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

Present: Shri J. Borah, AJS

Special Judge,

Bilasipara

## Special (POCSO) Case No- 05 of 2018

u/s 6 of Protection of Children from Sexual Offences Act

### **State of Assam**

-Vs-

### Sah Ali @ Sahar Ali

..... accused person

Date of framing charge :- 10-10-2018

Date of recording evidence :- 18-03-2019

03-04-2019

24-05-2019

Date of Argument :- 04-06-2019

Date of Judgment :- 04-06-2019

### **Advocates Appeared:**

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

for the State of Assam

For the defence :- Smti Syeda Afroza Akhtar

Ld. Advocate for the accused.

### **JUDGMENT**

1. This case is under section 6 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 'x', the informant lodged an ejahar with the Bilasipara police station on 16-07-2018 informing that a relation grew between her and the accused Sah Ali @ Sahar Ali. In disguise of the said relation, the accused Sah Ali @ Sahar Ali went into her house and had voluptuous act on her. The accused Sah Ali @ Sahar Ali agreed to get marry her, but due to resistance from her mother, he could not do it.

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

- 3. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 842/2018 u/s 6 of POCSO Act. The case was investigated and having found prima facie u/s 6 of POCSO Act against the accused Sah Ali @ Sahar Ali, prepared the chargesheet and laid the same before the court for trial.
- 4. The accused Sah Ali @ Sahar Ali, hereinafter called as the accused, appeared in this case and he was furnished copy. Charge was framed u/s 6 of POCSO Act 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 4 (four) witnesses, namely-

1.	`x'/ the victim	PW-1
2.	Anjira Khatun	PW-2
3.	Dr. Rinku Ahmed	PW-3
4.	Jamal Uddin	PW-4

- 6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations leveled 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 03-04-2018, 05-04-2018, 09-04-2018 and 15-05-2018 on several occasions at informant's house at village Kathaldi Pt. II under Bilasipara PS, committed penetrative sexual assault on 'x' aged about 16 years old repeatedly?

## **DECISION AND REASONS THERE OF**

- 9. In this prosecution case P.W-1 'x' is the informant as well as alleged victim, P.W-2 Anjira Khatun is the step mother of 'x', the alleged victim, P.W-3 Dr. (Mrs.) Rinku Ahmed is the Medical & Health Officer and P.W-4 Jamal Uddin is the independent witness.
- 10. Now let us see the evidence available on record.

P.W-1 'x' has stated in her evidence that she is the informant in this case. She knows the accused, he is her husband. She got married with the accused one year ago and she is maintaining conjugal life with the accused. When she was at her in law's house, there was altercation with her mother-in-law and this led her to lodge ejahar against the accused. Ext-1 is the said ejahar. She gave her statement before the Magistrate, Ext-2 is the said statement.

In her cross P.W-1 has stated that she was 18 (eighteen) years old at the time of marriage.

11. P.W-2 Anjira Khatun has stated in her evidence that she is the step mother of 'x'. 'x' was married with the accused and during the conjugal life with the accused, she was subjected to torture by her mother-in-law and this led 'x' to lodge ejahar against the accused.

In her cross, P.W-2 has stated that 'x' is now continuing her conjugal life with the accused.

12. P.W-4 Jamal Uddin has stated in his evidence that he knows both the informant and the accused, they are husband and wife. There was altercation between the informant and the accused. He knew nothing about the occurrence prior to their marriage.

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

13. Thus, careful scrutiny of evidence of P.W-1, P.W-2 and P.W-4 shows that P.W-1 'x' being the informant as well as alleged victim brought no allegation against the accused. She has simply stated that there was dispute with her mother-in-law and this led her to lodge this case against the accused. There is no evidence that the accused committed sexual intercourse with her on 3<sup>rd</sup>, 5<sup>th</sup>, 9<sup>th</sup> and 15<sup>th</sup> April of 2018. There is no evidence that she was below 18 (eighteen) years old at the time of occurrence. Thus, P.W-1 'x' has adduced evidence not implicating the accused person.

14. Same is the evidence of P.W-2 and P.W-4. P.W-2 Anjira Khatun has stated that the mother-in-law of 'x' has subjected torture to 'x' which led her to lodge this case. P.W-4 Jamal Uddin has stated that there arose dispute between 'x' and the accused and this led to lodge ejahar against the accused.

So, according to P.W-2 and P.W-4 there was dispute between husband and wife and this dispute led 'x' to lodge this case against the accused. So, there found no inculpatory evidence adduced by the prosecution witnesses against the accused.

15. Now, let us see the evidence of P.W-3 Dr. (Mrs.) Rinku Ahmed, the Medical & Health Officer.

P.W-3 has stated in her evidence that she had medically examined 'x' and found- 1. General examination-normal; 2. No mark of violence; Laboratory examination- no spermatozoa is seen; Final opinion- No evidence of recent sexual intercourse or assault. Ext-3 is medical report.

Thus, the evidence of P.W-3 Dr. (Mrs.) Rinku Ahmed also does not support prosecution case that there was sexual intercourse on 'x' by the accused.

- 16. Considering all aspects, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offences as alleged against the accused. The prosecution evidence is found dearth of merit.
- 17. The prosecution, thereby, failed to prove its case u/s 6 of POCSO Act against the accused beyond all reasonable doubt.
- 18. Held, the accused is not guilty u/s 6 POCSO Act.
- 19. 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 04<sup>th</sup> day of June 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 'x'/ the alleged victim,

PW-2 Anjira Khatun,

PW-3 Dr. (Mrs.) Rinku Ahmed &

PW-4 Jamal Uddin

## **PROSECUTION EXHIBIT:-**

Ext-1 Ejahar,

Ext-2 Statement of 'x'/the victim recorded u/s 164 Cr.P.C &

Ext-3 Medical report.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara