#### IN THE COURT OF SPECIAL JUDGE :::: SIVASAGAR

Present :- Sri S. K. Poddar,

Sessions Judge cum Special Judge,

Sivasagar.

# Spl. (P) Case No. 18 of 2016 U/S 6 of POCSO Act, 2012. (Arising out of Sonari P.S. Case No. 89/2016)

State of Assam

-Vs-

Sri Ramu Tanti ...... Accused

APPEARANCE:

For the prosecution : Mr. Srimanta Gogoi, Special P.P.

For the accused : Mr. D. M. Neog, Advocate

(Legal Aid Counsel)

Date of framing Charge : 16.09.2016 & 05.04.2017

Dates of Evidence : 29.04.2017, 29.05.2017, 23.06.2017,

21.07.2017, 08.08.2017, 19.09.2017,

07.12.2017

 Date of S/D
 :
 19.01.2018

 Date of Argument
 :
 22.03.2018

 Date of Judgment
 :
 05.04.2018

#### JUDGMENT

- 1. Prosecution case, in brief, is that on 15.05.2016, informant Sri Samaru Ghatowar lodged an FIR with O/C, Sonari Police Station alleging, inter alia, that on that day, at about 4 PM after taking the victim 'M' (name withheld), aged about five years inside the Bagan, accused Ramu Tanti has committed rape on her and flee away from the place of occurrence. Subsequently accused was apprehended by locals.
- 2. On receipt of the FIR, Sonari P.S. Case No. 89/2016, U/S 4 of POCSO Act, 2012 was registered and investigated. During investigation,

accused was arrested and forwarded to judicial custody. The victim was medically examined and statement of the victim was recorded in the court U/S 164 Cr.P.C. On completion of investigation, I.O. has submitted Charge-Sheet U/S 4 of POCSO Act, 2012 against the accused person.

- 3. Upon submission of Charge-Sheet, vide order dated 16.09.2016, the then presiding officer has framed charge U/S 4 of POCSO Act 2012. However upon detecting that while framing charge the accused was not represented by any counsel of his own or by any legal aid counsel, services of Advocate Mr. Dhiraj Dutta was provided to the accused as legal aid counsel to defend the accused. Upon rehearing the matter on the point of framing charge, considering the age of the victim, vide order dated 05.04.2017 charge was reframed U/S 6 of POCSO Act 2012 to which the accused again pleaded not guilty and claimed to stand trial.
- 4. It may be noted here that at the last stage of trial, on appointment of Advocate Dhiraj Dutta as Public Prosecutor, Sivasagar; Mr. D.M. Neog, a senior member of the Sivasagar Bar Association was appointed as Legal Aid Counsel to defend the accused.
- 5. Upon completion of the prosecution evidence, accused was examined U/S 313 Cr.P.C. Defence case is of total denial and false implication. Accused declined to adduce evidence when he was called upon to enter into defence
- 6. I have heard argument of learned Special P.P. Mr. Srimanta Gogoi and Mr. D,M. Neog, learned Legal Aid Counsel and gone through the evidence on record. I have considered the submission of both the sides.

## POINTS FOR DETERMINATION ARE -

- 7. (I) What was the age of the victim 'M' on the date of incident?
  - (II) Whether on 15.05.2017, victim 'M' was subjected to aggravated penetrative sexual assault?

(III) If so, whether accused Ramu Tanti has committed the alleged crime?

#### **DECISION AND REASONS THEREOF**

- 8. Before going further, let me narrate the evidence of the witnesses for better understanding of fact in issue.
- 9. PW-1 Smt. Sarumai Ghatowar, mother of the victim in her evidence deposed that accused Ramu Tanti is known to her since after the incident. On the date of incident, the victim was aged about 5 years and was a student of KA class (Nursury class). On 15.05.2016, while she was returning from bagan work, on way the boys playing, told her that victim M has come to her work place in search of her and one boy wearing white shirt has taken her away. On this, she have started searching her by calling her name and inside garden area, saw that Victim was lying and accused was sitting near to her. On seeing her, accused Ramu Tanti, whom she recognised in court, flee away there from. She saw Victim in naked condition. Her pant was removed. She saw bleeding injury on her private parts (urinary track). She also saw nail scratch marks injury on her neck. Those marks were of gagging her neck while she attempted to cry. There from by keeping her daughter on lap came to the residence of Bagan owner Mahendra Gogoi at Longpatia. He informed the matter to reporters and student union leader. There from, she was sent to Rajapukhuri Hospital Rajapukhuri Hospital in 108 ambulance service and victim was treated there. Her daughter was remained admitted in the hospital for four days. Though her daughter was referred to AMCH, she cannot go there for lack of money. Her husband has lodged the FIR on the same day of incident. On asking, victim told her that accused has committed misdeed with her by opening her pant and that accused has gagged her neck while she tried to cry. Police also seized the wearing apparels of the victim. Police also seized one Lollypop chocolate which was shown to her daughter for inducing her to take to him. She had also given statement in Sonari Court. Exbt. 1 is her statement in

