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

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

Special Judge,

Bilasipara.

Special (POCSO) Case No- 26 of 2019

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

State of Assam

-Vs-

Jalbahar Ali

..... accused person

Date of framing charge :- 10-01-2020

Date of recording evidence :- 30-01-2020

Date of Argument :- 04-02-2020

Date of Judgment :- 04-02-2020

Advocates Appeared:

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

for the State of Assam.

For the defence :- Mr. 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 Rejina Begum, the informant, lodged an ezahar with the Bilasipara police station on 08-05-2018 informing that 'x' is the daughter of the informant. 'x' was only $7 \frac{1}{2}$ years old. Gram

Panchayat Office situated nearby her house. At the time of occurrence i.e on 07-05-2018, there was NRC hearing. Many people gathered at the said place. The accused Jalbahar Ali, taking advantage of gathering of people, took 'x' to his car where he committed rape on 'x'.

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. 446/18 under section 6 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie under section 4 of Protection of Children from Sexual Offences Act against the accused Jalbahar Ali, laid the charge sheet before the court for trial.
- 4. The accused Jalbahar 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 Offence Act, POCSO Act in short, against the accused. The charge was read over and explained to the accused to which he pleaded not quilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined 4 (four) witnesses, namely-

1.	Rejina Begum	P.W-1
2.	Aminal Hoque	P.W-2
3.	Anuja Parvin	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 witnesses and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

i. Whether accused on 07-05-2018 at about 01.00 P.M at village Ananda Nagar under Bilasipara police station, committed penetrative sexual assault on 'x', aged about 7 ½ years old and thereby committed offence u/s 4 of POCSO Act?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Rejina Begum is the informant, P.W-2 Aminal Hoque is the husband of the informant, P.W-3 Anuja Parvin is the daughter of the informant and P.W-4 'x' is the alleged victim.
- 10. Since P.W-1 Rejina Begum is the informant and P.W-4 'x' is the alleged victim, so, both are the prime witnesses in this case. Let's see the evidence of this two witnesses, at first.
- 11. P.W-1 Rejina Begum has stated in her evidence that she is the informant in this case. She lodged the ezahar, Ext-1 against the accused. But she does not know the name of the accused. 'x' is her daughter. The Gram Panchayat Office, Bangalipara is nearby to her house. There was hue and cry on the day of occurrence. Accordingly, she went there. The people present there took her to the police station and asked her to lodge the case against the accused. She did not hear anything from her daughter.

In her cross P.W-1 has stated that the ezahar was not read over to her. She did not know what was written in the ezahar.

12. P.W-4 'x' has stated in her evidence that the informant is her mother. Nobody did anything on her. She gave her statement before the Magistrate, Ext-2 but she failed to recollect what she stated before the Magistrate.

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

13. Thus, minute scrutiny of evidence of P.W-1 and P.W-4, it appears that P.W-1, the informant does not know the name of the accused. She does not know against whom she lodged the ezahar. According to her the people asked her to lodge the ezahar. So, she lodged it. Even, she did not read the ezahar, nor the ezahar was read over to her. This implies that she does not know the content of the ezahar.

P.W-4 'x' has vehemently denied to do anything on her by anyone. She failed to recollect what she stated before the Magistrate. Thus, the evidence of P.W-1 and P.W-4 is not incriminating against the accused.

14. Now let's see the evidence of other witnesses.

P.W-2 Aminal Hoque has stated in his evidence that the informant is his wife. He knows the accused. On the day of occurrence he went to Circle Office, Bilasipara. When he returned, he got to know that there was altercation amongst the police and the people. The people gathered there asked the informant to lodge the ezahar. There had occurred nothing against his daughter.

Cross examination of P.W-2 was declined by the defence.

15. P.W-3 Anuja Parvin has stated in her evidence that the informant is her mother. 'x' is her younger sister. She does not know the accused. She knows nothing about the occurrence.

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

- 16. Thus, minute scrutiny of evidence of P.W-2 and P.W-3 shows that P.W-2 is the father of the informant and P.W-3 is the another daughter of the informant. Both of them have denied to occur anything on 'x'. So, their evidence is not inculpatory against the accused.
- 17. Thus, the prosecution evidence is not sufficient and reliable to prove the offence as alleged against the accused. The prosecution evidence is found dearth of merit.
- 18. The prosecution has failed to prove it's case u/s 4 of POCSO Act against the accused beyond all reasonable doubt.
- 19. Held, the accused is not guilty u/s 4 of POCSO Act.
- 20. 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 04th 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 Rejina Begum

P.W-2 Aminal Hoque

P.W-3 Anuja Parvin

P.W-4 'x'/the victim

PROSECUTION EXHIBITS:-

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