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

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

Special Judge,

Bilasipara

Special (POCSO) Case No- 13 of 2019

u/s 12 of Protection of Children from Sexual Offences Act

State of Assam

-Vs-

Baharul Islam

..... accused person

Date of framing charge :- 04-06-2019

Date of recording evidence :- 18-06-2019

10-07-2019

06-08-2019

Date of Argument :- 28-08-2019

Date of Judgment :- 28-08-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. A.M. Sarkar,

Ld. Advocate for the accused.

JUDGMENT

- 1. This case is u/s 12 of Protection of Children from Sexual Offences Act, in short POCSO Act. So, the name of the victim is not mentioned here and she is referred to, hereinafter, as 'x'.
- 2. The prosecution case, in brief, is that Jakir Hussain, the informant

lodged an ejahar with Bilasipara police station on 13-04-2019 informing that 'x' is the daughter of the informant. She is 17 years old. She goes to school by a road which runs infront of the house of the accused Baharul Islam. The accused Baharul Islam shows some bad signal to her. The said accused also uttered some obscene words to her. The said accused also created some rumours against 'x'. 'x' found an irritating situation to mix with the villagers.

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

- 3. The Bilasipara police station recived the ejahar and registered as Bilasipara police station case no. 312/19 u/s 12 of POCSO Act. The case was investigated and having found prima facie u/s 12 of POCSO Act against the accused Baharul Hussain, prepared the charge sheet and laid the same before the court for trial.
- 4. The accused Baharul Islam, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed u/s 12 of POCSO Act. 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 9 (nine) witnesses, namely-

1.	Jakir Hussain	PW-1
2.	Johura Bibi	PW-2
3.	Khalilur Rahman	PW-3
4.	Abdul Hashem Miah	PW-4
5.	`x'/ the victim	P.W-5
6.	Mayful Bewa	P.W-6
7.	Gulzar Seikh	P.W-7
8.	Nur Jamal Hoque	P.W-8
9.	Chitta Ranjan Purkayestha	P.W-9

- 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 since many days back from the date of lodging

ejahar on 10-04-2019 on several occasions at village Pasuar Khal Pt. III under Bilasipara police station committed sexual harassment to 'x', a minor girl aged about 17 years old, by showing indecent sign to 'x'?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Jakir Hussain is the informant, P.W-2 Johura Bibi is the wife of the informant, P.W-3 Khalilur Rahman, P.W-4 Abdul Hashem Miah, P.W-6 Mayful Bewa, P.W-7 Gulzar Seikh, P.W-8 Nurjamal Hoque are independent witnesses. P.W-5 'x' is the alleged victim and P.W-9 Chitta Ranjan Purkayestha is the investigating officer.
- 10. Now let's see the evidence available on record.

P.W-1 Jakir Hussain has stated in his evidence that he is the informant in this case. 'x' is his daughter. The occurrence took place two months ago (from the date of adducing his evidence on 18-06-2019). At the time of occurrence 'x' was 17 ½ years old. 'x' is a student of Barkanda Higher Secondary school. When 'x' goes to school, the accused used to utter obscene word to her. The parents of the accused were informed about it, but they did not take any steps. So, he lodged the ejahar, Ext-1 against the accused. The police seized one school certificate from him, Ext-2 is the seizure list and Ext-2(1) is his signature.

In his cross P.W-1 has stated that he cannot say the days on which the accused uttered obscene words to 'x'. He did not hear the obscene words uttered by the accused. The accused is the son of his elder brother. He denied that the accused did not utter any obscene words towards 'x'.

11. P.W-2 Jahura Bibi has stated in her evidence that the informant is her husband and 'x' is her daughter. 'x' is 17 ½ years old. 'x' is a student of Barkanda Higher Secondary School. The accused uttered some obscene words to 'x' when she went to school. The parents of the accused were informed about it, but they did nothing. Accordingly, her husband lodged ejahar against the accused.

In her cross examination P.W-2 has stated that they did not complain to the school authority. The accused is the son of her husband's elder brother.

12. P.W-3 Khalilur Rahman has stated in his evidence that a village meeting was called for the occurrence in connection with 'x', but the meeting did not hold. He does not know the rest.

Cross examination of P.W-3 was declined by the defence.

13. P.W-4 Abdul Hashem Miah has stated in his evidence that there occurred something between 'x' and the accused. A meeting was called for but it did not hold.

The cross examination of P.W-4 was declined by the defence.

14. P.W-5 'x' has stated in her evidence that the informant is her father. She is a student of Barkanda Higher Secondary School. When she went to school, the accused uttered obscene words to her. The accused told her to have physical relation with him. The accused also threatened to kidnap her. She informed her parents all about the occurrence. A village meeting was called for. But it did not hold. Her father lodged this case against the accused. She gave her statement before the Magistrate. Ext-3 is the said statement. Ext-3(1)(2) are her signatures. The police seized her school certificate, Ext-2 is the seizure list and Ext-2(2) is her signature.

In her cross P.W-5 has stated that the accused is her brother in relation. The accused used to visit their house. The accused is married man. She did not say anything to the family members of the accused person. She denied that the accused did not utter any obscene words to her.

15. P.W-6 Mayful Bewa has stated in her evidence when 'x' told that the accused uttered obscene words to her, she was present there. She does not know the other thing.

In her cross P.W-6 has stated that she knows nothing about the occurrence.

16. P.W-7 Gulzar Seikh has stated in his evidence that he heard when 'x' told that the accused uttered obscene words to her. A meeting was called for, but it did not hold.

In his cross P.W-7 has stated that he did not hear to utter obscene words to 'x' by the accused.

17. P.W-8 Nur Jamal Hoque has stated in his evidence that he got to know from the villagers that the accused uttered obscene words to her.

In his cross P.W-8 has stated that he cannot say from whom he heard about it.

18. Thus, meticulous scrutiny of evidence of P.W-1 to P.W-8 shows that P.W-1 Jakir Hussain is the informant and P.W-2 Jahura Bibi is the mother of 'x'. P.W-1 and P.W-2 got to know about the occurrence from their daughter 'x' that the accused uttered obscene words to 'x'. The other witnesses namely P.W-3, P.W-4, P.W-6 and P.W-7 and P.W-8 got to know either from 'x' or from the villagers. There is not a single witness to hear when the accused uttered obscene words to 'x'. So, the whole prosecution case depends on the evidence of P.W-5 'x'.

According to P.W-5 when she went to school. The accused uttered obscene words and gave her ill signals and asked her to have physical relation with him and also threaten to kidnap her. According to P.W-5, the accused did it repeatedly. But she did not inform the family members of the accused. The accused is the son of her (P.W-5) father's elder brother. So, by that way, the accused is her brother. The accused is a married man. P.W-5 'x' could have informed the family members of the accused. But according to P.W-5, she did not inform the family members of the accused. P.W-5 has not stated anything in her evidence why she did not inform the family members of the accused.

Another aspect is that there were other 3/4 girls students from the said village to go Barkanda Higher Secondary School. They would have known about the occurrence. But the prosecution did not examine any one of them. So, it is a lapse on the part of the prosecution.

Another aspect is that P.W-5 is an educated girl. She could have stated on which days the accused uttered obscene words to her or gave bad signal to her. But P.W-5 has failed to mention the date of occurrence.

Another important aspect is that the sketch map Ext-4 shows that there are many houses, namely house of Jakir, Harmuz Ali and Abdul Rashid, nearby the place of occurrence. If the accused did something, P.W-5 could have taken any measure to protect herself from such untoward occurrence. But P.W-5 did not take any steps.

Another aspect is that the accused is brother of P.W-5 'x' in relation. There were good relations between them. In such a situation, the accused being the brother of 'x', would threaten 'x' to commit rape her cannot be acceptable.

Considering above all aspects, it appears that the evidence of P.W-5

is not free from doubt. Rather the evidence of P.W-5 is shrouded with many discrepancies.

- 19. P.W-1 Jakir Hussain is the informant. He lodged the ejahar Ext-1. The ejahar Ext-1 does not reflect any date of occurrence. P.W-1 has not mentioned any particular day on which day or days the occurrence took place. So, the information as found in the ejahar is not itself clear.
- 20. The same is the evidence of P.W-2 Jahura Bibi. P.W-2 has also not mentioned the day when the occurrence took place.
- 21. The other witnesses namely P.W-3, P.W-4, P.W-6, P.W-7 and P.W-8 are not trustworthy. They heard about the occurrence either from P.W-5 'x' or from the villagers.
- 22. P.W-9 Chitta Ranjan Purkayestha is the investigating officer. He investigated the case and prepare charge sheet Ext-5. The evidence of P.W-9 is mere official. It cannot develop the prosecution case.
- 23. Taking all into consideration, it leads to conclusion that the prosecution has failed to prove the offences as alleged against the accused. The evidence as projected by the prosecution is not sufficient and reliable to establish it's case. The prosecution case is found dearth of merit.
- 24. The prosecution, thereby, has failed to prove it's case u/s 12 of POCSO Act against the accused beyond all reasonable doubt.
- 25. Held, the accused is not guilty u/s 12 of POCSO Act.
- 26. Accordingly, the accused is acquitted and set at liberty.

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

The case is disposed of.

Given under my hand and seal by this court on this 28th day of August, 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESSES:-

PW-1 Jakir Hussain

PW-2 Johura Bibi

PW-3 Khalilur Rahman

PW-4 Abdul Hashem Miah

P.W-5 'x'/ the victim

P.W-6 Mayful Bewa

P.W-7 Gulzar Seikh

P.W-8 Nur Jamal Hoque

P.W-9 Chitta Ranjan Purkayastha

PROSECUTION EXHIBITS:-

Ext-1 Ejahar,

Ext-2 Seizure list,

Ext-3 Statement of 'x' recorded u/s 164 Cr.P.C,

Ext-4 Sketch map,

Ext-5 Charge sheet

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara