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

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

Special Judge, Bilasipara.

### Special (POCSO) Case No-12 of 2018

u/s 366(A)/376(2)(i) of Indian Penal Code & u/s 4 of Protection of Children from Sexual Offences Act.

#### **State of Assam**

-Vs-

### **Rofiqul Islam**

..... accused person

Date of framing charge :- 04-01-2019

Date of recording evidence :- 03-06-2019

03-07-2019

15-07-2019

02-09-2019

30-09-2019

04-12-2019

22-01-2020

Date of Argument :- 10-02-2020

Date of Judgment :- 10-02-2020

### **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 366(A)/376(2)(i) of Indian Penal Code and 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 Mamoni Begum, the informant lodged an ejahar with the Lakhiganj Police Watch Post on 04-07-2017 informing that she is the mother of 'x'. On 04-07-2017 at about 09:00 at night she was busy with works in the Kitchen room. 'x' was in the courtyard of their house ('x' was only fourteen years old at that time and she was undergoing study in the Class-VII). The accused Rofiqul Islam went to the courtyard of the informant and took away 'x'. 'x' was taken away to somewhere. She was not found out.

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

- 3. The Lakhiganj Police watch post received the ejahar vide G.D.E. No. 75 dated 05-07-2017 and forwarded to Bilasipara Police Station. The Bilasipara police station received the ejahar and registered vide Bilasipara Police Station Case No. 678/2017 under section 366 (A) of Indian Penal Code. The case was investigated and having found prima facie under section 366(A)/376 of Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act against the accused Rofiqul Islam, laid the charge sheet before the court for trial.
- 4. The accused Rofiqul Islam, hereinafter called the accused, appeared in this case. The accused was furnished copy. Charge was framed under section 366(A)/376(2)(i) of Indian Penal Code, I.P.C in short, and section 4 of the 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 10 (ten) witnesses, namely -

1.	Mamoni Begum	P.W-1
2.	`x'/the victim	P.W-2
3.	Manjura Bibi	P.W-3
4.	Dul Hussain	P.W-4

5. Jibrail Hussain	P.W-5
6. Majnur Rahman	P.W-6
7. Mostafa Hussain	P.W-7
8. Bipija Khatun	P.W-8
9. Dr. Rinku Ahmed	P.W-9
10. Ajit Kr. Ray	P.W-10

- 6. The accused was examined under section 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 04-07-2017 at about 09.00 P.M at village Lakhiganj under Bilasipara police station, kidnaped 'x', a minor girl under the age of 18 years with intent that said 'x' may be forced or seduced to illicit intercourse by him or other and thereby committed offence u/s 366(A) I.P.C?
- ii. Whether accused on 04-07-2017 at about 09.00 P.M at village Lakhiganj under Bilasipara police station, committed rape on 'x', a minor girl under the age of 16 years and thereby committed offence u/s 376 (2)(i) I.P.C?
- iii. Whether accused on 04-07-2017 at about 09.00 P.M at village Lakhiganj under Bilasipara police station, committed penetrative sexual assault on 'x', aged about 14 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 Mamoni Begum is the informant, P.W-2 'x' is the alleged victim, P.W-3 Manjura Bibi, P.W-4 Dul Hussain, P.W-5 Jibrail Hussain, P.W-6 Majnur Rahman, P.W-7 Mostafa Hussain, P.W-8 Bipija Khatun are independent witnesses. P.W-9 Dr. Rinku Ahmed is the Medical and Health Officer and P.W-10 Ajit Kr. Ray is the Investigating Officer.
- 10. Since P.W.-1 Mamoni Begum is the informant and P.W.-2 'x' is the

alleged victim, so both are prime witnesses, so let's see the evidence of this two witnesses, at first.

11. P.W-1 Mamoni Begum has stated in her evidence that she is the informant in this case. She lodged the ejahar, Ext-1 against the accused. The occurrence took place 2 (two) and ½ (half) years ago (from the date of adducing evidence on 03-06-2019). On the day of occurrence she went to the house of her uncle Yunus Ali at Lakhiganj. Her daughter x was also with her. X was loitering in the court yard. Thereafter she became traceless. She informed the village headman. The village headman asked her to lodge ejahar. Accordingly, she lodged the ejahar, Ext-1. Next day 'x' was found out. She asked the victim 'x'. 'x' told her that someone took her away. She suspected the accused to take away her daughter, so, lodged the ejahar Ext-1 against the accused. Ext-1(1) is her signature.

In cross P.W-1 has stated that the ejahar was not read over to her. The accused did not commit voluptuous act on x.

12. P.W-2 'x' has stated in her evidence that the informant is her mother. She does not know the accused. The occurrence took place 2  $\frac{1}{2}$  years ago (from the day of adducing evidence on 03-06-2019). On the day of occurrence she went to the house of uncle. Her mother was working in the kitchen room at the time of occurrence. She was loitering in the courtyard. At that moment, someone had taken away her holding her from behind. She, on way, pushed the accused away and she went her maternal uncle's house. The person did not commit sexual assault on her. She gave her statement before the Magistrate, Ext-2 is the said statement, Ext-2(1) her signature.

In her cross P.W.-2 has stated that she could not identify the person who had taken away her. The accused did not commit sexual intercourse on her. She could not recollect what she had stated in her statement, Ext-2.

13. Thus, careful scrutiny of evidence of P.W-1 and P.W-2 shows that both P.W-1 and P.W-2 failed to identify the accused. P.W-2 'x' who is the alleged victim has stated that she could not identify the person who had taken away her. P.W-1 has stated that P.W-2 did not tell her the name of the person who had taken away her. So, both P.W-1 and P.W-2 have clearly stated in their evidence that they failed to identify the accused.

Next question arises whether the accused committed sexual intercourse on P.W-2 'x'.

P.W-2 'x' has vehemently denied to commit sexual intercourse on her by the accused. In her evidence P.W-2 has stated that when she was taken away, she pushed the person and she took shelter in her maternal uncle's house. So the evidence of P.W.-2 is clear that the accused person did not commit sexual intercourse on her.

Thus, the evidences of both P.W-1 and P.W-2 is not inculpatory against the accused. They have adduced evidence not incriminating the accused.

14. P.W-9 Dr. Rinku Ahmed who examined the health of P.W-2 'x' has also not supported the prosecution that there was sexual assault on 'x'. In her evidence P.W-9 has stated that she found no sign of sexual intercourse or assault on 'x'.

So the evidence of P.W-9 is that there was no sexual intercourse or assault on P.W-2 'x'.

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

P.W-3 Manjura Bibi has stated in her evidence that she knows nothing about the occurrence.

Her cross examination was declined by the defence.

P.W-4 Dul Hussain has stated in his evidence that the informant gave a proposal for marriage between 'x' and the accused. As 'x' was minor, so the marriage did not hold. Accordingly this case was lodge against the accused.

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

16. P.W-5 Jibrail Hussain has stated in his evidence that he got know that someone kidnapped 'x'. But he did not know who had kidnapped her.

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

17. P.W-6 Majnur Rahman has stated in his evidence that he knows nothing about the occurrence.

Cross examination of P.W-6 was declined by the defence.

18. P.W-7 Mostafa Hussain has stated in his evidence that he knows nothing about the occurrence.

Cross examination of P.W-7 was declined by the defence.

19. P.W-8 Bipija Khatun has stated in his evidence that she knows nothing about the occurrence.

Cross examination of P.W.-8 was declined by the defence.

20. Thus, scrutiny of evidence of P.W. 3 to P.W.-8, it appears that all the

witnesses have categorically stated in their evidence that they know nothing about the occurrence. P.W-5 Jibrail Hussain has stated in his evidence that he got to know that 'x' was kidnapped by someone. But he did not know who kidnapped 'x'. So, his evidence is also imbibed with ambiguity. The other witnesses have categorically denied to know about the occurrence. So, the evidence of P.W.-3 to P.W.-8 have not effective value to consider the prosecution case.

- 21. The evidence of P.W-10 Ajit Kr. Ray the investigating officer, is mere official. He investigated the case. This evidence of P.W.-10 will not meliorate the prosecution case.
- 22. Taking above 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 found dearth of merit.
- 23. The prosecution has failed to prove its case under section 366(A)/376(2)(i) of I.P.C and under section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 24. Held, the accused is not guilty under section 366(A)/376(2)(i) of I.P.C. and under section 4 of POCSO Act.
- 25. The accused is, accordingly, 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 of this court on this 10<sup>th</sup> day of February, 2020 at Bilasipara, District- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by, Manoj Kumar Choudhury, Computer Typist

### **APPENDIX**

#### **PROSECUTION WITNESS:-**

P.W-1 Mamoni Begum

P.W-2 'x'/the victim

P.W-3 Manjura Bibi

P.W-4 Dul Hussain

P.W-5 Jibrail Hussain

P.W-6 Majnur Rahman

P.W-7 Mostafa Hussain

P.W-8 Bipija Khatun

P.W-9 Dr. Rinku Ahmed

P.W-10 Ajit Kr. Ray

#### **PROSECUTION EXHIBITS:-**

Ext-1 Ezahar,

Ext-2 Statement of 'x' recorded u/s 164 Cr.P.C,

Ext-3 Medical report,

Ext-4 Sketch map.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara