



DISTRICT- BAKSA

**IN THE COURT OF ADDL. DIST. & SESSIONS JUDGE -CUM- SPECIAL
JUDGE FOR TRIAL OF POCSO CASES, BAKSA, MUSHALPUR**

**Present- Smti. M.C. Bordoloi, M.A., L.L.B., (A.J.S.),
Special Judge (POCSO),
Baksa, Mughalpur**

**Spl. POCSO Case No. 37/2019
u/s 4 of the POCSO Act 2012.**

**State of Assam
Vs
Jamir Ali.....Accused**


Appearance:

Tapan Swargiary.....Spl. Public Prosecutor for the State
A.M. Choudhury.....Advocate for the accused

Date of charge: 04-09-2019
Date of Evidence: 20-01-2021
Statement recorded on: 20-01-2021
Date of Argument: 20-01-2021
Date of Judgment: 21-01-2021

Judgment

1. Prosecutrix/victim lodged an 'ejahar' with the Nagrijulli out post on 04-01-2018 alleging inter-alia that her neighbour Hasna Begum on the fateful day proposed for an outing to 'Ras Mela' and accordingly at about 9 pm when they were on their way to their destination, the accused Jamir Ali being the brother-in-law of Hasna Begum intercepted them and dragged the prosecutrix to a nearby jungle and committed rape on her person and when she raised cries of alarms, the said neighbour comforted her and assured her of marriage with the accused. It is also alleged, that accused


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again on another occasion raped the prosecutrix, consequent to which she became pregnant with child and that accused eventually went back on his assurance to marry the prosecutrix. Hence the ejahar.

2. Upon receipt of the 'ejahar', an entry in the out post's General Diary vide GD entry No. 51 dated 04-01-18 was made and thereafter the 'ejahar' was forwarded to Tamulpur police station for registration of a case under proper section of law. The then officer-in-charge of Tamulpur police station accordingly registered a case vide Tamulpur P.S. Case No. 06/2018 u/s 376/493 IPC and during investigation when the offence was found to have occurred within the jurisdiction of Goreswar Police Station, 'ejahar' was received at Goreswar police station and accordingly Goreswar P.S. Case No. 26/18 u/s 376/493 IPC was registered and investigated into.

3. Upon completion of investigation, charge sheet vide no. 42/2019 dated 29-07-2019 u/s 376/493 IPC against accused Jamir Ali was laid before the Ld. CJM, Baksa, Muzhalpur who having secured the attendance of the accused in Court, serviced copies of the material documents of the case to the accused in compliance of the provisions of section 207 CrPC and having found that the case was one exclusively triable by the Court of Sessions vide order dated 08-08-19 committed the case record to the court of Hon'ble Dist & Sessions Judge cum Special Judge(POCSO), Baksa with due notice to the Ld. P.P., Baksa.

4. The then Hon'ble Sessions Judge, Baksa upon receipt of the case record on commitment, took cognizance of the offence and secured the attendance of the accused from judicial custody in Court the accused being under detention then and having heard the submissions of the Id. counsels for both sides on the point of charge and finding prima-facie materials u/s 4 of the POCSO Act 2012, vide order dated 04-09-2019, framed a formal charge u/s 4 of the POCSO Act against accused Jamir Ali. The accused pleaded not guilty to the charge and claimed trial.

5. It deserves mention herein that this Court being designated as a Special Court for trial of POCSO Cases vide Hon'ble Gauhati High Court's notification dated 02-01-2020, the then Hon'ble Sessions Judge, Baksa


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transferred the case record to this Court for trial and disposal and accordingly trial proceeded in the instant court.

6. The prosecution in order to prove its case examined 1 no. of witness. The prosecution witness was cross examined by the defence side.

7. The statement of the accused person u/s 313 CrPC was recorded. The accused denied having committed any offence as alleged, and declined to adduce defence evidence. Accordingly DW evidence stood closed.

8. The defence plea is that of total denial of guilt.

9. Arguments

9.(i) Heard the arguments forwarded by the Id. Counsels of both sides. Ld. Spl. P.P., Baksa submits that Court shall pass appropriate judgment after scrutinizing the materials available in the case record.


