# IN THE COURT OF THE SPECIAL JUDGE, NAGAON ::: ASSAM.

## Special (POCSO) Case No.-35/2018\_ U/S-6 of the POCSO Act.

State

- Versus -

Sri Raju Patra

: Accused person.

### Present:

Md. A. Rahman, AJS Special Judge, Nagaon.

# **Appearance & particulars :-**

For the State : Mr. M.J. Neog, Ld. Special Prosecutor.

For the accused person : Mr. R. Ullah, Ld. Legal Aid Counsel.

Charge framed on : 09/08/2018.

Evidence recorded on : 22/10/2018, 26/11/2018,

04/01/2019, 06/03/2019, 25/04/2019, 08/07/2019,

02/08/2019.

Date of recording 313 Cr.P.C. statement: 12/07/2019.

Date of Argument : 06/08/2019.

Date of Judgment : 08/08/2019.

### **JUDGMENT**

- 1. Briefly stated the facts of the prosecution case are that "Miss. Mamoni" (actual name changed), aged around 9(nine) years, is the only daughter of accused Raju Patra. Due to prolong illness, she lost her mother when she was 7(seven) years old. Accordingly, she was staying with his father in a rented house nearby Morikolong Railway Station, Nagaon. The accused in drunken stated used to commit sexual intercourse with her during every night. She could not disclose the occurrence immediately to others because her father threatened her to finish her life if she divulges the occurrence to others. Unable to bear with such sexual harassment upon her, she left home and disclosed the entire occurrence before the employee of Nagaon B.P. Civil Hospital Musstt. Monuwara Begum (PW-2) and Abanita Saikia (PW-4) on 25/04/2017. On the basis of the information of the victim, PW-1 Miss. Sangeeta Saikia, a counsellor of Nagaon Child Help Line lodged Ext.-1 written FIR with the I/C of Morikolong TOP.
- 2. On the basis of the written Ejahar dated-24/04/2017 lodged by PW-1 Sangita Saikia, the I/C of Morikolong TOP made GDE No.-378 dated-24/04/2017 and forwarded the same to the O/C of Nagaon Sadar Police Station for registering a case. Accordingly, Nagaon Sadar P.S. Case No.-1007/17 was registered u/s-4 of the POCSO Act. PW-8 S.I. Raja Irshad, I/C of the said TOP took up the investigation of the case.
- 3. During the course of investigation, I/O S.I. Raja Irshad visited the place of occurrence, drew Sketch Map and recorded the statements of the witnesses. He also sent the victim child to Nagaon B.P. Civil Hospital for her medical examination. He also got recorded the

statement of the victim girl u/s-164 Cr.P.C. During investigation, the accused was arrested and produced before the court for his judicial custody. At the conclusion of investigation, police submitted Charge Sheet against the accused u/s-4 of the POCSO Act.

- 4. After receiving the Charge Sheet, the instant POCSO case was registered. Subsequently, the Hon'ble Sessions Judge, Nagaon made over the case to this court for trial.
- 5. The accused since the date of arrest was staying in jail custody. Considering his oral prayer that he is very poor, Mr. R. Ullah, a Legal Aid Lawyer of DLSA, Nagaon was appointed as Legal Aid Counsel for the defence.
- 6. Upon hearing learned Special Prosecutor as well as learned Legal Aid Counsel and considering the materials on record, charge u/s-6 of the POCSO Act was framed against the accused. He denied the charge and claimed to be tried.
- 7. To prove the case against the accused, prosecution during the trial examined altogether 8(eight) witnesses including the doctor who examined the victim child. The accused was examined u/s-313 Cr.P.C. He has denied the allegation brought against him by his daughter and further pleaded that he slapped her on the relevant night as she had gone out with her bicycle and returned home at 9 p.m. He adduced his own evidence.
- 8. I have heard Mr. M.J. Neog, learned Special Prosecutor as well

as Mr. R. Ullah, learned Legal Aid Counsel for the defence. I have also thoroughly and meticulously gone through the evidence and materials on record.

# 9. Now the point for determination is as follows:-

Whether the accused committed aggravated penetrative sexual assault with his minor daughter Mamoni (9 years) during night time at his rented house and thereby committed an offence punishable u/s-6 of the POCSO Act ?

