

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Sessions Case No- 180 of 2014

u/s 366(A)/376 of IPC

STATE

Versus

Amir Hussain @ Ali

Accused person

(Committed by Sri Y. Azaz, then learned SDJM (M), Bilasipara in GR case No-163/10 u/s 366(A)/376 IPC)

Advocate appeared:-

For the state:-Mr. T. Kr Bhattacharya, Addl. PP

For the accused:- A. H. Mannan, advocate.

Date of institution of the case :- 12-08-10.

Date of commitment :- 28-05-14.

Date of Framing charge :- 04-08-14

Date of prosecution evidence :- 24-08-17

Statement of accused recorded on:- 16-09-17

Date of Argument :- 16-09-17

Judgment delivered :- 19-09-17

JUDGMENT

Prosecution Case

1. Prosecution case as unfurl from the ejahar is that on 02-08-10 at about 09.00 am accused no. 1 mentioned in the ejahar kidnapped minor daughter of informant aged about 12 years from Ghagmari while his daughter was going to Sapatgram Academy School at the instigation of other accused persons mentioned in the ejahar. In this regard when father of victim asked accused no. 2 to 5 regarding presence of his daughter then accused no. 2 to 5 threatened him and used slang language. To this fact Javed Ali, father of victim lodged the ejahar before i/c Sapatgram out post and there is delay in filing the ejahar due to searching of the victim.

Investigation

2. I/C of Sapatgram police station on receiving the ejahar from informant Javed Ali forwarded the ejahar to Bilasipara PS for registration of case. On receipt of ejahar Bilasipara PS registered a police case vide No Bilasipara police case No. 405/2010 under Section 143/366(A)/120(B)/506/294 I.P.C. After completion of the investigation IO submitted charge sheet against the accused person named herein above u/s 366(A)/376 IPC.

Committal

3. On receipt of the charge sheet, Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused person committed the case before the Court of Sessions, Dhubri for trial and Learned Session Judge, Dhubri made over the case to this court for trial.

Charge

4. My then Ld. Predecessor after hearing both sides and perusal of material on record framed charges under Section 366(A)/376 IPC against the accused Amir Ali and when charges read over and explained to the accused person he pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the prosecution charges against the accused person, prosecution adduce of evidence two witnesses and prosecution exhibited one

number of documents. PW- 1 Javed Ali, PW-2 Victim. Ext.1 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.

6. **POINTS FOR DETERMINATION:-**

- i) Whether victim (Mrs. X) was minor at the time of incident?
- ii) Whether accused Amir Ali @ Hussain on 02-08-10 at about 09.00 am at village Ghagmari under Sapatgram PS induced Mrs. X (a minor girl under the age of 18 years) to go with him from Sapatgram with intent that she will be forced or seduced to illicit intercourse with him or other?
- iii) Whether accused Amir Ali @ Hussain on 02-08-10 at about 09.00 am at village Ghagmari under Sapatgram PS committed rape on the victim Mrs. X, minor girl?

DISCUSSION, DECISION & REASON THEREOFF:-

7. In this case name of the victim is changed and she is referred as Mrs. X in view of the charge u/s 376/366A I.P.C

8. Prosecution case against the accused is that he had kidnapped a minor girl and committed rape on her. To attract section 366(A) I.P.C against the accused one of the vital ingredient is that the victim must be below the age of 18 years i.e. she must be minor at the time of incident. Now let me see whether she was a minor at the time of incident or not. PW-1 is the informant and father of the victim. His evidence is that accused is his nephew and victim is his daughter. There is love affairs between accused and his daughter and both of them eloped and he lodged ejahar Ext.1. In cross he stated that at the time of incident his daughter was 19 years old and his daughter eloped with accused to get married.

9. PW-2 is the victim of this case. She stated informant is her father. Accused is her husband and when she was studying in school both of them fell in love and they wanted to get married but her father opposed the marriage between them so both of them eloped to get married and therefore, her father lodged the case and after that she came home, told whole fact to her father and her father forgive both of them and accepted accused Amir Hussain as his son-in-law. Thereafter, she

appeared before police, made her statement and police produced her before the Magistrate and before magistrate she also made her statement. Ext-2 is her statement recorded u/s 164 Cr.P.C. I have perused the same. Victim at the time of recording her statement on 12-05-11 stated her age as 21 years and at the time of recording her evidence in court stated her age as 28 years. PW-1 father of the victim stated that at the time of incident victim was 19 years old. Except this oral piece of evidence prosecution did not produce any other evidence to show the age of the victim below the age of 18 years and no different age of victim at the time of incident is coming out. PW-1 being father of the victim, his statement is accepted and victim also in her statement made before the police and Magistrate initially at the time of incident stated her age 21 years and conjoint reading of the statement of PW1 and PW2 goes to show that victim at the time of incident was not below the 18 years and she was not a minor and she was major at the time of incident and therefore I hold that the first point for determination goes against the prosecution.

10. With regard to the second point for determination, it is crystal clear that victim was a major girl at the time of incident. Therefore she has liberty to choose a person as her life partner of her own choice. Her evidence shown that she and accused are in love and to get married she eloped with the accused who is her husband now. She stated her father did not accept their marriage as they are poor and therefore, both of them eloped to get married. Her father also did not state any incriminating materials against the accused. His evidence also pointed that his daughter and accused who is his son in law now are in love and both of them eloped. In cross he stated no incident of kidnapping of his daughter took place by the accused. That accused enticed victim with intent to seduce or forced to seduce her and to have any illicit intercourse with her and to marry her against her consent and will are not at all appearing from the evidence on record. Evidence on record clearly shown that victim who was a major at the time of incident went with the company of accused Amir Hussain of her own consent and volition and there is no element of enticing her and moving her from place to place with intent to seduction and therefore I come to my considerate finding that second point for determination is also goes against the prosecution.

11. From the reading of the evidence of victim it is reveal from her statement recorded before court that she did not whisper that accused committed rape on her. In her statement recorded before the magistrate u/s 164 Cr.P.C she did not state that accused had committed rape on her. There is not a single line of

statement made by the victim that accused had sexual intercourse with her against her will and or consent. Her evidence made sufficiently clear that she went with the company of accused to get married as both of them are in love. There is not a single ingredient of forceful sexual intercourse without consent and will of the victim comes out from the testimonies of victim and she did not supported prosecution charge levelled against the accused and therefore I come to my considerate finding that prosecution failed to bring home the third point for determination against accused.

12. Form the aforesaid discussion I come to my considerate finding that prosecution miserably failed to bring home ingredient of section 366(A)/376 I.P.C against the accused Amir Hussain and I hold him not guilty under charge of section 366A/376 IPC. He is acquitted from the charge of section 366(A)/376 I.P.C and is set at liberty.

13. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.

14. Send back the GR case record to the learned committal Court with a copy of the judgment.

15. Given under hand and seal of this Court on this 19th day of September 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III

APPENDIX

PROSECUTION WITNESS:-

PW- 1 Javed Ali

PW-2 Miss X

PROSECUTION EXHIBIT:-

Ext.1 Ejahar.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITES :- NIL

COURT EXHIBITES :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara