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

Present: Smti S. Bhuyan Special Judge

Nalbari.

# **Special (P) CASE NO : 20/19**

(Under section 6 of the POCSO Act, 2012.)

#### **STATE**

-Vs-

# Rituparna Gautam

S/O-Sri Upen Sarma R/o: Vill-Budrukuchi

PS-Nalbari, Dist-Nalbari ......Accused person

Appearance:-

For the prosecution : Mr. K. Sarma, Special PP

For the defence : Mr. T. Ahmed, Advocate.

Mr. M. Misra, Advocate

Date of institution of the case : 20/04/19

Date of framing charge : 03/06/19

Date of evidence : 16/07/19, 17/07/19, 18/07/19,

19/07/19, 20/07/19, 01/08/19, 03/08/19, 05/08/19, 19/08/19

Statement of accused recorded: 12/09/19

Date of Argument : 23/10/19, 30/10/19

Judgment Delivered : 13/11/19
Sentence hearing : 15/11/19
Sentence Pronounced : 15/11/19

# <u>JUDGMENT</u>

1. The fact of the prosecution case is that on 19/04/19, victim girl 'Miss X' aged about 15 years adopted daughter of Late Nripendra Sarma was taken away by accused Rituparna Gautam at about 10 pm from the house of Jamini Mishra on the night of his

daughter Madhusmita Misra's marriage where victim was staying being her maternal uncle and after taking her into the field accused had rape the victim. It is the prosecution case that victim at the time of incident was not mentally sound and she came to her maternal uncle's house with her mother to attend the marriage of Madhusmita Misra. The family member and guest present in the marriage house when found Miss 'X' the victim missing they made search for her and during search she was recovered in the field with the accused and then both were brought, police was informed and informant was also informed and at the time of recovery of victim she was found topless, one person gave her shirt to cover up her body and they were taken to the police station. Informant who is the cousin elder brother of victim was informed from the police station by his another cousin sister about bringing of victim at the police station and about the incident of her recovery in the field with accused in indecent condition, he came to police station and then lodged the written eiahar.

On the date of incident O/C, Nalbari PS received one 2. telephonic information from one Hitesh Talukdar apprehension of one boy and girl by the village people so after making a GD entry vide GD Entry No. 25 dated 19/04/19 police from Nalbari PS proceeded to the place of occurrence the public graveyard of village Janigog and found the victim with accused who were apprehended by the public and brought them to the police station with the near relative of the victim girl. The O/C, Nalbari PS on receipt of the written ejahar from PW-1 Jyoti Kr Sarma registered Nalbari PS case no. 247/19 u/s-376(3)(2)(n) IPC and section 6 of the POCSO Act. In course of investigation I/O prepared sketch map of the place of occurrence (Ext-11), produced victim at SMK Civil Hospital, Nalbari for her medical examination, recorded her statement u/s-161 CrPC and thereafter, she was produced before the court to record her statement u/s-164 CrPC, seized the motorcycle and mobile belonging to the accused from the place of occurrence (Ext-8), seized the prescriptions of the victim undergoing treatment from Dr Spl (P) Case No: 20/19 2 of 18

Jayashree Das, consultant clinical psychologist and one under Dr Jayanta Das, Consultant psychiatrist, two no's of jeans pant, one black ganji, one Sporting, one yellow ganji, one panty vide Ext-10 and produced accused before the court after his medical examination and on completion of investigation he submitted charge sheet against the accused Rituparna Gautam u/s-376(3)(2) (n) IPC and section 6 of the POCSO Act 2012.

- 3. After taking cognizance, necessary copies furnished to the accused and after hearing learned counsel for the accused and Special PP and perusal of the material on record the charge u/s-376(2)(I) IPC and section 6 of the POCSO Act has been framed finding prima facie material against the accused and when charges are read over and explained to the accused he pleaded not guilty and stood for trial.
- 4. Prosecution submitted that victim Miss 'X' is below 18 years and is suffering from mental illness and accused rapped her. To prove the charge prosecution adduced evidence of altogether 12 no's of witnesses including informant, victim, and medical officer and Investigating officer of the case and exhibited 12 no's of documents. PW-1, Jyoti Kr. Sarma (informant), PW-2, Miss 'X' (victim), PW-3, Prafulla Misra, PW-4, Bharati Misra, PW-5, Rupanjali Misra, PW-6, Dr. Urmi Devi Choudhury (M/O), PW-7, Arup Baishya @ Pinku, PW-8, Nipan Sarma, PW-9, Hitesh Talukdar, PW-10, Joy Kr. Misra, PW-11, Munindra Sarma, PW-12, Mridul Bhagawati, IO of the case. Ext-1, ejahar, Ext-2, statement of victim u/s-164 CrPC, Ext-3 Medical report, Ext-4, consent report of victim for medical examination, Ext-5, report of USG, Ext-6, report of vaginal swab done at SMK Civil Hospital, Nalbari, Ext-7, X-ray report, Ext-8, seizure list, Ext-9, seizure list, Ext-10, seizure list, Ext-11, sketch map and Ext-12, charge sheet. After closures of the evidence of the prosecution, statement of the accused Rituparna Gautam recorded u/s-313 Cr.P.C and accused plea is total denial however accused declined to adduce evidence in support of his plea of denial.

### 5. **POINTS FOR DETERMINATIONS ARE:-**

- (i) Whether victim was below 18 years and was minor at the time of incident and she was suffering from mental illness at the time of incident?
- (ii) Whether accused taking advantage of Miss 'X' mental disability/illness committed aggravated penetrative sexual assault upon her?
- (iii) Whether accused taking advantage of Miss 'X' mental disability/illness committed rape upon her.

# <u>Argument</u>

- 6. I have heard argument of learned counsel for both sides. Learned special PP contended that prosecution by adducing statement of informant, medical officer and other PWs established that victim was below 18 years and she was minor at the time of incident and also established that there is mental disability of the victim and it has been also coming from the evidence and materials on record and from the medical examination report of the victim that she was undergoing treatment of psychological problem and I/O of the case seized document relating to psychological treatment undergoing by the victim and victim statement established the prosecution charges against the accused person.
- 7. It has been argued by the learned defence counsel that informant lodged the ejahar on the next day of the incident though victim and accused brought to the police station on the night of incident and the delay in filing ejahar is fatal for the prosecution case. The victim was brought to the police station on the same day, i.e. on the date of incident in terms of GD Entry but said GD entry not placed before the court and therefore, the prosecution case as a whole go away and has no merits. He further submitted that police did not visit the place of occurrence and this has been revealed from the statement of victim adduced before the court. She stated police did not visit the place of occurrence with her and

place of occurrence is the side of road near paddy field which is about 200 meters distance from the marriage house. Victim evidence pointed that she is a major girl of 20 years old, she goes with accused of her own and there is no document in respect of her age is produced by I/O to show that she is below 18 years and radiological estimated age is not the conclusive proof of actual age of person. There is always error of 2/3 years in both sides and if 2-3 years is added on either side of radiological age she is above 18 years and in cross she stated she is 20 years. There is no medical documents produced to show victim was suffering from any kind of mental illness or is undergoing psychological treatment. Medical Officer, PW6 statement pointed that her intelligence and memory is good. Therefore, the fact that alleged victim girl is minor and is suffering from any physical and mental deformities are not proved. Learned counsel further submitted that the victim in her statement stated that she was friendly with the accused in the marriage house. She pinched accused's hand while giving a glass of water to accused. First accused sit on the motorcycle and then she sat. Thus shown she being major went with the company of accused of her own. Her evidence does not pointed commission of any physical relationship and medical examination ruled out commission of recent sexual intercourse though victim was examined by Pw-6 within 24 hours of the incident and till then she was at the police station therefore allegation of commission of rape does not established and ingredients of section 376(2)(I) IPC and section 6 of POCSO Act does not attract. Learned counsel further submitted that touching body may attract other provision of law but not section 6 of the POSCO Act and section 376 IPC and ingredients of section 3 of the POCSO Act and section 375 IPC does not comes to play and accused entitled acquittal.

# **DISCUSSION, DECISION AND REASON THEREOF:**

8. PW-1 is the informant of the case, he in his evidence and ejahar stated that victim is aged about 15 years old on the date of incident. Incident took place on 19/04/19 on the day of marriage of

Madhusmita Misra, D/o- Jamini Misra of village Janigog. It is an admitted fact that victim as well as accused came to the marriage house where they came into contact with each other. Victim Miss 'X' at the time of recording her statement stated that she is aged about 15 years. PW-7 stated that victim is aged about 14/15 yrs. PW-9 Hitesh Talukdar stated age of the victim is about 12/13 years. PW-4 in cross stated victim was adopted when she was a baby by her adoptive parents.

- 9. PW-6 is the Medical officer. Her statement is that on 20/04/19, she had examined Miss 'X' aged 15 years and victim was found taking treatment for some psychological condition with Dr Jayanta Das since last 2 years, menarche was at 12 years and as per radiological estimation, the age of the victim is above 14 years and below 16 years. The ocular evidence with regards to the age of the victim is about 15 years. Medical Officer report shown that victim was undergoing treatment for last 2 years for psychological condition. Radiological age is below 16 years and above 14 years and if 2 years is added then also age of the victim is below 18 years and if 2 years subtracted then she is aged about 12 and if 2 years subtracted from 16 years then she is aged about 14 years and if 2 years is added on either side, then the range is above 16 years but below 18 years. In both way the ocular and radiological age of the victim is below 18 years of age.
- 10. At the time of argument learned counsel submitted that as per medical report, victim is intelligent. PW-6, is the Medical officer. In the column of general condition of the victim, it is mentioned that victim is taking treatment since last 2 years for some psychological condition under Dr Jayanta Das. PW-12 is the I/O who has seized documents relating to mental illness of the victim vide Ext-9. During trial, at the time of filing bail petition for accused which was filed and moved by present defence counsel, the bail petitioner Upen Sarma, father of the accused made statement that the doctor opined that victim is a psychiatric patient since a long back and is under the treatment of Dr Jayanta Das, psychiatrist and again stated that victim is psychiatric patient

in the bail petition dated 20/05/19 which was numbered as 727/19 and again in the bail petition filed by the same petitioner which was numbered as petition number 937/19 in para 9 it is stated that doctor physically examined the victim and opined that victim is psychiatric patient and again in page 3 sub para 2 of para 9 in line 18 it is stated that she (victim) is a psychiatric patient that means victim girl was suffering from some psychological problem and is undergoing treatment under a psychiatrist and was not mentally sound at the time of incident is clearly coming out from the material on record and same is an admitted facts.

- PW-12, I/O of the case submitted that the victim is suffering 11. from mental illness. PW-9 stated victim girl was suffering from mental abnormalities at the time of incident. On perusal of the seized documents together with the testimonies of M/O with medical report of the victim girl it is seen that victim girl was undergoing treatment for her psychological problem under Dr. Jayashree Das and Dr. Jayanta Das and the statement of the petitioner Upen Sarma, father of the accused Rituparna Gautam made in bail petition vide no. 937/19 and 727/19 further strengthen the prosecution version that victim girl is suffering from some kind of psychological condition for which she was undergoing treatment and she was not mentally sound at the time of incident and prosecution proved the fact that victim girl was minor and was suffering from mental disorder at the time of incident.
- 12. The learned defence counsel made submission that PW-2, victim in her evidence stated she was not rape and she kissed the accused. So she is a consenting party to go with the accused. The fact that victim is a minor girl below the age of 18 years and was suffering from mental disorder being established and proved, therefore, the question of consent is immaterial and because of this fact she may stated in cross that she kissed the accused when accused told her that he would marry her. But she denied the suggestion put by defence that "accused did not undress her, not touched her body, not put his hands inside her panty and not touched her private parts". The victim girl in her evidence stated

that on the date of incident she was taken by the accused on his motorcycle in the field where he undressed her, touched her whole body, pressed her breast, put his hand into her vagina after removing her dress and thereafter, accused told her that he wanted to marry her. Other public noticing the incident took her and accused to the police station and from police station her cousin brother Jyoti Kr Sarma took her to her house.

- 13. The accused in his statement u/s-313 CrPC admitted that he took the victim to the field. It is also admitted by the accused in question no. 9 that public took him along with victim Miss 'X' on the question put to him that "public noticing the incident took victim along with him to the police station."
- 14. PW-7 Arup Baishya @ Pinku stated on the night of incident while he was sleeping at his house, village people called him as one bike was abandoned near his house and owner of the bike was not found. He then came out from his house and made search for the owner of the bike and preceded towards the graveyard and at that time he saw accused running away. He called the accused and accused returned and when he enquired, accused answered him that he came to the graveyard for no reason. Hearing this he suspects the accused and again preceded to the graveyard and found the victim girl in naked condition and he gave her his shirt to wear. Thereafter, family member of the victim came and brought the dress for her and then she was made to wear the dress and she was taken away by the public. On asking, victim told that she was forcibly taken by accused, undressed her and committed rape on her.
- 15. The statement of PW-3 who was the purohit of the marriage is that while he was in the marriage house performing the rituals of marriage, he came to know that victim is missing from the marriage house and she was taken by a boy and after completing the necessary works of purohit he came to road and noticed both accused and victim.

- 16. The statement of PW-4 pointed that mother of the victim is suffering from cancer as such victim stayed at her house whenever her mother went for treatment and evidence of PW-4, PW-5, PW-8 and PW-10 pointed that victim was taken by the accused from the marriage house and there was hue and cry took place in the marriage house finding her missing in the marriage house and at the place where victim recovered with the accused is graveyard near the field. Statement of PW-4 pointed that when she heard hue and cry she came out from her house, and victim is her niece and at that time victim is staying at her house and victim was missing from marriage house and coming to know about the recovery she reached Janigog Shiva mandir where accused and victim girl was brought from the place of recovery i.e. graveyard and noticed both of them and at that time victim girl was wearing her camisole and someone gave gamocha and some persons informed police.
- 17. Her cross examination pointed that victim girl told her that accused took victim from the marriage house. The statement of PW-5 Rupanjali Misra also pointed that hearing hue and cry, she came out and came to know that one boy kidnapped victim and at that time her another cousin brother Jay Misra over phone asked her to bring dress for victim to the police station and she went to the Nalbari PS with dress for the victim and at the police station she noticed victim was wearing a shirt.
- 18. The combined reading of statement of PW-7, PW-4, PW-5 pointed that at the time of recovery of victim girl she was not in well dressed. She was found topless. Pw-7 gave his shirt to wear which victim put on her body. Pw-4 evidence also pointed that someone given a gamocha to the victim by which she wrapped on her chest to cover up her body and Pw-5 evidence pointed when she went to police station with the dress of victim as asked by her cousin brother Jay Misra, she found victim was wearing a white shirt. The combined reading of the statement of PWs together with the statement of PW-2 the victim of the case, it is seen that accused took victim to the field before arrival of the groom, removed her dress, touched her breast, vagina and her body and

the fact that victim was found in the field where she was taken by the accused in topless condition with the accused has been established and as victim was found in topless condition PW-7 gave his shirt to cover up her body which she wear and noticed by PW-5 at police station. Accused was present at the place of occurrence and Pw-7 noticed him and when he asked him reason for coming to the graveyard the isolated place he could not give answer and going a little, victim was found in topless position at the same place. PW-2 victim in her in-chief and cross stated that accused removed her dress, touch her body, place his hand on her vagina and defence failed to distract victim from this part of her statement and her this piece of evidence is remains unassailable. The fact that accused removed dress of the victim girl who is below 18 years and is suffering from psychological problem has been proved from the combined reading of the statement of victim with other PWs.

- 19. PW-8, Nipan Sarma who on the date of incident present on the marriage house and came out from the marriage house hearing hue and cry and went to the place where hue and cry was taking place and on reaching the place that is 'buragohain than' where victim girl was brought after she was spotted at graveyard in a topless condition with accused, he found accused was sitting on the steps of the 'burhagohain than' and also noticed the victim girl. Villagers called police and police arrived.
- 20. Pw-9 evidence pointed that victim girl who was suffering from mental illness when found missing from the marriage house, they immediately make search for her and enquired about her. And on that time one boy of their 'suburi' told them that accused took the victim girl on his bike and the guests who were coming to the marriage noticed one motorcycle near the house of Arup Baishya and public apprehended one boy and girl in between the field and graveyard. Arup Baishya is examined as PW-7 and his statement pointed that some villagers finding abandoned motorcycle near his house called him and he came out and went towards the field in search of the owner and noticed accused and on asking the accused he could not give answer for his coming to

graveyard, suspicion draws and PW-7 Arup went ahead to find out actual facts and Pw-7 found the victim in topless condition and thereafter, they were brought from the place of recovery to the Janigog Shiva mandir (buragohainthan). Thereafter, he along with Munin Sarma Nripen Sarma and some guest of the marriage house went to the buragohainthan where victim girl and accused was brought and victim was in half naked condition and they were brought to the marriage house but as situation turned hostile police was informed and police took both accused and victim to police station.

- 21. In cross, PW-9 stated that he was present when victim was recovered in the field where from accused and victim were brought to burahgoainthan shiv mandir and accused was found wearing a vest and long pant at the time of recovery.
- 22. PW-10 Jay Kr Misra stated on the date of incident, when he was standing near the marriage house he heard villagers talking about accused taking away the victim from the marriage house and public apprehended the accused with the victim girl while doing indecent works at Simeli tal and he preceded there and at that time noticed that accused and victim were brought to burhagohainthan, but as groom arrived so he returned to the marriage house. His evidence pointed accused and victim was brought to police station and victim was accompanied by her 'mami' Bharati Misra, PW-4. His cross pointed that he noticed Hitesh at the place of occurrence and Hitesh came to the buragohainthan and Hitesh was called by the villgers and Hitesh is PW-9 of the case.
- 23. The evidence of PW-11 Munidra Sarma is that while he was present in marriage house, he heard that niece of Jamini Misra is missing from the marriage house, they searched for the girl here and there and at that moment one boy informed that villagers caught one boy and girl near the house of Arup Baishya. Accordingly, he went to the place where victim girl was recovered in half naked condition with accused Rituparna Gautam. His cross pointed that he went to the place of occurrence along with Hitesh.

- 24. The reading of the statement of PW-11 and PW-9 pointed both went together to the place of occurrence where villagers spotted and apprehend the victim as well as accused. The presence of Pw-9 at place of occurrence is stated by Pw-10 who went to the buragohain than after Pw-9 and Pw-11 when victim and accused was brought to buragohain than by the villager after their recovery at the graveyard and field near the house of Pw-7. The field and graveyard is near to each other and house of Pw-7 is near the place of occurrence where villager spotted one owner less motorcycle.
- 25. Pw-7 evidence pointed that the villagers called him when abandoned owner less bike was parked near his house and while searching the owner of the said bike that belonged to accused, he noticed accused and found the victim girl. The place where victim and accused were present is a graveyard and one field. The statement of PW-9, PW-8 and PW-11 pointed that when they find out the victim is missing who was minor and suffering from psychological problem they enquired about the girl and made search for her and during that time one village boy informed that some villagers apprehend one boy and girl. Immediately, they went to the place where villager apprehend the boy and girl riding one their bike. The distance being short distance they reached fast.
- 26. The statement of PW-10 and PW-11 pointed that they went to the place of recovery. Pw-8, 9, 11 evidence pointed that when they reached the place where the accused and victim was recovered, they found victim in topless condition. PW-7 spot the accused first and then victim was spotted. Victim was brought to the place by the accused.
- 27. Pw-9 evidence pointed he asked a shirt to cover up the girl body and one boy gave a shirt and said boy is PW-7. The spotting of the victim with accused in the field at night, victim found topless, to cover up her body Pw-7 gave his shirt, someone gave gamocha and then Pw-5 brought dress for the girl at the PS are all

corroborated statement and same is established from the statement of witnesses.

- 28. Victim was medically examined by PW-6 on 20/04/19 and before her medical examination she was brought to police station from the place of her recovery and medical examination report show no recent sexual intercourse or assault. PW-2 victim stated she was not raped by accused but she stated accused touched her breast, body, placed his hand on her vagina and this piece of statement of PW-2 is unassailable, remains intact and I have accepted the same.
- 29. Sexual assault is defined in section 7 of the POCSO Act which is quoted below: "Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child to touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."

# 30. Section 9 of the POCSO Act defined aggravated sexual assault and clause 9 (k) are defined as:

- " (k) Whoever, taking advantage of a child's mental or physical disability, commits sexual assault on the child."
- 31. Section 3 of the POCSO Act relates with penetrative sexual assault and section 4 is the penal provision for section 3. Section 5 of the POCSO Act says aggravated penetrative sexual assault and section 6 is the penal provision for section 5 of the POCSO Act.
- 32. The victim girl in her evidence stated that accused after removing her dress put his hands into her vagina, touch her breast and whole body. The victim is a minor and she was suffering from mental disability for which she was undergoing treatment under consultant psychiatric. The statement of victim clearly pointed that she was sexually abused by the accused and defence failed to assail her this piece of testimonies and her evidence together with the statement of other PWs that she was found topless, accused SpI (P) Case No: 20/19

took victim to the graveyard at night all goes against the accused and summation of the evidence on record pointed that accused sexually assaulted the victim which is covered by the ingredient of section 7 and 9 (k) of the POCSO Act.

- 33. The victim girl being suffering from mental disability that is to say some kind of psychological problem for which she was undergoing treatment is covered by section 9 (k) which is punishable under 10 of the POCSO act.
- 34. From the foregoing discussion I come to my considerate finding that victim was a minor at the time of incident and accused took her to the field where he touches her vagina, breast, remove her cloth and that pointed the sexual intent of the accused. Though in the case in hand offence u/s 6 POCSO Act is not proved against the accused however, offence u/s-9 of the POCSO Act which is punishable u/s-10 of the POCSO Act has been proved and fully established against the accused beyond all reasonable doubt.
- 35. Section 6 of the POCSO Act is an act of committing aggravated penetrative sexual assault and maximum punishment prescribed is imprisonment for life but which shall not be less then 7 years. Section 10 of the POCSO Act is an act of aggravated sexual assault and maximum punishment prescribed is seven years imprisonment and with fine and which shall not be less than 5 years.
- 36. Situated thus, I find that provision of sec 222 Cr.P.C is applicable in the case in hand to render justice to the victim of the case and same will not miscarriage the due procedure of law and there will not be any vitiation of proceeding and miscarriage of justice will not be done to accused also because offence u/s-10 of the POCSO Act is a minor offence and when material on record constituted a minor offence of which charge has not been framed by the Court, Court can convict the accused in minor offence if evidence on record constituted one minor offence of which charge has not been framed, followed decision of Tarkeshwar Sahu Vs

State of Bihar (2006) 8 SCC. Hon'ble Apex court in a catena of decision held that-'It is true that section 222 Cr.P.C entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried.'

- 37. Section 222 Cr.P.C is quoted below:- "When offence proved included in offence charged- (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
- (2) When a person is charged with an offence and facts are proved which reduces it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.
- (3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
- (4) Nothing in this section shall be deemed to authorize a conviction of any minor offence where conclusions requisite for the initiation of proceeding in respect of that minor offence have not been satisfied."
- 38. Upon perusal of the evidence on record and ingredient of section 6 of the POCSO Act, I am of the considered opinion that section 10 of the POCSO Act is the minor offence and ingredient of section 10 of the POCSO Act has been fully satisfied in this case against the accused Rituparna Gautam and I have applied the provision of section 222 Cr.P.C. From the evidence on record I found accused Rituparna Gautam is guilty of offence punishable u/s-10 of the POCSO Act and accordingly I hold accused Rituparna Gautam guilty of offence u/s-10 of the POCSO Act and I convict accused Rituparna Gautam u/s-10 of the POCSO Act. His bail stands cancelled.
- 39. Considering the facts and circumstances of the case and nature of the offence committed by the convicted accused Rituparna Gautam, which is sexual assault on a child, the benefit

of Probation of Offender Act or section 360 I.P.C. is not applicable. Accordingly, convicted accused Rituparna Gautam is heard on the point of sentence.

### **HEARING ON SENTENCE**

40. I have heard accused and his counsel and prosecution side on the point of sentence. Accused pleaded mercy and his sentence is written in a separate sheet enclosed with the case record. Learned defence counsel made submission there is a discrepancy on the evidence of victim and age stated by the victim in her cross examination and the age as per the statement of other PWs and radiological evidence the order of conviction is required to be condoned and considering the age of the accused being a young boy aged 28 years, he may be treated leniently. Ld. Special P.P submits that accused be sentenced in accordance with law.

### **ORDER**

- 41. After going through the entire case record, I find that in this case victim is not only a minor but she was suffering from mental illness which is evident from the record and from the statement of the bail petitioner, who is the father of the accused. After scrutiny of entire record I am of the opinion that it is the accused who first moved the girl from the marriage house and then sexually assaulted her by taking her in an isolated place and therefore accused does not deserve any leniency. Accordingly, I sentence accused Rituparna Gautam to undergo R/I for 7 (seven) years and to pay fine of Rs. 10,000/-, in default, R/I for another 6 (six) months for committing offence u/s- 10 of the POCSO Act.
- 42. Period under detention is set off u/s 428 Cr.P.C. Let furnish free copy of Judgment to convicted accused Rituparna Gautam.
- 43. The convicted accused is told that he has right to prefer appeal against the judgment and order of conviction and sentence before the Hon'ble High Court of his own, through jail or through the legal aid counsel.

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- 44. Seized articles vide MR No. 149/2019 and MR No. 150/2019 be returned to the owner and disposed of in accordance with law.
- 45. Send copy of judgment to learned District Magistrate Nalbari u/s 365 Cr.P.C.

Given under hand and seal of this Court on this 15<sup>th</sup> day of November, 2019 at Nalbari, District- Nalbari.

(Smti S. Bhuyan) Special Judge, Nalbari

Dictated and Corrected by me,

(Smti S. Bhuyan) Special Judge, Nalbari.

Typed by, Biswajit Bhattacharjya Copyist

## **APPENDIX**

## A. Prosecution witnesses

PW-1, Jyoti Kr. Sarma (informant),

PW-2, Miss 'X' (victim),

PW-3, Prafulla Misra,

PW-4, Bharati Misra,

PW-5, Rupanjali Misra,

PW-6, Dr. Urmi Devi Choudhury (M/O),

PW-7, Arup Baishya @ Pinku,

PW-8, Nipan Sarma,

PW-9, Hitesh Talukdar,

PW-10, Joy Kr. Misra,

PW-11, Munindra Sarma,

PW-12, Mridul Bhagawati, IO of the case.

## B. Defence witness

NIL

## C. <u>Prosecution Exhibits</u>

Ext-1, ejahar,

Ext-2, statement of victim u/s-164 CrPC,

Ext-3 Medical report,

Ext-4, consent report of victim for medical examination,

Ext-5, report of USG,

Ext-6, report of vaginal swab done at SMK Civil Hospital, Nalbari.

Ext-7, X-ray report,

Ext-8, seizure list,

Ext-9, seizure list,

Ext-10, seizure list,

Ext-11, sketch map

Ext-12, charge sheet.

# D. <u>Defence Exhibit</u>

NIL

(Smti S. Bhuyan) Special Judge, Nalbari