IN THE COURT OF THE SPECIAL JUDGE, UDALGURI, ASSAM

SPI. (POCSO) Case No.37/2017 (U/S: 6 of POCSO Act)

State
Versus
(1) Radha Krishna Barman @ Pandit,
S/O- Late Tarak Barman,
Vill- Nepaligaon,

(2) Subodh Biswas, S/o- Sri Gouranga Biswas, Vill.- Borgara Bagisha, P.S.- Dalgaon, Dist.- Darrang (Assam).

PS-Rowta, Dist-Udalguri.

PRESENT: Sri P.Saikia,A.J.S., Special Judge, Udalguri.

APPERANCE:

For the Prosecution: Sri M.Khaklary, Addl. P.P., Udalguri

AND

For the accused: Mr. M.C. Narzary, and

Mr. P. Sutradhar, Advocates.

Evidence recorded on: 26.6.18, 29.8.18, 28.9.18, 5.12.18,

5.1.2019

Argument heard on: 26.3.2019. Judgment delivered on: 9.4.2019.

JUDGMENT

1. The prosecution case, in a nutshell, is that on 2.9.2017 one Pradip Singha lodged an FIR with the Officer-in-charge of Rowta PS alleging amongst other that about four months prior to the lodgment of the FIR his minor daughter (real name is withheld, henceforth referred to as the victim) was suffering from physically weakness and she could not give concentration to her

studies and, therefore, she became worried. Taking advantage of this situation the accused Subodh Biswas, who resides near his house induced him and her daughter with a promise that she would be able to cure her illness and accordingly his daughter was taken to the house of one village quack Radha Krishna Barman situated at village Nepaligaon of Koupati. Then accused Radha Krishna Barman by adopting occult science and spelling some "Mantras" send her to her home and asked her to come again for her further treatment after one week alongwith the accused Subodh Biswas. After one week when his daughter went with accused Subdh Biswas to the house of accused Radha Krishna Barman on that day both of them committed rape on her showing threat to her life. After ravishing her both the accused persons warned his daughter not to reveal the incident to any one as otherwise she would face fire consequences. Out of fear his daughter did not say anything about the incident to them. Later, when her menstrual period became irregular then he asked her about the matter and then she narrated about the incident. As the victim did not disclose about the incident and, as such, there was cause of delay in lodging the FIR in promptitude.

- 2. On the basis of the FIR, the Officer-In-Charge, Rowta Police Station registered a case vide Rowta PS case No.107/2017 U/S 6 of POCSO Act and investigated into it. On conclusion of investigation the accused persons Radha Krishna Barman and Subodh Biswas were charge-sheeted U/S 6 of POCSO Act to face trial of the case.
- 3. On receipt of the charge sheet the Special (POCSO) case was registered and cognizance of the offence was taken. The presence of the accused was ensued by the process of the court. On due appearance he was furnished with the necessary copies of the police documents U/S 173 Cr.P.C.
- 4. In consideration of framing of charge my learned predecessor in office heard learned counsel of both sides and also perused the entire materials on record. Having found a prima-facie case and sufficient ground for presuming that the accused persons Radha Krishna Barman and Subodh Biswas had

committed the offence U/S 6 of POCSO Act framed formal charge thereunder and the same on being read over and explained to them to which they pleaded not guilty and claimed to stand trial.

- 5. In order to prove the case, the prosecution has examined as many as seven witnesses including the informant, victim and I.O. of the case. The prosecution has also relied on some documents annexed in the case record.
- 6. The accused persons when examined U/S 313 Cr.P.C. took the plea that they have been falsely implicated in the case. However, no evidence was led in support of the defence.
- 7. In the light of the above perspective, the point for determination in the present case is set up and framed as:-

Whether the accused prior to four months of 2.9.2017 at Koupati Nepaligaon under Rowta PS committed aggravated penetrative sexual assault upon the victim, aged about 17 years as alleged U/S 6 of POCSO Act?

8. I have heard argument advanced by the learned counsel of both the sides and also carefully gone through the evidence on record in its entirety.

DISCUSSION, DECISION AND REASONS THEREOF:

9. PW1, Dr. Hiranya Kr. Gayari is the Medical and Health Officer of the case who examined the victim on 3.9.2017. He has testified to the effect that on 3.9.17 with reference to Rowta P.S. case No.107/17 U/S 6 of POCSO Act examined the victim and after examination he opined that radiological age of the victim was approximate 17-18 years, USG abdomen- single live fetus of 21 +- weeks of gestational age and Urine test for BMCG positive. Ext.1 is his report and Ext.1(1) is his signature.

- 10. In cross-examination, he has stated that as per the radiological report which was done at Radhika Xray Centre, Mangaldai he has given the opinion that approximate age of the victim was 17-18 years at the time of examination.
- 11. PW2, Pradip Singha is the informant of the case. As per his version, the victim is his daughter. About 4 months ago before filing of the FIR his daughter was suffering from illness. One day accused Subodh Biswas came to his house and advised to treat his daughter with a village quack (Kabiraj) namely, Radha Krishna Barman, for her recovery who resides at village Nepaligaon. After one week accused Subodh Biswas again came to his house and took his daughter with him to the house of the quack accused Radha Krishna Barman for her treatment. Before her treatment the accused Radha Krishna Barman lighted a cigarette and blew the smoke of the cigarette on her face and, as a result she lost her consciousness. Then accused Radha Krishna Barman committed rape on her. When his daughter regained her sense then the accused Radha Krishna Barman asked her to hold one garland. When his daughter holding the flower garland the accused told her that she should swear in the name of God that she would not disclose the commission of rape by him to any one and if she divulged about the incident she would die. After 2/3 months from this incident his daughter became pregnant. Noticing the pregnancy of his daughter his wife asked her as to how she became pregnant. Then his daughter narrated about the incident as to how the accused Radha Krishna Barman on the pretext of curing her ailment committed rape at his house. Later, his wife narrated him about the incident. In this regard he called a village meeting where both the accused persons were present and they confessed their guilt. Thereafter, he lodged the FIR with the police as regards the incident. Ext.2 is the FIR. Ext.2(1) is his signature.
- 12. In cross-examination, he has stated that he is a PAN shop owner which is about half kilometer away from his house. Every morning he comes to open his shop. He has his wife and three daughters and two sons. Two of his daughters have already given in marriage before the incident. His wife also

goes for her work every day in a tea estate. His elder son also goes for work in the factory. At the material time his victim daughter and her younger brother remained at house. His house is adjacent to Borgarah TE. Prior to this incident his daughter eloped away with one Ajoy Gowala of Borgarah TE and stayed with him for about 15 days. When his daughter eloped away with Ajoy a village meeting was held after her recovery. In that meeting, the accused as well as his father were present and the father of the accused assured to provide monetary relief to his daughter. Subsequently, the father of Ajoy refused to pay any money as per the resolution of the meeting. Soon after the prior incident his daughter became gradually ill and in order to cure of her illness she was sent to the accused Radha Krishna Barman, who is a quake by profession in the village. He did not witness the incident as narrated in the FIR. He has denied the defence suggestion that accused Radha Krishna Barman had not committed rape on his daughter on the pretext of curing her and the accused Subodh Biswas did not abetted the commission of rape by the accused Radha Krishna Barman.

