IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B., AJS, Special Judge, Barpeta.

JUDGMENT IN SPECIAL POCSO CASE NO. 109 OF 2019 (G.R. Case 2692 of 2019) Barpeta P.S. Case No 1111 of 2019

State of Assam

-versus-

1. Jiyaur Rahman, S/O Lt. Ebadat Ali, Resident of Donakuchi, 2. Fulchan Ali, S/O Sattar Ali, Resident of Bheraldi, Palahartal, Both are of

...... Accused. P.S. & Dist.: Barpeta,

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned Public Prosecutor,

Barpeta.

For the Accused : Mafiz Uddin Ahmed and

Rafiz Uddin Dewan, learned Advocate, Barpeta.

CHARGE FRAMED UNDER SECTION 376/511 OF THE INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

Date of Charge : 02.07.2019,

Date of Prosecution evidence : 15.07.2019 & 30.07.2019

Date of Statement of accused

recorded u/s 313 CrPC : 03.08.2019,

: 17.08.2019, 29.08.2019 & 23.09.2019

Date of Argument
Date of Judgment : 23.09.2019.

<u>JUDGMENT</u>

1. The prosecution case, in brief, is that Barpeta P.S. Case No 1111 of 2019 under section 376DA/511 of the Indian Penal Code, 1860 Read with section 8 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Smt. Mira Das, the mother of the victim (hereinafter referred to as 'X').

In the aforesaid F.I.R. Dated 26.05.2019 (Exhibit-2) the informant Mira Das (P.W.2) alleged interalia that on 25.05.2019 the accused persons were sent to their house by contractor for construction of a latrine, which was allotted to them by Govt. Her husband went outside for work and she too went to other persons house for work. Then, at about 12:00 O'clock at noon, when her victim daughter, aged 13 years, was alone at home, both the accused persons entered into her house and gagged mouth of her victim daughter and touched her body and also attempted to commit rape upon her. It is also alleged that her victim daughter somehow managed to escape herself from the clutch of the accused persons and she ran outside and raised hulla. Then the neighbouring people caught both the accused persons and handed over to police.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Barpeta Police Station, the same was registered as Barpeta P.S. Case No 1111 of 2019 under section 376DA/511 of the Indian Penal Code read with section 8 of the Protection of Children From Sexual Offences Act. 2012.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Jiyaur Rahman & Fulchan Ali under section 376DA/511 IPC Read with section 8 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.546, dated 29.06.2019.

- **2.** Accused persons were produced after filing of charge-sheet against them. On appearance of accused, copy was furnished to them by the undersigned.
- **3.** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused persons and the prosecution in this behalf, charge was framed against the accused persons u/s 376/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012, which was read over and explained to the accused persons, to which, the accused pleaded not guilty and claimed to be tried.
- **4.** During the course of trial, **07(seven)** number of witnesses including the victim, informant, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge u/s 376/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused persons were recorded u/s 313 of CrPC. The accused persons denied all the alleged incriminating materials against them. Them claimed themselves to be innocent. They also stated that false case has been lodged against them. They denied to adduce evidence in their defence.

- I have heard argument advanced by Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as the learned Defence Counsel for the accused persons, who are facing trial for commission of offence u/s 376/511 IPC R/W section 8 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether on 25.05.2019 at about 12:00 PM at Dakhinhati within the jurisdiction of Barpeta Police Station, District Barpeta,

attempted to commit rape on the minor daughter of the informant Mira Das and thereby committed an offence punishable u/s 376/511 of the Indian Penal Code ?

(2) Whether on the aforesaid date, time & place, committed sexual assault on the minor daughter of the informant Mira Das and thereby committed an offence punishable u/s 8 of the Protection of Children From Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF

7. First of all, let me see what are the relevant provisions of law with reference to the charged sections against accused.

Section-375-Rape - A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following description:-

First - Against her will.

Secondly - Without her consent.

<u>Thirdly</u> - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

<u>Fourthly</u> - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

<u>Fifthly</u> - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequence of that to which she gives consent.

<u>Sixthly</u> - With or without her consent, when she is under sixteen years of age.

