IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 22 of 2018
(Arising out of Sarthebari P.S. Case No.85/2018)
U/S 8 of PROTECTION OF CHILDREN FROM SEXUAL
OFFENCE ACT, 2012.

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge,

Barpeta.

Charge framed on:- 27.06.2018

State of Assam

- Vs -

Rupjyoti Deka @ Rupak......Accused.

Date of Recording Evidence on - 08.10.2018, 10.10.2018, 11.10.2018, 30.10.2018 & 11.12.2018.

Date of Hearing Argument on - 27.03.2019

Date of Delivering the Judgment on -04.06.2019

Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused------Mr. N. Hussain, Ld Advocates.

JUDGMENT

1. The prosecution case, in brief, as narrated in the FIR is that on 12.03.2018 at about 11 pm while the marriage ceremony of the sister-in-law of the informant was going on in full swing the daughter of informant (herein after referred her as X) aged about 6 (six) years disappeared from the marriage hall with the accused person. Having not found her, the family members as well as other known persons

present in the marriage house started searching her but for two hours they could not trace her out. The accused also switch off his mobile. However, later on, one Bhabesh Deka, son of Debicharan Deka brought her daughter and then they noticed mud, sand and seeds of shrub on her hair and clothes. On being questioned, her daughter told that accused took her to the bushes behind his house in the pretext of showing something in the mobile phone and then by removing her clothes, accused touched her vagina. Hearing their shout, her daughter tried to respond but accused threatened her not to shout as he shut her mouth but finally accused fled away leaving her by taking advantage of darkness. Hence the case.

- 2. Following the information as above, Sarthebari police station registered a case being Sarthebari PS Case No.85/18 u/s 366-A IPC R/W Section 8 of POCSO Act and investigated the case.
- 3. During the course of investigation, police visited the place of occurrence, drew sketch map, recorded the statement of the witnesses including the statement of the alleged victim girl u/s 161 Cr.P.C. The victim girl was sent to court for recording her statement u/s 164 Cr.P.C. The victim was also sent for medical examination and on conclusion of investigation police finally laid the charge sheet against accused u/s 366-A IPC and section 8 of POCSO Act, 2012 with a view to stand trial.
- 4. During the course of time, accused entered his appearance in court to face trial. On his appearance, the Hon'ble Special Judge, Barpeta vide order dated 27.06.2018 framed charge u/s 8 of POCSO Act after hearing both sides. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.
- 5. During the course of trial, the prosecution examined as many as 8 witnesses including the alleged victim girl, medical officer as well as the investigating officer. PW-1 is the victim girl (referred her as X), PW-2 Kapil Deka, PW-3 Sadananda Deka, PW-4 Babita Deka, the informant, PW-5 Mahananda Talukdar, PW-6 Tapan Kalita, PW-7 doctor Anima Boro and PW-8 Swapan Bhowmik, the I/O respectively.

- 6. In order to establish the case, the prosecution also exhibited the statement of the victim girl as Ext.A and her signature as Ext.A(1) and A(2). The FIR Ext.B. The signature of informant as Ext.B(1). Seizure list of one sky colour jeans long pent with white colour belt and one sky colour jacket as Ext.C. Signature of witnesses as Ext.C(1) and C(2). Another seizure list of one jeans long pent and one pair of chappal as Ext.D, and signature of witness Tapan Kalita as Ext.D(1). The medical report as Ext.E. Signature of doctor Anima Boro as Ext.E(1). Sketch map as Ext. F Signature of I/O as Ext.F(1). The charge sheet as Ext.G and signature of I/O as Ext.G(1). 5 Nos. of photograph as Ext.H(1), H(2), H(3), H(4) and H(5).
- 7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. Accused has however, denied the prosecution evidence as false. On being asked accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

8. Now point for determination ;-

1. Whether on 12.03.2018 at about 11 pm accused with sexual intent committed sexual assault on the victim girl aged about 6 years as alleged?

9. **Discussion, Decision and reasons for such decision** :-

I have heard the arduous contention of the learned lawyers appearing for both sides.

10. The learned counsel appearing for the state Smti. Priti Das vehemently contended that the prosecution examined 8 witnesses and exhibited several documents to substantiate the case and all the witnesses have adduced credible, trustworthy and corroborative evidence. There is nothing to be doubted. The evidence of the victim girl is very natural and trustworthy supported by other witnesses.

Therefore, there is no reason to disbelieve the evidence of prosecution witnesses as false as the oral version of the witnesses are duly corroborated by the documentary evidence. Therefore, she vehemently contended that it is a fit case to record conviction.

- On the other hand, the learned counsel Norain Hussain appearing on behalf of the accused strongly disputed the contention of the learned Addl. P.P. and submitted that in the instant case prosecution has miserably failed to substantiate the case for sustaining conviction of accused u/s 8 of POCSO Act. According to the learned counsel for the accused, the alleged victim is a minor girl and her evidence regarding the alleged sexual assault cannot be trusted or relied on as there is every probability of tutoring the girl by her parents to depose false evidence against accused as she a minor girl. According to learned counsel, there is contradiction in her evidence with that of her statement recorded by police u/s 161 Cr.P.C. where she has not stated anything. But in her evidence in court she implicated the accused person. Therefore, no reliance can be placed on her evidence. More so, when medical evidence does not suggest any sign of sexual assault on the victim. The medical officer found no recent sign of sexual intercourse or injury mark on her private part or any foreign particuls found on her clothes at the time of examination. There fore, the learned counsel contended that the very evidence of the prosecution witnesses are exaggerated one. The evidence of other witnesses namely PW-2 Kapil Deka, PW-3 Sadananda Deka, PW-4 Babita Deka, PW-5 Mahananda Talukdar and PW-6 Tapan Kalita are exaggerated in nature and as such, no reliance can be place on their evidence in view of evidence of PW-1 and PW-7 who negated the case. Therefore, the learned counsel submitted that this is a fit case to acquit the accused from the charge u/s 8 of POCSO Act.
- 12. Having heard the arduous contention of the learned lawyers appearing for both sides, this court is forced to read the evidence of the prosecution witnesses and documents on record for arriving at a

just decision in the case.

- 13. Now, on perusal of the contents of FIR (Ext.B) it is seen that the incident occurred on 12.03.2018 at about 11 P.M. It is alleged that while the daughter of the informant (X) was in the marriage function adjacent to her house the girl and accused disappeared from marriage function. However, when the girl was not seen the family members including persons present in the marriage function started searching her. After about two hours the girl was taken to the marriage hall by one Bhobesh Deka. Then they noticed mud, sand and some seeds of weed in the clothes of the girl and on quarry it is learnt from the girl that accused took the girl to the bushes in the pretext of showing her picture and other things in the mobile and then asked her to sleep on paper, then accused by removing his clothes, touched the vagina of the girl. In her evidence the victim girl as PW-1 also corroborated this fact narrated in the FIR by deposing that on the day of incident she was enjoying band party in the marriage function but accused took her on the back side of the house in the pretext of showing something in his mobile and then removed her panty as well as his own pent. She identified the pant in court in M.R. No.3/18 worn by her and the pant and chappal of accused as M.R. No.4/18 worn by him on the date of incident. Then accused get his penis touched into her vagina and exert pressure but having seen the shred of torch light accused remove her inside the bushes. Later on, he sent her to his house. She stated that she feel pain on her private part when she urinate later on. She also stated that she narrated her ordeal to her mother. She also identified the material Ext.1 her panty and material Ext.2 the pant and chappal of accused person.
- 14. In her cross examination she deposed that she knows the accused earlier as he used to visit her house. She was enjoying band party in the marriage function along with Dalisa and Kajal. When she was taken by accused she did not shout as she knows him earlier. She also identified the colour of cloth worn by accused at that time. She

also stated that accused carries a big size mobile having the facility of screen touch. She also stated that she was questioned by police and her statement was recorded before Magistrate and she narrated the story. She saw the parents and brother of accused in his house but she did not divulge the fact to them. She disclosed the incident to her mother only. She also visited the house of accused earlier along with her mother. There were number of boys and girl present in the marriage function. She denied that accused did not remove her panty as well as his own pant and did not try to put his penis into her vagina. She denied that she deposed false evidence.

- PW-2 is Kapil Deka, who deposed that the incident occurred about 6 months back and it was the marriage ceremony of his niece Phulkan Deka and everyone were busy in the marriage function. The band party was also there. About 11 P.M. Bridegroom also reached the house of bride and it was a busy situation. Family members and he were busy to welcome the bridegroom and also reception of the persons accompanying the bridegroom. Then coming to know about disappearance of the victim girl they started searching her but could not trace her out for about two hours. Later on, Bhabesh Deka, the brother of accused Rupjyoti Deka brought the girl. Then he took the girl from Bhabesh Deka and handed her over to her mother. He then noticed seeds of weed (Banguti) as well as sand and mud on the clothes of the girl. When the girl was handed over to her mother she narrated her ordeal to her mother stating how accused took her in the pretext of showing mobile, removed her clothes and his own and touched her body in inappropriate manner and also touched her vagina with sexual intent. Though this witness was cross examined by defence counsel but failed to discredit him in material particulars.
- 16. PW-3 Sadananda Deka, who is a senior citizen of 71 years deposed that he knows the informant as well as accused person. The incident occurred about 8/9 months back. It was marriage ceremony of his daughter and the house of the informant is adjacent to his house.

Therefore, all the male and female members of the family were extremely busy. In the meantime, there was hue and cry that the daughter of the informant was missing from the marriage function. There was frantic search of the girl for about 2 hours, but she could not be traced out. Later on, she was brought by Bhabesh Deka and handed her over to Kapil Deka, who in turn handed the girl on the lap of her mother. He had also seen her and noticed some seeds of weed on her hair and also seen sand and mud on her clothes. On being asked by him, the girl told him that accused took her to the jungle, lay on a paper, show her videos on his mobile, removed her clothes and touches her vagina. He further deposed that he feel pain in the manner in which the minor girl was treated by accused in such a manner. During investigation, police recorded his statement. The defence also cross examined this witness but failed to discredit him in material particular.

17. PW-4 Babita Deka, is the informant cum mother of the victim girl. According to her, the incident occurred on 12th March, 2018 and they were busy in the marriage of Phulkan Deka, her sister-in-law. At 11 pm the bridegroom came and it was a rush hour to welcome the bridegroom and accompanying persons as per social norms and custom. But in the meantime, she wanted to feed something to her daughter, but she was not found on search. So, a frantic search was made by all the relatives gathered in the marriage. In the meantime, one Paruli Deka told her that she saw accused Rupak @ Rupjyoti Deka taking her daughter a while ago. Accordingly, all searched them but could not found them. After about 2 hours, her daughter was brought back by Bhabesh Deka and handed her over to Kapil Deka, who again handed her daughter to her. As soon as she was given on her lap, her daughter hold her tightly out of fear and on being asked, she told her weeping that Rupak @ Rupjyoti Deka took her from marriage house in the pretext of showing her mobile and took her to the jungle in the back side of his house and forced her to lie on a paper in the jungle

and made her naked by removing her pant, and accused Rupak also removed his pant and touched her vagina with his hands and gave kisses on her check and lips by jumping over her. She also told her that she heard the voice of her mother at the time of search but accused put her mouth shut and take her inside the jungle. Thereafter, accused came to his house in a naked position along with her daughter and by leaving her in his house, he ran away by wearing another cloth. Then only, Bhabesh Deka brought her and on his way, Kapil Deka took her from him and handed her daughter to her. She also stated that during investigation police seized clothes of accused left by him on the spot as well as the pant of her daughter. Ext.B is the FIR and Ext.(1) is her signature. Ext.C is the seizure list and Ext. C(1) is her signature.

- 18. In her cross examination she stated that her daughter was born on 24.05.2012. On the day of incident she was extremely busy in the marriage where Tapan Kalita, Kapil Deka, Ganesh, Dhruba Deka, Dhanjit Deka, Bipul Deka etc were present. There were about 300/400 people gathered in the marriage. Since bridegroom came, all were busy in the marriage function. So, when accused Rupak @ Rupjyoti Deka took her daughter she cannot say but she denied that she did not state before police about accused giving kisses on the check and lips of her daughter, jumping over her and accused came to his house in naked condition with her daughter and ran away by wearing another cloth. She also stated that at the time of seizure, police took her signature along with signature of one Kushal Deka and Tapan Deka.
- 19. PW-5 Mahananda Talukdar and PW-6 Tapan Kalita also narrated the fact as to how the daughter of the informant disappeared from the marriage ceremony and the way in which she was recovered. Tapan Kalita stood as seizure witness, on the next day when police seized the clothes of the victim girl as well as pant and chappal of the accused on the spot in his presence. Police also took photograph on the spot and recorded his statement. Ext.C(2) is his signature over Ext.C. Ext.C and Ext.D were another seizure list in which he put his signatures as

witness.

- 20. In his cross examination he denied that no pant and chappal of accused were recovered on the spot.
- 21. PW-7 Dr. Anima Boro who deposed that on 13.03.2018 she examined the victim girl (X) in connection with Sarthebari P.S. case No.85/18 accompanied by woman police constable Mina Pathak with history of alleged physical assault by accused Rupak @ Rupjyoti Deka in the same village at about 11:5 pm to 1:30 am. On examination she opined that there was no recent sign of sexual intercourse, no injury mark on her private part, no foreign particle found on her cloth at the time of examination. Ext.E is the medical examination report and Ext. E(1) is her signature.
- 22. PW-8 is the I/O Swapan Bhowmik. According to him he received the FIR on 13.03.2018 from one Babita Deka and after registering a case being Sarthebari P.S. case No. 85/18 u/s 366(A) IPC and section 8 of POCSO Act by officer-in-charge, he was entrusted to investigate the case. Accordingly, he visited the place of occurrence, drew sketch map, and recorded statement of the witnesses including the statement of the victim girl before Magistrate u/s 164 Cr.P.C. He also sent the victim girl for medical examination at Barpeta FAAMCH. He arrested the accused person, collected medical report and also seized clothes of the girl as well as the accused vide Ext.C & Ext.D respectively. On completion of investigation he handed over the C.D. to O/C who submitted the charge sheet against accused u/s 366(A) IPC and section 8 of POCSO Act. Ext.F is the sketch map and Ext.F(1) is his signature. Ext.G is the charge sheet and Ext.G(1) is his signature. Ext.H, H(1), H(2), H(3) and H(4) are the photographs taken by him at the place of occurrence. He was duly cross examined by the learned defence counsel.
- 23. It is to be noted that the Protection of Children from Sexual Offence Act, 2012 was passed by Parliament with the objective of securing that the tender age of children are not abused and their

childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

24. In this backdrop, let me refer to definition of Section 7 of the POCSO Act which reads as under:

<u>Section 7. sexual assault-</u> "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"

- 25. In the context of the definition in the Protection of Children from Sexual Assault Act, 2012 let this court examine whether the offence defined u/s 7 of POCSO Act,2012 has been committed by accused person.
- 26. From a conjoint reading of evidence of all the prosecution witnesses from PW-1 to PW-8 one thing is crystal clear that the incident occurred at 11p.m. when everyone were busy in the celebration of marriage function including the informant. As it was the marriage of one Phulkan Deka the sister-in-law of informant (PW-4) and daughter of Sadananda Deka (PW-3) it is very natural that they were busy in the marriage function being the important member of the family. From the evidence of the prosecution witnesses it also transpires that the victim girl was also present in the marriage function enjoying band party with friends.
- 27. It also seen that accused Rupjyoti Deka is known to the victim girl being her neighbour. As deposed by the victim girl and her mother and other witnesses it is crystal clear that accused Rupjyoti Deka took her from the marriage function in the pretext of showing her picture in mobile. Therefore, it is not unusual or unlikely that the unsuspecting innocent girl readily moved with the accused person when asked by accused to accompany him on the promise of showing her picture/video on the mobile. Now a days, it is very common knowledge

that the young children are most crazy in mobile phones, of course, not only the younger chap but also the major and fully grown up man and woman are also not escaped from the vices of using mobile because of the facilities available in this modern gadgets. Therefore, it is very natural that an innocent minor girl is very easily influenced/lured on the promise of showing picture in the mobile phone that too by a known person. As such, there is no doubt that the girl was taken by the accused Rupjyoti Deka in the pretext of showing her mobile as narrated by the victim girl corroborated by other prosecution witnesses in material particulars.

The contention of the learned defence counsel Norain Hussain 28. that it is very unlikely that accused can't take away the girl from the marriage hall without the knowledge of her colleagues with whom she was playing in the marriage function. Moreover, the evidence of P W 4 that one Paruli Deka told her that she saw accused Rupak @ Rupjyoti Deka taking her daughter is unworthy of credit as said witness is not examined by prosecution to substantiate this stand is not backed by good reason as the prosecution is not bound to examine each and every person to substantiate its stand. When the bridegroom came into the house of bride, everyone become busy to welcome the bridegroom and to perform other social rites and custom and in such a situation guardians were busy in performing the rituals only and become less attentive to their ward and the children also become busy merry making and ran from here and there. Under such a situation, the parents gets less attentive for their children on the expectation that the children might be there in the marriage hall playing with colleagues somewhere. But one thing is clear that the mother is always mother. In spite of pre-occupation, mother remain concerned in her subconscious mind for her daughter and as deposed by the informant Babita Deka, the mother of the victim girl, she felt the need to feed something to her daughter and then she enquired about her in the marriage function. But when she was not found, there was alarming situation when she

disclosed the fact of disappearance of her daughter to her near and dear one's present in the marriage function, everyone got busy searching her daughter and the situation become tense, as it was middle of the night. So, all become very much concerned about her apprehending something unexpected. So, they searched in all the possible location in the marriage function and nearby places but could not trace her out for about 2 hours.

- 29. The fact that the victim girl was taken away by accused Rupjyoti Deka has been established in the evidence of the victim girl (PW-1) and her mother PW-4 and PW-2 Kapil Deka. The evidence of the victim girl shows how she was taken by Rupjyoti Deka behind the back of his house in the jungle and how he removed her pant as well as his own pant and touches her vagina and gave her kisses on her check and lips. As deposed by PW-2 Kapil Deka and PW-3 Sadananda Deka who is a senior citizen of 71 years when the girl was handed over to PW-4 Babita Deka they noticed seeds of weed and little sand and mud on her clothes and on her hair etc. From the evidence of mother of victim girl PW-4 it is also seen that when her daughter (victim girl) was handed over to her, she hold her tightly and started weeping and narrated her ordeal as to how accused Rupjyoti Deka took her from the marriage function and did the other things. The evidence of the victim girl (PW-1) and her mother cannot be thrown overboard as unbelievable and unworthy of credit on the pretext that they adduced exaggerated evidence in court without violating the dignity of the (victim girl) by accused. No one, except the mother can feel the pain and agony of her daughter and her mental condition at that time. Mother is privy to her minor girl. Daughter can feel safe and secure only in the lap of her mother and feel free to disclose secrets to her mother, not to the father. Therefore, the version of the mother and daughter dao cannot be disbelieved as untrue.
- 30. In this context this court beg to refer the decision of the Hon'ble Supreme court in Rameshwar v. State of Rajasthan, 1952 SCR 377 : AIR

1952 SC 54: 1952 SCJ 46: 1952 Cri LJ 547 wherein the Hon'ble Supreme court held as under,

The proviso to section 5 of the Indian Oaths Act, 1873, prescribes that— "Provided that where the witness is a child under twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 6 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth."

The question is whether the opinion referred to must be formally recorded or whether it can be inferred from the circumstances in which the deposition was taken.

- 31. The proviso quoted above must be read along with section 118 of the Evidence Act and section 13 of the Oaths Act. In my opinion, an omission to administer an oath, even to an adult, goes only to the credibility of the witness and not his competency. The question of competency is dealt with in section 118. Every witness is competent unless the Court considers he is prevented from understanding the questions put to him, or from giving rational answers by reason of tender years, extreme old age, and disease whether of body or mind, or any other cause of the same kind. It will be observed that there is always competency in fact unless the court considers otherwise. No other ground of incompetency is given, therefore, unless the Oaths Act adds additional grounds of incompetency it is evident that section 118 must prevail".
- 32. The contention of the learned defence counsel Mr. Norain Hussain that the version of the victim girl in court cannot be accepted as gospel truth this court feels it bears little force, as admittedly, she being a girl of very tender age, minor contradiction and little inconsistencies in her evidence/version is bound to occur.

Nothing more can be expected from a girls of 6/7 years particularly when a heinous crime was committed against her. So, the evidence of the victim girl in court cannot be disbelieved or discarded as unworthy of credit. She may be influenced to some extent, but everything she said cannot be disbelieved.

- 33. It is evident that accused after taking the victim girl touches her vagina and also gave her kisses in her check and lips and does other things, such as, to lay her on the ground, remove her pant and also remove his own pant and come into physical contact with the girl. Therefore, the act/acts done by accused prima facie attracts the ingredients of the offence described in section 7 of the POCSO Act, attracting punishment u/s 8 of the Act, as, the very activities of the accused clearly reveals sexual intent and none else. Therefore, the act/acts of the accused squarely fall within the parameters of offence u/s 7 punishable u/s 8 of POCSO Act.
- Being the neighbor, accused has the responsibility to protect the 34. interest of the children of his neighbour, but, he did the contrary by exploiting her innocence and good faith reposed on him by the victim girl. It is not only an offence but it is reprehensible act by any sensible human being. The act of the accused involves full of carnal desire and his mind was corrosive with sexual intent. Had the villagers not searched the girl and had there been no hue and cry, accused could have done the unexpected but he could not do so because of fear of public gaze sensing that the girl was under search he, out of fear leave the girl in his house in an opportune moment as deposed by the victim girl and leave his house immediately by wearing another cloth. The seized clothes of the victim girl as well as of the accused collected from the spot and the photographs taken by the I/O prove the fact with certainty. Such being the evidence, this court can very well draw the presumption u/s 29 of POCSO Act that act/acts done by accused against the girl is true because accused failed to rebut the presumption that he had no criminal intent in committing the crime.

35. <u>Section 29:-Presumption as to certain offence.</u> Where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30:- Presumption of culpable mental state.- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purpose of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation. In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

- 36. During the course of cross examination of the prosecution witnesses accused failed to establish the fact that he had no intention, motive or knowledge in doing so. Therefore, court can very well draw presumption u/s 29 of the Act that accused committed the crime.
- 37. From the above narration and the evidence of the prosecution witnesses, this court has therefore, come to unerring findings that accused evidently invaded the privacy and sexuality of the victim girl and attempts to violate her dignity as a person by taking her to the bushes behind the back of his house on the day of marriage function by taking advantage of engagement of her parents in the marriage function. Even though she is a minor girl, she is very much entitled to protection of her person from aggression of intruders. Be it in the form

of simply touching her private part by accused and giving kisses without her consent where there was no involvement of love and affection but with sexual intent. The effect of the act done by accused made a deep imprint in the mind of the victim girl which will also hunt her in her future life. The rising crime rate and falling standards certainly invite deterrent action under law. Therefore, this court comes to unerring finding that accused undoubtedly committed the offence as define u/s 7 of POCSO Act punishable u/s 8 of POCSO Act. Accordingly, this court found the accused guilty for the offence u/s 8 of POCSO Act. Accordingly, the accused is convicted.

38. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case and the age of the accused the nature of the offences committed, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused.

SENTENCE HEARING

- 39. I have heard the accused person on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused person hails from very poor strata of society. He is 30 years old and unmarried. He has his old and ailing mother to maintain. So, in the event he is put behind bar his innocent family member would suffer a lot. Hence, accused pleaded clemency.
- 40. Heaving considered all the attending facts and circumstances of the case and the nature of the offence proved and punishment prescribed in section 8 of POCSO Act, 2012 accused is convicted and sentenced to undergo Rigorous imprisonment for a term of 3 (Three years) which is the minimum sentence provided under the law and fine of Rs.1000/- (One thousand) only. In default, S/I for 3(three) months.
- 41. The period of detention, if any, undergone by accused during the

course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.

- 42. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 43. Let copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 44. Let the case record be consigned to record room after completing the formalities.
- 45. Given under my hand and seal of this Court on this 4^{th} day of May 2019.

Dictated & corrected my me

Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta Sd/-(Sri C.B. Gogoi) Special Judge, Barpeta

APPENDIX

1. The prosecution has examined the following 8 nos. of witnesses:-

PW-1 = is victim(X)

PW-2 = is Kapil Deka

PW-3 = is Sadamamda Deka

PW-4 = is Babita Deka, the informant

PW-5 = is Mahananda Talukdar

PW-6 = is Tapan Kalita

PW-7 = is Dr. Anima Boro, the M/O

PW-8 = is Swapan Bhowmik, the I/O

2. The prosecution has exhibited following document:

Ext.A = is the 164 Cr.P.C. statement of victim (X)

Ext. A(1) & A(2) =are the signatures of victim

Ext.B = is the FIR.

Ext.B(1) = is the signature of informant Babita Deka

Ext.C = is the seizure list

Ext.C(1)= is the signatures of seizure witness Babita Deka and Kushal Deka in the seizure list

Ext.C(2) = is the signature of seizure witness Tapan Kalita in the seizure list

Ext.D = is the seizure list

 $\operatorname{Ext.D}(1) = \operatorname{is}$ the signature of seizure witness Kushal Deka, Dhruba Deka and Tapan Kalita in the seizure list

Ext.E= is the medical report.

Ext.E(1) = is the signature of M/O

Ext.F= is the sketch map

Ext.F(1) = is the signature of I.O

Ext.G= is the charge sheet

Ext.G(1) is the signature of S/I Rupam Hazarika

Ext.H, H(1), H(2), H(3) & H(4)= are the photograph of the place of occurrence.

Sd/-

(Sri C.B. Gogoi) Special Judge, Barpeta.