HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special (POCSO) Case No- 01 of 2019

u/s 4 of POCSO Act

STATE

Versus

Mohibul Hoque @ Mohibul Ali

S/O Lt. Keru Sk. R/O vill- Satber,

PS- Bilasipara, Dist- Dhubri, Assam

Accused person

(Corresponding to GR Case No- 589/18 (arising out of Bilasipara PS case no. 409/18) u/s 4 of POCSO Act)

Advocate appeared:-

For the state:- Mr. T. Kr. Bhattacharya, Special P.P.

For the accused:- Smt. Syeda Afroza Akhtar, Advocate.

Date of institution of the case :- 29-04-18

Date of Framing charge :- 24-01-19

Date of prosecution evidence :- 22-02-19,11-03-19

Statement of accused recorded on :- 28-03-19

Date of Argument :- 28-03-19

Judgment delivered :- 10-04-19

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that on 22-04-18 one Alima Bibi lodged written ejahar before O/C Bilasipara PS inter alia citing that on 27-04-18 at about 04.30 pm, accused Mohibul Hoque caught hold of her daughter 'Miss X' (named changed herein after read as 'Miss X') and thereafter gagging mouth of her daughter forcefully taken her to another house situated near to her house and then accused committed forceful sexual intercourse with her daughter 'Miss X'. Accused after committing forceful sexual intercourse on her daughter, threatened her daughter to finish her life if she disclosed the matter to anyone and finally her daughter 'Miss X' narrated about the whole incident to her on 28-04-18.

Investigation

2. Officer in charge Bilasipara PS, on receipt of ejahar from informant Alima Bibi registered a police case vide Bilasipara PS case no. 409/18 u/s 4 of POCSO Act and after registration of the case, SI Sanjoy Borgohain was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused Mahibul Hoque @ Ali u/s 4 of POCSO Act and cognizance taken.

Charge

3. After hearing learned counsel for both sides and perusal of material on record charge u/s 4 of POCSO Act was framed against the accused Mohibul Hoque @ Ali and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

<u>Trial</u>

4. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 5 number of witnesses and exhibited 3 nos. of documents. PW-1 Alima Bibi, PW-2 Miss X, PW-3 Ennus Ali, PW-4 Md. Mirajul Hoque and PW-5 Afruja Bibi. Ext-1 Ejahar, Ext-2 statement of PW-2 recorded u/s 164 Cr.P.C and Ext-3 Seizure list. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused

plea is denial, however declined to adduced evidence in support of the plea of denial.

5. **POINTS FOR DETERMINATION:-**

i) Whether accused on 27-04-18 at about 04.30 pm at Bilasipara W/N-06, under Bilasipara PS, committed penetrative sexual assault on informant's daughter Miss X?

ARGUMENT

6. I have heard ld. counsel for both sides. It has been argued by the ld. defence counsel that informant as well alleged victim of this case did not supported the prosecution case and from their evidence it is reveal that no such incident was took place as alleged in the ejahar and therefore accused entitled acquittal.

PROSECUTION EVIDENCE

- 7. PW-1 Alima Bibi is the informant of the case. She deposed on the day of incident one family function was going on at her house and at that time she had altercation with accused and as there was alteration she lodged case against the accused vide Ext-1. **In cross** she stated she is an illiterate person and ejahar was written by one mohori. She stated accused did not commit sexual assault upon her daughter.
- 8. PW-2 'Miss X' is alleged victim girl of the case. She deposed informant is her mother and after lodging of ejahar by her mother, police recorded her statement and produced her before the court and she made statement before the court. She deposed Ext-2 is her statement recorded by Ld. Magistrate and Ext-2(1) and 2(2) are her signatures but presently she cannot recollect what statement she made earlier before the Magistrate. **In cross** she stated no incident was took place with her as alleged by her mother.
- 9. Evidence of PW-3 Ennus Ali is that informant is his wife, 'Miss X' is his daughter and he knows accused person. After coming home, he got to know that there was kechal took place at his house between his wife and accused and his wife lodged ejahar. He further deposed the signature present on Ext-3 is his

signature but he does not know why police took his signature. Defence declined to cross examine PW-3.

- 10. Evidence of PW-4 Md. Mirajul Hoque is that he has no knowledge why Alima Bibi lodged ejahar. He did not hear any incident and Alima and 'Miss X' did not report him any incident. Defence declined to cross examine PW-4.
- 11. PW-5 Afruja Bibi deposed on the day of incident hearing hue and cry she came out from her house and she noticed accused and informant quarrelling each other on the village road. Defence declined to cross examine PW-5.

DISCUSSION, DECISION & REASON THERE OF:-

- 12. Prosecution allegation leveled against accused Mohibul Hoque is that on 27-04-18 at about 04.30 pm at Bilasipara W/N-06, under Bilasipara PS, committed penetrative sexual assault on informant's daughter Miss X.
- 13. Admittedly in the case in hand, alleged victim girl is aged about 12 years and she is under the age of 18 years. Now, let me scrutinized the material and evidence on record to find out whether evidence on record able to establish prosecution charges of penetrative sexual assault on 'Miss X' by accused Mohibul Hogue or not.
- 14. PW-1 is the informant of the case. PW-1 in her ejahar alleged that on 27-04-18 at about 04.30 pm, accused Mohibul Hoque caught hold of her daughter and thereafter gagging mouth of her daughter forcefully taken her to another house situated near to her house and then accused committed forceful sexual intercourse with her daughter and accused after committing forceful sexual intercourse on her daughter, threatened her daughter to finish her life if she disclosed the matter to anyone.
- 15. PW-1 while adducing her evidence before the court stated on the day of incident one family function was going on at her house and at that time she had altercation with accused and as there was alteration she lodged case against the accused.
- 16. From the evidence of PW-1 it is seen that she subsequently changed her statement and bring different story before the court. Evidence of PW-1 made before the court did not substantiate her statement which PW-1 made in her ejahar. PW-1 while adducing before the court, she did not state that on the

day of incident accused had committed penetrative sexual assault on her daughter 'Miss X'. Thus seen that PW-1 informant of the case did not support the prosecution case and she totally overturn the prosecution case.

- 17. PW-2 is alleged victim girl of this case. Evidence of PW-2 is that she does not know accused Mohibul Hoque and her mother lodged one case and in connection with said case, police recorded her statement, produced her before the Magistrate and she made statement before the Magistrate. Cross of PW-2 is that no incident was took place with her as alleged by her mother in the ejahar. From scrutiny of evidence of PW-2, alleged victim girl, it is seen that she did not made any statement against the accused Mohibul Hoque. While adducing her evidence before the court, PW-2 did not made state that it is the accused Mohibul Hoque who had committed penetrative sexual assault on her. Cross of PW-2 pointed no incident took place with her as alleged in the ejahar. PW-2 in her in chief further stated she cannot recollect what statement she made earlier before the Ld. Magistrate. Thus seen PW-2 does not substantiate her earlier statement made before the Ld. Magistrate and inconsistency found in the statement of PW-2 and therefore prosecution exhibited document Ext-2 cannot be acted upon in absence of corroboration from the statement of PW-2.
- 18. PW-3 is the husband of informant and father of the alleged victim girl. His evidence is only confined to the fact that one (kechal) altercation took place in between accused and his wife and his wife lodged ejahar against the accused. Evidence of PW-5 also pointed taking place quarrelling in between accused and informant. PW-3 and PW-3 except stating taking place of quarrelling in between accused and informant did not stated anything against the accused Mohibul Hoque. They did not state before court that accused Mohibul Hoque had committed penetrative sexual assault on PW-2. Thus, shown their evidence say good bye to the prosecution case and their evidence bring different story that goes in favour of the accused person.
- 19. Evidence of PW-4 is that he has no knowledge why Alima Bibi lodged ejahar. Thus, evidence of PW-4 pointed total ignorance about the incident and his evidence also not help the prosecution case.
- 20. From the scrutiny of entire evidence on record, I find that prosecution failed to bring home a single material against the accused that on the day of

incident accused committed forceful penetrative sexual assault on PW-2. In the instant case PW-1 informant of the case did not supported her statement made in the ejahar and before the court she changes her statement and her statement before the court totally overturn the prosecution case. PW-2, the alleged victim girl also resile from her earlier statement and she made different story before the court which makes her statement u/s 164 Cr.P.C not believable beyond all reasonable doubt. More so statement of her father i.e PW-3 and PW-5 bring totally different story before the court that goes against the prosecution and I come to my definite judicious finding that prosecution failed to bring home single ingredient of section 3 of POCSO Act against the accused Mohibul Hoque.

- 21. Therefore, in view of my discussion, and on scrutiny of the entire evidence on record, I come to my definite finding that prosecution miserably failed to bring home charge u/s 4 of POCSO Act against the accused Mohibul Hoque @ Mohibul Ali. Accordingly accused Mohibul Hoque @ Mohibul Ali is acquitted from the charge of section 4 of POCSO Act and is set at liberty.
- 22. Bail bond of accused person shall remain stands for next six (6) months u/s 437(A) Cr.P.C.
- 23. Given under hand and seal of this Court on this 10th day of April, 2019 at Bilasipara, Dist- Dhubri.

(Smti S. Bhuyan)

Special Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan) Special Judge, Bilasipara

Typed by, Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

PW-1 Alima Bibi,

PW-2 Miss X,

PW-3 Ennus Ali,

PW-4 Md. Mirajul Hoque and

PW-5 Afruja Bibi.

PROSECUTION EXHIBIT:-

Ext-1 Ejahar,

Ext-2 Statement of PW-2 recorded u/s 164 Cr.P.C and

Ext-3 Seizure list

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Special Judge, Bilasipara