

APPENDIX - 12

IN THE COURT OF THE SPECIAL JUDGE (POCSO), KAMRUP, AMINGAON

Present: Smti. T. Hussain, Special Judge (POCSO), KAMRUP, AMINGAON.

(28-06-2024)

Special(POCSO) Case No. 95 of 2023

(Nagarbera P.S Case No.29/2023, U/S 9/10/11(1) PCM Act R/W Sec. 6/17 of POCSO Act.)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	Mr J Talukdar Special Public Prosecutor
ACCUSED	Hafizur Rahman S/O Dilu Munchi R/O Gogalmari PS: Nagarbera Dist- Kamrup, Assam.
REPRESENTED BY	L. Rahman, M. Islam

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Date of offence	Not mentioned
Date of FIR	08-02-2023
Date of Charge-Sheet	31-03-2023
Date of Framing of Charges	10-11-2023
Date of commencement of evidence	18-12-2023
Date of which judgment is reserved	28-06-2024
Date of Judgment	28-06-2024
Date of the Sentencing Order, if any	N/A

28.06.24
Addl Sessions Judge
Special Judge, POCSO
Kamrup, Amingaon

Accused Details:

Rank of the Accused	Name Of the Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C
1.	Hafizur Rahman	09/02/2023	02/03/2023	U/S 9 of PCM Act R/W Sec. 6 POC SO Act	Acquitted	N/A	N/A

JUDGMENT

1. The prosecution case in brief is that on 08.02.2023, Sankar Das, VDP Secretary of Gagalmari village, lodged an Ejahar alleging that the accused Hafizur Rahman had contracted child marriage by marrying a minor girl.

2. Accordingly, Nagarbera P.S Case No.29/2023, U/S 9/10/11(1) PCM Act R/W Sec. 6/17 of POC SO Act was registered and investigated into. On completion of the investigation, charge-sheet was submitted against the accused Hafizur Rahman U/S 9 of PCM Act R/W Section 6/17 of POC SO Act.

3. After furnishing copies to the accused as required u/s 207 Cr.P.C, vide order dated 10/11/2023, charges were framed against the accused u/s 9 of PCM Act and u/s 6 of POC SO Act.

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Special Judge, POCSO
Kamrup district

4. During the course of the trial, the prosecution examined two witnesses including the Informant and victim girl. Considering the testimony of the Informant and the victim, on submission of the Learned Special P.P, the prosecution evidence was closed. As there was no Incriminating evidence against the accused his examination u/s 313 of Cr.P.C. was dispensed with.

1) Whether the accused prior to the date of lodging of the ejahar (ejahar was lodged on 08.02.2023), being a male adult above 18 years of age, contracted a child marriage with the minor victim girl, and thereby committed an offence punishable u/s 9 of PCM Act?

II) Whether the accused after contracting the child marriage, committed aggravated penetrative sexual assault upon the minor victim girl and thereby committed an offence punishable u/s 60 of POCSO Act?

I have heard the learned counsel for the parties and perused the materials available in the case record.

7. For arriving at just decision, let me now scrutinize the evidence on record.

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1001 Sessions Judge
1001 Special Judge, POCSO
Kamrup Amigaon

8. PW1 is the Informant. He is the VDP secretary of Gagolmari. In his evidence, PW1 has stated about knowing the accused Hafizur Rahman, who is his co villager. In the first part of 2023, he was called to the Nagarbera P.S. and the O.C. asked him to sign a paper saying that a person from their village has been arrested and as a witness of that matter, he was asked to sign a document. Accordingly he put his signature. Exhibit P1/PW1 is the said documents and Exhibit P(1)/PW1 is his signature. He does not know the contents of the Exhibit P(1)/PW1. At that time, VDP Secretaries of other villages were also present in the police station and they also signed such documents. Subsequently he learned that in respect of child marriage, the accused Hafizur was arrested and the case was lodged. But he does not know anything about the marriage of the accused Hafizur.

9. In his cross examination, Pw1 has reiterated that he does not know the contents of the Ejahar. On being instructed by police, he signed Exhibit P1/PW1.

10. Pw2 is the victim of this case. In her evidence, PW2 has said that the informant is known to her. The accused Hafizur is his husband. She got married to Hafizur in the year 2021. At that time she was 20 years old. They have one 1 and 1/2 year old daughter. She does not know why the case was lodged against her husband.

11. PW2 in her cross examination, said that she has been leading happy conjugal life with her husband and child.

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Adl. Sessions Judge
Karnap Amritgarh
Spl. POCSO

12. It is seen that the Informant/Pw1 in his evidence ,has not implicated the accused in manner by saying that he does not know anything about the marriage of the accused Hafizur. Similarly the victim/Pw2 has contended that at the age of 20,she being an adult got married to the accused.

13. Here in this case, one of the charges framed against the accused is u/s 6 of POCSO Act. As such, in respect of this charge under POCSO Act ,age of the victim has to be determined following the procedure prescribed u/s 94 of J.J Act 2015 which provides that date of Birth Certificate issued by the School or Matriculation or equivalent Certificate has to be looked into in the first place. In absence of such certificates, Birth Certificate issued by a Corporation or Municipal Authority has to be taken in to consideration. In absence of all the aforesaid certificates, age has to be determined by an Ossification Test or any other latest Medical Test which is conducted for age determination.

14. In the instant case, during investigation, only Adhar card of the victim was seized as age proof document. As Adhar card has not been included u/s 94 of J.J Act 2015 ,the same can not be taken in to consideration for determining age of the victim girl/Pw2. From the case record,it is found that during investigation, no ossification test or any other test was done for age determination of the victim. Hence, there is nothing on record for determining the age of the victim and as a result ,the prosecution has failed to prove that the victim was a child on the

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Adm. Subordinate Magistrate
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date of her marriage. Consequently, the victim is found to be an adult at the time of her marriage. Accordingly, the prosecution has failed to establish the charges framed against the accused u/s 6 of POCSO Act.

15. Similarly the charge framed against the accused u/s 9 of Prohibition of Child Marriage Act is also not established.

16. Order:

In the result the accused Hafizur Rahman is acquitted of the charges framed against him u/s 9 of PCM Act and u/s 6 of POCSO Act and set at liberty forth with.

The bail bond shall remain in force for the next six months.

17. From the facts and the circumstances of the case, I find it not a fit case to recommend for victim compensation.

18. A copy of the Judgment be forwarded to the Learned District Magistrate, Kamrup Amingaon as required u/s 365 of Cr.P.C.

Given under my hand and seal of this Court on this the 28th day of June, 2024.

28-6-24
Special Judge, POCSO
Kamrup, Amingaon

Dictated and corrected by me:

28-6-24
Special Judge, POCSO
Kamrup Amingaon
Addl. Sessions Judge-
Joint Special Judge, POCSO
Kamrup Amingaon

Addl. Sessions Judge
Joint Special Judge, POCSO
Kamrup Amingaon

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LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW-1	Sankardev Das	Informant
PW-2	Name withheld being a case under POCSO Act	Victim

B. Defence Witnesses, if any: Nil

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
nil		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1.	Exhibit P1	Ejazar

B. Defence:

C. Court Exhibits: Nil.

D. Material Objects:

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Special Judge, POCSO
Kamrup, Amingaon.

ADH. SANGRAM JUK
11-07-2024 JUDGE. P.
KAMRUP AMINGAON

