Spl. POCSO Case No. 29/18

#### **DISTRICT- BAKSA**

#### IN THE COURT OF SPECIAL JUDGE, BAKSA, MUSHALPUR



#### SPECIAL POCSO CASE NO. 29/18

(u/s 8 of POCSO Act 2012)

State of Assam

-versus-

Samiran Tahbildar ..... Accused

Present- Smti. M.C. Bordoloi, M.A., L.L.B., (A.J.S.), Special Judge, Baksa

Appearance:

Mr. Ranjit Chetri......Public Prosecutor for the State

Swamdan Dewry, Amrit Boro.....Advocates for the accused person

Date of charge:

06-04-2019.

Date of Evidence:

03-09-2019, 06-01-2020.

Statement recorded on:

27-02-2020.

Date of Argument:

27-02-2020.

Date of judgment:

28-02-2020.

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# <u>Judament</u>

One Jonali Borah resident of Village Ambari, Dist. Baksa lodged an ejahar with the Mushalpur P.S on 13.10.2017 alleging inter alia that on 11.10.2017 at about 1.50 pm, the accused Samiran Tahbildar sexually assaulted her minor daughter during her absence at home. Hence, the ejahar.

Upon receipt of the ejahar, the same was registered vide Mushalpur P.S Case No. 101/17 u/s 4 of POCSO Act and investigated upon.



After completion of investigation, charge-sheet being No. 68/17 dated 30.11.2017 was laid before the Ld. CJM, Baksa which was forwarded to the Hon'ble Sessions Judge, Baksa who having taken cognizance of the offence issued summons to secure the presence of the accused in court and on appearance of the accused serviced copies of the material documents of the case, to the accused in compliance of the provisions of Section 207 Cr.PC. Having found prima-facie materials u/s 8 of the POCSO Act, the Hon'ble Sessions Judge, Baksa vide order dated 06.04.2019 framed a formal charge u/s 8 of the POCSO Act against the accused. The charge on being read over and explained to the accused, he pleaded not guilty and claimed trial.

It deserves mention herein that the defence side took the plea of insanity and his consequent inability to take defence in the case. Thereafter, the Hon'ble Sessions Judge after an exhaustive inquiry came to a conclusion that the accused was not mentally unsound and only suffered from mild mental retardation and that he was capable of standing trial and accordingly trial proceeded against the accused.

It is also worthwhile to mention herein that consequent to the designation of the instant court as the Special court for trial of POCSO cases by the Hon'ble Gauhati High Court vide notification dated 02.01.2020, the instant case was received in this court for disposal.

The prosecution in order to prove its case, examined 4 witnesses including the victim girl. The defence side cross-examined all the prosecution witnesses but declined to adduce evidence. The statement of the accused u/s 313 Cr.PC was recorded and kept in the case record. The accused pleaded complete innocence.

The defence plea is that of total denial of guilt.

#### **ARGUMENTS**

Heard the arguments forwarded by the Ld. Counsels of both sides. Ld. PP, Baksa submits that the court shall pass judgment/order after perusal of the case record in its entirety.



Ld. Defence Counsel submits that the accused is innocent and prosecution has failed to establish the charge brought against the accused beyond all reasonable doubt. Ld. Defence Counsel prays for acquittal of the accused.

Heard. Perused C/R and the evidence on record meticulously.

The point for determination that has arisen in the instant case is as follows:-

#### POINT FOR DETERMINATION:

a) Whether on the 11<sup>th</sup> day of October 2017, at about 1.50 pm, the accused committed sexual assault on the informant's 6 years old minor daughter at village Ambari under Mushalpur Police Station?

My decision on the above points for determination along with reasons is given hereinunder.

#### **DISCUSSION, DECISION AND REASONS THEREFOR:**

To address the point for determination so framed, it will be necessary to peruse the evidence on record and I proceed to do so.

PW-1 Manuranjan Talukdar in his evidence stated that the occurrence took place about 2 years back from his deposing in court and that at that time the family members of the victim girl were tenants of the accused person. PW-1 also stated that he heard that the accused committed sexual intercourse with the victim girl.

In his cross-examination, PW-1 revealed that he had not seen the occurrence.

PW-2 Smt. Jonali Borah is the informant of the case. PW-2 deposed that the occurrence took place in the year 2017 and that on the fateful day, she and her husband were absent at the house and the victim girl was alone in the house. She stated that, on her return, the victim girl told her that the accused touched her body and accordingly, she approached the accused to inquire about the incident. PW-2 further deposed that the accused is not a mentally stable person for which she could not get satisfactory answer on askance and that she was compelled to file the ejahar as the local public raised hue and cry. PW-2 also revealed that she was a tenant of the accused at the relevant time and that the

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police sent the victim girl for her medical examination and to court for recording her statement. She further stated that the victim was 7 years old at the time of occurrence.

PW-2 identified the ejahar filed by her as Ext-1 and her signature thereon as Ext.1(1). She also identified the medical report of the victim as Ext.2 and her signatures thereon as Ext.2(1) and Ext.2(2)

In her cross-examination, PW-2 revealed that she had not written the ejahar by herself and that she had filed the case due to pressure from the local public.

PW-3 is the victim girl(name withheld). PW-3 in her deposition stated that the accused had physically assaulted her. She further deposed that at the time of the incident, her mother (PW-2) was not present at the house and that after her mother returned back home, she reported to her about the incident and thereafter her mother (PW-2) filed the case. PW-3 went on to state that after filing of the case, police came and apprehended the accused and that police took her to hospital for medical examination and to court for recording her statement.

During her cross-examination, PW-3 stated that she does not know if the accused was mentally not stable.

PW-4 Tapon Borah is the husband of PW-2(informant) and the father of the victim girl. PW-4 deposed that on the fateful day of the incident, he was not present at his house and that after his return to home, he came to know about the incident. PW-4 also stated that his wife(PW-2) told him that the accused had committed some bad act on the victim girl in her absence and thereafter, his wife (PW-2) filed the case. PW-4 went on to state that the victim girl was 6 years old at the time of occurrence and that he was a tenant of the accused at the time of occurrence.

In his cross-examination, PW-4 stated that he and PW-2 (informant) had no knowledge about the incident and due to pressure from local public the case was filed.

This is the evidence available on record.

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In the present case, the accused stands charged u/s 8 of the POCSO Act. The evidence of the victim and the informant who were examined as PW-3 and PW-2 respectively thus assumes importance in the present case.

PW-2 in her evidence stated that her victim daughter by gesture reported to her that the accused touched her body and that the said fact could not be ascertained by asking the accused person as he was not a mentally stable person. PW-2 also disclosed that as the local public raised a lot of hue and cry, she was compelled to file the ejahar. PW-2 reaffirmed in her cross-examination that she did not want to lodge the "ejahar" and only due to public outcry, she had lodged the "ejahar". The informant therefore do not support the case of sexual assault on her victim daughter rather she had stated that accused had only touched her minor child. She did not indicate in her evidence whether the said "touch" had any sexual overtones or not.

Now coming to the evidence of the child witness (PW-3), it is seen that the Hon'ble Sessions Judge cum Special Judge, Baksa had recorded the evidence of the said witness after ascertaining her capacity to depose, after being satisfied that, she could give rational answers to the questions asked. The minor victim disclosed that the accused assaulted her on her hand and that at the relevant time her mother was not present at the home and that she reported it to her mother, whereupon her mother filed the case. Even in the evidence of the victim child, there is nothing to fix the culpability on the accused. She had stated that the accused had only hit her hand.

This evidence of the victim is not indicative of whether the accused intended to make any sexual advances on her or not.

Now coming to the evidence of PW-1 and PW-4 it is seen that they do not have knowledge about the occurrence and their evidence is simply hearsay and their evidence would not come to the aid of the prosecution.

The evidence on record is not sufficient to hold that the accused had committed the offence of sexual assault on the victim girl.

Prosecution has failed to establish the charge u/s 8 of the POCSO Act against accused Samiran Tahbildar beyond all reasonable doubt.

The point for determination stands answered in the negative.

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In the above facts and circumstances of the case, compensation to the victim is not justified.

#### Order

In the light of the above discussions, accused Samiran Tahbildar is acquitted of the charges u/s 8 of the POCSO Act and set at liberty forthwith.

The bail bond of the accused person shall remain in force for a period of 6 months with effect from today in view of the provisions of Section 437-A Cr.PC.

Given under my hand and seal of this court on the 28th day of February, 2020.

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Special Judge, Baksa

Dictated and corrected by me

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## **APPENDIX**

## **Prosecution witness:**

PW1

Manuranjan Talukdar.

PW2

Jonali Borah(informant).

PW3

victim(name withheld).

PW4

Tapon Borah.

## **Prosecution Exhibits:**

Ext.1

FIR.

Ext.1(1)

Signature of Jonali Borah.

Ext.2

Medical report of the victim.

Ext.2(1) and Ext.2(2

Signatures of Jonali Borah.

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**Defence witness:** 

Nil.

**Material exhibits:** 

Nil.

**Court witness:** 

Nil.

(Smti. M.C. Bordoloi) Special Judge Special Judge, BaksBaksa, Mushalpur