## Special (P) Case No.22/19

## 25/02/2020

Accused Sirish Das is produced from jail hajot. Heard learned Special PP, learned defence counsel and the accused on the point of sentence. Written in separate sheets, kept with record. Accused prays for showing him leniency.

After hearing learned Special PP and learned defence counsel and the accused on the point of sentence and further taking into account the offence which has been committed by accused and its impact on the society and increasing trend of sexual assault, rape case on the woman, child, I am of the opinion that the offence which have been committed by the accused who is aged about 60 years and age of the victim girl who is a 10 years old who is about 50 years younger to accused who had not yet developed any sign of secondary sex, the accused does not deserve any leniency. Further taking into account of provision of section 42 of the POCSO Act- when accused is found guilty both under the provisions of POCSO Act and under Indian Penal Code then where the degree of punishment is more will suffice the justice and accordingly, I find that the punishment u/s-376(AB) will equally serve the justice to section 6 of the POCSO Act.

Section 42 of the POCSO Act says: "42. Alternative punishment.- Where an act or omission constitute anoffence punishable under this Act and also under section166A, 354-A, 354-B, 354-C, 354-D, 370, 370-A, 375, 376,[376-A, 376-B, 376-C, 376-D, 376-AB, 376-DA, 376-DB] 376-E, or section 509 of the Indian Penal Code then, not withstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree."Maximum punishment prescribed u/s 6 of POCSO Act is imprisonment for life but which shall not be less than 10 years and shall be liable to fine. Coming to section 42 of the POCSO Act. I find that act of accused constitute an offence which is punishable u/s-376(AB) IPC

and punishment prescribed in section 376(AB) of IPC is greater in degree. Therefore, I am of the considered opinion, if accused is sentenced u/s-376(AB) IPC it will also serve the purpose of section 6 of the POCSO Act as nature of offence is same. Accordingly, for the offence committed by the accused u/s-6 of POCSO Act which is equivalent to the offence u/s-376(AB) IPC, I deem it fit to sentence the accused u/s-376(AB) of the Indian Penal Code and same will do the justice. Accordingly, convicted accused Sirish Das is sentenced to undergo rigorous imprisonment for life which means imprisonment for the remainder of the natural life of the convicted accused Sirish Das with fine of Rs.10,000/- in default Simple Imprisonment for 6 (six) months under section 376(AB) IPC and this will equally serve the punishment u/s-6 of the POCSO Act in view of section 42 of the POCSO Act.

Let furnish free copy of judgment to the convicted accused Sirish Das.

The convicted accused is told that he has right to appeal against the judgment and order of conviction and sentence passed by this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court.

As the victim of the case is a victim of rape case and she is a victim at the very tender age, so State has a right to take care of her and therefore, the victim is entitled to compensation under Victim Compensation Scheme. Learned Secretary, DLSA, Nalbari will determine the quantum of compensation payable to the victim Miss 'X' (PW-1). Send copy of judgment and order with relevant documents to the Secretary, District Legal Services Authority, Nalbari for information and compliance.

Send copy of judgment to learned District Magistrate, Nalbari u/s- 365 CrPC.