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

Present:- Shri J. Borah, AJS

Special Judge,

Bilasipara

# Special (POCSO) Case No- 04 of 2019

u/s 366(A)/376/506 Indian Penal Code & u/s 4 of Protection of Children from Sexual Offences Act

#### State of Assam

-Vs-

### Saiful Islam @ Ashra Ful Alom

..... accused person

Date of framing charge :- 26-02-2019

Date of recording evidence :- 12-03-2019

01-04-2019

02-05-2019

27-05-2019

28-06-2019

Date of Argument :- 19-07-2019

Date of Judgment :- 23-07-2019

# **Advocates Appeared:**

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

for the State of Assam

For the defence :- Smti. Sayeda Afroza Akhtar,

Ld. Advocate for the accused.

## **JUDGMENT**

- 1. This case is u/s 366(A)/376/506 Indian Penal Code, I.P.C in short and u/s 4 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 Sahinur Islam, the informant, lodged an ejahar with the Nayahat police out post on 06-11-2018 informing that 'x' is his sister. On 06-11-2018 at about 02.00 P.M 'x' was standing infront of their house. The accused Saiful Islam took 'x' away from there forcibly.

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

- 3. The Nayahat police out post received the ejahar vide GDE no. 96 dated 06-11-2018 and forwarded to the Bilasipara police station. The Bilasipara police station received the ejahar and registered vide Bilasipara police station case no. 1365/2018 u/s 365 I.P.C. The case was investigated and having found prima facie u/s 366(A)/376 I.P.C read with section 4 of POCSO Act against the accused Saiful Islam @ Ashraful Alom, prepared the charge sheet and laid the same before the court for trial.
- 4. The accused Saiful Islam @ Ashraful Alom, hereinafter called the accused, appeared in this case and he was furnished copy. Charge was framed u/s 366(A)/376/506 I.P.C and section 4 of POCSO Act. 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.	'x'/ the victim	PW-1
2.	Sahinur Islam	PW-2
3.	Nosimuddin	PW-3
4.	Dr. Aruna Saikia	PW-4
5.	Hashina Khatun	P.W-5
6.	Mafizul Rahman	P.W-6
7.	Dr. Laskar Ali	P.W-7
8.	Dipak Kr. Sarkar	P.W-8

- 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 06-11-2018 at about 02.00 P.M at village Barkanda under Bilasipara police station, kidnaped 'x', a minor girl aged about 15 years old from the road situated in front of the house of informant with intention that 'x' may be forced or seduced to illicit intercourse by accused or with other?
- ii. Whether accused on 06-11-2018 at about 02.00 P.M at village Barkanda under Bilasipara police station, committed criminal intimidation by threatening 'x' to kill her?
- iii. Whether accused after kidnapping 'x' on 06-11-2018 from village Barkanda situated under Bilasipara PS, committed rape on 'x'?
- iv. Whether accused after kidnapping 'x' on 06-11-2018 from village Barkanda situated under Bilasipara PS, committed penetrative sexual assault on 'x'?

### **DECISION AND REASONS THERE OF**

- 9. In this prosecution case P.W-1 'x' is the alleged victim, P.W-2 Sahinur Islam is the informant, P.W-3 Nosimuddin is the father of the informant, P.W-4 Dr. Aruna Saikia and P.W-7 Dr. Laskar Ali are Medical & Health Officer. P.W-5 Hashina Khatun and P.W-6 Mafizul Rahman are independent witnesses. P.W-8 Dipak Kr. Sarkar is the investigating officer.
- 10. Since, P.W-1 'x' is the alleged victim and P.W-2 Sahinur Islam is the informant, so, both are the prime witness in this case. Let us now go through the evidence of this two witnesses.
- 11. P.W-1 'x' has stated in her evidence that the informant Sahinur Islam is her brother and the accused is her maternal uncle. The occurrence took place 3/4 months ago (from the date of adducing her evidence on 12-03-2019). Her parent rebuked her as she did not read properly. So, she wanted to go to her grandmother's house at Goalpara. Accordingly she went to

Nayahat. She was waiting for bus at Nayahat bus stoppage. The accused met her there. He was also going to Goalpara. Both of them, accordingly, went to Goalpara. They reached the house of her grandmother and leaving her there, the accused went somewhere. When the accused got to know, ejahar was lodged against him, he took her to her parent's house and dropped her there. She gave her statement before the Magistrate, Ext-1 is the said statement, Ext-1(1) is her signature.

In her cross P.W-1 has stated that she did not tell her parents when she left for Goalpara. The accused did not take her forcibly. The accused did not do any evil act on her. She gave the statement Ext-1 under stress.

12. P.W-2 Sahinur Islam has stated in his evidence that he is the informant in this case. 'x' is his sister. The occurrence took place 3/4 months ago (from the date of adducing his evidence on 12-03-2019). His sister was missing. His sister was seen with the accused. His sister did not return to house. Accordingly, he lodged the ejahar Ext-2 against the accused, Ext-2 (1) is his signature.

In his cross P.W-2 has stated that due to misunderstanding, he lodged the ejahar against the accused.

13. Thus, meticulous scrutiny of evidences of P.W-1 'x' and P.W-2 Sahinur Islam it appears that both of them have adduced not incriminating the accused. According to P.W-1 'x', the accused did not force her to go with him nor he did any evil act on her. The accused and she herself went to her grandmother's house. When she left for Goalpara, she did not inform her parents and this led her brother to lodge the ejahar against the accused. It was only because of misunderstanding. Same is the evidence of P.W-2 Sahinur Islam. According to P.W-2, he lodged the ejahar due to misunderstanding. The accused did not took his sister forcibly and he did nothing against 'x'.

So, the evidence of P.W-1 and P.W-2 is not inculpatory against the accused.

14. Now, let us see the evidence of other witnesses.

P.W-3 Nosimuddin is the father of the 'x' who has stated in his evidence that he rebuked his daughter 'x' and she went to her grandmother's house at Goalpara. She went with the accused.

In his cross P.W-3 has stated that the accused is his brother-in-law. The ejahar was lodged due to misunderstanding.

- 15. P.W-5 Hashina Khatun has stated in her evidence that she knows nothing about the occurrence. Cross examination of P.W-5 was declined by the defence.
- 16. P.W-6 Mafizul Rahman has stated in his evidence that he got to know that 'x' was missing from her house. After a few days, she came back. On being asked, she told that she went to visit her relatives. Except this he knew nothing.

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

17. Thus, careful scrutiny of evidence of P.W-3, P.W-5 and P.W-6 shows that all the witnesses have adduced evidence not incriminating against the accused. P.W-3 Nosimuddin, who is the father of the victim has stated that due to misunderstanding, the ejahar was lodged against the accused. His daughter 'x' went to her grandmother's house. As she went without informing them. So, they lodged the ejahar on suspicion. So, the evidence of P.W-3 not inculpatory against the accused.

The evidence of P.W-5 is that she knows nothing about the occurrence. The evidence of PW-6 is that he got to know that x' was missing.

Thus, the evidence of P.W-3, P.W-5 and P.W-6 is found without merit. Such evidence will never meliorate the prosecution case.

- 18. The evidence of P.W-4 Dr. Aruna Saikia, the Medical & Health Officer shows that she found no sign of rape on 'x'.
- 19. The evidence of P.W-7 Dr. Laskar Ali, the Medical & Health Officer, shows that 'x' was between 16 to 17 years old at the time of occurrence.
- 20. P.W-8 Dipak Kr. Sarkar is the investigating officer. His evidence is mere official. The evidence of P.W-8 will not meliorate the prosecution case.
- 21. Taking above all into consideration, it leads to conclusion that the prosecution evidence is not sufficient to prove that the accused kidnapped 'x', 'x' was committed rape by accused or accused committed penetrative sexual assault on 'x'. The evidence of prosecution witnesses is not convincing to establish the offences as alleged against the accused. The prosecution case is found dearth of merit.

- 22. The prosecution, thereby, has failed to prove it's case u/s 366(A)/376/506 I.P.C and u/s 4 of POCSO Act against the accused beyond all reasonable doubt.
- 23. Held, the accused is not guilty u/s 366(A)/376/506 I.P.C and section 4 POCSO Act.
- 24. 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 23<sup>rd</sup> day of July, 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

#### **APPENDIX**

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

PW-1 'x'/ the victim

PW-2 Sahinur Islam

PW-3 Nosimuddin

PW-4 Dr. Aruna Saikia

P.W-5 Hashina Khatun

P.W-6 Mafizul Rahman

P.W-7 Dr. Laskar Ali

P.W-8 Dipak Kr. Sarkar

### **PROSECUTION EXHIBIT:-**

Ext-1 Statement of 'x'/the victim recorded u/s 164 Cr.P.C,

Ext-2 Ejahar,

Ext-3 Medical Examination report,

Ext-4 Medical Examination report,

Ext-5 Sketch map,

Ext-6 Seizure list,

Ext-7 Charge Sheet.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara