# IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>07 OF 2015</u>

(Under Section 6 of the POCSO Act, arising out of G.R. Case No. 142 of

2015)

Present :- Sri Ashok Kumar Borah, AJS

**Special Judge, Sonitpur** 

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Souna Tete

Son of Lokus Tete,

Resident of Koloni Tea Estate Police Station – Rangapara Dist:- Sonitpur, Assam

Date of framing Charge :- 06/05/2015

Date of Recording Evidence :- 30/05/2015, 26/06/2015,

24/07/2015, 19/09/2015, 10/06//2016, 30/06/2016

27/09/2016,

Date of examination of accused u/s

313 Cr.P.C

:- 25/07/2016.

Date of Argument :- 05/11/2016.

Date of Judgment :- 11/11/2016.

Counsel for the Prosecution :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. R.R. Kalita., Advocate.

# **JUDGMENT**

**1.** In this case accused Souna Tete is put for trial for allegation of charge under Section 6 of the POCSO Act, 2012.

- **2.** The factual matrix of the case in brief is that on or about 6 P.M. of 18/1/2015 accused enticing informant's minor daughter Smt. Bhabani Karmakar to his home and committed rape on her. Hence this prosecution case.
- 3. The ejahar was filed by the complainant Sri. Bipul Karmakar before the O.C Rangapara P.S on 18/01/2015 and on received the izhar the O.C Rangapara P.S. registered the case vide Rangapara P.S. Case No. 13/2015 under Section 366 (A)/ 376 (2) (1) of the IPC. After completion of usual investigation, the I.O sent up the case for trial against the accused person by filing charge sheet under Section 4/6 of the POCSO Act.
- **4.** On being appeared the accused before this Court, my learned predecessor-in-Court, after hearing both parties, framed charge under section 6 of POCSO Act, 2012 against the accused and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case prosecution examined as many as 10 (ten) numbers of witnesses which includes the informant, victim, other material witnesses and the Investigating Officer.
- **6.** After completion of prosecution evidence accused is examined u/s 313 Cr.P.C. All the allegation made against the accused and evidence appears against the accused are put before him for explanation where he deny the evidence and allegation. To butters the defence is accused is examined one defence evidence.
- **7.** I have heard the argument put forward by the learned counsels of both sides.

# 8. The point for decision in this case is that:

1. Whether on about 6 p.m. of 18/01/2015 at Colony Tea Estate on new staff line under Rangapara P.S. accused committed penetrative sexual assault on Smt. Bhabani Karmakar (aged about 6 years.)?

# Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **10.** PW- 1 (Miss- X), the victim of this case stated that at about 3 months ago one day at about 6 p.m. she went to accused house to watch TV. She used to call accused as "phupha". Accused was sitting on bed and she was asked to sat on his lap. The accused open his pant and done "Choda-Chodi" with her by opening her pant. Nobody was there. She told everything to her sister Laxmi. She was crying. She told her parent about the incident. Her father went to beat Souna. Thereafter she was taken to Police Station. She was also brought to Court. Her statement was recorded by the Magistrate. She was examined by doctor at Tezpur, Hospital.

Though she has been exposed to long cross-examination, the evidence as to at the relevant time while she went to watch TV, accused called her to sit on his lap, open her pant and done sexual intercourse with her has remained unchallenged.

11. PW-2 Bipul Karmakar has stated accused is his brother-in-law who is lives infront of his home. The victim, a 6 years old girl is his daughter. About 5 months ago, in the evenging at about 6 p.m. he was in his house. His daughter Bhabani went to the house of accused to watch TV. After sometime she came back with her elder daughter. She told him that accused open his clothes and also open clothes of his daughter put her to sit on lap and told him that accused sexual intercourse her. Thereafter, she took to his daughter to Rangapara P.S and lodged an F.I.R. The F.I.R was written by someone else, he put his thumb impression. Thereafter he took his daughter to the hospital. Then her daughter was brought to Court and after recording her statement her custody was given to him.

Though he has been exposed to long cross-examination the evidence as to relevant time his victim daughter came from the house of accused, watching TV, reported him that the accused put her to sit on his lap and sexual intercourse her has remained unchallenged.

Spl POCSO Case No. 07 of 2015

**12.** PW-3 Radhika Karmakar stated he know the accused who is his brother-in-law. The victim who was a 6 years old her daughter. The incident took place on a day at about 6 p.m. in one month back. She was in her house. Her daughter went to accused house to watch TV. After sometime her daughter came back crying along with Laxmi. When she asked her what happened, she told her that accused open her pant and his pant and done sexual intercourse with her after taking her on his lap. She went to the house of the accused and when she ask him he admitted his guilt. Thereafter they went to Rangapara Police Station.

In her cross-examination except giving some suggestion the evidence as to at the relevant time the victim after arrival from accused house reported her that accused open her pant and his pant and done sexual intercourse with her after taking her on his lap has remained unchallenged.

13. PW-4 Dr. Sangeeta Sarma stated before the Court that on 19/01/2015 he working as Medical & Health Officer-1 in the Kanaklata Ciivil Hospital, Tezpur and on that day at about 1.40 p.m at Emergency OPD, in the labour room complex of KCH he examined Smt Bhabani Karmakar, 6 years, female D/O Bipul Karmakar of village Kolony Tea Estate, New Line, PS Rangapara, escorted and identified by Woman Police Constable 610 Anju Moni Dutta of Rangapara P.S. She was examined in presence of staff Nurse Mrs. Manjula Devi. On examination she found the following.

Menstrual history- not attained menarche. Exposure history- Exposure present on 18/01/15 at about 6 p.m to Sauna Munda as told by her attendant.

Identification mark- a small mole over right eye Browe.

Height- 100 cm., Weight- 15 Kg, Teeth- 6/6, 6/6 mixed dentition.

At the time of examination, she was netly dressed, clean and tidy. Her gait was normal, secondary sexual characters not developed. Hymen present. Vulva and vagina healthy. No injury seen on her private as well as other body parts.

Investigation advised and reports-

- 1. Vaginal smear for spermatozoa no sperm.
- 2. USG Pelvis- normal pelvic organs- Non gravid uterus.

<u>Spl POCSO Case No. 07 of 2015</u>
Page 4

3. X-ray for age determination- Age of the persons under investigation is below 10 years.

#### **OPINION:**

- 1. No sign and symptom of recent sexual intercourse.
- 2. No injury observed on her private as well as other body parts.
- 3. Age of the victim is below 10 years.

#### **Enclosure:**

- 1. OPD registration Card wherein investigation given are present along with the consent in written.
- 2. Vaginal smear for spermatozoa report.
- 3. USG film,
- 4. USG and X-ray report
- 5. X-ray plate.

During cross-examination, the doctor stated that in her personal examination the victim, she found no sign of recent sexual intercourse or any injury observed on her private as well as other body parts.

**14.** PW- 5 Smt Seema Karmakar stated that she know accused but she do not know his name. The victim is her niece. At about 2/3 months ago, the incident occurred in the evening at about 6 p.m. She heard a hue and cry near the house of Souna. Then, she went to the house of Souna. When she went to the house of Bipul Karmakar, victim came there and told that she has been subjected to sexual intercourse by the accused.

Though she has been exposed to long cross-examination, the evidence as to on hearing commotion, she went to the house of the complainant, the victim came there and told that she has been subjected to sexual intercourse has remained unchallenged.

**15.** PW-6 Sri Sanjay Karmakar stated that he know the accused Souna. The victim is his niece. The incident occurred in the month of January, 2015 in the evening at about 6 p.m. When he reached his house, Laxmi Karmakar told him that the victim has been raped by Souna. Thereafter, he went to the house of his elder brother Bipual Karmakar. There he met Lakhmi, victim and Souna. Victim also told him that Souna raped her.

Though he has been exposed to long cross-examination the evidence as to at the relevant time on hearing about the incident from Lakhmi he went to the house of his elder brother Bipual Karmakar there he meet Lakhmi, victim and Souna and the victim told him that accused raped her has remained unchallenged.

- **16.** PW- 7 Harimohan Nayak stated he know the accused Souna. The victim is known to him. The incident occurred in the month of January, 2015. On the day of occurrence, he went to picnic. After returning from picnic he heard hue and cry in the house of accused Souna. He went to his house. He did not found the accused in the house. There he came to know from the people that Souna has committed rape on the victim Bhabani Karmakar.
- PW- 8 Sri Hemanta @ Henta Chante stated that he know accused Souna and victim. The incident occurred in the month of January, 2015 at about 6 p.m. On the day of occurrence, he was at home. He heard hue and cry in the house of accused Souna. He went to his house. There he came to know from the people that accused has committed rape on the victim.
- PW- 9 Sri Dipak Das, the I.O, stated that on 18/01/2015 he was posted at Rangapara Police station as attached officer. On that day, one Bipul Karmakar lodged an FIR alleging that on that day at about 6 p.m. his daughter Bhabani Karmakar, aged about 6 years, was raped by the accused in his house. After receiving the FIR O/C of Rangapara PS registered a case being Rangapara PS No. 13/2015 u/s 366 A/376(2) (1) IPC and endorsed him for investigation. Ext. 6 is the FIR and Ext. 6 (1) is the signature of O/C Ajijur Rahman. Then he visited the place of occurrence and prepared a sketch map thereon. He brought the accused to the police station and interrogated him. He was detained in the police station. Ext. 7 is the sketch map and Ext. 7(1) is his signature. After arrest, the accused was forwarded to the court on 19/01/2015. He had also sent the victim girl for medical examination and also to the court for recording her statement before the Magistrate on the same

Spl POCSO Case No. 07 of 2015

day. Thereafter he filed the charge sheet against the accused. Ext. 8 is the charge sheet and Ext. 8(1) is his signature.

- 19. PW-10 M. Sharma, the learned Magistrate who recorded the statement of victim under Section 164 Cr.P.C stated on 19/01/2015 while she was working as JMFC at Tezpur she had recorded the statement of victim, daughter of Bipul Karmakar at the requisition of Rangapara P.S. in connection with Rangapara P.S. Case No. 13/15 376 (2) (1) IPC. Since the victim was 6 years old minor so she was not administered oath. She was satisfied that the victim understood the questions which she had asked her. Then she recorded her statement. Ext. 6 is the statement of victim and Ext. 6(1) is his signature. Since the victim was minor her thumb impression or signature are not taken in the statement.
- 20. The defence witness, DW-1 Ichi Nowrai Alias @ Tete stated that accused Bipul Karmakar filed a case against her husband for allegation of committing rape on his daughter. The incident took place about 1 ½ years back. At the time of incident, she was at her home in the kitchen cutting "Sangji". It was winter season. At that time, the victim came to their house to watch TV. Her house is situated infront of their house. During that time she was mopping the floor with mud and the victim has just entered and wants to sit in their floor, but it was wet with mud so she asked loudly not to sit there. Immediately her husband picked her up and her pant was put off automatically due to lose string of her panty. Then victim's elder sister Laxmi who has also came to their home to watch TV took her to their home. Then Bipul, father of the victim, came to their house and assaulted her husband and also had took altercation with her, so he asked him that she will lodge a complaint before the police against her, then Bipul filed the case against her husband falsely.

In cross-examination, the DW admitted that though the father of the victim assaulted with fist and blow but she has not seen any external injury upon her husband. Her husband was not medically examined. Except, herself, her

husband and the victim, nobody was present at the time of occurrence. The incident took place at about 6 p.m. By that time, to dark was set in.

- **21.** These much is the evidence of the prosecution case.
- 22. Learned counsel for the accused submitted that the case was filed by the complainant on a baseless, concocted story against the accused. The victim is the neighbour of the accused. The victim quite off and on used to visit the house of the accused to watch TV. On the day of incident the wife of the victim mopping the floor by mud. The victim came to watch TV hastily so, the wife raised alarm to her. Accused took her to the bed to avoid skidding. Then victim's pant was put off automatically due to loose string of her panty. Then, victim's elder sister Laxmi who has also came to their home to watch TV took her to their home. Then the father of the victim came to their home and assaulted the accused and then the victim's father filed this case against the accused falsely, which was ably supported by the defence evidence. That apart, the doctor's certificate noway supported the alleged charge. Despite that prosecution has failed to prove the case beyond any reasonable doubt.
- 23. On the other hand, learned Public Prosecutor, Sonitpur, Tezpur submitted that the prosecution has ably proved the case beyond all shadow of doubt, as such required to be convicted under the said section of law. Learned PP also submitted that in fact there is no enmity in between the accused and the complainant to file a false case. Even if there is any strange relation between the parties, it would not be expected from the complainant to involve his own minor daughter in such a hatred cases.

Learned PP again submitted that PWs 2 and 3, the father and mother of the victim, therefore, they are interested witnesses. To rely the interested witnesses in convicting the accused, learned PP submitted the case of **Gali Venkataiah Vs. State of Andhra Pradesh** reported in **2008 Crl.L.J. 690.** In regard to minor discrepancies, learned PP also submitted the case law of **State of UP V. Krishna Master & ors** reported in **2010 Crl.L.J.3889.** 

Spl POCSO Case No. 07 of 2015

- **24.** Keeping in mind, the rival submissions advanced by the learned counsels of both the parties, I am going to dispose of the case as follows.
- **25.** After going through the evidence of the aforesaid witnesses, it is seen except the victim, there is no eye witness to the incident, but after the incident, the victim came out of her house and informed about the incident to her parents which was corroborated by them.

According to PW 2 and PW 3, the mother and the father of the victim, they were reported by their minor daughter immediately after the incident. PW 1, the victim also stated that at the relevant time she went to accused's house to watch TV. The accused was sitting on bed and she sat on his lap. The accused opened her pant and sexually intercourse with her. Nobody was there. She told everything to her sister. She also told her mother and father about the incident. Though all the PWs 1,2 and 3 were exposed to long cross-examination but defence has failed to examine any one of them that immediately after the incident, the victim reported about the matter to her father and mother.

- **26.** Learned counsel for the accused argued that the victim is a minor girl and changed her version in different times, before the police, before the Magistrate and even in the Court whose statement cannot be considered to convict the accused.
- **27.** It is true that in the present case there is no documents like Birth certificate or age certificate or any certificate issued by the School authority where the victim last studied or any certificate issued by local Panchayat etc. available on the record to prove the victim that she was 6 years at the time of incident. But the PW 4, the Doctor who examined the victim after the incident opined that the age of the victim girl is below 10 years. That has not been challenged by the defence at any point of time. Therefore, it can safely be held that the victim was a minor.
- **28.** In the case of **K. Muthu Mariappan Vs State**, represented by the Inspector of Police, **Criminal Appeal (MD) No.98 of 2015**, it was held that it is true that primary evidence to prove the date of birth of the individual may be preferably the birth certificate. But, it cannot be said that in absence of birth

certificate, the date of birth cannot be proved. When the age of the individual is not disputed, the question of proving the same does not arise at all. It is the settled law that a fact in issue or any relevant fact or any fact relevant to the issue, which is disputed by the adverse party alone, needs proof. If it is not disputed, there is no need to lead any evidence in proof of the said admitted fact.

- **29.** In this case, the victim and her parents categorically stated the age of the victim as 6 years from the very beginning of the case, at the time of commission of offence, besides during cross-examination, the same has not been disputed at all by the accused side. Thus, the evidence of PWs 1, 2 and 3 in respect of age of the victim remains unchallenged.
- **30.** In the case in hand, the victim has been consistent on the material particulars with regard to the incident that on the day of incident, she went to the house of the accused to watch TV. She was asked to sit by the accused on his lap. Then the accused opened her pant and sexually intercourse with her. Nobody was there. Immediately after the incident she told everything to her sister Laxmi. She also told her mother and father about the incident after coming to her home. Then her father went to beat the accused. The victim also made such statement before the learned Magistrate u/s 164 Cr.P.C. and before the police and even in the time of deposition before this court. Though she has been vigorously cross-examined but the evidence as to the accused called her to watch TV and she was sat on the lap of the accused and the accused opened her pant and committed sexual intercourse on her has remained unchallenged. The evidence of victim is cogent and reliable. There cannot be any doubt to disbelieve the evidence of the victim.
- **31.** Undoubtedly in a criminal trial any such lapse on the part of accused is not leading any defence evidence would not have mattered much as prosecution is supposed to prove its case beyond shadows of all reasonable doubts. However, in a case under POCSO Act, the situation is not so. In this

regard, it will be worthwhile to refer to the provisions of Section 29 and 30 of POCSO Act.

- **32.** U/s. 29 of POCSO Act, a mandatory presumption for certain offence is to be drawn against the accused in a prosecution for certain offences and same reads as under:
- "29. Presumption as to certain offences Where a person is prosecuted for committing or abetting or attempting to commit any offence u/s.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.
- **33.** Similarly, Section 30 of POCSO Act mandates that the Special Court shall draw a presumption of the existence of culpable mental state of the accused where culpable mental state is required on the part of the accused. Section 30 reads as under:
- "30. Presumption of culpable mental state (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume that existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- (2) For the purpose of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probabilities.
- **34.** The use of expression "shall presume" has been defined in Section 4 of the Indian Evidence Act. As contrasted from the expression "if presume", the expression "shall presume" whenever used connotes "legal presumption" or "compulsory presumption" as contrasted from "factual presumption" or "discretionary presumption" emanating from the expression "may presume". "Legal presumptions" or "compulsory presumption" as are signified by the use of expression "shall presume" are inferences or proposition established by law,

which the law peremptorily requires to be made whenever the facts appear which it assumes as the basis of that inference. The presumptions of law are in reality rules of law, and part of the law itself and the court may draw inference whenever the requisite facts are developed in pleadings.

- **35.** Similarly whenever any law prescribes that the Court shall presume the existence of culpable mandatory state or to draw a presumption regarding commission of any offence, unless the contrary is proved, the onus to prove the contrary undoubtedly shifts upon the accused. Certainly, it does not discharge the prosecution of its duty to first establish and prove the facts, the existence of which can only lead to drawing of any such compulsory presumption or legal presumption by the use of the expression "shall presume". Thus, as per Section 29, if a person is prosecuted for committing or abating or attempting to commit any offence u/s.3, 5, 7 and 9 of POCSO Act, the Special Court shall presume that such person has committed or abated or attempted to commit the said offence as the case may be unless the contrary is proved. However, in the present case, the accused has completely failed in discharging his burden even by preponderance of probabilities much less beyond reasonable doubt.
- **36.** Coming now to the fact as to whether conviction can be recorded on the sole testimony of a child witness or not? This issue was dealt by the Hon'ble Apex Court in **Virendra Vs State of U.P., (2008) 16 SCC**, which are reproduced as under:

"The Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that who may testify – all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

**37.** A child of tender age can be allowed to testify if he or she has intellectual capacity to understand questions and give rational answers thereto.

The evidence of a child witness is not required to be rejected per se, but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon.

- **38. In Dattu Ramrao Sakhare Vs State of Maharashtra, (1997) 5 SCC 341,** it was held that a child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words, even in the absence of oath the evidence of a child witness can be considered u/s.118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answer 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 a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.
- **39.** Subsequently, in **Ratansingh Dalsukhbahai Nayak Vs State of Gujarat, (2004) 1 SCC 64**, it was held that the decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possessions or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath.
- **40.** In the present case, at the time of examination of the victim, some questions were put to her and she replied the same without any hesitation and this Court hold that the victim was able to give rational answers and thereafter her statement was recorded without oath. Apart from that, other witnesses including the parents of the victim i.e. PW 2 and 3 also supported the evidence of PW1. Besides them, PW 5 also stated that at the relevant time on hearing hue and cry near the house of the accused, while she went there the victim also came there and told that she has been subjected to sexual intercourse.

Similarly, PW 6 Sanjay Karmakar also stated that on being came to know about the incident, he went to the house of the complainant and there he met Laxmi, victim and the accused where the victim also told him that accused committed rape on her. Therefore, it is not only, the PW 2 and 3, the father and mother of the victim, but PW 5 and 6 also stated clearly that the victim stated to them that the accused has committed rape on her. There is nothing in the cross-examination of any of the prosecution witnesses which could suggest that they were deposing falsely in any manner. Though they have been subjected to various suggestions, but all the said witnesses vehemently denied.

Here in the present case as discussed above, the victim immediately after the incident reported the matter to Laxmi, her elder sister and then at home she reported the matter to her father and mother. It is true that the prosecution has failed to examine Laxmi, the elder sister of the victim to whom the victim first reported the matter.

In this case, I may mention a case law i.e. Md. Khalid Vs. State of West Bengal reported in 2002 SCC Crl. 1734. It has been held that "Normally, the prosecution's duty is to examine all the eye witnesses, the selection of whom has to be made with due care, honestly and fairly. The witnesses have to be selected with a view not to suppress any honest opinion, and due care has to be taken that in selction of witnesses, no adverse inference is drawn against the prosecution, However, no general rule can be laid down that each and every witness has to be examined even though his testimony may or may not be material. the most important factor for the prosecution being that all those witnesses strengthening the case of the prosecution have to be examined, the prosecution can pick and choose the witnesses who are considered to be relevant and material for the purpose of unfolding the case the prosecution. It is not the quantity but the quality of the evidence that is important. In the case at hand, if the prosecution felt that its case has been well established through the witnesses examined, it cannot be said that nonexamination of some persons rendered its version vulnerable."

**41.** Coming to the present case, it appears that according to the prosecution story immediately after the incident, the victim has reported the

matter only to her elder sister Laxmi and also her mother and father i.e. PW 2 and 3. Similarly, while the victim stated the matter to other persons i.e. PW 4 and 5 also heard. Therefore, when there is other convincible and reliable witnesses, so non-examination of Laxmi cannot be a ground to discard the prosecution story. It is true that the accused has examined one DW i.e. through his wife who has deposed a quite different story. The story narrated by DW 1 has not been in cross-examination of any of the witnesses. So, this is a new plea adduced by the wife of the accused only to save her husband from the punishment. Further, DW has appeared not on summons. She was brought by the accused. Therefore, it cannot be ruled out that the defence witness has deposed falsely in order to save the accused who is her husband. Hence, not reliable.

- 42. On appreciation of the evidence given by the victim, her parents and other independent witnesses, I find that the victim was sexually assaulted by the accused. It appears that the medical evidence no way supported the materials of the penetrative sexual assault, as the Doctor stated no injury found on the private parts of the victim and also on any part of the body. Here in the present case the victim is below ten years old at the time of occurrence. According to Section 9 (m) aggravated sexual assault whoever commits sexual assault on a child below twelve years. Section 10 of POCSO Act prescribes the punishment for the offence defined u/s.9 for a term which shall not be less than five years but which may extend to seven years and shall also be liable to a fine. Hence, I convict the accused Souna Tete U/s 10 of the POCSO Act.
- **43.** The accused is heard on the point of sentence where he praying for leniency stating that he is the only bread earner of his family having one new born baby and wife. At the time of investigation he was in jail for about 6 months, hence praying for leniency.
- **44.** I have heard learned counsel for the accused as well as learned Public Prosecutor, Sonitpur.

45. Turning to the question of sentence, it is the settled law that while deciding the quantum of punishment, it is required that the Court should strike a balance between aggravating circumstances and mitigating circumstances. The aggravating circumstances relate to the crime and mitigating circumstances relate to the criminal. In this case, so far as the aggravating circumstances are concerned, a minor girl was sexually exploited. The wound caused to the girl is not only to the body but also to the mind of not only to the victim but that of entire family members, but considering the mitigating circumstances, the accused was hardly 26 years of age at the time of the incident. It is not brought to the notice of this Court that before this incident, the accused had committed any other offence. There is likelihood of his reformation, but the statute u/s.10 of POCSO Act prescribes minimum punishment for a term of five years with fine. When the intention of the legislator is to impose stringent punishment for not less than five years, this court has no option but to impose minimum punishment of five years.

# <u>ORDER</u>

- 46. I convict the accused Souna Tete u/s. 10 of POCSO Act and sentence him to Rigorous Imprisonment for 5 (Five) years and also to pay a fine of Rs.500/- (Rupees Five Hundred only), in default, Rigorous Imprisonment for one month. The period, which he detained in custody, shall be set off from the period of imprisonment, imposed on him.
- As per provision of section 357 (A) of the Cr.P.C, the victim compensation is permissible in law. After going through the statement of witnesses, I think the victim is entitled to get the compensation. To mitigating the mental agony and trauma suffered by the victim, an amount of Rs. 25,000/-(Rupees twenty five thousand) only is awarded as compensation. The Secretary, District Legal Aid Services Authority, Sonitpur, Tezpur be asked to give the compensation to the father of the victim after proper enquiry.

**48.** A copy of this judgment be furnished to the accused free of cost and a copy thereof be sent to the District Magistrate, Sonitpur, Tezpur, as per provisions of law.

Given under my Hand and Seal of this Court on this the  $11^{\rm th}$  day of November, 2016.

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

<u>Spl POCSO Case No. 07 of 2015</u>
Page 17

# **APPENDIX**

# **Prosecution Witness**

1. Prosecution Witness No.1 :- Victim.

2. Prosecution Witness No.2 Sri Bipul Karmakar :-3. Prosecution Witness No.3 Smt. Radhika Karmakar 4. **Prosecution Witness No.4** Dr. Sangeeta Sarma, M.O. 5. Prosecution Witness No.5 Smt. Seema Karmakar 6. Prosecution Witness No.6 Sri Sanjay Karmakar 7. Prosecution Witness No.7 Sri Harimohan Nayak

8. Prosecution Witness No.8 :- Sri Hemanta Chante 9. Prosecution Witness No.9 :- Sri Dipak Das, I.O.

10. Prosecution Witness No.10 :- Smt. M. Sharma, Judicial Magistrate,1st

class, Tezpur.

# **EXHIBITS.**

Exhibit 1,2,3, 4 and 5 :- Advice slip, vaginal smear report, USG

flim, USG report and X-ray report and

Medical report.

Exhibit 6 :- Ejahar

Exhibit 7 :- Sketch map

Exhibit 8 :- Chargesheet.

Exhibit 9 :- Statement of the victim u/s 164 Cr.P.C.

# **Defence witness.**

1. Smt. Ichi Nowria @ Tete. : DW 1.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR