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

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

Special Judge,

Bilasipara

Special (POCSO) Case No- 20 of 2019

u/s 8 of Protection of Children from Sexual Offences Act

State of Assam

-Vs-

Aizul Ali @ Azizur Rahman

..... accused person

Date of framing charge :- 01-10-2019

Date of recording evidence :- 19-10-2019

Date of Argument :- 23-10-2019

Date of Judgment :- 23-10-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. Abdul Mannan,

Ld. Advocate for the defence.

<u>JUDGMENT</u>

- 1. This case is under section 8 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 Rustom Ali, the informant lodged an ezahar with the Bilasipara police station on 25-06-2019 informing that 'x' is the daughter of the informant. On 25-06-2019 in the afternoon,

the informant and his wife Basia Bibi were not at their house. Taking the advantage of their absence, the accused Aizul Ali went to their house, closed the door of the house and committed sexual intercourse on 'x'. The informant's wife Basia Bibi arrived their house. She heard the scream of 'x' and she started to raise hue and cry. The villagers went there. The accused ran away.

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. 634/2019 u/s 376 (2)(3) I.P.C read with section 6 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 Aizul Ali @ Azizur Rahman, laid the charge sheet before the court for trial.
- 4. The accused Aizul Ali @ Azizur Rahman hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed u/s 8 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 4 (four) witnesses, namely-

1.	Rustom Ali	P.W-1
2.	Basia Khatun	P.W-2
3.	Asiruddin Mondal	P.W-3
4.	'x'/ the victim	P.W-4

- 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 25-06-2019 at about 04.00 P.M at village Udmari Pt. V under Bilasipara police station, committed sexual

assault on 'x', aged about 13 years old, by touching her breast and thereby committed offence u/s 8 of POCSO Act?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Rustom Ali is the informant, P.W-2 Basia Khatun is the wife of P.W-1, P.W-3 Asiruddin Mondal is the independent witness and P.W-4 'x' is the alleged victim.
- 10. Since P.W-1 Rustom Ali is the informant and P.W-4 'x' is the alleged victim, so, both are the prime witnesses in this case. Now let us see the evidence of this two witnesses at first.

P.W-1 Rustom Ali has stated in his evidence that he is the informant in this case. He lodged the case against the accused. The occurrence took place 3/4 months ago (from the date of adducing his evidence on 19-10-2019). On the day of occurrence he was not at his house. He went to Bilasipara. 'x' is his daughter , she was 17 years old at the time of occurrence. On the day of occurrence at about 04.00 P.M, his daughter 'x' was talking with the accused at road. His wife saw it and had quarrel with the accused. When he went to his house, he heard about the said altercation. He, thereafter, lodged the ezahar against the accused. Ext-1 is the said ezahar. Except altercation between the accused and his wife, there had happened nothing.

In his cross P.W-1 has stated that he did not know what was scribed in the ezahar.

11. P.W-4 'x' has stated in her evidence that informant is her father and she knows the accused. On the day of occurrence, she was talking with Azizur Rahman at road. Her mother went there and saw both of them talking there. Her mother told her father about the occurrence. Her father became wrath with her and he lodged the ezahar against the accused. Her parents misunderstood them. The accused committed no sexual act on her. The accused neither touch her breast nor touched her hand. The accused did not put off her garment. Accused did not attempt to commit sexual intercourse on her. She gave her statement before the Magistrate, Ext-2 is the said statement, Ext-2 (1) is her signature.

In her cross P.W-4 has stated that she forgot what she stated in her statement Ext-2.

12. Thus, minute scrutiny of evidence of P.W-1 and P.W-4, it appears that P.W-1 being the informant has stated that he lodged the ezahar Ext-1 when he heard about the altercation between his wife and the accused, but he did not know what was written in the ezahar, Ext-1. He denied to occur anything except altercation. So, the evidence of P.W-1 is clear that he lodged the ezahar when he heard about the altercation between the accused and his wife. He denied to do anything on his daughter by the accused.

This evidence of P.W-1 is supported by P.W-4 'x'. P.W-4 evinced clearly that she was talking with the accused at road. When her mother saw them, she informed her father and her father lodged the ezahar. P.W-4 has vehemently denied to do anything else on her by the accused. She denied to touch her breast by the accused. She denied to do anything by the accused on her.

So, both P.W-1 and P.W-4 have adduced evidence not incriminating the accused. The evidence of P.W-1 and P.W-4 is not inculpatory against the accused. There is no evidence that the accused touched the breast or hand of 'x'. There is no evidence that the accused did anything to commit rape on 'x'.

13. Now let us see the evidence of P.W-2 and P.W-3.

P.W-2 Basia Khatun has stated in her evidence that on the day of occurrence her daughter 'x' was talking with the accused. There was noise raised by the villagers. When her husband returned, she told her husband and he lodged the ezahar against the accused.

In her cross P.W-2 has stated that it was mere misunderstanding with the accused.

14. P.W-3 Asiruddin Mondal has stated in his evidence that he knows nothing about the occurrence.

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

15. Thus, the evidence of P.W-2 and P.W-3 is not incriminating against the accused. According to P.W-2, she found 'x' and the accused engaged in talking. There was hue and cry when 'x' and the accused were talking. When she informed her husband, he lodged the ezahar against the accused. Thus the evidence of P.W-2 is not incriminating against the accused. P.W-3 had no knowledge about the occurrence. The evidences of P.W-2 and P.W-3 do

not inspire the confidence to believe that the accused did anything else on 'x'.

- 16. Thus, 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 has failed to prove it's case u/s 8 of POCSO Act against the accused beyond all reasonable doubt.
- 18. Held, the accused is not guilty u/s 8 of POCSO Act.
- 19. 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 October, 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 Rustom Ali

P.W-2 Basia Khatun

P.W-3 Asiruddin Mondal

P.W-4 'x'/ the victim

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