

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

Present:- Shri J. Borah, A.J.S
Special Judge,
Bilasipara.

Special (POCSO) Case No- 25 of 2019

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

State of Assam

-Vs-

Majnu Ali

..... **accused person**

Date of framing charge :- 27-01-2020
Date of recording evidence :- 14-02-2020
06-03-2020
10-09-2020
Date of Argument :- 30-09-2020
Date of Judgment :- 30-09-2020

Advocates Appeared:

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P
for the State of Assam.
For the defence :- Mr. Amiya Kr. Nath,
Ld. Advocate for the defence.

J U D G M E N T

1. This case is under section 8 of Protection of Children from Sexual Offences Act. So, the name of the victim is not mentioned and she is, hereinafter, referred to 'x'.

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2. The prosecution case, in brief, is that Suren Nath, the informant lodged an ezahar with the Bilasipara police station on 05-08-2019 informing that 'x' is the daughter of the informant. 'x' was 15 years old. On 05-08-2019 at about 06.00 A.M, 'x' went to a temple named Paglababa Mandir, situated at Gopigaon. After visiting the temple, 'x' returned to her house. On her way, the accused Majnu Ali wrongfully restraint her and caught her hand. The said accused also attempted to commit rape on her. 'x' escaped herself from the clutch of the accused and ran away.

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

3. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 799/2019 under section 8 of Protection of Children from Sexual Offences Act. The Bilasipara police station also investigated the case and having found prima facie under section 8 of Protection of Children from Sexual Offences Act against the accused Majnu Ali, laid the charge sheet before the court for trial.

4. The accused Majnu Ali, hereinafter called the accused, appeared in this case. He was furnished copy. Charge was framed under section 8 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. Suren Nath	P.W-1
2. Smti Purnima Nath	P.W-2
3. Shravani Nath	P.W-3
4. 'x'/the victim	P.W-4
5. Priya Nath	P.W-5
6. Ujala Nath	P.W-6
7. Prahalad Das	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 05-08-2019 at about 06.30 A.M at village Gopigaon under Sapatgram police station, committed sexual assault on 'x' , aged about 15 years old by touching on her hands and shoulder forcefully and thereby committed offence u/s 8 of POCSO Act?

DECISION AND REASONS THERE OF

9. In this prosecution case P.W-1 Suren Nath is the informant, P.W-4 'x' is the victim, P.W-2 Smti Purnima Nath, P.W-3 Shravani Nath, P.W-5 Priya Nath and P.W-6 Ujala Nath are independent witnesses. P.W-7 Prahalad Das is the investigating officer.

Since P.W-1 Suren Nath is the informant and P.W-4 'x' is the alleged victim, so, both are vital witnesses in this prosecution case.

10. P.W-1 Suren Nath has stated in his evidence that he is the informant in this case. He lodged the ezahar against the accused. 'x' is his daughter, she is 15/16 years old. On the day of occurrence, his daughter 'x' went outside his house for walk and someone caught hand of 'x'. She then informed him about the occurrence. Accordingly, he lodged the ezahar. He gave thumb impression on the ezahar.

In his cross P.W-1 has stated that he does not know the accused. He did not see the occurrence. He denied that nobody caught the hand of his daughter.

11. P.W-4 'x' has stated in her evidence that the informant is her father. She does not know the accused. The occurrence took place one year ago. The occurrence took place at Saltara road. On the day of occurrence she with her friends were coming from Paglababa temple. On their way, when they reached Saltara road, one boy caught her hand. She asked the boy to leave her hand. When he left her hand, she had gone away. She informed her father about the occurrence. Her father lodged the ezahar. She gave her statement before the magistrate, Ext-1 is the said statement, Ext-1(1)(2) are her signatures.

In her cross P.W-4 has stated that she does know the accused. The accused did not catch her hand. The accused did not do anything to her.

12. Thus, minute scrutiny of evidence of P.W-1 and P.W-4 shows that P.W-1 being the informant lodged the ezahar on the information given to him by his daughter P.W-4 'x'. P.W-1 did not see the occurrence. So, whole thing depends on P.W-4 'x', the alleged victim. P.W-4 'x' who has stated in her evidence in chief that one boy caught her hand while she was on her way to house from Pagla Baba Mandir. But in her cross examination she sternly denied to catch her hand by the accused. So, the evidence of P.W-4 is ascertained. She has not stated firmly that the accused caught her hand. So, the evidence of P.W-4 is confusing. Such evidence cannot be accepted into confidence.

13. Now, let see the evidence of P.W-2, P.W-3, P.W-5 and P.W-6, the independent witnesses.

P.W-2 Smti Purnima Nath has stated in her evidence that the occurrence took place one year ago. On the day of occurrence, when they were coming from Pagla Baba Mandir, they saw a boy and then they ran away. Except this there had happed nothing.

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

P.W-3 Shravani Nath has stated in her evidence that she knows the informant and 'x' the victim. She knows nothing about the incident.

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

P.W-5 Priya Nath and P.W-6 Ujala Nath has also stated in their respective evidence that they knows nothing about the occurrence. Cross examination of P.W-5 and P.W-6 were declined by the defence.

Thus, the evidence of P.W-2 shows that on the day of occurrence when they were coming from Pagla Baba Mandir, they saw a boy and seeing him, they ran away. Evidence of P.W-2 further shows that except above mentioned incident, nothing had happened with them. Thus the evidence of P.W-2 is not incriminating against the accused.

The other witnesses namely P.W-3, P.W-5 and P.W-6 have stated their ignorance about the occurrence. So, their evidence has got little value.

14. P.W-7 Prahalad Das is the investigating officer. He investigated the case and at the end of investigation he submitted charge sheet Ext-3 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.

15. Taking all into consideration, it leads to conclusion that the evidence as projected by the prosecution is not sufficient and satisfactory to prove the offences as alleged against the accused. The prosecution case is dearth of merit.

16. The prosecution, thereby, has failed to prove it's case u/s 8 of POCSO Act against the accused beyond all reasonable doubt.

17. Held, the accused is not guilty u/s 8 of POCSO Act.

18. Accordingly, the accused is acquitted and set at liberty.

The bail bond 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 30th day of September, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,
S. Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

P.W-1 Suren Nath

P.W-2 Smti Purnima Nath

P.W-3 Shravani Nath

P.W-4 'x'/the victim

P.W-5 Priya Nath

P.W-6 Ujala Nath

P.W-7 Prahalad Das

PROSECUTION EXHIBITS:-

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

Ext-2 Sketch Map &

Ext-3 Charge sheet.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara