CAUSE TITLE PCSO Case No. 26/15

Informant: Sri Ram Brij Gowalla,

S/o- Late Mangal Gowalla, R/o- Green Wood Tea Estate,

PS- Lahoal,

District- Dibrugarh.

Accused: Md. Fidar Ali,

S/o- Late Rahat Ali,

R/o- Green Wood Tea Estate,

PS- Lahoal,

District- Dibrugarh.

ADVOCATES:-

For the State: Mrs	. Runumi Devi,	learned	Public	Prosecutor.
For the Defence:			learned	d Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> PCSO Case No. 26/15 G.R. Case No. 3647/13

> > State of Assam

-Vs-

Md. Fidar Ali

Charges: Under Section 417 IPC & Section 6 read with Section 5(I) POCSO Act.

Date of evidence on : 12-06-15, 14-07-15, 18-09-15, 18-11-15, 07-04-16,

19-05-16, 17-06-16 & 01-10-16.

Date of argument : 03-01-17 & 14-02-17.

Date of Judgment : 04-05-17.

JUDGMENT

- 1) The facts of this case in brief infra is that Md. Fider Ali (hereinafter the accused) induced the victim into having sexual relationship with him with false promises of marriage. When the victim became pregnant and was carrying about eight months, a meeting was arranged on 06-09-13. The victim stated before the people present in the meeting that the accused impregnated her which was vehemently denied by the accused. An ejahar regarding this incident was lodged by Sri Rambriz Gowalla (hereinafter the complainant) with the police. A Mohanbari Outpost GDE 446 dtd. 22-12-13 was registered and the same was forwarded to the Officer-in-charge of the Lahoal Police Station. The ejahar was registered as Lahoal Police Station Case No. 193/13 under Section 493/376 of the Indian Penal Code (IPC in short) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short) and the investigating officer (IO in short) who was investigating the case, continued with the investigation.
- 2) The IO forwarded the victim for medical examination and for recording her statement under Section 164 of the Criminal Procedure Act (CrPC in short). During investigation, the DNA Test Report of the accused was also obtained.

The IO also recorded the statements of the witnesses and prepared the Sketch-Map of the place of occurrence. On finding prima facie materials, the IO submitted the Charge-Sheet against the accused under Section 493/376 IPC read with Section 10 of the POCSO Act.

- 3) On appearance of the accused, copies were furnished. After hearing both the sides, a formal charge under Section 6 read with Section 5(I) of the POCSO Act was framed and read over and explained to the accused. The accused abjured his guilt and claimed to be tried. On a later stage, charge under Section 417 IPC was added and read over and explained to the accused and the accused again abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of eleven witnesses including the Scientific Officer, the IO and the Medical Officer (MO in short). The defence cross-examined the witnesses in extenso to refute the charges.
- 5) On the questions of the circumstances arising against him, the statement of the accused was recorded under Section 313 (1)(b) CrPC and the plea of the accused was of total denial.

SUBMISSIONS:

6) I have heard the arguments advanced by the learned counsel for both the sides. Learned Public Prosecutor Smti. R Devi submitted that this case has been proved beyond reasonable doubt. The question of consent does not arise at all as the victim is a minor and the doctor has opined that the victim is under 16 (sixteen) years of age. On the contrary, the learned defence counsel Mr. G. Pareek laid stress in his argument that the place of occurrence described by the witnesses brings a major contradiction reflecting the true nature of the victim casting a shadow of doubt over the veracity of her evidence. It is also submitted that the victim was about 18 (eighteen) years of age according to the age given by the victim herself and her father. The learned defence counsel further submitted that the cross-examination of the medical officer depicts that the victim's age was not properly determined.

POINTS FOR DETERMINATION

- 7) The points which are apposite to be determined in this case are:
 - 1. Whether since April, 2013, at Green Tea Estate Line, the accused repeatedly committed sexual assault on the victim and impregnated the minor victim?

2. Whether the accused at the same time and place cheated the victim by dishonestly inducing her to have sexual relationship with him by luring her with false promises of marriage, thereby causing damage in mind, body and reputation of the victim?

DECISION THEREON AND THE REASONS FOR THE DECISION:

- 8) To decide the case in its right perspective, it is necessary to delve into the evidence. The victim testified as PW-1 that the accused person is her neighbour whilst the complainant is her father. At present, she is the mother of a child about one and half year old. When she became pregnant and was carrying for five months, her father lodged a case against the accused. The accused expressed his love for her and with promises to marry her, he gratified his passion over her and he had sexual intercourse with her. She further testified that one day, when her family members were not present, the accused called her to his house to watch TV. Promising to marry her, the accused had sexual intercourse with her. She did not inform about the incident to her parents, but informed the mater to one ASA worker. The ASA worker took her to the garden hospital and after examination, the doctor confirmed that she was pregnant and was carrying for about five months. She was accompanied by her father to the hospital and when her father asked her about the matter, she informed him that the accused impregnated her by promising to marry her. Her father called the villagers and informed the matter. Child Line was also informed about the incident. A meeting was called and the employees of the Child Line also attended the meeting. Thereafter, her father lodged an ejahar. Police forwarded her to the Court to record her statement. Ext. 1 is her statement where Ext. 1(1) and Ext. 1(2) are her signatures. She was taken to the hospital for medical examination. After the registration of this case, she has been residing in the "Smile Children Home" under the supervision of Child Line. She was blessed with a child on 13-01-14. Hers as well as her son's blood samples were taken for paternity test. She further stated that it was within her knowledge that the accused person was a married person at the time of the incident.
- 9) In her cross-examination, she stated that she did not know her date of birth. She stated that her age was 20-21 years. She denied in her cross-examination that she stated before the police that the accused came to her house in the absence of her family members and had sexual intercourse with

her on four such occasions. She admitted that she was in love relationship with the accused for about one year. She admitted in her cross-examination that in the meeting, pressure was exercised upon the accused to marry her. She also denied the suggestion that she did not state before the Magistrate that the accused went to her house when her family members were absent and finding her alone at home, he expressed his love for her and proposed to marry her and thereafter, he had sexual intercourse with her with promises of marriage and in this manner, the accused on several occasions had sexual intercourse with her in her house.

- 10) The victim's father Sri Rambriz Gowalla testified as PW-2 that the accused is his neighbour. The alleged incident took place about one and half year back. When his daughter was not well, one ASA worker from their locality took his daughter X to the garden hospital and on examination, the doctor confirmed that his daughter was pregnant. The ASA worker informed him about his daughter's pregnancy. When he asked his daughter as to how she became pregnant, she replied that the accused had sexual intercourse with her. She also informed him that that the accused called her to his house and had sexual intercourse with her and as a result, she became pregnant. A meeting was called by the local men regarding the incident and the accused was also present in the meeting. The meeting was also attended by the employees of Child Line. The accused denied his involvement in the incident in the meeting. Then he informed the local Gaon Burah Sri Dondiram Toppo and Dondiram wrote an ejahar for him. He lodged the ejahar with the police. He went to the police station along with his daughter and the police recorded his statement. A case was registered. His daughter has been residing in the "Smile Home" since then. On 13-01-14, his daughter was blessed with a son and both the mother and son are still residing in the "Smile Children Home" at Dibrugarh. He further testified that his daughter was only fifteen years at the time of the incident.
- 11) In his cross-examination, he stated that the birth of every child is registered in their garden in the Birth Register. He did not know the date of birth of his daughter and her present age. He also did not know the date of birth of his other children. His daughter studied in the garden school upto Class-II. The people from the labour line got an ejahar written by the Gaon Burah and he along with the Gaon Burah went to the police station and lodged the ejahar.

He admitted his ignorance about the contents of the ejahar. He further stated in his cross-examination that about thirty-five people were present in the house when the ejahar was being drafted and till the lodgment of the ejahar, he did not ask his daughter about the incident nor did he meet his daughter till the lodgment of the ejahar. He also did not know the actual age of his daughter. He stated that the accused did not attend the meeting called by the Gaon Burah. He further testified in his cross-examination that after a lapse of one and a half month, when his daughter was taken to the Child Line, he lodged an ejahar with the police regarding the incident.

- 12) The Government Gaonburah Sri Dandiram Toppo testified as PW-3 that the accused and the complainant as well as the victim are known to him. About a year back, one day the complainant went to his house to prepare an ejahar. The complainant informed him that his daughter who was about 18-19 years was pregnant due to a physical relationship with the accused Md. Fider Ali, and the accused had no intention to accept his daughter. So, he wrote an ejahar according to the complainant's narrative and he affixed his signature on the ejahar. Ext. 2 is the ejahar and Ext. 2(1) is his signature. He also took down the thumb impression of the complainant.
- 13) In his cross-examination, PW-3 testified that the victim was 20-21 years of age. He learnt about the incident when the complainant asked him to write the ejahar. He admitted that he did not state before the police that the accused seduced the minor victim X and had sexual intercourse with her which impregnated her.
- 14) Sri Radheshyam Chetri testified as PW-4 that the accused as well as the victim are known to him. The occurrence took place about two years back. There was a programme in the tea garden hospital to provide medicine to the children, but the victim X did not go to the hospital for the medicine. When the Mahila Samiti members took the victim to the hospital, the doctor examined her and informed them that the victim was pregnant. On being asked, the victim replied that the accused impregnated her. He did not hear about the incident directly from the victim, but heard about it from the other people.
- 15) The ASA worker Smti. Paramoni Das testified as PW-7 that the accused person and that victim are known to her. The incident took place in the year 2013. At that time, she was working as ASA Worker in the area near the

victim's house. At that time, there was a programme in the garden for distribution of medicine to the children. At that time, she learnt that the victim who resides in No. 6 Line of Green Wood Tea Estate refused to take medicine as she was ill. So she took her to the garden hospital. When the doctor examined her, he informed her that the victim was pregnant and she was carrying for seven months. When the doctor asked the victim about her pregnancy, she informed the doctor in her presence that the accused impregnated her. She took the victim to her house and informed her father about the victim's pregnancy. Someone from the locality informed the matter to the higher authority of the Child Line. Later, police visited the tea garden and enquired about the matter and the police also recorded her statement. After a few months, the victim delivered a male child. She came to know that that Md. Fider Ali is a married person with two children. The age of the victim was sixteen years at the time of the incident. Her cross-examination is denial of suggestions by the learned defence counsel.

- 16) Sri Mahabir Gowalla testified as PW-8 that the victim is his younger sister. The occurrence took place about two years ago. At that time, he was in Dibrugarh. On the day of occurrence, he went to his house because his father informed him about the incident regarding his sister and he was informed that the Child Welfare Committee was visiting the tea garden. Then he learnt from his sister that Md. Fider Ali impregnated her. The employees of the Child Welfare Committee took his sister to Dibrugarh. Police was also present at that time and his statement was recorded by the police. His sister informed him that the accused lured her into have sexual relationship with him with assurances of marrying her.
- 17) In his cross-examination, he stated that his sister was four years younger than him and his age at that time was twenty-three years.
- 18) Dr. Nibedita Shyam testified as PW-6 that on 24-12-13, while working as GDMO in the Department of Forensic Medicine, AMCH, Dibrugarh, she examined X in connection with Lahoal PS Case No. 193/13 under Section 493/376 IPC r/w Section 10 of the POCSO Act. On examination, she found the following-

On genital examination: Genital organs were healthy. Vulva is healthy. Labia minora exposed on abduction of thigh. Hymen: Old tear present 1, 4 & 9 O' Clock position and hymenal orifice admits two fingers. Vagina and cervix

healthy. Uterus is enlarged with fundal height at 36 weeks of gestation. Linea alba and striae gravidarum present. Foetal parts and movements palpable. Vaginal smears were taken on glass slides from posterior fornix and around the cervix result of which does not show any spermatozoa.

The doctor opined on the basis of Physical examination, Radiological & Laboratory Investigation done on 'X' that:-

- (1) Her age was above 14 years and below 16 years at the time of her examination;
- (2) Evidence of pregnancy detected on her person and duration of pregnancy was approximately 35 weeks 2 days at the time of her examination as per USG obstetrics report;
- (3) Evidence of injury not detected on her body or private part at the time of her examination;

Ext. 3 is the Medico-legal Report where Ext. 3(1) to Ext. 3(4) are her signatures.

- 19) In her cross-examination, she stated that she could not say from radiological examination whether the exact age was 14 years or 16 years. she could only indicate the range given in her report.
- 20) The IO SI Bipin Chandra Bora testified as PW-10 that on 22-10-13, while he was working as In-Charge of Mohanbari Outpost, he received an ejahar from Sri Rambriz Gowalla and registered a GDE No. 446 dtd. 22-10-13 and forwarded the ejahar to Lahoal Police Station which was registered as Lahoal Police Station Case No. 193/13 under Section 494/376 IPC read with Section 10 of the POCSO Act. He was directed to conduct the investigation. Ext. 2 is the ejahar and Ext. 2(3) is the signature of the Officer-in-charge of Lahoal Police Station. During investigation, he went to the place of occurrence and recorded the statements of the witnesses and the informant. When he learnt that the victim X was in the custody of CWC, he visited the members of CWC and took the victim girl for medical examination. He forwarded the victim to the Court for recording her statement under Section 164 CrPC. Then he arrested the accused Md. Fider Ali and forwarded him to the Court. On 27-01-14, he learnt from the victim's father that the victim gave birth to a male child and they were under the custody of Child Line. On getting the information of the birth of the child, he prayed before the Court for collecting the blood samples from the accused, the victim and the new born baby for

DNA profiling. During investigation, he prepared a Sketch-Map of the place of occurrence. Ext. 5 is the Sketch-Map and Ext. 5(1) is his signature. Ext. 6 is the copy of the GDE No. 446 dtd. 22-12-13 of Mohanbari Outpost. He obtained Medico-legal Report of the victim. On 31-12-14, he was transferred from the Mohanbari Outpost and so he handed over the Case Diary to the Lahoal Police Station. The cross-examination of the IO will be discussed at the appropriate stage.

21) The Scientific Officer Sri Arup Manta testified as PW-9 that on 17-11-14, while working as Junior Scientific Officer, DNA Typing Unit of Serology Division, the Director-cum-Chemical Examiner to the Government of Assam DFS, Assam Kahilipara, Guwahati, received one parcel. The parcel consisted of three exhibits in a cartoon box which was sealed with the impression seal corresponding with the seal impression forwarded and directed him to examine and furnish report.

Description of Article:

- One sealed EDTA vial contained 2 ml (approx liquid blood of Miss Lakhi Gowala, collected by doctor of Assam Medical College & Hospital, Dibrugarh, with blood Donor authentication Card. ----Marked as Ext. No. DNA 1134/14/14.
- One sealed EDTA vial contained 2 ml (approx liquid blood of Sri Senash (baby), collected by doctor of Assam Medical College & Hospital, Dibrugarh, with blood donor authentication Card. ----Marked as Ext. No. DNA 1135/14.
- One sealed EDTA vial contained 2 ml (approx liquid blood of Fidar Ali, collected by doctor of Assam Medical College & Hospital, Dibrugarh, with blood donor authentication Card. ----Marked as Ext. No. DNA 1136/14.
 - Result of DNA Finger Printing Analysis: DNA from the source of the above exhibits were isolated by organic extraction method and subjected to multiplex PCR reaction for sixteen STR loci Alleles and amelogenine using AmpFLSTR Identifier Kit. The amplified product alongwith controls were run on automated DNA Sequencer and analysis was carried out using Genemapper I/D V3.2 Software with respect to Standard ladder and from the resultant allel, it is observed:—

That one of the maternal allel of the amplified Loci of Ext. No. DNA 1135/14 (Baby) matches with one of the respective allele in the DNA Profile of Ext. No. DNA 1134/14 (mother). The non-maternal allel of Ext. No. DNA 1135/14 (baby) is matching with the DNA Profile of Ext. No. DNA 1136/14 (father).

Ext. 4 is the result of the DNA finger printing analysis in two pages. Ext. 4(1) is his signature. Ext. 4(A) is the forwarding letter sent to Addl. Superintendent of Police, Head Quarter, Dibrugarh, for submitting the report in connection with Lahoal P.S. Case No. 193/13 sent from Director of Chemical Examiner to the Government of Assam DFS , Assam, Kahilipara, Guwahati- 19, dated 9.2.15 Ext. 4(A)(1) is the signature of Dr. Rajen Khound, Director-cum-Chemical Examiner to the Government of Assam which he knows as he had been working with him in the same Department.

- 22) PW-5 Smti. Lakhiram Chetri denied any knowledge about the occurrence.
- 23) Another IO Sri Chanakya Deori testified as PW-11 that on 21-03-14, he was posted at Mohanbari Outpost as In-Charge, he was handed over the Case Diary of this case by SI Bipin Chandra Bora who was investigating the case. As SI Bipin Chandra Bora was on transfer, he (PW-11) continued the investigation. He went to the CWC and met the victim and he noticed her new born baby. He filed application for DNA profiling. He applied for paternity test on 28-10-14 before this Court and this Court allowed the petition vide Memo No. DJD/6593/14 dtd. 15-11-14. On receipt of the order, he brought the victim along with her baby to Assam Medical College & Hospital, Dibrugarh and after collection of blood sample, he forwarded the same to the FSL vide Memo No. R/B/63/79 on 15-11-14. He received the DNA Report on 25-03-15. After finding prima facie material against the accused, he submitted Charge-Sheet on the instruction of the Addl. SP (HQ) under Section 493/376 of the IPC, read with Section 10 of the POCSO Act. Ext. 7 is the Charge-Sheet and Ext. 7(1) is his signature. Ext. 4 and Ext. 4(A) are the FSL Report which he had collected. Ext. A is the Identification Form of Fidar Ali dtd. 25-11-14 and photograph attested by the MO on duty. Ext. 8(1) is the photograph of the accused Fidar Ali. The Identification Form was attested and signed by Dr. N Shyam, the MO on duty, Department of Forensic Medicine, Assam Medical College & Hospital, Dibrugarh. Through her crossexamination, the defence tried to portray that blood sample of another

person Fidal Ali was taken for DNA profiling which the defence miserably failed.

ANALYSIS OF EVIDENCE

- 24) The evidence of PW-1 reveals that she was well aware of the fact that the accused was a married man. She was induced by his false promise and she willingly had physical relationship with the accused because she was keen to get married to the accused. She concealed her pregnancy until she could conceal no more. She was five months pregnant when she had to disclose about her pregnancy to her father. The ASA worker detected that the victim was pregnant after she took the victim to the doctor when the victim was absent during distribution of medicine. The accused did not miss the opportunity to gratify his passion over the victim when he noticed the vulnerability of the victim. The victim cannot be rated as an innocent victim because she was well aware of the fact that the accused was a married person and her entry into such a family would never be accepted by the family members of the accused, i.e., the first wife of the accused.
- 25) Moreover, the statement of the victim is contradictory to the statements of other witnesses. She testified that one day, when her family members were not present, the accused called her to his house to watch TV and had sexual intercourse with her. On the contrary, she stated before the Magistrate in her statement under Section 164 CrPC that on the day of occurrence, when she was alone at home, the accused came to her house and expressed his love towards her and proposed to marry her and then he had sexual intercourse with her in her house in the absence of her family members. The accused repeatedly had sexual intercourse with her in her house, the veracity of the evidence of the victim is not reliable because her testimony before the Court depicts that the accused had sexual intercourse with her in his house while on the contrary in her statement under Section 164 CrPC, she stated before the Magistrate that the accused repeatedly had sexual intercourse with her in her house during the absence of her family members. Ext. 1 is the statement of the victim under Section 164 CrPC and Ext. 1(1) is her signature. The victim's testimony has also been contradicted by the IO who testified as PW-10 in his cross-examination that the victim X stated before him that the accused went to her house and had sexual intercourse with her four times in the absence of her family members. She also stated before the IO that the

- accused has two wives and two children.
- 26) Despite knowing that the accused was married twice, the victim was keen to get married to the accused and to stay with him as his third wife. Her testimony belies her evidence. She is not an innocent victim and her evidence cannot be relied upon in its totality. The allegation of rape has to be assessed very carefully. In this regard, it is pertinent to mention at this stage that the medical officer's opinion depicts that the victim was below 16 years and so two years if taken on the higher side, the age of the victim can be assessed to be as around 18 years. Moreover, in her cross-examination, the victim stated that her age was around 20/21 years. The alleged incident took place in the year 2013 and the victim gave her statement on 12-06-15. She admitted in her cross-examination that she was 20/21 years of age and then it can be safely held that she was around 18 years at the time of incident. Moreover, her statement is self contradictory because when she gave her age while giving her name and address to the Court, she mentioned that she was 17 years and in her cross-examination, she stated that she was 20/21 years of age. The doctor's cross-examination reveals that she has given a range regarding the age of the victim, i.e., between 14 years to 16 years. She could not give the exact age of the victim. The benefit thereby goes to the accused.
- 27) The evidence of PW-1, 2, 3 (village gaonburah), 7 & 8 clearly reveals that the accused impregnated the victim. It can be held that the accused induced the victim with false promises of marriage and procured her consent to have sexual intercourse with him. The evidence of the victim clearly reveals that she had a love relationship with the accused and she was keen to get married to the much married man. The victim PW-1, her father PW-2 and her brother PW-8 testified that the victim was taken by the employees of the Child line to Dibrugarh. PW-1 & 2 further stated that on 13-01-14, the victim gave birth to a son in the 'Smile Children Home' at Dibrugarh. The IO (PW-10) testified that when he learnt about the birth of the child, he prayed before the Court to collect blood samples for DNA test.
- 28) The Scientific Officer Sri Arup Manta testified as PW-9 and his evidence depicts that on DNA profiling and on testing, it was found that the sample of the father matches the sample of the child of the victim.
- 29) In this context, the learned defence counsel laid stress in his argument that

- the Ext. 4 depicts the name of the father as Md. Fedal Ali. This argument of the learned counsel can be safely ignored because Ext. 8 depicts the photograph of the accused on the identification form and it can be safely held that there was a printing mistake on Ext. 4 where the name was erroneously typed as Fidal instead of Fidar Ali. Thus it can safely be held that the accused and no one else is the father of the child borne by the victim.
- 30) In view of my foregoing discussions, it is thereby held that the accused cannot be held guilty of offence of rape for procuring the consent of the victim who is a minor or acquiring the consent of the victim on misrepresentation of facts. The evidence clearly proves that the victim was a consenting party and she was keen to get married to the accused and she had sexual relationship with him willingly. The accused who promised to marry the victim, cheated the victim and he is thus held guilty of offence under Section 417 IPC.
- 31) There is not even an iota of doubt that there was a love affair between the accused and 'X' and both indulged in physical relationship. The victim's evidence belies the entire incident. It has already been held that the contradictions of the victim's statement under Section 161 CrPC and under Section 164 of the CrPC with her testimony before this Court casts a shadow of doubt over the veracity of her evidence. But, at the same time, the fact that the accused impregnated the victim cannot be ruled out.
- 32) It has already been held that the victim was a consenting party and was eager to get married to the much married man. The evidence of PW-1, 2, 3, 4, 7, 8 as well as the evidence of the IOs PW-10 & 11 and the evidence of the scientific officer PW-9 clearly depicts that the accused sired the victim's child. It is amply clear that the accused is the father of the victim's son. At the same time, it cannot be held that he accused committed rape on the victim. The contradictions are apparent and the evidence of the victim cannot be relied upon.

33) Regarding presumption envisaged under Section 29 of the POCSO Act, the question of presumption does not arise at all, because the victim is held to be around 18 years of age. Moreover, inducement to the victim does not arise at all because despite having knowledge that the accused already had two wives, the victim had aspirations to be his another wife.

34) Moreover the learned defence counsel emphatically laid stress in his

argument that pressure was exercised on the accused to marry the victim and the PW-1 admitted in her cross-examination that pressure was exerted on the accused. The learned defence counsel submitted that when the accused did not marry the victim, then case was foisted against him. The learned defence counsel emphasized in his argument that there was a prolonged delay in the lodgment of ejahar. The victim was carrying for about five months whereafter the ejahar was lodged. This implies that there was delay of more than five months in lodging the ejahar and the complainant had ample time to fabricate and foist a case against the accused. this argument of the learned defence counsel cannot be taken into consideration because it is amply clear from the evidence as well as from the ejahar that the victims pregnancy was detected after five months and thereafter, the prosecution was set into motion because the victim was mum about the entire incident till the discovery of her pregnancy by the ASA worker. Moreover, at this stage, I would like to divert attention towards the crossexamination of the IOs PW-10 & 11. It is clear from the cross-examination of both the IOs that the evidence of the witnesses remained uncontradicted and uncontroverted. No contradiction regarding the previous statement made by the witnesses are evident in this case.

- 35) Recapitulating the foregoing discussions, it is thereby held that the prosecution failed to prove beyond reasonable doubt that the accused committed aggravated sexual assault on the victim 'X'. It is also held that there is clinching evidence that the accused sired the victim's child. Paternity test of the child had been conducted holding the accused to be the father of the child. The accused intentionally induced the victim to indulge in physical relationship with him by luring her with false promises of marriage, causing damage to the victim in body, mind and reputation.
- 36) The accused Fider Ali is hereby held guilty of offence under Section 417 of the IPC. I have heard the accused on the point of sentence. He has submitted that he is the sole bread winner and supports a large family and his family will suffer immensely if he is confined for such for a long time.
- 37) Regarding the question of punishment, I believe that the accused deserves stringent punishment. He has abandoned his own son. The victim is left to fend for herself and her child. She is in a very deplorable and pathetic

condition contributed by the accused. The victim definitely did not deserve such an indifferent and averse behaviour from the person she loved. Considering the desolate condition of the victim, I believe a compensation awarded to the victim will meet the ends of justice.

SENTENCE:

38) The accused Md. Fider Ali is hereby convicted under Section 417 of the IPC and sentenced to rigorous imprisonment for 1 (one) years. He is further directed to pay a compensation of Rs. 2,00,000/- (Rupees Two Lakhs) only under Section 357(3) of the CrPC which will be paid to the victim. Further a recommendation is made for compensation to the victim under the Victims Compensation Scheme. The period of detention of the accused during investigation and trial is set off with the custodial sentence.

Judgment is signed, sealed and delivered in the open Court on the 4th day of May, 2017.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 The victim;
- 2. PW-2 Sri Rambriz Gowalla;
- 3. PW-3 Sri Dandiram Toppo;
- 4. PW-4 Sri Radheshyam Chetri;
- 5. PW-5 Smti. Lakhiram Chetri;
- 6. PW-6 Dr. Nibedita Shyam;
- 7. PW-7 Smti. Paramoni Das;
- 8. PW-8 Sri Mahabir Gowalla;
- 9. PW-9 Sri Arup Manta;
- 10. PW-10 SI Bipin Chandra Bora;
- 11. PW-11 Sri Chanakya Deori.

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4(A) Forwarding Letter of FSL;
- 5. Ext. 5 Sketch-Map; and
- 6. Ext. 6 Extract copy of Mohanbari Police Outpost General Diary Entry No. 446 dtd. 22-12-13.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.