<u>Explanation</u> - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

<u>Exception</u> - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Section 511 of IPC - Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment - Whoever attempts to commit an offence punishable by this Code with [imprisonment for life] or imprisonment., or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this code for the punishment of such attempt, be punished with [imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

THE PROTECTION OF CHILDREN FRM SEXUAL OFFENCES ACT, 2012 Section-8 - Whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

8. To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Witness **Dr. Renuka Rangpharpy [PW1],** who is M.O. of this case, deposed in her evidence before the court that on 25-05-2019 while she was posted as Associate Professor, DFM, FAAMCH, Barpeta, she examined victim Miss Gitishmita Das, age 13 years, D/o- Chandan Das, Vill- Dakshinhati, PS- Barpeta, Dist- Barpeta, Assam on being identified by

WPC - 682 Mamani Devi and found as follows:

History: As per alleged victim girl, on 25-05-2019 at about 12.30 PM while she was folding cloths inside the room, two unknown man (workers) who came to built toilet at her place, came suddenly inside the room and trying to have sexual intercourse with her. She shouted for help and escaped from them and went to her neighbour aunty's place. When the public came to know about the incident, they informed to police on the same day and she is brought to medical for medical examination.

Physical Examination:

Identification Marks: (1) Black mole present over left side of front of chest 8 cm below the clavicle and 5 cm away from rid leap.

(2) Black mole present over back of wrist joint (right) 1 cm lateral to rid leap.

Height: 139 CM **Weight:** 44 KG.

Chest girth as nipple level : 78 CM.

Abdominal girth at navel level : 64 CM.

General built & appearance : Average.

Voice: Feminine.

Teeth: 28.

Permanent: 14/14

Temporary: Nil

Hairs: Axillary: Nil.

Breasts: Hemispherical, soft to firm is consistency. Nipple and areola

small.

Puberty (as told by the individual): Class V.

Menstruation (as told by the individual): Regular, Duration - 4-5

days.

L.M.P (as told by the individual): 20 days back (05/05/2019).

Mental Condition: Nothing abnormality detected.

Gait: Normal.

Intelligence: Average.

Wearing garments & any suspected stains present : Wearing

garments intact stasis not present.

Bodily Injuries : Nil.

Genital Examination:

Pubic Hairs: 0.5-1 cm, non matted and scanty is distribution

Vulva (Labia majora & minora): Developed, healthy

Hymen: Intact.

Vagina: Rugosed and healthy

Cervix & Uterus : Uterus per abdomen not palpable.

Fourchette & Perineum : Healthy.

Vaginal swab collected:

Result of vaginal swab smear examination: Vaginal smears does not

show spermatozoa under microscope.

X-Ray Investigation advised:

Result of X- Investigation: Plate No. 13 dated 25-05-2019.

Writs Joint: Epiphyseal union around wrist joint is not completed.

Elbow joint: Epiphyseal union around elbow joint is completed.

Shoulder Joint: Epiphyseal union around shoulder joint is not

completed.

Pelvis: Epiphyseal union around iliac crest and istheal lecbero

Others (Face/Skull): Lity are not completed.

Ultrasonography advised and result: Not advised.

Opinion:

- (1) There is no evidence of sexual intercourse detected on her person.
- (2) There is no evidence of injury detected on her body and private parts.
- (3) No evidence of mental or physical disability detected at the time of examination.
- (4) She is above 14 (fourteen) years and below 16 (sixteen) years of age.
- (5) No foreign particles are found on the body/cloths of the alleged victim girl.

PW1 exhibited her report as Ext.1 and her signatures thereon as Ext. 1(1) and 1(2).

During cross-examination, PW1 has stated that she examined victim as per Barpeta PS GDE No. given in her report. Victim did

not state name of any person in the history recorded by her in Ext. 1.

Witness **Mira Das [PW2]**, who is the mother as well as the informant of the case, deposed that the victim is her daughter. Incident took place about 2 months ago and she was at her work place. She stated that the accused persons went to her house for construction of latrine, at her house, as per Government scheme and both the accused were engaged persons of the contractor. On returning home, at 1:00 PM, she found gathering of many people in her house and her victim daughter was not at home.

Victim told her that the accused persons had bitten on her cheeks and torn cloths. After that, police was informed and police took the accused persons. PW2 lodged the FIR before the police on the same day.

PW2 exhibited the FIR as Ext.2 and Ext.2(1) & 2(2) are her signatures.

During cross examination, PW2 has stated that she got married before 19 years. Victim was born after one year of her marriage. Her son and victim study in a school. Victim was student of Jiban Lata High School. School was open on the date of incident and her son did not go to school as there was a function in his school. The distance between her house and the house of Manoj Das where she was working, at the relevant time, may be one furlong.

Incident took place around 1:00 PM. No incident occurred after and prior to 1:00 PM. Police came after half an hour of the incident. Accused were assaulted by the public. They went to thana after an hour of taking the accused persons by the police.

She denied that she did not state before the police that she found bitting mark and nail scratching mark on the person of her victim daughter; that victim told that accused persons bitten on her cheeks and torn her cloths. Accused were tied with an electrical post. Police was informed and police took both the accused persons.

She also stated that she lodged only one FIR over the incident.

She denied the other suggestions of the defence side.

PW2, in her **re-examination**, deposed that police seized the frock. Ext.4 is the seizure list. Ext.4(1) is her signature. Ext.5 is the seizure list and Ext.5(2) is her signature. Photocopy of birth certificate is available.

During cross-examination, she denied that seized frock is not related to the incident of this case. She has not seen the seized frock in the court. She did not state before police that the seizure (Ext.5). Birth certificate of victim was obtained immediately after her birth. Original birth certificate is not available in the court today.

The Victim [PW3] has deposed in her evidence before the court that incident took place before 1½ months ago. At the time of incident, her parents were not at home. She was alone at her home. It was about 12:00 PM. While she was arranging her cloth, then the accused liyarul came and threw her on the bed and torn her cloths. He also had bitten on her cheek. She tried to resist the accused persons, but could not get success. Ultimately, she pushed the accused persons and came out from her house. Co-accused told her that "Moko dibi neki, moko dibi neki" (will you give me too, will you give me too). Then she told the incident to neighbouring girl namely Olimpika Das D/O Dipak Das, who she informed her mother. Then neighbouring people came to know the incident and tried to assault the accused persons. She told the incident to her mother as well as mother of Olimipika Das. Her mother lodged this case. Police came and took the accused persons with them. PW3 further stated that they also went to thana and told the incident to police. Police sent her to doctor for her medical examination and also sent her to learned Magistrate for recorded her statement u/s 164 CrPC. She gave her statement voluntarily. Ext.3 is her statement recorded u/s 164 CrPC and Ext.3(1) is her signature.

During her cross examination, PW3 stated that her mother knows her date of birth. She was wearing sporting at the time of incident. She changed her torn sporting and wore a frock. Police seized the frock. There are two rooms in their house. Accused were working for last 2/3 days of incident in their house. The incident took place at around 11:30 AM. Sewali, Manju reside near their house. Police came to their

house at about 12 PM. Accused were taken to the police station in injured position. They also went to thana after the incident. Police examined her and her mother simultaneously. The accused persons kept working even after the incident at their house. Neighbouring people of their house may listen to hue and cry, if raised, from their house.

She also stated that she has not seen the seized cloths today, which was, seized by police. She studies in a school. She was brought to Hon'ble court on the date of incident to record her statement u/s 164 CrPC.

In her evidence she denied that she did not state before police as wel as before learned Magistrate in her statement that the accused had bitten on her cheek, made scratch on her body with nail at the time of incident. She gave her statement before the police she came out, after wearing top.

She also denied that she did not state before police that she told the incident to Olimpika Das and her mother including her own mother.

She denied the other suggestions of the defence side.

