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

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

Special Judge,

Bilasipara

Special (POCSO) Case No- 18 of 2019

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

State of Assam

-Vs-

Saddam Hussain

..... accused person

Date of framing charge :- 09-08-2019

Date of recording evidence :- 26-08-2019

11-09-2019

Date of Argument :- 21-09-2019

Date of Judgment :- 21-09-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. Shah Nawaz Hussain,

Ld. Advocate for the defence.

<u>JUDGMENT</u>

- 1. This case is u/s 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 Motior Rahman, the informant lodged an ejahar with the Superintendent of Police, Dhubri informing that 'x' is his daughter. 'x' is student of Lakhiganj Higher Secondary School. She is

16 years old. The accused Saddam Hussain used to take 'x' to his house from way to school and committed voluptuous act on her. On 09-05-2019 at about 05.30 P.M, the accused took 'x' to his house and committed sexual intercourse on her forcefully. When 'x' raised hue and cry, the other accused namely Dewan Ali, Nargis Begum, Hasina Bibi, Mofida Bibi, Sonjuma Bibi, Anowar Ali and Sahadot Ali assaulted her physically and ousted her from their house.

So, the informant prayed for taking necessary step against the accused persons.

- 3. The Superintendent of Police, Dhubri recived the ejahar and forwarded to the Bilasipara police station. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 533/19 u/s 376(2)(3) Indian Penal Code read with section 4 of Protection of Children from Sexual offences Act. The case was investigated and having found prima facie u/s 4 of Protection of Children from Sexual Offences Act against the accused Saddam Hussain, laid the charge sheet before the court for trial.
- 4. The accused Saddam Hussain, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed u/s 4 of 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 7 (seven) witnesses, namely-

1.	Motior Rahman	P.W-1
2.	Nur Mahammad	P.W-2
3.	Khalek Ali	P.W-3
4.	Moinul Hoque	P.W-4
5.	Momina Bibi	P.W-5
6.	`x'/ the victim	P.W-6
7.	Chandra Bhushan Singh	P.W-7

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 and also declined to adduce evidence in defence.

7. Heard argument for both sides.

8. **POINTS FOR DETERMINATION**

i. Whether accused on 09-05-2019 at about 05.30 P.M and on several occasions at his house situated at village Hazaripara under Bilasipara police station, committed penetrative sexual assault on 'x', a minor girl and thereby committed offence u/s 4 of POCSO Act?

DECISION AND REASONS THERE OF

9. In this prosecution case P.W-1 Motior Rahman is the informant and P.W-6 'x' is the alleged victim. So, both are the prime witnesses in this case. Let's see the evidence of this two witnesses.

P.W-1 Motior Rahman has stated in his evidence that he is the informant in this case. He knows the accused Saddam Hussain. 'x' is his daughter. There was love affair between his daughter 'x' and the accused. 'x' heard that the accused would marry another girl, accordingly she went to the house of the accused. She stayed there for a day. The family members of the accused informed the police. He took his daughter from there. He then lodged the ejahar against the accused.

In his cross P.W-1 has stated that the 'x' did not tell him that the accused had committed sexual intercourse with her or he assaulted her physically.

P.W-6 'x' has stated in her evidence that the informant is her father. She knows the accused. She had love affair with the accused. The accused was not willing to marry her, rather he wanted to marry another girl. So, she went to the house of the accused. She stayed at the house of the accused for a day. The police had taken her from there. The accused did not commit sexual intercourse with her. The Magistrate recorded her statement, Ext-1 is the said statement and Ext-1(1)(2) are her signatures.

In her cross P.W-6 has stated that the family members of the accused did not assault her physically.

10. Thus, minute scrutiny of evidence of P.W-1 and P.W-6 shows that P.W-1 is the informant. According to P.W-1, 'x' had love affair with the accused, so she was interested to get marry with the accused. But when she heard that the accused was going to marry another girl, so she went to the house of the accused. She stayed there for a day. The family members of the accused informed the police and the police took her away. According to P.W-1, 'x' did not tell him that the accused had committed sexual intercourse with her. The evidence of P.W-1 does not divulge that the accused had committed sexual intercourse with his daughter 'x'.

In the ejahar, P.W-1, the informant scribed that the accused had sexual intercourse with his daughter 'x'. But in the evidence P.W-1 denied the same. So, the evidence of P.W-1 is itself contradictory. There is distinct contradiction between his previous statement made in the ejahar and the evidence adduced before the court. Such contradiction may affect the prosecution case.

11. P.W-6 'x' is herself alleged victim. She sternly denied to commit sexual intercourse on her by the accused. She acknowledges that she had love affair with the accused. She wanted to get marry with the accused. But when she heard that accused wanted to marry another girl, she went to his house. The evidence of P.W-6 shows that the accused did not take her to his house. Rather P.W-6 'x' had herself went to the house of the accused. P.W-6 'x' denied to commit sexual intercourse on her by the accused. She also denied to assault her by the family members of the accused. The evidence of P.W-6 is found not inculpatory against the accused.

The evidences of P.W-1 and P.W-6, thus, stand on the same footing. Both P.W-1 and P.W-6 have denied to commit sexual intercourse on 'x' by the accused. The evidence of P.W-1 and P.W-6 is corroborated to each other.

12. Now let us see the evidence of other witnesses.

P.W-2 Nur Mahammad has stated in his evidence that 'x' and the accused had love affair. 'x' went to the house of the accused. The police went to the hosue of the accused. He did not know the rest.

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

13. P.W-3 Khalek Ali has stated in his evidence that the accused was to marry 'x' but finally he did not marry her. He did not know other thing.

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

14. P.W-4 Moinul Hoque has stated in his evidence that there was discussion about the marriage between the accused and 'x'. But the accused did not marry 'x'. As such, 'x' wanted to go to the house of the accused, but he (P.W-4) stopped her. The police went to the house of the accused.

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

15. P.W-5 Momina Bibi has stated in her evidence that the accused was to marry 'x', but he did not marry 'x'. As 'x' was minor, so the accused did not marry her.

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

16. Thus, scrutiny of evidence of P.W-2, P.W-3, P.W-4 and P.W-5 shows that they are independent witnesses. They know both 'x' and the accused. They have categorically stated in their respective evidence that both accused and 'x' had love affair and there was discussion of their marriage. But later on, accused decided to marry other girl. The result was that the father of 'x' lodged the case against the accused. The witnesses uttered not a single word that the accused committed voluptuous act on 'x'. There is no evidence adduced by them that 'x' went to the house of the accused and stayed there for a day. Rather P.W-4 Moinul Hoque evinced that when 'x' was going to the house of the accused, he stopped her and kept her at his house. So, the evidence of P.W-1 and P.W-6 that 'x' went to the hosue of the accused and stayed there for a day is not supported by the independent witnesses particularly by P.W-4.

Being the said position of the evidence of P.W-2 to P.W-5, it appears that the evidence of said witnesses is not inspiring and convincing to prove the offence as alleged against the accused.

- 17. P.W-7 Chandra Bhushan Singh is the investigating officer. He investigated the case and at the end of investigation he submitted charge sheet Ext-4 against the accused. So, the evidence of P.W-7 is mere official. The evidence of P.W-7 does not meliorate the prosecution case.
- 18. Taking all into consideration, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offence as

alleged against the accused. There is no sufficient evidence to prove that there was penetrative sexual assault on P.W-6 'x' by the accused. The prosecution evidence is found dearth of merit.

- 19. The prosecution, thereby, has failed to prove it's case u/s 4 of POCSO Act against the accused beyond all reasonable doubt.
- 20. Held, accused is not guilty u/s 4 of POCSO Act.
- 21. Accordingly, the accused is acquitted and set at liberty.

Bail bonds 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 21st day of September, 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESSES:-

P.W-1 Motior Rahman,

P.W-2 Nur Mahammad,

P.W-3 Khalek Ali,

P.W-4 Moinul Hoque,

P.W-5 Momina Bibi,

P.W-6 'x'/ the victim,

P.W-7 Chandra Bhushan Singh.

PROSECUTION EXHIBIT:-

Ext-1 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