# IN THE COURT OF THE SPECIAL JUDGE SONITPUR:: TEZPUR SPECIAL POCSO CASE NO. 20 of 2019

Under section 8 of POCSO Act of IPC. (Arising out of Dhekiajuli PS Case No. 15/18)

#### State of Assam

-Vs-

Md Khairul Islam ... Accused Person

Present : Smti. I. Barman,AJS, Special Judge, Sonitpur, Tezpur.

For the State : Mr. S. Maitra,

Special Public Prosecutor

For the accused : Mr N Uddin , Advocate

Date of Argument : 07-01-2020

Date of Judgment : 07-01 -2020.

#### **JUDGMENT**

1. The prosecution case against the accused person as projected in the FIR (Ext. 1), in brief, is that on 03-01-2018 at around 12.00 noon, his 16 years old daughter went to the house of his neighbour Habijul Islam and as soon as his daughter reached the house of Habijul Islam, accused Khairul Islam who is ploughing by tractor near the house of Habijul, came to the house of Habijul and sought for glass of water. When, his daughter went inside the house of Habijul to bring water, then, accused following her entered into the house of Habijul and with intend to commit misdeed,

misbehaved her. On raising alarm by the victim, when the wife of Habijul entered into the room, when the accused fled away therefrom.

- 2. On receipt of the FIR **(Ext.1)** on 05-01-2018 from the informant (PW2), Dhekiajuli P.S. Case No. 15/2018 u/s 448/376/511 of IPC was registered and launched investigation of the case. During investigation, the Investigating Officer recorded the statement of the witnesses, got recorded the statement of the victim u/s 164 Cr.P.C. and on completion of investigation having found materials, laid charge sheet against the accused Khairul Islam u/s 448/376/511 of IPC.
- On producing the accused person, after furnishing the copies of the documents as required u/s 207 of Cr.P.C, the Ld Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur committed the case to the Court of Session being the offence under Section 376/511 of IPC exclusively triable by the court of Sessions. On committal, the case was transferred to the court of the Ld Addl. Sessions Judge(FTC), Sonitpur, Tezpur for disposal. Accordingly, after going through the police report and having heard both parties, being the victim a child of 16 years, registered the case as POCSO Act, and charge u/s 8 of POCSO Act was framed against the accused. Particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial. Later, on transfer of the Ld Addl Sessions Judge(FTC), Sonitpur, Tezpur, the case was withdrawn to this court for disposal.
- **4.** To substantiate the case, prosecution examined only 2(two) witnesses in support of the case. On closure of the prosecution evidence, statement of the accused was recorded u/s 313 Cr.P.C. wherein the accused denied all the allegations.
- **5.** I have heard the argument of the learned counsel of both sides and also have gone through the materials on record.
- **6.** The point for decision in this case is that -
  - (1) " Whether the accused Khairul Islam on 03-01-2018 at around 12.00 noon at village No.1 Keherukhanda under

Dhekiajuli Police Station committed sexual assault on the victim Miss "X", a minor girl aged about 16 years, and thereby committed an offence punishable under section 8 of POCSO Act?

#### Reasons, Decisions and reason for decision.

- **7.** In order to appreciate the argument advanced on behalf of both sides, it is considered next to outline a sketch of the evidence on record.
- **8. PW 1** is the victim of this case. She deposed that on the day of incident, when she was in her elder sister's house, accused Khairul Islam was ploughing land by tractor which is situated near the house of her elder sister. During that time, accused sought for a glass of water from her elder sister and then her elder sister asked her for giving him the glass of water. Accordingly, she offered him a glass of water. At that time, some persons were sitting in the backside of her elder sister's house. Seeing her giving the glass of water to the accused, the said persons informed her father that the accused had done something with her. But, actually, the accused did nothing to her. Then, her father lodged the FIR. She further stated that she made statement before the Magistrate as tutored by the villagers. She proved her statement before the Magistrate under Section 164 of CrPC as Ext.1 and her signatures as Ext.1(1) and Ext.1(2).

During cross she stated that after the incident she got married. She also said that there was no fault on the part of the accused. Only on being asked by the villagers her father lodged the FIR.

**9.** Corroborating the evidence of PW1, her father as well as the informant Md Suruj Ali, deposing as PW2 stated that he was informed that on the day of incident, the accused coming to his elder daughter's house, sought for a glass of water and accordingly when, his victim daughter gave him a glass of water, the people of the village raised hulla. Thereafter as per instruction of the villagers, he lodged the FIR(Ext2). He further said that later on, when he enquired the victim about the incident, she replied that except giving glass of water, nothing happened to her.

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**10.** In the case neither of the informant nor the victim stated anything

against the accused alleging sexual assault. Their evidence disclosed that at

the relevant time the victim was in her elder sister's house. PW1 & PW2, the

most vital witnesses categorically stated that on the day of incident, the

accused sought for a glass of water and accordingly when she offered the

water, the villagers thinking that the accused did some misdeed to her, asked

PW2 to lodge the FIR which he did. The victim clearly stated that accused did

nothing misdeed to her, he only sought for a glass of water. Her evidence is

fully corroborated by her father PW2. There is no iota of evidence of any kind

of sexual assault or attempting to commit any sexual act on the girl. In the

above circumstances, other witnesses were not examined as no fruitful

purpose will be served by examining them.

**11.** The cumulative effects of the evidence of victim who is the core

witness in this case and the most natural witness i.e. her father as discussed

above is that prosecution failed to establish the charge under Section 8 of

POCSO Act or any other provision of law.

**12.** Accordingly, accused Khairul Islam is acquitted from the charge u/s 8

of POCSO Act and set him at liberty forthwith. His bail bond shall remain in

force till next six months.

**13.** Judgement is pronounced and delivered in open court under the Seal

and signature of this Court on the 7th day of January, 2020.

(I.Barman)

Special Judge,

Sonitpur, Tezpur.

Dictated and corrected by me.

(I.Barman)

Special Judge, Sonitpur, Tezpur.

## **Prosecution witnesses.**

1. PW 1 : victim

2. PW 2 : father of the victim(informant)

### **Exhibits.**

Ext. 1 : 164 Cr.P.C. statement of the victim

Ext. 2 : FIR

(I.Barman)
Special Judge,
SONITPUR: TEZPUR