

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-113 of 17

u/s 417/376 IPC

STATE

Versus

Jahirul Islam

Accused person

(Committed by Shri B. Prasad, Ld. JMFC, Bilasipara in GR case No-1091/14
u/s 418/420/376/ I.P.C.)

Advocate appeared:-

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

For the accused:- Mr. Shanti Uddin Sk., Advocate.

Date of institution of the case :- 30-07-14

Date of commitment :- 17-05-17

Date of Framing charge :- 29-06-17

Date of prosecution evidence :- 24-08-17, 16-11-17

Statement of accused recorded on :- 21-11-17

Date of Argument :- 21-11-17, 13-12-17

Judgment delivered :- 15-12-17

JUDGMENT

Prosecution Case

1. Prosecution case as unfurled from ejahar is that there was love - affairs in between informant and accused Jahirul for about 1 ½ years and during that period on the pretext of marriage accused Jahirul had sexual intercourse with informant at different places at several occasions. Thereafter on 25-07-14 accused Jahirul fixed a marriage date to marry informant and accordingly family members of informant arranged the all goods and items required for their marriage but the fixed marriage date on the ill advice of other accused persons Mokbul Hussain, Ansar Ali Mondal, Juran Ali Mondal accused Jahirul did not come to informant's house to marry informant. To this fact informant lodged the ejahar before Bilasipara PS.

Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from informant/victim registered a police case vide no Bilasipara police case No. 633/14 under Section 420/376/418/34 I.P.C. and ASI Ali Hussain 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 420/376/418 I.P.C.

Committal

3. On receipt of the charge sheet, Learned JMFC, 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. After hearing for learned counsels for both sides and perusal of material on record charge u/s 417/376 IPC was frame against the accused

person Jahirul Islam 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 evidence of all together 4 number of witnesses and exhibited 2 no of documents. PW- 1 Haran Ali, PW-2 Bellal Hussain, PW- 3 Amina Khatun, PW-4 Miss X (informant/victim). Ext-1 Ejahar, Ext-2 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 accused prior to lodging of ejahar on or before 25-07-14 at village Kajaikhata Pt. III cheated informant/victim deceiving her fraudulently with promise to marry her sexually intercourse with her?
- ii) Whether accused during last 1 ½ years prior to lodging of ejahar at different places committed rape on informant/victim?

ARGUMENT

7. I have heard learned counsel for both sides. Ld. defence counsel made submission that informant and other witnesses of this case have not supported the prosecution case and their evidence overruled the prosecution charge made against the accused and prosecution case against accused is not at all proved and therefore accused entitle acquittal.

EVIDENCE

8. Evidence of PW-1 Haran Ali is that he knows both informant and accused Jahirul. He deposed 2 years back he heard that marriage of informant/victim was fixed with accused Jahirul but their marriage did not solemnize. **In cross** he stated he does not know who had given first proposal of marriage in between accused and informant and he has no idea what incident took place in between informant/victim and accused.

9. Evidence of PW-2 Bellal Hussain is that he knows informant/victim and accused Jahirul. He deposed one meeting held to discuss marriage

date of accused Jahirul with informant and date of marriage between informant/victim and accused Jahirul was fixed but their marriage did not solemnize. **In cross** he stated he was not present in the meeting where marriage date of informant with accused Jahirul was fixed. He stated he does not who re-fixed the marriage date of informant with accused Jahirul. He further stated he does know why informant lodged this case.

10. Evidence of PW-3 Amina Khatun is that she knows informant/victim and accused Jahirul. She stated a date of marriage in between informant/victim and accused Jahirul was fixed but their marriage was not held. She further deposed she does not know why marriage between informant/victim and accused Jahirul did not held. PW-3 was not cross examined by defence.

11. PW-4 is the informant/victim of this case. Her evidence is that accused Jahirul hails from her village and her parents and parents of accused Jahirul fixed date of marriage in between her and accused but something happened in between her family members and accused's family member and her marriage with accused Jahirul did not held. She deposed her parent's wrote ejahar vide Ext1 and she put signature on ejahar as told by her parents. She deposed after lodging of ejahar police produced her before doctor and she was medically examined and then produced her before magistrate to record her statement u/s 164 Cr.P.C and she made her statement u/s 164 Cr. P.C. vide Ext 2. She deposed she forget what statement she made in Ext 2. **In cross** she stated she did not read the ejahar before putting her signature on it. She further stated no incident took place in between her and accused.

DISCUSSION, DECISION & REASON THERE OFF:-

12. Prosecution allegation leveled against accused is that accused prior to lodging of ejahar on or before 25-07-14 at village Kajaikhata Pt. III cheated informant/victim deceiving her fraudulently with promise to marry her and sexually intercourse with her and during last 1 ½ years prior to lodging of ejahar at different places accused had committed rape on informant/victim. I have scrutinized the evidence on record. In this case prosecution adduced evidence of informant/victim and other witnesses. PW-4 is the informant/victim of this case and she, being victim, is star witness of this case. Now let me analyze evidence on record.

13. Evidence of PW-1, PW-2, PW-3 shown that a date of marriage was fixed to solemnize marry between accused and informant/victim but their marriage did not held. They could not say for what such reason marriage between informant/victim and accused could not be held. They did not made any single allegation that it is the accused who promised to marry informant/victim sexually abused victim and later did not marry her. Also PW-1, PW-2, PW-3 did not state that accused had committed rape on informant/victim. Thus their evidence does not throw any light on prosecution case.

14. PW-4 though in her ejahar stated that there was love affairs in between her and accused and on the pretext of marriage accused had sexual intercourse with her and thereafter accused fixed marriage date to marry her but accused cheated her and did not marry her but on oath before court she did not state that there was love affairs in between accused and her and accused had sexually intercourse with her with promise to marry her and fixed marriage date with her thereafter accused cheated hear and did not marry. She also did not state that accused had committed rape on her. Victim evidence shown that her family members and accused's family members fixed a date of marriage in between her and accused but something happened in between her family members and accused's family members which is not known to her and her marriage with accused was not held.

15. It is the evidence of PW-4 that she only put her signature on ejahar. According to her contents of ejahar was not dictate to her. Thus shown ejahar was not written as per instruction. Victim does not support the contents of the ejahar. Her evidence gone against the contents of the ejahar. She did not whisper that accused had made any promise to marry her. She did not speak that accused had physical relation with her on the pretext of marriage. Her evidence totally good bye the prosecution case. Her evidence does not bring any facts of promise, cheating and sexual intercourse. Though she stated her parents fixed her marriage with accused but said marriage was not held on accounts of difference amongst her parents and accused's parents. She did not blame and put any allegation against the accused for not holding of her marriage with accused. Her evidence shown it was her parents and accused's parents who were responsible for not holding of her marriage with accused.

16. Therefore, from the evidence on record and more specifically from the evidence of PW-4 it is crystal clear that prosecution totally failed to bring home charge u/s 417/376 I.P.C against the accused person Jahirul Islam and he is acquitted from the charge of section 417/376 I.P.C 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. Send back the GR case record to the learned committal Court with a copy of the judgment.

19. Given under hand and seal of this Court on this 15th 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 Haran Ali,

PW-2 Bellal Hussain,

PW-3 Amina Khatun,

PW-4 Miss X (informant/victim).

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2 Statement of victim 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