13. PW3, Bani Singha is the victim. According to her evidence about 1 year ago one day after returning from school towards home at around 12 pm the accused Subudh Biswas who was known to her since before the incident accosted her and asked her to accompany him to a village quack as she was suffering from some kind of ailments since before the incident which was known to him. When she refused to go on that day, the accused Subudh Biswas insisted her on meeting the quack Radha Krishna Barman who is the other accused in this case. She also knows the Radha Krishna Barman who used to go to the house of accused Subudh Biswas who is her co-villager. Eventually she decided to go with the accused Subudh Biswas for her treatment before the accused Radha Krishna Barman at his house in the bicycle of the accused Subudh Biswas as a pillion rider. On reaching the house of the accused Radha Krishna Barman, she was asked to sit at his house. Then accused Radha Krishna Barman chanted some magic spell before her and he also put one cloth in her mouth. Thereafter, she was dragged into the bed room of Radha Krishna Barman with the help of the accused Subodh Biswas. Then the accused Subudh Biswas ravished her sexually in spite of her protest. Then the other accused Radha Krishna Barman also sexually ravished her. After ravishment by both the accused persons she was taken to her home by the accused Subudh Biswas in his bicycle. She was also told by the accused persons that if she reveals regarding the incident her entire family would be perished. Out of fear of course she did not disclose the matter to any one of her parents until completion of about 4 months from the date of occurrence. Thereafter, one day she decided to narrate about the incident and told her mother about the incident. He mother then informed her father about the incident. In turn her father placed the matter before the village people. When the village people did not take any action in the matter her father lodged an FIR before the police. Police got her statement recorded under Section 164 Cr.P.C. and she was examined by a doctor. As a result of commission of rape on her by the accused persons she became pregnant and gave birth to a male baby in the month of January, 2018. The male baby in the meantime has taken by the Child Welfare Committee. Ext.-3 is her statement recorded under Section 164 Cr.P.C. wherein Ext.-3(1) is her signature.

14. In cross-examination, she has revealed that she did not state before the police in her statement recorded under Section 161 Cr.P.C. that on reaching the house of the accused persons Radha Krishna Barman her mouth was gagged with a cloth and dragged her to his bed room with the help of accused Subudh Biswas. Before this incident she eloped away with one Ajay Gowala due to her love affairs with him. She stayed with Ajay Gowala for about one week before this incident in another house. As regards this incident a village meeting was held and in that meeting the father of Ajay Gowala promised to compensate her but subsequently no compensation was given to her. After leaving the company of Ajay Gowala her health started to deteriorate and she continued to feel ailments in her body. She has denied the defence suggestion that she had co-habited with Ajay Gowala before this incident and, as such, she became gradually ill due to her pregnancy. There are many houses close to the house of the accused Radha Krishna Barman. When she visited the house of the accused Radha Krishna Barman on the date of

occurrence his family members were present. It takes half an hour to reach the house of Radha Krishna Barman by bicycle from her house. She visited the house of accused Radha Krishna Barman twice alongwith accused Subudh Biswas in his bicycle. She has denied the defence suggestion that she conceived as a result of co-habitation with Ajay Gowala and gave birth to a male baby but in order to save herself from this ignominy she has falsely implicated the accused persons.

- 15. PW4, Sabita Rani is the mother of the victim. It is her evidence that the incident occurred in the month of April,2017. At the material time ofthe incident her daughter was suffering from illness and did not showing interest in her studies. The accused subudh Biwas who is her co-villager used to come to their house and she told him about the ailments of her daughter. Then the accused Subodh Biswas told her that there was a quack (KabiraJ) who would be able to cure the ailments of her daughter. Then accused Subudh Biswas was also ready to help her in making contact with that quack. Accordingly they agreed to send their daughter before the quack for her treatment. In that way one day accused Subodh Biswas came to her home and took her daughter to the house of the quack for her treatment. Even after four months of treatment her daughter did not recover. Rather her health started to deteriorate further and her physical appearance also changed. On suspicion she asked her daughter about her condition. Then she told her that on the day when accused Subudh Biswas took her into the house of the quack both of them committed rape on her as a result she became pregnant. Later she came to know the quack as Radha Krishna Barman. Then she informed about the matter to her husband. Her husband took the matter to the local people but they did not take any action. So, her husband lodged the FIR before the police as regards the incident. Her daughter eventually gave birth to a male baby in the month of January, 2018 and the baby is presently taken by the social welfare committee. At the time of occurrence her daughter was 16 years old.
- 16. In cross-examination, she has stated that she is a tea garden labourer. She goes for work in the morning and returns in the afternoon. Her husband who owns a PAN shop also goes to open the PAN shop in the morning and

