



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. 120/2018
u/s 4 of the POCSO Act 2012.**

**State of Assam
Vs
Firoz Ahmed.....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: 22-01-2021
Statement recorded on: 22-01-2021
Date of Argument: 22-01-2021
Date of Judgment: 25-01-2021

Judgment

1. Prosecutrix/victim lodged an 'ejahar' with the Suagpur out post alleging inter-alia that she had been in a love relationship with the accused since 6 months prior to the lodging of the 'ejahar' and that on 15-08-2014 accused being her teacher called her to attend tuitions and taking advantage of the absence of the other students at the tuition class, he caught her in an embrace and having gagged her mouth, raped her against her will and thereafter sent her back to her house. It is also alleged that the act of the accused was witnessed by some co-villagers, whereupon a village meeting (bichaar) was convened without any result. 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. 288 dated 16-08-14 was made and thereafter the 'ejahar' was forwarded to Goreswar police station for registration of a case under proper section of law. The then officer-in-charge of Goreswar Police Station accordingly registered a case vide Goreswar P.S. Case No. 66/2014 u/s 376 IPC and caused investigation.

3. Upon completion of investigation, charge sheet vide no. 36/2017 dated 31-07-2017 u/s 4 of POCSO Act 2012 against accused Firoz Ahmed was laid before the Ld. Sub Divisional Judicial Magistrate, Rangia, District-Kamrup. Subsequent to the creation of the judicial courts at Baksa district and the alleged offence being committed within the jurisdiction of Baksa District, the case record was received at Baksa on transfer from Kamrup district. Ld. CJM, Baksa on the receipt of the case record caused the same to be placed before the Hon'ble Sessions Judge cum Special Judge(POCSO), Baksa, who having taken cognizance of the offence secured the attendance of the accused in Court, and serviced copies of the material documents of the case to the accused in compliance of the provisions of section 207 CrPC.

4. The then Hon'ble Sessions Judge, Baksa having heard the submissions of the ld. 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 Firoz Ahmed. 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 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 3 nos. of witnesses. The prosecution witness No.1 was cross examined by the


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defence side while the cross examination of the other witnesses was declined by defence.

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. Special Public Prosecutor, 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 on 15-08-2018 at about 11 am at Bangalipara Junior College under Goreswar Police Station, Dist- Baksa, accused committed penetrative sexual assault on the prosecutrix/victim and thereby committed offence punishable u/s 4 of POCSO Act 2012?

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.


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13. PW1 the prosecutrix/victim in her evidence stated that on the relevant day she had gone to take tuition from the accused who was her teacher and that on her way back home she was intercepted by 5 or 6 youths who threatened her to lodge a case against the accused as they had some grudge against the accused person. PW1 stated that the said boys had compelled her to put her signature on the 'ejahar' and she had given her signature on the ejahar out of fear though she did not know, then, what was written on the ejahar. PW1 also stated that she had recorded her statement through Court, as instructed by the villagers as they had threatened to malign her image if she did not oblige. 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).

14. In her cross examination, PW1 clarified that, she does not have any grievance against the accused person. She also clarified that accused is innocent.

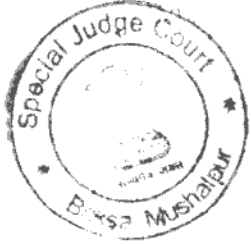
15. PW2- the victim's mother and PW3- the victim's father stated in their respective evidences that at the relevant time, their victim daughter's image was maligned by the co-villagers and they had compelled their daughter to lodge a case against the accused falsely.

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

17. 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' against the accused on being threatened by the co-villagers that they would malign her image in society if she did not oblige. PW1(victim) and PW2 and PW3 being the victim's parents also confirmed the fact that accused was innocent and prosecutrix lodged the case to save her honour. The victim/prosecutrix and her parents rejected the prosecution case in toto. There is nothing on record to show that victim or her parents were not testifying voluntarily. Had the occurrence as alleged would have taken place, victim or her parents would not have vouched for the innocence of


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the accused person in Court. Taking into account the society from where the prosecutrix/victim hails, it can be comprehended that for fear of insinuation of character, the prosecutrix could have lodged the ejahar, a wrong she had mustered the courage to set right during trial. The evidence of the PWs are believable hence. 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.

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

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

20. **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.


21. **Order**

In the light of the above discussions, accused Firoz Ahmed 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 25th day of January, 2021.


(Smti. M.C. Bordoloi) 25/1/2021
Special Judge (POCSO) (POCSO)
Baksa, Muzhapur, Muzhapur

Dictated and corrected by me


(Smti. M.C. Bordoloi) 25/1/2021
Special Judge (POCSO) (POCSO)
Baksa, Muzhapur, Muzhapur

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APPENDIX

Prosecution witnesses:

PW1	victim(name withheld)
PW2	Sayeda Ramina Begum
PW3	Hasmat Ali

Documents Exhibited by Prosecution:


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

Defence witnesses: Nil.

Material exhibits: Nil.

Court witnesses: Nil.


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