



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, Mushalpur**

**Spl. POCSO Case No. 06/2020
u/s 366/376 IPC r/w section 4 of the POCSO Act 2012.**

**State of Assam
Vs
Debajit Biswas.....Accused**

Appearance:

Tapan Swargiary.....Spl. Public Prosecutor for the State
Tridib Sarma.....Advocate for the accused

Date of charge: 06-02-2020
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. One Narami Munda, resident of 2 No. Dongargaon, under Tamulpur P.S. Dist- Baksa lodged an 'ejahar' with the Nagrijuli out post on 05-02-2019 alleging inter-alia that since 27-01-2019 her minor daughter (name withheld) went missing from the house and that subsequently she could learn that accused Debajit Biswas @ Das with a promise to marry her victim daughter enticed her and took her out to some other state and confined her in such place. Hence the 'ejahar'.


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2. Upon receipt of the 'ejahar', an entry in the out post's General Diary vide GD entry No. 68 dated 05-02-19 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. 48/2019 u/s 366/493 IPC and caused investigation of the case.

3. Upon completion of investigation, charge sheet vide no. 210/2019 dated 30-07-2019 u/s 366/493 IPC against accused Debajit Biswas @ Das was laid before the Ld. CJM, Baksa, Mughalpur who made over the case to Ld. Addl. CJM, Baksa, Mughalpur who in turn having secured the attendance of the accused in Court from judicial custody, the accused being in detention then, 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 07-09-19 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.

3(i). 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 and having heard the submissions of the Id. counsels for both sides on the point of charge and finding prima-facie materials u/s 366/376 IPC, vide order dated 17-09-2019, framed a formal charge u/s 366/376 IPC against accused Debajit Biswas @ Das. The accused pleaded not guilty to the charge and claimed trial.

3(ii). It deserves mention herein that the Hon'ble Sessions Judge, Baksa vide order dated 06-02-2020 having found that the case is one falling within the purview of the POCSO Act, directed registration of a Special POCSO Case and transferred the case record to the instant Court for disposal, this Court being the designated Court for trial of POCSO Cases, notified vide Gauhati High Court notification dated 02-01-2020.


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3(iii). Upon receipt of the case record in the instant Court, in view of the aforesaid order of the Hon'ble Sessions Judge, Baksa, both sides were heard on the point of charge and having found prima-facie materials u/s 366/376 IPC r/w section 4 of POCSO Act, charge was altered and charge u/s 366/376 IPC r/w section 4 of POCSO Act was framed against accused Debajit Biswas @ Das vide order dated 06-02-2020.

4. The accused pleaded not guilty to the altered charge and claimed trial.

5. The prosecution in order to prove its case, examined 2 nos. of witnesses. The defence side declined to cross-examine the prosecution witnesses.

6. 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.

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

8. **Arguments**

8(i) Heard the arguments forwarded by the Id. Counsels of both sides. Ld. Special Public Prosecutor, Baksa submits that Court shall pass appropriate judgment after scrutinizing the available materials in its entirety.

8(ii). Ld. Defence counsel T. Sarma submits that instant case is no evidence case and the accused person deserves clean acquittal. Ld. Counsel points out that the victim herself gave a goodbye to the prosecution case, she completely negating the occurrence of any offence as alleged and instead averring that she went with the accused on her own will, in search of livelihood. Ld. Counsel submits that the accused may be acquitted.

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


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9. The points for determination that have arisen in the instant case are:-

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

- (a) *Whether on 27-01-2019 accused at village 2 No. Dongargaon under Tamulpur P.S., Dist- Baksa kidnapped the victim girl to go from her home with intent that the victim may be forced or seduced to illicit intercourse against her will?*
- (b) *Whether the accused committed rape on the person of the victim girl?*
- (c) *Whether the accused committed penetrative sexual assault on the victim girl while she was in his company?*

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

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

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

12. PW1-the informant in her evidence stated that the occurrence took place about 2 years ago and that on the fateful day when her victim daughter went missing and could not be found despite search, she lodged the 'ejahar' with the Nagrijuli O.P. and that subsequently people recovered her daughter and brought her back to their house. PW1 added that she did not know that her daughter eloped on her own from her house and lodged the case due to misunderstanding of facts.

13. PW2-the victim in his evidence stated that on the fateful day she went with the accused for the purpose of earning a livelihood as it had become difficult to run their family, her parents being poor. PW2 clarified that she did not inform her parents before leaving home and due to pressure from her co-villagers her mother lodged the case against the accused. She also stated that the accused did not force her to accompany him and that she went with him on her own to save her family. She also


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made it clear that the accused did not misbehave with her or did any bad act on her while she was with him. PW2 exhibited her statement recorded u/s 164 CrPC as Ext. 1, her signatures thereon as Ext. 1(1) and Ext. 1(2). PW2 also stated that she loved the accused and so she went with him for work.


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

15. Minority of the victim is not under challenge in the instant case. Therefore there is no hesitation in holding that victim is a 'child' within the meaning of Section 2 (d) of the POCSO Act.

16. Perusal of the evidence on record discloses that PW2/victim has testified that she at the relevant time on her own discretion went with the accused in search of livelihood without informing her guardian. Victim also clarified that accused had not kidnapped her against her will. The accused's act of allowing the minor victim to accompany him cannot be construed to be an act of his 'taking away' the victim, more so when evidence is silent that he had played an active role in the formation of opinion in the mind of the minor victim that she should go with him in search of livelihood.

17. Evidence is also silent in respect of the accused persuading or soliciting the victim girl at some earlier stage to leave the house of her guardian. The admission of the victim girl that she loved the accused and went with him indicates that she had trust in him and for that she went with him. Accused cannot be said to have induced the minor victim to slip out of the keeping of her guardian. The accused in the above premises cannot be held guilty of kidnapping or taking away the victim girl from lawful guardianship.

18. Now it is required to be seen whether the victim child was raped or subjected to sexual violation as alleged. Further perusal of the evidence on record discloses that victim in her evidence did not even make a whisper that accused sexually assaulted or violated her in any manner. Ext. 2 that is the victim's medical examination report also is not indicative of the victim's sexual violation. Again PW1, the informant making a sharp departure from the 'ejahar' lodged by her disclosed that she had lodged the same due to


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misunderstanding of facts when infact the victim girl had on her own consent and will left her house with the accused. In fact both PW1 and PW2 set the prosecution case at naught. Accordingly accused cannot be held guilty of commission of alleged rape or penetrative sexual assault on the victim girl.

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

20. The points for determination stands answered in the negative accordingly, in favour of the accused.

21. **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.

22. **Order**

In the light of the above discussions, accused Debajit Biswas @ Das is acquitted of the charge u/s 366/376 IPC r/w section 4 of the POCSO Act 2012 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.

Bordoloi
 (Smti. M.C. Bordoloi)
 Special Judge (POCSO)
 Baksa, Muzhalpur

Dictated and corrected by me

Bordoloi
 (Smti. M.C. Bordoloi)
 Special Judge (POCSO)
 Baksa, Muzhalpur

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APPENDIX

Prosecution witnesses:

PW1	Narami Munda
PW2	Victim(name withheld)

Documents Exhibited by Prosecution:

Ext.1	Statement recorded u/s 164 CrPC.
Ext. 1(1) and Ext. 1(2)	Signatures of victim

Defence witnesses: Nil.

Material exhibits: Nil.

Court witnesses: Nil.

[Signature]
21/1/2021
Special Judge (POCSO)
Baksa, Muzhalpur

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