court. In her cross-examination by defence, PW 1 deposed that the garden in which she work is a small tea garden. There were 12 workers in the said garden. The place of occurrence is near the place of collecting the tea leaves. The Bagan was spread over 8 bighas of land. The owner has another garden over 7 bighas of land near to the garden where she work. Victim is her third daughter. Her eldest daughter Nomi Ghatowar was married to accused Ramu. About 2 years back she eloped with the accused and got married without taking her consent. After about one year of conjugal life with the accused, after having some quarrel with the accused her daughter (Nomi) returned home. Thereafter her daughter (Nomi) got married with another person of her choice. They did not have any cordial relation with the accused. She denied the defence suggestions that while giving statement to police or in court, she has not stated that "On way the boys playing, told her that the victim come to her work place in search of her and one boy wearing white shirt has taken her away and that she took the victim to the residence of Bagan owner at Longpatia, that student union boys met her and that they stayed for four days in hospital." Victim has no acquaintance with the accused due to non-maintaining relation with him. She denied that due to sour relation with the accused, she has falsely implicated the accused. She also denied that accused did not commit any misdeed with the victim. She denied that as her eldest daughter was driven out by accused, she has falsely implicated him with this incident. She also denied that she tutored the victim to implicate the accused. She also denied that she has not seen the accused near the place of occurrence.

10. PW-2 the victim while claiming her as student of Class I, failed to give answers of question put by learned PP except saying that Ramu has committed act of rape on her by showing her private parts. Her mother took her to medical. Blood come on her TIKA (vagina). She also went to police. During cross-examination by defence she however said that her mother has said that Ramu has committed rape with her.

- 11. PW-3 Sri Samaru Ghatowar father of the victim in his evidence deposed that on the date of incident, victim was aged about 5 years and was a student of KA class (Nursury class). On knowing that condition of victim was bad and she was taken to Hospital by 108 ambulance, immediately he came to Rajapukhury Hospital, Sonari and saw her under treatment. She stayed there for four days. Victim told him that Ramu has committed rape on her and gagged her neck. Doctor has given treatment on her private parts. On this incident, he lodged the FIR at Sonari PS. Police took him and his niece Bhanti to place of occurrence. Accused was apprehended by local people and handed over to police. Police also seized one Lollypop chocolate from the accused. In his cross-examination he admitted that accused is a married man having children. Before police, he has not stated that victim told him that accused Ramu has committed rape on her and gagged her neck and that accused was absconding and that local people apprehended Ramu. PW 3 admitted that about 2 years back her eldest daughter Nami Ghatowar eloped with the accused Ramu and got married without taking their consent. About three month prior to the incident of this case, Ramu sent back his daughter Nami after making quarrel with her. On this, they did not have any cordial relation with the accused. He denied that on the matter of Nami, he threatened Ramu to take revenge. He also denied that they have falsely implicated him for the torture on his daughter (Nami). Near the storage place of plucked tea leaves, several persons have their houses.
- 12. PW-4 Sri Deepak Ghatowar uncle of the victim in his evidence deposed that on the date of incident, victim was aged about 5½ years. On 15.05.2016, while he returned from work, he heard from Sarumai Ghatowar, mother of the victim that accused Ramu has committed rape with the victim. On knowing this, he along with other villagers went to search accused Ramu but seeing them, Ramu fled away. Victim was taken to Rajapukhuri Hospital for

treatment. In his cross-examination, he admitted that before police, he has not stated that on seeing them Ramu fled away.

