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

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

Special Judge,

Bilasipara

Special (POCSO) Case No-16 of 2019

u/s 365 I.P.C & section 4 of Protection of Children from Sexual Offences Act

State of Assam

-Vs-

Saddam Hussain

..... accused person

Date of framing charge :- 01-10-2019

Date of recording evidence :- 09-12-2019

18-12-2019

Date of Argument :- 23-12-2019

Date of Judgment :- 23-12-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. R. Dasgupta,

Ld. Advocate for the defence.

JUDGMENT

- 1. This case is under section 365 of Indian Penal Code and 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 'x'.
- 2. The prosecution case, in brief, is that Mohibul Islam, the informant lodged an ezahar with the Bilasipara police station on 21-01-2019 informing

that 'x' is the sister of the informant. She was 14 years old. On 19-01-2019 at about 08.00 P.M 'x' went *Botar Kanda* to attend a religious function from where she became traceless. On 21-01-2019 the informant got to know that the accused Saddam Hussain allured her and took away to his house.

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

- 3. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 63/2019 under section 365 of Indian Penal code. The case was investigated and having found prima facie u/s 365 of Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act against the accused Saddam Hussain, laid the charge sheet before the court for trial.
- 4. The accused Saddam Hussain, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed under section 365 Indian Penal Code, I.P.C in short, and section 4 of Protection of Children from Sexual Offences 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 3 (three) witnesses, namely-

1.	Mohibul Islam	P.W-1
2.	`x'/the victim	P.W-2
3.	Ahidul Islam	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 and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

i. Whether accused on 19-01-2019 at about 08.00 P.M at village *Botar Kanda* under Bilasipara police station, kidnapped 'x', with intent to cause 'x' to be secretly and wrongfully confined and thereby committed offence u/s 365 I.P.C?

ii. Whether accused on 19-01-2019 at about 08.00 P.M at village Botar Kanda under Bilasipara police station, committed penetrative sexual assault on 'x', aged about 14 years old and thereby committee offence u/s 4 of POCSO Act?

DECISION AND REASONS THERE OF

- 9. In this case instant, P.W-1 Mohibul Islam is the informant, P.W-2 'x' is the alleged victim and P.W-3 Ahidul Islam is the brother of P.W-1.
- 10. Now let's see the evidence available on record.

P.W-1 Mohibul Islam has stated in his evidence that he is the informant in this case. 'x' is his sister. The occurrence took place 8/9 months ago (from the date of adducing his evidence on 09-12-2019). There held religious function in their village. 'x' went to attend the function. She then went their maternal uncle's house at Suapata. 'x' went there without informing her family members. 'x' was there for three days. When he did not find out 'x', he lodged the ezahar against the accused. Ext-1 is the said ezahar.

In his cross P.W-1 has stated that he lodged the ezahar against the accused on suspicion.

11. P.W-2 'x' has stated in her evidence that the informant Mohibul Islam is her brother. The occurrence took place in the last January (from the date of adducing her evidence on 09-12-2019). There held a religious function at *Botar Kanda* and she went there. Thereafter, she went to the house of the accused who is her maternal uncle. She stayed there for three days. When her brother did not see her at house, she suspected the accused to take away her and lodged the ezahar against him. She gave her statement before the Magistrate, Ext-2 is the said statement. The doctor examined her body.

In her cross P.W-2 has stated that she went to the house of the accused as guest as the accused is her maternal uncle. The accused did not commit sexual intercourse on her.

12. P.W-3 Ahidul Islam has stated in his evidence that the informant is his brother and the victim 'x' is his sister. He knows the accused. The accused is his maternal uncle. The occurrence took place nine months ago (from the date of adducing his evidence on 18-12-2019). 'x' went to the

house of the accused. The informant misunderstood it and lodged the case against the accused.

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

13. The careful scrutiny of evidence of P.W-1 to P.W-3 shows that P.W-1 Mohibul Islam is the informant and P.W-2 'x' is the alleged victim. Both P.W-1 and P.W-2 have stated in their respective evidence that the accused is their maternal uncle. According to them 'x' went to a religious function held in their village. Thereafter she went to the house of the accused as guest. 'x' did not inform her family members about her visit to her uncle's house. P.W-1 misunderstood it and he lodged the ezahar, Ext-1 against the accused. Thus, the evidence of P.W-1 and P.W-2 is clear that the informant P.W-1 lodged the ezahar due to misunderstanding. There is no evidence that the accused took away 'x' forcefully or alluring or induced her to go with the accused. Rather it is clear that 'x' had gone to the house of the accused as guest, because the accused is her maternal uncle.

Another aspect is that 'x' has categorically denied to commit voluptuous act on her by the accused. She has sternly stated that the accused did not commit sexual intercourse on her or he did any objectionable thing on her. In such a question, there is no evidence to commit penetrative sexual assault on 'x' by the accused.

- 14. P.W-3 Ahidul Islam also supports the evidence of P.W-1 and P.W-2. P.W-3 denied to do anything on 'x' by the accused.
- 15. Thus, the prosecution evidence is not inculpatory against the accused. There found no incriminating evidence against the accused. The prosecution evidence is found dearth of merit.
- 16. The prosecution, thereby, has failed to prove it's case under section 365 I.P.C and under section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 17. Held, the accused is not guilty u/s 365 I.P.C and section 4 of POCSO Act.
- 18. 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 23rd day of December, 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 Mohibul Islam

P.W-2 'x'/the victim

P.W-3 Ahidul Islam

PROSECUTION EXHIBIT:-

Ext-1 Ezahar,

Ext-2 Statement of 'x' 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