returns in the evening. Her elder son is aged about 22 years and employed in the tea estate. Her victim daughter and younger son remained in the house in their absence. Before this incident her daughter went away from her house alongwith one Ajoy Gowala of village Borgarah T.E. and stayed with him for about 5/6 days. In this connection after returned of her daughter after leaving the company of Ajoy Gowala a village meeting was held and in that meeting the father of Ajoy Gowala asured to compensate the expenditure of her daughter but, the father of Ajoy Gowala, later backdrop from his assurance without paying anything. After returning from the company of Ajoy Gowala her daughter's health was fine. She has denied the defence suggestion that after returning from the company of Ajoy Gowala the health of her daughter deteriorate and one day she asked accused Subhash Biswas to bring one pregnancy test kit to examine her daughter pregnancy or not. She has never visited the house of the accused Radha Krishna Barman. She has denied the defence suggestion that her daughter conceived as a result of elopement with Ajoy Gowala before the incident and she has falsely implicated the present accused persons in this case.

17. PW5, Dimbeswar Deka is one of the investigating officers of this case. He has stated in his evidence that on 2.9.2017 he was posted as In-charge of Borobazar OP under Rowta PS. On that day OC Rowta PS Dipu Bora received an FIR from one Pradip Singha and on the strength of the FIR the Officer-in-charge, Rowta PS registered a case being Rowta PS case No. 107/2017 U/S 6 of POCSO Act and entrusted him for investigation of the case. In the mean time, he had taken up the preliminary investigation of the case. During the investigation he recorded the statement of the witnesses, visited the place of occurrence, prepared the sketch map thereof and arrested the accused persons Subodh Biswas and Radha Krishna Barman. He also got the statement of the victim recorded U/S 164 CrPC and sent the victim for medical examination and collected her medical report. On conclusion of the preliminary investigation he handed over the case diary to the Officer-in-charge, Rowta PS. Ext. 4 is the sketch map Ext. 4(1) is his signature.

- 18. In cross-examination, he has stated that he has not attached the extract copy of the GD entry along with the case diary. On the basis of the GD entry he conducted preliminary investigation of the case. At the time of the investigation he found the accused persons were living with their family members at their house. He did not record the statement of the neighboring witness namely, Surubala Das and Sonaram Das though their houses are indicated in the sketch map near the place of occurrence. When the victim turned up to the police station in connection with this case she was kept in the police station for the night to get her statement recorded U/S 164 CrPC before the magistrate on the next day. In the house of the accused Radhakrishna there is a small temple in his courtyard and the worshipers cannot sit inside the temple due to its small size. The house of the accused Radhakrishna comprises four rooms. The family of the accused Radhakrisha consists of 6-7 family members.
- 19. PW6, Khagendra Hazarika is the other investigating officer of the case. His testimony reveals that on 21-11-2017 he was working as 2nd officer at Rowta PS. On 2-9-17 he was entrusted to investigate this case being Rowta PS case No. 107/17 U/S 6 of POCSO act which was earlier investigated by SI Dimbeswasr Deka, I/C Boorobazar police outpost on the basis of the GD entry. After completion preliminary investigation of the case as per the entrustment of the then Officer-in-charge, Rowta PS he also conducted the final investigation of the case. Hence, he did not conduct any investigation of the case except receipt of the case diary from the I/C Dimbeswar Deka after completion of the investigation. On perusal of the case diary he found that the investigation was completed and, therefore, he laid the charge-sheet against the accused persons Radah Krishna Barman and Subodh Barman U/S 6 of POCSO Act. Ext. 5 is the charge-sheet Ext. 5(1) is his signature.
- 20. In cross-examination, he has stated that he only submitted the charge sheet of the case.

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- 21. PW7, Sanjit Singha is not an eye witness to the occurrence. He has deposed to the effect that both the informant and the accused persons are known to him. He also knows the victim. The occurrence took place in the month of April, 2017. In the month of April one day he saw accused Subudh alongwith the victim, the daughter of the informant together. On being enquired accused Subudh told that he was taking the victim to one tantrick (village quake) Radhakrishna Barman to cure her illness. After four months of the incident when the victim became pregnant he asked her as to how she became pregnant. Then the victim told that that in the month of April when the accused Subudh took her to the house of the tantrik Radhakrisha on the pretext of curing her illness. On that day both the accused Subudh and Radhakrishna had committed rape on her and as consequent thereupon she became pregnant. She also told before him that the victim did not disclose the incident of rape immediately because the accused persons threatened her that if she disclosed the matter her entire family would be doomed. The victim eventually gave birth to a male baby who is at present under the custody of child welfare community.
- 22. In cross-examination, he has stated that he is the brother-in-law of the victim. He resides separately. He has admitted that he had not stated before the police that the accused Subudh had taken the victim to the house of the tantrik Radahakrisha one day in the month of April. The victim did not disclose before him about the incident in the month of April though he used to visit her house frequently during that period. He has denied the defence suggestion that before the occurrence of this incident the victim once eloped away with one Ajay Gowala of Borgora T.E. and stayed with him for seven days till return to her house. The victim only went away from her house with the sister of Ajay Gowala and stayed with her for seven days. He has also denied the suggestion that after recovery of the victim from the custody of Ajay Gowala a village meeting was conveyed in their village and in that meeting penalty was imposed on Ajay Gowala to give compensation to the victim. He has also denied the suggestion that as the victim stayed with Ajay Gowala she conceived due to cohabitation with him.

- 23. Before proceeding to evaluate the evidence on record minutely, it appears that the allegation of aggravated penetrative sexual assault/rape has been levelled against the accused persons by the victim in the instant case in absence of any ocular evidence as regards the incident except the victim herself. In such a situation, the main evidence is that of the prosecutrix herself.
- 24. In practice a conviction for rape almost entirely depends on the credibility of the woman, so far as the essential ingredients are concerned, the other evidence being merely corroborative. It is not necessary that there should be independent corroboration of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the prosecutrix, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the prosecutrix is true and that is reasonably safe to act upon it. If the evidence of the victim does not suffer from any basic infirmity the probabilities factor does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case medical evidence can be accepted to be forth coming.
- 25. It is on this back ground if we shift the testimony of the victim (PW3) it would appear that on the day of occurrence while she was returning from school to her house at around 12 pm the accused Subudh Biswas who was known to her before the incident accosted her and asked her to accompany him to the house of village quack as she was suffering from some ailments since before the incident which was known to him. When she refused to go the accused Subudh Biswas insisted on her going to meet the village quack accused Radha Krishna Barman. Eventually she decided to go with the accused Subudh Biswas for her treatment before the accused Radha Krishna Barman in his bicycle. On reaching the house of the accused Radha Krishna Barman he asked her to sit at his house and, thereafter, accused Radha Krishna Barman chanted some magic spell before her and also put a cloth in her mouth. Thereafter, she was dragged into the bed room of Radha Krishna Barman.

After putting her in the bed of accused Radha Krishna Barman accused Subodh Biswas at first molested her sexually in spite of her protest. After accused Subodh Biswas the other accused Radha Krishna Barman also molested her. After commission of rape by both the accused persons she was taken to her home by the accused Subudh Biswas in his bicycle. After commission of the ravishment both the accused persons told her that if she reveals about the matter her entire family would be perished. Out of fear she did not disclose the matter to her parents till the completion of about 4 months and, thereafter, one day she narrated about the incident to her mother who narrated the incident before her husband. After coming to know about the incident her father placed the matter before the village people. When the village people refused to take action in the matter her father lodged the FIR before the police. As a result of commission of rape on her by the accused persons she became pregnant and gave birth to a male baby in the month of January, 2018 who has already been taken by the Child Welfare Committee. But her examination in-chief has suffered from material contradictions and discrepancies as to commission of gang rape by the accused persons on the day of occurrence as a consequence of which she became pregnant and eventually she gave birth to a male baby after about nine months of the incident. The victim (PW3) has revealed in cross-examination that before this incident she eloped away with one Ajay Gowala due to love affairs and she stayed with Ajay Gowala for about one week before this incident in another house and in this regards a village meeting was held and in that meeting the father of Ajay Gowala promised to compensate her but subsequently no compensation was given to her. She has further admitted that after leaving the company of Ajay Gowala her health started to deteriorate and she continued to feel ailments in her body. Though she has denied the defence suggestion that she had not co-habited with Ajay Gowala before this incident as a result she conceived is not at all believable. PW3 has categorically admitted that before the incident she eloped away with Ajoy Gowala and stayed with him for about one week till her return to her own home. It also appears from her evidence that regarding the previous incident a village meeting was held and the village people imposed penalty on Ajoy Gowala and his father also assured to pay the

penalty but subsequently he refused to pay. If the victim had not cohabited with Ajoy Gowala after her elopement with him then why her father had to place the matter before the village meeting where the father of Ajoy Gowala assured to compensate her.

- 26. Even if it assumed for the sake of argument that the victim (PW3) had no intercourse with Ajoy Gowala in the first incident in spite of living with him for one week then how her health became started to deteriorate. In this aspect her own evidence is clinching that after living with the company of Ajoy Gowala her health started to deteriorate and she continued to feel ailments in her body as a result of which she went to the house of the accused Radha Krishna Barman as per the advice of the other accused Subodh Biswas before whom her own mother PW4 stated that her daughter's health started to break down after staying in the company of one Ajoy Gowala for one week till her return. This is also the evidence of PW2 and her mother PW4 as both of them had in no uncertain terms have admitted that her daughter's health started to deteriorate after returning from the company of Ajoy Gowala after her elopement. As a result of such incident as admitted by the victim including her parents PW 2 and PW4 it can be safely inferred that the victim (PW3) was sent to the house of the accused Radha Krishna Barman with the help of the other accused Subodh Biswas as per advice of her own parents PW2 and PW4.
- 27. This apart, the elopement of the victim (PW3) with one Ajoy Gowala and staying with him for about seven days is an undisputed fact. In such a situation, the evidence of the victim (PW3) that when she went to the house of the accused Radha Krishna Barman for curing her ailment with the other accused in his bicycle and, thereafter, both the accused persons committed rape on her and, thereafter she conceived and gave birth to a mae baby does not have a ring of truth without corroboration from independent evidence and the surrounding facts and circumstances of the case so much so that she might have conceived due to her admitted elopement with one Ajoy Gowala with whom she had stayed for a week.

- 28. Top of all, it is beyond comprehension as to why the victim did not disclose about commission of gang rape by the accused persons on the day of occurrence in the month of April,2017 till her pregnancy came to the notice of her parents in the month of October,2017. The allegation of the victim (PW3) is of gang rape committed by the accused persons on the pretext of curing her ailment. If that is so, it defies logic as to why as per her own evidence she again accompanied the accused Subodh Biswas for the second time after commission of gang rape by both of them on the pretext of curing her ailment when she was a matured major girl as per the medical report of doctor (PW1). In that view of matter the age stated by the victim (PW3) in the absence of any school certificate that she was 16 years old at the time of occurrence to hold her as a minor girl at the time of occurrence is discounted though the doctor found positive test of pregnancy with single live fetus of 21 +- of qestational age.
- 29. It has already been noticed from the testimony of the other witnesses including the informant (PW1) that they were not eye witnesses to the incident. Their evidence does not disclose incriminating circumstances to augment the prosecution case inasmuch as evidence of these witnesses have also suffered from material contradictions and discrepancies to accept their evidences as truthful one.
- 30. Moreover, placing of the matter of this incident by the informant (PW2) before the village people and refusal on the part of the village people to convene a village meeting creates further doubt as to commission of gang rape by the accused persons on the day of occurrence as a result of which the victim (PW3) became pregnant and, eventually gave birth to a male baby in the month of January,2018. It is hard to accept as to why PW1 the first informant after coming to know about such a serious incident again placed the matter before the village meeting without lodging the FIR promptly and as a result it has cast a cloud on the authenticity of the prosecution case.

