In The Court of Special Judge, Cachar at Silchar.

Present: Mr. D.Ullah, A.J.S

Special Judge, Cachar, Silchar.

Spl(POCSO) Case No. 30 / 2017 u/s 376 IPC r/w sec. 6 of the POCSO Act The State of Assam

-Versus-

Sankar Malakar

..... accused person.

Dates of evidence : 11.1.18; 31.5.18; 13.7.18; 12.9.18 &

22.5.19

Date of argument : 27.1.2020

Date of judgment : 15.2.2020

Appearance:-

For the Prosecution: Miss. B. Acharjee, Id. Spl.P.P.

For the Defence: Mr. S. Chakraborty. Ld. Advocate

J U D G M E N T

1. The brief facts of the prosecution case is that the informant – Michrilal Nunia had lodged an ejahar dated 6.7.17 to the effect that before 6 months ago (i.e. prior to lodging of the ejahar) the ejahar named accused person had entered into the house of the

informant and raped his minor daughter i.e. the victim aged about 17 years (name witheld) when she was alone in the house. It is also stated that as a result, the victim girl carries about five months pregnancy.

- 2. Accordingly, on receipt of the ejehar, police registered a case being Udharbond P.S Case No.138/176 u/s 448 of the IPC r/w sec.4 of the POCSO Act. Thereafter, on completion of investigation police submitted charge sheet against the present accused person u/s 448 of the IPC r/w sec.6 of the POCSO Act and sent up the accused person to face trial.
- 3. Thereafter, on 19.7.17 this court received the case record and registered the same as a Spl(POCSO) case. The accused person namely, Sankar Malakar has appeared before this court and on 19.9.17 after hearing the prosecution and the defence counsel, my Ld. predecessor was pleased to frame charge u/s 4 of the POCSO Act against the accused person and the particular of the charges were read over and explained to the accused to which he pleaded not guilty and stood to face the trial.
- 4. Thereafter, the trial of this case was commenced, during which the prosecution examined as many as 9(nine) witnesses which include the informant, the victim, the Medical Officer and the Investigating Officer of the case. After completion of Prosecution evidence, the statement of the accused person u/s 313 of the Cr.P.C is recorded during which the accused person denied the allegations and also declined to adduce any evidence in his support.
- 5. It is pertinent to mention here that when the case was at argument stage, the Ld. Spl.P.P has filed a petition with a prayer for alteration of charges for the offence u/s 376 IPC r/w sec.6 of the

POCSO Act, in view of the fact that the victim girl got pregnant due to the offence in question. Thereafter, on 18.1.2020 after hearing both sides this court altered the charges u/s 376 IPC r/w sec.6 of the POCSO Act and the particular of the charges were read over and explained to him to which the accused pleaded not guilty and stood to face the trial. The Ld. Counsel for the accused person has declined to further cross-examine the P.Ws, already examined, in view of alteration of charges.

6. Heard the Ld. Spl.P.P and also the Ld. Counsel appearing for the accused person .

During argument, the Ld. Spl.P.P has submitted that the prosecution has able to prove the offence against the accused person beyond all reasonable doubt. It is further submitted that the victim is a minor aged between 16 years and 18 years and it is proved beyond doubt that she was made pregnant by the accused and she gave birth of a female child. Under the above materials, the Ld. Spl.P.P has prayed to punish the accused accordingly. On the other hand, the Ld. Defence counsel has submitted that the victim could not able to say the date and time of occurrence and the statement of the victim regarding the time of the occurrence is different on different occasions and the same is not believable at all. It is further submitted that the Investigating Agency has also failed to conduct any DNA test in order to confirm the involvement of the accused in respect of birth of the child of the victim. The Ld. Counsel for the accused has further submitted that it is unbelievable proposition that till 5-6 months of pregnancy nobody could notice the victim in respect of her pregnancy. Under the above circumstances the Ld. Defence counsel has submitted that the version of the victim and the other witnesses supporting her are

not therefore believable. In this context he has relied upon a decision of Hon'ble Sikkim High Court in State of Sikkim Vs Girjaman Rai @ Kami and another reported in 2019 Cri.L.J 4247. In respect of failure of the Investigating Agency to conduct DNA test for paternity of the child the defence counsel has relied on a decision of Culcutta High Court in Suparna Mukherjee Vs State of West Bengal reported in 2017 Cri.L.J 3098.

7. **Point for determination:**-

- (i)Whether on one day at the time of Durga Puja in the year 2006 and on subsequent five occasions at village Sukachera under Udharbond P.S the accused person committed rape upon the victim , as alleged ?
- (ii)Whether the accused person committed aggravated penetrative sexual assault upon the victim, as alleged?

Discussion, Decision and Reasons Thereof:-

- 8. In this case the prosecution side examined as many as 9(nine) witnesses to prove the case.
- 9. The P.W.1 i.e. the victim of the case and she testified that about one and half years back in the month of Ashwin in Bengali Calender , in one day at about 4 pm the accused came to their house as usual and finding none except her in the house he took her in a nearby hillock and committed rape on her. She further stated that the accused continued such type of relation for about subsequent 7/8 months. She added that she became pregnant and gave birth of a female child about one month back. She further stated that her father lodged an ejahar about five months after the first occurrence . The P.W.1 also stated that she was medically examined and she gave her statement before the Magistrate. The

victim P.W.1 further added that the accused has got four sons and two daughters and three sons are married and two daughters are married.

During her cross-examination the P.W.1 stated that the accused used to keep his sown timber in their house and he sometime helped her father with money. She also stated that her paternal aunt's house is near to their house and in the surroundings of their house there are many houses of their relative. The P.W.1 also stated prior to the alleged incident she visited Bharambaba mela and from there she visited her maternal uncle's house at Sildubi and remained there for three days. The P.W.1 denied a suggestion that as her father took loan from the accused and her father when failed to return the same collusively filed this case with false allegation. This witness also denied the suggestion that she got pregnant by some other person.

10. The P.W.2 is Mishri Lal Nunia, the informant of the case and he stated that he used to carry business of collection of bamboo etc. with the accused and they had financial transaction between them. The P.W.2 further stated that the accused visited their house. The P.W.2 also stated that he along with his son used to go out for work keeping the victim alone in the house as his younger daughter used to go to school. The P.W.2 also stated that after five months of the alleged incident when he noticed pregnancy of the victim and accordingly he made query and came to know that accused caused pregnancy and then he lodged FIR, which is exhibited as Ext.1. The P.W.2 further stated that the age of the accused is around 85 years.

During cross-examination the P.W.2 stated that the accused used to keep sown wood to his homestead. The P.W.2 further

stated that the victim reported him that the accused giving Rs.500/to her caught hold of her and took into the jungle and committed
rape on her and only after five months of pregnancy he could
realize the same . The P.W.2 admitted during his cross-examination
that his relatives used to visit his house, but none of them could
notice the pregnancy of the victim. The P.W.2 denied a suggestion
that he took loan from the accused and he could not repay the
same and on his demand they collusively prepared a concocted
case . The P.W.2 also denied a suggestion that the accused did not
commit rape and the accused is not responsible for the pregnancy.
The P.W.2 also denied a suggestion that his daughter had illicit
relation with other boys and when she became pregnant implicated,
the accused in this case for getting relief from loan amount.

11. The P.W.3 Sita Nunia is a reported witness and he stated that when they asked the victim about what has happened to her then she told them that Sankar Malakar i.e. accused has made her pregnant.

During his cross-examination he stated that he came to know about the occurrence when the victim was taken from medical college after her examination.

12. The P.W.4 Moyna Nunia stated that the informant and the victim is her neighbours and seeing larger abdomen of victim, she asked her how it has happened then she told her that accused has made her pregnant. She also stated that at first accused denied, but while the victim caught her by his neck then accused confessed his liability of making the victim pregnant. The P.W.4 also stated that after 3/4 months of her knowledge about the occurrence the victim delivered a female child and the child is still alive.

- 13. During her cross-examination the P.W.4 stated that he came to know about the occurrence when there was an injury on the leg of victim and she went to a doctor of Madhura and there her pregnancy was detected by doctor. The P.W.3 also stated that one week ago of filing of this case by the informant the victim went to the doctor of Madhura and prior to the visit of doctor she did not know anything about her pregnancy . The P.W.4 also stated that accused Sankar is doing timber business and father of the victim works under the accused . He also stated that accused used to pay money to the father of the victim . The P.W.4 specifically admitted that she did not see anything about the occurrence. The P.W.4 also admitted that the victim is her relative.
- The P.W.5 Tarabati Nunia @ Tara Moni Nunia has stated 14. that victim's mother has died long back and while the victim was pregnant for about 4 months she seeing her larger abdomen and asked her who has done this. The P.W.5 also stated that then she took her (victim) to doctor at Madhura who detected her pregnancy for four months and then she took her to her (P.W's) house and insisted her to tell the name who has done her pregnancy then the victim told them that the accused Sankar Malakar had done her pregnancy doing relation with her about from 5/6 months back. The P.W.5 also stated that while they asked the accused about the occurrence, at first he denied but while the victim caught his neck by her hand, the accused Sankar Malakar admitted his guilt in their presence that he had made the victim pregnant . The P.W.5 also stated that after about 5 months victim delivered a female child who is still alive.
- 15. The P.W.5 during her cross-examination stated that after coming from doctor of Madhura with victim this case was filed by

the informant. She admitted that prior to taking the victim to doctor of Madhura she did not know anything. The P.W.5 also denied several suggestions that were put to her by the Ld. Counsel for the defence.

16. The P.W.6 - Reba Chanda stated in her evidence that in the last Bengali month of Magh, the occurrence took place and at the time of occurrence and still now she is the Secretary of local Mahila committee of Nogor Colony inclding Nogor Tea Estate. The P.W.6 also stated that the informant Mishrilal Nunia and one Shyambehari Nunia informed her after the victim was recovered and taken to Udharbond P.S that the accused Sankar Malakar after doing physical relation with the victim made her pregnant . Thus, her evidence shows that she is a reported witness.

During her cross-examination she denied several suggestions that were put to her by the Ld. Counsel for the defence.

17. The P.W.7 – Kolabati Nunia has stated that about one year back the occurrence took place . She stated that she knew the accused person used to to go to the house of the informant before the occurrence regularly . She stated that her house is situated in a tilla which is intervened by another tilla from the house of the informant.

During her cross-examination the P.W.7 stated that her house is situated in a tilla and thereafter paddy land and then in another tilla there is the house of the informant. She stated that on her tilla, sufficient trees are there and from her house the house of the victim is not visible.

18. The P.W.8 – Dr. Monalisa Dev, the Medical Officer, who examined the victim. The P.W.8 stated that on 6.7.17, she

examined the victim on police requisition and on the basis of physical examination, laboratory and Radiological investigations done on the victim, the P.W.8 opined that – (1) age of the individual was above 16 years and below 18 years (2)Evidence of recent sexual penetration not detected as on the date of examination , (3) injury marks not detected on her person or genitals except old hymenal tears and (4) The individual carries pregnancy with a single live intrauterine gestation in changing lie at 18 weeks 3 days + - one week. The Medical report is brought on record as the Ext.2.

19. The P.W.9- Ahmed Hussain Mazumder , the I.O of the case testified that on 6.7.17 he was posted at Udharbond P.S and at that time, Swapan Kumar Dey was the Officer in Charge of Udharbond P.S. who received one FIR, Ext. 1 and registered the same vide Udharbond P.S. Case No. 138/2017 on 06.07.2017 U/S 448 IPC R/ W Section 4 of POCSO Act. and entrusted the same to him for investigation. The P.W.9 stated that Misri Lal Nunia, the father of the victim girl, brought the victim to the PS and he recorded the statement of informant and the victim U/S 161 Cr.P.C. The P.W.9 also stated that on the same date, victim was sent to SMCH, Silchar for her medical examination and it was done there on the same date. The P.W.9 also stated that during investigation, he visited the PO, drew sketch map, which is Ext. 3, recorded statement of other witnesses and arrested the accused on 07.07.2017 and forwarded him to Hon'ble Court. The P.W.9 also stated that after completion of investigation, he submitted charge sheet u/s 448 IPC r/w Section 6 of POCSO Act, which is brought on record as the Ext. 5

During cross-examination the P.W.9 stated that there is no mention of date of occurrence in Ext. 1, the FIR. The P.W.9 also stated that in Ext. 3, sketch map, he indicated the PO as one house and said house consists of three rooms and he also mentioned two houses by indication "E" and "F". "E" is the house under construction and "F" is kitchen. The P.W.9 stated that towards east of the PO, there is Madura river which he indicated as "B". The P.W.9 also stated that on 06.07.2017 at about 7.20 PM he sent the victim to SMCH, Silchar for her examination and at about 10 P.M. she returned from SMCH, Silchar and then kept in Ujala and on the next day i.e. on 07.07.2017, the victim was brought to Court for recording her statement U/S 164 Cr.P.C. The P.W.9 further stated during his cross-examination that on 11.07.2017 the statement of the victim U/S 164 Cr.P.C was recorded in Court. The P.W.9 admitted during his cross-examination that as there is no other house he has not mentioned any other house in Ext. 3. The P.W.9 also stated that he had not mentioned the distance of the house of the accused from the place of occurrence and there are houses of other persons near the house of the accused. The P.W.9 admitted that the houses of all witnesses are within a range of one kilometer from the PO and on the eastern bank of river Madura. The P.W.9 also stated that he had not mentioned the age of the accused as 85 years. The P.W.9 during his cross-examination stated that the PW 1 i.e. the victim did not state to him that on the date of occurrence she was alone in her house and accused took her to a nearby hillock and raped her and for about subsequent 6/7 months he continued such activities. The P.W.9 also stated during his crossexamination that the PW 3 Sita Nunia did not state to him that after the occurrence she along with the victim went to the house of Shyam Bihari Nunia and accordingly she herself, Moyna Nunia, Tara Nunia, Shalanti Orang went to the house of Shyam Bihari Nunia.

The P.W.9 also stated that this witness has also not stated to him that she also went with him to the house of Shyam Bihari Nunia and on being asked the victim stated that accused Shankar Malakar made her pregnant. The P.W.9 also stated that the PW 5 Tarabati Nunia @ Taramoni Nunia did not state to him that seeing larger abdomen of victim she took the victim to a doctor of Madura and there her pregnancy was detected by doctor and that she did not state to him that after returning from Madura when she took the victim to her house and insisted to tell the name of the person who caused her pregnancy, then the victim told that the accused made her pregnancy by establishing physical relation for about 5/6 months. The P.W.9 further stated during his cross-examination that the PW 6 Reba Chanda did not state to him that the occurrence took place in the Bengali month of "Maagh". The P.W.9 also stated that she also did not state to him that one Misri Lal Nunia and Shyam Bihari Nunia informed her that the victim girl was recovered and she was taken to Udharbond P.S. She also did not state to him that one Misri Lal Nunia and Shyam Bihari Nunia told her that accused Shankar Malakar after doing physical relation with her made her pregnant. The P.W.9 also stated that the P.W.6 -Reba Chanda did not state to him that when she was informed about the occurrence at that time the victim was eight months pregnant. The P.W.9 further stated during his cross-examination that the PW 7 Kolabati Nunia did not state to him that the occurrence took place about one year ago and also did not state to him that the accused used to visit the house of the victim regularly.

20. Appreciating the materials on record, it is found that the victim has specifically stated in her evidence that taking advantage of absence of other members in their house the accused came and

took her to a nearby hillock and committed rape upon her. She has further stated that the accused continued such type of relation for about subsequent 7/8 months for which she became pregnant and gave birth of a female child . So far as the pregnancy of the victim is concerned, the P.W.2, the informant being the father of the victim , the P.W.3 – Sita Nunia, the P.W.4- Moyna Nunia , the P.W.5- Tarabati Nunia @ Tara Moni Nunia and the P.W.6- Reba Chanda have supported the victim and the defence has not disputed or denied that the victim got pregnant and even not suggested that she has not delivered any child resulting to the pregnancy .

- 21. The P.W.8, the Medical Officer who had examined the victim on police requisition opined that the age of the individual was above 16 years and below 18 years and also opined that the individual carries pregnancy with a single live intrauterine gestation in changing lie at 18 weeks 3 days + one week. Therefore, upon consideration of evidence of all the aforesaid P.Ws including the evidence of the doctor it is proved that the victim got pregnant and ultimately delivered a female child . The case of the defence is of total denial . The facts and circumstances of commission of the offence resulting to pregnancy of the victim is that sexual intercourse took place in absence of the family members of the victim and as such there is no question of seeking an eye witness of such offence.
- 22. In a case for offence u/s 376 IPC r/w sec.6 of the POCSO Act, the medical evidence and the other circumstantial evidence supporting the evidence of the victim will certainly play an important role .

- 23. Under the above context, if we scrutinize the prosecution evidence, we will find that the P.W.2, the informant has stated in his evidence that he alongwith his son used to go out for work keeping the victim alone in the house. This witness has also stated that after about five months of the alleged occurrence, when they noticed pregnancy of the victim, they made query and came to know that the accused caused pregnancy to the victim and thereafter he lodged the FIR(Ext.1). He has also confirmed in the cross-examination that the accused by giving Rs.500/- to the victim caught hold of her and took her in the jungle and committed rape on her .
- 24. The defence case is that this witness i.e. the P.W.2 took loan from the accused and he could not able to repay the same and as the accused demanded for repayment of the said amount then they collusively prepared the instant concocted case. But, except putting such a suggestion , which is denied by the P.W.2, the defence has failed to prove their contention that the P.W.2 lodged this false case due to the aforesaid reason. The defence has also put another suggestion to this witness i.e. the P.W.2 that his daughter i.e the victim, had illicit relation with other boy and when she got pregnant they implicated the accused falsely for getting relief from the loan amount, which the P.W.2 took from the accused. This suggestions is specifically denied by the P.W.2.
- 25. The P.W.3- Sita Nunia, the P.W.4-Moyna Nunia are the reported witnesses who have stated that the victim told them that the accused made her pregnant. The P.W.4 has also stated that after 3/4 months of her knowledge about the occurrence, the victim delivered a female child and the child is still alive. The defence during cross-examination to these witnesses i.e. the P.W.2, the

- P.W.3 and the P.W.4 could not able to rebut the incriminating portion of evidence except putting some suggestions , which these witnesses denied.
- 26. The P.W.5- Tarabati Nunia @ Tara Moni Nunia has also stated in her evidence that seeing her larger abdomen she asked the victim as to who had done this and also took the victim to a doctor at Madhura who detected her pregnancy for 4 months and then she took her to her house and insisted her to tell the name who has done her pregnancy and then victim told them that accused Sankar Malakar has made her pregnant doing physical relation with her about from 5/6 months back. This witness also stated that they asked the accused Sankar Malakar occurrence, at first he denied but while the victim caught his neck by her hand, the accused admitted his guilt that he made the victim pregnant. This witness also stated that after about 5 months the victim delivered a female child who is still alive. Similarly, P.W.6- Reba Chanda is also a reported witness who came to know from the informant that the victim was made pregnant by the accused.
- 27. The P.W.9 ,the Investigating Officer, in his evidence has narrated various stages of investigation conducted by him. During his cross-examination he has stated that in the sketch map , the Ext. 3, he indicated the PO as one house and said house consists of three rooms and he also mentioned two houses by indication "E" and "F. This P.W.9 further stated in his cross-examination that he had not mentioned the distance of the house of the accused from the place of occurrence and there are houses of other persons near the house of the accused. The P.W.9, the I.O during his cross-examination has stated that the victim did not state to him that on

the date of occurrence she was alone in her house and accused took her to a nearby hillock and raped her and for about subsequent 6/7 months he continued such activities. The P.W.9 further stated that the P.W.5 did not state to him that seeing larger abdomen of victim she took the victim to a doctor of Madura and there her pregnancy was detected by doctor and that she did not state to him that after returning from Madura when she took the victim to her house and insisted to tell the name of the person who caused her pregnancy, then the victim told that the accused made her pregnant by establishing physical relation for about 5/6 months.

- 28. The instant case is for offence u/s 376 IPC r/w sec.6 of the POCSO Act. Section 6 of the POCSO Act is the provision for punishment for aggravated penetrative sexual assault which is defined in Section 5 of the said Act. As per Section 29 of the Actwhere a person is prosecuted for committing or abetting or attempting to commit any offence under sections 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.
- 29. In the instant case , the victim has specifically stated in her evidence that the accused had established sexual relation with her resulting to her pregnancy and ultimately the victim has delivered a female child . The said averments were reported to other P.Ws who have supported and deposed before the Court. The doctor i.e. the P.W.8 has also opined the age of the victim was above 16 years and below 18 years and also opined in respect of existence of pregnancy of the victim . The defence by way of cross-examining the victim and other P.Ws could not able to rebut the incriminating portion of the evidence against the accused. The evidence of the

victim duly supported by the medical evidence as well as corroboration from the reported witnesses to establish a strong prosecution case against the accused and under such circumstances, I am of the opinion that section 29 of the Act will come into play and the burden lies upon the accused to prove the contrary . Although, the accused has suggested the victim as well as the informant that due to existence of previous loan with him i.e. accused , the instant case is falsely lodged by the P.W.2 against the accused but except mere putting suggestions the accused side has failed to prove such situation in order to disprove the averments and allegations put-forwarded by the victim as well as the informant duly supported by other P.Ws.

- 30. I have also gone through the decision of Hon'ble Sikkim High Court in **State of Sikkim Vs Girjaman Rai** @ **Kami** and **another reported in 2019 Cri.L.J 4247**, I am of the opinion that the fact of the said case is totally different from that of the instant case and in the instant case the victim has specifically and categorically implicated the accused in respect of making her pregnant by the accused as a result of which she gave birth to a female child . We have already discussed that the other P.Ws have also supported the victim stating inter alia, that the victim had reported them that the accused had made her pregnant.
- 31. Under the above context, I humbly opined that the above decision is not applicable in this case and the accused is not entitled any benefit out of the same.
- 32. I have also gone through the decision of **Culcutta High Court in Suparna Mukherjee Vs State of West Bengal**reported in **2017 Cri.L.J 3098**. In the said decision it was opined that the DNA test cannot be ordered as a matter of routine. When

Section 112 of the Evidence Act was enacted at that time there was not even any contemplation of the legislature to make a provision regarding DNA test which is virtually outcome of advancement of modern science . It was also opined that if DNA test is done it will be clear if the private Opposite Party is the biological father or not. At the same time it has to be kept in mind that a person cannot be compelled to undergo DNA test.

- 33. After going through the above decision, it is found that under the context of the said case the court had ordered DNA test and directed the Investigating Agency to approach the accused to undergo DNA test and if he refuses to undergo DNA test and in that case trial court shall be at liberty to draw adverse presumption.
- 34. In the instant case , it is a fact that DNA test is not done but it is not mandatory that in all cases of offences like section 376 IPC or section 6 of the POCSO Act the DNA test is required to be conducted. The case record reveals that even during the trial also the defence side has also not claimed DNA test to rebut the presumption of section 29 of the POCSO Act.
- 35. Upon consideration of the factual matrix of the instant case, I am of the opinion that the accused cannot get the benefit out of the aforesaid decisions and the available evidence on record cannot be thrown away only on the ground that DNA test has not been done.
- 36. The accused side has also taken a defence while cross-examining the victim suggesting her that prior to the occurrence while she visited her maternal uncle's house at Sildubi she had mixed up with some boys and thereafter her father and brother brought her back . The said suggestion was denied by the victim.

Mere putting such suggestion cannot substantiate that the victim got pregnant through other boys at Sildubi . The defence side has failed to produce any positive evidence or also failed to bring through cross-examination of the victim or other P.Ws that the victim got pregnant through other person other than the accused.

