THE COURT OF THE SPECIAL JUDGE, SONITPUR AT TEZPUR

SPL(POCSO) CASE NO. :- 15 of 2017

(Under Section 8 of POCSO Act, arising out of G.R. Case No 1256

of 2017)

Present :- Sri Ashok Kumar Borah, AJS

Special judge, Sonitpur,

Tezpur

Prosecutor :- State of Assam

-Vs-

Accused :- Sri Nilsan Nag @ Nelsan Nag

Son of Sri Gagon Nag Resident of Gorpara Police Station – Dhekiajuli Dist: Sonitpur, Assam.

Date of framing Charge :- 12/07/2017

Date of Recording Evidence : 25/07/2017, 13/11/2017,

27/11/2017, 1/12/2017,

& 05/04/2018.

Date of examination of

accused u/s 313 Cr.P.C

:- 19/04/2018.

Date of Argument :- 20/04/2018

Date of Judgment :- 20/04/2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Special Public prosecutor, Sonitpur

Counsel for Accused :- Sri A.K. Saikia, Legal Aid counsel.

<u>JUDGMENT</u>

- **1.** In this case accused Sri Nelsan @ Nilsan Nag is put for trial for allegation of charge under Section 8 of POCSO Act.
- 2. The various facts leading to this case according to FIR in brief is that on or about 11.30 a.m. of 10-04-2017, in absence of informant and his wife, informant's minor daughter who attained the age of 4 years 5 months alone in the house accused entered there, induced his minor daughter and forcefully committed rape on her. The ejahar was filed by informant Sri Nikodin Bage before the O/C of Dhekiajuli PS on 11-04-2017.
- **3.** On being receipt the ejahar, the O/C Dhekiajuli P.S. registered the case, vide Dhekiajuli PS Case No. 269/17, under Section 3/4/6 of POCSO Act. After completion of usual investigation, the O/C Dhekiajuli Police station sent up the case for trial against the accused Sri Nelsan @ Nilsan Nag under Section 8 of POCSO Act.
- **4.** On being appeared the accused person before this Court after hearing both parties, framed charge under section 8 of POCSO Act. Particulars of the charge are read over and explained to which he pleads not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined as many as 8 (eight) numbers of witnesses. Accused pleads total denial while his statement was recorded u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him where he deny the evidence and decline to give defence evidence.
- **6.** I have also heard argument put forward by the learned counsel for both parties.

7. The point for decision in this case is that:

(i) Whether on or about 11.30 a.m. at Gormara under Dhekiajuli Police station, accused committed sexual assault on victim, aged about 5 years 4 months and thereby

committed an offence punishable under section 8 of POCSO Act ?

Reasons, Decisions and reason for decision

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **9. PW- 1** Dr. Tutumoni Handique, stated that that on 11-04-2017 she was posted as working as Sr. Medical & Health Officer in the Kanaklata Civil Hospital, Tezpur and on that day at about 2.30 p.m. in the labour room complex of KCH, she examined Mahima Bage, 5 yrs. 5 months, D/O Nikodin Bagge of Gorpara, PS Dhekiajuli in reference to Dhekiajuli PS Case NO. 269/17 u/s 3/4/6 of the pOCSO Act , on being escorted and identified by Woman Home Guard Kunjalata Kakoti of Dhekiajuli PS, vide Hospital Registration No. 4085/17. She was examined in presence of GNM Anna Marry. On examination she found the following:

History – according to the victim as explained by her mother she was sexually assaulted on 10-04-2017 at about 11 a.m. by known person.

Height - 94 cm, Weight - 11 Kg, Teeth - 5 in all quadrants all temporary teeth. No marks of violence seen on her body as well as on her private parts. Hymen present.

Investigation report:

- 1. Vaginal smear no spermatozoa seen. Done at KCH laboratory. Lab No. 47/17.
 - 2. X-ray for determination of age -

Age of the person under investigation appears to be under 10 years.

Done at Assam X-ray Clinic and Laboratory. Patient ID AXC 236, Radiologist Dr. P.K. Barman.

OPINION: 1. Actual age of the victim is below 10 years.

2. No sign and symptom suggestive of recent sexual intercourse.

3. No marks of injury on her body as well as on her private parts.

Enclos: Advice slip, Vaginal smear report and X-ray for age determination.

Ext. 1 is the Medical Report and Ext. 1(1) is her signature. Ext. 2 is the X-ray report and Ext. 2(1) is the signature of Dr. P.K. Barman, Radiologist. Ext. 3 is the laboratory report of KCH and Ext. 3(1) is the signature of laboratory technician. Ext. 4 advice slip along with the X-ray plates.

10. PW- 2 Sri Nikodin Bage, father of the victim and complainant stated that the incident took place about three months ago one day at about 10 AM. On the day of incident, at the evening when he arrived home after work, his wife Katina Bage informed him that his minor daughter Miss X, aged about 5 years was raped by accused Nelson Nag in their house. Then, his daughter Miss X informed him by crying that accused Nelson committed misdeed to her by holding. Then he searched the accused Nelson and met him on the road, but, he fled away without responding him. In the next day, he lodged the ejahar before Dhekiajuli Police Station by putting thumb impression. Police recorded his statement.

Though he has been exposed to long cross-examination, the evidence as to at the evening when he arrived home after work, his wife Katina Bage informed him that his minor daughter Miss X, aged about 5 years was raped by accused Nelson Nag in their house, Then, his daughter Miss X informed him by crying that accused Nelson committed misdeed to her by holding has remained unchallenged.

11. PW -3 Smt. Katina Bage stated that **t**he incident took place about 2/3 months ago. On the said day of incident, at about 12 AM after doing her work of Job Card she arrived at home. During that time her daughter Miss X told her by crying that accused committed misdeed to her by applying spit on her private part. Accused is also applied his hand in her private part. Her daughter also told her that the said incident took place at their home. She also reported that

for the act of the accused, she had suffering pain on her private part. Then she informed the matter to the village headman Bisnath. The gaonburha immediately came to their home and saw her victim daughter. In the next day, her husband lodged the FIR and then police arrived at their home. The incident took place in Monday and her husband lodged the ejahar on Tuesday. Police took her daughter/victim for medical examination. Police has also sent herdaughter/victim to the Court for recording her statement. During investigation, police has seized the panty and other clothes which were put by her victim daughter at the time of incident.

Though she has been exposed to long cross-examination, the evidence as to on day of incident, at about 12 AM after doing her work of Job Card she arrived at home, during that time her daughter Miss X told her by crying that accused committed misdeed to her by applying spit on her private part, accused is also applied his hand in her private part, as a result, she had suffering pain on her private part has remained unchallenged.

PW 4, Smti Quari Bage, stated that the incident took place **12.** about 2/3 months ago. On the day of incident, she has been to field to tether her cattle at about 9 AM. Then she came to the house of informant and found victim Miss X in their house. As she was alone, so, she asked her to play there. After about one hour, when she return to her home, she saw accused Nelson Nag in the house of the informant. Then she asked Nelson why he has been in the house of complainant since there were no other older person and there were only a little girl Miss X. She saw Miss X who was in crying and she asked her why she was crying. Then Miss X told her that accused Nelson opened her panty. Then she told her that her mother arrived at about 12 O'clock and then she informed the matter to her mother. Then she remained there till arrival of the mother of the victim. After arrival of her mother, she told her mother that accused committed misdeed to her by applying spit on her private part and thereafter she left the house.

Though she has been exposed to long cross-examination, the evidence as to when she returned to her house she saw accused in the house of the informant and on being asked him why he has been in the house of the informant, and saw Miss X was crying and Miss X told her that accused opened her panty has remained unchallenged. Rather she admitted that the victim's mother informed her that accused committed misdeed to her daughter by applying spit on her private parts.

13. PW 5 the victim Miss X, who was examined after making enquiry by putting different questions to test as to her intelligence and ability to give rational answers stated that she knows the accused. At the relevant time she was at their own house. Accused came to their house at about 12 O' clock in the day when she was alone. Accused came to their house and opened her panty and applies spit on her private parts.

In cross-examination, she admitted that she had made statement to the learned Magistrate. She has also admitted that she was instructed what to state before the court.

14. PW 6 Smti Moddit Bage stated that the incident took place in this year at about 4/5 months ago. At the time of incident she went to work. At about 12 O'clock when she returned to home she heard that victim Miss X was crying. Then she asked her why she was crying, she replied that Nelson committed rape on her. The victim i.e. her grand-daughter shown her private parts to her and she noticed swelling on her private parts. Nelson fled away. At 5 p.m. father of the victim Miss X caught Nelson. Then, mother of victim filed this case. Thereafter police sent the victim for medical examination and sent her to the learned Magistrate for recording her Magistrate u/s 164 Cr.P.C. and thereafter, she was handed over to her parents. Accused Nelson was involved in such type of activities on earlier occasion also.

In cross-examination she admitted that while she returned to home, she heard that victim Miss X was crying, then she asked her why she was crying, she replied that Nelson committed rape on her has remained unchallenged.

PW-7 Sri David Doimari, I.O. of this case, has stated that on 11-04-2017 he was posted at Dhekiajuli Police station as ASI. On that day, one Nikodin Bage lodged an ejahar before O/C Dhekiajuli Police station. In the said ejahar the complainant put thumb impression. On receipt of the ejahar the then I/C Dhekiajuli PS SI Ghana Kanta Baruah registered a case vide Dhekiajuli PS case No.269/17 u/s 3/4/6 of the POCSO Act and endorsed him to took up the investigation. Ext. 5 is the ejahar and Ext. 5(1) is the signature of O/C Dhekiajuli PS SI Ghana Kanta Baruah, I/C of Dhekiajuli PS. Thereafter, he has visited the place of occurrence, recorded the statement of complainant, recorded the statement of witnesses and prepared the sketch map of the place of occurrence. Ext. 7 is the sketch map and Ext. 7(1) is his signature. The victim, aged about 5 years four months, was sent to KCH for medical examination and she was sent to the court for recording her statement u/s 164 CR.P.C. Thereafter, on 13-04-2017 he has arrested the accused Nelson Nag, S/O Sri Gagan Nag of village Gorpara, Dhekiajuli. Ext. 8 is the prayer made to the learned Magistrate to record the statement of the victim. After collecting the medical report and after finding sufficient materials against the accused, he has filed the chargesheet against the accused Nelson Nag. Ext. 9 is the chargesheet and Ext. 9(1) is his signature.

In cross-examination he admitted that victim belongs to Adibashi community. Case diary is silent whether the victim canb speak or understand the Assamese language. At the time of investigation, he has put some questions to the victim but she did not give reply verbally but only nodding. At the time of examination of the victim, victim's mother Katina Bage was also present as interpreter. He has not obtained permission from the learned court to engage Katina Bage as interpreter. Witness Quari Bage stated before him that Mohima told her that the accused forcefully opened her panty.

- **16.** PW 8 Smt Bijaya Khakhlary stated that on 11-04-17 she was posted as Judicial Magistrate, first Class, Tezpur. On that day in reference to Dhekiajuli PS Case No. 269/17 under section 346 of POCSO Act she had attempted to record the statement of witness Mahima Bagge under section 164 Cr.P.C. Since she was 4-5 years old, so she made enquiry by putting different questions. She attempted to record the statement of victim after giving her reflection period for four hours and she attempted to record the statement of the victim ease and feel free. But inspite of her best effort and being asked repeatedly the victim did not state anything about the incident. As the victim is a minor, the I.O. was directed to give her in zimma of her natural guardian on execution a bond of Rs. 2,000/- with direction to produce her as and when required. Ext. 10 order dated 11-04-17, Ext. 10(1) is the signature of Addl. Chief Judicial Magistrate. Ext. 10(2) is the order of the learned Chief Judicial Magistrate. Ext. 10(3) is the signature of learned Chief Judicial Magistrate. Ext. 11 is a procedure of regarding statement. Ext. 11(1) is her signature. Ext. 11(2) is her order dated 11-04-17. Ext. 11(3) is her signature.
- **17.** These much is the evidence of prosecution
- **18.** Defence plea is total denial while his statement was recorded u/s 313 Cr.P.C.
- **19.** Learned counsel for the accused submitted that the prosecution has failed to prove the case beyond any reasonable doubt. **Firstly,** the sole evidence of the victim cannot be relied on as she could not able to speak anything before the learned Magistrate while she was sent for recording her statement recorded u/s 164 Cr.P.C. **Secondly,** the statement of other witnesses even the PW 2, father and PW 3 the mother of the victim did not tally with the statement of the victim. **Thirdly,** there are many contradictions in the statements of the witnesses.
- **20.** On the other hand, learned Special Public Prosecutor has submitted that the prosecution has ably proved the case against the accused beyond any reasonable doubt, hence, accused is required

to be convicted under the charged section. Learned Special PP also submitted that in fact there is no enmity in between the accused and the complainant. Even if there is any strange relation between the accused and complainant, it would not be expected from the complainant to involve his own minor daughter in such a hatred cases.

Learned Special PP again submitted that PWs 2 and 3 are the father and mother of the victim, therefore, question may arise to their interestedness to succeed the case. To rely the interested witnesses in convicting the accused, learned Special 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 Special PP also submitted the case law of **State of UP V. Krishna Master & ors** reported in **2010 Crl.L.J.3889.**

- **21.** 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.
- **22.** 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 informed about the incident to her father (PW 2), mother (PW 3) and also PW 4 Smt. Quari Bage which are corroborated.

According to PW 2, father of the victim, stated that the incident took place about three months ago one day at about 10 AM. On the day of incident, at the evening when he arrived home after work, his wife Katina Bage informed him that his minor daughter Miss X, aged about 5 years was raped by accused Nelson Nag in their house. Then, his daughter Miss X informed him by crying that accused Nelson committed misdeed to her by holding. Then he searched the accused Nelson and met him on the road, but, he fled away without responding him and in the next day, he lodged the ejahar. Similarly PW 3 mother of the victim, stated that on day of incident, at about 12 AM after doing her work of Job Card she arrived at home. During that time her daughter Miss X told her

by crying that accused committed misdeed to her by applying spit on her private part. Accused is also applied his hand in her private part. Her daughter also told her that the said incident took place at their home. She also reported that for the act of the accused, she had suffering pain on her private part. Then she informed the matter to the village headman Bisnath. The gaonburha immediately came to their home and saw her victim daughter. Though both the PW 2 and 3 are respectively father and mother of the victim duly cross-examined by the defence but the evidence as to victim reported to them by crying that accused committed misdeed to her by applying spit on her private parts has remained unchallenged.

Supporting the evidence of PW 2 and PW 3, PW 4 Smt. Quari Bage stated that while she returned to her home, she saw accused Nelson Nag in the house of the informant, then she asked Nelson why he has been in the house of complainant since there were no other older person and there were only a little girl i.e. the victim, then she saw victim was in crying and she asked her why she was crying, victim told her that accused Nelson opened her panty. Though PW 4 has been duly cross-examined but the evidence as to she was reported by the victim that accused opened her panty and committed misdeed by applying spit on her private parts has remained unchallenged.

PW 5, the victim, who was examined after making enquiry by putting different questions to test as to her intelligence and ability to give rational answers, she stated that at the relevant time she was alone in the house at about 12 O' clock accused came to their house and opened her panty and applies spit on her private parts. Her evidence is corroborated with the statement made before the police u/s 161 Cr.P.C. Though she has been exposed to long cross-examination, but the evidence as to accused came to their house when she was alone and by opening her panty and spit on her private parts has remained unchallenged.

23. Learned counsel for the accused submitted that the prosecution has failed to prove the age of the victim as they have

not been seized any school certificate or Birth certificate of victim to ascertain the age. Therefore, the case cannot be stated to be fallen under POCSO Act.

- **24.** 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. to prove the victim that she was 5 years old at the time of incident. But the Doctor PW 1 who examined the victim stated that the actual age of the victim is below 10 years. The victim was examined before this court on 13-11-2017 where she stated that she was 5 years old on the day of incident. That has not been challenged by defence at any point of time. Therefore, it can safely be held that the victim was a minor.
- 25. 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.
- 26. In this case, the victim and her parents categorically stated the age of the victim was about 5 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 victim and her parents in respect of age of the victim remains unchallenged.
- **27.** 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, while she was alone, at about 12 O' clock accused came to their house and opened her panty and applied spit on her private

parts and thereby committed sexual assault to her. The victim also made such statement before the I.O. while her statement was recorded u/s 161 Cr.P.C. Though the victim has been vigorously cross-examined by the learned counsel for the accused but the evidence as to at the relevant time accused came to their house and opened her panty and applied spit on her private parts has remained unchallenged. There is nothing in the evidence of the PWs that the accused had any enmity or quarrel with the complainant to file the case falsely against the accused. Therefore, defence of false allegation is not made out.

- 28. The Hon'ble Supreme Court in **State of Rajasthan Vs. Babu Muna (2013) 4 SCC 206,** has observed as under :-
- **"9.** We do not have any slightest hesitation in accepting the broad submission of Mr. Jain that the conviction be based on the sole testimony of the prosecutrix, it found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be clarified into three categories, namely, (i) wholly reliable, (ii) whole unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of single witness, the conviction can be found without corroboration. This principle applies with greater in terms in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of single witness but the court has no option to acquit the accused."
- 29. 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.
- **30.** 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.

- **31.** 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.
- **32.** Coming now to the fact as to whether conviction can be recorded on the sole testimony of a child witness or not? Such 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."

- **33.** 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.
- **34. 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.
- **35.** 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.
- **36.** 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, thereafter this court recorded her statement. Apart from that, other witnesses including the parents of the victim i.e. PW 2 and 3 also supported the evidence of PW 5 (victim).

Here in the present case as discussed above, the evidence as to on the day of incident while the victim was alone in their house, accused came to their house, opened her panty, spitting on her private parts are supported by reporting witnesses PW 2, 3 and 4.

- **37.** On appreciation of the evidence given by the victim, her parents and other independent witnesses i.e. PW 4 before whom the victim stated about the incident and considering the aforesaid facts, it comes to the conclusion that it is the accused who attempt to commit sexual assault to the victim. The doctor clearly stated that there is no any sign and symptoms of recent sexual intercourse and no mark of violence was seen on her body as well as in her private parts. Therefore, I think that the prosecution has failed to prove the ingredients of section 8 of the POCSO Act.
- **38.** In regard to the age of the victim, it appears that as stated above, the victim as well as parents of the victim, all were stated that the victim is about 5 years of age. Similarly, the doctor confirmed the age of the victim is below 10 years, but there is no documentary proof as to her age. Under such circumstances, it can be stated to be the offence committed by accused is attempted to commit the offence of sexual assault.
- **39.** Therefore, accused Sri Nilsan @ Nelsan Nag is acquitted from the alleged charge u/s 8 of the POCSO Act but accused Sri Nilsan @ Nelsan Nag is convicted u/s 18 of the POCSO Act.
- **40.** The accused is heard on the point of sentence where he praying for leniency stating that he has his wife and one minor son and he is the only bread earner of his family, hence, praying for leniency.
- **41.** I have heard learned counsel for the accused as well as learned Public Prosecutor, Sonitpur.
- **42.** 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 35 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.18 of POCSO Act a punishment for any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.

ORDER

43. I convict the accused Sri Nilsan @ Nelsan Nag u/s. 18 of POCSO Act and sentence him to Rigorous Imprisonment for 12 (twelve) months and to pay a fine of Rs. 5000/- (Rupees five thousand only) in default Rigorous Imprisonment for 2 (two) months.

It appears from the record that the accused has been in custody since 13-04-2017.

The period, which he detained in custody, shall be set off from the period of imprisonment, imposed on him.

44. 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. 20,000/- (Rupees twenty 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.

45. 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 20^{th} day of April, 2018

(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

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 Dr. Tutumoni Handique, M.O. :-Prosecution Witness No.2 2. Sri Nikodin Bage **Prosecution Witness No.3** 3. Smti Katina Bage :-**Prosecution Witness No.4** Smti Quari Bage 4. :-**Prosecution Witness No.5** Victim Miss X 5. :-Smti Moddit Bage 6. Prosecution Witness No.6 :-7. Prosecution Witness No.7 Sri David Doimari, I.O. Prosecution Witness No.8 Smti Bajay Khakhlary, Judl. Magistrate. 8.

EXHIBITS.

Exhibit 1 :- Medical report.

Exhibit 2 & 3 :- X-ray and laboratory reports,

Exhibit 4 :- Advice slip Exhibit 5 :- Ejahar Exhibit 7 :- Sketch map

Exhibit 8 :- Prayer for recording statement of the victim

Exhibit 9 :- Charge sheet

Exhibit 10 :- Order dated 11-04-17

Exhibit 10(1) :- signature of Addl. CJM, Sonitpur.
Exhibit 10(2) & (3) :- signatures of learned CJM, Sonitpur.
Exhibit 11 :- Procedure of regarding statement
Exhibit 11(1) & (3) :- signature of Judicial Magistrate
Exhibit 11(2) :- Order of Judicial Magistrate

(Ashok Kumar Borah) SPECIAL JUDGE SONITPUR: TEZPUR