IN THE COURT OF THE SPECIAL JUDGE (POCSO): KAMRUP(M), AT GUWAHATI

SESSIONS CASE NO.287/16

(Under Section u/s 8 of the POCSO Act)

Present: S.P. Moitra,

Special Judge

Kamrup(M), Guwahati

State of Assam

-Vs -

Mantu Mazumdar

.....Accused Person

Appearance for the Parties:

For the State :Smt. Deepa Bezbaruah

.....Learned Special Public Prosecutor

For the accused : Sri P. Borgohain, Sri J. Borah

.....Learned Defence Counsel

Date of recording evidence: 02.11.2017, 07.12.2017,11.01.2018,

Date of Argument : 30.11.2018

Date of Judgment : 14.12.2018

J U D G M E N T

1. Brief facts of the case of the prosecution, as emerged during trial, are that on the 16th day of September, 2016, at about 6:30 am, when the

cousin (sister) of the informant (name withheld) then aged about 16 years was going to the residence of her private tutor, near Raj Bhawan, she was sexually assaulted by the accused person near Panikal. On her way to the said residence, the accused person suddenly rushed to her and touched and pressed her breast and then fled away.

- 2. On the basis of the said information, Latasil P.S Case No.277/16 was registered u/s 8 (A) of the POCSO Act, 2012 and was taken up for investigation. During investigation of the case, the accused person was arrested. The statements of the witnesses were recorded. After completion of investigation of the case, the I/O submitted charge sheet against accused Mantu Mazumdar u/s 8 (A) of the POCSO Act, 2012.
- Copies of the relevant documents were furnished to the accused in compliance to the provision of Section 207 of the Cr.P.C. On consideration of charge, charge under section 8 of the POCSO Act, 2012 was framed against the accused person. Charge was read over and explained to the accused, to which he pleaded not guilty and stood to face the trial.
- 4. In course of trial, the prosecution examined, as many as, 5 witnesses on its behalf and also exhibited 3 documents. Defence plea was of complete denial of any guilt, as appears from the trend of cross examination. Statement of the accused person was also recorded u/s 313 of the Cr.P.C. Accused person also adduced evidence in his defence.
- **5.** I heard arguments advanced by the Ld. Counsel for the parties.

6. <u>Points for determination</u>

Whether on 16.09.2016, at about 6:30 am, at Panikal, near Rajbhawan under Latasil P.S, accused person committed sexual assault on the minor victim girl?

Decision and Reasons thereof

7. I have gone carefully through the entire evidence on record and the materials placed before me.

PW.1 is the victim of this case and as such her evidence is very much important to prove the case of the prosecution. She deposed that on 16.09.2016, she was reading at Class XI at Cotton University and on that day, at about 6:30 am, she was going towards Raj Bhawan for taking private tuition class. She deposed that near Belleview Hotel, a boy (the witness identified the accused in the court) was sitting by the side of the road and suddenly the boy rushed to her and tried to drag her and thereafter he touched and pressed her breast. Her testimony further reveals that as she raised alarm, he (accused) fled away by crossing the iron grill. She added that a scooter rider came to her help and she requested him to apprehend the boy. She further deposed that the person made attempt to capture the boy, but could not find him. Her further testimony is that thereafter, she went to the tuition class and reported the incident to her tutor and the tutor also came out with her and searched the boy, but could not find him. She disclosed that she could learn that he resides nearby and probably also runs a shop. She added that on that very evening, she went to that side with her father and cousin Jawahar Jyoti Kalita and saw the boy in a shop. She further deposed that on seeing her, the boy fled away again and thereafter her father, her cousin and her tutor went to the police station on that night. She testified that before that in the morning itself, she narrated the entire incident to the members of her house. She also testified that the title of the boy was Majumdar, but added that she forgot the name. I like to repeat that the witness could identify the accused person in the dock at the time of deposition. She added that thereafter she stopped going to her private tutor. She deposed that he (accused) should be punished so that it may not happen to other girls. She added that her date of birth is 29.10.1999.

