HEADING OF JUDGMENT IN SPECIAL CASE

IN THE COURT OF SPECIAL JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Special Judge, Bilasipara

Special Case No- 01 of 2015

u/s 4 of POCSO Act

STATE

Versus

Bellal Hussain,

S/O Abdul Gofur,

R/O Vill- Sontoshpur,

PS- Chapar, Dist- Dhubri, Assam

Accused person

(Corresponding to GR case No- 377/14 (Chapar PS Case No. 377/14) u/s 4 of POCSO Act)

Advocate appeared:-

For the state :- Mr. T. Kr. Bhattacharya, Special P.P.

For the accused :- Mr. Mozahar Ali Prodhani &

Mr. Tofazal Hoque, Advocate.

Date of institution of the case :- 08-08-14

Date of Framing charge :- 28-07-15

Date of prosecution evidence :- 05-12-15, 08-02-16, 14-02-17,24-08-17

20-02-18,28-02-18

Statement of accused recorded on :- 12-09-18

Date of Argument :- 03-11-18, 07-01-19

Judgment delivered :- 21-01-19

Hearing on Sentence :- 25-01-19

Sentence Pronounced :- 25-01-19

JUDGMENT

Prosecution Case

1. This prosecution case set on motion based on the ejahar filed by informant Md. Sultan Ali on 08-08-14 before i/c Salkocha out post inter alia citing that on 08-08-14 at about 10.30 am accused Bellal Hussain enticed his granddaughter Miss X, (name changed, herein after read as Miss X) at his house and thereafter accused had committed rape on her. Hearing cry of the Miss X, mother of Miss X rushed to accused's house and she witnessed the incident and thereafter mother of Miss X brought the victim girl Miss X from the house of accused Bellal and narrated the whole incident.

Investigation

2. On receipt of ejahar from informant i/c Salkocha oust post forwarded the same to O/C Chapar PS for registration of the case and O/C Chapar PS registered the police case vide Chapar PS case no. 377/14 u/s 4 of POCSO Act and ASI Nirendra Ch. Nath was entrusted to conduct the investigation of the case and after completion of investigation I/O submitted charge sheet against the accused person named herein above u/s 4 of POCSO Act and cognizance taken and upon appearance of the accused person, necessary copies has been furnished to him.

Charge

3. My Ld. predecessor after hearing learned counsel for both sides and perusal of material on record framed charge against the accused Bellal Hussain u/s 4 of POCSO Act and when charge is read over and explained to the accused person he pleaded not guilty and claimed to be tried.

<u>Trial</u>

4. In order to prove the prosecution charges against the accused person, prosecution adduced evidence of all together 9 numbers of witnesses including

one court witness and exhibited 8 nos. of documents. PW-1 Sultan Ali, PW-2 Moniza Bibi, PW-3 Abbas Ali, PW-4 Abu Shama Sk, PW-5 Mustt. Fatema Bibi, PW-6 Mr. Sankar Chandra Rabha (FSL expert), PW-7 ASI Nirendra Ch. Nath (I.O), PW-8 Dr. Rinku Ahmed(M.O) and CW-1 Miss X, (victim child). Ext-1 FSL report, Ext-2 forwarding letter, Ext-3 Ejahar, Ext-4 Sketch Map, Ext-5 Seizure list, Ext-6 Seizure list, Ext-7 Statement of victim girl recorded u/s 164 Cr.P.C and Ext-8 Charge sheet. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is total denial, however declined to adduced evidence in support of the plea of denial.

5. **POINTS FOR DETERMINATION:-**

i) Whether accused on 08-08-14 at about 10.30 am at village Sontoshpur under Chapar PS committed penetrative sexual assault on informant's granddaughter Miss X (aged about 4 years old)?

ARGUMENT

- 6. Ld. Addl. P.P submits prosecution by adducing the evidence of informant, victim, FSL expert and other witnesses, the eye witness of the case established the charge framed against the accused and accused failed to rebut the evidence of prosecution and accused entitled the punishment prescribed under the law.
- 7. It has been argued by Id. defence counsel that Ext-3 cannot treated as ejahar as IO of the case reached place of occurrence on receiving of information made by one Komar Ali vide GD entry no. 141 dated 08-08-14 and Komar Ali is not examined by the prosecution and therefore prosecution case is fatal. Ld. counsel further submitted informant lodged ejahar on 08-08-14 but he has lodged ejahar after 6 ½ hours and delay of 6 ½ hours in lodging of ejahar not being explained and disclosed by informant, the prosecution case totally failed to prove. Ld. counsel further submitted the victim girl urinated on her panty when accused rebuked her after quarrelling with his daughter and there appears two stories in the prosecution case. One is commission of rape and other is quarrel between informant and accused's daughter and accused rebuked victim girl, so wet panty of victim girl is due to urination of victim girl on her panty on standing position out of fear. Ld. counsel further submitted PW-1 did not stated before the police that he see semen on the under garment of the victim girl and PW-2 not stated panty of the victim girl was wet and PW-

5 did not stated police seized gamosa of accused and undergarment of the victim girl, so wet panty does not established that it contain semen and police seized gamosa of accused and wet panty of victim girl not stated before witness so seizure not proved and therefore their evidence does not stand. He further submitted victim girl in her evidence stated colour of her undergarment as yellow and police seized one green colour under wear. So there is differences in the statement of victim girl and she made different statement in her 161 and 164 Cr.P.C statement and before the court and therefore her evidence cannot be relied upon. Ld. defence counsel further submitted PW-2 found victim girl naked, so falling of the semen of accused on the undergarment of victim girl caste doubt and prosecution case is not established against the accused beyond all reasonable doubt and evidence of PW-1, PW-2, PW-4, PW-5 and victim child cannot be acted upon and therefore ingredient of section 3 of POCSO Act not at all comes out from the evidence on record. Ld. defence counsel in support of his argument relied on decisions of Ashok Debbarama @ Achak Debbarama Vs. State of Tripura, 2014 CRI. L.J. 1830; Tukan Sharma Vs. State of Tripura, 2016 CRI. L.J. 4019; Manoj Das Vs. State of Assam, 2018(2) Gauhati Law Journal 182; Ahizul Hoque Vs. State of Assam, 2013 (3) Gauhati Law Journal 684; Allauddin Vs. State of Assam, 2003(2) Gauhati Law Journal 578; Partha Dey Vs. State of Tripura, 2013 (3) Gauhati Law Journal 220; State of Tripura Vs. Dulal Dey, 2008 (1) Gauhati Law Journal (NOC) 112.

PROSECUTION EVIDENCE

8. CW-1 Miss X, victim girl of the case deposed complainant is her grandfather and she knows accused Bellal Hussain. She deposed about 2 years back while she was proceeding to a grocery shop, accused Bellal called her to his house and assured her to give sugarcane. Thereafter accused took her to his house and removed her pant and committed sexual assault on her. She raised hue and cry and hearing the same her mother came and rescued her. **In cross** she stated when accused Bellal took her, she raised hue and cry and on hearing her shout, her mother came to the house of accused and recovered her. She stated at the time of incident she was wearing yellow colour pant and Bella was wearing a gamosa. "She denied on the day of incident, quarrel took place between the daughter of accused and her and accused Bellal warned her and then she urinated in her undergarment out of fear; she deposed falsely as

per instruction of her parents; accused Bellal did not commit any sexual assault on her".

9. PW-1 Sultan Ali is the informant of the case. His evidence is that victim girl is his granddaughter and at the time of incident victim girl was aged about 4 years old. He deposed on the day of incident at about 10.30 am he was lying on bed in his room. At that time he heard shouting from outside. Hearing the same he came out from his room and saw his daughter in law coming to his house along with victim girl. He deposed his daughter in law narrated before him that accused had committed sexual intercourse and assault on the victim child and undergarment of the victim child got wet as a result of sexual assault made by the accused. He deposed his daughter in law further told him that accused took the victim child to his house and committed sexual assault on her. Thereafter when matter was known to the mother of the victim child, she made hue and cry and accused run away from the scene. He deposed they found presence of semen on the undergarment of the victim child and undergarment of the victim child was also wet. He deposed later on accused was caught by village people and accused was handed over to the police. On the same day he lodged ejahar and after lodging of ejahar victim child was examined by doctor. He further deposed he also made statement before the Ld. Magistrate and police seized the undergarment of the victim child. In cross he stated Salkocha police out post is situated at a distance of 1 km from his house and he lodged ejahar in the evening on the same day of the occurrence of the incident. He stated accused has also a daughter namely Khodeja Khatun who is almost of the age of his granddaughter. He stated house of his son Rahim Badsha, Musa, Nisha & Monnaf are situated adjacent to his house and at the time of incident he did not see Monnaf, Nisha & Musa coming to his house. He stated there was no wall in between the house of his son and accused Bellal. He stated there are nearly about 6 family members in the house of accused Bellal and there are 8 family members in his family and his dwelling house is adjacent to the house of his son Rahim Badsha. He stated he did not see accused Bella running away from the scene after the incident and he only heard that accused was caught by public later on. He denied he did not see semen in the undergarment of the victim child after the incident; there was a dispute with regard to the common path of land between the mother of the victim and the accused Bellal; on the day of incident his granddaughter was playing with the daughter of accused

and when accused scolded his granddaughter, his granddaughter urinated on her undergarment out of fear.

10. PW-2 Moniza Bibi deposed informant is her father in law and victim girl is her daughter. She deposed her victim daughter was aged about 4 years old at the time of incident and on the date of incident at about 10.00 am, while she was preparing food in her kitchen, she heard shouting of her daughter outside her house. When she came out, she heard shouting of her daughter coming from the house of accused Bellal. Accordingly she went to the house of accused Bellal and found her daughter inside the room of accused Bellal and she found her daughter naked and accused was sitting above her daughter. She deposed undergarment of her daughter was removed by the accused and accused Bellal had committed sexual assault on her daughter. Thereafter, she went to the house of her father in law and told the incident and matter was also reported to the neighboring people. Later on village people caught accused Bellal and police arrived and asked her about the incident to which she narrated about the incident to police. She deposed her victim daughter was brought before the Magistrate and she made statement before the Magistrate and police seized her victim daughter's undergarment and one gamosa of accused Bellal. She further deposed later on village people handed over the accused to police. In cross she stated accused Bellal has 3 years old daughter at the time of occurrence and house of accused Bellal is adjacent to her house. She stated she did not see her daughter going to the house of accused and after the incident her neighbors Musa, Nisha & Monnaf came to her house hearing her shouting. She stated prior to the occurrence of the incident, her daughter went to a grocery shop to buy some articles and her daughter did not return back to house from the shop and she was called by accused to his house. She stated there are 6 family members in the house of accused and her parents in law did not see the occurrence of the incident. She stated her daughter went to shop at about 10.00 am at the time of occurrence and prior to the occurrence of the incident, she and her parents in law were in her house. She stated she did not find accused Bellal at naked state at the time of incident. She denied since they had dispute with accused Bellal for some land issue, therefore she lodged the case against the accused; prior to the occurrence of the incident, her daughter and daughter of accused were quarrelling each other and accused Bellal warned her daughter and then her daughter urinated in her undergarment out of fear.

- 11. PW-3 Abbas Ali deposed he knows complainant and accused. On the day of incident hearing hue and cry in the house of complainant he went there and saw some people gathered in the campus of the complainant. From the gathering he came to know that accused had scolded the granddaughter of the complainant and he found undergarment of the granddaughter of the complainant wet. He deposed later on he came to know that police arrested accused Bellal. **In cross** he stated many people gathered at the campus of complainant and at that time hue and cry was took place there. He stated he did not see Musa, Nisha and Monnaf at the place of occurrence and the undergarment of the victim was wet.
- 12. PW-4 Abu Shama Sk. deposed incident was took place at about 10.00 am. Hearing hue and cry in the house of accused Bellal Hussain, he rushed to the house of accused Bellal and found informant's granddaughter crying and also found undergarment of informant's granddaughter wet. He deposed accused Bellal Hussain was also present at the place of occurrence and accused fled away seeing gathering of the people at the place of occurrence. He deposed many people gathered at the place of occurrence and later on informant lodged ejahar before the police station. **In cross** he stated victim girl is daughter of his daughter Manjita and there were 4/5 houses present in between his house and her daughter. He stated he did not see Abbash Ali at the place of occurrence. He stated one grocery shop house is present near the house of accused Bellal. He denied accused did not commit rape on victim child.
- 13. PW-5 Musstt. Fatema Bibi deposed house of accused stands near to her house. Hearing hue and cry in the house of accused Bellal, she went to the place of occurrence and there she saw victim child in naked condition. Accused Bellal Hussain fled away from that place but later on he was apprehended by villager. She deposed victim child told her that accused had taken her to his house and committed beya kam with her. She deposed underwear of victim child was wet. She deposed later on police came at the place of occurrence and police seized gamosa of accused and wet underwear of victim child. Thereafter victim child was medically examined by the doctor. **In cross** she stated on the southern side of her house, house of accused Bellal Hussain is present and one shop is present after three houses from her house. She stated she saw accused Bellal Hussain taking victim girl to his house. She stated Abu Shama is her brother. She stated hearing hue and cry first mother of victim girl went to the place of occurrence and subsequently she visited the place of occurrence and

when mother of victim child visited the place of occurrence, accused Bellal Hussain was standing there. She stated police recorded her statement in the house of accused Bellal Hussain i.e at the place of occurrence. She stated prior to the incident victim child used to visit the house of accused Bellal and used to play with children of accused Bellal. She denied she in collusion with others had lodged false case against the accused; she did not made statement before police that police seized gamosa of accused and wet undergarment of victim child; on the day of incident victim child went to play in the house of accused Bellal and one altercation took place.

- 14. PW-6 Mr. Sankar Chandra Rabha, Scientific Officer deposed on 26-09-14 he received a parcel through Director, FSL, Kahilipara in connection with Chapar PS case no. 377/14 u/s 4 of POCSO Act 2012. The parcel sealed cloth over in one carton box consist of two exhibits. After opening the parcel he found- i. one green colour underwear contains stain of suspected semen mark as A. MR no. 114/14. My examination number SERO 3390/A and ii. One white and red colour gamosa contains stain of suspected blood and semen mark as B. MR no. 115/14. My examination number SERO 3390/B and after examining aforesaid articles he found- i. Ext No. SERO 3390/A gave positive test for human semen and ii. Ext. No. SERO 3390/B gave positive test for human blood and negative test for spermatozoa (semen). He deposed Ext. 1 is his report and Ext. 1(1) is his signature. He deposed he had examined one green colour underwear contains stain of suspected semen and one white and red colour gamosa contains stain of suspected blood and semen and he had seen the same before the court at the time of adducing his evidence after opening of the seal cover carton. He deposed Ext M(1) is one green colour underwear contains stain of suspected semen and Ext M(2) is one white and red colour gamosa contains stain of suspected blood and semen. In cross he stated the process of present examination was completed within one month and he had examined only one green colour under wear.
- 15. PW-7 ASI Nirendra Ch. Nath, IO of the case deposed on 08-08-2014, he was posted at Salkocha O.P. as ASI of Police. On that day i/c Salkocha O.P. received one information over mobile from one Komar Ali Talukdar that one boy was apprehended by the villager suspected him to be involved in illicit act. Accordingly i/c Salkocha out post after making GD entry vide GD no. 141 dated 08-08-14 send him to village Santoshpur. He visited the village Santoshpur and took custody of one 4 year old girl Miss X and one 22 year old boy Bellal

Hussain. On that day he had recorded statement of the witnesses, drawn sketch map of the place of occurrence, seized Panty of the 4 year old victim girl and one Gamosa belonging to the accused by preparing seizure list. Thereafter he brought accused Bellal Hussain and 4 year old victim girl Miss X to the Salkocha Police O.P. and he produced accused Bellal Hussain and victim at Salkocha SHC for Medical examination. He deposed in connection with this incident written ejahar was filed on 08-08-14 by Sultan Ali and he finding material against the accused Bellal Hussain produced accused Bellal Hussain before the Magistrate and on 9-8-14 and he produced victim girl at Dhubri Civil Hospital for her further Medical Examination and thereafter he had produced victim girl before the Magistrate to record her state u/s 164 Cr.P.C. He deposed he sent seized articles to FSL for examination. Thereafter he had collected Medical examination report of the victim, FSL examination report and after completion of the investigation he had submitted charge sheet vide Ext-8. He further deposed M. Ext. 1 is the green colour Panty (underwear) which he had seized vide M R No. 114/14 by Ext. 5 and M Ext.2 is one white and red colour Gamosa, which he had seized vide M.R. No. 115/14 by Ext. 6. In cross he stated one Kumar Ali given information over mobile to then i/c Salkocha out post about the incident but he did not recorded statement of Kumar Ali. He stated he had recorded statement of the witnesses as per GD entry and after lodging ejahar another GD entry is made vide GD entry 148 dated 08-08-14. He stated after receiving ejahar, he did not record statement of any further witness and he did not again visit the place of occurrence after receiving ejahar. He stated in his case diary he had made note that in presence of guardian he had recorded the statement of the victim girl as she is a minor. He stated he had mentioned the colour of the seized panty in the seizure list and it was green colour. He stated he first provided preliminary medical examination of the victim on 08-08-14 and on next day 09-08-14 he had produced victim girl to Dhubri Civil Hospital and on 09-08-17 he had produced victim to court to record her statement u/s 164 Cr.P.C. He stated victim girl stated before him that accused Bellal had committed sexual assault on her. He stated witness Sultan Ali did not stated before police that he saw semen in the undergarment of the victim girl. He stated witness Moniza Bibi did not stated before him that she found the undergarment of her daughter wet. He stated witness Moniza Bibi stated before him that accused committed sexual assault (beya kam) on her daughter. He denied seized articles were connected with the present case; the

case is a false and therefore he had recorded only the statement of the relative of the victim girl.

16. PW-8 Dr. Rinku Ahmed is M.O. She deposed on 09-08-14 in connection with Chapar PS Case No. 377/14 u/s 4 of POCSO Act she had medically examined Miss X, victim girl and on examination found- Patient was oriented in space & time. Clothing fresh, victim has washed her genitalia and changed her cloths after the incident; Examination of injuries- No injuries found; Local examination of genital parts- External Genitalia – Normal; Hymen- not mentioned in medical report; Vagina & Cervix- Normal. Laboratory. As the vaginal orifice is very small so she could not do the vaginal examination but the vaginal smear is made from the panty which patient was wearing as she has not washed the panty; Laboratory findings no spermatozoa seen in the smear. According to her opinion- patient was not consistent with recent sexual intercourse or assault. She further deposed during medical examination patient narrated history before her as- on 08-08-14 at 10.30 am the person called her and sexually assaulted her. In cross she stated in column 9 of Ext-9 as per history incident was took place on 08-08-14 at about 10.30 am and she had examined on 09-08-14 at about 11.30 am after 25 hours of the incident. She stated if a minor girl of the age of 4 suffers from any urine infection then there is not white discharge or vaginal discharge and there is no similarity of white discharge, vaginal discharge with sugar cane juice. She stated to find out the presence of semen, the smear found in the panty is sent to State Forensic Science Laboratory for chemical examination. She denied she has prepared a medical report without examining patient.