- 37. Under the above situation, I do not find any reason to disbelieve the evidence of the victim that she was made pregnant by the accused.
- 38. The ground taken by the defence side that the victim had concocted the story against the accused due to previous existence of loan with her father i.e. the P.W.2 cannot be believable only on the basis of mere suggestion of the accused, which the victim denied.
- 39. In view of the above discussion , I hold that the prosecution has able to prove the offence u/s 376 IPC r/w sec. 6 of the POCSO Act against the accused person beyond all reasonable doubt and as such the accused person is liable to be convicted and accordingly he is convicted for the offence u/s 376 IPC r/w sec. 6 of the POCSO Act.
- 40. Upon consideration of the nature and gravity of the offence, I am of the opinion that the accused person is not entitled to get the benefit of the Probation of Offenders Act and accordingly, I declined to provide him any benefit under the Probation of Offenders Act.
- 41. Heard the accused /convict namely, Sankar Malakar on the point of sentence u/s 376 IPC r/w sec.6 of the POCSO Act to which he has stated that he is presently 85 years of age, having his wife and children in his family and he has prayed for mercy. In respect

of compensation the accused/convict has stated that he has no income of his own presently.

- 42. Having considered the provisions of section 71 of the IPC and sec. 42 of the POCSO Act under the present context of the case, I am of the opinion that punishment u/s 6 of the POCSO Act will be appropriate in the instant case . Accordingly, I propose to punish the accused for offence u/s 6 of the POCSO Act instead of punishing him u/s 376 of the IPC.
- 43. Upon consideration of the nature and gravity of the offence and also upon consideration of the submission of the accused during sentence hearing , his mitigating circumstances like his age, the convict Sankar Malakar is sentenced to undergo imprisonment of R.I for a period of 10 (ten) years and to pay a fine of Rs.10,000/-(Rupees ten thousand) only i/d S.I for 2(two) months for the offence u/s 6 of the POCSO Act. The fine amount, if realized, be paid to the victim as compensation u/s 357 of the Cr.P.C. The period of detention already undergone by the accused/convict during trial and investigation be set off from the period of sentence as per section 428 of the Cr.P.C.
- 44. As the victim got pregnant and gave birth to a female child and suffered loss as a result of the crime and hence she requires rehabilitation and as such , I am of the opinion that she is entitled to compensation u/s 357(A) of the Cr.P.C and accordingly I recommand for adequate compensation as per section 357(A)(1) of the Cr.P.C.
- 45. The District Legal Service Authority, Cachar, Silchar shall decide the quantum of compensation as per section 357(A)(2) of the Cr.P.C and shall pay the same to the victim.

- 46. A free copy of this judgment shall be furnished to the convict
- Sankar Malakar u/s 363 of the Cr.P.C.
- 47. A copy of this judgment along with other relevant papers like copy of the FIR etc. be furnished to the Secretary, DLSA., Cachar, Silchar facilitating the DLSA for deciding compensation to the victim u/s 357(A) of the Cr.P.C.
- 48. A copy of this judgment be furnished to the District Magistrate, Cachar, Silchar u/s 365 of the Cr.P.C.

Given under my hand and seal of this court on this the 15th day of February/2020.

(Mr.D.Ullah),

Special Judge, Cachar, Silchar.

Dictated & corrected by me;

Special Judge, Cachar, Silchar.

Transcribed by, Sahid Ah.Laskar, Stenographer.

APPENDIX

A.Prosecution Witnesses:-

P.W.1-victim(name withheld)

P.W.2-Mishri Lal Nunia

P.W.3-Sita Nunia

P.W.4-Moyna Nunia

P.W.5-Taranati Nunia @ Tara Moni Nunia

P.W.6-Smti Reba Chanda

P.W.7-Smti Kolabati Nunia

P.W.8-Dr.Monalisa Dev

P.W.9-Ahmed Hussain Mazumder

B.Prosecution Exhibits:-

Ext.1-FIR

Ext.2-Medical reported

Ext.3Sketch map

Ext.4-statement u/s 164 of the Cr.P.C

Ext.5-Charge sheet

C.Defence witnesses :- NIL

D.Defence Exhibits:- NIL

E.Court witness:- NIL.

(Mr.D.Ullah), Special Judge, Cachar, Silchar.