

HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special Case No- 17 of 17

u/s 8 of POCSO Act

STATE

Versus

Nasiruddin Ahmed

Accused person

(Corresponding to GR case No- 1577/17 u/s 341/354(A)/506/34 I.P.C. r/w
section 8 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 :- 28-09-17

Date of Framing charge :- 22-11-17

Date of prosecution evidence :- 08-12-17

Statement of accused recorded on :- 14-12-17

Date of Argument :- 14-12-17

Judgment delivered :- 14-12-17

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 22-09-17 at about 05.00 pm when informant's minor daughter, victim searching for goat accused Nasir Uddin

giving false information to her daughter that missing goat was in the banana grove and asked victim to go to the same. Thereafter accused followed victim and at said banana grove accused express his love to victim and thereafter tried to commit rape on victim. To that victim made hue and cry and hearing hue and cry of victim informant rushed to the place of occurrence, seeing informant's arrival accused fled away from the place of occurrence. On the said incident village meeting was also held but as no fruitful result coming out from the village meeting informant lodge this case.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from Abdul Hanif Sk. registered a police case vide Bilasipara police case No. 1027/17 under section 341/354(A)/506/34 of IPC r/w section 8 of POCSO Act and S.I Raghav Mazumdar 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 341 I.P.C r/w section 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 Nasiruddin Ahmed 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 all together 2 numbers of witnesses and exhibited 1 no of document. PW-1 Abdul Hanif Sk., 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 22-09-17 at about 05.00 pm at village Suapata Pt. IV under Bilasipara PS committed sexual assault on informant's minor daughter Miss X?

ARGUMENT

6. I have heard learned counsel for both sides. Ld. defence counsel made submission that prosecution miserably failed to establish the prosecution charge leveled against the accused as informant and victim of this case did support the prosecution case and according to them no such incident took place as alleged in the ejahar and therefore accused entitled acquittal.

DISCUSSION, DECISION & REASON THERE OFF:-

7. Prosecution allegation leveled against accused is that on 22-09-17 at about 05.00 pm at village Suapata Pt. IV under Bilasipara he had committed PS committed sexual assault on informant's minor daughter Miss X. 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 Abdul Hanif Sk. is the informant this case and victim is his daughter. His evidence is that on the day of incident his goat entered into accused's banana garden and when his daughter Miss X went to bring back the said goat from accused's banana garden a quarrel took place in between his daughter and accused. He deposed that thereafter accused filed case against them and therefore he also lodged the case against accused. He deposed during investigation his daughter was medically examined and magistrate recorded his daughter's statement. **In cross** he stated accused is his relative and he does not have any grievances against accused.

9. PW-2, victim of this case deposed on the day of incident in evening hour their goat entered into accused's banana garden and while she went to accused's banana garden to bring back the said goat altercation took place in between her and accused and when she told her father about altercation that took place in between her and accused, her father lodged the ejahar. She deposed during examination she was medically examined and her statement was recorded by magistrate u/s 164 Cr.P.C wherein she put her signature. She further deposed that accused did nothing to her. **In cross** she stated that she could not remember what statement she earlier made before magistrate and at present she does not have any grievances against the accused.

10. From the scanning of evidence of PW-1, informant it is seen that on the day of incident victim and accused entered into a quarrel for a goat which entered into accused's banana grove and informant has lodged the case against accused as accused also lodged case against them on the same

incident. Thus his evidence shown that PW-1 lodged this case to save themselves from the case lodged by accused and he did not come with clean hand before this court and therefore his evidence does not enlighten the prosecution case against the accused. PW-2 who is the victim of this case also deposed that an altercation took place in between her and accused for a goat which entered into accused's banana grove. None of this witnesses state that accused had committed sexual assault on victim at his banana garden while victim went to bring goat from there. 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 Nasiruddin Ahmed. In cross victim also stated that she could not remember what statement she made earlier before Magistrate thus it shown that that victim did not supported and corroborated the statement made by her u/s 164 Cr.P.C vide Ext 1 and therefore Ext-1 does not make any improvement in the case against the accused in absence of the corroboration from the statement of the victim.

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 Nasiruddin Ahmed and I hold accused Nasiruddin Ahmed 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 14th 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 Abdul Hanif Sk.,

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