

**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. 62/2019  
u/s 8 of the POCSO Act 2012.**

**State of Assam  
Vs  
Abubakkar Siddique.....Accused**

**Appearance:**

Tapan Swargiary.....Spl. Public Prosecutor for the State  
Dwimu Narzary.....Advocate for the accused

Date of charge: 04-12-2020  
Date of Evidence: 11-01-2021  
Statement recorded on: 11-01-2021  
Date of Argument: 11-01-2021  
Date of Judgment: 12-01-2021

**Judgment**

1. One Ramjan Ali, resident of Koimari, under Salbari police station, Dist- Baksa lodged an ejahar with the Ananda Bazar out post on 12-10-2015 alleging inter-alia that on 05-10-2015 at about 9 pm his minor sister(name withheld) went to her school to make payment of her examination fees, whereupon the accused being the head master of the school held his victim sister in an embrace and touched her bosom and when his victim sister disclosed her intention to raise cries of alarm, the

Contd...

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Mushalpur

accused let her go and threatened to kill her if she reported the matter to anyone. It was also stated that the matter was reported to the school Managing Committee for taking necessary action but in vain. Hence the ejahar.

2. Upon receipt of the ejahar, an entry in the out post's general diary vide GD entry no. 151 dated 11-10-15 was made and the same was forwarded to Salbari police station for registration of a case under proper section of law. Accordingly a case was registered by the then officer-in-charge at Salbari Police Station vide Salbari P.S. Case No. 136/2015 u/s 10 of POCSO Act and investigated upon.

3. On completion of investigation, charge sheet vide no. 56/2017 dated 29-11-2017 u/s 10 of the POCSO Act, 2012 against accused Abubakkar Siddique was laid before the Ld. JMFC, Bajali, Pathsala. 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 Barpeta District., Ld. CJM, Baksa on the receipt of the case record caused the same to be placed before the instant Court, this Court being designated the Special Court for trial of POCSO Cases vide Hon'ble Gauhati High Court's notification dated 02-01-2020

4. Cognizance of the offence was taken and summon was issued to the accused to secure his presence in Court. On appearance, accused was furnished copies of the case in compliance of the provisions of Section 207 CrPC.

5. Having heard the submissions of the Id. counsels for both sides on the point of charge and finding prima-facie materials u/s 8 of the POCSO Act, a charge u/s 8 of the POCSO Act 2012 was framed against accused Abubakkar Siddique. The charge so framed, on being read over and explained to the accused, he pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 2 nos of witnesses. The prosecution witnesses were cross examined by the defence side.

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Muzhapur

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 C/D.

9.(ii). Ld. Defence counsel Dwimu Narzary submits that instant case is a no evidence case and the accused deserves clean acquittal. Ld. Counsel points out to the fact that the prosecutrix herself gave a goodbye to the prosecution case, she completely negating the occurrence of any offence as alleged and instead averring that she was only admonished by the accused who was her teacher. Ld. Counsel submits 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 that has arisen for determination in the instant case is:-

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

***(a) Whether on the morning of 05-10-15 at about 9 am accused Abubakkar Siddique sexually assaulted the victim girl (name withheld) in his office room at B.K.M.E. Madrassa school at village koimari under Salbari P.S., Dist- Baksa?***

Contd..

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Muzhapur

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-Ramjan Ali the informant in his evidence stated that the occurrence took place in the year 2015 and that on the fateful day at about 10 am his victim sister went to her school to make payment of her examination fees and the headmaster who is the accused in the present case asked for her Roll No. but she failed to answer, for which the accused gave her a beating with the pen and his sister returned home crying and reported the matter and thereafter he lodged the case against the accused person due to misunderstanding. PW1 exhibited ejahar as Ext. 1 and his signature thereon as Ext. 1(1).

13.(i). When put to cross-examination PW1 disclosed that he lodged the case against the accused purely on misunderstanding of facts.


14. PW2-the victim in her evidence also stated that on the relevant day at about 10 am when she went to her school to make payment of examination fees, the headmaster who is the accused of the present case asked her roll no. but she failed to answer for which the accused gave her an admonition and a beating on her fingers with the pen and thereafter she returned home crying and reported the matter to her brother who lodged the case against the accused person. PW2 exhibited her statement recorded u/s 164 CrPC as Ext. 2 her signatures thereon as Ext. 2(1) and Ext. 2(2).

14.(i). In her cross examination, PW2 clarified that accused was her teacher and she gave her statement in court on being tutored by the villagers.

15. This is the only evidence available on record.

16. In the instant case the accused stood charged u/s 8 of the POCSO Act 2012, for alleged sexual assault on the victim girl.

Contd..

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Mushalpur

17. **Sexual assault is defined in section 7 of the Act in reference as-**“Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”.


18. Having gone through the definition of sexual assault, it is understandable that victim's testimony is of prime importance, in cases involving alleged sexual assault. Now when the victim's testimony, available on record is scrutinized, it is seen that she at no point disclosed that accused had with sexual intent touched her body or her private parts or did any other acts with sexual intent involving physical contact with her on the relevant day or otherwise. Rather victim had clarified that accused being her teacher admonished her and gave a beating on her fingers with a pen. The alleged act of beating cannot be assumed to be an act bearing sexual intent. Further the informant also made it clear that the 'ejahar' was lodged due to misunderstanding of facts, thereby giving a goodbye to the prosecution case.

19. Accordingly in the above circumstances I am constrained to hold that prosecution case fails and accused deserves to be acquitted.

20. The point for determination stands answered accordingly in favour of the accused.

**21.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.

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Muzhapur


22. **Order**


In the light of the above discussions, accused Abubakkar Siddique is acquitted of the charge u/s 8 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 12<sup>th</sup> day of January, 2021.

  
12/1/2021  
Special Judge (POCSO)  
Baksa, Mughalpur

  
12/1/2021  
(Smti. M.C. Bordoloi)  
Special Judge (POCSO)  
Baksa, Mughalpur

Dictated and corrected by me

  
12/1/2021  
(Smti. M.C. Bordoloi)  
Special Judge (POCSO)  
Baksa, Mughalpur

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

PW1	Ramjan Ali
PW2	victim(name withheld)

**Documents Exhibited by Prosecution:**

Ext.1	Ejahaar
Ext. 1(1)	Signature of Ramjan Ali
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.

  
 12/1/2021  
 Special Judge (POCSO)  
 Baksa, Mushalpur

  
 (Smti. M.C. Bordoloi) 12/1/2021  
 Special Judge (POCSO)  
 Baksa, Mushalpur  
**Baksa, Mushalpur**