

**HEADING OF JUDGMENT IN SESSION CASE**

**IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA**

**Present:- Smti S. Bhuyan, AJS**

**Additional Session Judge, Bilasipara**

**Session Case No-07 of 13**

**u/s 366/34/376 IPC**

**STATE**

**Versus**

Sahidur Islam@ Babu

Accused person

(Committed by Smti Sabeena Mazumdar, then Ld. SDJM (M) Bilasipara in GR (BLP) case No-107/08 u/s 366/376/419/34 I.P.C.)

**Advocate appeared:-**

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

For the accused:- Mr. Abdul Mannan , Advocate.

Date of institution of the case :- 26-04-08

Date of commitment :- 27-11-12

Date of Framing charge :- 22-04-14

Date of prosecution evidence :- 06-09-17, 27-11-17

Statement of accused recorded on :- 08-12-17

Date of Argument :- 08-12-17

Judgment delivered :- 13-12-17

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case as unfurled from ejahar is that on 25-04-04 at about 10.00 am while informant's daughter Miss X (16 years old) and informant's niece Miss Y (17 years old) went to Mahamaya mela along with one Tuleswari Ray of Molandubi village accused persons Mukut Tahbildar and Sahidur Islam @ Babu kidnapped them from the said place. To this fact informant Dinesh Ch. Nath lodged the case.

### **Investigation**

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from Dinesh Ch. Nath registered a police case vide Bilasipara police case No. 107/08 under Section 366(A)/34 I.P.C. and SI B.C. Nath was entrusted to conduct the investigation of the case and after completion of investigation IO submitted charge sheet against the accused person named herein above u/s 366/376/419/34 I.P.C.

### **Committal**

3. On receipt of the charge sheet, then Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused person committed the case before the Learned. Sessions Judge, 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 learned counsel for both sides and perusal of material on record framed charge u/s 366/34 against the accused persons Mukut Tahbildar and Sahidur Islam @ Babu and charge u/s 376 I.P.C. against the accused Sahidur Islam @ Babu when charges read over and explained to the accused persons they pleaded not guilty and claimed to be tried. During the trial accused Mukut Tahbildar expired.

### **Trial**

5. In order to prove the prosecution charges against the present accused person, prosecution adduce evidence of all together 7 number of witnesses and exhibited 3 no of documents. PW- 1 Dinesh Ch. Nath, PW-2 Parul Nath, PW- 3 Hiron Devi, PW-4 Mukul Ch. Nath, PW-5 Miss X (victim), PW-6 Miss Y (another victim), PW-7 Lankeswar Sharma . Ext-1 Ejahar, Ext-2 statement of victim recorded u/s 164 Cr.P.C, Ext-3 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 total denial, however declined to adduced evidence in support of the plea of denial.

6. **POINTS FOR DETERMINATION:-**

- i) Whether present accused person along with another accused ( since deceased) on 25-04-08 at about 10.00 am at Sonaluguri village under Bilasipara PS kidnapped Miss X and Miss Y from Mahamaya mela with intent that they might be compelled to marry against their will or in order that they might be force or seduced to illicit intercourse with him or other person?
- ii) Whether present accused person on 25-04-08 at about 10.00 am at Sonaluguri village under Bilasipara PS committed rape on informant's daughter Miss X?

### **ARGUMENT**

7. I have heard learned counsel for both sides. Ld. defence counsel made submission that informant, other witnesses as well as victims of this case did not support the prosecution case and their evidence overruled the prosecution charges made against the present accused persons and therefore prosecution case against present accused is not at all proved and present accused entitle acquittal.

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

8. Prosecution allegation leveled against accused is that present accused person along with another accused( since deceased) on 25-04-08 at about 10.00 am at Sonaluguri village under Bilasipara PS kidnapped Miss X and Miss Y from Mahamaya mela and after kidnapping present accused persons committed rape on informant's daughter Miss X.I have scrutinized the case record. In this case prosecution adduced evidence of informant, victims and other witnesses and PW-5 and PW-6 are being victim, star witnesses of this case. Now let me analyze evidence on record.

9. PW-1 is the informant of this case. His evidence is that one of the victim is his daughter and another victim is his niece. He deposed that on the day of incident at about 10.00 to 10.30 am victims had gone to Mahamaya temple and as they did not return till evening he lodged this instant case. He deposed on the next day of lodging ejahar police recovered and hand over the victims to him and on asking to his daughter she told him that they (victims) went to their friend Mukut Tahbildar's house. In cross he stated he can't say what is written in the ejahar.

10. PW-2 Parul Nath is mother of victim Miss X and PW-3 Hiron Devi is mother of victim Miss Y. They deposed in similar line as deposed by PW-1. They deposed that on being asked their daughter told them that they (victims) went to their friend Mukut Tahbildar's house. They were not cross examined by defence.

11. Evidence of PW-4 Mukul Ch. Nath is that he heard that victims went to Mahamaya mela and did not return to home and therefore his uncle in law lodged the case. He deposed after two days of incident when he went to the house of informant i.e his uncle in law he came to know that both missing victims were returned back. PW-4 was not cross examined by victim.

12. PW-5 Miss X is victim of this case. Her evidence is that on the day of incident she along with Miss Y visited to Mahamaya mela at Bagribari and became late and could not inform the same to their family as they did not possess any mobile at that time and therefore she along with Miss Y stayed on that night in the house of one of their relative. She deposed as they did not reach home on that day her father lodged ejahar. She further deposed that no untoward incident befall on them and during investigation she was produced before Magistrate and her statement was recorded by Magistrate u/s 164 Cr.P.C vide Ext 2 . In cross she stated she does not remember what statement she made before the Magistrate.

13. PW-6 Miss Y is another victim of this case. She deposed in a similar line as deposed by PW-6. She also deposed that during investigation she was produced before Magistrate and her statement was recorded by Magistrate u/s 164 Cr.P.C vide Ext 3. **In cross** she stated she does not remember what statement she made before the Magistrate.

14. Evidence of PW-7 Lankeswar Sharma is that on the day of incident he was away from his house and came to know that informant lodged the ejahar as victims did not return home after visiting Mahamaya temple. PW-7 is not cross examined by the defence.

15. From the scanning of evidence of PW-1, PW-2, PW-3 and specifically victims i.e PW-5 and PW-6 it is seen that victims did not whisper to them( PW-1, PW-2 and PW-3) that present accused had induced them( victims) to go with him with intent that they( victims) might be forced or seduced to illicit intercourse by present accused or with other persons. Their evidences pointed that victims went to see Mahamaya mela at Bagribari and as they became late coming home, PW-1 lodged the ejahar and after 2 days of lodging of ejahar victims returned to their house and told the real fact that as they(victims) became late at mela they(victims) took shelter in their friend's house . Their evidence does not implicate any allegation of kidnapping of victims by present accused person Sahidur Islam@ Babu. Victim does not whisper that present accused had committed rape on them. Further victim's statement shown they could not recollect what statement they earlier made before the police and Magistrate. Therefore, it is apparent that victims did not supported and corroborated the statement made by them u/s 164 Cr.P.C vide Ext 2 and Ext 3 and their statement before court on oath is totally inconsistent with their statement made in Ext-2 and Ext 3 . Therefore Ext-2 and Ext 3 does not make any improvement in the case against the present accused in absence of the corroboration from the statement of the victims and therefore statements of the victims totally discarded the prosecution charge against the present accused person. Rather evidence of the victims brings a different story that they( victims) went to Mahamaya mela at Bagribari and as victims became late at mela, victims took shelter at their friend's house and after next day of lodging ejahar by PW-1 they returned back to home and told the real fact to their relatives.

16. Evidence of PW-4 and PW-7 also not make any improvement of the case as they only heard about the incident of missing of victims. Their

evidence does not bring any incriminating material against the present accused person that accused Sahidur Islam @ Babu had kidnapped victims and after kidnapping them present accused person committed rape on Miss X.

17. Thus from the evidence on record not a single ingredient of section 366 and 376 of IPC coming out against the present accused person and therefore from the evidence on record and more specifically from the evidence of victims it is crystal clear that prosecution totally failed to bring home charge u/s 366/34 and 376 of I.P.C against the present accused person Sahidur Islam @ Babu and he is acquitted from the charge of section 366/34 and 376 of I.P.C and is set at liberty.

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

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

20. Given under hand and seal of this Court on this 13<sup>th</sup> day of December 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 Dinesh Ch. Nath,  
PW-2 Parul Nath,  
PW-3 Hiron Devi,  
PW-4 Mukul Ch. Nath,  
PW-5 Miss X (victim),  
PW-6 Miss Y (another victim),  
PW-7 Lankeswar Sharma.

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,  
Ext-2 Statement of victim Miss X recorded u/s 164 Cr.P.C,  
Ext-3 Statement of victim Miss Y recorded u/s 164 Cr.P.C.

DEFENCE WITNESS :- NIL  
DEFENCE EXHIBITS :- NIL  
COURT EXHIBITS :- NIL  
COURT WITNESS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara