IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (<u>POCSO</u>) Case No.15/2015 (U/S :448 IPC R/W Sec. 4 of POCSO Act)

State Versus Afaj Ali S/O Md. Suruj Ali Vill- Dipbichara, PS-Rowta, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri M. Khaklary, Addl. P.P., Udalguri

AND

For the accused: Sri. J.K. Brahma, Advocate. Evidence recorded on:14.10.15, 20.11.15.

Argument heard on: 29.10.2018.

Judgment delivered on: 12.11.2018.

<u>JUDGMENT</u>

The prosecution case as presented is traceable from the FIR dated 25.6.15 lodged by the informant Azad Ali with the In-charge, Lalpool Police Out Post alleging, inter-alia, that on 26.3.15 at about 5.30 PM the accused Afaj ali committed rape on his minor daughter (real name is withheld, henceforth referred as the victim) aged about 15 years during the absence of him and his wife in their home. When the informant came to know about the incident asked his victim daughter who disclosed that accused had committed rape upon her against her will and consent. Since the informant is a poor persons and as such, he initially placed the matter before the village people and they wanted to settle the matter and the father of the accused also assured to sit in

the village meeting but later he evaded from attending the meeting and rather threatened the informant with dire consequences. Hence there was delay in lodging the FIR.

- 2. On the basis of the FIR the In-charge, Lalpool Police Out Post recorded GDE No.440 dated 25.6.15 and forwarded the same to the Officer In-charge, Rowta Police Station for registering a case and in the meantime he had taken up the preliminary investigation of the case. On receipt of the FIR, the Officer In-charge, Rowta Police Station registered a case vide Rowta P.S. case No.57/15 U/S 448/376/506/34 IPC and endorsed the case for investigation to the In-charge, Lalpool Police Out Post who had already taken up the investigation of the case. During as usual investigation of the case, the I.O. visited the place of occurrence, recorded the statement of available witnesses U/S 161 Cr.P.C. and prepared a sketch map of the place of occurrence. The I.O. got the statement of the victim recorded U/S 164 Cr.P.C. and sent her for medical examination and obtained her medical examination report and the accused was arrested. On completion of the investigation the I.O. laid the charge-sheet against the accused Afaj Ali U/S 448/376 IPC R/W Sec. 4 of POCSO Act to face trial in the court of law.
- 3. On receipt of the charge sheet and this being a Special (POCSO) case my learned predecessor in office assayed the copies of police documents supplied U/S 173 Cr.P.C.
- 4. Whereupon, on assessing relevant papers including the case diary and having heard learned counsel of both sides my learned predecessor in office having found a prima-facie case and sufficient ground for presuming that the accused had committed the offence U/S 448/376 IPC R/W Sec. 4 of POCSO Act formal charges thereunder were framed against the accused and the same on being read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.

- 5. In order to romp home the charges the prosecution has examined as many as nine witnesses including the informant, victim, M.O and I.O. of the case. Apart from that prosecution has also exhibited some documents in support of its case.
- 6. The defence of the accused is of complete denial. The accused has pleaded in his statement U/S 313 Cr.P.C. that he is totally innocent and he has been falsely implicated. However, no evidence has been adduced in support of his defence.
- 7. In view of the above perspective, the points for determination in the present case are set up and framed as:
- (i) Whether the accused on 26.3.15 at about 5.30 PM at Dipbisara under Rowta PS committed house trespass into the dwelling house of informant Azad Ali as alleged U/S 448 IPC?
- (ii) Whether the accused on the same day, time and place committed rape upon Miss Aklima Khatoon as alleged U/S 376 IPC?
- (iii) Whether the accused on the same day, time and place committed penetrative sexual assault upon the victim, aged about 15 years as alleged U/S 4 of POCSO Act?
- 8. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

9. PW1, Dr. Bhanita Deka is the Medical Officer of this case. She has stated to the fact that on 1.7.15, she was serving as Asstt. Professor, Tezpur Medical College & Hospital, Tezpur. On that day, she examined the victim Aklima Khatoon, D/o- Azad Ali of village Dipbisara under Rowta P.S. The girl

was escorted by WPC/527 Kanchi Narzari, in presence of staff nurse Orful Nessa. On examination, she found the following:-

Physical examination:-

Height- 140 cm, weight- 42 Kg, teeth- 14/14, Scalp hair- 43-45 cm, axillary hair- 1-2 cm, pubic hair- 2-4 cm black, breast- developed, hymen- intact, valve- healthy, uterus- not palpable, vagina- healthy.

No injury mark on her private parts.

Mental condition- normal.

Vaginal swab examination for spermatozoa:- no spermatozoa seen.

RADIOLOGICAL EXAMINATION:-

X-ray for age determination:- Urine HCG report shows negative result.

Opinion:-

- (1) Evidence of recent sexual intercourse is not present on her person.
- (2) Evidence of violence mark is not present on her person. .
- (3) Her age is above fourteen years and below sixteen years.

Ext.1 is her report and Ext.1(1) is her signature.

- 10. In her cross-examination she stated that according to victim accused is Abas Ali @ Afaz Ali. She has not stated his father's name. Doctor had examined the victim on 1.7.15. At the time of examination of the said woman Dr. Putul Mahanta, Asstt. Professor of Medical College was also present. Ext. 1(3) is the signature of Dr. Putul Mahanta which she knows on communication.
- 11. PW2 Azad Ali is the first informant of the case as well as the father of the victim. He stated that the accused is known to him and the victim who was 15 years old at the time of occurrence. The incident occurred on 26.3.15. As regards the incident many village meeting had been convened. Neither the

accused nor his father in spite of giving assurance to present themselves in the meeting failed to turn up and that had caused delay in lodging the FIR. Incident occurred around 5.30 PM when he went to see a doctor at Dalgaon. After returning from doctor he heard hue and cry at his village and he came to his house. At that time his victim daughter informed him that during their absence the accused came to their house and committed rape on her. Some village people namely, Fajal Ali and Tarfuli Nessa etc. who came to the place of occurrence told him that they saw the accused was coming out from his house. Before lodging the FIR with the police he tried to settle the matter at the village level but the father of the accused refused which resulted in delay in lodging the FIR with the police.

12. In cross-examination he has stated that the FIR was scribed by one person of Lalpool and he does not remember his name and the same was scribed as per his version. He did not witness the incident which took place on 26.3.15. He has stated that he does not remember as to whether he stated before the police that he has seen Tarful Nessa and Fazal Ali had seen the accused coming out from his house. He has deserted his first wife and he does not know when he walked out of her. The victim is the daughter of his first wife. He has been staying in the land of one Usuf by constructing a small house. He married his second wife Jamiran about 2/3 years before the incident. On the North of his house is the house of one Jahur at a distance of about 30 feet of his house. On his South is the house of one Usuf which is adjacent to his house. On the East cultivation field and on the West is the road. There are about 8/9 family members in the house of Jahur and there are about 10/12 family members in the house of Usuf. The courtyard of Usuf and his courtyard is the same. When he returned from doctor at the material time of occurrence he heard hue and cry which was caused by one Hamuj and Fajar Ali and other people and he cannot recollect their names. He has denied the suggestion that at the time of occurrence his daughter was staying at the house of one Akbar. He has further denied the suggestion that accused did not commit rape on his daughter on the day of occurrence and they rather tried to give in marriage his victim daughter to the accused and the proposal was

rejected by the father of the accused and therefore he has lodged a false case against the accused out of grudge.

- 13. PW3 is the victim. It is her evidence that the informant is her father and the accused is known to her. The occurrence took place at around 5 PM when there was no body in their house except her. At that time her parents went to see doctor. At the material time accused came to their house and after disrobe her committed rape on her gagging her mouth by a "Gamocha" (towel) and as a consequence she could not shout for help. After commission of rape on her the accused went away. After 10 to 15 minutes her parents came and she narrated about the incident. Police brought her before the Magistrate and got her statement recorded U/S 164 Cr.P.C. But she did not put her signature in her statement which is exhibited vide Ext.2.
- In cross-examination she has stated that at the time of occurrence she 14. was studying at Ikrabari ME school in class VIII. At present she is staying in the house of one Nur Islam and before that she was staying in the house of one Akbar for about 2/3 years. Her own mother Soleman Nessa left her when she was very young age. Her own mother eloped with another man and staying at Dimapur. So, her father married another lady as his second wife. On the North of their house is the house of one Jahur and one Afaj Ali. On the South is the house of one Usuf Ali who is her uncle. On the East is the cultivation field and on the West the house of Akbar is situated. She has admitted that she did not state before the police that accused at first gagged her mouth with a "Gamocha" (cloth) and after disrobing her committed rape on her. She has denied the suggestion that on the day of occurrence the accused did not come to her house and committed rape on her rather in order to falsely implicated in the case her father lodged the case on the allegation that she was raped by the accused. She has also denied the suggestion that she had love affairs with the accused and in order to rope the accused falsely in this case, this case was lodged by her father. At the time of occurrence she was staying at the house of Akbar. She has admitted that she did not tell before Usuf and Jahur immediately after the incident though many people gathered at

the place of occurrence immediately. Her brother Usuf Ali, Akbar, Nur Islam came to their house before arrival of her father and mother. But she did not tell the said people about the incident. When she was brought for recording her statement before the Magistrate she came from the house of her uncle Nur Islam. She has denied the defence suggestion that she has deposed falsely before this court as tutored by her parent.

- 15. PW4 Fazal Ali has deposed that the victim is his niece. The occurrence took place at about 5.30 PM. His house is contiguous to the house of the informant. At the material time when Azad Ali, his wife and others raised hue and cry he was at his house. He came to the house of Azad Ali and Azad Ali told him that accused committed rape on his daughter. The victim also told him that accused committed rape on her. When informant Azad Ali informed about the incident took father of the accused then father of the accused assured Azad Ali that his daughter would be brought as his daughter-in-law but for the last three months after the incident nothing developed and therefore the informant Azad Ali lodged the case.
- 16. In cross-examination he has revealed that his house and the house of the accused are adjacent to each other with a distance of 20 meters apart. He did not witness the incident. He has stated before this court as to what he had heard and he has no special knowledge.
- 17. PW5 Musstt. Ariful Nessa has stated in her evidence that the informant Azad Ali is known to her and the victim who is the daughter of the informant Azad Ali is her niece. The occurrence took place on 26.3.15 at about 5.30 PM. At the material time when she heard commotion in the house of the informant Azad Ali she rushed to his house and informant told her that the accused taking advantage of absence of anyone in his house committed rape on his daughter. This was also told by the victim before her. The father of the accused told before the informant Azad Ali that after returns of the accused he would settle the matter. But the matter could not be resolved even after elapse

of three months no settlement could be reached in the matter which resulted in lodgment of the FIR by the informant Azad Ali.

- 18. In cross-examination she has stated that she did not witness the incident. After the incident the victim was kept in her house and before that she was staying at her own house. The victim also used to stay at her mother-in-law's house before the incident of and on.
- 19. PW6, Musstt. Jamiran Nessa is the wife of the informant. her evidence reveals that she knows the accused and the victim is the daughter of the first wife of her husband. At the material time of occurrence she went alongwith her husband to see a doctor. When she returned to her house she came to know from the victim and the gathering people on the road itself that accused committed indecent assault on the victim. The victim narrated about the incident before her.
- 20. In cross-examination she has disclosed that she returned from the doctor with her husband at about 5 PM. She witnessed the commission of rape on the victim. It is also known to her that many people of the locality witnessed the incident but she does not know the names of those persons. She has admitted that she did not state before the police that she had witnessed the indecent assault on the victim. No such incident had occurred. On the North of their house is the house of Jahur Ali, on the South house of Fazal, on the East vacant land and on the West the house of Akbar. She has denied the defence suggestion that she has falsely deposed in the case against the accused.
- 21. PW7 is Mr. A. J. Baishya, who is an official witness. It is in his evidence that on 4.7.15, while I was posted as SDJM, Udalguri, he recorded the statement of victim Aklima Khatoon U/S 164 Cr.P.C. in reference to Rowta P.S. case No. 57/15. After recording her statement of the victim same was read over to her and she accepted as correct. Ext.2 is the statement of the victim

and Ext.2(1) is his signature. None was present in his chamber when he recorded the statement of the victim.

- 22. In cross-examination he has stated that as the identifying constable was not present at the time of recording the statement of victim, so he did not obtain any signature of the said identifying constable in Ext.2 and therefore Ext.2 is silent as to the signature of the victim. It is an official omission for which the signature of the victim was not taken by his Bench Assistant. He has denied the defence suggestion that Ext.2 bears no signature of the victim so this is not statement of the victim.
- 23. PW8, Amir Hussain is the I.O. of the case. His evidence displays that on 25.6.15 he was posted as SI of Police at Lalpool Pout post. On that day, on being received an written ejahar from one Azad Ali he had given GDE No.440 dated 25.6.15 and forwarded the same to the O/C, Rowta P.S. for registering a case and he himself took the charge of investigation. On receipt of the ejahar the O/C Rowta PS registered the case vide Rowta P.S. case No.57/15 U/S 376/406/34 IPC. The informant Azad Ali put thumb impression in the ejahar. Ext.3 is the ejahar and Ext.3(1) is his GDE note with signature. During investigation he had visited the place of occurrence, recorded the statement of witnesses drew the sketch map thereof and sent the victim for medical examination and also before Magistrate to get her statement recorded U/S 164 Cr.P.C. After completion of preliminary examination, he handed over the record to the O/C, Rowta P.S. He has marked the sketch map as Ext.4 and Ext.4(1) is his signature.
- 24. In cross-examination he has stated that the FIR was receipt on 25.6.15 and the incident occurred on 26.3.15 at about 5.30 PM. From the statement of witnesses particularly the victim, it appears that they were waiting for a village meeting. As the village meeting could not decide the case so it becomes late in lodging the ejahar. He recorded the statement of members present in the village meeting but he did not recorded the statement of Habibur Rahman, Oman Ali, Harmuj Ali in this case as they could not be found during the time of

