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

Present:- Shri J. Borah, AJS

Special Judge,

Bilasipara

Special (POCSO) Case No- 06 of 2018

u/s 10 of Protection of Children from Sexual Offences Act

State of Assam

-Vs-

Ahidur Rahman @ Ohidur Rahman Seikh

..... accused person

Date of framing charge :- 05-01-2019

Date of recording evidence :- 25-03-2019

13-05-2019

Date of Argument :- 22-05-2019

Date of Judgment :- 22-05-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Smti Syeda Afroza Akhtar

Ld. Advocate for the accused.

JUDGMENT

1. This case is under section 10 of Protection of Children from Sexual Offences Act. So, the name of the victim is not mentioned here and she is referred to, hereinafter, as 'x'.

2. The prosecution case, in brief, is that Sadhan Saha, the informant, lodged an ejahar with the Bilasipara police station on 24-04-2018 informing that 'x' is his daughter who was 9 years old. She studied under the accused Ahidur Rahman @ Ohidur Rahman Seikh as tuition. On 24-04-2018 at about 08.30 a.m in the morning 'x' went to the house of Mohan Lal Saha for that purpose. After end of tuition, the accused asked the other students to leave the tuition house and kept 'x'. The accused laid 'x' on the floor and attempted to commit rape on her.

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

- 3. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 391/2018 u/s 8 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie u/s 10 of Protection of Children from Sexual Offences Act, prepared the chargesheet and laid the same before the court for trial.
- 4. The accused Ahidur Rahman @ Ohidur Rahman Seikh, hereinafter called as the accused, appeared in this case and he was furnished copy. Charge was framed u/s 10 of Protection of Children from Sexual Offences Act 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 4 (four) witnesses, namely-

1.	Sadhan Saha	PW-1
2.	`x'/ the victim	PW-2
3.	Sima Saha	PW-3
4.	Mohan Lal Saha	PW-4

- 6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations leveled 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 24-04-2018 at about 08.30 am at Bilasipara W/N-14, under Bilasipara PS, committed sexual assault on 'x' aged

about 9 years old by undressing her and undressing himself with sexual intent which involves aggravated sexual assault?

DECISION AND REASONS THERE OF

- 9. In this prosecution case P.W-1 Sadhan Saha is the informant, P.W-2 'x' is the alleged victim and P.W-3 Sima Saha, P.W-4 Mohan Lal Saha are independent witnesses.
- 10. Since P.W-1 Sadhan Saha is the informant and P.W-2 'x' is the alleged victim, so both the witnesses are prime witnesses in this case. So, let's see the evidence of this two witnesses.
- 11. P.W-1 Sadhan Saha has stated in his evidence that he is the informant in this case. 'x' is his daughter. The accused was the tuition teacher of his daughter 'x'. One day his daughter returned to house in tears. He asked his daughter why she wept. His daughter did respond. He went to the accused. The accused told him that he rebuked her and she fell down on the stair. He suspected the accused to do something else on his daughter and accordingly he lodged the ejahar, Ext-1.

In his cross P.W-1 has stated that the accused did not misbehave his daughter. He lodged the ejahar due to misunderstanding.

12. P.W-2 'x' has stated in her evidence that the informant is her father. The accused is her tuition teacher. The accused did nothing against her. She did not know why her father lodged ejahar against the accused. She gave her statement before the Magistrate. Ext-2 is the said statement.

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

13. Thus, careful scrutiny of evidence of P.W-1 and P.W-2 it appears that P.W-1 being the informant brought no incriminating evidence against the accused. Rather P.W-1 has made it clear that he lodged the ejahar Ext-1 due to misunderstanding with the accused.

Same is the evidence of P.W-2 'x', the alleged victim. She evinced without any hesitation that the accused did nothing against her. She also reiterated that she did not know why his father lodged the ejahar against the accused. So, P.W-2 has also brought no allegation against the accused.

14. In the ejahar P.W-1 scribed that the accused laid 'x' on the ground and attempted to molest her. But in his evidence, he had adduced in different way. There found great gulf between the content of the ejahar Ext-1 and the evidence adduced by the P.W-1. This contradiction is a vital and it may shroud the prosecution case with doubt.

15. Now let us see the evidence of independent witnesses.

P.W-3 Sima Saha has stated in her evidence that in the morning she saw 'x' coming home in tears. On being asked 'x' told her that she fell on the stairs.

P.W-4 Mohan Lal Saha has stated in his evidence that one day when he saw x' in tears, he enquired x' and she replied that she fell down on the stair.

- 16. Thus, minute scrutiny of evidence of P.W-3 and P.W-4 shows that both the witnesses have categorically stated in their respective evidence that 'x' fell down on the stair, so, she returned home in tears. The evidence of P.W-3 and P.W-4 doesn't divulge that the accused did anything to 'x'. There is no evidence adduced by the P.W-3 and P.W-4 that the accused made nude or did physical contact with 'x'.
- 17. In view of above all, it appears that 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, thereby, failed to prove its case u/s 10 of Protection of Children from Sexual Offences Act against the accused beyond all reasonable doubt.
- 19. Held, the accused is not guilty u/s 10 Protection of Children from Sexual Offences Act.
- 20. Accordingly, the accused is acquitted and set at liberty.

The bail bond of accused stands cancelled and bailor is discharged from liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 22nd day of May 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 Sadhan Saha

PW-2 'x'/ the victim.

PW-3 Sima Saha

PW-4 Mohan Lal Saha

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2 Statement of 'x'/the victim 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