

HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special Case No- 08 of 17

u/s 8 of POCSO Act

STATE

Versus

Aynuddin Mondal

Accused person

(Corresponding to GR case No- 667/17 u/s 4 of POCSO Act)

Advocate appeared:-

For the state:- Mr. T. Kr. Bhattacharya, Special P.P.

For the accused:- Mr. M. Islam , Advocate.

Date of institution of the case :- 13-05-17

Date of Framing charge :- 04-09-17

Date of prosecution evidence :- 20-11-17

Statement of accused recorded on :- 07-12-17

Date of Argument :- 07-12-17

Judgment delivered :- 13-12-17

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 13-05-17 at about 01.00 am midnight accused Aynuddin Mondal criminally trespassed into the house of informant's brother and forcefully rape victim and when victim tried to raise

alarm accused Aynuddin Mondal gagged victim's mouth. Thereafter when victim somehow managed to raise alarm accused Aynuddin Mondal tried to flee away but informant along with Abul Kalam caught the accused and they handed over the accused to Nayahat Police out post. Hence the case.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from Abu Bakkar Siddique registered a police case vide No Bilasipara police case No. 436/17 under section 4 of POCSO Act and S.I M. Rahman 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 8 of POCSO Act.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge section 8 of POCSO Act was framed against the accused person Aynuddin Mondal 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 2 number of witnesses and exhibited 1 no of document. PW-1 Abu Bakkar Siddique, PW-2 Miss X, victim of the case. 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 13-05-17 at about 01.00 am midnight at village Tiapara under Bilasipara PS committed sexual assault on informant's niece Miss X by touching her body?

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 and according to PWs and victim no such incident took place as alleged in the ejahar and therefore prosecution case against accused is not at all proved and accused entitled acquittal.

DISCUSSION, DECISION & REASON THEREOFF:-

7. Prosecution allegation leveled against accused is that on 13-05-17 at about 01.00 am midnight at village Tiapara under Bilasipara PS accused had committed sexual assault on informant's niece Miss X by touching her body. I have scrutinized the case record. In this case prosecution adduced evidence of informant and victim only. PW-2 is the victim of this case and she, being victim, is star witness of this case. Now let me analyze evidence on record.

8. PW-1 Abu Bakkar Siddique is the informant of this case and victim is his niece. His evidence is that he lodged the case against accused as accused came to his house at about 11.00 to 12.00 mid night and talking with victim. **In cross** he stated before putting his thumb impression on ejahar he was not read over the contents of ejahar. He stated accused is his co villager and accused had grocery shop in his village. He further stated accused came to his house to collect his dues as called by them.

9. PW-2 is the victim of this case. Her evidence is that six months back accused came to their house to collect his due as they took grocery items from his shop on credit and her uncle on suspicion lodged the case against accused. She deposed after lodging of ejahar she was produced before doctor for medical examination and her statement is also recorded by magistrate u/s 164 Cr.P.C vide Ext 1 and wherein she put her signature vide Ext1(1)

10. From the scanning of evidence of PW-1, informant it is seen that he did not supported the contents of the ejahar i.e his statement made in the ejahar. His cross reveals that accused came to his house to collect dues as called by them. PW-1 who is the victim of this case also deposed that accused came to their house to collect dues. None of this witnesses state that

accused entering into the house of victim committed sexual assault on victim. Thus, their evidence does not point any material against the accused person and not a single ingredient of section 8 of POCSO Act coming out against the accused Aynuddin Mondal.

11. 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 8 of POCSO Act against the accused person Aynuddin Mondal and I hold accused Aynuddin Mondal not found guilty u/s 8 of the POCSO Act and accordingly he is acquitted from the charge of section 8 of POCSO Act and is set at liberty.

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

13. Given under hand and seal of this Court on this 13th 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 Abu Bakkar Siddique,
PW-2 Miss X, victim of the case.

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