31. On cumulative consideration of whole gamut of the prosecution evidence on record in its proper perspective as discussed above, the discrepant, discordant and contradictory evidence on record including that of the victim (PW3) coupled with delay in lodging the FIR which has not been satisfactorily explained and the purported explanation offered by the informant (PW2) is apparently found to be false and this is an additional ground to falsify the testimony of the victim which is repleted with glaring infirmities in respect to the material particulars of the case. The testimony of the victim is not creditworthy and she cannot be called as a starling witness whose version can be accepted without any corroboration as her version on the core spectratum is explicitly shaky while all other attended materials, namely oral and documentary evidence have also failed to match the version of the victim in material particulars to sieve the other supporting materials for holding the accused persons guilty of the charge levelled against them.

32 In Narendra Kumar Vs State (NCT of Delhi) 2012 (7) SCC 171, it has been observed

"It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. &

Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).

Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence."

- 33. There is no doubt that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation or commission of rape also causes humiliation and damage to the accused. An accused has also right which are also be protected against the possibility of false implication has to be ruled out.
- 34. In **Abbas Ahmed Choudhury Vs State of Assam (2018)12 SCC 115**, the Hon'ble Supreme Court has held that –

"We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully."

35. In **Raju Vs State of Madhya Pradesh (2008)15 SCC 133**, the Hon'ble Apex Court has held that-

"Testimony of victim of a rape cannot be presumed to be gospel truth and observed that false allegation of rape can cause equal distress humiliation and damage to the accused."

36. Keeping in mind the above cited judgments, the testimony of the prosecutrix is not natural and consistence with the case of the prosecution and free from infirmity which inspires confidence and, therefore, it cannot be presumed that the statement of the prosecutrix (Pw3) is true and without embellishment.

37. The narration of the prosecution case by the victim (PW3) as well as her parents PW2 and PW4 having found full of vital omission and contradiction and it raises doubt which has overshadowed the genuineness of the prosecution case.

38. Situated thus, on appreciation of evidence on record, particularly, evidence of the prosecutrix (PW3) her evidence has been found artificial, unreliable and inconsistence, which as per the settle position of law, cannot be accepted and acted upon to bring home the charge levelled against the accused persons that they molested her on the date of alleged occurrence and as a consequence she became pregnant and gave birth to a male baby.

39. Therefore, in my opinion, the prosecution has failed to prove its case against the accused persons beyond reasonable doubt and, hence, accused persons are entitled at least to the benefit of doubt.

40. In the result, I am constrained to hold that the accused Radha Krishna Barman and Subodh Biswas are not guilty U/S 6 of the POCSO Act. Therefore, they are acquitted thereunder on and set him at liberty forthwith.

41. Bail bond executed by the accused and the surety shall remain in force for another six months under the purview of Section 437(A) Cr.P.C.

Given under my hand and seal of this Court this 9th day of April,2019.

Dictated and corrected by me and each page bears my signatures.

(P.Saikia) Special Judge, Udalguri.

Sessions Judge, Udalguri.

APPENDIX:

A)Prosecution witnesses:

i) PW1 Dr. Hiranya Kr. Gayari
 ii)PW2 Pradip Singha
 iii)PW3 Bani Singha
 iv)PW4 Sabita Rani
 v)PW5 Dimbeswar Deka

vi)PW6 Khagendra Hazarika

vii)PW7 Sanjit Singha B)Defence witness: Nil.

C)Exhibits:

i)Ext.1 Medical report

ii)Ext.2 FIR.

iii)Ext.3 Statement of the victim U/S 164 Cr.P.C.

iv)Ext.4 Sketch map v) Ext.5 Charge-sheet

Dictated and corrected by me.

Special Judge, Udalguri