#### **DISCUSSION, DECISIONS AND REASONS THEREOF**

10. Victim Mamoni was examined as PW-3 in this case. She is the most crucial and vital witness of the prosecution. The accused is her own father. The charge against her father is very serious and sensational from the social point of view under the facts and circumstances. Her evidence needs minute scrutiny and analysis to ascertain the truth. During the camera trial, her evidence was recorded in the form of "Question-Answer" as per Section-276(2) Cr.P.C, in order to get a clear picture of the case. On the date of recording the evidence, PW-3 was 11 years. As such, no oath was administered to her. Before recording her evidence, it was ascertained that she was capable to give rational answers to the questions put to her. Extreme care has been taken so that prosecution could not ask any leading question to her. She has deposed that since after death of her mother, her father used to commit bad work with her on several times during night time in their rented house nearby Nagaon Railway Station. She has no any brother or sister. She has categorically stated that her father committed violence upon her by inserting his pennis inside her private parts. She could not disclose the occurrence to others because her father threatened to slash and throw her in Kolong river. Her father used to sell country liquor. She came into acquaintance with Geeta, Sangeeta (PW-1) whom she met while her mother was undergoing treatment at Nagaon B.P. Civil Hospital for more than 7(seven) months. About one year back, PW-1 and others took her to Nagaon Children Home from Nagaon Police Station. She disclosed the occurrence to Geeta and Sangeeta. She has also confirmed that PW-1 and others accompanied her to her house; but her father was not at home. She was examined by the doctor at Nagaon B.P. Civil Hospital. She was also produced before the court. Ext.-2 is her statement before the Magistrate. Ext.-2(1) to Ext.-2(4) are her signatures.

During cross-examination, she stated that she had disclosed the occurrence to the old woman whom she addressed as 'Nani'. Before 2 / 3 days of lodging the Ejahar, she also disclosed the occurrence to their landlord Kamalesh and he stated that he would keep her at his house. She denied the suggestion that she has falsely stated that her father used to do bad work with her during night time and threatened her to kill and throw in Kolong river. She has also denied the suggestion that she in collusion with PW-1 and the Nurses of Nagaon Civil Hospital lodged the false case against her father.

11. PW-1 Miss. Sangeeta Saikia is the informant of this case. She has deposed that she lodged the case against Raju Patra who is the biological father of PW-3. In the month of April, 2017, she received one telephonic call from Geetamoni Baruah, Counsellor of Drugs Deadiction Centre, Nagaon B.P. Civil Hospital asking her to immediately visit there. Accordingly, she arrived at Nagaon B.P. Civil Hospital. Geetamoni Baruah introduced PW-3 with her. On being asked, PW-3 stated to her that she had lost her mother about two years back. Since the death of her mother, her father Raju Patra used to commit sexual intercourse with her. She could not disclose the occurrence to others as he threatened her to kill. She has also stated that about two days back

during night time her father severely abused her sexually and committed vigorous sexual intercourse as a result of which she suffered bleeding injury on her vagina. Under such circumstances, she had left her house and decided not to return home as she was afraid of her father. At the time PW-3 was disclosing the occurrence to her, Monuwara Begum (PW-2), Abanita Saikia (PW-4) and Geetamoni Baruah were present. PW-1 has further testified that after coming to know about the occurrence from PW-3, they took the victim girl to her house; but her father was found absent. Therefore, they came to Morikolong TOP and informed the occurrence. She has confirmed that Ext.-1 is the FIR and Ext.-1(1) is her signature.

In cross-examination, she denied the suggestion that her examination-in-chief is false and they instigated PW-3 to tell against her father.

12. PW-2 Monuwara Begum is an employee of one NGO. She has deposed almost in the same line of PW-1. Her evidence was recorded on 22/10/2018. She has deposed that last year on the relevant day she found PW-3 was crying in the verandah of Nagaon B.P. Civil Hospital. At that time, Geetamoni Bora and Abanita Saikia (PW-4) who were the members of DDC, Nagaon were present at the hospital. On being asked the cause of her cry, she replied tearing her eyes that when she slept, her father gagged her mouth and committed bad work. PW-3 also stated to them that as her father had done bad work with her, as such her undergarment became dirty. She also sustained injury on her private parts. Accordingly, after coming to know about the occurrence from PW-3, they made telephonic contact with PW-1 who immediately came to Nagaon B.P. Civil Hospital. Thereafter, she accompanied by PW-1, Geetamoni Bora and Abanita Saikia went to the house of PW-3 in front of Nagaon Railway Station. PW-2 further stated that PW-3 had shown her wearing apparels in dirty condition. They did not find the

father of PW-3. She was examined medically at Nagaon B.P. Civil Hospital and Ejahar was lodged by PW-1.

In cross-examination, she has denied the suggestion that she is falsely deposing that PW-3 disclosed before them that her father had sexually abused her.

13. PW-4 Abanita Saikia has also deposed almost the same thing as deposed by PW-1 and PW-2. She also deposed that in the month of April, 2017 while she was on duty at Nagaon B.P. Civil Hospital, one of her colleagues Geetamoni Baruah was also with her. At that time, PW-3 entered into her chamber. She knew PW-3 as she was staying in Nagaon B.P. Civil Hospital in connection with treatment of her mother. On being enquired from PW-3, she replied that her father used to commit bad work with her during night. Being astonished, she asked PW-3 as to what was the bad work her father had done with her. She stated that her father had committed physical relation with her as a result of which she experienced pain on her private part from which blood also came out. Again PW-4 asked PW-3 whether she was telling the truth, she again repeated the same thing to her. Accordingly, she informed the matter to Dr. Ajit Goswami, I/C of Psychiatric Department and PW-2 Monuwara Begum. Thereafter, they examined PW-3 physically and informed Nagaon Child Line. Thereafter, they accompanied by PW-3 went to her house; but they did not find her father. On being enquired, her neighbours also stated that PW-3 was sexually abused by her father.

In cross-examination, PW-4 has replied that the mother of PW-3 expired at Nagaon B.P. Civil Hospital. She again visited the Hospital after 3 / 4 months after expiry of her mother. PW-4 has denied the suggestion that PW-3 did not make any complaint against her father before them.

- 14. PW-5 Fulzari Devi (57 years) is the next door neighbour of PW-3. She has deposed that about 2(two) years back PW-3 along with her father was staying in a rented house adjacent to her house. On a certain morning at around 9 a.m, PW-3 said to her, "My father has done bad work with me." She did not give much importance to the said version of PW-3. On the same day, PW-3 went to Nagaon Civil Hospital. Thereafter, some women accompanied by PW-3 came and enquired about the occurrence. Accordingly, she replied that PW-3 had disclosed about the occurrence to her in the morning.
- 15. PW-6 Shanti Devi is another neighbour of PW-3. She has deposed that about 2(two) years back on a certain afternoon at about 3 p.m., PW-3 rolling tear stated that her father in drunk committed bad work with her during night time.
- 16. PW-7 Dr. Julina Hussain has deposed that on 24/04/2017, she was posted at Nagaon B.P. Civil Hospital as Pathologist. On that day, she examined Nandini Patra, D/O- Raju Patra, R/O- Morikolong Railway Station, P.S- Nagaon Sadar, District- Nagaon (Assam), in reference to Morikolong TOP G.D.E. No.-378, on being escorted by H.C. Pobin Bora, in presence of ANM Runu Jamindar.

On examination, PW-7 found the following:-

## **Identification Marks** -

- (a) One mole on the right side of neck.
- (b) One mole on right cheek.

Height - 132 Cms.

Weight - 25 Kgs.

**Teeth** - 14/13.

**Breast** - Not fully developed.

**Auxiliary Hair** – Not fully developed.

**Pubic Hair** - Not fully developed. **Hymen** - absent.

Vaginal Injury - Absent.Marks of violence - Absent.Clothings - Frock.LMP - Puberty not attained.

Smear examination vide Regd. No.\_\_\_\_, Lab No.-157, reported by PW-7 shows - No Spermatozoa seen in the vaginal smear.

X-Ray examination of the right wrist, elbow and iliac crest vide No.5060 dated-25/04/2017 reported by Radiologist Dr. S. Sarma shows radiological age as 9 - 11 (nine to eleven) years.

**Right Wrist joints -** Epiphysis of proximal and distal end of radius and ulna are not fused.

**Right Elbow joints** – Epiphysis of proximal and distal end of humerus are not fused. Pisiform has appeared.

**Right Iliac Crest** - Epiphysis of right iliac crest is not fused.

Urine for pregnancy test- Not done.
Ultrasonography of Abdomen - Not done.

## The doctor (PW-7) has opined the following:

- 1) There is evidence of sexual abuse / assault (as hymen is absent).
- 2) There is no evidence of recent injury on her private parts.
- 3) Age 9 11 (nine to eleven) years according to Radiologist.

PW-7 has testified that Ext.-3 is the medical report whereon Ext.-3(1) is her signature.

In cross-examination, PW-7 has stated that before attaining puberty, there can be no cause for absence of hymen of a girl without any penetrative injury. She denied the suggestion that hymen may be absent by falling on hard substance due to playing games or accident.

17. PW-8 S.I. Raja Irshad being the I/O has deposed giving details

of investigation. After receiving the FIR, he made Morikolong TOP G.D.E. No.-378, dated-24/04/2017 at 2:40 p.m. and took up investigation of the case after forwarding the FIR to the O/C of Nagaon Sadar Police Station. He has deposed that on the same day, he sent the victim to Nagaon B.P. Civil Hospital for her medical examination. He also visited the place of occurrence and drew Ext.-4 Sketch Map. He also recorded the statement of Monuwara Begum, Fulzari Devi, Shanti Devi and Abanita Saikia. At the time of his visit, he did not find the accused; but at about 6:45 p.m. on the same day he apprehended the accused from Morikolong Railway Track. On the relevant night, he kept PW-3 at Nagaon State Home for her custody. On the next day, she was produced before the Magistrate for recording her statement. He has further testified that having collected the medical examination report of the victim, he submitted Ext.-5 Charge Sheet against accused Raju Patra u/s-4 of the POCSO Act on 31/05/2017. Ext.-5(1) is his signature.

18. DW-1 Raju Patra has deposed that his wife died in the year 2016 while undergoing treatment at Nagaon B.P. Civil Hospital. During the relevant time, his daughter (PW-3) was staying with her mother at the hospital. After death of his wife, his daughter (PW-3) used to stay with Fulzari Devi adjacent to his rented house. His daughter used to go out with her bicycle during night time and did not return till 9 / 10 p.m. As such he cautioned his daughter for which she brought false allegation against him.

During cross-examination, he admitted that during night time, he used to return home in drunken state consuming country liquor. Shanti Devi (PW-6) was residing in the room adjacent to his rented house. He has distinctly stated that his daughter (PW-3) loved him very much. As such, she could not give any false allegation against him. Since before two days of lodging the Ejahar, his daughter was not with him.

# 19. <u>APPRECIATION OF EVIDENCE</u> :-

As per Ext.-1 FIR, the occurrence took place in the month of April, 2017. The age of the victim child (PW-3) at the relevant time of occurrence is required to be determined at first. PW-3 has deposed before the court on 26/11/2018 and she stated her age to be 11 years. PW-3 in her Ext.-2 statement before Magistrate stated her age as 9(nine) years at the relevant time of occurrence. PW-7 Julina Hussain on the basis of radiological examination of the wrist joint, elbow joint and iliac crest has opined that the age of PW-3 was around 9-11 years on 25-04-2017 being the date of her medical examination. The defence side did not challenge the age of PW-3. Accordingly, from the above discussion, it is held that PW-3 was around 9-11 years at the relevant time of occurrence. In the case of Jayamala -Vs- Home Secretary Jammu & Kashmir (AIR 1982 SC-1297), the Hon'ble Supreme Court held that ossification test is no doubt a surer test but margin of error is two years on either side. So, by applying the ratio of the said case, even if the age of PW-3 on the date of her examination is taken as 13 years, but the occurrence of committing sexual intercourse upon her started taking place since after death of her mother. DW-1 has admitted that his wife expired in 2016. That being so, palpably PW-3 was below 12 years at the time of first occurrence. Thus, undoubtedly PW-3 was a victim as defined u/s-2(d) of the POCSO Act at the relevant time of occurrence. The oral testimony of PW-3 has clearly shows that since after death of her mother, her accused father during night time used to commit sexual intercourse with her after removing her inner garment on several occasions. She could not disclose the occurrence immediately to others because her father threatened her to kill if she disclosed the occurrence to others. Unfortunately, she was the only child of her parents and she became alone after death of her mother due to illness. The aforesaid medical evidence of PW-7 and Ext.-3 clearly show that hymen of PW-3 was absent. PW-7 has clearly stated

