CAUSE TITLE POCSO Case No. 32/16

Informant: Sri Ganesh Mahato,

S/o- Late Lala Mahato, R/o- Dinjay Paniera Gaon,

PS- Chabua,

District- Dibrugarh.

Accused: Sri Prafulla Gogoi,

S/o- Late Gandheswar Gogoi,

R/o- Dinjay Gaon, PS- Chabua,

District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

Mrs. Shahnaz Akhtar, learned Addl. Public Prosecutor.

For the Defence: Mr. S Todi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Smti. SP Khaund, (MA Economics, LLB),

Sessions Judge, Dibrugarh.

> POCSO Case No. 32/16 G.R. Case No. 695/16

> > State of Assam

-Vs-

Sri Prafulla Gogoi

Charges: Under Sections 9/6/18 of POCSO Act.

Date of evidence on : 02-07-16, 02-08-16, 08-09-16, 08-05-17, 12-12-17,

13-03-18 and 07-08-18.

Date of argument : 01-11-18. Date of Judgment : 28-11-18.

JUDGMENT

- 1) A brief account of this case is that on 14-03-16, at about 12 noon, the 10 year old victim-say-'X' was playing along with her friends in Naren Das's house and at that time, Sri Prafulla Gogoi (hereinafter the accused) induced the victim to go with him and attempted to commit rape on her by gagging her by her mouth. At that time, Naren Das's son Rajen Das and Babatu Mahato witnessed the incident and raised alarm and the labourers working in the tea garden, rushed to the spot. An ejahar regarding this incident was lodged by the victim's father Sri Ganesh Mahato (hereinafter the informant) which was registered as Chabua PS Case No. 32/16 under Sections 376/511 of the Indian Penal Code (IPC for short), read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short) and SI Bidyut Dutta was endorsed with the investigation.
- 2) The officer in charge (OC in short) embarked upon the investigation. He forwarded the victim to the Magistrate for recording her statement. He also

forwarded the victim for medical examination. He went to the place of occurrence and recorded the statements of the witnesses. On finding prima facie materials, he submitted Charge Sheet against accused person under Sections 376/511 IPC, read with Section 4 of POCSO Act.

- 3) On appearance of accused, copies were furnished and a formal charge under section 9 and section 6/18 of POCSO Act was framed and read over explained to the accused. The accused abjured his guilt and claimed innocence.
- 4) To substantiate the stance, the prosecution adduced the evidence of 10 witnesses including the medical officer (MO for short) and the IO, and also exhibited several documents. The defence cross examined the witnesses to refute the charges.
- 5) On the inculpatory circumstances arising against him, the accused stated in his answers under Section 313(1)(b) of the Code of Criminal Procedure (CrPC for short) that it was a rainy date and when he went to check the manure, the victim slipped and fell down, because of the rains and when he tried to protect her, the victim screamed and Rajen came and he was then falsely entangled with this case.

Submissions

- 6) The learned Public Prosecutor Smt. Runumi Devi and learned Addl. Public Prosecutor Mrs. Sahnaz Akhtar laid stress in their arguments that PW-1 is a reliable witness, because she is the victim in this case. Sri Rejan Rabidas is an employee in the garden belonging to the accused person, so he turned hostile at the stage of evidence. Apart from the evidence of hostile witnesses, the evidence of other witnesses proves beyond reasonable doubt that the accused is complicit.
- 7) The learned defence counsel Sri Sameer Todi emphasised through his

argument that this case is fraught with contradictions. Even the evidence of the victim's parents depicts contradiction. It is clear that PW-1 did not inform her parents. It is submitted that it was raining and the road was slippery and the victim fell down and when the accused tried to help the victim, at that moment, his good intentions where misunderstood. It is also contended that PW-3 stated that he lodged the FIR, because he was told to lodge the FIR. The hostile witness is not a permanent employee, but temporary labourer and he is not inimical. The MO's evidence depicts that the victim was not shocked at the time of her examination. In this manner, the accused gets a benefit of doubt. His age has to be taken into consideration, because he is 65 years of age and so on and so forth.

