

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

Special Judge, Bilasipara.

Special (POCSO) Case No- 06 of 2019

u/s 10 of Protection of Children from Sexual Offences Act.

State of Assam

-Vs-

Siddique Ali

..... accused person

Date of framing charge :- 02-04-2019

Date of recording evidence :- 17-05-2019

18-06-2019

10-07-2019

03-10-2019

10-01-2020

Date of Argument :- 11-02-2020

Date of Judgment :- 17-02-2020

Advocates Appeared:

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

for the State of Assam.

For the defence :- Mr. Dipan Kr. Nath,

Ld. Advocate for the defence.

JUDGMENT

1. This case is under section 10 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 Momina Bibi, the informant lodged an ezahar with the in-charge, Nayahat Police Out Post on 24-06-2015 informing that 'x' is the daughter of the informant. Sahena Banu is another daughter of the informant. On 24-06-2015 at about 09.00 A.M 'x' took Sahena Banu to No. 1927 Nayahat L.P School as Sahena Banu was appearing examination. After end of the examination of Sahena Banu, the accused called 'x' and asked to broom the school room. When 'x' was brooming, the accused Siddique Ali touched the breast of 'x' and also attempted to commit rape on her. 'x', after her arrival at house, told the informant about the occurrence.

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

- 3. The Nayahat Police Out Post received the ezahar vide GDE no. 379 dated 24-06-2015 and forwarded to the Bilasipara police station. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 748/2015 under section 8 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie under section 8 of Protection of Children from Sexual Offences Act against the accused Siddique Ali, laid the charge sheet before the court for trial.
- 4. The accused Siddique Ali, hereinafter called the accused, appeared in this case. The accused was furnished copy. Charge was framed under section 10 of Protection of Children from Sexual Offences 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 10 (ten) witnesses, namely-

1.	Momina Bibi	P.W-1
2.	Sadek Ali	P.W-2
3.	`x'/the victim	P.W-3
4.	Sangeeta Gogoi Ray	P.W-4
5.	Abdul Malek	P.W-5
6.	Atowar Rahman	P.W-6
7.	Monowara Khatun	P.W-7
8.	Sekendar Ali	P.W-8

Dewan Harmuz Ali
 P.W-9
 Muktazur Rahman
 P.W-10

- 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 24-06-2015 at about 09.00 A.M at 1927 No. Nayahat L.P School under Bilasipara police station, committed aggravated sexual assault on 'x', under the age of 12 years old by touching on her breast and thereby committed offence u/s 10 of POCSO Act?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Momina Bibi is the informant, P.W-2 Sadek Ali is the husband of the informant, P.W-3 'x' is the alleged victim. P.W-4 Sangeeta Gogoi Ray, P.W-5 Abdul Malek, P.W-6 Atowar Rahman, P.W-7 Monowara Khatun, P.W-8 Sekendar Ali are independent witnesses. P.W-9 Dewan Harmuz Ali and P.W-10 Muktazur Rahman are investigating officers.
- 10. Since P.W-1 Momina Bibi is the informant and P.W-3 'x' is the alleged victim, so, both are the prime witnesses in this case. Let see the evidence of this two witnesses at first.
- 11. P.W-1 Momina Bibi has stated in her evidence that she is the informant in this case. She lodged the ezahar against the accused. 'x' is her daughter. 'x' is 15 years old. 'x' was a student of Nayahat L.P School at the time of occurrence. On 24-06-2015 it was raining. On that day 'x' went to Nayahat L.P School to keep her sister Sahena Banu at School. Sahena Banu was also student of the said school. When 'x' went to school, the accused asked her to broom the school room. When 'x' was brooming, the accused touched her breast. 'x' told the said occurrence to the informant. She told her husband about the occurrence. Her husband went to school but the

school had already ended. Accordingly, he went to the Headmistress of the school. The Headmistress asked him to meet the president of the school. When he informed the president, the president asked both the accused and 'x'. The accused admitted the occurrence. Accordingly, she lodged the ezahar Ext-1. Ext-1(1) is her signature.

In her cross P.W-1 has stated that 'x' was only 11 (eleven) years old. There were students, teachers and guardians at the school at the time of examination. She does not know whether 'x' told others about the occurrence. P.W-1 has denied that the Headmistress was not informed about the occurrence. The accused also lodged an ezahar against her. She also denied that she lodged a false case against the accused.

