



Spl. POCSO Case No. 14/2019

**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. 14/2019  
u/s 366(A)/34 IPC r/w section 4 of the POCSO Act 2012.**

**State of Assam**

**Vs**

- 1. Saiful Ali**
- 2. Intaz Ali.....Accused**

**Appearance:**

Tapan Swargiary.....Spl. Public Prosecutor for the State  
Swamdan Deury.....Advocate for the accused

Date of charge: 28-02-2020  
Date of Evidence: 25-01-2021  
Statement recorded on: 25-01-2021  
Date of Argument: 25-01-2021  
Date of Judgment: 28-01-2021

**Judgment**

1. One Hikmat Ali, a resident of 2 No. Dongargaon, under Tamulpur P.S. Dist- Baksa lodged an 'ejahar' with the Nagrijuli Out Post on 26-01-2018 alleging inter-alia that on 17-01-2018 at about 9.50 pm accused Saiful Ali and accused Intaz Ali in furtherance of their common intention forcefully kidnapped his minor daughter(name withheld) from his house and took her away to some place and confined her at such place. It is also stated despite search, his daughter could not be traced out. Hence the 'ejahar'.

2. Upon receipt of the 'ejahar', an entry in the out post's General Diary vide GD entry No. 414 dated 26-01-18 was made and thereafter the

  
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'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. 37/2018 u/s 366 IPC and caused investigation.

3. Upon completion of investigation, charge sheet vide no. 211/2018 dated 31-10-2018 u/s 366/34 IPC r/w section 4 of POCSO Act 2012 against accused Saiful Ali and Intaz Ali was laid before the Ld. CJM, Baksa who caused the same to be placed before the Hon'ble Sessions Judge cum Special Judge(POCSO), Baksa. Consequent to the designation of the instant Court as the Special 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 cognizance of the offence was taken in the instant Court on receipt of the case record. The attendance of the accused was secured in the instant Court and copies of the material documents of the case was serviced to the accused in compliance of the provisions of section 207 CrPC.

4. Having heard the submissions of the ld. counsels for both sides on the point of charge and finding prima-facie materials u/s 366/34 IPC r/w section 4 of the POCSO Act 2012, vide order dated 28-02-2020, a formal charge u/s 366/34 IPC against both accused Intaz Ali and Saiful Ali and charge u/s 4 of the POCSO Act against accused Saiful Ali was framed. The accused persons pleaded not guilty to the charge and claimed trial.

5. The prosecution in order to prove its case examined 3 nos. of witnesses. Defence side cross examined all the prosecution witnesses to the exception of PW 3.

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

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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 materials available in the case record.

8(ii). Ld. Defence counsel submits that instant case is a no evidence case and the accused persons deserves clean acquittal. Ld. Counsel prays 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.

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

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

*(a) Whether during the month of January 2018, the accused Saiful Ali committed penetrative sexual assault on the victim girl while she was in his company and thereby committed punishable u/s 4 of POCSO Act 2012?*

*(b) Whether accused Saiful Ali and Intaz Ali in furtherance of their common intention, kidnapped the informant's minor daughter (name withheld) with intent that she might be compelled or knowing it to be likely that she would be compelled to marry against her will, or that she might be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366/34 IPC?*

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

  
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### 11. Discussion decision and reasons there for

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

13. PW1 Hikmat Ali in his evidence stated that the occurrence took place about 3 years ago and that on the fateful day while he was at Guwahati in connection with his work, he received the information from his wife that his daughter was not at the house and she could not be found out despite search. PW1 receiving such information, returned back home, the immediate next morning and searched for his victim daughter and during search he could learn that accused Saiful had taken away his daughter. PW1 also stated that being unable to find his daughter he lodged the 'ejahar' against the accused Saiful Ali and as accused Intaz was with accused Saiful in the taking away of his daughter he lodged the 'ejahar' in his name as well. He further stated that his victim daughter appeared on her own at Nagrijuli out post after 3 months of the alleged occurrence, and thereafter he received his victim daughter back. He added that his victim daughter was aged 15 years at the time of occurrence and that his daughter is married to Saiful Ali and they have a child, presently aged 3 months.

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13(i). In his cross examination, PW1 clarified that, he lodged the 'ejahar' after 11 days of the occurrence when he did not find his daughter and that his wife had reported to him that his daughter had gone away with the accused Saiful Ali. PW1 disclosed that he did not know the date of birth of his victim daughter and that after recovery of his victim daughter, she again went away to the house of the accused and that he did not lodged an 'ejahar' in respect of the second occurrence. PW1 further disclosed that his victim girl is married with the accused for two years and that he could learn from his victim daughter that she went with the accused on her own.



PW1 also clarified that he did not have any personal grudge against accused Intaz Ali.

14. PW2-victim stated in her evidence that accused Saiful is her husband and accused Intaz Ali is her husband's relative. PW2 stated that as her parents did not approve of her relationship with the accused Saiful, on the fateful day she went away with him without informing her parents whereupon her father lodged the case against the accused persons. PW2 went on the state that she appeared in the Police Station after one month of the occurrence and police interrogated her during investigation and also took her for her medical examination. She stated that her age at the time of her elopement was 15 years probably and presently she has a child with the accused. PW2 exhibited her statement recorded u/s 164 CrPC in Court as Ext. 1, her signatures thereon as Ext. 1(1) and Ext. 2(2), her medical examination report as Ext. 2 and her signatures thereon as Ext 2(1) and Ext. 2(2).

14(i). In her cross examination, PW2 clarified that, she read upto class vii and thereafter left school and that she does not remember the date of her birth. She revealed that she is presently leading conjugal life with accused Saiful and had come to depose in Court from the house of accused Saiful.

15. PW3-Firoza Begum stated that on the fateful day her victim daughter went away with the accused Saiful Ali and that presently her daughter is co-habiting with accused Saiful Ali and they have a child. She stated that her victim daughter went with the accused on her own, without informing them and returned home after 2/3 months of the occurrence.

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

17. Perusal of the evidence of the victim/PW2 discloses that she went with the accused as her parents did not approve of her relationship with accused Saiful. The revelation of PW1-the father of the victim that victim after her recovery again went away to the house of the accused Saiful Ali

  
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discloses PW2's(victim's) desperation and also the fact that she exercised her discretion to be with the accused Saiful Ali. PW2 did not state that accused had forcefully taken her away to his house. In so far as the age of the victim is concerned prosecution has not led any evidence in respect of the victim's age. PW1-the victim's father or the victim herself did not know about the date of birth of the victim. In such circumstances the medical evidence being Ext. 2 can be looked into which discloses that victim had refused to undergo medical examination at the relevant point of time. In the above circumstances when both the informant and the victim herself failed to give the actual age of the victim at the relevant point of time and in the absence of any documentary evidence in respect of the victim's age, it cannot be safely concluded that victim girl was definitely a minor at the relevant point of time and benefit would go to the accused. If that be so, the victim girl who had exercised her willful desire and consent to go with the accused, he could not be put to fault.

18. Further there is no evidence forthcoming against accused Intaz Ali that he had participated in the alleged kidnapping rather PW1/informant clarified that he had no grudge against accused Intaz.

19. Again PW2/victim's testimony is silent in respect of her sexual violation or any assault by accused Saiful. Infact PW2 did not even make a whisper that accused Saiful sexually assaulted or violated her in any manner.

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

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

  
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22. **Victim Compensation:-**

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

23. **Order**

In the light of the above discussions, accused Saiful Ali is acquitted of the charge u/s 366/34 IPC r/w section 4 of the POCSO Act while accused Intaz Ali is acquitted of the charge u/s 366/34 IPC in the instant case and set at liberty forthwith.

Bail bonds for the accused persons 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 28<sup>th</sup> day of January, 2021.

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

Dictated and corrected by me

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



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## **APPENDIX**

### **Prosecution witnesses:**

PW1	Hikmat Ali
PW2	victim(name withheld)
PW3	Firoja Begum

### **Documents Exhibited by Prosecution:**

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

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