DISCUSSION, DECISION & REASON THERE OF:-

- 17. Prosecution allegation against the accused Bellal Hussain @ Hosen is commission of penetrative sexual assault on victim girl, minor grand-daughter of informant Sultan Ali who was aged about 4 years old on the day of incident. Therefore, prosecution must bring on record the ingredients of section 3 of the POCSO Act.
- 18. Section 3 of the POCSO Act says- **Penetrative sexual assault-** A person is said to commit "penetrative sexual assault" if-
 - a) he penetrates his penis, to any extent, into the vagina, mouth, urethra
 or anus of a child or makes the child to do so with him or any other
 person; or

- b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 19. When allegation is made under section 3, 5, 7 and 9 of the POCSO Act and same is proved as alleged against the offender (accused), presumption is drawn against the offender u/s 29 of the POCSO Act that offender (accused) has committed/ abated or attempted to commit the offence, unless the contrary is proved. The Penal Provision of section 3 of the POCSO Act is section 4 of the POCSO Act.
- 20. Keeping in mind the statutory provision of law, now let me scrutinized and scanned the evidence on record, whether prosecution able to bring home the charge of section 4 of the POCSO Act as alleged against the accused Bellal Hussain.
- 21. At the very outset let me see whether the victim girl was minor on the date of incident. Ext-3 is the ejahar. In the ejahar, the grandfather of the child made statement that victim was aged about 4 years old on the day of incident. PW-8 is the medical officer, who had examined victim girl on 09-08-14, that is on the next day of the incident and PW-8 in her medical report noted age of the victim on 09-08-14 as 4 years. Medical report shown victim's vaginal orifice is very small so not possible to do the vaginal examination. This report of the Medical officer (PW-8) clearly pointed that victim girl was child on the date of incident and she was not a minor only but she is a child. PW-1 informant, PW-2 mother of the victim girl stated victim was 4 years old at the time of incident. Other PWs and PW-7 IO of the case stated victim was a child of 4 years. There is no cross examination from the accused side on the age of the victim. That means age of the victim child at the time was 4 years is an admitted fact. Ext-7 statement of victim girl recorded u/s 164 Cr.P.C clearly pointed that victim girl was 4 years old on the date of incident. Thus, from the evidence on record it is abundantly clear that victim girl was 4 years old at the time of incident and she was just a toddler whose age is to play and merry and she has not developed

any sexual character. Now let me find out whether accused Bellal Hussain committed penetrative sexual assault on victim child as alleged against him by prosecution.

- 22. In the Ext-3 ejahar it has been alleged that accused Bellal on 08-08-14 at about 10.30 am enticed victim child at his house when child went to nearby grocery shop and thereafter he had committed rape on her. Hearing cry of the child, her mother PW-2 rushed to accused's house, wherefrom cry of child is coming and witness the incident and PW-2 brought the child victim from the house of accused Bellal and narrated the whole incident to other members of the family including the informant.
- 23. PW-1, informant of the case at the time of adducing evidence before the court stated victim child is his grandchild and on the day of incident while he was lying on bed in his room he heard shouting and saw his daughter in law PW-2 is coming with victim and told him that accused Bellal committed sexual intercourse with his granddaughter (PW-2's daughter) and he noticed undergarment (panty) of the victim girl wet. His evidence shown he got to know from PW-2 that accused Bellal took away victim child at his house and hearing cry of the child, PW-2 rushed to accused's house and seen the incident, she bring her daughter and accused fled away from the place of occurrence. PW-1 informant fully substantiates his statement made in his ejahar and before police. There is no laches in his testimonies and he stand firmly what he stated in his earlier statement.
- 24. PW-2 deposed on the date of incident when she was preparing food in the kitchen, she heard cry of her victim daughter and she came out from the kitchen and senses cry of her daughter coming out from the house of accused, she went there, found her daughter naked and accused was sitting above her daughter and seeing her accused run away pushing her and then she bring her daughter and went to her father in law's (PW-1's) house and narrated the incident. Her further testimony is that accused removed undergarment of her daughter and committed sexual assault on her daughter. She deposed later on village people apprehend accused Bellal.
- 25. Testimonies of PW-2 reveals she told incident to PW-1, her father in law and informant of the case. PW-2 immediately rushed to the house of accused Bellal, place of occurrence hearing cry of her victim child, seen accused sitting over her daughter, her daughter was naked, she bring her daughter and narrated the incident to PW-1. Reading of statement of PW-1 and PW-2 made it

crystal clear that both corroborated each other statement and except the allegation made in the ejahar no other facts, stories coming out from their statement. Statement of PW-2 bring on record other people rushed to accused's house when hue and cry was taken place. Her evidence further pointed accused fled away from the crime scene when she rushed to the place of occurrence pushing her and later on village people manage to apprehend accused Bellal and handed over to police.

- 26. House of accused is present on the south boundary of PW-5. It means PW-5 is the adjacent neighbour of accused Bellal. In between accused Bellal and PW-4 house there present other 5/6 houses because accused is the adjacent neighbour of PW-2 and house of PW-2 is after 4/5 houses from the house of PW-4. Both the PWs rushed to accused Bellal's house hearing hue and cry of the victim child and found victim was crying and her undergarment was wet, accused run away from his house on arrival of PW-4, PW-5, PW-2 at his house. Both the PWs found victim naked and on being asked victim child told them that accused did beya kam (here witness means beya kam sexual intercourse/rape) with her after bringing her at his house. Their evidence shown village people later on managed to apprehend the accused. PW-5 rushed to the place of occurrence immediately after PW-2.
- 27. Reading together statement of PW-1, PW-2, PW-4 and PW-5 pointed they heard cry of the victim child, cry of the victim child coming from the house of accused Bellal, all of them rushed to the house of accused Bellal, found victim child in naked condition, undergarment of victim child was wet and accused Bellal run away seeing their arrival. Accused person trying to abscond and run away from the place of occurrence immediately on arrival of the witnesses of the case at place of occurrence leaving the child victim naked at place of occurrence only goes to show accused involvement in the commission of the offence as alleged against the accused. Victim child told them that accused (had sexual intercourse with her) did beya kam with her. All the PWs specifically and categorically stated that victim girl narrated incident to them. More so, PW-2, PW4 and PW-5 witness accused running away from the place of occurrence on their arrival. PW-3 is another witness of the case and his evidence pointed he heard hue and cry in the house of informant, came there and found undergarment of victim child wet.
- 28. CW-1 is the victim child. Her evidence shown accused Bellal took her to his house in the name of giving sugarcane and then removed her pant and

committed sexual assault on her. She raised hue and cry and her mother came and rescued her. Her cross shown she denied all the suggestion put to her by defence. She denied having quarrel with daughter of accused, urinate in her undergarment when accused scolded, Bellal did not commit sexual assault on her. Cross examination of CW-1, child victim shown her mother came to accused's house when she made hue and cry and recovered her and Bellal was wearing a Gamosa. PW-2, mother of the child victim stated hearing shouting of her child, she came out from the kitchen, senses her daughter's cry coming out from the accused's house and she rushed to the accused's house and saw her daughter in naked condition and accused was above her daughter and she bring her daughter and accused run away pushing her. The statement of PW-2 and CW-1 is fully corroborated by each other statement. CW-1 is a child of 4 years old so there may be omission in her statement. The minor omission in her statement does not waive her whole statement when victim child categorically and specifically in all her statement stated that accused did beya kam with her by which she mean accused sexually assaulted her. Her statement before police, Ld. Magistrate u/s 164 Cr.P.C and before the court is exclusive and she stated accused removed her pant, committed sexual assault on her. Her statement shown she made statement in all the stage without any pressure, not being tutored and her evidence alone is acceptable beyond all reasonable doubt. It is not the rule of law that child will only speak what the child is asked to say. Here CW-1 is the victim of extreme sexual assault at her very tender age. She suffered the trauma so she will speak what she suffered and nothing else. A female child possesses modesty from the date of her birth and same is attribute of her sex. The tender age of the victim cannot be sole ground to discard her evidence when nothing comes out against her that she made statement not being tutored or being influenced by other. Why a girl of 4 years will lie before others pointing her fingers towards one major person that he had removed her pant and had sexual assaulted her. She has no knowledge what sex is all about. She is an innocent girl and 4 years old girl pointing her finger toward one man that he removed her pant, did sexual assault her only means accused Bellal had committed sexual assault on her. Cross examination shown victim child was bring by her mother from the house of accused and she was found naked with accused with wet undergarment and accused run away from his house when PW-2, PW-4, PW-5 came his house. Accused run away from his house seeing arrival of mother of the child victim of sexual assault and PW-4 and PW-5 further strengthen the prosecution allegation made against the accused. Accused failed to give any answer why child was found naked with him inside the room of his house if she was playing at her house with his daughter. Presence of accused with the naked child victim and accused sitting above the victim and victim is naked with wet undergarment only drawn presumption that accused had committed sexual intercourse with the child victim.

- 29. On scrutiny of the cross examination of the PW-1, PW-2, PW-4, PW-5 and victim child only goes to show that accused run away from his house after the incident on arrival of the mother of the victim child, PW-4 and PW-5. Cross examination of PW-1, PW-2, PW-3, PW-4 and PW-5 reveal that accused was apprehended by villager, police was informed and accused was handed over to police on arrival of the police and PW-7 corroborated the same while adducing his evidence before the court. When accused run away from the place of occurrence, villager got alerted and apprehended him inform police and handed over to police on their arrival.
- 30. It is further evident from the cross examination of PWs that all the PWs, that is to say PW-1 to PW-5 noticed wet undergarment of the victim. Defence during cross and at the time of argument stated there was quarrel took place between accused daughter and PW-2's daughter while she was playing with accused's daughter. But this cross examination and defence argument is totally failed and nullified by defence cross examination of PW-2 that victim child went to grocery shop just before the incident. Victim child and her mother PW-2 stated just before the incident victim girl went to grocery shop wherefrom accused picked up her and taken to his house. In villages little girl alone went to nearby village shop and parents also allowed them to go on the assumption that they are known to each other and no untoward incident would befall on them. They are rustic village people. Do not think much before sending their little one to nearby shop. Cross examination of PWs further bring on record that grocery shop house is at a little distance from the accused and PW-2's house. Prosecution allegation against the accused is that he lured child victim to his house and sexually assaulted her when she went to nearby grocery shop and prosecution fairly able to bring home the same and accused totally failed to overrule and rebut the evidence of the prosecution witnesses. Victim's mother saw her little child naked and accused is above the child. Accused failed to rebut this fact and nothing comes out in favour of the accused from the cross

examination of PWs and there is no two story appearing from the evidence of PWs as contended by the learned counsel. Rather cross examination of PWs makes it crystal clear that there was no dispute between accused and family member of child victim prior to the incident or just prior to the incident. It is also noticeable from the evidence on record accused run away from his house after just arrival of child victim's mother and PW-4 and PW-5 to his house. PW-5 is not related to PW-2 and she is the adjacent neighbour of accused and one of the neighboring people of PW-2 and she had deposed what she noticed and heard from the victim girl. The running away of accused further establish commission of the offence by him. A person will not run away from the place of occurrence if it is simple case of rebuking. More so, if altercation took place between accused daughter and child victim and accused rebuked him that too while playing outside and in the house of PW-2, then how victim found in the house of accused, why his daughter was not found in and around the place of occurrence not been able to answer the accused and failed to rebut by the accused. The evidence on record squarely covered the prosecution allegation made against the accused.

31. Defence took plea that victim child urinate in her undergarment in standing position so her undergarment (pant) was wet. But this plea is totally disproved by the statement of PW-6 and Ext-1 the Scientific officer's report on seized article. It has been stated by PW-1, PW-2 and PW-5 police seized Gamosa and wet panty of victim. PW-7 corroborates that he had seized panty (wet) of the victim child and Gamosa of the accused vide Ext-5 seizure list and send both seized material for examination at FSL Kahilipara, Guwahati. PW-6 is the Scientific Officer and he stated one green coloured underwear contains stain of suspected semen gave positive test for human semen and one red and while gamosa gave positive test of human blood. All the witnesses stated they saw wet panty of the victim child. PW-1, PW-2, PW-5 stated panty of child victim contain semen of accused. The testimony of PWs together with expert report establish that wet panty of child victim is found with human semen and it totally discarded and disproved defence version that victim child urinate in standing position so her panty got wet. This further totally ruled out and thrown away defence story of guarrel between victim child and accused daughter while playing in the house of victim child and child victim urinate in the standing position when accused rebuked her. Presence of the semen in the panty of the victim, mother of the victim seen victim naked and accused sitting above her

and wet panty of the victim all goes to show and prove the prosecution allegation made against the accused.

