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

Present:- Shri J. Borah, AJS

Special Judge,

Bilasipara

Special (POCSO) Case No- 15 of 2017

u/s 8 of Protection of Children from Sexual Offences Act

State of Assam

-Vs-

Eusuf Ali @ Eushuf Ali

..... accused person

Date of framing charge :- 08-05-2018

Date of recording evidence :- 01-10-2018

26-02-2019

12-03-2019

24-04-2019

11-06-2019

06-07-2019

Date of Argument :- 29-07-2019

14-08-2019

Date of Judgment :- 22-08-2019

Advocates Appeared:

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

for the State of Assam

For the defence :- Mr. A.M Sarkar,

Ld. Advocate for the accused.

JUDGMENT

- 1. This case is under section 8 of Protection of Children from Sexual Offences Act, in short POCSO 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 Mohar Ali, the informant lodged an ejahar with the Bilasipara police station on 12-08-2015 informing that 'x' is his daughter who was only 9 ½ (nine and half) years old. On 09-08-2015 the accused Aynal Hoque, suggested by the accused Eusuf Ali, invited 'x' to their house. 'x' went to the house of the accused Aynal Hoque at about 02.00 P.M. 'x' did not return to their house. 'x' arranged a bed on the floor and she slept there. At night, the accused Eusuf Ali touched the breast of 'x' and attempted to commit sexual intercourse on her. 'x' awoke up and raised hue and cry. Hearing her cry, the persons slept nearby the room came and save her.

So, the informant prayed for taking necessary action against the accused Eusuf Ali and Aynal Hoque.

- 3. The Bilasipara police station received the ejahar and registered as Bilasipara police station case no. 1023/2015 u/s 120(B)/448/34 Indian Penal Code, I.P.C in short, read with section 8 of POCSO Act. The case was investigated and having found prima facie u/s 448 I.P.C and u/s 8 of POCSO Act against the accused Eushuf Ali, prepared the charge sheet and laid the same before the court for trial.
- 4. The accused Eusuf Ali @ Eushuf Ali, hereinafter called the accused, appeared in this case. He was furnished copy. Charge was framed u/s 8 of POCSO 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 8 (eight) witnesses, namely-

1.	Mohar Ali	P.W-1
2.	Basia Bibi	P.W-2
3.	Anowar Ali Seikh	P.W-3
4.	Jonab Ali	P.W-4
5.	Halimon Nessa	P.W-5
6.	`x'/ the victim	P.W-6

7.	Anjuma Khatun	P.W-7
8.	SI Bitu Marme	P.W-8

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 claimed to adduce evidence in defence.

7. The defence examined 5 (five) witnesses namely-

1.	Deljan Bibi	D.W-1
2.	Howa Bibi	D.W-2
3.	Magar Ali Mondal	D.W-3
4.	Aynal Hoque	D.W-4
5.	Mokram Ali	D.W-5

8. Heard argument for both sides.

9. **POINTS FOR DETERMINATION**

i. Whether accused on 09-08-2015 at night at village Gowalerchar under Bilasipara police station, committed sexual assault on 'x', aged about 9 ½ years by touching on her chest?

DECISION AND REASONS THERE OF

- 10. In this prosecution case P.W-1 Mohar Ali is the informant and he is the father of the alleged victim, P.W-2 Basia Bibi is the mother of the alleged victim. P.W-3 Anowar Ali Seikh, P.W-4 Jonab Ali, P.W-5 Halimon Nessa, P.W-7 Anjuma Khatun are independent witnesses. P.W-6 'x' is the alleged victim. P.W-8 S.I Bitu Marme is the investigating officer.
- 11. Since P.W-1 Mohar Ali is the informant, P.W-2 Basia Bibi is the mother of the alleged victim and P.W-6 'x' is the victim. So, they are prime witnesses in this case. Now let's see the evidence of this three witnesses.
- 12. P.W-1 Mohar Ali has stated in his evidence that he is the informant in this case. 'x' is his daughter. The occurrence took place two years ago (from the date of adducing his evidence on 01-10-2018) at the house of Aynal Hoque at Gowalerchar. At the time of occurrence 'x' went to the house of Aynal Hoque to attend the marriage ceremony of Anjuma Khatun, the daughter of Aynal Hoque. At night 'x' with her two friends Anjuma Khatun and Falani arranged a bed on the floor of a room and slept there. At about

02.00 A.M the accused went their room, removed the wearings of 'x', outraged her modesty and attempted to commit rape on 'x'. At such 'x' raised hue and cry. The people gathered there. The accused ran away. In the morning, when he went to the house of Aynal, 'x' was found weeping. On being asked, 'x' narrated the occurrence to him. He lodged the ejahar against the accused.

In his cross P.W-1 has stated that the accused was married person at the time of occurrence. He did not give the torn dresses of 'x' to the police. P.W-1 has denied he lodged a false case against the accused.

13. P.W-2 Basia Bibi has stated in her evidence that the informant is her husband and 'x' is her daughter. The occurrence took place at the house of Aynal at Gowalerchar. On the day of occurrence, 'x' went to the house of Aynal Hoque to attend the marriage ceremony of her friend Anjuma Khatun. At night 'x' slept in a room. The accused went to the said room at about 02.00 A.M. The accused removed the wearing of 'x' and attempted to commit rape 'x'. 'x' awoke up. She raised hue and cry. The people gathered and at such the accused ran away. In the morning 'x' returned their house and narrated the occurrence.

In her cross P.W-2 has stated that she was not present at the house of Aynal. Her husband lodged the ejahar after 5(five) days from the date of occurrence. She denied that 'x' did not tell her the occurrence.

14. P.W-6 'x' has stated in her evidence that the informant is her father. The occurrence took place 3 - 3 ½ years ago at the house of Aynal at Gowalerchar. Anjuma Khatun is her friend. Anjuma Khatun invited her to attend her (Anjuma's) marriage ceremony. Accordingly she went to attend the marriage ceremony of Anjuma. She stayed at their house. At night she with Anjuma Khatun and Falani arranged a bed on the floor of a room and they slept there together. When she was sleeping, she got to know that someone touched her body and was removing her wearings. She saw the accused was doing that. She raised hue and cry. The accused gagged her mouth with his one hand and caught hold of her hand with his other hand. Inspite of that she raised hue and cry. Hearing her hue and cry, the people nearby to the house of Aynal reached there. The accused then ran away. At the time of occurrence Halima, the mother of Anjuma Khatun, was busy with other work. The neighbours such as Anar, Jonab, Halema and Anowar went

to the place of occurrence. She told the people gathered there about the occurrence. She returned to their house in the morning and told her parent's about the occurrence. She gave her statement before the Magistrate. Ext-2 and Ext-2(1)(2) are her signatures.

In her cross P.W-6 has stated that Anjuma and Falani slept with her. The accused was also in the room. P.W-6 has denied that the accused did not sleep in the same room where they slept. P.W-6 has also denied that the accused did not touch her, gagged her mouth and removed her wearing.

15. Thus, meticulous scrutiny of evidence of P.W-1, P.W-2 and P.W-6 shows that P.W-1, P.W-2 are parents of P.W-6. P.W-6 went to attend the marriage ceremony of her friend Anjuma at Gowalerchar where the alleged occurrence took place. P.W-1 and P.W-2 did not go to attend the marriage. So, both P.W-1 and P.W-2 got to know about the occurrence from their daughter P.W-6 'x'.

According to P.W-6 'x' she went to her friend's house at Gowalerchar to attend the marriage ceremony of Anjuma. She stayed at night at her friend's house. At night she with Anjuma and Falani arranged a bed on the floor and they slept there. The accused also slept in the said room but in different bed. According to P.W-6 when she was sleeping, awoke suddenly and saw that the accused touched her body, gagged her mouth and removed her wearing and attempt to commit sexual assault on her. She raised hue and cry and hearing her cry one Halema, Jonab, Anar Ali and Anowar reached the room and at such the accused ran away.

Now, the question arises whether Anjuma and Falani awoke and got to know about the occurrence. Anjuma Khatun and Falani slept in the same bed. If there occurred any occurrence, they would have aware it.

So, let us see the evidence of Anjuma Khatun. Worth mentioning that the prosecution has not examined Falani as witness.

16. P.W-7 Anjuma Khatun has stated in her evidence that 3/4 years ago (from the date of adducing her evidence on 12-03-2019) 'x' went to their house to attend her (P.W-7) marriage. 'x' stayed at night. There occurred nothing at their house at night.

Thus, the evidence of P.W-7 shows that she has denied to take place any occurrence. P.W-7 Anjuma Khatun slept on the same bed in the same room with 'x'. If there had occurred anything P.W-7 Anjuma Khatun would

have aware of it. But P.W-7 has denied to take place anything. So, the evidence of P.W-6 'x' is not supported by P.W-7.

17. Another vital witness is Halimon Nessa. The alleged occurrence took place at the house of Halimon Nessa. According to P.W-6 'x' Halimon Nessa arrived at their room when she raised hue and cry. All this shows that Halimon Nessa is the prime witness in this prosecution case. Let's see the evidence of this witness.

P.W-5 Halimon Nessa has stated in her evidence that she is the mother of Anjuma Khatun. The accused is her neighbour. The occurrence took place 3/4 years ago (from the date of adducing her evidence on 26-02-2019). 'x' was invited to their house to participate the marriage ceremony of Anjuma Khatun. Accordingly, 'x' went there house. 'x' stayed at their house at night. No occurrence was reported to her.

In her cross P.W-5 has stated that Anjuma Khatun, Falani and 'x' slept in the same bed. Other persons were also slept at their house.

18. Thus, the evidence of P.W-5 shows that Anjuma, Falani and 'x' slept in the same bed. Other people were also slept at their house. P.W-5 sternly denied to take place anything at their house.

So, the evidence of P.W-6 'x' that when she raised alarm, Halimon Nessa reached there and got to know about the occurrence is not supported by P.W-5.

The defence witnesses namely D.W-1, D.W-2, D.W-3, D.W-4 and D.W-5 have also categorically denied in their respective evidence of taking place of such occurrence with 'x' in the house of Aynal Hoque.

19. According to P.W-6 'x' the persons namely Jonab, Anar and Anowar went to the place of occurrence. So, let's see the evidence of this witnesses.

P.W-3 Anowar Ali Seikh has stated that on the night of occurrence, he was at his father in law's house. At about 11.00/12.00 he heard hue and cry towards the house of Aynal. He went there and came to know that the accused embraced 'x'. There were also 10/12 persons.

In his cross P.W-3 has stated that he cannot say whether Halimon Nessa was present or not.

20. P.W-4 Jonab Ali has stated in his evidence that his house is situated nearby to the house of Aynal. On the night of occurrence he was at house.

At about 12.00/01.00 he heard hue and cry towards the house of Aynal. He went there. On his way he saw the accused going out of the house of the Aynal. He got to know from 'x' that the accused entered into their room, touched her breast and removed her wearings.

In his cross P.W-4 has stated that when he reached the house of Aynal, he saw the accused there.

21. The evidence of P.W-3 and P.W-4 shows that P.W-4 hails from the nearby house of Aynal. P.W-3 hails from a village 3 km away from the house of Aynal. According to evidence in chief adduced by P.W-4, when he was going to the house of Aynal, he saw the accused going out of the house of Aynal. At the same time, in his cross P.W-4 has stated that he saw the accused at the house of Aynal. So, there found gulf between the evidence in chief and evidence of cross of P.W-4.

The evidence of P.W-3 that he was at his father in law's house is not duly proved by the prosecution.

According to P.W-5 Halimon Nessa and P.W-4 Jonab Ali there were other persons at the house of Aynal. According to P.W-5, the other persons were also sleeping at their house. If that is, the prosecution could have examined those persons. The day of occurrence was before the day of marriage ceremony of Anjuma Khatun. So, it is expected a lot of persons gathered there. But the prosecution did not examine them. Rather the prosecution examined P.W-3 and P.W-4 who hail from nearby house.

Moreover, the evidence of P.W-3 and P.W-4 are found not convincing.

- 22. Above all aspects, it shows that the information got by P.W-1 and P.W-2 from P.W-6 'x' is not duly proved. So, the evidence of P.W-6 'x' that she was touched by the accused, her wearings was removed by the accused in order to molest her is not duly proved.
- 23. P.W-8 S.I Bitu Marme is the investigating officer. He investigated the case. His evidence is mere official and it does not meliorate the prosecution case.
- 24. Considering above all aspects, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove it's offences as alleged against the accused. The prosecution evidence is imbibed with many

embellishment and discrepancies. The prosecution evidence is found dearth of merit.

- 25. The prosecution has failed to prove it's case u/s 8 of POCSO Act against the accused beyond all reasonable doubt.
- 26. Held, the accused is not guilty u/s 8 of POCSO Act.
- 27. 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 August, 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 Mohar Ali

P.W-2 Basia Bibi

P.W-3 Anowar Ali Seikh

P.W-4 Jonab Ali

P.W-5 Halimon Nessa

P.W-6 'x'/ the victim

P.W-7 Anjuma Khatun

P.W-8 SI Bitu Marme

PROSECUTION EXHIBITS:-

Ext-1 Ejahar,

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

Ext-3 Sketch map,

Ext-4 Charge sheet

DEFENCE WITNESS:-

D.W-1 Deljan Bibi

D.W-2 Howa Bibi

D.W-3 Magar Ali Mondal

D.W-4 Aynal Hoque

D.W-5 Mokram Ali

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara