IN THE COURT OF THE SPECIAL JUDGE, BARPETA

Special POCSO Case No. 20/2018
(Arising out of Barpeta P.S. Case No. 900/2018)
U/S 4 of POCSO ACT, 2012

PRESENT: Sri Chatra Bhukhan Gogoi

Special Judge, Barpeta.

Charge framed on:- 05.07.2018

State of Assam

- Vs -

Annas Ali....Accused person.

Date of Recording Evidence on - 29.10.2018, 02.02.2019, 17.06.2019.

Date of Hearing Argument on – 11.07.2019. Date of Delivering the Judgment on – 23.07.2019

Appearance:

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P. Advocate for the Accused-----Mr. A. Mannan, Ld. Advocate.

JUDGMENT

1. The brief fact, of the prosecution case, is that on 27.04.2018 one Saha Alom lodged an FIR in Barpeta police station alleging inter-alia that on 20.11.2017 accused took his minor daughter (X) under threat of her life and promise of marriage, kept her into his house for about four days and during this four days accused rapped her on number of occasion. Coming to know about the incident, he called a meeting of the society and accordingly, his daughter was recovered from the house of accused at the intervention of the society and in the meeting it was resolved that accused will marry his daughter when she become major. It is contended that accused accepted the verdict of the society. Thereafter, he took his daughter to his residence. Even then accused visited his house and again forceful sexual intercourse with her. When the informant again informed the guardian of accused, they assured to marry his daughter with accused. But on 20.04.2018 accused married another girl thereby defrauded and cheated his daughter bringing disrepute and uncertainty to her life. Hence the case.

- 2. Acting on the information, Barpeta police station registered a case being Barpeta P.S. case No. 900/18 u/s 343/417/506/34 IPC and Section 4 of POCSO Act and investigated the case.
- 3. During the course of investigation, police visited the place of occurrence, recorded the statements of the witnesses, sent the victim girl for medical examination but she refused her examination, Nevertheless, the statement of the victim girl was recorded before Magistrate u/s 164 Cr.P.C. Thereafter, on conclusion of investigation, police finally laid the charge sheet against accused u/s 343/417/506 IPC and Section 4 of POCSO Act with a view to stand trial.
- 4. During the course of time, accused entered his appearance in court to face trial. On his appearance, having complied with the provision of Section 207 Cr.P.C. vide order dated 05.07.2018 the then Special Judge framed charge u/s 4 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, prosecution, however, examined as many as 5(five)witnesses including the informant, the alleged victim and the investigating officer.
- 6. On conclusion of prosecution evidence, accused was examined u/s 313 Cr.P.C. However, accused pleaded that the prosecution evidence are false and misleading. On being asked accused however, declined to adduce defence evidence. His plea is total denial of the prosecution case.

7. **Now point for determination** ;-

 Whether on 20.11.2017 and prior thereto accused committed penetrative sexual assault on the victim punishable u/s 4 of POCSO Act as alleged?

8. <u>Discussion, Decision and reasons for such decision</u>:

- 9. I have heard the learned lawyers appearing for both sides and carefully perused the evidence and documents available on record.
- 10. The learned Addl. P.P. appearing for the state Mrs. Priti Das contended that in the present case the evidence of PW-1 the informant Saha Alom, PW-2

the victim girl, PW-3 Mohar Uddin, PW-4 Danez Khan and PW-5 Ashok Kumar Das shows that accused had the penetrative physical relation with the victim girl on the promise of marriage on number of occasion but subsequently he married another girl. Therefore, the evidence of the prosecution witnesses clearly established the fact that accused committed the crime enumerated u/s 3 punishable u/s 4 of POCSO Act. According to her, in the present case, prosecution has been able to bring home the guilt of the accused for awarding adequate punishment in accordance with law.

11. On the other hand, the learned counsel Mr. Abdul Mannam appearing for the accused person contended that all the allegations are false and misleading because the alleged incident occurred on 20.11.2017 but the FIR has been lodged only on 27.04.2018 after a long gape of almost five months and the delay has also not been properly explained in the FIR. Therefore, the learned counsel contended that it a cooked up—story only to harass the accused person. According to him, the evidence of the victim girl is unworthy of credit as she on being frustrated for not being married her by accused falsely implicated the accused of having sexual intercourse with her. The evidence of the parents are also interested. Therefore, no reliance can be placed on their evidence. As such, the learned defence counsel Abdul Mannan vehemently contended that it is a

fit case for recording judgment of acquittal.

12. Before going to adumbrate the evidence of the prosecution witnesses, it is apposite to refer section 3 and 4 of POCSO Act which reads as under:

Section 3 Penetrative sexual assault. A person is said to commit "penetrative sexual assault" if-

- (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
- (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child

or makes the child to do so to such person or any other person.

<u>Section 4 Punishment for penetrative sexual assault.</u>- Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

- 13. Now, this court is to see what the victim has stated in her evidence.
- 14. The victim PW-2 in her evidence stated that about one year back while she has been reading in Class IX and returning from school accused Annas Ali took her to his residence on the promise of marriage and kept her in his residence for about 4 days and during that period he had sexual intercourse with her. Having come to know about this, she was taken by her parents to her village where a meeting was held in presence of family members of accused Annas Ali and other villagers wherein it was decided that accused will marry her after she attained majority. She also stated that even after the village meeting accused used to visit her residence and continue physical relation with her on the promise of marriage. But later on, he married another girl for which her father filed the case. She also stated that during investigation police produced her before Magistrate for recording her statement u/s 164 Cr.P.C. Ext.2 is the said statement and Ext.2(1) and 2(2) are her signatures.
- 15. In her cross examination she denied that she ever consume poison at Saragpara village and described her age as 18 years before doctor as suggested by the learned defence counsel. She also denied that she was ever admitted in any hospital for treatment. She also stated that after seven months of the incident police took her to doctor for medical examination but she refused her examination. In her statement before Magistrate she also stated that she has love affairs with Annas for two years and also stated before Magistrate that accused took her to his house from school. In the village meeting along with her father, one Samsul Hoque was present. In the meeting she also expressed her intention to marry Annas and Annas Ali also knows about physical relation but not by other family members. She told her parents about her relation with Annas Ali. She however, admitted that no case was filed against accused for last six months. She also denied that at the relevant time her age was 18 years and filed this false case against accused with conspiracy and denied that she was not kept by accused in his residence

for four days.

- 16. In her statement before Magistrate Ext.2 she stated her age as 17 years and stated that on 20.11.2017 accused with criminal intimidation took her to his residence on the promise of marriage and kept her in his house for four days and all the four days he had sexual intercourse with her. After four days, meeting was held where accused promised to marry her. Even after she came to her residence accused visited her house and continue physical relation with her. But he did not marry her citing her under age and thereafter, married another girl. Hence her father filed the case. Therefore, from the evidence of the victim as well as her statement before Magistrate u/s 164 Cr.P.C. it appears that accused had penetrative sexual assault on the victim girl on number of occasion on the promise of marriage but subsequently refused to marry her.
- 17. Now, let me consider whether other prosecution witnesses lend any credence to the evidence of PW-2 the alleged victim.
- 18. PW-1 Saha Alom the father of the victim girl deposed that about 8/9 months back accused took his daughter and kept her in his house for 3 /4 days. Having not found his daughter he called a village meeting. In the said meeting accused assured to marry his daughter on attaining her majority. But in the mean time, accused married another girl and now his daughter has been residing in his house. Ext.1 is the FIR and Ext.1(1) and 1(2) are his signatures.
- 19. In his cross examination he expressed his ignorance about the defence suggestion that his daughter consumed poison in the village Saragpara before he filed the case. In his cross examination he further deposed that his daughter had love affairs with accused but for how long he cannot say. Since his daughter was minor then so she was not married with accused. He denied that he filed the case against accused for not marrying his daughter.
- 20. PW-3 Mohar Uddin also deposed that accused kept the daughter of informant about 3 /4 days in his residence.
- 21. PW-4 Denez Khan also deposed that accused Annas Ali kept the daughter of informant for about 4 days in his residence and in the village meeting he agreed to marry the victim girl. Later on, when she attained majority. But after that he married another girl. So, the evidence of PW-1, 3 and 4 fully corroborated the evidence of the victim girl.

- 22. PW-6 the investigating officer Ashok Kumar Das in his evidence also deposed that during investigation he visited the place of occurrence, recorded the statement of the witnesses, arrested the accused and finally having found a prima facie case submitted charge sheet against accused Annas Ali u/s 343/417/506 IPC and Section 4 of POCSO Act.
- 23. In the instant case, accused was charged u/s 4 of POCSO Act only. On perusal of Section 3 it appears that a person is said to commit "penetrative sexual assault" if (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person or Section 4 of the said Act prescribed punishment for the commission of the offence as define in Section 3 of the Act.
- 24. In this context this court profitably refer a judgment of the Hon'ble Delhi High Court In Raghav vs State on 24 May, 2018, which is impregnated with the law rendered by Hon'ble Apex Court as well as its own findings as under-

Analysis

"13. Various issues arise, for consideration, in the present case, which may be addressed, seriatim.

Statement of the prosecutrix _M'

- 14. That conviction, for rape, can be sustained solely on the basis of the statement of the prosecutrix is, by now, almost axiomatic. Several judicial pronouncements, on the issue, were digested, by the Supreme Court in paragraphs 9 to 14 of the report in Vijay @ Chinee vs State of Madhya Pradesh, (2010) 8 SCC 191, which may be reproduced thus:
 - —Sole evidence of prosecutrix
- 9. In State of Maharashtra v. Chandraprakash Kewalchand Jain,(1990) 1 SCC 550 this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16) —16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical

violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

10. In State of U.P. v. Pappu, (2005) 3 SCC 594 this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12) —12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if

the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.

11. In State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21) -8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a

condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

- 12. In State of Orissa v. Thakara Besra, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.
- 13. In State of H.P. v. Raghubir Singh, (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [(2010) 2 SCC 9: (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan [AIR 1952 SC 54: 1952 Cri LJ 547].
- 14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable,

requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix. (Emphasis supplied)

- 15. Vijay @ Chinee (supra) was followed, by another 2-judge bench of the Supreme Court (speaking through Madan B. Lokur, J.), in State of Haryana vs Basti Ram, (2013) 4 SCC 200. As in the present case, the prosecutrix, in that case, who was less than 16 years of age, alleged misbehaviour and, thereafter, rape, by her maternal uncle, intermittently over a period of time. The High Court acquitted the accused, finding the sole testimony of the prosecutrix to be insufficient to indict him. The Supreme Court was critical of the approach of the High Court, opining, thus, in paras 2 and 25 of the report:
- —2. In our opinion, the High Court committed an error of law in not considering the evidence put forward by the prosecutrix (who was less than 16 years when she was raped) and ignoring the settled position in law that if the sole testimony of the prosecutrix is credible, a conviction can be based thereon without the need for any further corroboration.

- 25. The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in Vijay v. State of M.P., (2010) 8 SCC 191. After discussing the entire case law, this Court concluded in para 14 of the Report as follows: (SCC p. 198) —14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.
- 16. Profitable reference may also be made to one of the most recent authorities on the point, State of Himachal Pradesh vs Sanjay Kumar, (2017) 2 SCC 51. There, too, a 9 year old girl was ravaged by her uncle. The Supreme Court took pointed note of this fact, at the very beginning of its reasoning in the judgement, in para 21 of the report, thus:
- —Here is a case where charge of sexual assault on a girl aged nine years is levelled. More pertinently, this is to be seen in the context that the respondent, who is accused of the crime, is the uncle in relation. Entire matter has to be examined in this perspective taking into consideration the realities of life that prevail in Indian social milieu.

- 17. Para 31 of the report precisely sets out the legal position, regarding the admissibility, and acceptability, of the evidence of a victim of rape, and the advisability of seeking corroboration thereof, before seeking to base conviction, thereon, in the following words:
- --31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. 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 (See Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove. (Emphasis supplied

Having said that, we do have, with us, the statements of the prosecutrix _M' herself, both under <u>Section 164</u> of the Cr.P.C., as well as during trial, which are consistent regarding the allegation of threat having been held out, to her, by the appellant. The statements inspire confidence, especially as they are supported by the depositions of Seema (PW-3) and Gauri Shankar (PW-6)."

- 25. Coming back to the present case, it is seen that during the course of argument the learned defence counsel vehemently contended that there is unusual delay of 5 months in filing the case which entertain serious doubt regarding the authenticity of the case. He also submitted that the girl has affairs with the accused which has been suppressed in the present case. Moreover, the doctor is not examined in the instant case because the victim refused her medical examination. The learned defence counsel further contended that except the evidence of alleged victim girl the evidence of other prosecution witnesses are not worthy of credit. The evidence of the alleged victim girl also entertains doubt as it suggest false implication given the inordinate delay in filing the case. Therefore, the learned defence counsel vehemently contended that it is a fit case for recording judgment of acquittal.
- Having taken into consideration, the argument of the learned defence counsel and the provision of law which prescribed punishment it appears that the victim girl in her evidence in court on oath as well as her statement before Magistrate categorically stated that accused had taken her to his house and kept her there for four days and had sexual intercourse with her for four days. Subsequently a village meeting was held in which accused agreed to marry her on attaining the age of majority. In the mean time, also accused visited her house and had sexual intercourse with her on the promise of marriage but subsequently he married another girl instead of her. This vital fact has been supported by PW-1 the father, and other two prosecution witnesses who categorically stated that accused kept victim in his house for four days. Though there is some delay in lodging the FIR, but in the considered estimation of this court the delay is very natural in view of the fact that the victim girl and her father are rustic villagers they do not know the technicalities of law in filing the case at the earliest opportunity. Moreover, the court must be alive to the ground realities instead of taking a pedantic view. In the present case, victim and her parents are illiterate and ignorant. They cannot take quick decisions. They are easily influenced by the dictate of the village "Matabbars" because of their vulnerable economic condition, fragile status in the society. So, they cannot take right decision at right time. The fact remains that they lives in remote village in an environment of ignorance. In the environment in which they lives the delay was not said to be intentional but because of the factors discussed above.

- 27. In the considered estimation of this court the evidence of the victim is found credible and trustworthy the delay in lodging the FIR also appears to have been explained in their evidence because immediately after the incident a village meeting was held wherein accused agreed to marry her on her attaining majority and even then continue sexual relation with her.
- 28. Under the above circumstances, the evidence of the victim cannot be discarded as unworthy of credit. Refusing medical examination by victim also no way weaken the prosecution case because after such a long gape medical examination will not bring any fruitful result.
- It is now a settle position that conviction can be sustained based solely on the evidence of the prosecutrix. The only precaution the court is required to take is whether the evidence of the victim inspires confidence in the mind of the court. In the present case, after a dispassionate assessment of the entire evidence, this court found the evidence of the prosecutrix credible and trustworthy as she clearly stated that accused had physical relation with her for four days and subsequent thereto which clearly attract the definition of penetrative sexual assault as provided in Section 3(a) of POCSO Act. punishable u/s 4 of POCSO Act. Now a days the crime against the girl child has been increasing day by day causing alarm to the society and criminals commit such crime at will and go scot free on the ground of technicalities of law. In the society where the victim lives, accused indulge such incident against minor girl and subsequently avoided her in various pretext. Thereafter, accused marrying another girl is the accepted norms but law does not permit to indulge such act at will. The court must be alive to the ground realities affecting the society at large. The society will continue to suffer and accused will continue to indulge such crimes if the offenders are not punished.
- 30. As contended by the learned defence counsel merely because the girl has love affairs with accused it does not give licence to accused to have penetrating sexual assault on her at his will or force the girl to do so with the accused. In the instant case, the narration of evidence given by the girl in court on oath as well as her statement before police u/s 161 Cr.P.C. it is seen that there is no such inconsistencies or contradiction regarding the fact of penetrating sexual assault on her by accused as she clearly stated that accused forced her to have penetrative sexual assault with him by taking her to his residence on the false promise of marriage for four days at the initial

stage and subsequent occasion also he has sexual inter course with her. But later on, he married another girl which shows his clear criminal conscience to exploit the innocence and tenderness of a minor girl which in the considered view of this court constitute the offence punishable u/s 4 of POCSO Act.

- 31. Therefore, this court can very well draw the presumption as provided in section 29 and 30 of the POCSO Act, 2012 that accused had the culpable mind in taking the victim girl to his residence in the name of love with her and having sexual intercourse with her. So, accused has the intention or knowledge that he is committing a crime against a minor which is an act punishable under section 4 of POCSO Act. Accused not only put a strain in the faith and innocent relationship but also invaded into the privacy and sexuality of the victim girl and violated her dignity as a person. The act of the accused is certainly an aggression into her privacy and sexuality.
- 32. In view of the foregoing discussion and reasons, this court has come to the unerring finding that this is a case wherein prosecution has been able to establish the case against accused u/s 4 of POCSO Act. Accordingly, he is found guilty u/s 4 of POCSO Act.
- 33. 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

- 34. I have heard the accused persons 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 and survives by doing labour. He is very young person of 22 years old and married. He has having his old mother to maintain. So, in the event he is put behind bar his innocent family members would suffer a lot. Hence, accused pleaded clemency.
- 35. Heaving considered all the attending facts and circumstances and the extenuating and mitigating circumstances of the case and the punishment prescribed in section 4 of POCSO Act, 2012 accused is convicted and sentenced to under go Rigorous imprisonment for a term of 7 years (Seven

years) which is the minimum sentence prescribed under section 4 of POCSO Act and fine of Rs.2000/- i/d S/I for 3 three months.

- 36. The period of detention, if any, undergone by accused during the course of investigation, inquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.
- 37. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.
- 38. Let copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.
- 39. Let the case record be consigned to the record room after completing the formalities.
- 40. Given under my hand and seal of this Court on this 23rd day of July, 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 5 nos. of witnesses :-

PW-1 = Saha Alom, the informant.

PW-2 = victim(X).

PW-3 = Mohar Uddin.

PW-4 = Danez Khan.

PW-5 = Ashom Kumar Das, the I/O.

2. The prosecution exhibited only one document :-

Ext.1 = is the FIR.

Ext.1(1) & 1(2)= are the signatures of informant Saha Alom.

Ext.2 = is the statement of victim u/s 164 Cr.P.C..

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

Ext.3= is the sketch map of P.O. No.I.

Ext.3(1) = is the signatures of M/O Ashok Kumar Das.

Ext.4= is the sketch map of P.O. No.II.

Ext.4(1) = is the signature of I/O Ashok Kumar Das.

Ext.5= is the Charge sheet.

Ext.5(1)- is the signature of I/O Ashom Kumar Das.

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