IN THE COURT OF SPECIAL JUDGE ::::::: BILASIPARA

Present:- Shri J. Borah, A.J.S

Special Judge,

Bilasipara.

Special (POCSO) Case No- 31 of 2019

u/s 4 of Protection of Children from Sexual Offences Act.

State of Assam

-Vs-

Shanidul Islam

..... accused person

Date of framing charge :- 11-02-2020

Date of recording evidence :- 20-02-2020

Date of Argument :- 11-03-2020

Date of Judgment :- 11-03-2020

Advocates Appeared:

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P

for the State of Assam.

For the defence :- Mr. Abdul Mannan,

Ld. Advocate for the defence.

<u>JUDGMENT</u>

- 1. This case is under section 4 of Protection of Children from Sexual Offences Act. So, the name of the alleged victim is not mentioned and she is, hereinafter, referred to 'x'.
- 2. The prosecution case, in brief, is that Joynal Ali, the informant, lodged an ezahar with the Chapar police station on 24-04-2015 informing that 'x' is the daughter of the informant. 'x' was 15 years old. The accused Shanidul Islam induced and allured 'x' to marry her and thereby the accused Shanidul Islam took 'x' to Puran Hatipota and committed rape on her. On 19-04-2015, the

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accused Shanidul Islam took 'x' to his house. On 19-04-2015, in the morning the accused namely Adam Ali and Momena Bewa sent both Shanidul Islam and 'x' to Guwahati

So, the informant prayed for taking necessary action against the accused.

- 3. The Chapar police station received the ezahar and registered as Chapar police station case no. 198/2015 under section 120(B)/384/34 of Indian Penal Code. The case was investigated and having found prima facie under section 4 of Protection of Children from Sexual Offences Act against the accused Shanidul Islam, laid the charge sheet before the court for trial.
- 4. The accused Shanidul Islam appeared in this case and he was furnished copy. Charge was framed under section 4 of Protection of Children from Sexual Offence Act, POCSO Act in short, against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined only 3 (three) witnesses, namely-

Joynal Ali P.W-1
 Ashiran Bibi P.W-2
 'x'/the victim P.W-3

- 6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations levelled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

i. Whether accused on 18-04-2015 at about 06.00 P.M at village Harkata under Chapar police station, committed penetrative sexual assault on informant's daughter 'x', aged about 15 years old and thereby committed offence u/s 4 of POCSO Act?

DECISION AND REASONS THERE OF

9. Since P.W.3 'x' is the alleged victim in this case, so she is the prime witness. Let see the evidence of this witness.

 $\ensuremath{\mathsf{P.W.1}}$ has stated in her evidence that the informant is her father. She knows

the accused. The accused wanted to marry her. There was a village meeting. There occurred chaotic situation in the said meeting. Thereafter, her father lodged the ezahar against the accused. The accused did not commit rape on her. She gave her statement before the Magistrate. The doctor examined her health.

Cross examination of P.W.3 declined by her defence.

- 10. Thus, careful scrutiny of evidence of P.W.3 shows that she herself refrained from incriminating the accused. She only stated that the accused wanted to marry her and there was village meeting where there occurred some untoward situation and her father lodged this case against the accused. P.W.3 sternly denied to commit sexual intercourse on her by the accused. Thus P.W.3 has not implicated the accused. There found no evidence adduced by P.W.3 incriminating the accused.
- 11. Now let see the evidence of other witnesses.

P.W.1 Joynal Ali has stated in his evidence that he is the informant in this case. He lodged the case against the accused. 'x' is his daughter. The occurrence took place in 2015 He has failed to remember the date. The accused wanted to marry 'x'. There was a village meeting in connection with it. The accused declared in the said meeting that he would not marry her. When he heard of it, he lodged this case against the accused. He gave thumb impression on it.

In his cross P.W.1 has stated that 'x' is married with another.

12. P.W-2 Ashiran Bibi has stated in her evidence that she knows the informant, 'x' and the accused. There was talk of marriage between 'x' and the accused. But the accused was not willing to marry 'x'. Then the informant lodged this case against the accused.

Cross examination of P.W-2 was declined by the defence.

- 13. Thus, the evidence of P.W.1 and P.W.2 shows that both P.W.1 and P.W.2 have adduced evidence not incriminating the accused. Both of them have stated in the same tune that there was talk of marriage between 'x' and the accused. When the accused disagreed to marry, P.W.1 lodged the case against the accused. There no evidence adduced by P.W.1 and P.W2 that there was sexual intercourse on 'x' by the accused. So, there found no incriminating evidence adduced by P.W.1 and P.W.2 against the accused.
- 14. Taking all into consideration, it leads to conclusion that the prosecution evidence is not sufficient and satisfactory to prove the offence as alleged

against the accused. The prosecution case is dearth of merit.

- 15. The prosecution has failed to prove it's case under section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 16. Held, the accused is not guilty u/s 4 of POCSO Act.
- 17. Accordingly, the accused is acquitted and set at liberty.

The bail bond of accused stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 11th day of March, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Typed by,

Saurav Karmakar, Computer Typist.

APPENDIX

PROSECUTION WITNESS:-

| 1. Joynal Ali | P.W-1 |
|-------------------|-------|
| 2. Ashiran Bibi | P.W-2 |
| 3. 'x'/the victim | P.W-3 |

PROSECUTION EXHIBITS:- NIL

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

(Shri J. Borah)

Special Judge, Bilasipara