram, Dist- Dhubri, Assam

# 2. Rezzak Ali

S/O Tomej Uddin Sk,

R/O Vill- Choto Girerpar,

PS- Bilasipara, Dist- Dhubri, Assam

# **Accused persons**

(Corresponding to GR case No- 1307/17 u/s 447/366(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. Abdul Mannan, Advocate.

Date of institution of the case :- 16-08-17

Date of Framing charge :- 14-08-18

Date of prosecution evidence :- 14-09-18, 06-10-18,19-12-18

Statement of accused recorded on :- 03-01-19

Date of Argument :- 03-01-19

Judgment delivered

:- 09-01-19

# **JUDGMENT**

# **Prosecution Case**

1. Prosecution case in brief is that on the night of 15-08-17 at about 10.30 pm accused Meher Jamal kidnapped informant's niece Miss X (name changed) aged about 15 years old from her house, taken her to an isolated place and committed rape on her. Thereafter on the next day at about 04.00 am Miss X was recovered at Haldibari paddy field in an un-conscious state.

# **Investigation**

2. Officer in charge Sapatgram PS, on receipt of ejahar from informant Johirul Islam registered a police case vide Sapatgram PS case No. 143/17 u/s 363/376/34 I.P.C r/w section 4 of POCSO Act and SI Habibar Rahman was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused persons Meher Jamal and Md. Rezzak Ali u/s 447/363/34 IPC r/w section 4 of POCSO Act and cognizance taken.

## **Charge**

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 447/366(A) I.P.C were framed against the accused Rezzak Ali and charge u/s 447/366(A) I.P.C r/w section 4 of POCSO Act was framed against the accused Meher Jamal and when charges are read over and explained to the accused persons, they pleaded not guilty and claimed to be tried.

### <u>Trial</u>

4. In order to prove the prosecution charges against the accused persons, prosecution adduced evidence of all together 9 number of witnesses and exhibited 2 nos. of documents. PW-1 Miss X, PW-2 Jahirul Islam, PW-3 Rafik Ali, PW-4 Monowara Bibi, PW-5 Monsur Ali, PW-6 Dr. Hemanta Kumar Nath, PW-7 Anu Bibi, PW-8 Abdul Kader, PW-9 Abu Bakkar Siddique. Ext-1 Statement of Miss X recorded u/s 164 Cr.P.C, Ext-2 Ejahar. 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 both the accused persons on 15-08-17 at about 10.30 pm at village Naderkuti under Sapatgram PS in furtherance of common intention committed criminal trespass by entering into the property of informant's niece Miss X, aged about 15 years old?
- ii) Whether both the accused persons on 15-08-17 at about 10.30 pm at village Naderkuti under Sapatgram PS in furtherance of common intention kidnapped Miss X, aged about 15 years old and moved her and taken to isolated place with intent that said Miss X may be forced or seduced to illicit intercourse with them or with other persons?
- iii) Whether accused Meher Jamal on 15-08-17 at about 10.30 pm at village Naderkuti under Sapatgram PS committed penetrative sexual assault on Miss X?

### **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 Miss X alleged victim of the case deposed informant Jahirul Islam is her khura and she knows both the accused persons. She deposed incident was took place on 15-08-17 and at that time she was student of class IX and studied at Jogirmahal High School and after the incident she stopped going to school and give up her education. She deposed on the day of incident at about 09.00 am she was talking with Meher Jamal and this was noticed by her father Rofik Ali, her uncle Jahirul Islam and they badly rebuked her as such she was hurt and therefore she went to her sister Rumi and brother in law Rezzak Ali's house without telling her parents and uncle Jahirul. She deposed on the next morning her brother in law Rezzak Ali took her to her house and dropped there and after her return to her home, her uncle lodged case as she had love affairs with accused Meher Jamal. She deposed after lodging of the case, police recorded her statement, medically examined her by doctor at Dhubri Civil Hospital and produced her before the court to record her statement and Ld. Magistrate recorded her statement u/s 164 Cr.P.C vide Ext-1. In cross he stated presently she cannot recollect what statement she made before the Ld.

Magistrate. She stated she and Meher Jamal had love affairs and for their marriage discussion between her guardians and accused's guardian took place but as she did not attain the age of 18 years, her marriage with Meher Jamal not solemnized and now presently she is 18 years 6 month old and she married Meher Jamal 6 months back. She stated she has no grievances against the accused persons Meher Jamal and Rezzak Ali.

- 8. PW-2 Jahirul Islam informant of the case deposed victim girl Miss X is his niece and he knows both the accused persons present before the court. He deposed on 15-08-2017 Meher Jamal was talking with Miss X to which he instructed Miss X not to talk with boys to that she replied to him that due to some matter she had altercation with Meher Jamal. PW-2 further deposed prior to this he got to know that Meher Jamal often talk with Miss X and villager spread rumor about it and therefore on the date of incident on 15-08-2017 when he noticed Miss X and Meher Jamal talking with each other, he had restrained Miss X to talk with Meher Jamal. He deposed at night he was informed by his elder brother Rofik that Miss X is missing from her house. Accordingly they made search for her but did not found and therefore lodged the case apprehending that accused Meher Jamal was involved with the missing of Miss X as he was found talking with Miss X in the morning. Thereafter on next day they receive information that Miss X was present in the house of accused Rezzak and his wife Rumi. In cross he stated he cannot say the content of ejahar. He stated he heard that there was love affair between Miss X and Meher Jamal and discussion on their marriage was took place. He stated at the time of incident Miss X was below 18 years of age and therefore her marriage could not be solemnized with Meher Jamal at that time. He stated Miss X after attaining 18 years of age, married accused Meher Jamal and presently Miss X is staying in the house of Meher Jamal and leading her conjugal life with Meher Jamal and they are leading peaceful matrimonial life.
- 9. PW-3 Rafik Ali is father of the victim girl. He deposed on the night of incident his daughter was talking with accused Meher Jamal and therefore they warned his daughter and Meher Jamal not to talk each other and he also came to know regarding existence of love affairs in between his daughter Miss X and accused Meher Jamal. Thereafter on the late night they found their daughter missing from the house and they made search for her. They visited the house of accused Meher Jamal but parents of accused Meher Jamal rebuked them. Later accused Rezzak who is his son in law bring back Miss X to his house and there he came to know from his daughter that as he rebuked Miss X, she went

to her sister's house. **In cross** he stated his daughter was 17 ½ years old at the time of incident. About 6 month back his daughter married accused Meher Jamal when she attains 18 years old and presently his daughter is leading happy married life with accused Meher Jamal.

- 10. PW-4 Monowara Bibi deposed Miss X is her daughter and she knows both the accused persons. She deposed there was love affair between her daughter and accused Meher Jamal and about 1 ½ years back her daughter Miss X was talking with accused Meher Jamal and seeing this, Jahirul rebuked her daughter Miss X. Thereafter from night her daughter Miss X gone missing. On the next day accused Rezzak Ali brought Miss X to their house and when she asked to her daughter Miss X, her daughter told her that as she was rebuked by Jahirul Islam, she left the house. She deposed police produced her daughter before the court to record her statement and she accompanied her daughter to the court and she was also along with her when statement of Miss X was recorded u/s 164 Cr.P.C. **In cross** she stated she does not know what statement her daughter made before the Ld. Magistrate. She stated presently her daughter is aged about 18 ½ years and about 6 months back her daughter married accused Meher Jamal and they were living happily together.
- 11. PW-5 Monsur Ali deposed he does not know what happened at his native village as he resides in Bilasipara in rented house. He only heard about incident of altercation that took place in between accused Meher Jamal and Jahirul Islam. Defence declined to cross examine PW-5.
- 12. PW-6 Dr. Hemanta Kumar Nath is Medical officer. His evidence is that on 16-08-18 at about 02.30 P.M he had medically examined Miss X under reference Sapatgram PS Case No. 143/2017 and on examination found-No sign of injury seen on the patient except the private parts (in and around). Examination of private parts not done. Patient is referred to Dhubri Civil Hospital for ML examination in related to sexual harassment. Defence declined to cross examine PW-6.
- 13. Evidence of Anu Bibi is that she heard that Miss X was missing from her house and after few days of this information she again heard that Miss X returned to her home. She further deposed she heard Miss X married accused Meher Jamal. Defence declined to cross examine PW-6.
- 14. Evidence of PW-8 Abdul Kader is that about 1 year back during flood season he heard hue and cry in the house of Rafik. Accordingly he went there and came to know that Miss X missing from her house. Thereafter they made search for her but did not find her at night and therefore her father lodged

written ejahar and after two days he came to know that Miss X went to visit some of her relative and she returned home. **In cross** he stated he does not know solemnization of social marriage of Miss X but he heard that marriage of Miss X was registered with accused Meher Jamal.

15. PW-9 Abu Bakkar Siddique deposed he heard in the village about missing of Miss X and later on she came home. **In cross** he stated Miss X got married with accused Meher Jamal and she is leading her matrimonial life with accused Meher Jamal.

# **DISCUSSION, DECISION & REASON THERE OF:-**

- 16. Prosecution allegation leveled against both the accused persons is that on 15-08-17 at about 10.30 pm at village Naderkuti under Sapatgram PS they had illegally entered in to the house of Miss X and kidnapped Miss X, aged about 15 years old and moved her and taken her to isolated place with intent that said Miss X may be forced or seduced to illicit intercourse with them or with other persons and after kidnapping Miss X, victim of this case, accused Meher Jamal had committed penetrative sexual assault on her.
- 17. In this case prosecution adduced evidence of informant, victim girl and other 7 numbers of witnesses including MO. PW-1 is the victim of this case and she, being victim, is star witness of this case. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of criminal house trespass and kidnapping by both the accused persons and charge of penetrative sexual assault by accused Meher Jamal.
- 18. On perusal of evidence of PW-1, PW-2, PW-3 and PW-4 it is reveal that there was a love affair in between PW-1 and accused Meher Jamal. Evidence of PW-1, alleged victim of the case pointed on the day of incident at about 09.00 am she was talking with Meher Jamal and when this was noticed by her father Rofik Ali, her uncle Jahirul Islam badly rebuked her as such she was hurt and therefore she went to her sister Rumi and brother in law Rezzak Ali's house without telling her parents and uncle Jahirul. Thereafter on the next morning her brother in law Rezzak Ali took her to her house and dropped there. PW-2 is the informant of the case. His evidence pointed on 15-08-2017 when he noticed Miss X and Meher Jamal talking with each other, he had restrained Miss X to talk with Meher Jamal and on the same night he was informed by his elder brother Rofik that Miss X is missing from her house. Thereafter they made search for Miss X and not finding her lodged ejahar against accused Meher Jamal and on the next day they receive information that Miss X was

present in the house of accused Rezzak and his wife Rumi. On perusal of evidence of PW-1, alleged victim and PW-2 informant of the case it is seen that they did not stated anything against the accused Meher Jamal and Rezzak Ali while adducing their evidence before the court. PW-1 and PW-2 did not stated before the court that both the accused persons had criminally trespassed into the house of PW-1, kidnapped PW-1 and taken her to an isolated place and then accused Meher Jamal committed sexual intercourse with PW-1. Evidence of PW-1 and PW-2 only pointed that on the date of incident accused Meher Jamal was talking with PW-1, alleged victim of the case. Thus, seen that evidence of PW-1 and PW-2 totally overturn the prosecution case and bring new fact before the court. Evidence of PW-1 further pointed she made statement before the Ld. Magistrate vide Ext-1. In cross PW-1 stated she cannot recollect what statement she made earlier before the Magistrate. Thus it again goes to show that PW-1 alleged victim girl not supported and corroborated her statement which she made before the magistrate u/s 164 Cr.P.C and therefore Ext-1 does not make any improvement in the case against the accused person in absence of the corroboration from her evidence.

- 19. PW-3 and PW-4 are the parents of alleged victim girl PW-1. Their evidence only pointed on the date of incident accused Meher Jamal was talking with PW-1, alleged victim of the case and there was love affairs between PW-1 and accused Meher Jamal. While adducing their evidence before the court PW-3 and PW-4 did not alleged that both the accused persons Meher Jamal and Rezzak Ali had criminally trespassed into the house of PW-1, kidnapped PW-1 and taken her to an isolated place and then accused Meher Jamal committed sexual intercourse with PW-1. Thus, seen that from the evidence of PW-3 and PW-4 nothing comes out against the accused persons Meher Jamal and Rezzak Ali.
- 20. Evidence of PW-5 is that he heard that one incident of altercation took place in between accused Meher Jamal and Jahirul Islam. Evidence of PW-7, PW-8 and PW-9 pointed they heard that PW-1 was missing from her house and later on PW-1 return to her home. Evidence of PW-5, PW-7, PW-8 and PW-9 does not connect any link with the accused Meher Jamal and Rezzak Ali of their involvement in missing of PW-1 from her house. Further their evidence does not pointed that accused Meher Jamal had committed sexual intercourse with PW-1. Accused Rezzak is the brother in law of PW-1 in whose house victim went and on next day it was Rezzak who brought her at home. Accused persons entering into the campus of PW-1, PW-3 and PW-4 is not stated by

PW-3 and PW-4 too. There is no element coming out from the testimony of PW-1, PW-3 and PW-4 about accused trespassing of their property and then kidnapping of PW-1 from the compound of PW-1.

- 21. Thus, from the evidence of PWs and more specifically from the evidence of PW-1, victim girl of the case it is seen that not a single ingredient of section 447/366A IPC appear against the accused persons Meher Jamal and Rezzak Ali and ingredient of section 3 of POCSO Act also not appear against the accused Meher Jamal. It is seen that PW-1 and PW-2 bring different story before the court which goes in favour of accused persons Rezzak Ali and Meher Jamal.
- 22. Therefore, in view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution miserably failed to bring home charge u/s 447/366(A) I.P.C against the accused Rezzak Ali and prosecution miserably failed to bring home charge u/s 447/366A I.P.C r/w section 4 of POCSO Act against the accused Meher Jamal. Accordingly accused Rezzak Ali is acquitted from the charge of section 447/366(A) I.P.C and accused Meher Jamal is acquitted from the charge of section 447/366A I.P.C and section 4 of POCSO Act and are set at liberty.
- 23. Bail bond of accused persons shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 24. Given under hand and seal of this Court on this 09<sup>th</sup> day of January, 2019 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 Miss X, (Victim)

PW-2 Jahirul Islam,

PW-3 Rafik Ali,

PW-4 Monowara Bibi,

PW-5 Monsur Ali,

PW-6 Dr. Hemanta Kumar Nath,

PW-7 Anu Bibi,

PW-8 Abdul Kader,

PW-9 Abu Bakkar Siddique.

# **PROSECUTION EXHIBIT:-**

Ext-1 Statement of Miss X recorded u/s 164 Cr.P.C,

Ext-2 Ejahar

**DEFENCE WITNESS** :- NIL

**DEFENCE EXHIBITS** :- NIL

**COURT EXHIBITS** :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara