IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

Special (POCSO) 26/2015

State of Assam -Vs-

Amar Munda.....Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.
For the Accused: Mr. Tarun Ch. Boro, Learned Advocate.

Date of Evidence : 10-02-16: 07-06-16: 05-07-16: 25-07-16:

19-05-17: 30-08-17.

Date of Argument : 03-01-19.

Date of Judgment : 30-03-19.

JUDGMENT

1. The prosecution case in brief is that on 19-07-15, at about 06.00 pm while the victim was proceeding towards the garden hospital the accused forcibly committed rape upon the victim. Next day the mother of the victim informed the garden authority about the incident. Initially the victim could not identify the accused, later on, her mother showed all the persons of line no. 10 of the garden and then the victim identified the accused as the person who committed rape upon her. Then on 24-07-15, the mother of the victim filed a written complaint before the Protection of Sexual Harassment Committee of Lamabari Tea Estate and in this connection on

26-07-15, a meeting was held by the committee. In the meeting the accused confessed his guilt. Thereafter, on 27-07-15, the mother of the victim namely Sukurmoni Munda lodged an FIR with the Officer-in-Charge of Mazbat P.S. regarding the allege incident of rape.

- On the basis of the FIR, Mazbat PS Case No. 49/15, U/S 376(2) IPC R/W
 Section 4 of POCSO Act was registered and after completion of
 investigation Police submitted charge-sheet U/S 376(2)(i) IPC against the
 accused person Amar Munda.
- 3. Learned Chief Judicial Magistrate, Udalguri after having complied with the provision U/S 207 CrPC found that the offences U/S 376(2)(i) I.P.C., are exclusively triable by the Court of Sessions and accordingly, he committed the case to the Court of Sessions on 30-10-2015.
- 4. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused persons had committed offences under Section 376(2)(i) IPC, R/W Section 4 of POCSO Act, Hon'ble Special Judge framed charge there under and the ingredients of charges under Section 376(2)(i) IPC, R/W Section 4 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 02-11-18, transferred the case to this court for disposal.
- 5. The prosecution in order to prove its case examined the following 12(twelve) witnesses:

PW1- Sukur Moni Munda.

PW2- Victim-A.

PW3- Anjana Hazarika.

PW4- Mathias Kujur.

PW5- Anthoni Khora.

PW6- Dr. Chandan Kr. Saha.

PW7- I/O Durgakingkar Sarma.

PW8- I/O Dipak Das.

PW9- Ribni Orang.

PW10- Mina Lohar.

PW11- Mahinush Tuti.

PW12- Dr. N.C. Bhuyan, Munsiff-cum-JMFC.

- The statement of the accused person had been recorded U/S 313 Cr.P.C.The defence plea was of total denial.
- 7. Situated thus, the points for determination in the instant case are set up as follows:-
 - (I) Whether the accused person committed rape upon victim-A (a minor) and thereby committed an offence punishable under Section 376(2)(i) IPC?
 - (II) Whether the accused person committed sexual assault on victim-A and thereby committed an offence punishable under Section 4 of POCSO Act ?

DISCUSSION, DECISION AND REASON FOR DECISION:

- 8. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defense counsel Mr. Tarun Ch. Boro and carefully appraised the evidences on record in its proper perspective.
- 9. Learned Addl. P.P. has submitted that prosecution has proved the incident of rape upon the victim girl by adducing cogent, reliable and consistent evidence. The evidence of the victim is reliable and there is nothing to disbelieve the testimony of the victim girl. The evidence of the victim girl is corroborated by the other prosecution witnesses. Immediately after the incident, the mother of the victim filed a complaint before the sexual

harassment committee of the tea garden. The members of the committee have testified corroborating the evidence of the mother of the victim girl. They have clearly adduced evidence that the accused confessed his guilt in the meeting held by the committee.

- 10. On the other hand learned defence counsel has contended that prosecution has failed to examine the material witness Fulbi, who was alongwith the victim girl at the time of incident. She is a material witness of the case and police has failed to give any proper explanation as to why she was not examined during investigation of the case. As such non-examination of the vital witness is fatal to the prosecution case. Learned defence counsel has also submitted that there was delay in filing the FIR and no proper explanation was given about such a delay in filing the FIR. He has also argued that in this case no test identification parade was conducted to identify the accused by the victim which is also fatal to the prosecution case. In support of defence, learned defence counsel has relied on the following decisions: (2008) 3 SCC Crl 330, Dilwar Singh Vs State of; 2004 SCC Crl 260 Vidyadharn Vs State of Kerala and 2004 SCC Crl Suppl 28, Harjinder Singh Vs. State of Punjab.
- 11. Before appreciating the argument put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel I would like to discuss the evidences adduced by the prosecution.
- 12. PW1 is Sukur Moni Munda, informant and the mother of the victim. In her evidence PW1 had deposed that on the date of occurrence her daughter went to the house of her uncle which was situated in the same tea garden. PW1 was informed by one Augusta that someone had raped her daughter/victim-A. Then PW1 brought her daughter back from the house of her uncle. The victim told PW1 that she was raped. The victim showed the accused to PW1 and identified him as the person who committed rape upon her. Then PW1 complaint before Anjana Hazarika of their tea garden

about the incident. In this regard 'Bichar' was held. In the 'Bichar' the accused confessed that he committed rape upon the victim. PW1 lodged FIR in the P.S. PW1 had deposed that her daughter is physically handicapped. She could not speak and walk properly. The victim told her that the accused raped upon her by taking her to the garden. In cross-examination PW1 had revealed that after three days of the incident she lodged the FIR. The victim was aged about 17 years. She had denied the suggestion that the accused did not rape her daughter.

- 13. PW2 is Victim-A. In her evidence PW2 had deposed that at the time of incident she was proceeding to the house of her uncle alongwith her counsin Fulbi. Then the accused took her inside the tea garden and committed rape upon her. While examining this witness my predecessor learned Special Judge recorded that the witness is physically handicapped and she could not speak properly. She also used gesture to tell about the incident of rape. PW2 had also deposed that after committing rape upon her the accused dragged her by her hair and asked her to go and thereafter he fled away. Later on, she informed her mother about the incident. At the time of incident there was no other person present. In cross-examination PW2 had stated that there was no residential house near the place of occurrence. She denied the suggestion that the accused did not commit rape upon her.
- 14. PW3 is Anjana Hazarika, Secretary of sexual harassment committee, Lamabari Tea estate and nurse of Lamabari tea estate hospital. In her evidence PW3 had deposed that the informant was permanent labour of Lamabari tea estate. On 24-07-15, the informant filed a written complaint before her in connection with the incident. Accordingly on 26-07-15, she through her committee called both the parties for discussion. On that day both parties were present. The committee asked both parties about the incident. Then the victim showed the accused alleging that the accused committed rape upon her. The accused confessed before the public that he

committed rape upon the victim. On 27-07-15, the committee filed a written report in the Mazbat P.S. Ext.-1 is the report. Ext.-1(1) is the signature of PW3. PW3 had deposed that the police seized the register of the committee. Ext.-2 is the seizure list. Ext.-2(1) is the signature of PW3. In cross-examination PW3 had revealed that there were about 15 to 20 persons in the meeting. In the meeting the accused was not under the influence of liquor. PW3 had denied the suggestion that the public present in the meeting compelled the accused to confess through coercion.

15. PW4 is Mathias Kujur, Welfare Officer of Lamabari T.E. In his evidence he had deposed that the incident occurred in the month of July, 15. There was a committee namely Sexual Harassment Committee at Lambari T.E. PW 4 was one of the members of said committee. On 24.7.15 informant Sukumani Munda lodged a complaint before the Sexual Harassment Committee of Lamabari TE regarding sexual harassment on her daughter victim A. In the said complaint it had been stated that accused Amar Munda committed rape upon the victim. Accordingly the committee convened a meeting on 26.7.15 to discuss the allegation made in the petition filed by Sukurmani Munda. Both the parties were present in the said meeting alongwith other villagers. In the meeting the victim pointed out to accused Amar Munda who had committed rape upon her. On being enquired by the committee accused confessed his guilt stating that he had sexual intercourse with the victim. PW 4 had presided over the said meeting. On the next day i.e. on 27.7.15 the committee informed the matter to O/C, Mazbat P.S. Ext.1 is the report to police station and Ext.1(2) is the signature of PW 4. During investigation police seized one register of Sexual Harassment Committee, Lamabari T.E. Ext.2 is the said seizure list and Ext.2(2) is the signature of PW 4. In cross-examination PW4 had stated that a huge number of people gathered in the meeting. The members of both the parties were present in the meeting. Some of the members of the informant party scolded the accused. PW 4 had denied the suggestion that accused did not confess his guilt before committee and that the members of the informant party threatened the accused person.

- 16. PW5 is Anthoni Khora. In his evidence PW5 had deposed that he was one of the members of sexual harassment committee of Lamabari tea estate. On 24-07-15, the informant submitted a written petition before the said committee that her daughter was raped by the accused. Then the meeting was called on 26-07-15, to discuss about the allegation. The members of both the parties were present in the meeting. In the meeting the victim stated that the accused Amar Munda committed rape upon her and pointed out to the accused. PW5 had deposed that they enquired the matter with the accused and the accused confessed his guilt stating that he had sexual intercourse with the victim. On 27-07-15, the committee reported the matter to O/C Mazbat P.S. During investigation of the case police seized the register of sexual harassment committee of Lamabari tea estate in presence of PW5 through Ext.-2 seizure list. Ext.-2(3) is the signature of PW5. In cross-examination PW5 had deposed that around 15 people were present in the meeting. He had denied the suggestion that the accused did not confess before them that he had sexual intercourse with the victim.
- 17. PW6 is Dr. Chandan Kr. Saha. In his evidence PW6 had deposed that on 28-07-2015, he examined the victim at Udalguri Civil Hospital and on examination he found a vaginal rear of 0.5 cm seen near the cervix, detected no sign of recent sexual coitus, pregnancy sign-absent, test negative and the approximate age of the victim was between 20-22 years. Ext.-3 is the medical report and Ext.-3(1) is the signature of PW6. In cross-examination PW6 had revealed that he found vaginal tear and so he mentioned as vaginal injury was present. The vaginal injury noticed as revealed in his report might not be related to sexual intercourse.
- 18. PW7 is I/O Durgakingkar Sarma. In his evidence PW7 had deposed that he investigated Mazbat P.S. case No.49/15 u/S 376 (I) IPC R/W Sec. 4 of the

POCSO Act. PW 7 collected the medical report of victim. Later on, he also collected the report from Lamabari T.E. hospital in respect of the age of the victim. Medical officer of Lamabari T.E. hospital opined date of birth of Lakhmi Munda to be 9.8.1995. Ext.5 is the report of the medical officer of Lamabari T.E. and Ext.5(1) is the signature of PW 7. In conclusion of investigation PW 7 submitted charge-sheet of the case vide C.S. No.37/15 dated 12.9.15 against the accused Amar Munda, u/S 376 (2)(I) IPC. Ext.6 is the charge-sheet. Ext.6(1) is the signature of PW 7. On 27.7.15 SI Dipak Das was O/C of Mazbat P.S. On that day he received a written ejahar from Smti. Sukurmani Munda. On the basis of said ejahar the then O/C, Dipak Das registered Mazbat P.S. case No.49/15 u/S 376 (I) IPC R/W Sec. 4 of the POCSO Act. Ext.4 is the FIR. Ext.4(1) is the signature of the then O/C, SI Dipak Das. PW 7 was acquainted with his signature. Cross-examination of PW7 had been declined by the defence.

19. PW8 is I/O Sri Dipak Das. In his evidence PW8 had deposed that On 27.7.15 he was serving as O/C at Mazbat P.S. On that day, informant, Sukurmani Munda lodged a written FIR with Mazbat P.S. On the basis of said FIR he registered Mazbat P.S. case No.49/15 u/S 376 (I) IPC R/W Sec. 4 of the POCSO Act against the accused and took up the investigation of the case. Ext.4 is the said FIR and Ext.4(1) is signature of PW 8 with registration note. On the same day i.e. on 27.7.15 Sexual Harassment Committee of Lamabari T.E. submitted a letter dated 27.7.15 before PW 8 and he had tagged the same with the case diary. He recorded the statement of the informant, victim and other witnesses. On the same day i.e on 27.7.15 he visited the place of occurrence as shown by complainant and drew up the sketch map. Ext.7 is the sketch map and Ext.7(1) is signature of PW 8. On 28.7.15 he sent the victim to Udalguri Civil Hospital for medical examination. PW 8 also produced the victim before the Magistrate for recording her statement u/S 164 Cr.P.C. On 28.7.15 accused surrendered before the police station and after interrogation he was arrested and forwarded to the court. During investigation he seized one register of Sexual Harassment Committee of Lamabari T.E. Ext.2 is the seized register and Ext.2(4) is the signature of PW 8. Thereafter on being transferred to other station he handed over the case diary to SI Durga Kingkor Sarma, O/C, Mazbat P.S. In cross-examination PW8 had stated that The occurrence took place on 19.7.15 whereas FIR was lodged on 27.7.15. Prior to the lodging of the FIR the informant filed petition before the Sexual Harassment Committee of Lamabari T.E. for redressal of the matter.PW 8 had revealed that he had not recorded the statement of Phulbi. While forwarding the accused person to the court, accused was examined by the doctor of Mazbat Mini PHC. The report of the doctor submitted alongwith the forwarding report reveals some injuries on the person of the accused. PW 8 made prayer before the court for recording the confessional statement of the accused person u/S 164 Cr.P.C.

20. PW9 is Ribni Orang, member of the Sexual Harassment Committee of Lamabari T.E. in his evidence PW 9 had deposed that the mother of victim informed their committee about the incident for which a meeting was held on 26.7.15. In the meeting both the parties were present. In the meeting victim stated that accused Amar Munda committed rape upon her and pointed out to accused Amar Munda. She narrated in the meeting that on the day of occurrence she went for call of nature. Accused met her and committed rape on her. On being asked in the meeting the accused admitted the commission of offence. A resolution was taken in the meeting which was sent to Mazbat P.S. In cross-examination PW9 had stated that the voice of the victim girl was not clear. About 20-22 persons had attended the meeting and most of the persons were from the relatives of victim. In the meeting the accused was beaten up. PW 9 had admitted that he did not state before the police that in the meeting victim pointed towards the accused and said that he committed rape on her. In the place of occurrence there are hospital and bungalow of the garden doctor. PW 9 had denied the suggestion that the accused did not confess his guilt in the meeting.

- 21. PW10 is Mina Lohar, member of the Sexual Harassment Committee of Lamabari T.E. PW 10 had deposed that the mother of victim informed the committee about the incident for which a meeting was held on 26.7.15. In the meeting victim divulged that accused Amar Munda committed rape upon her and pointed out to accused Amar Munda. She narrated in the meeting that on the day of occurrence she went to meet the call of nature. Accused met her and committed rape on her. On being asked in the meeting the accused admitted the commission of offence. In cross-examination PW10 had stated that the voice of the victim girl was not clear. Most of the persons attended the meeting were from the relatives of victim. When the victim identified the accused, the accused was assaulted by the relatives of the victim. PW 10 had denied the suggestion that the accused did not confess his guilt.
- 22. PW11 is Mahinush Tuti, member of the Sexual Harassment Committee of Lamabari T.E. PW 11 had deposed that the incident took place in the month of July, 15. While PW 11 was on duty his wife called him over phone to come home immediately. Within 5 minutes he reached home. he found victim in his house. The wife of PW 11 told him that rape was committed on Laxmi Munda as informed by victim. Since the victim had injury on her private part so PW 11 suggested his wife to take her to hospital. Then his wife alongwith mother of victim took her to hospital where she was given preliminary treatment. The victim is physically handicapped but she can speak. Since the sister Anjana Hazarika was Secretary of Sexual Harassment Committee, she suggested them to file an application before the committee. The girl could not disclose the name of the offender. The mother of victim took her to labour colony for identification of offender. Later on PW 11 could learn that victim girl identified Amar Munda as offender. PW 11 had deposed that a meeting was also organized by Sexual Harassment Committee. Victim and accused was present in that meeting. On being asked, the accused confessed that he committed rape on victim

in the drain of 10 No. Line of tea garden. Sexual Harassment Committee referred the matter to police. In cross-examination PW11 had stated that the victim was his niece. He had not seen the incident. PW11 denied the suggestions that the victim did not sustain blood oozing injury on her private part and that the victim girl did not identify the accused in the meeting. He had denied the suggestion that in the meeting the people assaulted the accused to obtain confession.

- 23. PW12 is Dr. N.C. Bhuyan, Munsiff-cum-JMFC. In his evidence PW12 had deposed that On 30.7.15, he recorded the statement of victim Ext.8 is the statement of victim. Ext.8(1) is the signature of PW 12. In cross-examination PW12 had stated that before recording the statement no question was put to the victim to testify that whether she is competent or not to depose.
- 24. On appraisement of the evidences on record it appears that the victim has adduced evidence implicating the accused in the allege incident of rape. Though the victim could not speak properly but at the time of evidence she also used gesture to narrate about the incident of rape. The evidence of the victim is corroborated by her mother PW1. After the incident when the victim identified the accused PW1 filed complaint before the Anjana Hazarika(PW3) the Secretary of sexual harassment committee, Lamabari Tea Estate. Thereafter, a meeting was held wherein the accused confessed his guilt and after that PW1 lodged the FIR. PW3 the Secretary of sexual harassment committee, Lamabari Tea Estate and nurse of Lamabari Tea Estate hospital adduced evidence corroborating the evidence of PW1. PW4, PW5, PW9, PW10 and PW11 who are the members of sexual harassment committee of the Lamabari Tea Estate testified corroborating the evidence of PW1 and PW3. It appears from the evidence of PW3, Secretary of sexual harassment committee Lamabari Tea Estate and a member of the said committee that on receiving complaint from the PW1 alleging rape upon her daughter by the accused on 26-07-15, a meeting was held by sexual

harassment committee of Lamabari Tea Estate. In the said meeting the victim pointed towards the accused alleging that he committed rape upon her. The accused also confessed his guilt. It is evident from the Ext.-1 that the sexual harassment committee filed a written report with the Officer-in-Charge of Mazbat P.S. stating about the whole incident. In their report the committee has clearly stated that the accused confessed his guilt. On the same day of filing the said report the mother of the victim also lodged the FIR which is exhibited as Ext.-4.

- 25. On careful scrutiny of the evidences on record is also found that PW11 who is also the uncle of the victim deposed to the effect that on coming to know about the incident from his wife he suggested his wife to take the victim girl to the hospital as the victim had sustained injury on her private part as a result of rape upon her. Then his wife alongwith the mother of the victim took her to the hospital where she was given preliminary treatment. Since sister Anjana Hazarika was a Secretary of sexual harassment committee she suggested them to filed an application before the committee. Later on, PW11 could learn that victim girl identified the accused as offender. Thereafter, a meeting was held by the sexual harassment committee where in the accused confessed his quilt.
- 26. It is found from the evidence of PW6 the Medical Officer that on examination of the victim he found vaginal tear of 0.5 cm near the cervix. In cross-examination he revealed that has he found vaginal tear it means that vaginal injury was present. He made it clear that the vaginal injury noticed as revealed in his report might not be related to sexual intercourse. It appears from the report of Doctor that though he found vaginal injury, but he could not detect any sign of recent sexual intercourse. In this case the victim was subjected to medical examination by PW6 after a few days of the incident of the rape. In such a case apparently the Doctor would not found evidence of recent sexual intercourse. In a decision of Hon'ble Gauhati High Court reported in 2003 1 GLT 278, Tharliana Vs. State of

Mizoram it has been stated "..... Moreover, it is settled law also that medical evidence is desired but not indispensable to prove rape. We may refer to the following views of Court in this context. In (1988) 2 Ker LT 972: 1989 1 Crimes 22, it was held:

Medical evidence can hardly ever negate the charge of rape. It may not support the charge but it cannot negate it.

- 27. Thus even the Doctor had not found evidence of recent sexual interocures it would not throw or completely discard the prosecution story. Moreover, medical evidence clearly revealed that there was injury on the private part of the victim.
- 28. Learned defence counsel has argued that the prosecution has failed to examine Phulbi who was alongwith the victim at the time of incident. She is the material witness of the case and her non-examination is fatal to the prosecution case. in this regard he has relied on the decision reported in 2004 SCC (Cri) Supp 28 Harjinder Singh Vs. State of Punjab. In the decision when the prosecution has not examine the witness who gathered immediately after the occurrence on hearing the cries without giving any reason for not examining such witness, the Hon'ble Supreme Court considers it as a serious lapse which casts a doubt on the prosecution case.
- 29. In this case the victim has adduced evidence alleging that the accused committed rape upon her. It is settled position of law that in a rape case the testimony of prosecutrix, if found to be reliable may be sufficient to convict the culprit and no corroboration of her evidence is necessary.
- 30. In **(2011)2 SCC 550, State of U.P Vs. Chhoteylal,** the Hon'ble Supreme Court stated as follows-

"19.In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analyzed and examined carefully. But, before we do that, we

state, as has been repeatedly stated by this Court, that a woman who is victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration".

31. In the said decision the Supreme Court stated that "the important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge. This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court."

32. Similarly in the decision reported in (2017) 2 SCC 51 State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny. In the said decision Hon'ble Supreme Court has observed as follows:

"By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance".

- 33. In view of above position of law it appears that the testimony of the prosecutix requires no corroboration if it is worthy of credence and reliable. The sole testimony of prosecutix is sufficient in a case u/s 376 IPC without being corroborated by other evidence. I have carefully scrutinized the evidence of victim. In the instant case the victim was cross examined by the defence at length but failed extract anything so as to demolish her testimony in examination in chief. The evidence adduced by the victim before the court is consistent with her statement recorded by the police U/S 161 Cr. P.C. and by the Magistrate U/S 164 Cr. P.C. In her statement recorded U/S 164 Cr.P.C. by the Magistrate (Ext.6), the victim has clearly stated about the incident of rape corroborating her evidence before the court on material points. Further the facts and circumstances as it appeared from the evidences on record do not point any finger to the victim that she had an ill intention against the accused for which there is possibility of testifying herself against the accused. The totality of the circumstances appearing on the record of the case disclosed that the prosecutrix does not have any motive to falsely implicate the accused. That apart a girl in a society like us in a rare occasion would come up with a false allegation of rape putting her dignity at stake. In the instant case neither from the evidence on record nor from the defence plea no such rare occasion comes up for notice.
- 34. It is also not at all believable that a mother would file a false case against someone alleging rape upon her daughter putting her daughter's social status at stake and lower down her position in the society to such a level wherefrom to regain her status again is very difficult. It is well known to everybody in Indian society it is very difficult for a rape victim to live respectfully in the society with the stigma of rape.
- 35. Moreover, each case depends on its own facts and circumstances. The facts and circumstances of the instant case are totally different from the facts and circumstances of the case cited by the defence. In the instant

case there is nothing to disbelieve the testimony of the prosecutrix and other prosecution witnesses. Therefore, it is found that non-examination of Fulbi, the girl with whom the victim was proceeding to the house of her uncle before the happening of the incident, is not fatal to the prosecution case. Further had the said girl been favorable to the accused he could have examined her as defence witness which he has not done.

- 36. With regard to delay in filing the FIR learned defence counsel relied on a decision reported in 2004 SCC (Cri) 260. In this decision Honorable Apex Court stated that delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained.
- 37. In the instant case it appears from the evidence on record that immediately after the incident the mother of the victim filed complain before the Sexual Harassment Committee at Lambari T.E and the Committee after discussing the issue in a meeting held on 26-07-15, suggested the mother of the victim to file the case. The Committee also submitted a written report with the Officer In-Charge of Mazbat PS in this regard. Definitely when an incident of rape occurred, the victim as well as her near relatives hesitated at the first instance to make it public. So in a case of rape delay in filing the FIR is normal and in such a case delay in filing FIR does not require heavy explanation from the prosecution. In (2004) 7 SCC 775, Sri Narayan Saha and Anr. Vs. State of Tripura, the Hon'ble Supreme Court stated that "...Merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy with her. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false."

- 38. In the instant case the relatives of the victim had discussion in the meeting convened by the Sexual Harassment Committee at Lambari T.E and finally when the Committee suggested, the mother of the victim lodged the FIR . Therefore, in the facts and circumstances of the case as appeared from the evidence on record I do not find that delay is fatal to the prosecution case.
- 39. With regard to the submission of learned defence counsel that no test identification parade was conducted to identify the accused by the prosecutrix and same is fatal to the prosecution case, it is to be noted that in this case that FIR was lodged against the accused after the victim identified the accused as the person who committed rape upon her. While the victim had already identified the accused and filed FIR naming the accused in the FIR, question of conducting identification parade during investigation of the case does not arise. Moreover, during her deposition before the Court the victim had duly identified the accused. Therefore, the contention of the learned defence counsel as no force at all.
- 40. On cumulative assessment of the evidences on record it is evident that there is credible and consistent evidence of the prosecutrix that the accused committed rape upon her. Now coming to the points for determination set up in the instant case, the question arises whether this is a case where the accused committed an offence punishable under Section 376(2)(i) IPC or under Section 4 of POCSO Act. Though in the FIR the age of the victim/prosecutrix was stated as 17 years, but medical evidence revealed that according to the opinion of the Doctor(PW6) the approximate age of the prosecutrix is between 20 to 22 years. Apart from the medical evidence there is no other evidence adduced such as birth certificate or school certificate with regard to the age of the prosecutrix. Under such circumstances accepting the opinion of Doctor, I am of the considered view that the age of the victim prosecutrix is between 20 to 22 years. Therefore, it is appeared that the prosecutrix was not a minor girl at the time of incident of rape. Hence, neither Section 376(2)(i) IPC nor Section 4 of

POCSO Act is attracted in this case. It appears from the evidence of PW1, the mother of the victim girl that the victim is physically handicapped, she could not speak and walk properly. During recording evidence of the victim my predecessor learned Special Judge has also recorded that victim is physically handicapped and she could not speak properly. It is clear from the evidences on record that the accused has committed an offence punishable under Section 376 (2)(l) IPC. Conviction of the accused under Section 376 (2)(l) IPC would cause no prejudice to the accused as charge under Section 376 (2) (i) IPC has already been framed which is relating to rape upon minor girl. Accordingly the accused Amar Munda is held guilty under Section 376 (2)(l) IPC.

- 41. In the present case the accused Amar Munda has been found guilty and convicted under Section 376 (2)(I) I.P.C. Section 376(2)(I) I.P.C. prescribes punishment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine. Hence, considering the nature and gravity of the offence in my considered view no benefit under Section 360 Cr.P.C. or under Section 3/4 of the Probation of offenders Act 1958 can be extended to the convicted accused person.
- 42. Before passing sentence, I have heard the convicted accused person on the question of sentence under Section 235(2) of the Cr.P.C. and recorded his statement. The accused has pleaded innocence. He further stated that he is a poor person having minor children and he is the sole earner of his family.
- 43. I have considered the facts and circumstances of the case. The accused belongs to poor strata of the society and the record does not display past blemish of the convict. Considering all, in my opinion imprisonment of the accused for a minimum period prescribed under Section 376(2)(I) IPC would meet the ends of justice.

ORDER

- 44. In the result accused Amar Munda is sentenced to undergo 10(ten) years rigorous imprisonment under Section 376(2)(I) I.P.C. and to pay fine of Rs. 10000/- only in default rigorous imprisonment for six(6) months.
- 45. It is ordered that the period of jail detention if any, already undergone by the convicted accused person during the period of investigation, enquiry or trial, shall be set off under Section 428 of the Cr.P.C. against the term of imprisonment imposed on him.
- 46. Considering the facts and circumstances of the case I am of the considered view that this is a fit case for recommendation for compensation under Section 357-A Cr.P.C. Hence, the case is recommended to District Legal Service Authority to decide the quantum of compensation to be awarded to the victim under the victim compensation scheme. Sent a copy of the Judgment to the District Legal Service Authority, Udalguri.
- 47. The convicted accused person shall be furnished with a copy of this Judgment free of cost forthwith.
- 48. Let one copy of the Judgment be sent to the learned District Magistrate, Udalguri in view of the provision under Section 365 Cr.P.C.
- 49. Sent back the original case record of GR Case No. 753/15 to the court of learned Chief Judicial Magistrate, Udalguri, with a copy of the Judgment, forthwith.

50. Judgment signed, delivered and pronounced in the open court today the 30^{th} day of March, 2019.

Dictated and Corrected

(N.Talukdar) Addl. Sessions Judge Udlaguri. (N.Talukdar)
Addl. Sessions Judge
Udalguri.

IN THE COURT OF ADDL. SESSIONS JUDGE::::::::::::UDALGURI. SPECIAL (POCSO) 26/2015 APPENDIX

(A) Prosecution Exhibits:

Ext.1 : The written report filed by the Committee in the Mazbat

P.S.

Ext.2 : Seizure list.

Ext.3 : Medical report.

Ext.4 : FIR.

Ext.5 : Medical report.

Ext.6 : Charge-sheet

Ext.7 : Sketch Map.

Ext.8 : Statement of victim recorded U/S 164 Cr.P.C.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Sukur Moni Munda.

PW2- Victim-A.

PW3- Anjana Hazarika.

PW4- Mathias Kujur.

PW5- Anthoni Khora.

PW6- Dr. Chandan Kr. Saha.

PW7- I/O Durgakingkar Sarma.

PW8- I/O Dipak Das.

PW9- Ribni Orang.

PW10- Mina Lohar.

PW11- Mahinush Tuti.

PW12- Dr. N.C. Bhuyan.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri