# **Special Case No.5/2018**

State of Assam
Versus
Sri Chanchal Khaira ..... Accused

Present: Smti Mitali Thakuria,M.Sc,LLB, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocate for the accused: Mr P. Dutta

Evidence recorded on :19.6.18, 28.8.18,14.9.18, 05.10.18,

10.12.18, 03.4.19 and 28.5.2019

Argument heard on : 08.7.2019 and 22.7.2019

Judgment delivered on: 30.7.2019

## JUDGMENT

1. The prosecution initiated the case on receipt of the first information report lodged by the informant Sri Raghubir @ Goldang Brahma with the allegation that on 01.01.2018 at about 2 P.M. his daughter Miss Nabina Brahma aged about 6 years old was forcibly taken by the accused Sri Chanchal Khaira inside the jungle and molested her when she was playing outside of her house. One Sri Bistu Khaira heard screaming of his daughter and then he immediately informed the villagers when the villagers apprehended accused and handed over him to the police. It is also mentioned

in the first information report that the accused was caught red handed and there are witnesses who also saw the incident and hence, the first information report.

- 2. On receipt of the first information report in Tipkai Police Out Post the same has been sent to Bogribari P.S. for registration of the case making Tipkai O.P. GDE No.19 dated 02.01.2018. Accordingly the case has been registered as Bogribari P.S. case No.01/2018 under section 4 of the Protection of Children from Sexual Offences Act and case was endorsed to ASI Angaraj Chetry for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses, arrested the accused, medically examined her and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 4 of POCSO Act against the accused Sri Chanchal Khaira. Relevant copies also furnished to the accused person and framed the charge under section 4 of POCSO Act against the accused finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. The prosecution side examined as many as 8 (eight) number of witnesses including the informant, victim, M.O. and I.O. as follows:-

PW 1 Miss Nabina Brahma (victim),

PW 2 Smti Urmila Brahma,

PW 3 Sri Danswarang Brahma,

PW4 Sri Raghubir Brahma (Informant),

PW5 Smti Anjima Brahma,

PW6 Dr Priyanka Mukherjee,

PW7 Smti Samaina Brahma,

PW8 ASI Angaraj Chetry,

4. The accused person took the plea of total denial while recording his statement under section 313 of Cr.P.C. and adduced two DWs in support of his case.

#### 5. **Point for determination:**

Whether the accused committed the offence of penetrative sexual assault to the minor victim ?

#### **Discussion, Decision and Reasons thereof:**

- 6. After thorough perusal of the case record including the evidence, first information report etc. and hearing argument from both the parties, I have decided the case as follows with my reason thereof:-
- 7. The first information of this case is lodged by one Sri Raghubir Brahma @ Goldang with the allegation that on 01.01.2018 at about 2 P.M. his daughter Miss Nabina Brahma aged about 6 years old was forcibly taken by the accused Sri Chanchal Khaira inside the jungle and molested her when she was playing outside of her house. One Sri Bistu Khaira heard crying of his daughter and then he immediately informed the villagers when the villagers apprehended accused and handed over him to the police. It is also mentioned in the first information report that the accused was caught red handed and there are witnesses who also saw the incident.
- 8. The informant adduced his evidence as PW4 and deposed that at the time of incident his minor daughter was playing with her friend Sri Danswarang Brahma in the court yard of his younger brother Sri Dwimalu Brahma when the accused came there and took his daughter covering her mouth saying that he will give something to eat her. Her friend Sri Danswarang Brahma also went behind the accused and he saw the entire incident when the accused put his penis into her mouth. He came and informed the matter to the informant. In the mean time one Sri Bistu Khaira also heard

cry of the child when he came to drink water as he was enjoying picnic with his friend. He also saw the accused Sri Chanchal Khaira while committing the incident. Accused tried to flee away from the place of occurrence. But, the said Bistu Khaira caught hold him and when the other villagers along with him came there and apprehended the accused Sri Chanchal Khaira.

- 9. The minor victim adduced her evidence as PW1 and after assessing her capacity of understanding, her statement was recorded. The victim very specifically stated in her evidence that the accused took her inside the jungle and opening his gamocha he put his penis inside her mouth. She was crying when Sri Bistu Khaira saw her and he brought her along with the accused person.
- 10. PW2 is the mother of the victim and she deposed that on the day of the incident at about 2 P.M. her daughter was playing in the court yard of her aunty when accused Sri Chanchal Khaira took her daughter to the nearby jungle and penetrated his penis into her mouth. She also deposed that one Sri Bistu Khaira saw the incident who brought her daughter along with the accused.
- 11. PW3 Sri Danswarang Brahma is another vital witness of the prosecution case and he being the child witness, his statement is also recorded assessing his capacity of understanding. He deposed that at the time of incident he was playing along with the victim when the accused came and took his friend inside the jungle where he put his penis into her mouth. He claimed that he saw the entire incident and immediately he came home and informed about the same.
- 12. PW5 is the mother of PW3 and she also deposed that at the time of incident her son was playing with the victim and she was working inside her room when her son reported that the accused took his friend saying that he

would give her Biscuit and Chocolate. She was also about to visit to the place of occurrence and then she saw the informant and his daughter and later on she came to know about the incident from her own son.

- 13. From the evidence of doctor it reveals that the victim refused to go for medical examination. But, after ossification test the doctor opined that the victim is more than 5 years old but, below 8 years.
- 14. PW7 is the Women Police Constable and she was present when the victim was brought to Bogribari PHC and RNB Civil Hospital, Kokrajhar where she was medically examined and also claimed her presence when the victim was brought before the Court for recording her statement under section 164 Cr.P.C. She stated that she translated the statement of the victim from Bodo to Assamese language and accordingly exhibited the statement of the victim as Ext.2 and Ext.2(1) is her signature which was put after identification of the victim.
- 15. PW8 is the I.O. who investigated the case on the basis of GDE which was exhibited as Ext.3. As per him on the day of incident at about 4 P.M. one Sri Raghubir Brahma came to the police station and reported that his daughter is raped by accused Sri Chanchal Khaira. Accordingly he made GDE No.6 dated 01.01.2018 and visited to the place of occurrence along with woman constable Smti Samaina Brahma (PW7) when he arrived at the place of occurrence he saw that the accused was in serious injured condition and he rescued the accused and took step for his medical examination. Thereafter he recorded the statement of the witnesses and also visited to the place of occurrence as led by witness Sri Bistu Khaira. He also recorded the statement of witnesses namely Sri Bistu Khaira, Miss Nabina Brahma and Sri Danswarang Brahma under section 164 Cr.P.C. the I.O. further deposed in his

evidence that after recording the statement of the witnesses it has come to his knowledge that prior to arrival of Sri Bistu Khaira, witness Sri Danswarang Brahma saw the entire incident. I.O. further deposed that he almost completed the investigation. And, his successor S.I. Jiten Phukan filed the charge-sheet of this case. I.O. also exhibited the FIR as Ext.4 as the same could not be exhibited through the informant who put thumb impression on the FIR.

- The record reveals that I.O. took step for recording the statement of witnesses Sri Danswarang Brahma and Sri Bistu Khaira. But, the statement could not be exhibited as the said Sri Danswarang Brahma also put his thumb impression on his statement. The prosecution did not examine witness Sri Bistu Khaira who was subsequently examined by the defence and his statement is also exhibited through the learned Magistrate who recorded the same.
- 17. So from the testimonies of all the prosecution witnesses it is seen that they brought the allegation that the accused Sri Chanchal Khaira took the minor victim inside the jungle and had oral sex with her. PW3 child witness claimed his presence at the time of incident and he very specifically deposed that he saw the entire incident which had happened with his friend (victim) as he also went inside the jungle behind the accused. The other PWs i.e. PWs2 and 4 heard about the incident. PW2 heard the same from Sri Bistu Khaira and PW4 father of the victim heard about the same from PW3, friend of his daughter who claimed to be an eye witness of the entire incident. PW4 also uttered the name of Bistu Khaira and he met him when he was going to the place of occurrence and saw Bistu Khaira while bringing the accused along with her daughter from the place of occurrence. PW5 is also one of the important witnesses and she came to know about the entire incident from her son Danswarang Brahma (PW3) with whom the victim was playing at her court yard.

- 18. The defence took the plea of innocence and no other specific plea has taken by the accused while recording his statement under section 313 Cr.P.C. However, the defence examined listed witness Sri Bistu Khaira as DW1 and also examined the learned Magistrate who recorded the statement of Sri Bistu Khaira under section 164 Cr.P.C. and the learned Magistrate accordingly exhibited the same. Her evidence was recorded through V.C. Said Sri Bistu Khaira as DW1 deposed that on the day of the incident he was enjoying picnic with his friend and came near to the tube well to drink water when he heard the sound of crying of a girl inside the jungle and accordingly he came there and saw the accused Sri Chanchal Khaira while kissing the victim and she was crying. While he enquired as to why he brought the child inside the jungle he did not reply and left the victim and then he brought the accused holding his collar of the shirt and handed over him to the father of the victim. As per him no one was present near to the place of occurrence when he reached there. He gave his statement before the Magistrate about the incident.
- 19. The learned Magistrate as DW2 exhibited the statement of DW1 as Ext.A which was recorded by her. So by adducing the evidence of DW1 who was listed witness of the prosecution case. The defence side tried to establish that no such incident had happened as stated by prosecution witnesses specially the minor victim and PW3. As per defence Sri Bistu Khaira is only eye witness of the entire prosecution case and as per him he only saw the accused while kissing the minor girl and minor girl was crying.
- 20. During the course of argument the learned defence counsel raised the following points:-
  - (i) The first information report is not the first information the investigation is claimed to have initiated on the basis of GD Entry and the GDE which is exhibited as Ext.3 is not true certified copy and hence the same cannot be accepted.

- (ii) The I.O. recorded the statement of witnesses in Assamese language though the witnesses gave their statements in Bodo language and there is no signature of interpreter furnished by the I.O.
- (iii) PW7 Smti Samaina Brahma claimed as interpreter. But, her evidence reveals that the mother of the victim was also present inside the room at the time of recoding the statement.
- (iv) The prosecution intentionally did not examine Sri Bistu Khaira though his name was listed as witness and as an eye witness in the FIR only to suppress the real fact.
- (v) So called eye witness Sri Danswarang Brahma's name is not mentioned in the FIR.
- 21. Raising these points at the time of argument, the learned advocate for the accused mainly stressed on the point that Sri Bistu Khaira is only eye witness of the entire prosecution case and prosecution did not examine the said Sri Bistu Khaira as prosecution witness only to suppress the original fact of the case. PW3 Sri Danswarang Brahma is not in the picture and his name was not mentioned in the FIR though it was claimed by the prosecution that the said Sri Danswarang Brahma first came to the place of occurrence and saw the entire incident. If Sri Danswarang Brahma would have seen the incident his name would have been mentioned in the FIR.
- 22. So to arrive at a just just decision the testimonies of the prosecution witnesses and DWs has to be scrutinized carefully. PWs 2, 4 and 5 have heard the incident from Sri Bistu Khaira and Sri Danswarang Brahma. As per the informant (PW4) he first came to know about the incident from PW3

and when he was coming towards the place of occurrence he met Sri Bistu Khaira while Bistu Khaira was bringing the accused by holding him. Corroborating this part of evidence DW1 also stated that he was bringing the accused and he met the father of the victim and handed over the accused to him. Thus, it is admitted that the accused was caught hold by DW1 when he saw the accused inside the jungle along with the victim. So hearing about the incident from Sri Bistu Khaira is not unbelievable as he was person who went inside the jungle hearing crying of the child and saw the accused along with the minor victim where from he brought the accused and handed over him to the father of the victim. The name of the said Bistu Khaira is also mentioned in the FIR and it is stated that Bistu Khaira saw the incident. However, there is also mentioned in the FIR that the accused was caught red handed and there was also other eye witnesses who can prove the incident. As per DW1 he saw the accused while kissing the victim and then he enquired the accused as to why he brought the victim inside the jungle. Accused did not reply and then he caught hold the collar of the shirt of the accused, brought him from the jungle and then handed over him to the father of the victim.

- 23. On the other hand as per the prosecution before arrival of DW1 at the place of occurrence, friend of the victim (PW3) saw the entire incident when the accused was having oral sex with the minor victim. He saw the incident and immediately informed the matter to the father of the victim who immediately went to the place of occurrence and then he met DW1 who handed over the accused to him.
- 24. It is pleaded by the learned advocate for the accused that PW3 subsequently brought by the prosecution only to prove the case against the accused suppressing the real fact. But, the I.O. of this case have specifically stated that during the investigation he came to know that prior to arrival of

DW1, PW3 saw the entire incident and hence, the I.O. also recorded the statement of PW3 under section 164 Cr.P.C. which is available in the case record though the prosecution failed to exhibit the same. However, for judicial notice I have perused the statement of PW3 recorded under section 164 Cr.P.C. which completely corroborates with the evidence recorded in the court. From the evidence of PWs2, 4 and 5 also it is evident that at the time of incident the victim was playing with Sri Danswarang Brahma (PW3) in the court yard of PW5 and hence presence of PW3 in the place of occurrence by following the accused is not unbelievable. The child might have curiosity as to why the accused took her inside the jungle and as to whether the accused would give the Biscuit and Chocolate to her. From the cross evidence of DW1 it is seen that he is not sure if any other child have seen the occurrence before his arrival though he did not find anyone when he visited to the place of occurrence. Further he admitted in his cross evidence that later on he heard that child Derhasat visited there prior to his arrival and left the place after seeing the occurrence.

- 25. So from the details discussion made above it is seen that the case of the prosecution is that witness Sri Danswarang Brahma saw the entire incident prior to arrival of Sri Bistu Khaira. More so the question also arise as to why the accused brought the girl of 5/6 years old age inside the jungle if he had no bad intention. A person may love a child and may kiss out of love but, bringing the child inside the jungle only to kiss her is not at all believable.
- 26. The prime witness of the prosecution is the victim herself and her friend Danswarang Brahma (PW3) and they are child witnesses. The learned advocate submitted that there is every possibility to tutor a child witness and hence, their evidence cannot be accepted without any other corroboration.

He further submitted that DW1 who also stated to be an eye witness contradicts the evidence of the victim and PW3. As per DW1 the accused only kissed the girl taking her inside the jungle. He has not seen any other offence. But, from the cross evidence of DW1 it is evident that one Danswarang saw the entire incident prior to his arrival. More so it also reveals from the evidence of I.O. during investigation he came to know about the presence of eye witness i.e. PW3 and accordingly, I.O. also recorded the statement both the PW3 and DW1. Regarding the acceptance of evidence of the child witness a case of Hon'ble Apex Court reported in (2008) 12 SCC 565 Nivrutti Pandurang Kokate Vs State of Maharashtra can be cited which was relied on the case of Hemmat Sukhadeo Wahurwagh Vs State of Maharashtra (2009) 6 SCC 712 (FB), the Hon'ble Supreme Court of India has held that-

"...... Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and molded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

As per section 118 of the Evidence Act, 1872, all persons shall be competent persons to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions.

27. Here in the instant case also it is seen that PW3 is only eye witness who came to the place of occurrence following the accused and saw the entire incident and then immediately went to inform the matter to the father of the victim. His evidence fully corroborates the evidence of the victim and from the circumstances brought by the prosecution, it is seen that there is

nothing to disbelieve both PWs1 and 3 the child witnesses. The minor victim very categorically stated that in her evidence as to how the accused brought her inside the jungle and how he had committed oral sex with her.

28. In the cross evidence of the minor victim she deposed that only Sri Bistu Khaira saw the incident and she also narrated the story to Sri Bistu Khaira. But, she is not aware if her friend Sri Danswarang Brahma saw the incident prior to arrival of Sri Bistu Khaira.

The Hon'ble Supreme Court in a case reported in (1983) 3 SCC 217 Bharwada Bhoginbhi Hirjubhai V. State of Gujrat has held that "testimony of victim of sexual assault is vital and unless there are compelling reasons which necessitates looking for corroboration of her statement, the Court should not find difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused when her testimony inspires confidence and found to be reliable. Seeking corroboration of her statement before relying upon the same as rule in such cases amounts to adding insult to the injury".

- 29. Our Hon'ble High Court also in another case reported in **2017 (4) GLT 395 Shiv Charan Talukdar Vs State of Assam** expressed the same view relying on the decision of the Hon'ble Supreme Court reported in **2017 (2) SCC 51 and paragraph 31** of the said judgment reads as follows:-
- "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 respondents, 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 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 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 the 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 of suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma V State of H.P.). Notwithstanding this legal position, in the instances case, we even find enough corroborative material as well, which is discussed herein above."

- 30. In the instant case also it is seen that the evidence of the victim or prosecutrix is found believable and trustworthy. More so the evidence of PW3 eye witness of this case also fully corroborates the prosecution version.
- 31. The learned advocate raised the point during argument as stated above, PW7 being the police person cannot to be an interpreter and she also cannot enter inside the room with the mother of the victim while the learned Magistrate recording the statement of the victim. From Ext.2 i.e. the statement

Magistrate took help of one Rathor as interpreter. So it is to be seen as to whether the presence of a police officer at the time of recording the statement under section 164 Cr.P.C. of the minor victim caused any prejudice to the accused person? Generally in cases where the statement of the minor victim was recorded it is seen that lady constable or police officer who brought the minor victim identifies the victim and in some occasions the police officer also identifies the parents or guardian of the victim if she is given zimma of her parents. The defence also did not give any explanation as to how merely presence of the police officer inside the room caused any prejudice to the accused.

32. As discussed above, it is seen that the statement of the victim fully corroborates her statement recorded under section 161 Cr.P.C. as well as her evidence before the court.

Section 26 (1) of the Protection of Children From Sexual Offences Act provides that Magistrate or Police Officer can record the statement of the child in presence of the parents of the child or any other person in whom the child has trust and confidence. So as per provision of this Act no bar in presence of the person to whom the child feels comfortable to give his/her statement. So merely presence of PW7 at the time of recording the statement by the learned Magistrate cannot vitiate trial nor caused any prejudice to the accused.

33. Coming to the another point raised by the learned defence counsel is that GDE is not certified properly on the basis on which the I.O. completed most part of the investigation. It is admitted that Ext.3 is not certified properly by the Officer-in-charge of concerned P.S. and it is merely extract copy of GDE. But, it cannot be denied that Ext.3 is prepared by I.O.

himself and on the basis of which he visited to the place of occurrence and started investigation. It is also admitted that giving oral information by the informant in the P.S. he lodged the FIR and subsequently the I.O. visited to the place of occurrence making GDE and also started part of the investigation. From Ext.3 it is seen that I.O. immediately rushed to the place of occurrence where the villagers confined the accused and also assaulted him. It also reveals that the contents of the Ext.3 fully corroborates the FIR (Ext.4). So only because of the prosecution failed to produce certified copy of GDE, the entire prosecution case cannot be disbelieved on technical issue where the other circumstances of the prosecution case as well as testimonies of prosecution witnesses are found believable and trustworthy.

- 34. From the medical evidence PW6 it is seen that the victim refused to go medical examination. But, the doctor opined her age as 5 years and below 8 years on the basis of ossification test. It is admitted fact that there is no allegation of penetration inside vagina of the victim and hence, possibility any medical proof of penetrative sexual assault does not arise as only the allegation brought against the accused is that he entered his penis into the mouth of the minor victim. So sign of rape or injury on the private part of the victim etc. is not material in this case.
- 35. Section 3 of the Protection of Children from Sexual Offences Act reads as follows:-

Section 3 of the Protection of Children From Sexual Offences Act read as follows:-

- "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 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."
- As per the provision of the Act even the manipulation of any part of the body of a child so as to cause penetration would amount to penetrative sexual assault which is punishable under section 4 of the Act. [2017 SCC Gau 576 Sri Kamakhya Roy Vs State of Assam].
- 37. So as per the section 3 (a) even penetration of penis, to any extent, into vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or penetrative sexual assault under this Act.
- 38. From the details discussion made above it is seen that the prosecution could establish that the accused penetrated his penis into the mouth of the minor victim taking her inside the jungle. Accordingly the case under section 4 of POCSO Act is well established against the accused person.
- 39. Section 29 of the said Act speaks about presumption that the accused had committed or abetted or committed to commit the offence of penetrative sexual assault unless the contrary is proved. Further section 30(1) of the said Act reads as follows:-

"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."

- 40. In the instant case it is seen that defence did not bring any reason or any explanation of lodging the false case against him that too with such an allegation of sexual assault with the minor victim of 5/6 years old. While recording the statement of the accused under section 313 Cr.P.C. also he did not take any plea in the defence except simple denial which is not at all sufficient to disprove the prosecution case. More so the question arises as to why the father of the minor girl will lodge the FIR against the accused without any basis or without having any previous enmity etc. with the accused. Further the defence could not rebut the prosecution case and also failed to adduce any evidence to disprove the case of the prosecution.
- 41. So considering the detail discussion made above, it is held that the prosecution is able to establish the case against the accused Sri Chanchal Khaira under section 4 of POCSO Act and accordingly the accused is convicted under the said section of law.
- 42. I have considered section 360 Cr.P.C. to release the accused on probation. But, the heinous crime of committing penetrative sexual assault on a minor girl of 5/6 years old shakes our judicial conscience. The offence was inhuman. Sexual violence apart from being dehumanizing act is an unlawful intrusion of right of privacy and sanctity of a female and as such the accused does not deserve such leniency. "Till rape cases are cases of rarest".
- 43. Heard the accused on the point of sentence under section 235 (2) Cr.P.C. which is written in separate sheet and tagged the same with case record. He submitted that he is poor person and has family burden and there is none to look after his old ailing mother who solely depend on him and accordingly, he prays for his release without any sort of punishment.
- 44. The object of the sentence should be to protect the society and deter the criminal. Gravity of the offence, mitigating factors, manner in which

the offence was planned and committed, prescribed punishment and the social abhorrence of the offences etc. are indicators for sentencing. Reference in this regard made to the Judgment of the Hon'ble Supreme Court reported in **2016** (16) SCC 441 (Jasbir Singh Vs Tara Singh).

- One of the prime objective of criminal law is imposition of adequate, just and proper punishment which commensurates with the gravity, nature of crime and manner in which the offence is committed. One should keep in mind social interest and consideration of the society while considering the determinative factors of sentence with the gravity of the crime.
- In **Rajendra Prasad Vs State of Uttar Pradesh [(1979)3 SCC 646]** it is held that- "Judges are entitled to hold their own views, but it is the bounden duty of the Court to impose proper punishment, depending upon the degree of criminality and the desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders".
- 47. So considering all aspects of the case, circumstances and submission of the convicted accused, I find that it is not a fit case for sentencing the accused with the maximum punishment of imprisonment for life and hence **Imprisonment for ten years** with fine will meet ends of justice.

### ORDER

48. In the result, the accused Sri Chanchal Khaira is hereby convicted under section 4 of the Protection of Child from Sexual Offences Act and hereby sentence with **Imprisonment for 10 (ten) years along with a fine of Rs.2,000**/-. In default of payment of fine will undergo **Imprisonment for two months.** The period of custody of the accused shall be set off from the period of sentence if any.

49. Free copy of the judgment be furnished to the convicted Sri Chanchal Khaira under section 363 of Cr.P.C. and also a copy of the Judgment be furnished to the learned District Magistrate, Kokrajhar complying the provision of under section 365 of Cr.P.C.

The judgment is delivered in the open court and given under my hand and seal of the Court on this 30th July/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge, Kokrajhar Special Judge, Kokrajhar

## **Appendix**

## The prosecution witnesses are:

PW 1 Miss Nabina Brahma (victim),

PW 2 Smti Urmila Brahma,

PW 3 Sri Danswarang Brahma,

PW4 Sri Ragubir Brahma (Informant),

PW5 Smti Anjima Brahma,

PW6 Dr Priyanka Mukherjee,

PW7 Smti Samaina Brahma and

PW8 ASI Angaraj Chetry,

The Court Witness is: Nil

The Defence witnesses are:

DW1 Sri Bistu Khoira

DW2 Smti Nilakshi Lahka

### The exhibited documents are:

- 1. Ext-1 ... Medical report of victim,
- 2. Ext.2 ... Statement of victim recorded u/s 164 Cr.P.C.,
- 3. Ext.3 ... Extract copy of GDE,
- 4. Ext.4 ... FIR and
- 5 Ext.5 ... Charge sheet

The Defence witness and exhibit: Nil

Special Judge, Kokrajhar