8. During cross examination, the witness stated that she does not know the accused person personally and had no opportunity to know him at any time before the incident. She further stated that her cousin was not present at the time of occurrence and the person who came by his scooter after the incident was not known to her. She added that later on, she came to know his name as Manoj. She further stated that on that day, she did not take the tuition and her tutor dropped her in the house by his scooter. The witness denied the fact that the date of birth as disclosed by her is not correct and that her present age is around 20 years. The witness denied a suggestion that the accused did not touch or press her breast. She reiterated that he did not wait there and immediately fled away. She also deposed that her father and the tutor could find out the name of the accused. She added that police came to her house and recorded her statement and denied that she had not stated all the facts to the police, what she had stated before in the Court. She also denied a suggestion that her cousin had enmity with the accused and at his instance, the false case has been manufactured. The witness further stated that on seeing her to cry, her tuition teacher took her to a different room and asked her what had happened.

9. PW.2 Rita Das is the mother of the victim and she deposed that the occurrence took place in the last year. She testified that her daughter was taking private tuition from Anjani Kumar Rajak and added that earlier she (victim) had taken tuition in the house, but from class XI, she started to go to the house of the tutor for taking tuition. She further testified that on the date of occurrence, at about 6:30 am, while she (victim) was going to the house of the tutor, the accused person was sitting nearby hotel Belleview, on the way to Raj Bhawan. Her testimony further reveals that as her daughter reached near hotel Belleview, suddenly the accused person jumped near her and touched her daughter's breast. She added that her daughter raised alarm and then the accused person fled away. She further testified that one person came for her help and he tried to search out the boy, but did not find him. Her further testimony is that her daughter went to the house of her tutor and cried and after hearing about the incident, her teacher came out with her and made searches for the accused, but could not trace him. She further testified that then her teacher dropped her in the house. She added that she could come to know about the incident from her daughter. She further added that her husband Jawahar and her tutor Anjani was searching for the boy and they saw him in a grocery shop in the evening, but on seeing them, the accused person fled away. She further testified that then the case was filed. She added that at present the age of her daughter is 17 years and some month and the date of birth of her daughter is 29.10.1999. On further examination, the witness stated that as per direction of the Court, she had brought with her the birth certificate of her daughter. She stated that it was issued on 03.11.1999, She proved Ext.3 as the birth certificate.

- 10. During cross examination, the witness stated that she does not know the accused and added that the accused person did not do anything to her daughter, prior to the date of incident. She further testified that she never saw the accused and added that she did not accompany her husband or her daughter to search out the boy. She denied the fact that her daughter is presently aged about 20 years. She stated that she has her birth certificate. She admitted that she did not see the occurrence, but was reported by her daughter and her tutor. She further stated that at the time, when her daughter reported her the incident, Jawahar Kalita was not present there.
- 11. PW.3 Anjani Kumar Rajak is the private tutor of the victim. Lending corroboration to the testimony of the victim, he deposed that the victim was his student and he has been teaching her from class 6 as Home tutor. He further deposed that after passing her matriculation, when she got admission at Cotton University, she used to come to his residence for taking tuition in mathematics and statistics. He further corroborated that he used to teach her in the morning from around 6:30 am and in the last year, on that particular day, the victim arrived in his house and she was crying. He added that he asked her what had happened and at first she could not say anything and she was just sobbing. He lent further corroboration, by stating that on his repeated asking, she told him that on her way to his house, near Belle View hotel, a person suddenly touched her private parts and then fled away. He corroborated that after hearing the same, he came out with her to search out the person, but they could not search him out. The witness further testified that thereafter he took her to her house and reported the incident to her parents. His testimony further reveals that in the evening, he was called in the house of the victim and her parents again requested him to

accompany them for searching out the person. He testified that then he himself, along with her father, her elder brother and the victim herself went to the place of occurrence and at that time, the victim identified the boy in a shop. He further testified that on seeing her, the boy again fled away. He added that he saw the boy then and his name was Mantu Majumdar, who was known to him. He further added that thereafter they went to the police station and lodged the FIR and police recorded his statement.

- working at Governor House and the sister of Mantu Majumdar also resides at Governor House. He further testified that he used to go to the shop of Mantu Majumdar and sometimes he used to sit in the shop and sometimes his father used to sit and sometimes even his mother used to sit. He added that prior to this incident, he did not hear anything adverse against Mantu Majumdar. He further testified that the elder brother of the victim is known to him as Maina da and his younger brother Dharmaraj Kalita was his classmate while he was studying in college. He further testified that on seeing them together, the accused person fled away before asking him anything. During further cross examination, the witness stated that when the victim came to his residence, his mother was there and two other students were there.
- 13. PW.4 Jaya Das testified that she knew both the accused person and the victim. She testified that in 2016, everyday in the morning, she used to go towards Raj Bhawan for a morning walk as she was suffering from Diabetes. She added that while going towards Raj Bhawan, she used to see the accused person regularly to remain seated by the side of the road. She further testified that one day, while she was at a distance, she

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saw that the accused person misbehaved with a young girl and suddenly he rushed to the girl and touched her breasts and thereafter fled away. She further testified that she rushed towards the girl and she started crying. She further testified that she asked her what had happened and she then told her that the boy had misbehaved with her by touching her breasts. She added that she also heard about the similar incident, done towards victim, by the same accused and she advised the mother of the victim to take shelter of law.

- During cross examination, the witness stated that the incident, which she narrated in her deposition, is not connected with the incident of the victim. She added that she does not know whether the girl had approached the police or not, but added that she did not go to police to report the same. She further stated that she is the aunt of the victim and also knows the informant of this case. She further stated that she does not know if there was any quarrel in between the family of the accused and the family of the informant. She denied the fact that as because she is the aunt of the victim, she deposed falsely. She also denied the fact that there was no such incident regarding any other girl, as deposed by her.
- 15. Now, PW.5 Jawaharjyoti Kalita is the informant of the case and she is the cousin of the victim. The accused person is also known to him. He deposed that the occurrence took place in September last year and on that day, he went out for his work. He added that after coming back to the house at about 4:00 pm, he could come to know from his aunt that on that morning, the victim had been going to Raj Bhawan for taking tuition and on her way, one boy suddenly touched her breasts and fled away. He added that after hearing the same, he went out in his

motorcycle in search of the boy and also took the victim in the motorcycle. His testimony further reveals that they searched the boy everywhere and also asked others, but did not get any clue. He further testified that in the evening, again they went to that side. He further testified that he knew that in the evening time, the young boys of the locality used to sit here and there in that side. He further testified that at that time, they found the boy inside a shop. He further testified that the victim identified the boy and added that his mother was also there in the shop. He further testified that on seeing them, the boy fled away from the back door of the shop. He further testified that then he got his name and after that he himself, the victim and her private tutor went together to Latasil P.S and lodged the FIR. He proved Ext.1 as the FIR and Ext.1(1) as his signature. He also proved Ext.2 as the printed form of FIR and Ext.2(1) as his signature. He further testified that police came and one woman sub-inspector recorded the statement of the victim. He added that his statement was also recorded. He added that after filing of the case, the accused person was arrested and his family members came to the house of his maternal uncle to request them to give pardon and to withdraw the case. He added that they also came to him with the same request.

16. During cross examination, the witness stated that the house of the victim is nearby their house. He stated that he is a professional photographer and at present, he had been working also as a manager in the PWD canteen. He stated that he went out on that day at about 9/10 am. He added that he knew the private tutor of his cousin. He denied the fact that he had enmity with accused Mantu Mazumdar from before. He further stated that in that year, she just started to go for taking private tuition and after matriculation there was a gap of three months or more

before starting tuition again. He denied the fact that at that time also the private tutor used to come for the purpose of taking tuition in her house.

- 17. The accused person in his statement, recorded u/s 313 Cr.P.C. denied the entire allegation and also took the plea of inimical relation with the informant. He also adduced his evidence as DW.1. He deposed that he does not know the victim girl, but the informant Jawahar Kalita @ Maina is known to him. He added that he had a quarrel with him. He denied the allegation that on 16.09.2016 while the sister of Jawahar Kalita was going to attend her tuition at about 6:30 am, he touched her body. He also stated that at that time, he was in his house. He further stated that he had no shop there. He also denied that on that very day, in the evening, they saw him inside his shop. He also denied that he had fled away on seeing him. During cross examination, he stated that he had a quarrel with Jawahar Kalita in connection with a Puja.
- the minor victim of the case by adducing evidence before the Court clearly stated that the accused person named above sexually assaulted her, while she was proceeding towards the residence of her private tutor, near Raj Bhawan. She also made it specific that the accused person suddenly rushed to her and touched and pressed her breast. She further made it specific that as she raised alarm, the accused person fled away by crossing the iron grill. The Ld. Defence Counsel submitted that her evidence suffers from various contradiction and omissions, which goes to the root of the case and as such her evidence requires to be disbelieved. The Ld. Defence Counsel also forcefully submitted that as the I/O did not appear before this Court, the defence could not get the opportunity to cross examine the I/O, nor could confront the I/O with the statement of