that the hymen of PW-3 at her tender age was lost because of sexual assault / violence. During cross-examination, PW-3 was not given any suggestion that she lost her hymen on account of playing games or falling on hard substance. The defence side during cross-examination of PW-7 has made it clear that before attaining puberty without penetrative injury there can be no cause for absence of hymen of the girl. Thus, the medical evidence also corroborates PW-3 that she was subjected to forcible sexual intercourse. On scrutiny of the evidence of PW-3 as a whole, there appears nothing to show that she was tutored or she falsely deposed against her father. The oral testimony of PW-3 is also corroborated by her Ext.-2 statement. After the death of her mother, PW-3 being the only daughter she was expecting security, care, love and affection from her accused father. Relation between the father and the daughter is a divine relation. Under the above circumstances, PW-3 could not be expected to falsely implicate her father in the heinous crime of committing repeated sexual assault upon her. PW-1, PW-2, PW-4, PW-5 and PW-6 also corroborates of the evidence of PW-3 that she disclosed the occurrence of committing sexual assault upon her by her accused father. It appears that PW-3 being traumatised both physically and mentally disgusted with such unexpected and abnormal behaviour and conduct of her accused father in committing sexual intercourse with her taking advantage of her loneliness at home, she fled away from her house and reported the occurrence to the aforesaid ladies. The admission of DW-1 that he used to return home during night time in drunken state consuming country liquor also supports the prosecution case. Further it is clear from his testimony that PW-3 loved him very much. As such, she could not bring any false allegation against him. Really a daughter who is naturally having more love, affection and emotional attachment with her father cannot be expected to bring wild and serious allegation of committing sexual violence upon her. Had the allegation of committing sexual assault upon PW-3 by DW-1 were not true, she would not have deposed against her father. She being a minor daughter having her only father in this world as her nearest and dearest, would not have liked to see him in prison unless he had done such unexpected and unusual sexual violence upon her. Interestingly, during the cross-examination of PW-3, the defence side did not give her any suggestion that she used to go outside her house during night time and returned late for which her father rebuked her and as such she lodged the false case. The evidence of DW-1 that PW-3 brought false allegation against him is afterthought. It has been already proved from oral testimony of PW-3 and medical evidence that she was subjected to sexual intercourse as a result of which she had lost her hymen at the age of 9 / 10 years.

- 20. The prosecution has proved beyond all reasonable doubt by adducing oral and documentary evidence that the accused committed penetrative sexual assault upon PW-3. Therefore, the statutory presumption u/s-29 of the POCSO Act enables the court to hold that the accused committed the offence u/s-5 of the Act. The defence side has failed to rebut the presumption to prove the contrary.
- 21. The above discussion and observation lead to the irresistible conclusion that accused Raju Patra being the father of the victim girl (PW-3) below 12 years committed penetrative sexual assault upon her. Committing penetrative sexual assault on the child more than once or repeatedly and committing penetrative sexual assault on a child below twelve years fall in the category of aggravated penetrative sexual u/s-5(I) & 5(m) of the POCSO Act respectively. Accordingly, I hold that the accused has committed the offence of aggravated penetrative sexual assault. Hence, he is convicted u/s-6 of the POCSO Act.
- 22. **Victim's compensation :-** PW-3 at her early childhood was

subjected to repeated sexual assault by her own father. She was traumatised both physically and mentally due to the heinous crime committed upon her. Unable to bear with the repeated commission of the violence upon her, she fled away from her house. She has suffered loss and injury tremendously. She became homeless following the occurrence. Now, she is taking shelter at Nagaon Children Home. Unfortunately, she has none of her own in this world to take care and ensure her security and welfare. Considering all the above aspects, in exercise of discretion as per Rule-7(2) of the Protection of Children from Sexual Offences Rule, 2012, it is recommended that PW-3 be paid adequate, appropriate and fair compensation for her future, education, welfare and rehabilitation as per Notification No. PLA.524/2015/Pt/190 (ECF-38361) dated- 1st February, 2019 of the Government of Assam. Under the facts and circumstances of the case and considering her plight following the crime, this court opines that she deserves to get compensation in the higher side stipulated in the said notification of the Government of Assam. The District Legal Services Authority, Nagaon, in consultation with the Superintendent of Children Home, Nagaon and the victim (PW-3), shall open a bank account in her name in any Nationalised Bank. The compensation amount shall be deposited in the bank account so opened in the name of PW-3 within a period of two months from the date of receipt of this Judgment.

- 23. Before parting with the Judgment, this court appreciates the legal assistance rendered by Mr. R. Ullah, learned legal aid counsel for the accused during the trial. He is entitled to his remuneration as per existing rule and the same shall be paid by the Secretary, DLSA, Nagaon.
- 24. A copy of this Judgment be sent each to the Secretary, District Legal Services Authority, Nagaon and the District Magistrate,

Nagaon for information.

- 25. A certified copy of this Judgment be furnished forthwith free of cost to the accused immediately.
- 26. The order on sentence shall be an integral part of this Judgment.
- 27. The Sessions case is disposed of accordingly.

Judgment is pronounced and delivered in the open Court under the seal of this Court and on my signature on this 8<sup>th</sup> day of August, 2019.

Dictated & corrected by me.

Special Judge, Nagaon.

Special Judge, Nagaon.

# <u>APPENDIX</u>:-

## Oral evidence :-

PW-1	Miss.	Sangeeta	Saikia.
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PW-2 Musstt. Monuwara Begum.

PW-3 Miss. Nandini Patra.

PW-4 Smti. Abanita Saikia.

PW-5 Smti. Fulzari Devi.

PW-6 Smti. Shanti Devi.

PW-7 Dr. Julina Hussain.

PW-8 S.I. Raja Irshad.

DW-1 Raju Patra.

# Documentary evidence :-

- Ext.-1 Ejahar.
- Ext.-2 Statement of the victim recorded by Magistrate u/s-164 Cr.P.C.
- Ext.-3 Medical Report.
- Ext.-4 Sketch Map.
- Ext.-5 Charge Sheet.

Special Judge, Nagaon.

## **ORDER ON SENTENCE**

#### Dated :-09/08/2019.

Accused Raju Patra who has already been convicted u/s-6 of the POCSO Act vide Judgment dated-08/08/2019 has been produced from jail custody. He is heard on the quantum of sentence u/s-235(2) Cr.P.C. Mr. M.J. Neog, learned Special Prosecutor has submitted that under the factual matrix of the case, no leniency should be shown to the accused and he deserves maximum punishment prescribed u/s-6 of the POCSO Act.

It is well settled that punishment must be proportionate to the nature and gravity of the offence. In this case, the accused being the own father of his minor daughter (PW-3) committed penetrative sexual assault upon her repeatedly during night time taking advantage of the death of his wife. He did not think for a moment that he is the only person in this world to look after care, security and welfare of his daughter. In stead of playing the role of a savior to his daughter, he became the perpetrator of the crime and damaged her chastity at her childhood days. The facts and circumstances of the case show that it is an exceptional case of extreme animalism exhibited by the accused father to his minor daughter. After death of her mother, the accused father ought to have been more caring for love, attention and security of his daughter. She has lost all trust upon him and ultimately because of repeated sexual assault, she had to flee away from her house and compel to take shelter in Nagaon Children Home. Therefore, considering all the aspects, I find that all the circumstances are aggravating circumstances in which the crime was committed by the accused and mitigating circumstance is nil. When the accused has not spared the own minor daughter in order to satisfy his lust, the other female would not be saved in his company. Therefore, I find that the accused deserves maximum punishment prescribed u/s-6 of the

POCSO Act. Accordingly, accused Raju Patra is sentenced to undergo R.I. for life and fine of Rs.2000/- (Rupees two thousand), in default to undergo further R.I. for 6(six) months. There shall be no remission of his sentence.

The accused person be sent to the jail custody forthwith to serve the sentence.

Special Judge, Nagaon.