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

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

Special Judge, Bilasipara.

# Special (POCSO) Case No-32 of 2019

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

#### **State of Assam**

-Vs-

#### **Mokram Ali**

..... accused person

Date of framing charge :- 10-12-2019

Date of recording evidence :- 20-12-2019

10-01-2020

Date of Argument :- 22-01-2020

Date of Judgment :- 22-01-2020

# **Advocates Appeared:**

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

for the State of Assam

For the defence :- Mr. R. Dasgupta,

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 'x'.
- 2. The prosecution case, in brief, is that Sabeda Bibi, the informant lodged an ezahar with the Salkocha police out post on 08-09-2019 informing

that 'x' is her daughter, aged about 15 (fifteen) years old. On 04-04-2019 'x' suffered from stomach pain. The accused Mokram Ali was a village 'kobiraj'. So, the informant told the accused about the pain of 'x'. The accused Mokram asked the informant to send her daughter to him. Accordingly, the informant sent 'x' to the house of the accused. The accused instead of treating her, gagged her mouth and committed sexual intercourse on her against her will. The accused Mokram Ali also threated 'x' not to divulge anything about the occurrence.

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

- 3. The Salkocha police out post received the ezahar vide GDE no. 128 dated 08.09.2019 and forwarded to the Chapar police station. The Chapar police station received the ezahar and registered as Chapar police station case no. 379/2019 under section 376 Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act. The case was investigated by the police and having found prima facie under section 376 Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act against the accused Mokram Ali, laid the charge sheet before the court for trial.
- 4. The accused Mokram Ali, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed under 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 5 (five) witnesses, namely-

1.	Sabeda Bibi	P.W-1
2.	`x'/the victim	P.W-2
3.	Nur Islam	P.W-3
4.	Ujufa Khatun	P.W-4
5.	Amela Bibi	P.W-5

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 04-04-2019 at about 09.00 A.M at village Santoshpur under Chapar police station, committed penetrative sexual assault on 'x', aged about 15 years old and thereby committed offence u/s 4 POCSO Act?

#### **DECISION AND REASONS THERE OF**

- 9. In this prosecution case P.W-1 Sabeda Bibi is the informant, P.W-2 'x' is the alleged victim, P.W-3 Nur Islam, P.W-4 Ujufa Khatun and P.W-5 Amela Bibi are the independent witnesses.
- 10. Now let's see the evidences on record for just and proper decision.

P.W-1 Sabeda Bibi has stated in her evidence that she is the informant in this case. The occurrence took place four years ago (from the date of adducing evidence on 20-12-2019). There was quarrel between her and the accused person. Accordingly, she lodged the ezahar against the accused. The accused did not do any evil act against her daughter 'x'. She gave her thumb impression on the ezahar.

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

11. P.W-2 'x' has stated in her evidence that the informant is her mother. She knows the accused. There was quarrel between the members of her family and the accused. The accused did not do any evil act on her. She gave her statement as taught by the villagers. Ext-1 is the statement, she gave before the Magistrate. Ext-1(1)(2)(3)(4) are her signatures.

In her cross P.W-2 has stated that the accused did not commit sexual intercourse on her.

12. P.W-3 Nur Islam has stated in his evidence that he knows both the informant and the accused. Three or four months ago (from the day of adducing her evidence on 10-01-2020) he saw a crowd in the house of the accused person. He got to know that there was illicit relation between the accused and 'x'.

In his cross P.W-3 has stated that he did not see any occurrence.

13. P.W-4 Ujufa Khatun has stated in her evidence that she knows both

the informant and the accused, but she knows nothing about the occurrence.

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

14. P.W-5 Amela Bibi has stated in her evidence that she knows the informant and the accused. There was quarrel between the informant and the accused. This led the informant to lodge the case against the accused.

Cross examination of P.W-5 was declined by the defence.

- 15. Thus, minute scrutiny of evidence of P.W-1 to P.W-5 shows that P.W-1 Sabeda Bibi being the informant has adduced evidence not incriminating the accused. She has mere stated in her evidence that it was mere altercation between her family and the accused and the said altercation was due to landed property. But in the ezahar, the informant scribed that when her daughter went to the house of the accused, he committed sexual intercourse on her. At the same time, P.W-1, in her evidence has uttered not a single word that the accused committed sexual intercourse on her daughter 'x'. Rather P.W-1 has stated in her evidence that the accused did not commit any evil act against her daughter x'. So, there found contradiction between the previous statement made in the ezahar and the evidence adduced before this court. This contradiction is a vital and this may affect the prosecution case.
- 16. P.W-2 'x' is the alleged victim. Her evidence is also not inculpatory against the accused. She has unequivocally stated in her evidence that the accused did not commit sexual intercourse on her. She denied to do anything evil against her by the accused. Her evidence is also contradictory to the statement made by her under section 164 Cr.P.C. This contradiction is vital and this may create doubt in the prosecution case.
- 17. The other witnesses namely P.W-3, P.W-4 and P.W-5 who are independent witnesses have also adduced evidence not incriminating the accused. All of them have stated in their respective evidence that they knew nothing about occurrence. So, their evidence has got little value for consideration.
- 18. Situated thus, from the evidence of prosecution evidence, it appears that the prosecution evidence is not sufficient and reliable to prove the offence as alleged against the accused. The prosecution evidence is imbibed with many doubts.

- 19. The prosecution has failed to prove it's case under section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 20. Held, the accused is not guilty u/s 4 of POCSO Act.
- 21. Accordingly, the accused is acquitted and set at liberty.

Accused Mokram Ali be released forthwith from jail hajot, if, not required in other cases.

The case is disposed of.

Given under my hand and seal by this court on this  $22^{nd}$  day of January, 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 Sabeda Bibi

P.W-2 'x'/the victim

P.W-3 Nur Islam

P.W-4 Ujufa Khatun

P.W-5 Amela Bibi

# **PROSECUTION EXHIBIT:-**

Ext-1 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