the victim, recorded u/s 161 of the Cr.P.C. He submitted that in such a situation the non examination of the I/O is fatal to the case of the prosecution. The defence Counsel further relied upon the Constitution Bench decision of the Hon'ble Apex Court of India, in *Tahsildar Singh* and another vs. State of U.P, reported in AIR 1959 SC1012.

- **19**. However, what attracts my mind is that at the time of cross examination of the victim (PW.1) the defence did not make any effort to confront PW.1 regarding her previous statement before the I/O. Simply an omnibus suggestion was given that she did not state all these facts to the police, what she now stated before the Court. Specifically when the present set of lawyers were engaged by the accused, the accused person vide petition No. 4736/17 sought for further cross examination of the victim (PW.1) and Anjani Kr. Rajak (PW.3). It was specifically mentioned that due to inadvertent mistake, the defence could not put certain questions to PW.1 and PW.3 and these questions are extremely necessary for just decision of the case. In view of the aforesaid petition, to give the accused a chance of fair trial and also for elucidation of truth, PW.1 and PW.3 were recalled for further cross examination (if any), by invoking the power conferred u/s 311 of the Cr.P.C. Accordingly, the said two witnesses appeared before the Court and they were further cross examined and discharged. But at that time also, no specific question was put to confront the witness, particularly the victim.
- 20. The Constitution Bench decision of the Hon'ble Apex Court of India, in *Tahsildar Singh and another vs. State of U.P (supra)*, as referred to by the learned defence Counsel, made detail introspection of Section 145 of the Evidence Act and Section 162 of the Cr.P.C. In paragraph 13 of the said judgment, after a thread bare discussion of the

various decisions of different Courts, the Hon'ble Apex Court of India observed as follows:-

"... The procedure prescribed is that, if it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The proviso to Section 162 of the Code of Criminal Procedure only enables the accused to make use of such statement to contradict a witness in the manner provided by Section 145 of the Evidence Act. It would be doing violence to the language of the proviso if the said statement be allowed to be used for the purpose of crossexamining a witness within the meaning of the first part of Section 145 of the Evidence Act. Nor are we impressed by the argument that it would not be possible to invoke the second part of Section 145 of the Evidence Act without putting relevant questions under the first part thereof. The difficulty is more imaginary than real. The second part of Section 145 of the Evidence Act clearly indicates the simple procedure to be followed. To illustrate: A says in the witness box that B stabbed C; before the police he had stated that D stabbed C. His attention can be drawn to that part of the statement made before the police which contradicts his statement in the witness box. If he admits his previous statement, no further proof is necessary; if he does not admit, the practice generally followed is to admit it subject to proof by the police officer. On the other hand, the procedure suggested by the learned counsel may be illustrated thus: If the witness is asked "did you say before the police officer that you saw a gas light?" and he answers "yes", then the statement which does not contain such recital is put to him as contradiction. This procedure involves two fallacies: one is it enables the accused to elicit by a process of cross-examination what the witness stated before the police officer. If a police officer did not make a record of a witness's statement, his entire statement could not be used for any purpose, whereas if a police officer recorded a few sentences, by this process of cross-examination, the witness's oral statement could be brought on record. This procedure, therefore, contravenes the express provision of Section 162 of the Code. The second fallacy is that by the illustration given by the learned counsel for the appellants there is no self-contradiction of the primary statement made in the witness box, for the witness has yet not made on the stand any assertion at all which can serve as the basis. The contradiction, under the section, should be between what a witness asserted in the witness box and what he stated before the police officer, and not between what he said he had stated before the police officer and what he actually made before him. In such a case the question could not be put at all: only questions to contradict can be put and the question here posed does not contradict; it leads to an answer which is contradicted by the police statement. This argument of the learned counsel based upon Section 145 of the Evidence Act is, therefore, not of any relevance in considering the express provisions of Section 162 of the Code of Criminal Procedure."

In Paragraph 23 of the said decision, the Constitution Bench of the Hon'ble Apex Court of India also reproduced some of the decisions to make it more lucid:-

" At a later stage of the judgment, the learned Judges laid down the following two tests to ascertain whether a particular omission

amounts to contradiction: (i) an omission is not a contradiction unless what is actually stated contradicts what is omitted to be said; and (ii) the test to find out whether an omission is contradiction or not is to see whether one can point to any sentence or assertion which is irreconcilable with the deposition in the court. The said observations are in accord with that of the Madras High Court in *In* Re Guruva Vannan [ILR (1944) Mad 897] . The Patna High Court in Badri Chaudhry v. King Emperor [AIR (1926) Pat 20] expressed a similar view. At p. 22, Macpherson, J. analysing Section 162 of the Code of Criminal Procedure, after its amendment in 1923, observed:"The first proviso to Section 162(1) makes an exception in favour of the accused but it is an exception most jealously circumscribed under the proviso itself. "Any part of such statement" which has been reduced to writing may in certain limited circumstances be used to *contradict* the witness who made it. The limitations are strict: (1) Only the statement of a prosecution witness can be used; and (2) only if it has been reduced to writing; (3) only a part of the statement recorded can be used; (4) such part must be duly proved; (5) it must be a contradiction of the evidence of the witness in court; (6) it must be used as provided in Section 145 of the Evidence Act, that is, it can only be used after the attention of the witness has been drawn to it or to those parts of it which it is intended to use for the purpose of contradiction, and there are others. Such a statement which does not contradict the testimony of the witness cannot be proved in any circumstances and it is not permissible to use the recorded statement as a whole to show that the witness did not say something to the investigating officer."

In a recent decision, *V.K. Mishra v. State of Uttarakhand*, reported in **(2015) 9 SCC 588**, the Hon'ble Apex Court of India specifically observed:-

"The court cannot suo motu make use of statements to police not proved and ask questions with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 CrPC "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightaway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. The statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of the Evidence Act that is by drawing attention to the parts intended for contradiction."

21. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that

part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo motu make use of statements to police not proved in compliance with Section 145 of the Evidence Act that is, by drawing attention to the parts intended for contradiction."

22. Thus when the defence intended to contradict the victim by his previous statement reduced into writing, the attention of such witness ought to have been called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. Unless the witness is confronted specifically with the part of his statement recorded, which the defence intends to proof as contradiction or omission, the same cannot be used at a later stage, as a contradiction or omission. The purpose of bringing the part of the statement to the notice of the witness is to give the witness an opportunity to explain whether he or she had stated the same before the I/O or why he or she had omitted the same. Without confronting the witness, the same cannot be directly put to the Investigating Officer. In this particular case, as the victim was not confronted specifically on the part or parts of her statement which

the defence intends to confront, and as such it can not be said that it is duly proved. The question of drawing attention of the I/O comes next. Merely, by drawing attention of the I/O, a contradiction or omission can not be proved, if the attention of the witness is not drawn first to the part or parts of the witness specifically, which was not done in this case inspite of giving opportunity for the second time by recalling the witness. Thus, non examination of the I/O is not fatal in this case. Besides, I perused the case diary u/s 172 of the Cr.P.C. The statement of the victim, as recorded by the I/O u/s 161 of the Cr.P.C, clearly reflects that she had stated before the I/O about the actual allegation of touching and pressing her breast by the accused person on her way to the house of her private tutor. He also specifically mentioned the name of the accused. Thus, I find that there is virtually no any contradiction in this regard. Her statement before the Investigating Officer clearly reflected the gist of the allegation and the Investigating Officer recorded it in a summary manner. Regarding the other facts of how she could come to know the name of the accused etc, those were not stated in details in her statement, recorded u/s 161 of the Cr.P.C. But even if that part of her evidence is omitted, her identification of the accused in the Court could not disproved by the defence.

23. Besides PW.3, i.e, her private teacher fully corroborated the testimony of the victim and specifically stated that the victim came to his house and she was crying. He also narrated the incident, he came to know from the victim and also corroborated that he went out immediately and took the victim in his motorcycle and went in that way and dropped her in her house. He also corroborated that in the evening the victim identified the accused person. As he is a man from that locality and he used to go to the grocery shop regularly, he could identify the

accused by his name. He corroborated that as the accused person had fled away on seeing them, they went directly to the police. The defence was also given an opportunity to further cross examine the witness, but during further cross examination also, defence could not reveal anything from his mouth which was demolish his testimony. The defence also challenged the testimony of Jaya Das (PW.4) stating that she did not witness the alleged occurrence of the victim of this case. However, her testimony is relevant and made one thing clear that the very antecedent of the accused person is not good and on earlier occasions too, he did the same thing to other girls. The defence laid much stress on the fact that the accused person had inimical relationship with PW.5 Jawaharjyoti Kalita, i.e, the informant. However, during cross examination, the defence could not bring anything from his mouth to show that due to inimical relationship he made up a concocted and cooked up story. It is also not believable that because the informant had inimical relationship, his cousin would put her modesty in question and would take the risk of inviting bad reputation in the society. It is to be remembered that she was a student of higher secondary in the prestigious Cotton College and it is difficult to believe that she would put her virtue in question by going to implicate the accused falsely. The defence also raised the question regarding the date of birth of the victim and submitted that this can not be a case under the POCSO Act, 2012 because the victim was not a minor at the relevant point of time. However, the birth certificate (Ext.3) of the victim girl has been proved in this Court, which reflects that her date of birth is 29.10.1999. It was registered immediately after the birth, i.e, on 31.12.1999. Thus, it is abundantly clear that on the relevant date of occurrence, she was below 18 years of age and as such the provisions of the POCSO Act, 2012 is attracted in this case.

- **24.** In view of the discussions made above, I find that the prosecution remained successful in establishing the guilt of the accused person for commission of the offence of sexual assault of the victim girl, removing all shadow of doubt.
- **25.** In result, accused Mantu Mazumdar is held guilty of offence punishable u/s 8 of the POCSO Act, 2012 and accordingly he is convicted under the said section of law.
- **26.** Considering that the sexual assault and sexual abuse of minor children has became the menace in the society and if it remains unchecked, the wrong doers will get more courage to repeat the offence even in public places. Accordingly, I do not find it a fit case where the convict can be extended the benefit of Probation of Offenders Act.
- 27. I heard the convict on the point of sentence. His statement has already been recorded in separate sheet, attached to the CR. In his statement, the convict specifically stated that he is the sole bread earner and has also been suffering from illness. He has prayed for clemency.
- **28.** Also, heard the Ld. Counsel for the parties on imposition of sentence.
- 29. Considering the aggravating circumstances of commission of the offence of sexual assault to a minor victim in the public road and the mitigating circumstances of the age of the accused, his illness and that he is the sole bread earner of the family, I find that the nature of justice will be appropriately met, if the convict is sentenced to rigorous imprisonment for one year with fine of Rs. 5000/-, in default, to RI for another three

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months. The convict Mantu Mazumdar is accordingly sentenced to rigorous imprisonment for one year with fine of Rs. 5000/-, in default, to RI for another three months. The period of imprisonment, he has already undergone during the investigation and trial of the case, will be set off. The amount of fine, if realized, will be applied in payment of compensation to the victim girl.

- **30.** The convict has been explained his right of appeal and even the right to file appeal through the jail authority free of cost.
- **31.** Furnish a free copy of the judgment to the convict immediately. Also, send a copy of this judgment to the District Magistrate in compliance to the provsion of Section 365 of the Cr.P.C.
- **32.** Signed, sealed and delivered in the open court on this 14th day of December, 2018 at Guwahati.

(S.P. Moitra)

Special Judge, Kamrup(M), Guwahati

Dictated & corrected by me.

(S.P. Moitra)

Special Judge,

Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits:

Ext-1: F.I.R

Ext-2: Printed form of F.I.R

Ext-3: Birth Certificate of the victim

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1: Victim

PW-2: Smt. Rita Das

PW-3: Sri Anjani Kumar Rajak

PW-4: Smt. Jaya Das

PW-5 : Sri Jawaharjyoti Kalita

(F) Defense Witnesses:

DW-1: Sri Mantu Mazumdar

(G) Court Witnesses: Nil.

(S.P. Moitra)

Special Judge, Kamrup(M), Guwahati