Points for determination:

- 8) On the backdrop of the rival contentions urged at the bar, the following points are apposite for proper adjudication of this case:
 - i. Whether on 14-03-16, the accused committed aggravated sexual assault on the victim 'X' who is under 12 years of age?
 - ii. Whether at the same time and place, the accused attempted to commit aggravated penetrative sexual assault on the victim 'X' who is under 12 years of age?

Decision thereon and the reasons for the decision:

- 9) To decide the case in its proper perspective, it is necessary to delve into the evidence.
- 10) The victim was ten years of age at the time when she deposed in the Court and so oath was not administered. Several questions were asked to her and her answers depicted that she could give rational answers. She testified as

PW-1 and she identified the accused person. She stated that on the day of the incident, she went out searching for her goat near Rajen's house. She asked Rajen about her goat and he told her that there was no goat around the place. Then she proceeded towards her house. At that time, the accused called her and asked her to sit on his lap and he started teaching A, B, C, D and Ka, Kha, Ga, Gha orally. At that time, a person came to supply manure to the accused person. The person asked the accused to go home and then the accused stated that he will go home only if he could take her (PW-1) along with him.

11) The evidence of PW-1 further proceeds that the accused offered to show how manure is sprinkled in the garden. He asked her to accompany him. Then in the hope of getting her goat, she accompanied the accused, while the other person who came to supply manure to the accused, went away. She accompanied the accused to the backside of Rajen's house where tea bushes stood. When she reached the spot, the accused person laid her down on the ground and pulled down her panty. She screamed and then the accused gagged her by her mouth. Then Rajen heard her screaming and he came to the spot and rescued her. Before Rajen's arrival, the accused also squeezed her breasts. Rajen came and pulled the accused person away from her and he raised alarm. Meanwhile, other people arrive and assaulted the accused. Her elder sister also came and then the villagers took the accused through the village and she accompanied them along with her sister Junaki. Thereafter, she was brought to the police station along with her parents. That night, she stayed in her maternal aunt's house. Next day, she was brought to Dibrugarh by the police and the doctor examined her. She was also forwarded to the Court and the Magistrate recorded her statement. She did not narrate

- the incident to her parents, as her parents have already heard about the incident. Ext. 1 is her statement before the Magistrate.
- 12) PW-1 was cross-examined in extenso. She testified in her cross-examination that she did not know the date of the incident. Her house is situated about 100 metres away from Rajen's house. The accused person has a t ea garden adjacent to Rajen's house. At the time of the incident, two persons were sprinkling manure in the accused person's tea garden and Rajen was one of them. She denied about her omission to state before the IO that she asked Rajen about her goat and he informed her that there was no goat around. She denied about her omission to state before the IO as well as the Magistrate that the person who came to spread manure, asked the accused to go home and then the accused insisted that he would go home only if he could take her (PW-1) with him and she also denied her omission to state before the police that the accused laid her on the ground and removed her panty. This contradictions have been affirmed by the IO. SI Bidyut Dutta is the IO and he testified in his cross-examination as PW-10 that the victim 'X' did not state under Section 161 CrPC that she asked Rajen about her goat and he informed her that there was no goat around and a person who came to give manure, asked the accused to go home and the accused insisted to return home if he could take her (PW-1) with him and that she omitted to state before him that the accused laid her and removed her panty. It is germane to mention at this juncture that her aforementioned statement remained uncontradicted to her statement under Section 164 CrPC. Ext. 1(1) and Ext. 1920 included her statement under Section 164 CrPC.
- 13) It has to be borne in mind that the learned defence counsel did not crossexamine the victim about her omission to state before the IO that the

accused person squeezed her breasts. This implies that the accused person indeed squeezed her breasts. This testimony of PW-1 remained uncontradicted and uncontroverted. The fact that the accused gagged her when she screamed remained uncontradicted and uncontroverted. It has to be borne in mind that the victim is a young girl who was found to be below 12 years of age by the MO. Immediately after the incident, she was in a state of stupor and shock. Such a young girl may not know how to describe an incident in details. The legal technicality is not known to her. Despite the fact that the victim is a young girl, her evidence that the accused gagged her and squeezed her breasts, remained uncontradicted. There is no contradiction regarding her testimony that the accused laid her on the ground and removed her panty with her statement under Section 164 CrPC. It is held that the victim's testimony that the accused squeezed her breasts and gagged her, remained uncontradicted. No reason is fathomable why the victim under twelve years of age, will implicate an old person if he is not complicit.

14) The evidence of PW-2 lends corroboration to the evidence of PW-1. Smti. Asha Mahato testified as PW-2 that on the day of the occurrence, she was working in the garden and her daughter was alone at home. Her nephew Sanjay Mahato informed her in the garden that something had happened in her house and she should go home. Then she went to her house and she noticed that the accused was apprehended by the villagers. At that time, the police arrived. The police took the accused, her husband and her daughter along with her to the police station. The police brought her daughter to the medical college. Later on, she came to know from her daughter 'X' that on the day of the incident, she was searching for her goat in Rajen's house and then she met the accused person. Thereafter, the accused started teaching

- her A, B, C, D and Ka, Kha, Ga, Gha and she was taken to the nearby tea garden. The accused tried to remove her panty and squeezed on different parts of her body. At that time, Rajen heard her screaming and went there. Her daughter was about ten years.
- 15) She admitted in her cross-examination of her omission to state before the police that her daughter informed her that the accused tutored her and taught her A, B, C, D and took her to the nearby garden and the accused tried to open her panty and pressed on the different parts of her body.
- 16) This contradiction elicited by the defence counsel can be safely discarded, because the victim testified that she did not inform her parents about the incident, because her parents already heard about the incident.
- 17) Sri Ganesh Mahato testified as PW-3 that the incident took place about three months ago. At that time, he was working in the garden. His son Mahesh Mahato went and informed him that the accused took his daughter towards the garden and tried to misbehave with her. Immediately, he went to the place of occurrence and saw the accused person. The villagers caught the accused near Naren Das's house. Several people were assembled there. He noticed that his daughter 'X' was weeping and he also noticed his elder daughter Junaki Mahato. On being asked, his daughter 'X' told that she was taken by the accused person towards the garden and he tried to misbehave with her. One of the accused persons present there, informed the police and the police arrived at the spot. The police took the accused to the police station and he went to the police station along with his daughter and his wife. The Gaonburah wrote the FIR and he affixed his signature. Ext. 2 is the FIR and Ext. 2(1) is his signature.
- 18) In his cross-examination, he testified that the distance between his house

and Rajen's house is 10 metres. The accused person's tea garden is adjacent to Rajen's residence.

19) This part of his cross-examination lends corroboration to the testimonies of PW-1, because she stated in her cross-examination that the accused person's tea garden is adjacent to Rajen's house. He could not remember whether he had stated under Section 161 CrPC that while he was working in the tea garden, his son Mahesh Mahato went and informed him that the accused taught his daughter A, B, C, D and took her to the garden and tried to misbehave with her. He admitted about his omission to state before the police that he saw his daughter 'X' was crying by sitting in Rajen's house and he also saw his other daughter Junaki holding her. He admitted that he did not state before the police that on being asked, his daughter informed him that the accused taught her A, B, C, D and Ka, Kha, Ga, Gha and took her to the garden and tried to commit some bad acts with her. The accused was assaulted by 50/100 villagers in his presence. As Rajen and other people informed him about the incident, he believed the incident to be true. PW-1 has already stated in her evidence-in-chief that her parents already heard about the incident from the villagers. This has been corroborated by the evidence of PW-3 who testified that Rajen and other people informed him about the incident and he believed the incident to be true. The contradiction regarding his daughter's cross-examination and his cross-examination can be discarded. There is a contradiction that his daughter informed him about the incident, because PW-1 denied of informing her parents about the incident. The corroborative evidence clearly depicts that the accused taught the victim A, B, C, D and then he took her to the nearby garden and misbehaved with her.

- 20) The evidence of PW-4 depicts the latter part of the incident. Sri Mahesh Mahato @ Babatu is PW-4 and he testified that the victim is his younger sister. On the day of the incident, she went to Rajen's house. After a while, he heard a commotion in the nearby tea garden of the accused. Then he saw his sister in the tea garden along with several other villagers. Later on, the villagers caught the accused and handed him over to the police. The evidence clearly depicts that he learnt about the incident when he noticed the gathering. His evidence clearly depicts that his sister was found in the accused person's tea garden. His evidence lends corroboration to the evidence of PW-1, because her evidence clearly depicts that the accused took her to the tea garden at the time when his labourers were sprinkling manure. In sync with the evidence of PW-1, PW-4 testified that he saw his sister 'X' near the tea garden along with several villagers. Later on, the villagers caught the accused and handed him over to the police.
- 21) Sri Rajen Rabidas is a hostile witness, but his evidence supports and corroborates the evidence of PW-5, despite the fact that he tried to shield the accused person. He testified that the incident took place about 5/6 months ago. On the day of the incident, at about 10:30 pm, he was spraying pesticide in the tea garden of the accused.
- 22) This part of the evidence of PW-5 finds corroboration from the evidence of PW-1, because PW-1 also testified in her cross-examination that Rajen was one of the two persons sprinkling manure in the tea garden of the accused person. The evidence of PW-5 further proceeds that at that time, he heard cries, and went towards the place and noticed that 'X' was lying on the road and at that time, the accused was also lying on the road. Then he brought the victim from the place and the nearby villagers caught the accused person.

- At that time, the police came to the place of occurrence and the villagers handed him over to the police. Later on, Sri Ganesh Manato lodged an ejahar with the police.
- 23) The evidence of PW-1 that Rajen came to her rescue, is corroborated by the evidence of PW-5. Although Rajen tried to conceal the remaining part of the incident, yet it is held that PW-1 finds corroboration from the evidence of PW-5. Despite the fact that PW-5 changed his version and turned hostile, the part of his statement under Section 161 CrPC is not required to be discussed to elicit corroboration. PW-5 fortified that part of the evidence of PW-1 that she was found lying on the road. There is not an iota of doubt that PW-1 was found lying in the garden. The hostile witness testified that she was found lying on the road, while PW-1 testified that she was laid down by the accused person who attempted to commit rape on her and pressed her breasts.
- 24) This witness was cross-examined on the prayer by the prosecution and he denied his statement under Section 161 CrPC that he stated before the IO that- "Today in the noon, while I was spraying pesticides in the garden of Prafulla Gogoi, he was sitting in our house. At that time, 'X' came to our house and asked for my younger sister. When I told that my younger sister is not in our house, then 'X' went out from our house. But Prafulla Gogoi took on his lap and asked her several questions regarding her study. Then I went inside my room to watch TV. After a while, when he came out, I did not find my sister 'X' in our house. Suddenly, I heard a sound of crying from the side of tea garden. At that time, hearing the sound, I went out with Babatu who arrived in my house at that time, towards the garden of Prafulla Gogoi and saw that Prafulla Gogoi gagged the mouth of 'X'. Then I gave a slap on the accused Prafulla Gogoi and several other people gathered there who

assaulted the accused."