investigation. He visited the place of occurrence on the very day of the lodgment of FIR on 25.6.15. As per the sketch map on the North of the place of occurrence is the house of Jahar Ali, on the Sout Fajar Ali, on West road and on the East paddy field. As he could not find Jahar Ali or any of his family members in the house at the time of his visit, so he could not record the statement of Jahar Ali and his family members. He sent the victim for medical examination on 30.6.15 and the doctor has examined her on 1.7.15 and thereafter he collected the medical report. The victim was sent to get her statement recorded U/S 164 Cr.P.C. on 4.7.15 before the Magistrate and the cause of delay in examination of the victim mentioned in the case diary. He had not seized any age certificate of the victim. He had not recorded the statement of Usuf Ali, Akbar Ali and Noor Islam as they could not be found during investigation. He has confirmed that the victim in her statement U/S 161 Cr.P.C. did not state that the accused gagged her mouth with a Gamocha and grabs her chest by opening her cloth. He recorded the statement of victim at police station in presence of her quardian. As the name of scribe of the FIR is illegible so the scribe could not be traced out.

- 25. PW9 Haresh Ch. Borah is the other Investigating Officer of the case who has simply laid charge-sheet against the accused Afaz Ali. He has stated that on 28.8.15 while he was posted as the Officer-In-Charge of Rowta PS he had received the case diary of Rowta PS case No. 57/15. After close perusal of the case diary it was found that earlier Investigating Officer had almost completed the investigation of the case and having found a prima-facie case he laid the charge-sheet against the accused Afaz Ali U/S 376 IPC R/W Sec. 4 of POCSO Act. Ext.5 is the charge-sheet. Ext.5(1) is his signature. His cross-examination is declined by the defence.
- 26. While evaluating the evidence on record as discussed above in its entirety, what has emerged that this being a case of sexual molestation of a minor victim, and there being no eye witness except the victim PW3 herself and as such her evidence is found to be most crucial to bring home the charge levelled against the accused beyond all reasonable doubt.

- 27. Before proceeding further to scan the evidence of the victim PW3 at the outset in the proper perspective, it is pertinent to mention at this stage that it has been fairly settled in a catena of decisions rendered by the Hon'ble Apex Court that there is no rule of law or practice that the evidence of the victim of rape can not be relied upon without corroboration and as such, it has been laid down that corroboration is not sine qua non for conviction in a rape case if the evidence of the victim does not suffer from "any basic infirmity and probabilities factor" does not render it unworthy of credence as a general rule, there is no reason to insist on corroboration except from the medical evidence", where having regard to the facts and circumstances of the case or medical evidence can be expected to be forthcoming.
- 28. Thus, it is amply evident that in a case of rape or penetrative sexual assault the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. However great the suspicion against the accused, however strong the moral belief and conviction of the Judge, unless the offence of the accused is established beyond reasonable doubt or beyond the possibility of reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to being home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.
- 29. On the above backdrop as to the value of the evidence of rape victim, if we appraise the evidence of PW3 (victim) on the record, it would appear that the evidence of the victim (PW3) is found to be shaky and suffers from basic infirmities coupled with glaring contradiction rendering her evidence not solely reliable in absence of corroboration.
- 30. PW3 has deposed in her evidence that occurrence took place at around 5 PM when there was no body in their house except her as at that time her

parents went to see doctor. At the material time accused came to their house. Then the accused disrobed her and committed sexual assault on her by gagging her mouth by means of a "Gamocha" as a result of which she could not shout for help. After commission of rape on her the accused went away. After 10 to 15 minutes her parents came and she narrated about the incident. In cross-examination she has revealed that she did not state before the police that the gagged her mouth with a "Gamocha" at the time of commission of rape which is a major contradiction in respect of the material particulars of the case inasmuch as in examination in-chief she has revealed that her mouth was gagged at the time of commission of rape by the accused which prevented her from raising shout for help. Had her mouth not been gagged by the accused as admitted by the victim (PW3) in cross-examination she would have definitely raised shout for help from the neighbourhood people when the rape was committed by the accused for about 10 to 15 minutes. Another glaring contradiction that has come out from the mouth of victim (PW3) herself is that her brother Usuf Ali, Akbar, Nur Islam came to their house before arrival of her father and mother but she did not tell about the incident to them has materially affected the credibility of the testimony of the victim PW3 as regards commission of rape by the accused. If the victim had been raped by the accused and immediately thereafter her brother Usuf and other persons namely, Akbar and Noor Islam came to their house she would have definitely narrated about the incident. Instead of narrating the incident to the said persons she rather waited till the arrival of her father and mother is implausible in the facts and circumstances of the case so much so that this part of the evidence is quite contradictory to the testimony of her father (PW2), who is the first informant of this case and her step mother (PW6). Thus, it transpires that the victim (PW3) has improvised her testimony for the first time in her evidence in the court in contradiction to her previous statement U/S 164 Cr.P.C. in support of the prosecution case as a result it has rendered her testimony unworthy of credence.

31. In the evidence of informant (PW2) it has been elicited that after returning from doctor he heard hue and cry in his village and after reaching his

home the victim (PW3) informed him that accused committed rape on her during their absence and some village people namely, Fajal Ali and Tarfuli Nessa who also came to the place of occurrence told him that they saw the accused was coming out from his house. On the other hand, it is the testimony of victim (PW3) in her cross-examination that after the incident her brother Usuf and nearby people namely, Akbar and Noor Islam came to their house before arrival of her father (PW2). Thus the evidence of PW2 and PW3 are found to be not only mutually contradictory to each other but also suffering from self contradiction in their own evidence. If some village people namely, Fajal and Tarful Nessa etc. were coming to the place of occurrence as stated by PW2 then the victim (PW3) would have also spoken their names instead of disclosing that her brother Usuf and other village people Noor Islam came to her house before arrival of her father (PW2). Except Azad Ali none of the above persons has been cited as witness in support of the prosecution case.

- 32. Be that as it may from the testimony of PW4, Fazal Ali, it appears that his evidence does not corroborate the evidence of either the victim (PW3) or her parents PW2 and PW6 respectively. PW4 in contradiction to the evidence of the vital witnesses. PW3 (victim), PW2 and PW6 has revealed that at the material time when Azad Ali, his wife raised hue and cry at his house he came there and PW2 (informant) stated before him that accused committed rape on his daughter (PW3). Thus, it is evident from the testimony of PW4 itself that he is not a witness who saw the accused going out from the house of the informant after committing rape on the victim (PW3) though his house is contiguous to the house of the informant (PW2). Hence, the testimony of PW4 belies the testimony of the informant (PW2) that he came to his house after his arrival and he had seen the accused coming out of his house after committing rape on PW3. PW3 (victim) has also not made a whisper as to coming of PW4 in their house after the incident.
- 33. Moreover, it appears from the testimony of the Medical Officer (PW1) that she examined the victim on 1.7.15 while the incident had occurred on 26.3.15. On examination of victim Medical Officer (PW1) opined vide medical

report Ext.1 that she did not find recent sexual intercourse or presence of violence mark in the person of the victim (PW3) and her age was found to be in between 14 years and below 16 years as per radiological report. Since the victim was examined by the Medical Officer (PW1) after about 3 months from the date of incident so it shall be the Medical Officer (PW1) neither found mark of violence either in the private part of the victim or on her body. Therefore, Medical Officer rightly ruled out commission of rape on the victim in connection with the incident which occurred long back on 26.3.15 as per the FIR Ext.3 and the victim (PW3) underwent medical examination on 1.7.15.

- 34. In the face of the belated examination of the victim (PW3) after about three months from the date of occurrence not supporting rape on the victim by the medical evidence and incoherent, inconsistent and contradictory evidence of the victim (PW3) if taken as a whole renders it unworthy of credence when the probabilities factor in the facts and circumstances of the case as to the involvement of the accused in commission of rape on her is found to be totally out of tune in absence of any corroboration by medical evidence or testimony of other prosecution witnesses.
- 35. Moreover, it has also emerged from the evidence of the informant (PW2) that he lodged the FIR almost after three months from the date of the commission of rape on his daughter (PW3). The explanation sought to be established by the informant (PW2), as to delay in lodging the FIR after three months from the date of occurrence is found to be not at all convincing. The statement of the FIR that due to place the matter before the village meeting and no settlement could be arrived and due to absence of the accused is found to be nothing but a cock and bull story as none of the independent witnesses of the vicinity of the place of occurrence have disclosed anything regarding placing of the matter by the informant (PW2) before the village meeting to settle the matter nor any proceeding book as to the village meeting convened in regard to the incident has been produced to establish its authenticit.

- 36. It also defies logic as to why the father of the victim had to place the incident for village settlement when his victim daughter (PW3) was raped by the accused against her will and consent when victim stated about the incident before him immediately after his arrival from the doctor's house to his home. Rather he filed the FIR before the police almost after three months from the date of the incident for the reason best known to him in such a serious allegation of rape against the accused. So, the explanation sought to be given by the informant (PW2) as to the delay in lodging the FIR after inordinate delay and found to be not at all convincing.
- 37. "Their Lordships of Hon'ble Supreme Court in Vijayan V. State of Kerela (2008) 14 Supreme Court Cases 763 have held that in the cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, especially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenseless. Had the prosecutrix lodged the complaint soon after the incident there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix had willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR, it will be every hazardous to convict on such sole oral testimony."
- 38. The present case wholly depends upon the testimony of the victim (PW3) as there was admittedly no other eye witness to the occurrence. The incident in the present case took place almost three months prior to the date of lodging the FIR as the realisation dawn upon her father (PW2) that she had been subjected to rape by the accused. No FIR was filed before the police nor grievances alleged to have been placed before the village meeting is also remained to be proved. The explanation for delay in lodging the FIR to the effect that the informant (PW2) being a poor person and waiting for village settlement in the matter without any proof thereof by the informant and the village witnesses examined above making no whisper as to placing of the matter before the village meeting, the prosecution case is found to be unreliable and the cause of inordinate delay in lodging the FIR remained to be

explained satisfactorily. Had the informant (PW2), the father of the victim, lodged the FIR soon after the incident there would have been some supporting evidence like the medical report or any other injury on the body of the victim (PW3) so as to show the sign of rape.

- 39. Situated thus, it is abundantly seen that there was inordinate delay in lodging the FIR with the police and the delay in lodging the FIR remained to be explained satisfactorily and as a result it has cast a doubt on the veracity of the prosecution case in the face of inherent, improbable and inconsistent evidence adduced by the victim (PW3) and other prosecution witnesses in respect of the material particular of the case. Therefore, I find no weight in the testimony of the prosecution witnesses to bring home the guilty of the accused beyond all reasonable doubt and that being so, prosecution evidence is disbelieved.
- 40. Thus, in the instant case though on principle enunciated by the Hon'ble Apex Court in a galaxy of decisions that in a case of rape the evidence of prosecutrix can be relied on without corroboration and that the evidence of victim of sexual assault stands on per with evidence of an injured witness just as a witness who has sustained an injury for the best witness in the sense that he is least likely to exculpate the real offender but that principle is not applicable in the facts and circumstances of the instant case due to discrepancies and contradiction galore in the evidence on record. It is amply evident from the record that the testimony of the victim (PW3) has indeed suffered from basic infirmity and the probabilities factor is extremely doubtful, and therefore, renders it unworthy of credence coupled with the fact that the medical evidence is also not forthcoming to augment the prosecution case. Therefore, the accused is entitled to benefit of doubt.
- 41. For what has been discussed above and reasons therefore, I am constrained to hold that the accused Afaj Ali is not guilty U/S 448 IPC R/W Sec. 4 of the POCSO Act. Therefore, he is acquitted thereunder on benefit of doubt and set him at liberty forthwith.

Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this the 12^{th} day of November,2018.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Bhanita Das

ii)PW2 Azad Ali

iii)PW3 Miss Aklima Khatun

iv)PW4 Fazal Ali

v)PW5 Musst. Ariful Nessa vi)PW6 Musstt. Jamiran Nessa

vii)PW7 Mr. A. J. Baishya viii) PW8 Amir Hussain ix) PW9 Haresh Ch. Borah

B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical report.

ii)Ext.2 Statement U/S 164 Cr.P.C.

iii)Ext.3 Ejahar iv)Ext.4 Sketch map. v)Ext.5 Charge sheet.

Dictated and corrected by me.

Special Judge, Udalguri