12. P.W-3 'x' has stated in her evidence that the informant is her mother. She knows the accused. The accused is their teacher. She was only 11 (eleven) years old at the time of occurrence. On the day of examination there was examination of her sister Sahena Bibi. So, she went to school to keep her sister at school. She kept her sister and she was playing outside the school. The accused asked her to clean the room by brooming. The school was closed after end of examination. She was brooming the school room. The accused touched her breast when she was brooming and attempted to commit rape on her. She then left then and there. She went home and told her mother other about the occurrence. Her mother told about the incident to her father. She with her parents went to then Head Mistress. The Headmistress asked them to meet the president of school. The president asked them to go to school. The accused admitted before the president about the occurrence. She gave statement before the Magistrate, Ext-2 is her statement. Ext-2(1)(2) are her signature.

In her cross P.W-3 has stated that she was in the class V at the time of occurrence. The examination of Sahena Banu started at 09.00 A.M and ended at 11 ½-12.00 P.M. There were students and teachers at school. She was brooming till end of examination. It took time ½ hours to broom the room. She did not raise hue and cry out of fear. She did not tell anyone about the occurrence. She denied that her father sought for a sack of rice from the accused and when the accused did not given, her father lodged this case against the accused. She denied that she has adduced false evidence against the accused.

13. Thus, minute scrutiny of evidence of P.W-1 Momina Begum and P.W-3 'x' it appears that P.W-1 is only informant. She lodged the ezahar only after getting the information from her daughter 'x'.

Now let's see what she got to know from her daughter. In the ezahar P.W-1 scribed that after end of the school, the accused sent Sahena Bibi to her house and she asked 'x' for brooming the class room and the accused taking advantage of absence of other people he touched the breast of 'x'.

But in her evidence P.W-1 has stated that when 'x' went school, the accused asked her for brooming. When 'x' was brooming, the accused touched her breast. The evidence of P.W-1 does not divulge when the occurrence took place either at early stage of school or at end of school. The excerpt of evidence of P.W-1 is as such-

" সাজিদা স্কুললৈ যাওঁতে পদকীয়া সিদিক আলীয়ে সাজিদাক ৰুমত ঝাৰু মাৰিবলৈ কয় । সাজিদা ৰুমত ঝাৰু মাৰি থাকোতে সিদিক আলীয়ে তাইৰ বৃকৃত হাত দিছিল ।"

Thus, the evidence of P.W-1 is not clear when the occurrence took place. But the evidence says that the occurrence took place when 'x' reached at school. In such a situation, her evidence is contradictory with her previous statement made in the ezahar Ext-1.

Secondly, according to P.W-3 'x', the accused asked her for brooming after end of school when all the students and teachers departed school.

This evidence can be authenticated by the evidence of other witnesses namely the teacher who were present at school on the very day.

P.W-4 Sangeeta Gogoi Ray is a school teacher of Nayahat L.P School. According to her, the examination was from 09.00 A.M to 12.00 P.M. After end of examination, she along with Monowara Khatun and the accused left the school. She did not see 'x'.

Thus, the evidence of P.W-4 shows that the accused left the school with her colleagues namely Sangeeta Gogoi Ray and Monowara Khatun.

P.W-7 Monowara Khatun is another school teacher of the said school. According to P.W-7 on the day of alleged occurrence there was examination of class 1 and 2. No incident took place during examination. After examination, she with Sangeeta Gogoi Ray and the accused left the school closing the gate of the school. She did not see 'x' within school campus.

Thus, the evidence of P.W-7 also makes it clear that she along with

her colleagues Sangeeta Gogoi Ray and the accused left school after end of school closing the gate.

In such a situation, the evidence of P.W-3 that the accused asked 'x' to clean the school room by brooming after end of school is not supported by P.W-4 and P.W-7.

If it is accepted that the occurrence took place at the early stage of examination. But P.W-3 has clearly stated in her evidence that many students and teachers were present at school. In such a position, the accused would touched the breast of 'x' cannot be accepted.

- 14. Thus, the evidence of P.W-1 and P.W-3 is not free from doubt. Rather the evidence of P.W-1 is contradictory and the evidence of P.W-3 is not authenticated by the independent witnesses.
- 15. Now next question is whether the accused admitted his guilt before the president of the school.

Both P.W-1 and P.W-3 have stated in their respective evidence that there was a meeting at school and the accused admitted his guilt before the president of the school.

P.W-6 Atowar Rahman was the president of the school at the time of occurrence. According to P.W-6, one Sadek Ali wanted a school certificate from him. He with Sadek Ali went to school. He along with Sadek Ali, Momina Bibi, 'x' and two other members of the school were present. The accused brought the book of certificates. But Momina Bibi told that they wanted no certificate, but they brought an allegation that the accused touched the breast of her daughter. Momina Bibi strangled the neck of 'x' and asked the accused to admit his guilt. But the accused did not admit his guilt.

P.W-8 Sekendar Ali has also not stated in his evidence that the accused admitted his guilt in the presence of the president.

Thus, the evidence of P.W-6 Atowar Rahman shows that Momina Bibi, the mother of 'x' forced the accused to admit his guilt. But inspite of her force, the accused did not admit guilt. P.W-8 who was present at the school has not stated the accused admitted his guilt.

16. Now let see the evidence of P.W-2 Sadek Ali, the father of 'x'.

According to P.W-2 Sadek Ali, he is the father of 'x'. On the day of occurrence he went outside to work. His daughter Sahena had examination.

'x', his another daughter had no examination. 'x' went school to keep his sister at school. He was called by his wife and when he came home, his daughter told him that the accused touched her breast and also attempted to commit rape on her. Accordingly he went to the house of Headmistress of the school. The Headmistress asked him to meet the president of the school. The President and some other persons came to school. The accused admitted his guilt. His wife, thereafter, lodged the ezahar against the accused.

In his cross P.W-2 has stated that he got to know about the occurrence from his wife. P.W-2 has denied that he sought for a sack of rice from the accused and when the accused refused to give, he lodged this false case against the accused.

17. Thus, careful scrutiny of evidence of P.W-2 shows that he got to know about the occurrence from his wife. He has not stated the time when the occurrence took place, whether it was before examination or after end of examination. So, the evidence of P.W-2 is not specific.

Another aspect is that according to P.W-2, the accused admitted his guilt before the president. But P.W-6 Atowar Rahman, who is the president has made it clear in his evidence that the accused did not admit his guilt though the mother of 'x' forced the accused to admit his guilt.

Thus, the evidence of P.W-2 that the accused admitted his guilt is not supported by P.W-6 Atowar Rahman, the president of the school. The evidence of P.W-2, thus, is found not free from doubt.

18. P.W-9 Dewan Harmuz Ali is the investigating officer. He investigated the case. He visited the place of occurrence, drew a sketch map, Ext-3. P.W-10 Muktazur Rahman is another investigating officer. He, on the basis of the investigation done by P.W-9, prepared the chargesheet Ext-4.

According to P.W-9, 'x' did not state before him that the occurrence took place after end of school. P.W-1 Momina Bibi stated before him that the occurrence took place before the commencement of the examination.

Thus, the evidence of P.W-9 shows some contradiction between the evidence P.W-1 and the statement given before P.W-9. It also appears some contradiction between the evidence of P.W-3 'x' and the statement given before P.W-9.

19. Situated thus, the prosecution evidence projected by the prosecution

is not free from doubt. The witnesses namely P.W-1, P.W-2 and P.W-3 are of one family. Their evidence is not supported by any independent witnesses namely P.W-4, P.W-5, P.W-6, P.W-7 and P.W-8. The evidence of P.W-1 and P.W-3 is also contradictory. The said evidence of P.W-1, P.W-2 and P.W-3 is not free from doubt. The prosecution evidence is found not sufficient and reliable to prove the offences as alleged against the accused. The prosecution case is dearth of merit.

- 20. The prosecution has failed to prove it's case u/s 10 of POCSO Act against the accused beyond all reasonable doubt.
- 21. Held, the accused is not guilty u/s 10 of POCSO Act.
- 22. 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 17th day of February, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

P.W-1 Momina Bibi

P.W-2 Sadek Ali

P.W-3 'x'/the victim

P.W-4 Sangeeta Gogoi Ray

P.W-5 Abdul Malek

P.W-6 Atowar Rahman

- P.W-7 Monowara Khatun
- P.W-8 Sekendar Ali
- P.W-9 Dewan Harmuz Ali
- P.W-10 Muktazur Rahman

PROSECUTION EXHIBITS:-

- Ext-1 Ezahar,
- Ext-2 Statement of 'x' recorded u/s 164 Cr.P.C,
- Ext-3 Sketch Map,
- Ext-4 Charge sheet.

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

(Shri J. Borah)

Special Judge, Bilasipara