- 25) This part of the evidence of PW-5 under Section 161 CrPC has been affirmed by the IO who testified as PW-10. Even if this part of the evidence of PW-5 is not take into consideration, yet the evidence-in-chief which corroborates the evidence of PW-1, affirms that the incident took place about 5/6 months ago. It was 10:30 am and PW-5 was sprinkling pesticide in the tea garden. At that time, PW-1 screamed and he went towards the place and saw PW-1 lying on the road. The remaining part has been described by PW-1 with clarity which could not be rejected at all.
- 26) At this juncture, I would like to rely on the decision of Hon'ble the Supreme

 Court of India in *Radha Mohan Singh @ Lal Sahib vs. State of UP*[(2006) 2 SCC 450] wherein it has been held that-

".....It is well settled that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent his version is found to be dependable on a careful scrutiny thereof..."

- 27) In the instant case also, it is clear that the evidence of PW-5 lends corroboration to the evidence of PW-1 even if his statement under Section 161 CrPC is not considered. I have considered his evidence-in-chief in the Court without relying at all on his statement under Section 161 CrPC, which was projected by the prosecution after he was declared as hostile and which was also affirmed by the IO.
- 28) The evidence of PW-6 Sri Jogeswar Mahato depicts that the incident took

place about 4/5 months ago. On that day, he was returning from Chabua and on his way back home, he noticed several villagers of his locality in the police station. Later, he learnt that the accused committed misdeed with the victim 'X'.

- 29) At this juncture, it is pertinent to mention that on 02-07-16, PWs-2 and 3 testified that the incident occurred about three months ago. On 02-08-16, PW-5 testified that the incident occurred about 5/6 months ago and on 08-09-16, PW-6 testified that the incident took place about 4/5 months ago. The witnesses have given an approximate date and time. It is clear from the FIR that the incident occurred on 14-03-16. Thus, the date and time given by the witnesses is similar to the date and time of the incident. The witnesses are tea garden labourers and they are naïve witnesses and so they could give the idea of the date and time of the incident. However, there is no dispute regarding date and time of the incident.
- 30) The learned defence counsel emphasized through his argument that the contradictions extend a benefit of doubt to the accused person.
- 31) I have already held in my foregoing discussions that the contradictions are minor contradictions which can safely be brushed aside. In this regard, I would like to rely on the decision of Hon'ble the Supreme Court in *A. Shankar vs. State of Karnataka* [(2011 AIAR (Crl) 516], wherein it has been held that:-

"However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form

its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal variations in statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions."

- 32) In the instant case, the core of the case could not be corroded on extensive cross-examination of the witnesses. On the contrary, the cross-examination of the witnesses culled out corroboration in the evidence and this has been discussed in my foregoing discussions.
- 33) In sync with the evidence of PWs-1, 2, 3, 4, 5 and 6, Smti. Ratna Lohar testified as PW-7 that the accused person and the victim are known to her. On the day of the incident, she was working in the tea garden along with the victim's mother (PW-2). At that time, Sanjay Mahatu went there and informed that something had happened to 'X' and she should return immediately to her house. Then she along with PW-2 went to her house and noticed that the police had already arid in Asha Mahatu's house. The police took Asha Mahatu and her daughter to the police station and she accompanied them. Her

- testimony supports the evidence of PWs-2 and 3 that Mahesh went to their place of work and informed them about the incident.
- 34) Thus, it is clear from the evidence of all the witnesses from PW-1 upto PW-2 clearly depicts that the incident was regarding the victim. When there was a commotion, the police arrived and the villagers also assembled. The evidence of PWs-1, 2 and 5 clearly depicts that the incident took place within the tea garden. It can be deduced from the evidence of all the witnesses that the incident occurred in the accused person's tea garden where Rajan Rabidas along with one person was sprinkling pesticide. When Rajen Rabidas heard the commotion, he went and saw the victim lying on the ground or may be on the path.
- 35) At this juncture, I would like to divert the attention towards the Sketch-Map. 'A' is shown as the place of occurrence which appears to be a path. B, C and D are all tea garden encapsulating the place of occurrence. 'E' is the house of Rajen Rabidas which is adjacent to the tea garden. Thus, the prosecution could prove beyond reasonable doubt that the accused committed the incident on the path which is surrounded by tea garden. The prosecution also could prove beyond reasonable doubt that Rajen's house is adjacent to a tea garden.
- 36) The MO Dr. Nibedita Shyam testified as PW-8 that on 15-03-16, she examined the victim 'X' in connection with this case and found the following:
 - On genital examination: Genital organs were healthy. Vulva is healthy. Hymen is intact. Vagina and cervix is healthy. Evidence of injury not detected at the time of examination.
 - Vaginal smears were taken on glass slides from in and around the vagina;

ii. Vaginal swab in normal saline taken which has been properly leveled, sealed and packed and handed to the escorting police.

Result of laboratory investigation: Vaginal smear does not show any spermatozoa.

Radiological finding:

- X-ray elbow joint (AP view)- Epiphyseal union are not completed;
- ii. X-ray wrist joint (AP view)- Epiphyseal union are not completed;
- iii. X-ray of shoulder joint (AP view)- Epiphyseal union is not completed;
- iv. X-ray of pelvis (AP view) Epiphiseal union are not completed.
- 37) The MO could not detect any injuries on the victim's body. There is no allegation of penetrative sexual assault and so no injuries could be detected.
- 38) The history recorded by the MO, the statement of the victim under Section 161 CrPC and the testimony of the victim is corroborative.
- 39) The testimony of Sri Sanjay Mahato as PW-9 has also corroborates the fact that the incident took place on 14-03-16. At about 1:00 pm, he returned from work and he saw an assembly of people and then he heard from the people that the accused indulged in eve teasing. The people tied up the accused and meanwhile, the police arrived and apprehended him.
- 40) The IO is a formal witness and he conducted investigation.
- 41) SI Bidyut Dutta testified as PW-10 that on 14-03-16, he was on duty as Attached Officer at Chabua Police Station. On that day, the OC received an

FIR from Sri Ganesh Mahato and he registered Chabua PS Case No. 32/16 under Sections 376/511 IPC, read with Section 4 of POCSO Act and endorsed him with the investigation. Ext. 2 is the FIR and Ext. 2(2) is the signature of Promod Phukan (OC). The complainant and the victim were in the police station along with the accused who was brought by the villagers. As the accused was assaulted by the villagers, he forwarded him for medical examination, after he was handed over by the public.

- 42) This evidence of PW-10 lends corroboration to the evidence of PWs-1, 2, 3, 4, 5, 6, 7 and 9. It is clear from the evidence of the above mentioned witnesses that the accused was taken to the police station by the villagers and the victim and the complainant also went to the police station along with them. Thereafter, the IO recorded the statement of the victim in the police station.
- 43) PW-10's evidence further proceeds that the victim was provided preliminary treatment at Chabua Model Hospital and on the next day, she was forwarded to Assam Medical College & Hospital at Dibrugarh. On the same day, she was also forwarded to the Magistrate who recorded her statement. As it was late at night at the time of lodgment of the ejahar, he went to the place of occurrence on the next day and prepared the Sketch-Map. On finding prima facie materials, he submitted Charge-Sheet against the accused person.
- 44) His cross-examination has been discussed in my foregoing discussions.
- 45) In view of my foregoing discussions, it is held that the prosecution could prove beyond reasonable doubt that the accused lured the victim towards the tea garden to show her how manure is sprinkled and thereafter, he committed sexual assault on the victim. The evidence that he attempted to commit rape on the victim or to commit penetrative sexual assault, is lacking.
- 46) It is also pertinent to mention at this juncture that the victim might have not

stated before the IO that the accused laid her on the ground and removed her panty, but the victim stated before the Magistrate that the accused laid her on the ground and removed her panty and when she raised alarm, the accused gagged her by her mouth and Rajen came to her rescue when she screamed. Ext. 1 is her statement and Ext. 1(1) upto Ext. 1(3) are her signatures.

- 47) In view of my foregoing discussions, it is thereby held that the statement of the victim remained uncontradicted and uncorroborated, bearing minor contradictions which are negligible.
- 48) I would also like to rely on the decision of Hon'ble Supreme Court of India in

 Dattu Ramrao Sakhare vs. State of Maharashtra [(1997) 5 SCC 341],

 wherein it has been observed that:-

"In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the question and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the Court always finds

it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well settled principle we may proceed to consider the evidence of Sarubai (P.W.2)."

- 49) In the instant case, the witness appears to be an intelligent witness. It can be deciphered from her statement under Section 164 CrPC and her statement in the Court that she is an intelligent witness and could give rational answers. Moreover, Section 29 of POCSO Act emphasizes presumption to certain offences and Section 30 emphasizes presumption of culpable mental state and the defence of the accused should be that he had no such mental state. The accused took such a defence.
- 50) On the inculpatory circumstances arising against him, the accused stated in his answers under Section 313(1)(b) CrPC that it was a rainy day and when he went to check the manure, the victim slipped and fell down, because of the rains and when he tried to protect her, the victim shouted and Rajen came and he was then falsely entangled with this case.
- 51) This plea was also reflected through the cross-examination of the hostile witness (PW-5) who testified in his cross-examination that it was a rainy day and the kutchha road was slippery and both the accused and the victim were lying on the ground.
- 52) However, the accused could not convince that he had no culpable mental state. The evidence of all the witnesses clearly fastens the guilt on the accused. There is corroborative evidence against the accused. No overt act could be attributed to the accused regarding his attempt to commit penetrative sexual assault, despite the fact that he pulled down the victim's panty. However, he is held guilty of offence under Section 10 of POCSO Act.

He is held guilty of aggravated sexual assault, because the victim was below 12 years of age. It is held that the prosecution could prove beyond reasonable doubt that the accused committed aggravated penetrative sexual assault on the victim by pulling down her panty and laying her on the road and squeezing her breasts. There is also evidence that he gagged her by her mouth when she scrammed. The direct oral substantive evidence as well as the circumstances establishes this case against the accused.

- 53) I have heard the accused on the point of sentence. He has prayed for leniency. The accused is an old man, aged about 65 years.
- 54) I have considered the age and antecedent of the accused. Considering the age of the victim and considering the circumstances of this case, it is held that this is a diabolic act and the accused deserves punishment. Such act affects the psyche of the victim.

SENTENCE:

- 55) The accused Sri Prafulla Gogoi is convicted under Section 10 of the POCSO Act and is sentenced to undergo rigorous imprisonment (RI in short) for 5 (five) years and to pay a fine of Rs. 1,000/- (Rupees One Thousand) only and in default of payment of fine, to undergo RI for 1 (one) month. The period of detention of the accused during investigation and trial is set off with his custodial sentence.
- 56) Furnish free copies of judgment to the accused and to the District Magistrate.
- 57) The victim, who has undergone such an ordeal, deserves compensation. This case is thereby recommended for compensation to the District Legal Services Authority, Dibrugarh to decide the quantum of compensation to be awarded to the victim under the Assam Victim Compensation Scheme, 2012.

Judgment is signed, sealed and delivered in the open Court on the 28th day of November, 2018.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX POCSO Case No. 32/16

List of witnesses for prosecution:

- 1. PW-1 The victim 'X';
- 2. PW-2 Smti. Asha Mahato;
- 3. PW-3 Sri Ganesh Mahato;
- 4. PW-4 Sri Mahesh Mahato @ Babatu;
- 5. PW-5 Sri Rajen Rabidas;
- 6. PW-6 Sri Jogeswar Mahato;
- 7. PW-7 Smti. Ratni Lohar;
- 8. PW-8 Dr. Nibedita Shyam;
- 9. PW-9 Sri Sanjay Mahato; and
- 10. PW-10 SI Bidyut Dutta.

List of exhibits for prosecution:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Sketch-Map; and
- 5. Ext. 5 Charge-Sheet.

List of material exhibits for prosecution: Nil.

List of witnesses for defence: Nil.

List of exhibits for defence: Nil.

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.