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

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

Special Judge,

Bilasipara

## Special (POCSO) Case No- 08 of 2019

u/s 120(B) Indian Penal Code & u/s 4 of Protection of Children from Sexual Offences Act

# **State of Assam**

-Vs-

## 1. Habibar Rahman @Habi

#### 2. Alomara Bibi

..... accused persons

Date of framing charge :- 08-05-2019

Date of recording evidence :- 09-08-2019

09-09-2019

Date of Argument :- 20-09-2019

Date of Judgment :- 20-09-2019

### **Advocates Appeared:**

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

for the State of Assam

For the defence :- Smti Mehnaz Begum,

Ld. Advocate for the defence.

### **JUDGMENT**

1. This case is u/s 120(B) Indian Penal Code and 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 as 'x'.

2. The prosecution case, in brief, is that Smti Bakul Bala Barman lodged an ejahar with the Bilasipara police station on 03-08-2018 informing that 'x' is niece of the informant. On 03-08-2018 at 04.00 P.M, the informant with her niece 'x' went to the house of Siddiqul Hussain. The informant kept her niece at the house of Siddique Hussain and she left for village Surjyakhata Pt. I. Taking the advantage of absence of the informant, the accused committed sexual intercourse with 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. 916/2018 u/s 120(B)/376 Indian Penal Code and section 4 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie u/s 120(B)/376 Indian Penal Code and section 4 of Protection of children from Sexual Offences Act against the accused Habibar Rahman @ Habi and 120(B)/114 I.P.C against the accused Alomara Bibi @ Babli, laid the charge sheet before the court for trial.
- 4. The accused Habibar Rahman @ Habi and Alomara Bibi, hereinafter called the accused persons, appeared in this court. Copy was furnished to the accused persons. Charge was framed u/s 120(B) of Indian Penal Code, I.P.C in short, against the accused Alomara Bibi and u/s 4 of Protection of Children from Sexual Offences Act against the accused Habibar Rahman @ Habi. The Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused persons, examined 4 (four) witnesses, namely-

Smti. Bakul Bala Barman P.W-1
'x'/ the victim P.W-2
Smti. Bhanumati Paul P.W-3
Smti. Anita Nath P.W-4

- 6. The accused persons were examined u/s 313 Cr.P.C and their statements were recorded where they denied all allegations levelled against them in the evidence adduced by the prosecution and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

### POINTS FOR DETERMINATION

8.

- i. Whether accused Habibar Rahman @ Habi on 03-08-2018 at about 04.00 P.M at Bilasipara W/N-04 under Bilasipara police station, committed penetrative sexual assault on 'x', a minor girl and thereby committed offence u/s 4 of POCSO Act?
- ii. Whether accused Alomara Bibi on 03-08-2018 at about 04.00 P.M at Bilasipara W/N-04 under Bilasipara police station, agreed with accused Habibar Rahman @ Habi to do penetrative sexual assault on 'x', a minor girl by accused Habibar Rahman @ Habi and hatched conspiracy to commit the said offence and thereby committed offence u/s 120(B) I.P.C?

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

- 9. In this prosecution case P.W-1 Smti. Bakul Bala Barman is the informant, P.W-3 Smti. Bhanumati Paul and P.W-4 Smti. Anita Nath are independent witnesses. P.W-2 'x' is the alleged victim.
- 10. Since P.W-1 Smti Bakul Bala Barman is the informant and P.W-2 'x' is the alleged victim, so they are the prime witnesses in this case. Let's see the evidence of this witnesses at first.

P.W-1 Smti. Bakul Bala Barman has stated in her evidence that she is the informant in this case. She along with her niece 'x' went to the house of accused 'Babli' (Alomara Bibi). Babli is one of the members of Asha group. She sought for money from Babli. But the accused Babli wanted to assault her. She was angry with the accused and out of wrath she lodged the ejahar against the accused, Ext-1 is the ejahar, Ext-1(1) is her signature.

In her cross P.W-1 has stated that she asked the ejahar writer to write against the accused Babli (Alomara Bibi). The ejahar was not read over to her.

P.W-2 'x' has stated in her evidence that she knows the informant Bakul Bala Nath and the accused Babli (Alomara Bibi). There was altercation between the informant Bakul Bala Nath and the accused Babli (Alomara Bibi). The informant lodged ejahar against the accused persons. Accused Habibar Rahman did not commit sexual intercourse on her. She gave her statement before the Magistrate, Ext-2 is the said statement and Ext-2(1)(2)

are her signatures. The police seized some papers, she signed in the seizure list, Ext-3 is the said seizure list and Ext-3(1) is her signature.

In cross examination P.W-2 has stated that she gave her statement Ext-2 as taught by her aunt, the informant.

- 11. Thus, careful scrutiny of evidence of P.W-1 and P.W-2 shows that P.W-1 being informant has adduced evidence not incriminating the accused persons. She has only stated that she had altercation with Alomara Bibi and when the accused Alomara Bibi wanted to assault her physically, she was angry with the accused and out of such wrath she lodged the ejahar Ext-1 against the accused. P.W-1 has plainly stated in her evidence that she lodged the ejahar against the accused Babli, not against the other accused. She does not know the other accused. There is no evidence adduced by P.W-1 that the accused Habibar Rahman committed sexual intercourse on 'x'. But in the ejahar P.W-1 scribed that the accused Habibar Rahman committed sexual intercourse on 'x'. So, there is distinct gulf between the previous statement of P.W-1 and her evidence adduced before this court. Such contradiction may affect the prosecution case.
- 12. The evidence of P.W-2 'x' shows that there is not a single word uttered by her that the accused committed sexual intercourse on her. She knew that there was altercation between the accused Babli (Alomara Bibi) and the informant. Except this she knows nothing. She sternly denied to commit rape on her by the accused.
- 13. Thus, the evidence of P.W-1 and P.W-2 is not inculpatory against the accused persons. There is no evidence adduced by P.W-1 and P.W-2 that the accused Babli (Alomara Bibi) conspired anything or the accused Habibar Rahman committed sexual intercourse on 'x'.
- 14. Now let's see the evidence of other witnesses.

P.W-3 Smti. Bhanumati Paul has stated in her evidence that she knows the informant. But she does not know the accused persons. She knows nothing about the occurrence.

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

15. P.W-4 Anita Nath has stated in her evidence that she knows the informant and the accused Babli (Alomara Bibi). The accused Babli was one of the members of self-help group. The informant Bakul Bala Barman sought

money from the accused Babli and at such there was altercation between two. Except this she knew nothing.

- 16. Thus, scrutiny of evidence of P.W-3 and P.W-4 shows that both are independent witnesses. But both of them have adduced evidence not incriminating the accused persons. P.W-3 has clearly stated that she knows nothing about the occurrence. P.W-4 has stated that there was altercation between the informant and the accused Babli. There is no evidence adduced by P.W-3 and P.W-4 that the accused Habibar Rahman committed sexual intercourse on 'x'. The evidence of P.W-3 and P.W-4 has not implicated the accused.
- 17. Taking all into consideration, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offences as alleged against the accused persons. The prosecution evidence is found dearth of merit.
- 18. The prosecution has failed to prove it's case u/s 120(B) I.P.C and section 4 of POCSO Act against the accused persons beyond all reasonable doubt.
- 19. Held, accused Habibar Rahman not guilty u/s 4 of POCSO Act and accused Alomara Bibi not guilty u/s 120(B) I.P.C.
- 20. Accordingly, the accused persons are acquitted and set at liberty.

Bail bonds of accused persons stand cancelled and their bailor(s) is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 20<sup>th</sup> 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 Smti. Bakul Bala Barman

P.W-2 'x'/ the victim

P.W-3 Smti. Bhanumati Paul

P.W-4 Smti. Anita Nath

### **PROSECUTION EXHIBITS:-**

Ext-1 Ejahar,

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

Ext-3 Seizure list.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara