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

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

Special Judge,

Bilasipara

Special (POCSO) Case No- 19 of 2019

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

State of Assam

-Vs-

Sanowar Hussain

..... accused person

Date of framing charge :- 30-08-2019

Date of recording evidence :- 13-09-2019

Date of Argument :- 18-09-2019

Date of Judgment :- 18-09-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. G.C. Nath,

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 victim is not mentioned and she is, hereinafter, referred to as 'x'.
- 2. The prosecution case, in brief, is that Gazibar Rahman, the informant lodged an ejahar with the Bilasipara police station on 24-05-2019 informing that 'x is his daughter. 'x' was 12 years old at the time of occurrence. The

accused Sanowar Hussain induced 'x' to get her marry. On the pretext of such promise to marry, the accused had sexual intercourse with 'x'. On 22-04-2019, the accused Sanowar Hussain took 'x' to a nearby field where he committed rape on her. The informant expected a decision from village meeting, so it took time to lodge the ejahar.

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

- 3. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 482/19 u/s 4 of Protection of Children from Sexual Offence Act. The case was investigated and having found prima facie u/s 4 of Protection of Children from Sexual Offence Act against the accused Sanowar Hussain, laid the charge sheet before the court for trial.
- 4. The accused Sanowar Hussain, hereinafter called the accused, appeared in this court and he was furnished copy. Charge was framed u/s 4 of Protection of Children from Sexual Offence Act, POCSO 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 three (3) witnesses, namely-

Jahura Khatun
 Mazibar Rahman
 'x'/ the victim

P.W-1
P.W-2

- 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 and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

i. Whether accused on 22-04-2019 at about 10.00 P.M at paddy field situated at village Kotergaon under Bilasipara police station committed penetrative sexual assault on 'x', a minor girl and thereby committed offence u/s 4 of POCSO Act?

DECISION AND REASONS THERE OF

9. Now let's see the evidence available on record.

P.W-1 Jahura Khatun has stated in her evidence that the informant is her husband and 'x' is her daughter. She knows the accused. The occurrence took place 3/4 months ago. 'x' told her that the accused wanted to marry her. 'x' told this to her father and her father lodged the case against the accused.

Cross examination of P.W-1 was declined by the defence.

10. P.W-2 Mazibar Rahman has stated in his evidence that he is the complainant in this case. 'x' is his daughter. He knows the accused. The occurrence took place 5/6 months ago. The accused wanted to marry his daughter 'x'. As his daughter 'x' was a minor he did not accept it. He lodged ejahar against the accused. The accused did not do any sexual act on 'x'.

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

11. P.W-3 'x' has stated in her evidence that the informant is her father. She knows the accused. The accused had love affair with her. She asked the accused to marry her. But he did not agree. She told her father about the matter and her father lodged the ejahar against the accused. Her father lodged ejahar against the accused. She gave her statement before the Magistrate, Ext-1 is the said statement and Ext-1(1)(2)(3) are her signatures.

In her cross P.W-3 has stated that the accused did not do any sexual act on her.

- 12. Thus, scrutiny of evidence of P.W-1, P.W-2 and P.W-3 it appears that P.W-3 'x' is the alleged victim. She had sternly denied that the accused committed sexual act on her. Rather P.W-3 has stated that she had love affair with the accused. She asked him to marry to which the accused denied. Accordingly she informed her father and her father lodged the ejahar against the accused. The evidence of P.W-3 does not implicate the accused.
- 13. P.W-1 Jahura Khatun is the mother of 'x'. According to P.W-2, her daughter 'x' told her that the accused wanted to marry her. When this was told to her husband by 'x', her husband lodged the ejahar against the accused. The evidence of P.W-1 does not show that the accused had sexual intercourse on 'x'. So, the evidence of P.W-1 is not incriminating against the accused.

14. Same is the evidence of P.W-2 Mazibar Rahman who has stated in his evidence that when he got to know that the accused wanted to marry his daughter 'x', he lodged the ejahar against the accused. There is no evidence adduced by P.W-2 that the accused committed sexual intercourse with his daughter 'x'.

The evidence of P.W-2 is contradictory. When he stated in the ejahar that the accused committed sexual intercourse on his daughter 'x', at the same time he has stated in his evidence that the accused did not do any sexual act on his daughter 'x'. So, the evidence of P.W-2 is contradictory.

- 15. Considering all aspects, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offence as alleged against the accused. The prosecution case is found dearth of merit.
- 16. The prosecution has failed to prove it's case u/s 4 of POCSO Act against the accused beyond all reasonable doubt.
- 17. Held, the accused is not guilty u/s 4 of POCSO Act.
- 18. Accordingly, the accused is acquitted and set at liberty.

Accused Sanowar Hussain be released forthwith from jail hajot, if, not required in connection with other case.

The case is disposed of.

Given under my hand and seal by this court on this 18th day of September, 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

P.W-1 Jahura Khatun

P.W-2 Mazibar Rahman

PW-3 'x'/ the victim

PROSECUTION EXHIBIT:-

Ext-1 Statement of 'x'/the victim recorded u/s 164 Cr.P.C,

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara