

DISTRICT : Hailakandi.

**IN THE COURT OF THE SPECIAL JUDGE, HAILAKANDI**

**Present:-Shri Syed Imdadur Rahman,  
Special Judge, Hailakandi.**

Dated the 19<sup>th</sup> day of March, 2025

**SPECIAL (POCSO) CASE NO. 15 OF 2023**

**U/S 6/17 of the POCSO Act, 2012 R/W  
Section 9/11 of the PCM Act.**

F.I.R was lodged before the Panchgram Police Station, which was registered as Panchgram PS Case No. 14/2023 U/S 9/10/11 of the PCM Act, read with 6/17 POCSO Act.

**State of Assam**

Represented by Special P.P.  
Mr. S.U. Laskar.

***Versus***

- 1. Saraf Uddin**
- 2. Kashim Uddin and**
- 3. Samsul Hoque**

**..... Accused**

Represented by Ld. Advocates  
Mr. R. A. Laskar and Rita Das.

*Sp*  
**Special Judge  
Hailakandi**

**SPECIAL (POCSO) CASE NO. 15 OF 2023**

| Name of accused                                      | Date of arrest | Date of order of bail    | Offences charged with                                        | Whether acquitted or convicted |
|------------------------------------------------------|----------------|--------------------------|--------------------------------------------------------------|--------------------------------|
| 1) Saraf Uddin<br>2) Kashim Uddin<br>3) Samsul Hoque | 03.02.2023     | 24.02.2023<br>09.03.2023 | Section 6/17 of the POCSO Act, 2012 R/W Sec. 9/11 of PCM Act | Acquitted                      |

Date of Offence : 2020  
FIR lodged on : 02.02.2023  
Date of Charge-Sheet : 28.02.2023  
Charge framed on : 27.02.2024  
Date of Commencement of Evidence : 10.04.2024  
Judgment reserved on : 19.03.2025  
Judgment delivered on : 19.03.2025

**J U D G M E N T**

**In this case, accused persons are facing trial under section 6/17 of the POCSO Act, 2012 9/11 of PCM Act.**

**1.** That, on 02.02.2023, one FIR was lodged before the Panchgram Police Station, by the informant, alleging that, in the year 2020 one adult person namely, Saraf Uddin has married a minor girl in a traditional manner in presence of their relatives.

In pursuance to lodging of the FIR, Panchgram Police Station registered its P.S. Case No. 14/2023 U/S. 9/10/11 of Prohibition of the Child Marriage Act read with 6/17 of POCSO Act. Later on, police after completion of investigation, forwarded charge sheet U/S 9/10/11 of Prohibition of the Child Marriage Act read with 6/17 of POCSO Act against all accused persons. My Id. Predecessor on 27.02.2024, framed charge against accused Saraf Uddin under Sec. 6 of the POCSO Act read with 9 of the Prohibition of the Child Marriage Act, and against accused Kashim Uddin and Samsul Hoque under Sec. 11 Prohibition of the Child Marriage Act read with 17 POCSO Act. The charge was read over and explained to all accused persons, to which they pleaded not guilty and claimed to be tried. In order to prove the case, prosecution examined 2 witnesses.

2. Accused persons were examined U/s. 313 Cr.P.C. Accused persons did not adduce any defence evidence. I have heard arguments put forwarded by both sides.

**3. In this case, Points for determination are:**

- A) Whether in the year 2020 the accused Saraf Uddin being a major person solemnized child marriage?
- B) Whether in the year 2020 accused Kashim Uddin and Samsul Hoque promoted or permitted solemnization of child marriage with the accused Saraf Uddin?
- C) Whether the accused Saraf Uddin committed aggravated penetrative sexual assault on the minor victim of this case?

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D) Whether accused Kashim Uddin and Samsul Hoque abated accused Saraf Uddin to commit any sexual offence against the minor victim of this case?

**Discussion, decision and reasons for the decision:**

4. In this case, all accused persons are facing trial U/S. 6/17 of the POCSO Act, 2012 and 9/11 of Prohibition of the Child Marriage Act. I have considered the nature of the alleged offence and evidences on record.

5. Let us now scrutinize evidences on record. For the sake of convenience, let us discuss evidences of this case, together, in relation with all points for determination.

6. In this case, the alleged victim/most material witness, as PW 2 deposed that, accused Saraf Uddin is her husband and other two accused persons are her father in law and brother in law. That, she was married to Saraf Uddin on 07.08.2022, and at that time she was 19 years old, as her date of birth is 02.07.2004. That, she is maintaining her conjugal life.

*Spm*  
In the cross examination this PW deposed that at the time of her marriage she was major girl. Ext. D1/PW1 is the birth certificate issued by the Govt. of Assam.

I have scrutinized the evidence of the alleged victim/PW2 and found that according to her she was married to the accused Saraf Uddin and at that time she was a major girl.