- 13. PW-5 Sri Choto Ghatowar, uncle of the victim in his evidence deposed that on the date of incident, victim was aged about 5 years. On 15.05.2016, while he returned from work, he has seen that Sarumai Ghatowar, mother of the victim was taking the victim on her lap and the victim was in ailing condition with injury on her neck. Sarumai told him that accused Ramu has committed rape with the victim. On knowing this, he along with other villagers went to search accused Ramu and apprehended him and handed over to VDP Secretary Pankaj Dey. Subsequently police arrived there. In his crossexamination he admitted that he has no personal knowledge about the incident.
- 14. PW 7 Sri Bablu Ghatowar in his evidence deposed that on the date of incident, victim was aged about 5 years. On 15.05.2016, while he returned from work, Sarumai Ghatowar, mother of the victim told him that accused Ramu has committed rape with the victim. Victim was sleeping on the lap of her mother. On knowing this, he along with other villagers went to search accused Ramu. On seeing them, accused flew away but they apprehended him and handed over to VDP Secretary Pankaj Dey. Subsequently police arrived there and took Ramu with them. In his cross-examination, he admitted that Ramu Married the elder daughter of Sarumai Ghatowar but subsequently they got separated. PW 7 also admitted that before police, he has not stated that on seeing them accused flew away.
- 15. PW 8 Sri Pankaj Dey, the VDP Secretary in his evidence deposed that on 15.05.2016, Sarumai Ghatowar, mother of the victim informed him that accused Ramu has committed rape with his daughter at the bagan of Mahendra Gogoi. Victim was on the lap of her mother with bleeding injuries. On knowing this, Villagers went to search accused Ramu and apprehended him while he attempted to flee away and handed over to him. Subsequently police arrived there and took Ramu with them. Victim was sent to medical. he also went to

Rajapukhuri Hospital, Sonari. In his cross-examination, PW 8 deposed that Sarumai Ghatowar told her that the incident took place near the tea leaf storage room. He declined to confirm that before police he has stated that the incident took place inside the leaf storage room and that accused was chased and apprehended by villagers. Ramu was searched by 8-10 boys of the village.

- 16. PW 9 Sri Mahendra Gogoi in his evidence deposed that on 15.05.2016, at about 4 pm Sarumai Ghatowar, mother of the victim came to his residence and told that accused Ramu has committed rape with the victim at the back side of leaf storage room of his bagan. Victim was on the lap of her mother with bleeding injuries at her private parts. Victim was sent to Hospital by 108 ambulance service. In his cross-examination, PW 9 deposed that Sarumai Ghatowar works in his tea estate. It was a bagan of 10 bigha area. There were three schools in and around Bagan. Normally Bagan work finishes at 3.30 PM. Plucking work was closed at about 3 pm. No one remains at the leaf storage room after 3.30 pm. He used to pay daily to the leaf pluckers. He denied that Bagan work continues till 4-4.30 pm. He also denied that while giving statement to police, he has stated that the incident took place inside the leaf storage room.
- 17. PW 10 Smt. Benu Bhumiz, ANM in her evidence deposed that on 15.05.2016, at about 6 pm while she was at duty as ANM Nurse at Rajapukhuri Civil Hospital, Sonari police brought the accused Ramu Tanti for medical examination and during search on his person, police found on candy pop (Morton) with white colour plastic stick covered with silky paper from the shirt pocket of Ramu Tanti and same was seized. Exbt. 3 is the seizure list. Exbt. 3(i) is her signature. Police also brought one patient with the accused. In her cross-examination she admitted that Sonari PS is situated at a distance of about 4 Km from the Civil Hospital. During providing treatment by them, morton was noticed as shown by police.

- 18. PW 11 Sri Jadumani Das, Homegaurd in his evidence deposed that on 15.05.2016 while he was attached at Rajapukhuri Civil Hospital OP, Sonari, accused was brought for medical examination by OC Sonari PS. During search on the person of accused, one candypop (Morton) with white colour plastic stick covered with silky paper was recovered from the shirt pocket of Ramu Tanti and same was seized. Exbt. 3 is the seizure list. Exbt. 3(ii) is his signature. In his cross-examination, he has not seen as to who has recovered the morton from the hands of accused. He has not seen the fact of recovery of morton from the accused on his own.
- 19. PW-12 Sri Naren Rajkhowa, the I/O of this case in his evidence deposed that on 15.05.2016, the then O/C has received one information over phone from Longpatia VDP Secretary Pankaj Dey regarding commission of rape on a minor girl and that the said Girl has already sent for medical examination to Rajapukhuri Hospital. On getting this information, same was entered in G D Entry book vide Sonari PS G D Entry No. 456 dated 15.05.2016 and entrusted him to investigate the matter. Exbt. 4 is the abstract copy of Sonari PS G D Entry No. 456 dated 15.05.2016. Accordingly at 5.15 pm, he along with OC Sonari PS and other police personal went to Rajapukhuri Civil Hospital at Sonari and issued requisition for medical examination of the victim, aged about 4-5 years. While, they were at hospital, O/C Sonari PS has got the information of apprehension of accused by local public of Longpatia Gaon and on this, he went to Longpatia Village. On arrival there, he examined local witnesses and took custody of the accused. Thereafter, he brought the accused to Rajapukhuri Hospital for medical examination of the accused. During search of the accused, he recovered one lollypop morton form the pocket of the accused and same was seized at Hospital. Exbt. 3 is the seizure list. Exbt. 3(iii) is his signature. During investigation, he learnt that accused by offering such lollypop Morton, allured the victim and committed rape on her. On the same day, he also went to the place of occurrence i.e. Tea leaf storage room of the T.E. belongs to

Mohendra Gogoi and drawn a sketch map of the PO. Exbt. 5 is the said sketch map. On 15.05.2016 at about 8.30 PM father of the victim lodged a written FIR at Sonari PS on which Sonari PS case No. 89/2016 was registered u/s 4 of Pocso Act, 2012. Exbt. 6 is the said FIR. He also sent 2 witnesses to Court for recording their statement in court u/s 164 Cr.P.C. During investigation he collected the medical report and statement given by victim in court. Exbt. 7 is the statement of witness Rima Ghatowar aged about 7 years. Though victim was brought to court for recording her statement, but her statement could not be recorded due to her tender stage. During investigation, he seized wearing apparels of the victim, vaginal smear of victim in glass slide, 4 ML blood of accused Ramu Tanti, Penile and urethral smear of accused Ramu Tanti in 2 slides. Exbt. 8 is the seizure list. All these were taken by Doctor. He sent the above seized articles to DFSL Kahilipara Guwahati but could not be examined and returned with report for non-availability of chemical for performing DNA Analysis of the sample at FSL Guwahati. Exbt. 9 is the report of DFSL Kahilipara Guwahati. On completion of investigation, he has submitted the charge sheet against the accused u/s 4 of POCSO Act. Exbt. 10 is the charge sheet. In his cross-examination, the I/O deposed that In the Exbt. 4 (copy of G D Entry), there was no mention of accused. Place of occurrence was tea leaf storage house. There was no mention as to whether it was open or closed. There were residences of different persons on three sides. On the east side there was school. The houses are at some distance. In the sketch map he has not mentioned about the area of T.E. but it is a small T.E. The distance of place of occurrence and Rajapukhuri Hospital will be about 7-8 KM on one side. He did not seize the wearing apparels of the accused. The seized morton was in sealed condition. I/O in his cross examination confirmed that witness Sarumai Ghatowar, while giving statement to police, has not stated that "On way the boys playing, told her that her daughter Victim has come to her work place in search of her and one boy wearing white shirt has taken her away, that she took the victim to the residence of Bagan owner at Longpatia, that student

union boys met her, that they stayed for four days in hospital." Witness Mahendra Gogoi in his evidence stated that "the incident took place inside the leaf storage room, that Sarumai came to his residence and informed him about the incident." Witness Mahendra Gogoi in his evidence has not stated that he saw bleeding injuries at private parts of Victim. Witness Pankaj Dey in his statement has stated that the incident took place inside the leaf storage room, that accused was chased and apprehended by villagers. I/O has denied the defence suggestion that he did not seized any lollypop morton from Ramu.

20. PW-13 Miss Rima Ghatowar in her evidence deposed that accused Ramu Tanti is known to her being co-villager. Victim is her cousin being daughter of her other uncle Samaru Ghatowar. Her residence is at some distance. There are three other houses in between their residences. On the date of incident, while knowing that Victim went alone to the other Bagan, in search of victim, she went with the mother of Victim. On meeting the son of Moon, who was playing on road, on asking about victim, he stated that he has seen the girl going with a man wearing white shirt. On this, her aunty, started searching the victim by calling her name. On arriving near to tea leaf storage room, she saw that accused Ramu is pulling Victim in side bagan. On entering inside garden area, upon hearing sound of gagging, she saw that Victim was lying on the ground, and accused was sitting over to her. She saw the victim in naked condition. Her pant was removed. Pant of Ramu was also open. On seeing her, accused Ramu Tanti, warned her and on chasing, she hide herself. There from accused left the place. Ongoing near to victim, she saw bleeding injury on her private parts (urinary track). She also saw blood stains on her pant. There from her aunty by keeping the victim on her lap, took her to hospital. She has also given statement in Court. Exbt. 7 is her statement in court. Exbt. 7(i) and 7(ii) are her signatures. In her cross-examination she admitted that accused Ramu married the eldest sister of victim. She denied the defence suggestions that while giving statement to police or in court, she has

not stated that "On meeting the son of Moon, who was playing on road, on asking about Victim, he stated that he has seen the girl going with a man wearing white shirt; on arriving near to tea leaf storage room, she saw that accused Ramu is pulling victim inside bagan; that on seeing her, accused Ramu Tanti, warned her and on chasing, she hide herself." She denied that she deposed on being tutored by mother of Victim. She also denied that due to sour relation, she has falsely implicated him.

- 21. From the above evidence on record, let me decide the points formulated for just decision of this case.
- 22. Point No. I: So far age of the victim is concerned, P.W. 1 and P.W. 3, the parents of the victim, in their evidence deposed that on the date of incident victim 'M' was aged about five years and was a student of Nursery class. P.W. 4, P.W. 5 and P.W. 7 has also supported the evidence of P.W. 1 and P.W. 3 so far age of the victim is concerned. P.W. 6 is the Medical Officer, in his evidence deposed that, as per Radiological report age of the victim is between 3 to 7 years. Though victim was a student of Nursery class, the I.O. of the case did not collect any school certificate regarding age of the victim. While recording the statement of the victim she also claimed her age as five years. Inspite of above, the evidence of the parents of the victim which got supports from the other evidence as well as the medical evidence remains unrebutted and unshaken from the defence. Considering materials available on record, it can safely be held that on the date of incident the victim 'M' was aged about five years.
- 23. <u>Point No. II:</u> So far allegation of aggravated penetrative sexual assault on the victim 'M' is concerned, the victim though called to court for evidence but she failed to give evidence except stating that rape was committed with her by showing her private parts, taking her to medical, coming of blood from her private parts. From the evidence of P.W. 1, the mother of the victim, it appears that when she recovered the victim at the Tea Garden she

saw the victim in naked condition. She also found bleeding injury at the urinary track of the victim. Thereafter victim was taken to Hospital. P.W. 3, the father of the victim has confirmed the fact that due to the physical condition of the victim she was taken to Hospital and immediately he came to Rajapukhuri Hospital and saw that Doctor has given treatment at the private parts of the victim. The other witnesses examined by the prosecution have also corroborated the fact that on 15.05.2016, at about 4 P.M. they heard regarding commission of penetrative sexual assault (rape) on the victim. This part of evidence remained unchallenged and unshaken in cross-examination by defence.

- P.W. 6, the M.O. in his evidence deposed that on 15.05.2016, at about 6.20 P.M., on police requisition he examined the victim at Sonari Sub-Divisional Civil Hospital who came to him with alleged history of sexual assault and upon examination he found that cloths were unchanged and red coloured stain present, genitalia not developed, forchette tear and bleeding present. clitoris present, hymen torn, vagina not developed, blood discharge present. Basing on the above clinical findings, P.W. 6 has opined that evidence of recent sexual assault was present. He proved the medical report as Exbt. 2. Defence declined to cross examine the Medical Officer. The medical evidence clearly shows that on 15.05.2016 the victim, a five years old girl was subjected to commission of penetrative sexual assault. In view of the age of the victim, under the provisions of Section 5(m) of Pocso Act, the act of penetrative sexual assault becomes aggravated penetrative sexual assault.
- 25. <u>Point No. III:</u> Now the prime question for determination is whether the accused Ramu Tanti is the perpetrator of the crime of aggravated penetrative sexual assault on the victim 'M'.
- 26. In the course of argument hearing, learned Special P.P. Mr. Srimanta Gogoi by referring to the evidence of the victim, P.W. 1 and P.W. 13 who went together in search of the victim and found the victim in injured

condition, has submitted that there is no scope of doubt regarding involvement of the accused Ramu Tanti in the alleged crime on the victim. Learned Special P.P. also pointed out that the victim being previously known to him as sister-inlaw, there is every opportunity for the accused to entice the victim while taking her away to the leaf storage room of the nearby Tea Garden and to fulfill his lust, accused had committed the crime. On the other hand, Mr. D.M. Neog, learned defence counsel appearing for the accused by referring various parts of the evidence, particularly the evidence of P.W. 1 and other witnesses has stated that involvement of the accused is very much doubtful. He has argued that from the evidence of P.W. 1 it appears that at the time of beginning of her evidence, she refused to identify the accused except from the date of incident, but from her cross examination, it appears that accused was her son-in-law and that there was a quarrel between the accused and the elder daughter of the P.W. 1. It is also pointed out that there is inconsistency regarding the place of occurrence as to whether it was inside the leaf storage room or near the said place. Learned counsel further pointed out the evidence of P.W. 1 and P.W. 13 who went to the place of occurrence together but their evidence are not consistent to each other. Learned defence counsel has also pointed out various exaggeration made by the prime witnesses from their earlier statements given before police. I have considered the submission of both the sides.

- Though the victim 'M' was produced before this court for evidence and she is examined as P.W.2, but virtually she gives no evidence except stating that Ramu has committed rape on her by showing her private parts and in her cross she stated that her mother has said that Ramu has committed rape with her. From the evidence of I.O. (P.W. 12) it appears that even at the beginning of the case, statement of the victim could not be recorded due to her tender stage. Under these circumstances, Court has to rely on the evidences of other witnesses including circumstances as available in the case record.
- 28. From the evidence of P.W. 1 and P.W. 13 it appears that on

15.05.2016 at about 4 PM while P.W. 1 was returning back from her work place, on her way, the boys playing in the field, informed her that in search of her, the victim has went to her work place and that the victim was taken by one boy wearing white shirt. On this, she started searching the victim by calling her name and saw the victim inside the garden area where the victim was lying on the ground and accused was sitting near to her. On seeing her, accused Ramu flew away. Immediately she informed the matter to Bagan owner Sri Mahendra Gogoi who in turn reported the matter to the reporters and student union leader and sent the victim to Hospital. P.W. 13, a nine years old girl, cousin of the victim, in her evidence deposed that while knowing that the victim went alone to the Bagan area, she along with the mother of the victim went in search of the victim and on their way, from the boys playing on the road, they came to know that the victim was taken inside the garden by a man wearing white shirt. On this her aunt, P.W. 1 started searching the victim by calling her name and on arrival near the tea leaf storage room she saw the accused Ramu in pulling the victim inside Bagan and upon entering inside Bagan area and on hearing the sound of gagging, she found the victim was lying on the ground and accused was sitting over to her. On seeing her, accused warned her and on being chased she hide herself. Thereafter the accused left the place. In their cross examination defence has pointed out that P.W. 1 has not stated the fact of taking the victim by one boy wearing white shirt. During cross examination of P.W. 13 it appears that said witness was exaggerated regarding knowing from a boy regarding taking away of the victim by a man wearing white shirt and that near the leaf storage room, seeing the accused in pulling the victim inside Bagan or chasing her by the accused. But the facts that P.W. 1 and P.W. 13 went in search of the victim to the Bagan of Sri Mahandra Gogoi (PW 9), finding the victim in injured condition and seeing the accused Ramu Tanti sitting near the victim and then flee away from the place of occurrence remains unshaken.

29. The fact that the victim 'M' was subjected to penetrative sexual

assault by the accused Ramu Tanti can also be seen from the evidence of other witnesses. P.W. 4, P.W. 5, P.W. 7 and P.W. 8 in their evidence has categorically stated that while they were returning from work place they saw the victim on the lap of her mother (P.W. 1) and P.W. 1 has informed them that accused Ramu has committed rape on the victim. They went for searching the accused and upon seeing them accused flew away. P.W. 9, the Bagan owner has also stated that on 15.05.2016, at about 4 P.M., mother of the victim came to his residence and told him that accused Ramu has committed rape with the victim at the back side of leaf storage room of his Bagan. On this he arranged 108 ambulance and sent the victim to Hospital.

- 30. From this part of evidence it is clear that just after the occurrence the victim was recovered from the Bagan of P.W. 9 Mahendra Gogoi and while P.W. 1 was carrying the victim on her lap she informed the matter to the persons she met and also the Bagan owner Mahendra Gogoi by going to his house. Evidence of above witnesses thus found relevant to determine the role of the accused. The reporting of the matter of rape to other witnesses clearly shows that there is least chance to concoct or to frame the accused as argued by defence.
- Apart from above, the prosecution has brought another aspect. It appears from the evidence of P.W. 1 that after recovery of the victim, on being asked, the victim told her that accused by showing one Lolly-pop chocolate enticed her to go with him. During evidence, P.W. 10, the ANM Nurse of Rajapukhuri Hospital and P.W. 11, a Home-guard of said Hospital has stated that accused was brought for his medical examination and during search on his person, police found one candy pop (Morton) and seized the same vide Exbt. 3. This part of evidence was supported by the I.O. (P.W. 12). In his evidence I.O. has stated that during search of the accused he recovered one Lolly-pop Morton from the pocket of the accused and same was seized vide Exbt. 3. I/O also deposed that during investigation, he learnt that by showing a Lolly-pop,

accused allured the victim and committed rape on her.