Witness **Diganta Das [PW4]** has deposed in his evidence before the court that he knows the informant and victim of the case. He knows both the accused person of this case. Incident took place on Bahag Bihu this year. He alongwith Subach Ch Das were going to petrol depot for purchasing diesel. On reaching the house of informant Mira Das, her daughter came running from her house. She told them that two persons have sexually assaulted her. She told them to save her. She told that accused had bitten her apart from other atrocity. By this time public gathered. The public people questioned the accused who assaulted the victim. Then he left that place.

Police seized the wearing frock of the victim vide. Seizure list Ext. 4. Ext. 4(2) is his signature.

During cross-examination, PW4 stated that at the time of incident it was 1.30-2.00 PM. He could not see both the accused clearly. He did not see the incident himself. Police might have taken his statement

next day.

He denied that he did not state before police that victim came running from her house. She told them that two persons have sexually assaulted her. She told them to save her. He does not remember what was written in seizure list in Ext.4. He does not remember which type of cloth was seized by the police. He has not seen the seized article today in the court.

He also denied that he deposed falsely today. He does not know the accused person by their names.

Witness **Subhash Ch. Das [PW5]** deposed in his evidence before the court that he knows the informant and victim of the case. He knows both the accused persons of this case.

Incident took place on 25-05-2019. He alongwith Diganta Das were going for purchasing diesel. On reaching the house of informant Mira Das, her daughter came running from her house. She told us that two persons (witness has pointed his finger towards accused persons) have tried to do bad work with her. By this time public gathered. The public questioned the accused who assaulted the victim. Public also assaulted the accused persons. Then he left that place.

Police seized the wearing cloths of the victim vide. Seizure list Ext. 4. Ext. 4(3) is his signature.

During cross-examination PW5 stated that at the time of incident it was 1.30-2.00 PM. He did not state before police at the relevant time he was going with Diganta to petrol depot for bringing diesel. He does not remember as to whether he stated before police or not that on reaching the house of informant Mira Das, her daughter came running from her house. She told them that two persons have tried to do bad work with her.

Witness **Manalisha Madhab Bhakta [PW6]**, who is one of the I.O. of the case, stated in her evidence before the court that on 25/05/2019 she was working at Barpeta PS as In-charge women cell. On that day as per verbal instruction of the SP Barpeta, she reached the place

of incident. She recorded the statement of victim Geetismita Das u/s 161 Cr.PC. She also took her to hospital for her medical examination and treatment.

She then handed over the statement of the victim to the I.O. of the case.

During her cross-examination, PW6 stated that the victim did not state before her that she told the incident to Olympica Das and her mother including her mother. But she told me that she told the incident to one 'baideo' (Sister).

Witness **Dhanmani Deka [PW7]**, who is the I.O. of this case, stated in his evidence that on 25-05-2019 he was working at Barpeta PS in the same capacity. On that day he received information that two persons have sexually assaulted the victim of this case. Then he went to the place of incident after entering the same vide thana GDE No. 679 dated 25-05-2019.

He found the accused persons confined by the public on the spot for committing sexual assault to the victim. He sent the accused to doctor for their medical examination.

He also seized the wearing cloth and birth certificate of the victim on the spot. Ext. 4 and 5 are the seizure list and Ext. 4(4) & 5(2) are his signatures. He also recorded the statement of witnesses.

The statement of the victim was recorded by WSI Manalisha Madhab Bhakta. He sent the victim for medical examination.

He drew sketch map of the place of incident. Ext. 6 is the sketch map and Ext. 6(1) is his signature.

On the next day, mother of the victim lodged FIR. He arrested the accused Jiyaur Rahman on 27-05-2019 after his treatment and other accused on 29-05-2019.

He also got the statement of the victim recorded by the ld. Magistrate.

He collected medical examination report of the victim. On completion of investigation he submitted charge Sheet against the accused person. Ext. 7 is the charge sheet date 29-06-2019. Ext. 7 (1) is

his signature.

During cross-examination, PW7 stated that he examined the wife of Dipak Das and Satyen Das in this case. However, he did not examine the witnesses as shown in the sketch map. He examined Kabita Das and Manju Das, who happened to be wife of Dipak Das and Satyen Das.

The informant Mira Das (PW-2) did not state before him that she found bitting and nail scratching mark on the person of victim.

Witness Subhash Ch. Das (PW-5) did not state before him that victim came running from her house at the relevant time and told them that accused tried to do bad work with her.

He does not have personal knowledge about the incident.

He signed Ext.4 either on the date of incident or next day. He did not go through the Ext. 4 before singing it.

He has not seen the seized article in the court today.

He denied that accused are innocent.

9. On a bare perusal of the statement of victim recorded by learned Magistrate vide Ext.3, it is seen that victim stated both the accused carried her to her bed and one of them closed her mouth at the relevant time of incident. She was laid on bed and one of them bitten on her cheeks. She further stated that both of them touched her on her chest and torn her cloths. But somehow she freed herself and came out of her house. Then people gathered. Victim [PW3] has stated the same thing in her statement u/s 161 CrPC before the police. She categorically stated in her statement before police that both accused embraced her and and bitten on her cheeks. She also stated that both of them put hands inside her sporting and touched her on her chest. Then other one also kept on saying that he has also to be given (moko dibo lagibo). She also stated that accused laid on her bed and did not free her inspite of her effort to get her released from their clutches. At last, she pushed them with her legs and came out from her house after wearing a new top.

Victim also gave almost the same version in her deposition before the court as PW3. She also reiterate that one of the accused told

her that "moko dibi neki, moko dibi neki" (will you give me too, will you give me too).

Thus, it is seen that victim was found consistent in her statement before police u/s 161 CrPC, before the learned Magistrate u/s 164 CrPC and before the court.

Moreover, the version of victim is fully supposed by PW4 and PW5, who are independent chance witnesses. Both the PWs in their evidence clearly stated that they were going in a bike to petrol depot just after the incident. On reaching the house of informant, victim was found coming out from her house. Victim also stated that two persons have sexually assaulted her. PW5 also identified both the accused during his evidence in the court.

Both the accused persons, in their statement u/s 313 CrPC, denied the alleged incriminating materials against them and simply stated that they have been falsely implicated in the present case.

- 10. In the case of **Bipin Kumar Mondal versus- State of**West Bengal, 2010 [12] SCC 91, the Hon'ble Apex Court reiterated the principle stated that it is not the quantity but the quality that is material. The honored principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy and reliable.
- **11.** From the aforesaid exposition of law, it is quite clear that it is not the number and quantity, but the quality that is material. It is the duty of the court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon.
- 12. It is an admitted fact that prosecution side has not produced the seized birth certificate of victim as per seizure list [Ext.5] prepared by I.O.[PW7]. The seizure list [Ext.5] prepared by I.O.[PW7] shows that date of birth of victim[PW3] as per seized birth certificate is 05.05.2008 and same was issued on 30.12.2011 by the Barpeta Municipal Board. However, as the seized birth certificate of victim was not produced during trial, so it

cannot be hold on the basis of seizure list[Ext.5] only that victim was aged less than 18 years of age, at the time of incident.

13. In the case of *Jarnail Singh -versus- State of Haryana*, *Criminal Appeal No.1209/2010 decided on 01.07.2013*, the Honble Apex Court held that Rule 12 of Juvenile Justice [Care and Protection of Children] Rules, 2007 would be applicable while determining age even for child, who is **victim** of the crime. The said rule is as follows:

'12	Procedure	to he	followed	in	determination	of age
12.	riocedule	נט אפ	ionowed	111	determination	or age.

i.								

- ii.
- iii. In every case concerning a child or juvenile in conflict with law, the age of determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -
- a) [I] the date of birth certificate from the school [other than a play school] first attended; and in the absence whereof;
 - [ii] the birth certificate given by a Corporation or a Municipal Authority or a Panchayat;
 - [iii] the Matriculation or equivalent certificate, if available;

b) And only in the absence of either [I], [ii] or [iii] of clause [a] above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the Juvenile or child. In case exact assessment of the age cannot be done, the Court or Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be juvenile, or the medical opinion, as the case may be, record a finding in respect of his/her age and either of the evidence specified in any of the clauses [a] [I], [iii], [iiii] or in the absence whereof, clause[b] shall be conclusive proof of the age as regards such child or the juvenile in

conflict with law.

In the present case, the victim gave her statement before the learned Magistrate on 27.05.2019 and stated her age to be 13 years. The M.O.[PW1], who examined the victim on 25.05.2019, opined that victim is above 14 years and below 16 years as per her Medical examination Report[Ext.1]. Moreover, victim was studying in Class VII at the time incident as recorded by learned Magistrate while recording her statement u/s 164 CrPC [Ext.3]. Further, victim also disclosed her age to be 13 years before the police while giving her statement u/s 161 CrPC. The FIR [Ext.2] lodged by mother of the victim [PW2] also disclosed the age of the victim as 13 years at the time of alleged incident.

It may be mentioned here that mother of victim cum informant of the case asserted in her cross examination that birth certificate of victim was immediately obtained after the birth of victim and photocopy of same is available in the case record. The photocopy of birth certificate also corroborates the testimony of PW2 and contents of seizure list[Ext.5].

- **15.** Under the circumstances and as per Section 2(d) of the POCSO Act, 2012, the victim is found below 18(eighteen) years of age at the time of incident.
- **16.** It is a well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the case of Dattu Rarao Sakhare-versus-State of Maharastra, report in (1997)5 SCC 341, the Hon'ble Apex Court has held that --"A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness ca be considered under section 118 of Indian Evidence Act, provided that such witness is able to

understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the could should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored".

- 17. In another case, i.e. Pancchi-versus- State of uttar Pradesh, AIR 1998 SC 2726, the Hon'ble Apex Court has held that ---"It is not the law that if a witness is a child, his/her evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and this child witness is easy prey to tutoring".
- 18. The ratio as laid down in the above case is that the testimony of a child witness is attributed the same kind of credibility that it attached to the statement of any other witness if the testimony is consistent. In the present case, the victim (PW2) has been consistent on the material particulars with regard to the incident. Further, there is full corroboration by other witnesses.

Moreover, there no material on record, to show that either victim or informant had any enmity with the accused persons prior to the incident to hold that false case has been lodged against the accused persons. I don't find any reason to hold that informant has lodged a false case against the accused persons, who were working in their house for construction of a latrine, under Govt. scheme. The accused were not known fully to the informant and her victim daughter prior to the incident.

19. In the light of the evidence of the victim as well as the other witnesses, this court can presume under Section 29 of The Prevention of Children from Sexual Offences Act, 2012 that it was the accused Jiyaur

Rahman and Fulchan Ali, who had committed sexual assault upon the victim and sexual intent required as per Section 7 of POCSO Act, 2012 can also be presumed in the light of Section 30 of the Act. It was for the accused persons to rebut that neither they had any sexual intent nor they had committed the offence by proving to the contrary. No ebvidence was led by the accused persons in their defence to prove their innocence. On the contrary, the defence put forwarded by the accused in this case is not consistent and therefore, same is required to be disbelieved.

- **20.** The accused were charged under Section 8 of The Prevention of Children from Sexual Offences Act, 2012, which reads as follow –
- **7. Sexual assault** Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- 21. The punishment for sexual assault is laid down under Section 8 of The Prevention of Children from Sexual Offences Act, 2012, which states as follows:
- **8. Punishment for sexual assault** Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.
- 22. In view of my aforesaid discussions in the foregoing paragraphs, I am of the opinion that prosecution has proved the case against accused Jiyaur Rahman and Fulchan Ali under Section 7 of the The Prevention of Children from Sexual Offences Act, 2012 and they are liable to be punished as per provision of Section 8 of The Prevention of Children from Sexual Offences Act, 2012. Hence, both the accused persons are convicted under Section 7 of The Prevention of Children from Sexual Offences Act, 2012.

23. However, from the discussions, as made hereinabove, I don't find sufficient materials against both the accused persons for committing offence u/s 376/511 IPC. Hence, I acquit both the them from the said charges.

SENTENCE HEARING

- 24. Both the accused persons are heard on the point of sentence.

 Both the accused persons have submitted that they have got two children each and there is none to look after them, in their absence. They have also stated that they were not convicted, earlier, in any criminal case, prior to this case. Both the accused persons have prayed for leniency.
- **25.** I have heard learned Defence Counsel for the accused as well as Sri Lalit Ch. Nath, learned Public Prosecutor, Barpeta.

It is seen that crime against young girls are on the rise in the society. Lenient conviction will give wrong signal to the society.

Hence, accused Jiyaur Rahman and Fulchan Ali are sentenced to undergo RIGOROUS IMPRISONMENT for 04[four] years and also to pay a fine of Rs.1000/-(Rupees one thousand) each, in default of payment of fine, to suffer RIGOROUS IMPRISONMENT for 1[one] month for the offence under section 8 of the Protection of Children From Sexual Offences Act, 2012. I am of the considered opinion that considering the nature of offence, this sentence shall do justice.

The period of detention already undergone by the accused during investigation and trial shall be set off from the period of

imprisonment imposed on him under section 428 of CrPC.

26. Now, coming to the aspect of compensation to the victim, who is a minor girl, the Hon'ble Apex Court has time to time observed that subordinate courts trying the offences of sexual assault have the jurisdiction to award the compensation to the victims being an offence against the basic human right and violation of Article 21 of the Indian Constitution.

In the case of **Bodhisattwa Gautam -versus- Subhra Chakraborty, AIR 1996 SC 922**, it has been held by the Hon'ble Apex

Court that the jurisdiction to pay compensation has to be treated to be a part of overall jurisdiction of the courts trying the offences of rape, which is an offence against basic human rights as also the Fundamental Rights of Personal Liberty & Life.

27. The concept of welfare and well being of children is basic for any civilize society and this has a direct bearing on the state of health and well being of the entire community, its growth and development. It has been time and again emphasized in various legislation, international declarations as well as the judicial pronouncements that the Children are a "supremely important national asset" and the future well being of the nation depends on how its children grow and develop.

Therefore, in order to provide restorative and compensatory justice to the victim, I hereby direct the **Secretary, District Legal Services Authority, Barpeta** to grant adequate compensation to the victim(PW2). The said amount shall be used for the welfare of the victim.

- **28.** Free copy of the judgment be furnished to the accused immediately.
- **29.** Send copy of this Judgment to the District Magistrate, Barpeta under section 365 Cr.P.C.

Another copy of this judgment be sent to the Secretary. D.L.S.A., Barpeta for information.

30. Given under my hand and seal of of September, 2019.	this Court on this 23rd day
	Special Judge, Barpeta.
Typed by me	
(Kavery Das, Stenographer)	

A P P E N D I X

(A) Prosecution witnesses:

P.W.1 = Dr. Renuka Rangpharpy, the M.O.,

P.W.2 = Mira Das, the informant,

P.W.3 = Gitismita Das, the victim,

P.W.4 = Diganta Das,

P.W.5 = Subhash Ch. Das,

P.W.6 = Manalisha Madhab Bhakta, the I.O.,

P.W.7 = Dhanmani Deka, the I.O.,

(B) **Prosecution Exhibits**:

Ext.1 = Medical report,

Ext.1(1) & 1(2) = Signature of Dr. Renuka Rangpharpy,

Ext.2 = F.I.R.

Ext.2(1) & 2(2) = Signature of Mira Das,

Ext.3 = Statement of victim u/s 164 CrPC,

Ext.3(1) = Signature of victim,

Ext.4 = Seizure List.

Ext.4(1) = Signature of Mira Das,

Ext.4(2) = Signature of Diganta Das,

Ext.4(3) = Signature of Subhash Ch. Das,

Ext.5 = Seizure List,

Ext.5(1) = Signature of Mira Das,

Ext.6 = Sketch Map,

Ext.6(1) = Signature of Dhanmani Deka, the I.O.,

Ext.7 = Charge Sheet,

Ext.7(1) = Signature of Dhanmani Deka, the I.O.

(C) **Defence witnesses**:Nil.

(D) **Defence Exhibits**: Nil.

(E) Court witnesses:Nil

(F) **Court Exhibits**: Nil.

Special Judge, Barpeta.