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

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

Special Judge,

Bilasipara.

Special (POCSO) Case No- 14 of 2019

u/s 363 of Indian Penal Code & u/s 8 of Protection of Children from Sexual Offences Act.

State of Assam

-Vs-

Moinul Hoque @ Munshi

..... accused person

Date of framing charge :- 17-06-2019

Date of recording evidence :- 17-08-2019

17-09-2019

25-10-2019

25-11-2019

Date of Argument :- 20-01-2020

Date of Judgment :- 01-02-2020

Advocates Appeared:

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

for the State of Assam.

For the defence :- Mr. Rabiul Islam,

Ld. Advocate for the defence.

JUDGMENT

1. This case is under section 363 Indian Penal Code and 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 Sanowar Hussain, the informant lodged an ezahar with the Chapar police station on 02-05-2019 informing that he is the father of 'x'. 'x' was 9 (nine) years old. She is student of class IV of no. 497 Mowatari Muktab L.P School. On 02-05-2019 at about 08.30 A.M, 'X' went to school. She kept her book at school and she went to a shop to buy tiffin. The accused Moinul Hoque @ Munshi met her on the road and took her on his bicycle and he took her to his house. In his house, the accused gagged her mouth and started to commit sexual intercourse on her. 'x' bit the accused Moinul Hoque and ran away from his house. She went to her house and informed about the occurrence to her parents.

So, the informant prayed for taking necessary action against the accused Moinul Hoque @ Munshi.

- 3. The Chapar police station received the ezahar and registered as Chapar police station case no. 155/19 under section 376 (AB) Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie under section 341/363/506 Indian Penal Code and section 8 of Protection of Children from Sexual Offences Act against the accused Moinul Hoque @ Munshi, laid the charge sheet before the court for trial.
- 4. The accused Moinul Hoque @ Munshi, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed under section 363 Indian Penal Code, I.P.C in short and under section 8 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 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.	Sanowar Hussain	P.W-1
2.	Kulsum Begum	P.W-2
3.	`x'/the victim	P.W-3
4.	Ashma Khatun	P.W-4
5.	Hafiza Bewa	P.W-5
6.	Amal Kr. Sarkar	P.W-6
7.	Soker Ali	P.W-7

8. Ganesh Das	P.W-8
9. Dr. Md. Laskar Ali	P.W-9
10. Dr. Mazida Sultana	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 02-05-2019 at about 08.30 A.M at Khorida Gossaigaon W/N-03 under Chapar police station, kidnapped 'x' aged about 9 years old, from lawful guardian of her father and thereby committed offence u/s 363 I.P.C?
- ii. Whether accused on 02-05-2019 at about 08.30 A.M at Khorida Gossaigaon W/N-03 under Chapar police station, committed sexual assault on 'x' by touching her private organ and thereby committed offence u/s 8 of POCSO Act?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Sanowar Hussain is the informant, P.W-2 Kulsum Begum is the mother of the victim, P.W-3 'x' is the alleged victim. P.W-4 Ashma Khatun, P.W-5 Hafiza Bewa, P.W-6 Amal Kr. Sarkar, P.W-7 Soker Ali are independent witnesses. P.W-8 Ganesh Das is the investigating officer. P.W-9 Dr. Md. Laskar Ali and P.W-10 Mazida Sultana are Medical & Health Officer.
- 10. Since P.W-1 Sanowar Hussain 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 Sanowar Hussain has stated in his evidence that he is the informant in this case. 'x' is his daughter. The occurrence took place 3 (three) months ago (from the date of adducing his evidence on 17-08-2019). At the time of occurrence 'x' was only 9 (nine) years old and she was a student of class IV at Mowatari Muktab L.P School. On the day of occurrence

at about 08.30 A.M 'x' went to school. 'x' purchased something in the shop of one Soker Ali. Then when 'x' was on the road, the accused got 'x' on his bicycle and took her to his house. In his house, the accused put off the wearing of 'x' and tried to commit sexual intercourse on her. The accused touched the private part of 'x' with his finger. 'x' then ran away from the house of the accused. 'x' told him all about the occurrence. There was a village meeting in the village. The accused did not attend the village meeting. Accordingly, he lodged the ezahar, Ext-1 is the ezahar, Ext-1(1) is his signature.

In his cross P.W-1 has stated that his house is ½ km away from the house of the accused. He took gas cylinder from the accused. P.W-1 has denied that there was altercation with the accused in connection with purchasing articles from the shop of the accused. The accused also lodged a case against him. He did not see the occurrence. 'x' went to school and returned from the gate of the school. She did not tell him that she kept her bag at school. P.W-1 has denied that the accused did not take 'x' to his house. P.W-1 has also denied that the accused did not put off her wearing and did not keep his finger on her (x) private part.

12. P.W-3 'x' has stated in her evidence that the informant is her father. She knows the accused. On the day of occurrence she went to school. On her way to school, the accused got her on his bicycle and took her to his house. The accused sent his wife somewhere. The accused sent his daughter somewhere to polish his shoe. The accused then put off her clothes and touched her private part with his hand. When she told the accused that she would tell her mother, then the accused threatened her to cut her neck. The accused strangled her neck. She bit the hand of the accused and she ran away from the house of the accused. She gave her statement before the Magistrate, Ext-2 is the said statement, Ext-2(1)(2)(3) are her signatures.

In her cross P.W-3 has stated that she does not know the accused well. She went to school and without keep her school bag at school, she went to the shop. There are houses near the house of the accused. She denied that she was taught to tell that the daughter of the accused was sent somewhere to polish his shoe. She also denied that she gave her statement before the Magistrate as she was taught to say.

13. Thus, minute scrutiny of evidence of P.W-1 and P.W-3 shows that P.W-1 Sanowar Hussain is the informant who lodged the ezahar Ext-1. He lodged the ezahar on the basis of the information given to him by P.W-3 'x'. P.W-1 did not see the occurrence.

According to P.W-1, 'x' on her way to school went to the shop of Soker Ali and she purchased tiffin and when she was on the road on way to school, the accused picked up her.

According to P.W-3 'x', she went to school and she returned from the gate without keeping her bag at school and she went to the shop of Soker Ali to purchase article.

So, there found gulf between the evidence of P.W-1 and P.W-3.

In her statement given before the Magistrate, Ext-2, P.W-3 has stated that she went to school, kept her bag and went to a nearby shop.

But in her evidence P.W-3 has stated that she returned from the gate of the school as the school gate did not open and went to nearby shop.

So, there are some contradictions in the statement Ext-2 and the evidence adduced before this court by P.W-3 'x'.

Another aspect is that according to P.W-3 'x' there were wife and daughter of the accused when she was taken to the house of the accused. The accused sent his wife somewhere outside the house and his daughter to polish shoe. Such evidence of P.W-3 'x' is not reliable. The accused is an elderly person. In the day light the accused will send his wife and child to commit sexual intercourse with a child who is only nine years old cannot be accepted.

Another aspect is that the informant P.W-1 scribed in the ezahar that the accused put off the wearing of 'x' and started to commit sexual intercourse on her. According to P.W-1, he lodged the ezahar on the information given by his daughter 'x'.

According to P.W-3 'x', the accused put off her wearing and touched her private part. There is no evidence adduced by P.W-3 that the accused committed sexual intercourse on her. At the same time, in the evidence of P.W-1, he has stated that the accused entered his finger into the private part of 'x'.

So, there found some contradictions in the content of the ezahar and the evidence adduced by the witnesses P.W-1 and P.W-3.

Moreover, the evidence of P.W-1 and P.W-3 is not corroborative to each other.

Another aspect is that the occurrence took place in the morning. It is stated both by P.W-1 and P.W-3 that the accused took 'x' on bicycle. If it is so, anybody could witness to carry 'x' on the bicycle of the accused. But the prosecution has failed to examine not a single witness to see such occurrence.

- 14. Now let's see the evidence of other witnesses.
- 15. P.W-2 Kulsum Begum has stated in her evidence that on the day of occurrence 'x' went to school. 'x' kept her school bag at school and went to a nearby shop. 'x' was picked up by the accused and he took her to his house where he put off her wearing and entered his finger into the private part of 'x'. There was village meeting in connection with the occurrence.

In her cross P.W-2 has stated that the accused also lodged a case against them.

- 16. P.W-4 Ashma Khatun knows nothing about the occurrence.
- 17. P.W-5 Hafiza Bewa also knows nothing about the occurrence.
- 18. P.W-6 Amal Kr. Sarkar has stated in his evidence that on 02-05-2019, many people went to his school and claimed a meeting. But he declined to arrange any meeting in connection with the occurrence taken place outside school. He knows nothing about the occurrence.
- 19. P.W-7 Soker Ali has stated that he has a shop about 200/250 feet away from Moktab L.P School. He knows nothing about the occurrence.
- 20. Thus, careful scrutiny of evidence of P.W-2, P.W-4 to P.W-7, it appears that P.W-2 is the mother of the alleged victim 'x'. P.W-2 has also stated in her evidence that the accused entered his finger into the private part of 'x'. But this evidence of P.W-2 is not supported by P.W-3 'x'. P.W-3 'x' has stated in her evidence that the accused touched private part only. She has not stated in her evidence that the accused entered his finger into her private part. P.W-3 'x' is an intelligent. She has capacity to understand and she can express everything. If the accused entered his finger into her private part, she could have stated the same.

So, there is lack of corroboration in the evidence of P.W-2 and P.W-3. Such non corroborated evidence of P.W-2 cannot be accepted.

Another aspect is that, according to P.W-2, there was village meeting

in connection with the occurrence. The accused did not attend the meeting, so nothing was decided.

Perusal of evidence of P.W-4 to P.W-7, who are independent witnesses shows that not a single witness has stated in their respective evidence that there was village meeting. In such a situation, the evidence of P.W-2 that there was a village meeting in connection with the occurrence cannot be accepted.

- 21. The witnesses namely P.W-4 to P.W-7 have stated categorically in their evidence that they know nothing about the occurrence. The evidence of P.W-4 to P.W-7 does not support the evidence of P.W-1 and P.W-3.
- 22. P.W-9 Dr. Md. Laskar Ali is the Medical & Health Officer who examined 'x' and found the age of 'x' to be 10 to 12 years.
- 23. P.W-10 Dr. Mazida Sultan is also another Medical & Health Officer who examined 'x' and found no sign of rape on 'x. So, the evidence of P.W-10 also does not support the evidence of P.W-1 and P.W-2 that the accused entered his finger into the private part of P.W-3 'x'.
- 24. The evidence of P.W-8 Ganesh Das, the investigating officer is mere official. He investigated the case, drew sketch map Ext-3, took statement of the witnesses and at the end of investigation, he submitted charge sheet, Ext-4.

This evidence of P.W-8 will no way meliorate the prosecution case.

- 25. Taking all into consideration, it appears that the prosecution evidence is not sufficient and reliable to prove the offences as alleged against the accused. The prosecution case is dearth of merit.
- 26. The prosecution has failed to prove it's case under section 363 I.P.C and under section 8 of POCSO Act against the accused beyond all reasonable doubt.
- 27. Held, the accused is not guilty u/s 363 I.P.C and section 8 of POCSO Act.
- 28. 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 01st 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 Sanowar Hussain

P.W-2 Kulsum Begum

P.W-3 'x'/the victim

P.W-4 Ashma Khatun

P.W-5 Hafiza Bewa

P.W-6 Amal Kr. Sarkar

P.W-7 Soker Ali

P.W-8 Ganesh Das

P.W-9 Dr. Md. Laskar Ali

P.W-10 Dr. Mazida Sultana

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,

Ext-5 Radiological report,

Ext-6 Medical report.

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

(Shri J. Borah)

Special Judge, Bilasipara