- 32. This is a case of penetrative sexual assault on child victim. Evidence on record shown when PW-2, the mother of the child went to the house of accused and she witness the incident of sexual intercourse on her child by accused, accused pushing her run away from the place of occurrence. PW-4 and PW-5 also noticed victim crying, wet undergarment and accused run away from his house. It is the evidence of all PWs, villagers caught accused and inform police, police arrived, took custody of accused and victim child. On the same day grandfather of the child victim lodged the ejahar. It has been coming out from the testimonies of PW-1 and PW-2 that, PW-2 after bringing her child from the house of accused went to PW-1, her father in law's house and narrated the incident. Statement of PW-4, PW-5 shown they asked victim what happened to her and she had narrated the incident of penetrative sexual assault to them. PW-3 and other villager also went to the house of informant and asked what happened to the child victim CW-1. All of them seen went panty of victim girl. When sexual assault 'rape' incident took place upon 4 years old girl, it is easily imaginable what pressure, trauma, befall on the mother and other family member of the girl. On one side there is future of the child, prestige of the family and stigma upon the child and her family and on other side fear, shame and then to gather courage to fight with the culprit. So thus there is a delay in lodging the ejahar for 6 hours. Under the facts and circumstances of the case and its nature, community, condition, village life, stigma, pressure, fear, future of the girl all coupled with led six hour delay in lodging the ejahar and that does not effected the prosecution charge coming out against the accused. The circumstances, nature of the crime, age of the victim, though silently but all clearly speaks, explained and narrated reasonable cause of the delay of 6 /12 hours in lodging the ejahar.
- 33. Hon'ble Apex Court in a catena of judgment made observation that delay in filing FIR in rape case is not of much significance as victim has to muster courage to come out in open and expose herself in a conservative social milieu. Hon'ble Apex court in State of Punjab vs Gurmeet Singh & Ors, (1996) 2 SCC, 384 observed "The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix

and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged".

- 34. In Tulshidas vs State of Goa, AIR 2004 SC 978 It is held that Prosecution case cannot be discarded solely on the ground of delay. There is no straight jacket formula can be adopted for delay in sexual offence due to various reason and most prominent reason is the mental condition of the girl/woman who is a victim of sexual harassment/assault/rape
- 35. In the present case coupled with the aforesaid principle of law laid down by the Hon'ble Apex Court together with the facts and circumstances of the case, nature of the case, age of the victim, village life of the informant and his family member goes to show that 6 hour delay in filing of the ejahar is not fatal for the prosecution case and this six hour delay has nothing to do when prosecution evidence bring only one inference of the guilty of the accused and under such circumstances delay cannot be the barrier to render the justice to the victim of the case.
- 36. Statement of PW-7 IO of the case is that on 08-08-14 i/c Salkocha police out post received one information over mobile from one Kamar Ali Talukdar that one boy was apprehended by the villager suspected him to be involved in illicit act. Thereafter i/c Salkocha police out post making GD entry no. 141 dated 08-08-14 send him to village Sonteshpur and he took custody of the boy named Bellal aged about 22 years and child Miss X, (named changed) aged about 4 years. Defence plea is that for this reason Ext-3 cannot be treated as ejahar in view of GD entry no. 141 dated 08-08-14.
- 37. Statement of all the PWs shown when accused Bellal run away from the place of occurrence he was chased and caught by village people and police was informed. Police arrived and took custody of accused Bellal. GD entry no. 141 dated 08-08-14 shown police received one information of holding of one boy by public suspected to be involved in illicit act. This information is just a cryptic information to inform police about the apprehension of one boy suspected to be involved in commission of crime and police party alerted to come to the place of occurrence to take stock of the situation and to took custody of accused. The GD entry does not speak what incident was took place. So it cannot be treated as first information report and Ext-3 is the first information report.
- 38. It is observed by Hon'ble Apex Court that cryptic information to police is not amounted to FIR as per section 154 Cr.P.C. In Sidhartha Vashisht @ Manu Sharma vs State (Nct Of Delhi) (Jessica Lal murder case) decided on 19 April,

2010 in para no. 37 Hon'ble Apex Court held that "Insofar as the decision in Bhagwant Kishore (supra), it was noted in para 8 at page 224 that the information received by the officer was not vaque, but contained precise particulars of the acts of misappropriation committed by the accused and, therefore, the said information could be treated as FIR. On the contrary, it is evident from the facts established on record in the present case that none of the three telephonic messages received by police furnished any detail about the offence or the accused. The judgment in Khwaja Nazir Ahmad (supra) is also distinguishable as the law laid down in the said case does not concern the issue involved in the present case. Cryptic telephonic messages could not be treated as FIR as their object only is to get the police to the scene of offence and not to register the FIR. The said intention can also be clearly culled out from a bare reading of Section 154 of the Criminal Procedure Code which states that the information, if given orally, should be reduced in writing, read over to the informant, signed by the informant and a copy of the same be given free of cost to the informant."

- 39. In Yanob Sheikh alias Gagu vs. State of West Bengal, reported in (2012) 6 SCC 428, It was observed by Hon'ble Apex court that "a First Information Report normally should give the basic essential in relation to the commission of a cognizable offence upon which the Investigation Officer can immediately start his investigation in accordance with the provisions of Section 154 CrPC. It was further observed that cryptic telephonic message cannot be treated as FIR as their objective is only to get the police to the scene of offence and not to register the FIR. Information which gives no details would not constitute First Information Report as contemplated under Section 154 of the CrPC but there is an obligation on the part of the police officer to register the information received by him in respect of commission of a cognizable offence. In Crl. A. (J) 12/2012 Sarif Uddin Son of Mozaid Ali, Village: Ratanpur, Police Station — Patherkandi, District: Karimganj, Assam. - Appellant - Versus - State of Assam -Respondent Our home High Court held not exhibiting the GD Entry is a lapse on the part of the prosecution and for this lapse, cause of justice cannot be allowed to suffer, especially when no prejudice is caused to the accused because of not exhibiting the same".
- 40. Ejahar was lodged on the day of incident and PW-7 recorded statement of witness, seized Gamosa and wet panty of the victim child, drawn sketch map of the place of occurrence, bring victim child before doctor on 09-08-14 for

medical examination, produced victim child before the Ld. Magistrate to record her statement u/s 164 Cr.P.C all can safely be presumed that actual investigation started only after lodging of the ejahar. Simply police rushed to the place of occurrence to took custody of the accused from the public who was caught hold by public on receipt of information of apprehending of a person suspected to be committed illegal act cannot be treated as FIR and GD entry no. 141 dated 08-08-14 cannot be termed as FIR and it has no impetus on Ext-3 ejahar and I do not find any merit on the submission of Ld. defence counsel and same is out rightly rejected. Therefore when Kamar Ali Talukdar is not examined by prosecution same does not made any lacuna in the prosecution case.

41. Submission of Id. defence counsel is that PW-1 did not made statement before police that he saw semen in the undergarment of the victim. PW-2 did not state she found wet undergarment of her victim child. PW-5 did not state police seized Gamosa of accused and wet panty of victim does not contradict their statement when police seized wet undergarment of the victim child and Gamosa of the accused and sent seized material for FSL examination and wet undergarment of the victim gave positive test of human sperm and Gamosa gave positive test of human blood and therefore submission of ld. defence counsel is devoid of merit. There is no cross examination of defence side to PW-1, PW-2, CW-1 or to other PWs such as PW-3, PW-4 and PW-5 with regard to the argument of the defence side about regular visiting of CW-1 at accused house. Hence this submission has no relevancy and is totally outside the material on record. Prosecution by exhibiting the seizure list and seized article Gamosa and panty duly authenticate the seizure of panty of the victim which is green colour and Gamosa of the accused which is red border white body. Mere fact that one 6 year old girl said different colour of the panty does not invalidate the seizure item with the case in hand. CW-1 was aged about 4 years old at the time of incident so there may be omission on her part when her evidence was recorded after two years from the date of incident and under the facts and circumstances entire evidence on record, material present on record, nature of the offence, trauma suffered by her on account of sexual assault on her at the very tender age may be the cause of her forgetting the actual colour of the panty. As she faced most gruesome incident at the very tender age, it drawn line on her brain on the said notorious incident that kill her very childish character so she remember the cruel incident that took place on the day of incident and she in plain words stated before the court and that inspire confidence.

- 42. In Krishan Lal Vs. State of Haryana 1980 AIR 1252, 1980 SCC (3) 305 held " The tender years of the child, coupled with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed, to stand." "It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged."
- 43. Hon'ble Apex Court in Tarkeshwar Sahu Vs. State of Bihar held "The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Sections 375 and 376 IPC. This Court had an occasion to deal with the basic ingredients of this offence in the case of State of U.P. v. Babul Nath . In this case, this Court dealt with the basic ingredients of the offence under Section 375 in the following words:- "8. It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:

"Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at

penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her."

Further in Tarkeshwar Sahu Vs. State of Bihar Hon'ble Apex Court held "The crux of the offence u/s 376 IPC is rape and it postulates a sexual intercourse. The word "intercourse" means sexual connection. It may be defined as mutual frequent action by members of independent organization. By a metaphor the word "intercourse" like the word "commerce" is applied to the relation of sexes. In intercourse there is temporary visitation of one organization by a member of the other organization for certain clearly defined and limited objects. The primary object of the visiting organization is to obtain euphoria by means of a detent of the nerves consequent on the sexual crisis. There is no intercourse unless the visiting member is enveloped at least partially by the visited organization, for intercourse connotes reciprocity. In intercourse between thighs the visiting male organ is enveloped at least partially by the organism visited, the thighs; the thighs are kept together and tight."

The word "penetrate", according to Concise Oxford Dictionary means "find access into or through, pass through".

In order to constitute rape, what section 375 IPC requires is medical evidence of penetration, and this may occur and the hymen remain intact. In view of the explanation to section 375, mere penetration of penis in vagina is an offence of rape. Slightest penetration is sufficient for conviction under Section 376 IPC. Position of law in England is the same. To constitute the offence of rape, there must be a penetration . Even the slightest, penetration will be sufficient. Where a penetration was proved, but not of such a depth as to injure the hymen, still it was held to be sufficient to constitute the crime of rape. This principle has been laid down in R v. M'Rue and R v. Allen . In the case of R v. Hughes and R v. Lines , the Court has taken the view that 'proof of the rupture of the hymen is unnecessary'. In the case of R v. Marsden , the Court has laid down that 'it is now unnecessary to prove actual emission of

seed; sexual intercourse is deemed complete upon proof of penetration only. In the case of Nirmal Kumar v. State , the Court held as under:- "Even slightest degree of penetration of the vulva by the penis with or without emission of semen is sufficient to constitute the offence of rape. The accused in this case had committed rape upon a minor girl aged 4 years and he could not explain the reasons regarding congestion of labia majora, labia minora and redness of inner side of labia minor and vaginal mucosa of victim. Stains of semen were also found on the underwear worn by the accused. The conviction of accused held proper."

The distinction between rape and criminal assault has been aptly described in the English case Rex v. James Lloyd . In this case, while summing up the charge to the jury, Justice Patterson observed: "In order to find the prisoner guilty of an assault with intent to commit a rape, you must be satisfied that the prisoner, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part."

44. In state of UP Vs. Chhoteylal Hon'ble Apex court in para no. 22 held "The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court.

- 45. Scenario that were coming out from the evidence on record is summed up below:- i) victim child went to nearby grocery shop of her house;
 - ii) She did not return home;
 - iii) PW-2, mother of the victim, PW-4 and PW-5 heard cry of the victim child;
 - iv) PW-2 came out from kitchen and she senses cry of her child is coming out from the house of accused and she rushed to the house of accused;
 - v) On reaching house of accused she finds her daughter naked and accused is sitting above the victim child in the room of the accused house;
 - vi) Seeing PW-2's arrival accused pushing her run away from the place of occurrence;
 - vii) PW-5 one of the adjacent neighbour of the accused heard crying of the victim child coming out from accused house and rushed to accused house next to PW-2;
 - viii) On reaching accused house she found victim child naked and she was crying and accused seeing her and Pw-2 run away from the place of occurrence;
 - ix) PW-4 also seen victim child naked in the house of accused and accused run away from the place of occurrence;
 - x) Hue and cry was took place and villager rushed to place of occurrence and got to know about the incident;
 - xi) PW-2, Pw-3, PW-4 and PW-6 noticed panty of the child wet;
 - xii) Villager apprehend the accused and called police and hand over accused to police;
 - xiii) Police took custody of the accused seized wet panty of the victim and gamosa of the accused containing blood stain and send to FSL for examination;
 - xiv) FSL examination report gave positive test of sperm in the panty of the child victim and presence of human blood in the gamosa of the accused;
 - vi) Victim child in her all the statement stated she was raped by the accused and PW-2, witness accused above the victim and victim was naked and her panty was wet and victim child disclosed incident to her mother and others.

- 46. To full fill the ingredients of section 3 of the POCSO Act, prosecution only need to bring on record that accused had penetrate his penis not the penetration of the victim is required and accused had insert penis or any object into the vagina, mouth, urethra, anus or manipulate any of the part of the body of the child and make the child to do the same full fill the ingredients of section 3 of the POCSO Act. Complete insertion of penis is not required. In the case in hand accused was sitting above the victim after undressing her and her panty was wet containing human sperm is sufficient to bring home the ingredients of section 3 of the POCSO Act to establish the prosecution charge of section 4 leveled against the accused. Coupled with the aforesaid decision and on scanning of the evidence of victim child, I find her testimonies firm, cogent, unrebutted. The testimonies of PW-2, PW-4, PW-5 who rushed to the place of occurrence and saw accused running away from the place of occurrence given more strength to the prosecution evidence.
- 47. Upon entire scrutiny of the evidence on record it only goes to show that on the date of incident accused Bellal taken away the victim child to his house when she went to nearby grocery shop and committed penetrative sexual assault on victim child who was aged about 4 years at the time of incident. In the case in hand prosecution beyond all reasonable doubt fairly able to bring home the charge u/s 4 of the POCSO Act against the accused Bellal and accused failed to dislocate the prosecution charge leveled against him.

CONCLUSION

- 48. Section 29 of POCSO Act says "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"
- 49. Evidence on record clearly pointed that accused Bellal Hussain committed penetrative sexual assault (rape) on victim after calling her to his house in the name of giving sugarcane to the victim child and her evidence alone is sufficient to book accused guilty of commission of the prosecution charge u/s 4 of the POCSO Act against accused. More so in the case in hand evidence of victim is corroborated by the evidence of other PWs and there is no rebuttal of the prosecution evidence and testimonies of PW-2, PW-4, PW-5 remains un shaken and inspires confidence and accordingly acted upon.

- 50. Section 29 of the POCSO Act draws presumption that if sexual assault is alleged by a minor unless it is rebutted by the accused it is presumed that accused had committed sexual assault on the minor as alleged. In the case in hand victim in a cogent manner in specific words stated that accused committed rape on her forcefully and rape amounted to penetrative sexual assault within the meaning of section 3 of the POCSO Act and same is punishable under section 4 of the POCSO Act and I do not find any space/room to disbelief the evidence of victim of the case and her piece of evidence is accepted beyond all reasonable doubt against the accused. Accordingly I come to my considerate judicious finding that prosecution fairly able to establish the charge of section 4 of the POCSO Act against the accused Bellal Hussain beyond all reasonable doubt and I hold him guilty u/s 4 of the POCSO Act and accordingly accused Bellal Hussain is convicted u/s 4 of the POCSO Act.
- 51. Considering the facts and circumstances of the case and nature of the offence committed by the convicted accused Bellal Hussain, he is not entitled the benefit of Probation of Offender Act or section 360 I.P.C. Accordingly, convicted accused Bellal Hussain is heard on the point of sentence.

HEARING ON SENTENCE

- 52. I have heard accused and his counsel and prosecution side on the point of sentence. Accused pleaded mercy and his sentence is written in a separate sheet enclosed with the case record. Ld. Accused counsel prayed for leniency considering the fact that accused is only earning member of the family and he is to look after his ailing father and mother and his children. Ld. Addl. P.P submits that accused be sentenced in accordance with law.
- 53. Considering the nature of the offence and facts and circumstances under which accused have committed the offence of rape on victim girl, spoiling of her life, loss of chastity and womanhood, mental agony suffered by the victim in view of the rape and her future agony because of the rape committed on her, her status and future life in the society because of the rape, and increasing number of sexual assault on child, I am of the opinion that accused does not deserve any leniency and he is to be dealt with exemplary punishment.

RESULT

54. Accordingly, convicted accused Bellal Hussain is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 25,000/- i/d another 1 $\frac{1}{2}$ years R.I. u/s 4 of the POCSO Act.

ORDER

- 55. Accused Bellal Hussain is found guilty u/s 4 of the POCSO Act and he is convicted u/s 4 of the POCSO Act and he is sentenced to undergo rigorous imprisonment for life and to pay fine of Rs. 25,000/- i/d another 1 $\frac{1}{2}$ years R.I. u/s 4 of the POCSO Act. Surety of accused Bellal Hussain stands discharged.
- 56. Period under detention is set off u/s 428 Cr.P.C. Let furnish free copy of Judgment to convicted accused Bellal Hussain.
- 57. Seized goods be disposed of in accordance with law in due course of time.
- 58. The convicted accused is told that he has right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court.
- 59. Right to life and protection is a fundamental right and none can snatch it and state duty is to protect life of person and his property. Increasing number of crime in the society means failure on the part of state to protect the life and property of the citizen of the State and State has to compensate the same to the victim of the case. Form the evidence on record it is appeared that CW-1 who is a minor is a victim of rape (sexual assault) case and due to rape on her she immensely suffered mental agony which is not measurable, countable and not perceivable and because of the rape her esteem is effected and her agony is not countable. In murder case person is killed but in respect of rape/sexual assault upon victim, the very soul of the victim killed, she lost her chastity which is the most valuable assets of the girl/woman, her dignity, esteem in the society lowered and she is made to suffer and she is looked in other ways for no fault of her and therefore, she being victim of rape case needs rehabilitation for her future security and therefore, I find victim of this case CW-1, who is made to suffer at her very tender age of her life entitled compensation u/s 357 A Cr.P.C under Victim Compensation Scheme for her secured future and accordingly Ld. Secretary DLSA, Dhubri will determine the quantum of the compensation payable to the CW-1 victim of this case.

- 60. Send copy of judgment and order along with copy of charge sheet to learned secretary DLSA, Dhubri for determination of the quantum of compensation under the victim compensation scheme under section 357-A Cr.P.C.
- 61. Send copy of judgment to learned District Magistrate Dhubri u/s 365 Cr.P.C.
- 62. Given under hand and seal of this Court on this 25th day of January, 2019 at Bilasipara, Dist- Dhubri.

(Smti S. Bhuyan)

Special Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan) Special Judge, Bilasipara

Typed by, Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

PW-1 Sultan Ali,

PW-2 Moniza Bibi,

PW-3 Abbas Ali,

PW-4 Abu Shama Sk,

PW-5 Mustt. Fatema Bibi,

PW-6 Mr. Sankar Chandra Rabha (FSL expert),

PW-7 ASI Nirendra Ch. Nath (I.O),

PW-8 Dr. Rinku Ahmed(M.O).

PROSECUTION EXHIBIT:-

Ext-1 FSL report,

Ext-2 forwarding letter,

Ext-3 Ejahar,

Ext-4 Sketch Map,

Ext-5 Seizure list,

Ext-6 Seizure list,

Ext-7 Statement of victim girl recorded u/s 164 Cr.P.C and

Ext-8 Charge sheet.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT EXHIBITS :- NIL

COURT WITNESS :- CW-1 Miss X, (victim child)

(Smti S. Bhuyan)

Special Judge, Bilasipara