7. The PW 1 in his evidence deposed that he knows nothing about the incident. This PW was declared as hostile.

8. I have scrutinized evidences on record in this case, concerning all points for determination. In this case, the alleged victim is the most material witness but she never adduced any evidence against any of the accused persons, concerning any of the points for determination. According to her, she was married to the accused after she became a major girl. At this stage I have perused the birth certificate/D1/PW2 issued in favour of the alleged victim of this case dated 30.04.2019 mentioning her date of birth to be 02.07.2004. Now, if the date of birth of the alleged victim is 02.07.2004 and her date of marriage is 07.08.2022 (as per examination in chief of the PW2/victim) then it is clear that on the date of her marriage she was a major girl. In presence of this factor, there cannot be any case concerning any child marriage or any offence in relation with POCSO Act.

9. A scrutiny of evidences on record shows that, in this case there is no evidence against any of the accused persons concerning any of the points for determination. At this stage, I have perused Section 29 of the POCSO Act 2012. As per the Section 29, "Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

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*The Hon'ble Bombay High Court in Navin Dhaniram Baraiye (Criminal Appeal 406/2017, Nagpur Bench, dated 25.06.2018) held that, "16. Therefore, this was a nature of the evidence of the prosecution witnesses before the trial Court. In cases concerning offences under the POCSO Act, the sheet anchor of the arguments made on behalf of the State is the presumption that operates against the accused under Section 29 of the POCSO Act. It is contended in cases pertaining to the POCSO Act, as contended in the present case by the learned APP on behalf of the respondent-State, that the Court has to presume that the accused has committed the offence for which he is charged under the said Act, unless the contrary is proved. On this basis, it is submitted on behalf of the respondent-State that in the present case, it was for the appellant to have proved to the contrary and that the burden was entirely upon him, which he had failed to discharge and that, therefore, the conviction and sentence imposed by the trial Court could not be disturbed.*

*17. In this backdrop, it is first necessary to examine the effect of presumption under Section 29 of the POCSO Act and the manner in which the accused could rebut such presumption.*

*Section 29 of the POCSO Act reads as follows:-*

*17 apeal406-17.odt "29. Presumption as to certain offences –*

*Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections*

3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

A perusal of the above quoted provision does show that it is for the accused to prove the contrary and in case he fails to do so, the presumption would operate against him leading to his conviction under the provisions of the POCSO Act. It cannot be disputed that no presumption is absolute and every presumption is rebuttable. It cannot be countenanced that the presumption under Section 29 of the POCSO Act is absolute. It would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption under Section 29 of the POCSO Act to operate. Otherwise, all that the prosecution would be required to do is to file a charge sheet against the accused under the provisions of the said Act and then claim that the evidence of the prosecution witnesses would have to be accepted as gospel truth and further that the entire burden would be on the accused to prove to the contrary. Such a position of law or interpretation of the presumption under Section 29 of the POCSO Act cannot be accepted as it would clearly violate the constitutional mandate that no person shall be deprived of liberty except in accordance with procedure established by law."

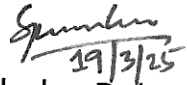
**10.** In this case, on record there is no evidence against any of the accused persons concerning any of the points of

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determination. Behind the backdrop of evidences on record of this case, there is no material for presumption of the guilt of accused persons, here in this case also, in consonances with the Judgment of the Hon'ble Bombay High Court mentioned above.

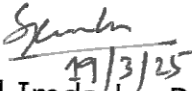
**11.** This being the position of the case, as the prosecution has failed to prove the case against accused persons, accused Saraf Uddin, Kasim Uddin and Samsul Hoque are acquitted from the offences, they are facing trial. They are set at liberty forthwith. Bail bonds are extended in terms with Section 437(A) Cr.P.C. No case for Rule 9 of POCSO Rules, 2012 as there is no material on record to comply the condition precedent for receiving victim compensation.

**12.** Given under my hand and seal of this court on this the **19<sup>th</sup>** day of **March, 2025**.

  
(Syed Imdadur Rahman)  
Special Judge, Hailakandi

**Special Judge  
Hailakandi**

Dictated & corrected by me.

  
(Syed Imdadur Rahman)  
Special judge, Hailakandi

**Special Judge  
Hailakandi**

**APPENDIX**

**1. PROSECUTION WITNESS:**

| Sl. | Name               | Nature of evidence |
|-----|--------------------|--------------------|
| 1.  | Sabir Hussain Mira | Witness            |
| 2.  | R.B                | Alleged Victim     |

**2. DEFENSE WITNESS:**

| Sl. | Name | Nature of evidence |
|-----|------|--------------------|
| 1.  | Nil  | Nil                |

**3. PROSECUTION EXHIBITS:**

| Sl. | Exhibit Number | Description |
|-----|----------------|-------------|
| 1   | NIL            | NIL         |
| 2   | NIL            | NIL         |

**4. DEFENCE EXHIBITS:**

| Sl. | Exhibit Number | Description          |
|-----|----------------|----------------------|
| 1.  | D1/PW2         | Birth Certificate    |
| 2   | D2/PW2         | Marriage Certificate |

*Syed Imdadur Rahman*  
19/3/25  
(Syed Imdadur Rahman)  
Special Judge, Hailakandi  
Special Judge  
Hailakandi