- 32. Now coming on the defence argument regarding hesitation of the P.W. 1 in identifying the accused and existence of previous enmity, the P.W. 1 in the first line of her evidence stated that accused Ramu is known to her soon after the incident, but in her cross-examination, she admitted that her eldest daughter Nomi Ghatowar was married to accused by eloping with him and after one year of conjugal life with the accused, she returned back after having some quarrel with the accused. Thereafter said Nomi got married with another person and for this they did not have any cordial relation with the accused. Learned Advocate for the defence though vehemently argued that out of the grudge, the victim has implicated the accused Ramu, but failed to substantiate the same except suggesting about the enmity. The probability of enmity for Nomi appears to be non-est because it is in her evidence that after the leaving the accused, her daughter Nomi took another husband. Has Nomi remained in her house, there could have been some substance in the argument. It is well known that enmity is a double edges weapon. It may work either side as argued by Learned Special PP. It might happen that accused wanted to take revenge of the elder sister by molesting the younger one.
- From the evidence of the witnesses as discussed herein-before, it is clear that soon after recovery of victim, P.W.1 took the victim to P.W.9 and P.W.6 and informed the other persons and did not get any chance to fabricate a story or to frame the accused. The evidence of P.W. 1 and P.W. 13 so far having seeing the accused near the victim in the Bagan is found reliable and trustworthy which was duly corroborated by the evidence of P.W. 4, P.W. 5, P.W. 7, P.W. 8 and P.W. 9. Their evidence is relevant though they are hearsay witnesses from the mother of the victim due to the immediate reaction given by the P.W.1, mother of the victim to them. It must be kept in mind that at the time of incident, the victim was hardly about 4 to 5 years old girl and she might not be in a position to speak properly either for the trauma she sustained or for

her immature age or both.

- 34. The next limb of argument of the defence regarding place of occurrence is of quite insignificant as to whether it was inside the leaf storage room or near the said place. There is no dispute that the incident happened inside the Tea Garden of PW 9 and in and around the tea leaf storage room. The further argument of defence that though at the alleged time of incident it was working hours of the tea garden, and there should have been other eye witnesses seeing the accused and victim in the garden area, or the alleged incident is clearly wiped out by the P.W. 9, the Garden owner, in his cross examination categorically stated that normally Bagan work finishes at 3.30 P.M. Plucking work closes at about 3.00 P.M. No one remains at the leaf storage room after 3.30 P.M. From the evidence of P.W. 1 and P.W. 13 the incident took place at about 4.00 P.M. So naturally there is least chance of having seeing the incident by any other worker.
- 35. It may be noted here that during investigation, the I.O. (P.W.12) though tried to get scientific evidence by collecting wearing apparels of the victim, vaginal smear of victim in glass slide, 4 ml blood of accused Ramu Tanti along with Penile and urethral smear of accused Ramu Tanti and sent those articles for examination by Forensic Science Laboratory, Kahilipara Guwahati, but said articles were returned unexamined by the said FSL due to non-availability of chemical for performing DNA analysis of those articles at FSL Guwahati at the relevant period. He proved the report as Exbt. 9. This reflects a sorry state of affairs on the part of Government showing its apathy towards Forensic Science Laboratory while the crime against women are increasing tremendously and police was deprived of getting its case proved both by oral evidence or scientific evidence.
- 36. To sum up the discussions, I am of the opinion that evidence of P.W. 1 and P.W. 13 so far seeing the accused near the victim is found reliable and trustworthy. The other witnesses have also supported the prosecution case

so far involvement of the accused is concerned. I found nothing to disbelieve their testimony.

- Considering all above, I have no hesitation to hold that accused Ramu Tanti has committed the offence of aggravated penetrative sexual assault upon the victim 'M', a girl of about 5 years old and make himself liable for punishment as provided U/S 6 of POCSO Act, 2012.
- 38. In view of above, I hold the accused guilty for the offence punishable U/S 6 of POCSO Act, 2012 and accordingly accused Ramu Tanti is convicted for the offence punishable U/S 6 of POCSO Act, 2012.
- 39. I have considered the applicability of Section 3 & 4 of Probation of Offenders Act in this case. Considering the nature of the offence proved by the prosecution and also considering the punishment provided for the offence, I am not inclined to extend the benefit of the benevolent provisions of law to the accused.
- 40. Heard the accused on the point of sentence. His statement is recorded in separate sheets. I have also heard learned Advocate for both the sides. Learned Special PP has prayed for awarding maximum punishment for the accused. Learned legal aid counsel has prayed for leniency in sentence by narrating the family background of the accused.
- 41. Hon'ble Supreme Court of India in the case of State of Punjab v. Gurmit Singh [(1996) 2 SCC 384] has expressed its anguish on the increasing rate of crime against women, has held as follows:
  - "21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys

the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.

- On the point of awarding just sentence in a case of rape, Hon'ble Supreme Court of India has observed that Shyam Narain v. State (NCT of Delhi), [(2013) 7 SCC 77] has laid down the law in following words:
  - "14. Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim."
- In the above referred case of Shyam Narain (supra), Hon'ble Supreme Court of India while dealing with the matter of imposition of life imprisonment to the convict for the offence of 376(2)(f) for committing rape on a 8 year old girl child after discussing various judgment of Hon'ble Supreme Court of India has held as follows:
  - 25. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the

background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors.

26. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers.

27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilised norm i.e. "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on the one hand, society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some perverted members of the same society dehumanise the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court.

- 28. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."
- Keeping the law laid down by Hon'ble Supreme Court of India so far awarding of sentence is concerned, though learned legal aid counsel appearing for the accused has prayed for mercy by referring the family back ground and children of the accused, I am of the considered opinion considering the nature of the brutality in committing the offence of aggravated penetrative sexual assault on a 5 year old girl as proved by the prosecution, I am of the considered opinion that accused does not deserve any leniency in sentence. The maximum sentence provided by law i.e. imprisonment for life with some amount of fine is the only just sentence in this case.
- Accordingly, convict Ramu Tanti is sentenced to undergo rigorous imprisonment (RI) for life for committing the offence punishable U/S 6 of Pocso Act, 2012 and also to pay a fine of Rs. 5000/- (Rupees five thousand) only i/d further SI of 6 (six) month.
- 46. Convict Ramu Tanti is remanded to District Jail, Sivasagar to serve out the remaining part of sentence.
- 47. Convict Ramu Tanti is entitled for the benefit of Section 428 Cr.P.C. for the period already undergone during investigation and trial.
- 48. Considering the fact of imposing meager amount of fine due to poor financial back ground of the convict, no order is passed for payment of compensation to victims U/S 357 Cr.P.C.
- 49. Considering the fact and circumstances of the case, the matter is

referred to DLSA Sivasagar for exploring the possibility of compensation U/S 357A Cr.P.C. Send a copy of the judgment to Secretary DLSA Sivasagar for needful action.

- 50. Seized articles be destroyed in due course of time.
- 51. Let a free of cost copy of the judgment be given to the convict Ramu Tanti immediately as per the provisions of Section 363(1) Cr.P.C.
- 52. Convict Ramu Tanti is informed about his right of appeal against the judgment and order of conviction and sentence either by appointing his own advocate or though legal aid panel advocate or by way of Jail Appeal.
- 53. Send a copy of the judgment to learned District Magistrate, Charaideo U/S 365 Cr.P.C.
- 54. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this 5<sup>th</sup> day of April, 2018 at Sivasagar.

Special Judge Sivasagar

#### <u>APPENDIX</u>

#### 1. Prosecution witnesses -

- P.W.1 Smt. Sarumai Ghatowar
- P.W.2 (Victim)
- P.W.3 Sri Samaru Ghatowar (Informant)
- P.W.4 Sri Deepak Ghatowar
- P.W.5 Sri Choto Ghatowar
- P.W.6 Dr. Mintu Deb (M.O.)
- P.W.7 Sri Babku Ghatowar
- P.W.8 Sri Pankaj Dey
- P.W.9 Sri Mahendra Gogoi
- P.W.10 Smt. Benu Bhumiz
- P.W.11 Sri Jadumoni Das
- P.W.12 Sri Naren Rajkhowa (I.O.)
- P.W.13 Miss Rima Ghatowar
- 2. Defence witnesses: None
- 3. <u>Court witnesses</u> : None

### 4. Exhibits by prosecution -

- Exbt.1 164 Cr.P.C. statement of witness Sarumai Ghatowar.
- Exbt.2 Medical examination report of victim 'M'
- Exbt.3 Seizure list
- Exbt.4 Copy of Sonari P.S. GD Entry No.456, dated 15.05.2016
- Exbt.5 Sketch map
- Exbt.6 FIR
- Exbt.7 Statement of witness Rima Ghatowar
- Exbt.8 Seizure list
- Exbt.9 Report of DFSL, Kahilipara Guwahati
- Exbt.10 Charge-Sheet

Special Judge, Sivasagar