9.(ii). Ld. Defence counsel submits that instant case is a no evidence case and the accused person deserves clean acquittal. Ld. Counsel prays that the accused may be acquitted.

9.(iii). I have given my anxious consideration to the arguments forwarded. I have also perused the case record in its entirety.

10. The point for determination that has arisen in the instant case is:-

10(i). **Point for determination:**

(a) Whether in the month of November, 2017 at about 9 p.m. at village Ambarishnagar under Gobardhana P.S., Dist- Baksa, accused committed penetrative sexual assault on the prosecutrix/victim and thereby committed offence punishable u/s 4 of POCSO Act 2012?


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11. My decision on the aforesaid point for determination along with reasons is given herein under:-

12. **Discussion decision and reasons there for**

12.(i). To address the aforesaid point for determination it will be worthwhile to peruse the evidence available on record and I proceed to do so.

13. PW1 the prosecutrix/victim in her evidence stated that she was in a love relationship with the accused at the relevant time and that the parents of the accused did not approve of their relationship and that accused also subsequently refused to marry her for which she lodged the 'ejahar' against the accused feeling cheated. PW1 exhibited the 'ejahar' as Ext. 1 and her signature thereon as Ext. 1(1). PW1 also identified her statement recorded in Court as Ext. 2 and her signatures thereon as Ext. 2(1) and Ext. 2(2), her medical examination report as Ext. 3 and her signature thereon as Ext. 3(1).


13.(i). In her cross examination, PW1 clarified that, presently accused have married her and they have been leading happy conjugal life for over a year. She also stated that accused may be acquitted as he is not at fault.

14. This in nutshell is the evidence available on record.

15. Perusal of the evidence of the victim/prosecutrix on record discloses that she had not even made a whisper that accused sexually assaulted or violated her in any manner. Rather she disclosed that she had lodged the 'ejahar' as accused backed out on his promise to marry her. Victim's medical report being Ext. 3 is also not indicative of any sexual violation. The victim/prosecutrix being married to the accused rejected the prosecution case in toto. Ingredients of section 4 of the POCSO Act does not find attraction herein and charge brought about by prosecution against the accused do not find a footing.

16. In the above premises, I am constrained to hold that prosecution case fails and accused deserves acquittal.

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17. The points for determination stands answered accordingly in favour of the accused.

18. **Victim Compensation:-**

In the fact and circumstances of the case compensation to the victim does not find justification. Hence no compensation is awarded to the victim.

19. **Order**

In the light of the above discussions, accused Jamir Ali is acquitted of the charge u/s 4 of the POCSO Act 2012 in the instant case and set at liberty forthwith.

Bail bond for the accused shall remain in force for a period of six months from today in view of the provisions of section 437-A CrPC.

A copy of the judgment be sent to the District Magistrate Baksa in view of the requirement of section 365 CrPC.

Given under my hand and seal of this Court on the 21st day of January, 2021.

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21/1/2021

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21/1/2021
(Smti. M.C. Bordoloi)
Special Judge (POCSO)
Baksa, Muzharpur

Dictated and corrected by me

[Handwritten signature: Bordoloi]
21/1/2021
(Smti. M.C. Bordoloi)
Special Judge (POCSO)
Baksa, Muzharpur

**APPENDIX****Prosecution witnesses:**

PW1	victim(name withheld)
PW2	Jamal Uddin

Documents Exhibited by Prosecution:

Ext.1	Statement recorded u/s 164 CrPC.
Ext. 1(1), Ext. 1(2) and Ext. 1(3)	Signatures of victim
Ext.2	Medical examination report of victim
Ext. 2(1 and Ext. 2(2))	Signatures of victim

Defence witnesses: Nil.**Material exhibits:** Nil.**Court witnesses:** Nil.

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Bordoloi
(Smti. M.C. Bordoloi) 21/1/2021
Special Judge (POCSO)
Baksa, Muzhalpur