

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 16

u/s 366(A) of I.P.C r/w section 4 of POCSO Act

STATE

Versus

Nur Mahammad Ali

Accused person

(Corresponding to GR case No- 866/16 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:- Mrs. Tara Bhanu Eyasmin , Advocate.

Date of institution of the case :- 10-06-16

Date of Framing charge :- 21-10-16

Date of prosecution evidence :- 22-09-17, 30-11-17

Statement of accused recorded on :- 12-12-17

Date of Argument :- 12-12-17

Judgment delivered :- 20-12-17

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 10-06-16 at about 12.00 Noon ejahar named accused Nur Mahammad Ali kidnapped informant's daughter Miss X, aged about 15 years old from informant's house and took Miss X to Hatipota graveyard and committed rape on her against her will and consent. Thereafter local people of Hatipota caught hold of them and informed about the incident to informant and informant along with his uncle went to the Hatipota and found both victim and accused and to this fact informant lodged the ejahar before Salkocha out post.

Investigation

2. Officer-in-charge of Chapar police station on receiving the ejahar from Mosstt. Dukati Bibi registered a police case vide Chapar police case No. 234/16 under section 366(A) r/w section 4 of POCSO Act and S.I Paren Ch. Das 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 366(A) r/w section 4 of POCSO Act.

Charge

3. My then Ld. Predecessor after hearing learned counsel for both sides and perusal of material on record framed charge u/s 366(A) r/w section 4 of POCSO Act against the accused person Nur Mahammad Ali and when charge is 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 7 number of witnesses and exhibited 1 no of document. PW-1 Dukati Bibi, PW-2 Miss X, (victim), PW-3 Hamid Ali, PW-4 Sayed Ali, PW-5 Moham Ali @ Nur Mahammad, PW-6 Naser Ali, PW-7 Mufti Abdul Matin Asmani. Ext-1 statement of victim recorded u/s 164 Cr.P.C. 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 10-06-16 at about 12.00 pm induced victim from her house with intent that she may be or knowing that she might be forced or seduced to illicit intercourse with accused?
- ii) Whether accused on 10-06-16 at about 12.00 pm at Hatipota committed penetrative sexual assault on victim?

ARGUMENT

6. I have heard learned counsel for both sides. It has been argued by the Id. defence counsel prosecution miserably failed to establish the prosecution charge leveled against the accused as because according to victim no such incident took place as alleged in the ejahar and other PWs also did not state anything against the accused. Therefore, prosecution case against accused is not at all proved and accused entitled acquittal.

DISCUSSION, DECISION & REASON THERE OFF:-

7. Prosecution allegation leveled against accused is that accused on 10-06-16 at about 02.00 pm induced victim from her house with intent that she may be or knowing that she might be forced or seduced to illicit intercourse and on the same day at Hatipota village accused had committed penetrative sexual assault on victim. In this case prosecution adduced evidence of informant, victim and other witnesses and PW-2, being victim of this case, she is the star witness of this case. Now let me analyze evidence on record.

8. PW-1 Dukati Bibi is informant of this case. Her evidence is that she came to know from one Rashidul that police held up her daughter with one young boy and hearing this she went to police station. Thereafter as police asked her to lodged ejahar, she lodged the ejahar wherein she put her thumb impression. She deposed she does not know the contents of ejahar and after lodging of ejahar she gave marriage of her victim daughter. **In cross** she stated she does not know about the incident.

9. PW-2, victim of this case deposed that informant is her mother and she knows the accused. She deposed one year back she was familiar with

accused Nur Mahammad through mobile and she became friend with her. Thereafter one day accused called her over phone and asked her to meet him at Hatipota Itimkhana and accordingly she went to Hatipota Itimkhana, met accused and started talking with accused. At that time committee member of Hatipota Itimkhana held them and handed them to Salkocha out post. Thereafter, her mother was called and she was handed over to her mother by police. During the course of investigation she was produced before doctor for medical examination and she was also produced before magistrate and her statement was recorded u/s 164 Cr.P.C vide Ext 1 wherein she put her signature vide Ext 1(1). **In cross** she stated she became familiar with accused through (via) mobile and became friend with accused. She stated on the day of incident she went to Hatipota graveyard of her own being called by accused and at Hatipota graveyard they were talking friendly with each other. She further stated she does not remember what statement she made before the Magistrate.

10. PW-3 Hamid Ali, PW-5 Moham Ali @ Nur Mahammad and PW-6 Naser Ali deposed that they saw accused and victim talking something on the national highway at Hatipota. Thereafter they held them and handed over them to Salkocha PS. **In cross** PW-3 & PW-5 stated that they don't know from where accused and victim hail. PW-6 was not cross examined by defence.

11. PW-4 Sayed Ali deposed that one day seeing accused and victim going towards Hatipota burial he along with Naser Ali, Mahammad, Hamed Ali followed them and asked about their address to that accused and victim told them that they are not from Hatipota and they will get married. Thereafter they held both accused and victim, informed the matter to one Mukti Saheb Abdul Motin Osmani and VDP secretary and handed over the both accused and victim to Salkocha PS. Thereafter mother of victim was informed and victim was given in the custody of her mother. **In cross** he stated he did not see accused going towards graveyard. He stated he only heard about the incident from other person and he don't know what conversation took place in between accused and victim.

12. PW-7 Mufti Abdul Matin Asmani deposed that he does not know informant but he knows the accused. He deposed during the last Ramjan month one evening at the time of eftar villager bring accused and victim before him and asked him to do bichar but he denied to do the same and later on matter was informed to police and police of Salkocha out post took

both accused and victim along with them. **In cross** he stated he is not aware of the incident and from where accused and victim were pick-up by villagers.

13. From the scanning of evidence of PW-1, it is seen that she had lodged the ejahar as asked by police and she is totally unknown about the contents of ejahar and therefore her evidence shown that she did not substantiate the contents of ejahar wherein she put her thumb impression. In her evidence in chief also she did not made any allegation against accused that accused had kidnapped her daughter and after kidnapping her committed penetrative sexual assault on her daughter.

14. Scanning of evidence of PW-2 who is the victim of this case shown that she did not whisper that accused had kidnapped her from her house and after kidnapping her sexually assaulted her or had any physical contact with her or sexual intercourse with her or did any act which is falls within the ambit of penetrative sexual act. Evidence of victim pointed that she became friendly with accused through mobile and on the day of incident she went to the Hatipota Itimkhana to meet accused of her own as she was called by accused and she along with accused were talking there and seeing this some local villagers came, held them and handed over them to police. Her evidence did not hint any happening of untoward, indecent incident with her. Her evidence further shown she could not recollect what statement she earlier made before the police and Magistrate. Therefore, it is apparent that victim did not supported and corroborated the statements made by her u/s 164 Cr.P.C and Ext-1 does not make any improvement in the case against the accused in absence of the corroboration from the statement of the victim.

15. On the plain perusal of the evidence PW-3, PW-4, PW-5, PW-6 and PW-7 shown that there is no whispering of the PWs with regard to the fact that accused Nur Mohammad Ali had kidnapped victim and after kidnapping her committed penetrative sexual assault on victim. They also did not state before the court that victim had told them that accused had kidnapped victim and after kidnapping her committed penetrative sexual assault on her. Thus, their evidence does not point any material against the accused person and not a single ingredient of section 366 (A) of IPC and section 3 of POCSO Act coming out against the accused Nur Mohammad Ali from their evidence.

16. 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 366(A) I.P.C r/w section 4 of POCSO Act against the accused person Nur Mohammad Ali and I hold accused Nur Mohammad Ali not found

guilty u/s 366(A) I.P.C r/w section 4 of POCSO Act and accordingly he is acquitted from the charge of section u/s 366(A) I.P.C r/w section 4 of POCSO Act and is set at liberty.

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

18. Given under hand and seal of this Court on this 20th day of December, 2017 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 Dukati Bibi,
PW-2 Miss X, (victim),
PW-3 Hamid Ali,
PW-4 Sayed Ali,
PW-5 Moham Ali @ Nur Mahammad,
PW-6 Naser Ali,
PW-7 Mufti Abdul Matin Asmani

PROSECUTION EXHIBIT:-

Ext-1 Statement of victim recorded u/s 164 Cr.P.C

DEFENCE WITNESS :- NIL
DEFENCE EXHIBITES :- NIL
COURT EXHIBITES :- NIL
COURT WITNESS :- NIL

(Smti S. Bhuyan)
Special Judge, Bilasipara