# IN THE COURT OF SPECIAL JUDGE (FTC), SONITPUR AT TEZPUR

**SPL(POCSO) CASE NO.** :- <u>18 of 2019</u>

(Under Section 364/511/34 of IPC r/w Section 4/17 of Protection of Children

From Sexual Offence (POCSO) Act, Arising

out of GR Case No 438 of 2018)

Present :- R. Baruah

Special Judge(FTC),

Sonitpur, Tezpur.

Prosecutor :- State of Assam

-Vs-

Accused :- 1.Md Ekramul Ali @ Kaltu,

S/o Md Saiful Islam,

Resident of Khagorijan, Thelamara,

PS - Thelamara,

Dist- Sonitpur, Assam,

2.Md Mubarak Ali,

S/o Md Nurul Amin,

3. Msstt Mejufa Khatoon,

W/o Md Mubarak Ali,

Both are R/O of No.3 Rongagora,

PS - Dhekiajuli,

Dist- Sonitpur, Assam

Date of framing charge :- 20-08-2018.

Date of Recording Evidence :- 22-05-2018, 21-06-2018, 17-07-2018,

03-08-2018, 13-09-2018, 14-09-2018,

29-11-2018, 21-06-2019, 19-07-2019.

Date of examination of accused

u/s 313 of Cr. P.C :- 30-08-2019.

Date of Argument :- 24-09-2019.

Date of Judgment :- **03-10-2019**.

Counsel of the Prosecution :- A Baruah & J Baruah,

Learned Addl. Public Prosecutors,

Tezpur.

Counsel for Accused :- B Borthakur,

Learned Advocate.

## **JUDGMENT**

- 1. In this case accused Md Ekramul Ali @ Kaltu is put for trial for the allegation of charge under Section 363/511/34 of IPC, r/w Section 4 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'), accused Md Mubarak Ali is put for trial for the allegation of charge under Section 363/511/34 of IPC, r/w Section 17 of POCSO Act and accused Mejufa Khatoon @ Begum is put for trial for the allegation of charge under Section 17 of POCSO Act.
- 2. The prosecution case in brief is that on 02-02-2018 informant lodged FIR before the Dhekiajuli PS stating inter alia prior to two months of lodging of the FIR accused Mubarak asked her daughter "X" to bring his clothes from his house. Accordingly, her daughter went to the house of Mubarak and when she went inside the house for bringing the clothes and then, accused Mejufa locked the door from outside and thereafter, accused Ekramul (who was concealing in the room prior to her arrival) committed rape on her forcibly. Though, initially her daughter did not disclose the matter to her out of fear, but, on 01-02-2018 her daughter stated that she was raped by Ekramul before two months and accused Mejufa abetted to Ekramul in commission of the crime.
- 3. On receipt of the ejahar, O/C, Dhekiajuli Police Station registered the case vide Dhekiajuli PS 105/18 under Section 109/376 of IPC, r/w Section 4/6 of POCSO Act. Police, after completion of investigation, submitted charge sheet against the accused Md Mubarak Ali and Ekramul Ali under Section 4/6 of POCSO Act for trial.

- 4. On appearance of the accused and after hearing the learned Advocate for both the sides, charge under Section 363/511/34 of IPC, r/w Section 4 of POCSO Act framed against the accused Md Ekramul Ali, Section 363/511/34 of IPC, r/w Section 17 of POCSO Act against accused Md Mubarak Ali and Section 17 of POCSO Act against the accused Mejufa Khatoon @ Begum. The above charges are read over and explained to the accused respectively to which they pleaded not guilty and claimed to be tried. Initially, the charges were framed against the accused Md Ekramul Ali and Md Mubarak Ali only. But, during trial, charges are altered after recording evidence of informant, and accused Mejufa Khatoon is added as one of the accused in the present case under Section 319 of the CrPC.
- 5. To substantiate the case, prosecution has examined as many as 8(eight) nos. of witnesses including the victim namely 1. Md Phurkan Ali (PW1), 2. Md Majibur Rahman (PW2), 3. Pinky Sultana (PW3), 4.Msstt Nazima Begum (PW4), 5. Miss "X" (victim, 6. Dr Dwipen Mahanta (PW6), 7.Dr Amarjit Kour (PW7) & 8. Md Taibur Rahman (IO).
- 6. Accused were examined under section 313 Cr.P.C. The defence plea is of total denial and declined to adduce defence evidence.
- 7. I have carefully gone through the record of the case and heard the learned Counsel for both the sides.

The learned Addl. Public Prosecutors submits that Mubarak sent the victim to his house in conspiracy with the accused Ikramul. The accused Ikramul committed rape on the victim. Initially the victim did not informed mother. On 1/2/2018 the accused attempted to kidnap the victim. The victim gave her statement u/s I64 Cr.P.C statement. She was a student of class- IX (nine). Accused Mezufa conspired and allowed the victim to be with the accused Ikramul. Mezufa facilitated the act. Initially, victim reported the matter to her sister. One Abdul Matin rescued her. Victim stated in the court also the same fact. Document of age of victim is in the court. Certificate of school is in the record. Court come to the conclusion that the age of the victim is less and hence the same is registered under POCSO Act. The PW1 and PW2 are hearsay witness. Mezufa (accused) is aunty of PW2 and hence, he will naturally not speak against them. PW3 is vital for the prosecution. PW3 is the elder sister of the

victim. She said that the victim was raped by the accused Ikramul. She said that during celebration of Republic Day, victim fell down and thereafter she disclosed that she was raped by the accused Ikramul. Ikramul played the music in higher decibel and committed the rape. The PW3 corroborated the fact of attempt to kidnap the victim. PW4 is the informant. She came to know about the pregnancy of her daughter after the incident of kidnapping. She said that at the time of occurrence the age of the victim was about 14 years and studying in class VIII (eight). House of Mubarak is at a secluded place. The mother has corroborated the evidence of the other witnesses. Mezufa fled hence her conduct be noted. Her daughter suffered miscarriage. Out of fear she stopped going to the school. Doctor said that the victim is pregnant. In cross examination of the PW4 there are only suggestion. THE fact of flag hoisting in the school mentioned by the PW3 and PW5. The PW5 is the victim. Her statement is vital in the case because, she is the only person who suffered the most. She narrated all the fact. Mubarak asked her to bring the clothes. Then Ikramul held and felled me on the ground. Mezufa locked the door. Music played in high volume. The accused raped her. She shouted but not heard due to the high volume music in the house. She was threatened by the accused not to disclose the matter to anybody. On the republic day she fell down. Out of fear she did not disclosed to mother. She said that accused Ikramul and Mubarak and an unknown person tried to lift her on the motor cycle. After the incident of attempt of kidnap she informed full fact to her mother. Here also Mezufa fled away. She suffered miscarriage. No material contradiction brought in the cross examination of the PW5 by the defence.

If the statement of the victim is believable, the accused can be convicted without corroboration. Cross examination also supported the prosecution. PW6 is the doctor. The pregnancy is positive. **THIS IS POCSO CASE. THE VERSION OF THE DOCTOR IS NOT RELEVANT.** 

PW 8 is the IO. He has confirmed the facts narrated by the victim. Police went to the place of occurrence after making a G D Entry.

As per the Act the penetration is not necessary. The prosecution has proved the guilt of the accused beyond all reasonable doubt. The mental trauma be considered in sentencing the accused.

## **Defense Argument**

The incident occurred in three stage. First before 5/6 months. Then 26 January. And then the kidnapping. The FIR lodge on 2/2/2018. Please see the FIR. Informant lodge by mother of the victim. But the witness (sister of victim) said that incident took place about 3-4 months back. No reason for the delay in lodging the FIR. Why in the FIR there is no mention of threatening by the accused. No articles/clothes did not seized during the investigation. PW1- caught by police. No mention of villagers or public. The PW1 and PW2 said misdeed committed hence, this should not be taken as rape. PW3 is most important witness. Incident took place 5-6 months ago. But the mother said that incident took about 2 months ago. All the witnesses have mentioned different time of occurrence. Where is the tape recorder?

The learned Advocate for the accused raise question as to why the IO did not examined witness from the school? Why Abdul Matin not examined by the prosecution? These shows that the prosecution has concealed something. Hue and cry could not be heard because of tape recorder. Why the tape recorder not seized by the IO. No music system was in the house. PW3 did not state before the police and Ld. Magistrate what she stated before the court. Which one should be believed? The victim has developed the facts.

PW4 is hearsay witness. She said that many people gathered. Why the police only recorded the statement of the relatives? Who apprehended the accused during alleged attempt to kidnap? Why the clothes of the accused is not seized. The clothes are vital because, the clothes are the starting point of the incident. Why victim without permission entered into the house? She knew that there was somebody inside the house. If the accused has threatened, how she has been attending the school. Why FIR not filed? One witness said that people who gathered informed the police. At some time the witness said that Matin informed the matter. Hence, there are three FIR. Miscarriage shows intention. Why the police was not informed during investigation about the miscarriage. The PW4 said that the accused slapped the victim which is not mentioned by the victim herself. Victim is not attending the classes. The PW4 said that at the age of five victim started attending school. Then where is the certificate? She forgot the date of birth of her son. But said that 23/3/2004 is the date of birth of the victim. The school certificate collected after the investigation. She only remembers the date of birth of the victim. These show that the PW4 is knowingly trying to implicate the accused. PW4 did not applied for birth

certificate till date. How she remembers the age of the victim? The headmaster of the school not examined by the prosecution to prove the age of the victim. The PW4 said different names of the school where the victim attended. The name of the Headmaster said by the PW4 but not examined by the prosecution. Transfer Certificate is with the PW4 where the actual date of birth is mentioned. PW4 said it is a fact that earlier regarding elopement of a maid servant meeting held in her house. Why the victim concealed the fact of vomiting in the school. These shows consenting. PW5 is the victim. According to her there are two rooms in the house of the accused Mubarak. Why the father did not heard the cries of the victim? The accused never send the victim to bring clothes. Till six months the victim did not informed about the pregnancy. Why? Why the police not informed? Flag hoisting is done in presence of many person. Why she did not informed the matter to the teacher and other students of the school. Why the sister did not state the matter to their mother. These shows that she has some weakness towards the accused. Why the persons who found the victim during attempt to kidnap not examined by the police. Why Matin withheld by the prosecution? Had Matin was examined, the facts of the case would have been otherwise. Matin would have supported the victim, then why not examined. She said to everybody. Why then the villagers not examined by the prosecution. Cross Examination the PW5 said inter alia that I often used to meet Matin. Student used the said road. Matin apprehended the accused Ikramul and Mubarak. The PW5 said that she was coming from tution pushing the bicycle. Then where is the bicycle? Bicycle is needed to show that she really went for tuition. The PW5 said that House of Mubarak has one room. Then where the music system was played? The victim knowingly concealed the exact date of stoppage of monthly cycle. The victim was major. Why she did not visit the doctor after 26<sup>th</sup> January, this show intention of the victim. No documents of miscarriage is placed before the court. Lock of house of accused Mubarak not seized by the police, Why? Her intention is there hence, she entered into the house. She did not shouted when Mezufa locked the room. There are lots of contradictions. She did not state to police and court that she was pulled and fell on the ground. Undressing not stated to the police. Threatening and defamation by acused not stated to police or to the Magistrate. Vomiting not mentioned to the police and the magistrate. The victim could not conceal the truth.

The PW8 – Taibur Rahman. (Investigation officer). He was informed that in the house Mubarak the bad act was done. This shows that there is already four FIR. At 11.00PM the police was informed over phone that victim subjected to bad act. The word rape is not mentioned. The PW4 said FIR lodged on 2/2/2018. Before the lodging of FIR the investigation was conducted. Recorded the statements of the witnesses and arrested the accused. On the basis of the phone call the PW8 went to the house of Mubarak in presence of villagers. He asked the informant to come to the police station on the next day. He submitted the charge sheet against two accused. No material found against the accused Mejufa. Exact date of occurrence not enquired. Extract copy of GD Entry not submitted by the IO. Admitted by the IO that he has not submitted the extract copy of GD Entry. On the basis of the GD entry the statement of the witnesses is recorded. PW8 said that mother gave him the school certificate, which is issued on 8/3/2018 i.e after the incident. The cross examination of the PW8 will show the major contradiction in the statements of the witnesses. The victim has not divulge some major facts to the IO during investigation. There is no note in the case diary that earlier also they approach the police but they refused. No sketch map of place of occurrence i.e the river bank is shown by the IO.

Mubarak is no way involved. Because the door was not locked. The fact of locking the door not mentioned by the witnesses to the investigating officer.

The school certificate is not exhibited hence not proved. The headmaster not examined. As per the school certificate the victim is minor. Actual age can be determined by doctor and birth certificate. Certificate of first school not placed. The school certificate is manipulated one. The certificate is issued after the date of alleged occurrence. The victim is not minor. The victim is major. The certificate is withheld and headmaster is also withheld. Why? The seal in the certificate is different. The seal is prepared by the parties. Why DNA test not conducted? The police failed in their duties. If 18 years than it should be added more two years i.e 20 years.

No requisition number in the medical certificate. Doctor said all organs are developed. Hence the doctor said that the victim was major. Exhibit- 3 there is not reference of requisition and case number.

- 8. The point for decision in this case is that
  - (1) "Whether the accused Md Ekramul Ali and Md Mubarak Ali, on 01-02-2018 at village NO.2 Rongagora under Dhekiajuli PS, in further of common intention, attempted to kidnap Miss "X", aged about 14 years (minor girl) from her lawful guardianship?
  - (2) Whether the accused Md Ekaramul Ali, prior to about two months from 01-02-2018, at Rongagora under Dhekiajuli PS, committed penetrative sexual assault to Miss "X", aged about 14 years minor girl?
  - (3) Whether the accused Md Mubarak Ali and Mejufa Khatoon @ Begum, prior to two months from 01-02-2018, at Rongagora under Dhekiajuli PS, abetted to commit an offence under the provisions of POCSO Act, 2012 by accused Ekramul?

#### Reasons, Decisions and reason for decision:

- 9. Before appreciating the evidences adduced by the parties, I deem it fit to reflect the summaries of evidence of the witnesses.
- 10. **PW1** stated that he came to know form the villagers that Ekramul and Mubarak were caught by the police from the house of Mubarak. Other than that he knew nothing. Then the witness is declared hostile to the prosecution.

During cross by prosecution PW1 denied that he stated before police that "he knows that a boy named Ekramul committed misdeed to the daughter of Dulal about two months back in the house of Mubarak".

In his cross examination by defence PW1 said that he has not stated to police what the learned public prosecutor suggested to him in his examination in-chief. Accused is neither his friend nor his relative. He denied that he has only stated to the IO that on being came to know about the arrival of police, he went to the place of

occurrence and he does not knows about the incident took place two month ago.

11. **PW2** stated the incident took place about two months ago. At the time of incident, he went to his aunt's (pehi) house. In the house of his aunty, he heard that police arrived in the house of one of the accused. He does not know anything about the incident. Police recorded his statement. Then, the witness is declared hostile to the prosecution..

During cross by prosecution PW1 denied that he stated before police that "he heard a sound from the house of Dulal and also heard from somebody of his village that Ekramul committed misdeed to the daughter of Dulal".

In his cross by defence PW1 said that he does not know the name and address of the accused persons. Accused persons are neither his friend nor his relative. None of the person informed him about the incident. He did not state anything to police other than his name and address.

12. **PW3-** the elder sister of victim stated in her examination in-chief that she knows the accused Ikramul and Mubarak @ Halan. Victim "X" is her younger sister and Complainant is her mother The incident took place about 5/6 months ago. On 26<sup>th</sup> January, 2018 when her victim sister went to school, at the time of flag hoisting she fell down due to giddiness. Then some school mates along with teacher took "X" to theri house. While she enquired from the victim as to why she fell so giddiness, she reported that about 2/3 months ago Halan while fishing a tank asked her to go to his house to bring his dress. When her sister went to the house of Halan and entered into the house, other accused i.e Ikramul pushed her down and also entered into the room and wife of Halan, Mijufa locked the door from outside. Then Ikramul switched on the computer make noisy by hearing song and committed rape upon her. On the said 26<sup>th</sup> January at about 3.00 PM her sister went to her tuition and while returning from tuition on the way Ikramul met her and forcefully taken her to the house of Halan. Then one Motin informed her over phone that her sister "X" was taken forcefully by Ikramul to the house of Halan and they apprehended her sister and accused. Then they informed police and went to the house of Halan. Police came and arrested the accused. At present "X" resides at Silchar at the house of Abdul Hamid.

During cross examination by defence, PW3 said that police recorded her

statement. PW3 denied that she has not stated to police what she said stated in her examination in-chief. PW3 denied that she stated to police that prior to this incident, my victim sister "X" did not stated anything and that accused committed any misdeed to her.

13. **PW4** the mother of victim stated in her examination in chief that the victim is her daughter. She know the accused. The occurrence took palce prior to 2(two) months of filing the FIR. About 4-5 months back, she lodged the FIR. One scribe writer wrote the FIR as per the her version and version of her daughter. At the time of incident the age of her daughter was about 14 years. At the time of incident, her daughter passed Class— VIII and attended Class— IX. At that time, she was studying in Rangagora High School. Name of the accused are Md Ikramul Ali of Khagarijan and Md Mubarak Ali son of Noor Amin of No 3 Rongagora. She has also lodged FIR against one Mejufa Khatoon wife of Mubarak Ali.

On 01-02-2018, while her daughter 'X' returning from her tuition in their village, accused Mubarak and Ikramul along with another boy restrained her on the way, dragged her and tried to lift her on the motorcycle. At that time, her daughter made hue and cry. One Abdul Motin witnessed the incident and he came for her rescue. On hearing the commotion the nearby people gathered and they caught Ikramul and Mubarak. The people so gathered detained the accused Ikramul and Mubarak and brought to the courtyard of Mubarak along with her daughter. Motin informed them over phone and they rushed to the spot. She found her daughter crying. Her daughter told her and to other people at the gathering that about two months ago, one day, when she returned from school, she found Mubarak and her father were fishing in our pond. Mubarak enquired from her whether she had her lunch and when she told that she had taken her meal, then, Mubarak asked her to bring his clothes i.e. shirt and pant from his house. Accordingly, victim went to the house of Mubarak and she called the wife of Mubarak. On repeated call no one gave answer and hence, she went inside the house and when she turn after picking the clothes from inside the house, Ikramul came from behind, pushed her and felled her on the ground inside the house and forcibly raped her. At that time, wife of Mubarak, Mejufa Khatoon, locked the door of the house from outside and played the taprecorder with high volume. The victim shouted, but, she could not be heard due to high volume of music. After committing rape, Ikramul threatened victim that if she

discloses the said matter to others, he will kill her. Thereafter, she has been attending her school regularly. The house of Mubarak is located in a secluded place. What is the relation between Ikramul and Mubarak she do not know.

The people in the gathering informed the police and after arrival of police, they took away Ikramul and Mubarak. But, Mejufa fled away and police directed her to bring her daughter to the police station on the next day. Accordingly, on the next day, she brought my daughter to police station and police sent her for medical examination. After lodging the FIR, her elder daughter namely told her that on 26-01-2018, while victim was attending Flag Hoisting in the school, she fell down and vomited. The children of the school brought victim to the house. Then victim disclosed before her elder daughter that about two months back she was raped by Ikramul in the house of Mubarak. But, her elder daughter out of fear did not disclose the matter.

After examination, the doctor declared that victim is pregnant. Police sent her daughter to the Court for recording her statement by Magistrate. Later on, due to some reason, her daughter suffered miscarriage.

On the day of occurrence i.e. on 01-02-2018, accused Ikramul slapped victim very hard and as a result, presently victim is facing hearing problem. It can be understood that the accused Mubarak conspired with Ikramul and abetted for committing rape on her daughter.

Presently, the accused persons are threatening them over phone to withdraw the case or else they will kidnap her daughter. Ext.1 is my ejahar and Ext. 1(1) is her signature. Out of fear, her daughter is not attending her classes. They enrolled victim in School when she attained the age of five. At first victim attended No 3 Rongagora Madhyamik Vidyalaya and thereafter from Class-V she is attending Rongagora High School.

During cross by defence, the PW4 stated that Pinky is elder to victim. Pinky has already got married. She have three sons. She forgot date of birth of her eldest son, but, presently, he is aged about 23 years. After four years the other dauther born. Her age is presently 20 years. She forgot in which year the other daughter born. After six years of birth of other daughter, victim born i.e. on 23-03-2004. After victim, another son was born and thereafter in the year 2008 the third son born. They have not applied for the birth certificate of victim. At the time of first admission of victim, they had placed Immunization Card of victim, but, we have not

given Birth Certificate. She admitted victim first in the No.3 Rongagora Madhyamik Jatiya Vidyalara. In this year i.e. 2018, she admitted victim in Rongagora High School. She knows that Rongagora High School is a High School. But, there are classes of college level also. Up to class X classes, in Rongagora High School. The name of the headmaster of Rangagora High School is Nizam. They know him as Nizam. The transfer certificate of Jatiya Bidyalaya was not place before the police. In the Class-VIII transfer certificate her date of birth was same. All my children except the other duaghter, used to reside in the same house. About three years back the other daughter got married. On 01-02-2018, She came to know about the whole incident and on the next date, she lodged the FIR. On 01-02-2018 itself they along with the villagers narrated the incident to the police so disclosed by victim. Police recorded the same. One lady scribe in front of Dhekiajuli PS wrote the FIR.

She denied that she has not mentioned the fact so stated in the examination-in-chief and in the ejahar. Victim only disclosed the matter of commission of rape, to her elder sister. The elder daughter also did not disclose the matter of rape on victim to her prior to 01-02-2018. She has not enquired from the doctor regarding the period of pregnancy of victim. She did not come to know prior to lodging of FIR regarding stoppage of menstrual cycle of victim. This matters are not generally discussed. She denied that her daughter 'X' willingly maintained physical relationship with Ikramul and did not disclose the same to her. She denied that that she deposed falsely. On the day of commission of rape, Mubarak sent victim to his house for bringing his clothes. She do not know whether the clothes so asked by accused Mubarak were seized by police. She denied that she deposed falsely that on the day of incident i.e. commission of rape on 'X' sound/music played outside the house of Mubarak in loud volume. She denied that she deposed falsely that accused Ikramul slapped hard on 'X' and because of that she is facing hearing problem. She denied that she deposed falsely that Mubarak has conspired with Ikramul in committing rape on 'X'.

She denied that her hasband has demanded Rs.2,00,000/- from the accused persons for withdrawing the case. PW4 denied that prior to this incident, 'X' eloped with another boy and regarding that matter a meeting (Mel) held in their village. She denied that while Ikramul was inside the jail, they family members wanted that he be their son-in-law. She denied that Ikramul declared that he do not love 'X' and do not want to marry her. After two days of lodging the ejahar she

might had taken victim to Tumuki hospital as she complained of stomach pain. Doctor told that her daughter is pregnant and prescribe some medicines. PW4 denied that they have facilitated miscarriage on 'X'. The PW4 denied that that age of her daughter is more than 18 years as per other documents and report of doctor. On the day of lodging FIR, 'X' was brought to the Court for recording her statement. PW4 denied that 'X' became pregnant due to her own fault. PW4 denied that 'X' knew that Ikramul was alone in the house of Mubarak and she came to know about the same from Mubarak. PW4 denied that when 'X' went to bring the clothes of Mubarak there occurred no incident of rape on 'X'.

14. PW5 the victim stated in her examination in-chief said that her mother is the informant. She knows both the accused. About 8 months ago one day when she came to home from school she found her father towards the backyard fishing in the pond with the accused Mubarak. She after taking meal went to see the fishing. Then the accused Mubarak asked her to bring his clothes (pant and shirt) from his house. She went to his house, which is situated about 1km away. On reaching his house she called his wife Mejufa but nobody answered. Hence, she entered into the house and took the clothes (pant & shirt) of Mubarak and when she wanted to come out, accused Ikramul pushed her and felled her on the ground. She noticed that Mejufa Khatoon came and locked the door from outside and put on music box in high volume in another room. Accused Ikramul forcibly opened her clothes and raped her. She cried for help but nobody came for help. The house of Mubarak is at an isolated place, surrounded by paddy field. After committing rape Ikramul warned her that if she discloses the matter of rape to any other person, he will kill her and defame her in public. She cried and left for home. Out of fear she didn't disclosed the matter to anybody. On the occasion of Republic Day (26th January), during flag hoisting at school she fell down and vomit. Her friends brought her to her home. Again she vomit in the house. She disclosed the matter of rape on her by Ikramul and narrated the complete facts to her elder sister. Her sister asked her not to disclose the matter to mother else she will scold her and Ikramul will kill her. She also asked my sister not to disclose the matter to anybody. On 1st February 2018 when she was coming from tuition pushing her bicycle at around 3.00PM, near the bank of river Belsiri, Ikramul, Mubarak and one unknown person came near her riding a motor cycle and forcibly tried to lift her on the motor cycle. She raised alarm. Then a person named

Matin came forward and asked the matter. She informed Matin that the accused are trying to forcibly kidnap her. During that time people of village gathered and took them to the house of Mubarak. The other associate of Ikramul and Mubarak fled away. She gave the phone number of her brother-in -law to Matin and asked him to inform her family members. Her mother and sister came to the house of Mubarak. She told her mother and the people who gathered at that place that Ikramul has raped her two months ago. Villagers informed the police. Police came and took away Ikramul and Mubarak but Mejufa Khatoon fled away. Mejufa Khatoon is the wife of Mubarak. As it was already dark police asked them to come to the police station for lodging FIR. On the next day her mother lodged FIR. Her mother and sister took her to the police station. She narrated the incident to the police. Police took her to the doctor for medical examination and also brought her to the court for recording her statement by the magistrate. Doctor informed that she is pregnant. After about 1-2 week she suffered miscarriage, and treated by doctor. The magistrate recorded her statement and read over to her and thereafter she signed in the statement. She was escorted to the magistrate with a lady constable. Exhibit-2 is her statement and Exhibit-2(1), 2(2) and 2(3) are her signatures. She know the meaning of rape i.e penetration of penis into vagina forcibly.

PW5 stated during cross-examination that on 1<sup>st</sup> February she was returning from her tuition alone pushing the bicycle. The accused Ikramul, Mubarak and their associate met her near the Belsiri river road. PW5 denied that she often used to meet Ikramul while going to school and coming from school. Matin is a co-villager. He is not related to her family. His home is at Nagaon but resides in her village.

During school and tuition time other people used to go through the said road. On the day of incident i.e. on 1<sup>st</sup> February, she initially shouted then Matin came forward. Matin apprehended both Mubarak and Ikramul and called her family members over phone. Matin took her, Ikramul and Mubarak to the house of Mubarak. Villager called the police. Pinki informed the police over phone. The police post is about 5 to 6 kilometer from the house of Mubarak. Police enquired the matter from her sister, mother, brother and Matin. On the next day they went to the police station with mother, as on the previous day it became dark. After the incident, her sister took away the bicycle to her house from the spot. At the place of occurrence i.e. near the river when people gathered her mother and sister also came to the spot and thereafter her sister took away the bicycle to her house. Police has not seized

the bicycle. When they reached the house of Mubarak, they met Mejufa in the house. Her sister came later on after keeping the bicycle. The house of Mubarak has 1 (one) room. From the house of Mubarak police took away both Mubarak and Ikramul. Police has not seized her clothes, locks of house of Mubarak on 1st February. Police has not seized the music system of Mubarak on 1st February or thereafter. She does not remember the date on which Ikramul raped her, but he committed the same in the year 2017. About 1 (one) month prior to lodging the FIR, Ikramul raped her. She do not remember from which month she stopped having the monthly cycle. She didn't informed the matter of not having the monthly cycle to mother. She informed the fact to her sister on 26th January. As Ikramul threatened with life and also to defame her, she out of fear did not informed the matter to her family members and friends. After 26th January, after coming to know about the facts, her sister had not taken any steps against the accused Ikramul. She didn't informed the matter to the authority of the school after the incident of 26th January. Her sister asked her not to inform parents regarding the matter of rape, else they will beat her.

After falling down in the school on 26<sup>th</sup> January, she didn't go for check-up by doctor. After lodging the FIR police examined her by a doctor. The doctor said that she is pregnant. She has not enquired from the doctor the period of her pregnancy.

Doctor examined the report of ultra sound. Doctor has not explained to her the nature of her pregnancy. She informed her family members falsely prior to examination by doctor that she is having regular menstruation cycle. After 1-2 weeks of lodging the FIR, she undergone with severe abdominal pain and loss of blood. Then her mother took her to the Tezpur Medical College Hospital. The doctor of civil hospital didn't referred her for treatment to other hospital. She do not know where and at which place she suffered the miscarriage. She suspect that she undergone the miscarriage in the home. After the miscarriage her mother informed the matter to the police but, didn't informed the doctor who examined her at Civil Hospital. In what manner her mother informed the police regarding the miscarriage, she is not aware. She has not taken any type of medicine during her pregnancy. The documents relating to her treatment at Tezpur Medical is with them. The documents of her treatment at Medical College may be with mother.

PW5 denied that she became pregnant as a result of her illicit relation and with her consent she undergone miscarriage.

When the doctor examined her at Civil Hospital, she was alone with the

doctor. The documents of her treatment at civil hospital is with the police, and the documents of treatment at Tezpur Medical College is with her mother. PW5 denied that after the arrest of the accused her mother and father went to the jail to meet Ikramul personally.

The distance between her house (pond of their house) and the house of Mubarak is about ½ Kilometer. She has not shown the clothes of Mubarak to the police and police also did not inquired regarding the clothes of Mubarak from her. After reaching the hose of Mubarak on the day of incident, she called Mejufa as "baidew..baidew" but nobody responded. The door of the house of Mubarak was open. When Ikramul felled her on the ground, Mejufa came out of other room and locked the room from outside and played music in high volume. Later on, Mejufa unlocked the door. The door was made of wood, with two parts. Police first brought her to the court and then to the hospital. Thereafter they again went to the police station and thereafter returned to home. Mejufa locked the door with help of chain. Police has not seized the chain and lock from the house of Mubarak.

PW5 denied that she went into the house of Mubarak on her own and nobody sent her to that place. On the day of lodging the FIR, police enquired about the incident from her. On the date of lodging the FIR, police brought her to the court for recording her statement. PW5 denied that she did not stated before the police and the magistrate that when she attempted to come out with the clothes, Ikramul pushed her and felled her on the ground.

PW5 denied that she did not state before the police and the Magistrate that Ikramul forcibly undressed her, that she did not stated before the police and the Magistrate that she cried for help but nobody came forward, that she did not stated before police and Magistrate that the house of Mubarak is situated at an isolated place and surrounded by paddy fields, that she didn't stated before the police and Magistrate that after committing the rape the accused Ikramul threatened her with life and also about defaming her, that she didn't stated to police and the Magistrate that on the occasion of Republic Day she felled down and vomit, that she did not stated to police and the Magistrate that in the house again she vomit and then she disclosed the fact of rape to her elder sister, that she didn't stated to the police and Magistrate that she disclosed the matter to her sister and she asked her not to disclose the same to her parents else they will beat her and she also asked her sister not to disclose the matter, that she didn't state to police and Magistrate that she told

Matin that the accused persons are trying to kidnap her and at that time the villagers gathered and took them to the house of Mubarak, that she didn't state to Police and Magistrate that she gave phone number of her brother —in —law and asked him to inform her family members, that she didn't stated to police and magistrate that after arrival of her mother and sister she disclosed before the villagers that two months ago Ikramul raped her, that she didn't state to police and magistrate that after arrival of police Mejufa fled away, that she didn't state to the police and Magistrate that police asked them to come to the police station on the next morning as it was already dark.

PW5 denied that she has deposed falsely that Ikramul raped her and Mejufa locked the door, that Mubarak sent her to bring his clothes, and Mejufa helped Ikramul in any way. PW5 denied that she never become pregnant due to Ikramul.

PW5 denied that Mejufa never locked the door of her house, nor played the music system in high volume, that no such incident occurred on the occasion of Republic Day in her school, that the accused Ikramul and Mubarak never tried to kidnap her while she was returning from tuition, that Matin never took her, Ikramul and Mubarak to the house of Mubarak.

PW5 denied that she willingly suppressed the matter from everybody and when she undergone physical change and enquired about the matter she was compelled to narrate a story. PW5 denied that the miscarriage is done by her and family members after discussion.

PW5 denied that accused persons never threatened her. She do not know Hekim Ali, Lokman Ali. PW5 denied that about one month from today she entered into a wedlock with Lokman Ali of Khagorijan.

15. PW6 said that on 03-02-2018 Urine sample of "X", age 14 years was tested for HCG and the result was positive. Ext.3 is his report and Ext.3 (1) is his signature.

During cross examination by defence PW6 said that when HCG is positive, one of the cause of pregnancy.

#### 16. PW7 the medical officer stated that –

"On 02-02-18, I was posted as Sr. M & HO at Kanaklata Civil Hospital, Tezpur. On that day, at about 1.50 PM in reference to Dhekiajuli Police Station PS case No 105/18 under Section 109/376 of the IPC, I have examined one patient (victim) namely "X" on being escorted and identified by WHG Kunjalata Kakoti. I have examined the victim on 02-02-18 at 1.50 PM in the emergency and labour room of the complex of the Kanaklata Civil Hospital in presence of GNM Kobita Bora vide hospital Reg No 889/E/18 and found the following:

Consent for examination was taken from her mother prior to examination.

**Menstrual History:** Regular. LMP- three months back.

## 0/E:

Height - 153cm,

weight - 35.5 kgs,

Teeth - 7/7-7/7.

Identification mark: A longitudinal scar just above the medial border of left eyebrow.

At the time of examination she was well dressed, neat and tidy. Her secondary sexual characters are well developed. Built average. Gait normal. Nipple and areola blacken. No mark of injury was seen on her body and private parts. Hymen absent.

## **Investigation and reports**:

- 1. Vaginal smear for spermatozoa No sperm seen. Done at KCH Laboratory, Lab No 14/18 dated 02-02-2018.
- 2. X-ray of left wrist joint, elbow and iliac crest for determination of age —Age of the person under investigation appears to be just over 18 years.
- USC of Pelvis: Gravid uterus with an active 12.3 weeks feotus.
   (X-ray and USG were done at AXCAL. Patient ID AXC-18 dated 03-02-2018, Radiologist – Dr PK Barman)/
- 4. Urine for HCG Positive (done at AXCAL. Patient IC 34237 dated 03-02-2018, Pathologist Dr D Mahanta)

#### Opinion:

- 1. No sign and symptoms of recent sexual intercourse.
- 2. No mark of violence was seen on her body and private parts.
- 3. Her age appears to be just over 18 years.
- 4. At the time of examination she was pregnant.

#### Enclosure:

- 1. Hospital advice slip,
- 2. Vaginal Smear report,
- 3. Urine HCG report,
- 4. X-ray plate & report,
- 5. USG film and repot.

Ext.4 is the medical report and Ext.4(1), is my signatures."

In her Cross examination PW7 said that -

"In my opinion part I have not mentioned the duration of pregnancy though I written in my report".

17. PW8 the investigating officer said that on 01-02-2018 he was posted at Dhekiajuli PS as SI of police. On that day, at about 11.30 PM, one Nazima Begum over phone informed the OC, Dhekiajuli PS that her daughter has been subjected to bad act in the house of Mubarak Ali. As per direction of OC, Dhekiajuli PS, he along with staff left for Rongagora. After reaching the house of Mubarak they noticed that inside the house of Mubarak many villagers has cordon Mubarak and Ikramul @ Kaltu. He also found the victim "X" and her mother. He interrogated the accused and some witnesses on the spot. The villagers and victim informed that the wife of Mubarak was also involved in the incident, but, at that time she fled away from the spot. He brought Ikramul @ Kaltu and Mubarak to police station. As no woman police accompanied him, he asked the complainant to bring the victim to the police station on the next day. Accordingly, the complainant brought the victim to the police station on the next morning and also submitted the FIR. The OC, endorsed the FIR to him for investigation. He took steps for recording the statement of victim by the hon'ble Magistrate and also issued requisition for examination of victim by doctor. During investigation, he collected the medical report of the victim. The doctor amongst others reported that the victim is pregnant. He prepared the sketch of the place of occurrence. After completion of investigation, he submitted the charge sheet against the accused Ikramul and Mubarak. As he did not found any material against accused Mejufa, charge sheet was not filed against her.

Ext.5 is the sketch map of the place of occurrence and Ext.5(1) is his signature. Ext.6 is the charge sheet and Ext. 6(1) is his signature.

He has recorded the statement of PW1 Furkan Ali. The said PW1 stated before him that "two months back Ikramul Ali did misdeed upon the daughter of informant in the house of Mubarak." Ext.7 is the relevant portion of statement of Furkan Ali.

He has also recorded the statement of PW2 Majibur Rahman. The said PW2 stated before him that "hearing commotion, I went to the house of Mubarka and came to know from the gathering that Ikramul committed misdeed to the daughter of Dulal". Ext.8 is the relevant portion of statement of Mujibur Rahman.

During cross examination by defence the IO stated that the date of occurrence is two months prior to lodging of FIR. In case diary he did not made any note regarding the date, day and year of occurrence. He recorded the statement of victim on 02.02.2018. On that day he forwarded the victim to the court for recording her statement under section 164 of Cr.P.C. The victim was examined by doctor on 02.02.2018. On 01.02.2018 at 11:00 PM information regarding the offence of received from Nazima Begum over phone. It is informed over phone (as per GD entry) that people has confined a person in the house of Mubarak for committing a bad act. The information is entered as GDE No. 19 dtd. 01.02.2018. He did not submitted the extract copy of the GDE No. dtd. 19 01.02.2018 with the charge sheet. He has not brought with him the original register maintained in the P.S. in connection with the GD Entry. After the GD Entry No. he recorded the statement of "X", and other witnesses. He prepared the sketch map of place of occurrence. The FIR received by the O/C of the P.S. on 02.02.2018 at 11:35 AM. He recorded the statements of all the witnesses on 01.02.2018 at night. It is not mentioned in the FIR why the victim reframed from informing the informant regarding the incident which occurred two months ago. He did not seize any cloths of victim, any musical instruments from the house of Mubarak, cloths of Mubarak, lock and keys of house of Mubarak. He found the doors of the house of Mubarak open. During investigation he did not found any material against the accused Mezufa Begum and hence she was not shown as accused. When he reached the spot he found villagers inside the house. He found villagers have detained the accused Ikramul in the house of Mubarak with Mubarak. No women constable accompanied him to the place of occurrence. He has collected the medical report of victim on 23.02.2018. As per medical report the victim is aged more than 18 years. During investigation he has collect documents from the victim regarding her age (school certificate). The mother of victim gave him the school certificate of the victim during investigation. The school certificate of the victim issued on 08.03.2018.

PW8 denied that PW1 Phulkan Ali did not state before him that two months back Ikramul committed misdeed to the victim in the house of Mubarak, that PW2 Mazibur Rahma did not state before him that hearing hulla he came and heard from somebody else from the village that Ikramul did misdeed to the daughter of Dulal.

PW8 said that PW3 did not state before him as follows:

"The incident took place about 5/6 months ago. On 26<sup>th</sup> January, 2018 when my victim sister went to school at School at the time of flag Hoisting she fell down on giddiness. Then some school mates along with teacher took 'X' to our house. While I enquired why she fell so giddiness, she reported me that about 2/3 months ago Halan while in fishing a tank asked 'X' to go to his house to bring his dress. When my sister went to the house of Halan, entered in to the house, other accused Ikramul pushed her down and he (Ikramul) also entered into the room and wife of Halan, Mijufa locked the door from outside. Then Ikramul switched on the computer make noisy by hearing song and committed rape upon her. On the said 26<sup>th</sup> January at about 3 p.m. my sister went to her tuition as per my advice and on returned from tuition on the way Ikramul met her and forcefully taken her to the house of Halan. Police came and arrested the accused. At present 'X' resides at Silchar at the house of Abdul Hamid."

The PW5 victim "X" did not state before him that when she attempted to come out with the clothes, Ikramul pushed her and felled her on the ground, that Ikramul forcibly undressed her, that she cried for help but nobody came forward, that the house of Mubarak is situated at an isolated place and surrounded by paddy fields, that after committing the rape the accused Ikramul threatened her with life and also about defaming her, that on the occasion of Republic Day she felled down and vomit, that in the house again she vomit and then she disclosed the fact of rape to her elder sister, that she disclosed the matter to her sister and she asked her not to disclose the same to her parents else they will beat her, and she also asked her sister not to disclose the matter, that the accused persons are trying to kidnap her and at that time the villagers gathered and took them to the house of Mubarak, that

she gave phone number of her brother –in –law and asked him to inform her family members, that after arrival of her mother and sister she disclosed before the villagers that two months ago Ikramul raped her, that after arrival of police Mejufa fled away.

The witness (PW3) did not gave any information to the police station over phone on the day of occurrence. There is no note in the case diary or mentioned by the witness that in connection with the incident they approached the police for filing FIR but police refused to accept the same. He has not seized motor cycle of accused or bicycle of victim in connection with the case. As per case diary the place of occurrence is No. 3 Rongagora, house of Mubarak Ali. No other place of occurrence shown in the case diary. The place of occurrence is only the house of accused Mubarak Ali.

PW8 said further that during investigation I have not ascertained whether "X" was married or unmarried. He has not visited the school to ascertain the correctness of the particulars mentioned in the certificate regarding the victim. The certificate was issued by Head Master, Rongagora High School but the pad is of Rongagora Higher Secondary School. He did not visit the Rongagora Higher Secondary School or Rongagora High School nor did he meet the head master of the school during investigation. He did not record the statements of village gaonburha of the village. He did not took steps to conduct DNA Test of the accused in connection with pregnancy of the victim.

18. To prove the charge under Section 4 of POCSO Act, prosecution must prove that –

**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;
- b) h e 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 or

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

19. Moreover, section 29 of the POCSO Act speaks as follows;

"Where 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."

- 20. The following facts in the present case is to be admitted;
  - a. The victim after examined by doctor found to be pregnant of 12 weeks 3 days.
  - b. The FIR lodged on 02.02.2018. On .02.02.2019 the victim was examined and found to be pregnant of 12 weeks 3 days.
  - c. The FIR is lodged by the mother of the victim after coming to know that the two male accused attempted to kidnap the victim.
  - d. Till lodging of the FIR the informant was not aware that her daughter was pregnant, else she would have mentioned in the FIR.
- 21. The defence argued that there is no cause for delay in lodging the FIR.

It is accepted by the Hon'ble Highre Courts that there is no straight jacket formula to consider the matter of delay in criminal trial. Each has its own area of explanation. The Hon'ble Highre Courts also mentioned that in case of offence against women, there may be explanation for delay in filing the information.

In the present case it is to be noticed that the mother of the victim was not aware about the pregnancy of her daughter. The PW4 said in her cross examination said that such things are not discussed in the house. Both the PW3 and PW5 are the daughters of the PW4. Both the PW3 and PW5 explained that if their mother comes to know about the incident, she (PW5) will get a beating. Hence it can be observed that certain values are maintained in the house of the informant. When

the matter between the PW5 and the accused persons made known to a larger section, the police administration is also called. Sufficient explanation can be deduced from the evidence on record.

22. Now, whether the PW5 became pregnant due to rape committed by accused Ikramul @ Ekramul Ali ?

The PW7 said that at the time of examination the victim was pregnant. Hence, the fact of PW5 becoming pregnant cannot be denied.

The PW5 said that in the house of the Mubarak the accused Ikramul raped her. The PW5 identified the accused Ikramul. There is no reason on the part of the PW5 to falsely implicate the accused Ikramul. The defence never denied the presence of the accused Ikramul in the house of Mubarak. The PW5 mentioned that in the year 2017. The version of the PW5 is confirmed by the medical report. To be pregnant of 12 weeks on 2/2/2018, one is to be subjected to physical relation in the year 2017. The PW5 cannot be disbelieved regarding the incident of rape and age. The PW5 has narrated how during the Republic Day celebration she fell giddiness and vomit and how her friend accompanied her to the house. The defence has not attempted to deny the incident which took place in the school of the PW5 during Republic Day celebration. The defence has been given ample scope by the PW5 by her statement to cross check the allegation by the defence. The defence has not denied the fact that both the accused Ikramul and Mubarak were apprehended by the police in the house of Mubarak and then there were villagers. It is not the case of the defence that the accused Mubarak and Ikramul not apprehended by police in the house of Mubarak at night.

The victim has mentioned specifically where she studies. The victim exhibited the statement u/s 164 Cr.P.C.( Exhibit- 2) There she mentioned that she is student of class IX. Thus, giving ample scope to the defence to counter the same. Though the defence argued that miscarriage is done without informing the investigating agency, this line of argument is quite irrelevant. It is to be remembered that a girl of class – IX became pregnant, accordingly to her without her consent. There may be many reasons for the miscarriage, including physical capacity. Further, to decide the complicity of accused, subsequent consequence of pregnancy is irrelevant.

Thus, it is proved that the victim (PW5) became pregnant due to rape committed by the accused Ekramul Ali @ Ikramul Ali.

23. It is to be decided whether the accused Mubarak and his wife Mejufa abetted and facilitated the accused Ikramul to commit rape on the victim. The victim is the material witness in this regard. It wholly depend on the statement given by the victim. The victim said that after she returned from school she found the accused Mubarak fishing with her father. Then the accused Mubarak asked her to bring his clothes. It is to be noted that the father of the victim not examined by prosecution.

In her statement under section 164 of CR.P.C the victim said that when she reached the house of Mubarak, both the accused Ikramul and Mejufa were present. Then Mejufa left both the victim and Ikramul inside the room and locked the room from outside and put on the tape recorded with high volumn. She shouted but due to the sound of music, her shout could not be heard. It is seen that after the incident the victim did not informed anybody about the incident. It is only on the occasion of Republic Day celebration, when she fell down and brought to the home, she informed her sister i.e the PW3. So the PW3 is the first person to hear what happen to the PW5 in the house of Mubarak about 2 months back. Regarding the information, the statement of the PW3 is also material. The PW3 said that the accused Ikramul played the computer in high volumn. After one week the PW5 siad before the Magistrate that the accused Mejufa put on the music. From the evidence on record it is not noticed that the accused Mubarak and Mejufa actually could come to know that the victim was raped. It seems that the victim and her mother had presumed that the accused Mubarak and Mejufa are the brain behind the condition of the victim. It is mentioned by the victim before the Magistrate that Mubarak is her paternal uncle. It is also to be considered that why one will sent the nephew to be a victim of rape. Nobody questioned the accused Mubarak and Mejufa till 01.02.2018 as to why they sent the PW5 to be a victim of rape. Before the Magistrate the victim said that after the door is locked from outside and played the tape recorder, Ikramul pushed and felled her. In the court the PW5 said during trial that there was nobody on the house of Mubarak and when she was about to return with the clothes of Mubarak, Ikramul came from behind and felled her. Then she noticed Mejufa locking the door of the room. The PW3 said that Ikramul himself put on the computer and the PW5 said that the music was played outside the room. Considering the information given to the PW3 and the statement given before the Learned Magistrate by the victim and the reading of situation by the minor girl for a length of time, it can

be concluded that the victim and family members has made a presumption that Mubarak and Mejufa are also having a hand in the molestation of the victim. The complicity of accused Mubarak and Mejufa for charge u/s 17 of POCSO is not proved beyond all reasonable doubt.

24. The learned Advocate for the defense has argued that the prosecution has failed to exhibit the G D Entry which was made after receiving the information about the incident. It is argued that the FIR is an afterthought only to implicate the accused.

The PW8 (IO) said that at night he received the information from the mother of the victim. On the next day she lodged the FIR, where the facts are describe broadly. The fact of rape on the victim only emerged after the lodging of the FIR. Further, it is not the case of the defense that accused Mubarak and Ikramul were not brought to the police station at night. The FIR based on which the case is registered cannot be discarded.

In Mahendra Nath Das @ Gobinda Das –vs- State Of Assam (reported in 1998 (1) GLT 249) the Hon'ble Gauhati High Court observed as follows;

"( 12 ) The second point relates to admissibility of Ext. 4 as an FIR within the meaning of section 154 Cr. P. C. It is an admitted position that even before this F. I. R. Ext. 4 came to be lodged, a G.D. Entry No. 739, Ext -11 had not only been entered and recorded, but in fact investigation had also commenced as would be revealed from a mere reading of the G.D. Entry, which is also reproduced below as a ready reference: "now Sri Mahendra Nath Das alias Sri gobinda Das, son of Sri Tarun Chandra Das, a resident of village Bohori, P. S. Tarabari, district Barpeta appear at the outpost with a severed human head and carrying a mit dao in his left hand and reports that he has cut harakanta Das, a resident of Santipur, with the mit dao he is carrying on M. G. Road near chambers Road and has taken the head along to the outpost, leaving the trunk. The man is arrested U/s 41 of the Cr. P. C. and I am taking necessary steps. By a seizure list I have seized the dao the man was carrying and I am getting ready for an inquest on the severed head which is identified by the assailant. The O. C. Panbazar p. S. and Panbazar Div. Dy. S. P. immediately informed of this over phone. I personally take up the charge of investigation."

(13) Even if the submission made by the learned Amicus Curiae that Ext-4 is hit by section 162 Cr. P. C., in face of Ext. 11, the G.D. Entry, and it is held to be

inadmissible as F. I. R. with the meaning of Section 154 Cr. P. C. the moot question that arises for consideration is what is its ultimate effect on the prosecution case as a whole ? Does it throw overboard the prosecution case? The G.D. Entry was in point of time the first report which came to be lodged and going through the same it does disclose commission of cognizable offence. In fact it should have been treated as an FIR within the meaning of Section 154 Cr. P. C. Learned Public prosecutor is right in her submission that even if the Ext-4 is excluded from consideration an f. I. R. within the meaning of Section 154 Cr. P. C, it does not have any material effect on the veracity of the prosecution case."

25. The Leaned Advocate for the accused has argued that as per the medical report the victim is more than 18 years and hence the case cannot be tried under the POCSO Act.

The prosecution has exhibited the medical report as Ext. 4. In the report the doctor has opined "her age appeared to be just 18 years." It is to be noted that the PW4 and the victim said that victim is student of class IX. PW4 specifically said that at the time of incident the age of her daughter was 14 years. The defence during cross examination of I.O. (PW8) brought out that during investigation he collected documents from the victim regarding her age. The PW8 during cross examination said that mother of victim gave him the school certificate of the victim during investigation which was issued on 08.03.2018. It shows that defence has the information regarding the existence of school certificate of the victim. No step taken by the defence to deny that victim was not a student of class IX during the time of occurrence. Moreover, as the doctor said that age of victim is just above 18 years, as the incident took place prior to more than 2 months of examination, it can be held that at the time of occurrence the age of victim was less than 18 years. Considering the submission of the mother and the victim herself regarding the age, their information is accepted.

The judgments cited by the Ld. Advocate for the defence i.e. reported in 2015 (3) GLT 612, 2016 (2) GLT 727, 2015 (3) GLT 89 and 2015 (2) GLT 291 are not applicable in connection with the present case. Because the present case is under POCSO Act.

26. The victim stated before the Ld. Magistrate u/s 164 Cr.P.C. that on

- 27. In view of the above discussions and reasons it is held that prosecution has proved that accused Ekramul @ Ikramul Ali @ Kaltu has committed the offence u/s 4 of POCSO Act.
- 28. The charges u/s 363/511/34 of IPC against the accused Ekramul Ali @ Ikramul and Mubarak Ali not proved beyond reasonable doubt. Hence, they are acquitted from the charges.

The charges u/s 17 of POCSO Act not proved against the accused Mubarak Ali and Mejufa Khatoon @ Begum beyond all reasonable doubt. Hence, they are acquitted from the charges.

The bail bonds for the accused Mubarak Ali and Mejufa Khatoon @ Begum shall remain valid for six months from today.

- 29. The accused Ekramul @ Ikramul Ali is convicted u/s 4 of POCSO Act. The accused cannot be considered for release u/s 360 of Cr.P.C. and Sec. 3 & 4 of Probation of Offenders Act.
- 30. Heard the accused Ekramul Ali @ Ikramul Ali @ Kaltu on sentence. The plea of accused is recorded. Considering the nature of offence committed by accused, he is sentenced to undergo rigorous imprisonment for a period of 7 (seven) years and pay a fine of Rs. 10,000/- (Rupees Ten Thousand). In default of payment of fine accused shall undergo further rigorous imprisonment for two months.
- 31. The period of detention undergone by the accused in jail hazot shall be set off from the period of imprisonment.
- 32. As per provision of Section 357-A of the CrPC, victim's

compensation is permissible in law. Earlier, DSLA, Sonitpur, Tezpur disbursed interim compensation to the victim. The victim is entitled to compensation.

- 33. Learned Secretary, District Legal Service Authority, Sonitpur, Tezpur hereby requested to give compensation to the victim as per existing norms.
- 34. Free copy of judgment be furnished to the convict.
- 35. Copies of judgment be sent to the learned District Magistrate, Sonitpur, Tezpur as per provision of Section 365 of CrPC and to the Learned Secretary, District Legal Service Authority, Sonitpur, Tezpur.

Given under my Hand and Seal of this Court on this the **3<sup>rd</sup>** day of **October, 2019**.

(R Baruah)
Special Judge(FTC)
Sonitpur, Tezpur.

Dictated and corrected by me.

(R Baruah)
Special Judge(FTC),
Sonitpur, Tezpur

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

## ANNEXURE

## Witnesses examined by the prosecution:

- 1.PW1 Md Phurkan Ali,
- 2.PW2 Md Majibur Rahman,
- 3.PW3 Pinky Sultana,
- 4.PW4 Msstt Nazima Begum,
- 5.PW5 Miss "X" (victim),
- 6.PW6 Dr Dwipen Mahanta,
- 7.PW7 Dr Amarjit Kour &
- 8.PW8 Md Taibur Rahman.

## Witnesses examined by the Defence:

1.Nil.

# Documents exhibited by the prosecution:

- 1. Ext. 1 : Ejahar,
- 2. Ext. 2: Statement of victim recorded under Section 164 of CrPC.
- 3. Ext. 3: Urine for HCG Report,
- 4. Ext. 4: Medical report,
- 5. Ext. 5: Sketch map,
- 6. Ext. 6: Charge sheet,
- 7. Ext. 7: Relevant portion of statement of Phurkan Ali &
- 8. Ext. 8: Relevant portion of statement of Mujibur Rahman,

(R Baruah)
Special Judge(FTC),
Sonitpur,Tezpur.