

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

Special Judge, Bilasipara.

Special (POCSO) Case No- 02 of 2020

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

State of Assam

-Vs-

Maynul Hoque

..... accused person

Date of framing charge :- 30-01-2020

Date of recording evidence :- 07-02-2020

Date of Argument :- 11-02-2020

Date of Judgment :- 11-02-2020

Advocates Appeared:

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

for the State of Assam.

For the defence :- Mr. S. N. Hussain,

Ld. Advocate for the defence.

JUDGMENT

- 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 Abdul Jabbar, the informant, lodged an ezahar with the Bilasipara police station on 25-08-2019 informing

that 'x' is the daughter of the informant. She is 16 years old. On 20-08-2019 at night 'x' was sleeping in her room. The accused Maynul Hoque entered into the room and gagged her mouth. 'x' awoke. The accused kept a sharp weapon at her neck and threatened to kill her. Thereafter, the accused committed sexual intercourse on 'x'. After performing sexual act on 'x', the accused had gone away.

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

- 3. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 881/2019 under section 457/506 Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie under section 457/506 Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act against the accused Maynul Hoque, laid the charge sheet before the court for trial.
- 4. The accused Maynul Hoque, 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 guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined only 3 (three) witnesses, namely-

1.	Abdul Jabbar	P.W-1
2.	Nazma Bibi	P.W-2
3.	'x'/the victim	P.W-3

- 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 20-08-2019 at about 12.00 midnight at village Kadamtala Pt. II under Bilasipara police station, committed

penetrative sexual assault on 'x', aged about 16 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 Abdul Jabbar is the informant, P.W-3 'x' is the alleged victim and P.W-2 Nazma Bibi is the mother of 'x'.

Since P.W-1 Abdul Jabbar is the informant and P.W-3 'x' is the alleged victim, so, both are the prime witnesses in this case. Let's see the evidences of this two witnesses at first.

10. P.W-1 Abdul Jabbar has stated in his evidence that he is the informant in this case. 'x' is his daughter. The occurrence took place 5/7 months ago (from the date of adducing evidence on 07-02-2020). The villagers suspected the accused and 'x' to have illicit relation between them. The villagers forced him to lodge case against the accused. Accordingly, he lodged the ezahar Ext-1. The accused did not commit sexual intercourse on his daughter. 'x' was 16 years old at the time of occurrence.

In his cross P.W-1 has stated that he does not know the content of the ezahar.

11. P.W-3 'x' has stated in her evidence that the informant is her father. She knows the accused. The occurrence took place 6/7 months ago (from the date of adducing evidence on 07-02-2020). The villagers suspected the accused and her to have illicit relation between them. The villagers forced her father to lodge the ezahar against the accused. Accordingly, her father lodged the case. The accused did not commit sexual intercourse on her. She gave statement before the Magistrate, Ext-2 is the said statement, Ext-2 (1) is her signature. She gave her statement as per direction of the villagers.

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

12. Careful scrutiny of evidence of P.W-1 and P.W-3 shows that P.W-1 Abdul Jabbar is the informant in this case. He lodged the ezahar Ext-1 against the accused. But according to P.W-1, he was forced to lodge the ezahar against the accused. There was love affair between the accused and his daughter. But the villagers suspected to have illicit relation between them. Owing to such suspicion, the villagers asked him to lodge the ezahar against the accused. The accused did not commit sexual intercourse on 'x'. Same is the evidence of P.W-3 'x'. According to P.W-3 'x', the villagers

suspected her and the accused to have illicit relation and they forced the informant to lodge the ezahar against the accused. P.W-3 'x' has sternly denied in her evidence that there was sexual intercourse on her by the accused. She has also made it clear in her evidence that the statement given by her before the Magistrate was as per instruction of the villagers.

Thus, the evidence of P.W-1 and P.W-3 is not inculpatory against the accused. Both P.W-1 and P.W-3 have adduced evidence not incriminating the accused.

13. Now let's see the evidence of P.W-2.

P.W-2 Nazma Bibi is the mother of P.W-3 'x'. She knows the accused. According to P.W-2 the villagers suspected the accused and her daughter to have illicit relation and accordingly they forced her husband to lodge the ezahar against the accused. P.W-2 has sternly denied that there was illicit relation between the accused and her daughter.

So, the evidence of P.W-2 is in the same tune with P.W-1 and P.W-3. P.W-3 has also denied that there was voluptuous act on 'x' by the accused.

- 14. Thus, the prosecution evidence is found not incriminating against the accused. The prosecution evidence is found not sufficient and reliable to prove the offence as alleged against the accused. The prosecution case is found dearth of merit.
- 15. The prosecution has failed to prove it's case under section 4 of POCSO Act against the accused beyond all reasonable doubt.
- 16. Held, the accused is not guilty u/s 4 of POCSO Act.
- 17. 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 11th day of February, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by, Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

P.W-1 Abdul Jabbar

P.W-2 Nazma Bibi

P.W-3 '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