IN THE COURT OF SPECIAL JUDGE, NAGAON.

Special (POCSO) case No-49/2018.

U/S- 376 IPC R/W-S-4 of the POCSO Act.

Parties -

State of Assam

-VS-

1. Shri. Nantu Nath

S/O late-Tulon Nath

2. Shri Rinku Nath @ Pradip Nath

S/O- Sri Bhadaram Nath

3. Shri Rajib Nath @ Pranjal Nath

S/O- Late Rajen Nath

All of village - Bhumuraguri Lalung gaon.

PS- Batradava

Date of charge-17-9-2018

Dates of recording evidence- 20-10-2018, 22-10-2018,

12-11-11-2018, 07-01-

2019,

25-3-2019, 06-5-2019,

20-05-2019, 17-08-2019

Date of argument- 16-9-2019.

Date of judgment - 17-9-2019.

Present- A. Rahman, LL.M, AJS .

Appearance -

For the prosecution- Mr.M. J. Neog , learned Special

prosecutor.

For the defence - Mr. R. Ullah, Learned legal aid counsel

and

Mr. M Goswami, learned counsel.

JUDGEM ENT

This case depicts a very shameful and sadistic story where a minor victim was repeatedly subjected to sexual intercourse for which she became the mother of a baby girl.

Prosecution case, unfurled in the written ejahar (FIR) dated 11/12/2017 lodged by Smt. A. Sonowal (Probation Officer cum District Child Protection Officer, Nagaon) in brief is that, victim Rimpi (actual Name withheld) 13 years, daughter of Ramen (actual name withheld) village Lalung gaon (Bhumuraguri) under Batadrava PS had been sexually abused by accused Nantu Nath, Rinku Nath and Rajib Nath of the same village. As a result, she developed pregnancy and on 04/12/2017 she gave birth a baby girl at Nagaon BPCH. With the initiative of District Child Protection unit and "CHILD LINE" the victim and her new born baby were produced before the Child Welfare Committee Nagaon on 08/12/2017. Accordingly under the instruction of CWC, the complainant lodged the FIR, requesting the O/C of Batadrava Police station to take necessary action against the said culprits. On the basis of the written ejahar (Ext-10), the O/C of said PS registered a case vide Batadrava PS case no 244/2017 U/S 376 IPC R/W section 4 of the POCSO Act.

SI Maheshwar Saikia (PW-8) was entrusted to investigate the case. During the course of investigation, the victim was medically examined and her statement U/S-164 CrPC was also recorded. Accused persons were arrested and forwarded to the jail custody. The IO also got recorded the confessional statement of accused Nantu Nath. He also collected blood sample of the accused persons, the victim and her baby daughter and sent to FSL for DNA test to determine the paternity of the baby.

At the conclusion of investigation, IO having collected the DNA test report laid charge sheet against all the aforesaid three accused persons U/S-4 of the POCSO Act.

Upon submission of charge sheet, the instant Special case was registered.

Subsequently, the Special Judge cum Sessions Judge transferred the case to this court for trial.

Accused Nantu Nath was produced before this court from jail custody.

Accused Rinku Nath and Rajib Nath appeared. Considering the oral prayer of accused Nantu Nath and the fact that he was staying in jail as UTP since after he had been arrested, Mr. R. Ullah, learned advocate was engaged as legal aid counsel for his defence.

After perusing the materials on record, charge U/S 6 of the POCSO Act against accused Nantu Nath was framed to which he pleaded not guilty and claimed to be tried. Charge U/S 4 of the POCSO Act was framed against accused Rinku Nath and Rajib Nath. They also denied the charge and claimed to be tried.

During the trial, prosecution side in order to prove the charges against the accused persons examined all together nine witnesses including the MO and IO. CW-1 Dilip Kumar Bordoloi, Headmaster of Bhumuraguri Lalung Gaon L.P School was also examined. After recording the evidence of the prosecution witness, accused persons were examined U/S 313 CrPC. The defence plea is of total denial and the accused persons chose not to examine defence witness.

I have argument submitted by Mr M.J Neog, learned special prosecutor. Also heard argument submitted by R. Ullah, learned legal aid counsel for the accused Nantu Nath and also heard Mr. M. Goswami, learned advocate for the accused persons Rinku Nath and Rajib Nath. I have also very carefully and minutely gone through the evidence. Now points for determination are as follows.

- 1. Whether accused Nantu Nath made sexual intercourse with victim Rimpi on several times and made her pregnant and as such committed the offence of aggravated penetrative sexual assault punishable U/S- 6 of the POCSO Act?
- 2. Whether accused Rinku Nath and Rajib Nath committed penetrative sexual assault upon the victim and as such punishable U/S 4 of the POCSO Act?

DISCUSSION DECISION AND REASONS THEREOF

1. Before entering upon the analysis and appreciation of evidence, it is utmost necessary to take a glimpse of the core of the relevant statement of the witnesses.

PW-1 is the adoptive father of the victim child who has been examined as PW-5.

2. PW-1 has deposed inter-alia that his wife died of cancer about three years back prior to the occurrence. As he is a day labourer,

he used to go out for work and his adopted minor daughter (PW-5) remained alone at his house. After three months of her first – mensuration, her menstruation got stopped. On being inquired through his neighbour – Aideu, Fulmai and Junmoni about her physical change, she disclosed that accused Nantu Nath had made her pregnant.

- 3. In the village-mel (sitting) his daughter disclosed accused Nantu Nath had forcibly committed sexual intercourse with her at dagger's point and threatened her with dire consequence in the event of disclosing the fact to others. Accused Nantu Nath also confessed before villagers in the sitting that he had committed sexual inter course with PW-5.
- 4. PW-1 has further testified that his daughter (PW-5) gave birth a baby girl, now aged 10 months, at Nagaon B.P. Civil Hospital. Accused Nantu Nath, his wife and he himself took PW-5 to the hospital before delivery of the baby. He has stated that his daughter studied up to class -V at Lalung Gaon L.P. School and she had left the school before two/three years back as his wife had died.
- 5. There was no cross examination of PW-1 as to the extrajudicial confession of accused Nantu Nath before the village-sitting. Thus, impliedly extra judicial confession is not denied and disputed by the defence.
- 6. PW-2 Smt Pallavi Saikia, Child Protection Officer, Nagaon. She has testified that as per instruction of complainant Ajanta Sonowal, she visited Nagaon B.P. Civil Hospital in the month of December 2017 and found the victim (PW-5) had given birth a child, on being inquired from the victim and her father, she could come to know that she was 13 years and had been made pregnant by Nantu Nath. The people of CHILD LINE Nagaon visited the victim at Nagaon Civil Hospital. Thereafter, they handed over the victim and her baby before Child Welfare Committee, Nagaon. During investigation police sized some documents from Child Protection Officer vide Ext-1 seizure list. She has confirmed that Ext-1(1) is her signature.
- 7. PW-3 Partho Protim Nath has deposed almost the same thing which PW-2 has deposed. He has also testified that Victim (PW-5) stated that she had been made pregnant by accused Nantu Nath. As per instruction of CWC, the victim and her new born baby girl were shifted to Nagaon State Home. Police sized some documents from Deepan-jali Devi (PW-4) in his presence vide Ext-1 seizure list. Ext-1(1) is her signature.

8. The evidence of PW-4 is that CWC recorded the statement of victim girl (PW-5) and her adoptive father (PW-1) in her presence. Police during investigation sized Exts-2, 3 4, 5, 6 & 7 from their office vide Ext-1 seizure list. She has confirmed that Ext-1(3) & Ext-1(4) are her signatures.

There is nothing in her cross examination except denial suggestion.

- 9. PW-5 being the victim child is the star witness of the prosecution. Her evidence was recorded on 7th January 2019. On the date of recording her evidence in camera, she brought her one year baby daughter on her lap with extreme difficulty. That was a very pathetic scenery how PW-5 herself being a child had to bear the burden of another baby.
- 10. She has testified that her baby (named Chayanika) is one year. The incident happened two years back from the date of her deposing before the court. Her father used to go out early morning for work and return home in the after noon. Accused Nantu Nath , her neighbour , on the relevant day of occurrence , came to her house and called in her to his house. His wife had gone to the meeting of Bandhan-Self-help group and his sons had gone to school. She has further testified that at his house, he forcibly committed bad work (means physical intercourse) with her. He threatened her to slash by showing a knife if she discloses the fact to others.
- 11. Out of fear, she did not disclose the occurrence to others. Then again on three/four days, the accused called her to his house and committed bad works with her. Her menstruation came to stoppage and she became pregnant for seven months and her stomach became enlarged. Her paternal aunt Jumoni and maternal aunt Aideu asked her the cause of her stomach becoming enlarged. In the village sitting, on being asked by the villagers as to who caused her pregnancy, she disclosed that accused Nantu Nath had committed bad work with her. He also confessed committing of sexual intercourse before the village sitting. And he assured that he would accept PW-5 as his wife and would maintain her and the baby. As per decision of the village sitting, Nantu Nath gave her maintenance for about three months. When she became unwell before the delivery of her baby, accused Nantu Nath, his wife Rekha Devi and her father (PW-1) admitted her in Nagaon B.P. Civil Hospital. She delivered a girl child. The persons from Children Nagaon shifted her along with her new-born to Children home. After lodging the case, police got him examined at Nagaon B.P. Civil Hospital. She was also produced before the Magistrate who recorded her

statement. She has confirmed that Ext-9 is her statement and Ext-9(1) to Ext-9(6) are her signatures.

She has further stated that she knows accused Rinku Nathan and Rajib Nath.

12. The prosecution, declares her hostile so far as her previous statement regarding the involvement of accused Raiku Nath and Rajib Nath.

She denied the suggestion that she stated in her previous statement before police stated that accused Rajib Nath and Rinku Nath each also committed sexual intercourse with her.

- 13. During the cross examination on behalf of accused Nath, she was given suggestion that at the relevant time of occurrence, she was major and sexual intercourse with her happened with her will and consent. Thus, it is impliedly admitted that accused Nantu Nath committed sexual intercourse with her. She has also replied that during her stay in the hospital, accused Natu Nath and his wife Rekha Devi pressurised her to tell the names of Rajib Nath and Rinku Nath in order that he would get married her.
- 14. CW-1 Sri Dilip Kr. Bordoloi, the head master of Bhumuraguri L.P. School. He has produced Ext-9 (proved in original) Admission Register of his school for the year 2009. Ext-9(1) [Proved in Original] is the relevant admission entry of PW-5. Ext-9(2) is the serial number of admission of PW-5 in class Ka (the first class in which a child is admitted for the first time in the school). He has confirmed that Ext-9(3) contains the date of birth of PW-5 which is 15-1-2003 and she was admitted on 7-1-2009. He has clearly stated that he himself made admission entry of all the students. The date of birth of PW-5 was entered after verifying her birth certificate produced by her father.
- 15. There is nothing in his cross examination to show that 15-1-2003 was not her correct date of birth.
- 16. PW-7 Smt Ajanta Sonowal, is the retired Probation Officer cum District Child Protection Officer. She has testified that on 11-12-2017 while she was in duty, she got an information that one child (PW-5) had given birth a baby at Nagaon B.P. Civil hospital. Accordingly with the formal permission of Superintendent of the hospital, she met PW-5 with her baby and her adoptive father (PW-1). She sent PW-5 and her new born to Child Welfare Committee. She has proved that she lodged Ext-10 FIR. Ext-10(1) is her signature.

- 17. PW-8 (wrongly mentioned as PW-7) Smt Pronami Dutta, learned JMFC, Nagaon recorded the confessional statement of accused Nantu Nath. Her evidence was recorded on 20th May 2019 through video –conference as she had been already transferred to Gauhati. She has testified that on 18-12-2017, accused Nantu Nath was produced before her for recording his confessional statement in connection with Batradava PS case No-244/17 U/S-376 IPC read with S-4 of the POCSO Act. She explained to the accused that he is not bound to make a confession and that if he does so, it may be used as evidence against him. She sent him to judicial custody for reflection with a direction to jail authority to keep him separately from the influence of other jail inmates.
- 18. Accordingly, on 19-12-2017 at about 4:25 pm, she recorded his confessional statement after explaining to him that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him. On being satisfied that he was willing to make confession voluntarily, she recorded his confessional statement (Ext-13) in her office chamber. She has confirmed that Ext-13(4), Ext-13(5) & Ext-13 (6) are the details of the confession. Ext-13(7) to Ext-13(10) are the signatures of the accused.
- SI Maheswar Saikia PW-9 (wrongly mentioned as PW-8) deposed that on 15-12-2017, he was entrusted by SI Rajib Baruah , the officer in charge of Batadrava police station to investigate the case registered as Batadrava PS case No- 244/17 U/S-376 IPC read with S-4 of the POCSO Act. investigation, he visited the Office of the District Child Protection Officer, Nagaon and recorded the statement of the complainant and other officials. He seized certain official documents from Deepanjai Devi (PW-4). He also recorded the statement of the victim at Nagaon State Home and found one new born baby with her. The victim was sent to Nagaon, B.P. Civil Hospital for her medical examination. The IO also got recorded her statement U/S-164 crpc through Magistrate. He drew Ext-14 sketch map of PO at the time of his visit. He also arrested accused Nantu Nath and forwarded him to the court for recording his confessional statement with a prayer for sending him to jail custody. Accused Rajib Nath and Rinku Nath were arrested on 21-12-2018 and two mobile phones were seized from by Ext-15 & Ext-16 seizure list. He has further deposed that with the permission of the court, he collected blood samples of the three accused persons, PW-5 and her new born baby on 24-1-2018. He sent the blood samples to FSL, Guwahati for DNA test to ascertain the paternity of the child. He received DNA test report on 25-5-2018. Ext-19 is the

DNA test report. On completion of investigation, he submitted Ext-20 charge sheet against the aforesaid three accused U/S-4 of the POCSO Act.

- 20. The prosecution side confronted PW-9 with regard to the previous statement of PW-5. He has made it clear that PW-5 in her previous statement before him stated that accused Rajib Nath committed bad-work with her after she had been threatened that if she refuses , he would show her photo graphs with Nantu in compromising position. She also stated that accused Rinku Nath also committed bad work with her after threatening to show her photographs with Nantu Nath in a compromising state.
- 21. In cross examination, PW-8 has replied that he asked PW-1 to produce the birth certificate of his victim daughter (PW-5) but he did not produce it. He denied all the suggestions put by the defence.
- 22. Now the crucial point that falls for determination is what was the age of victim (PW-5) at the relevant time of occurrence of committing sexual intercourse with her as a result of which she became pregnant and ultimately gave birth her baby daughter?
- 23. The medical evidence of PW-10 and Ext-14 report prove that PW-5 gave birth a female baby on 4-12-2017. Her age as per ossification report on 18-12-2017 was in between 16/17 years as epiphysis of wrist and iliac crest were not fused. She was carrying pregnancy for nine months till 4-12-2017 when she delivered the child. So her age prior to nine months from the said date would be around 16 years three months if her age is taken as 17 years on 18-12-2017. So her age in the first week of March 2017 would be crucial.
- 24. It is the specific evidence of PW-1 who is the adoptive father of PW-5 that after three months of first mensuration, her mensuration came to stoppage. Normally, a girl attains puberty at the age of twelve /thirteen years even in some case at the age of ten/eleven years. PW-1 being the adoptive father, because of expiry of his wife, definitely could come to know about the fact of first mensuration of his daughter (PW-5). Accordingly, from the said evidence of PW-1, it can be well estimated that she was around 13 years at the relevant time of occurrence.
- 25. Now scrutiny of the oral evidence CW-1 and documentary evidence viz- Ext-9(1) and Ext-9(2), it is found that PW-5 was admitted in class (Ka) (the first class when a child is admitted in the school for the first time) of Bhomoraguri Lalung Gaon L.P. School on 7-1-2009 and her date of birth is recorded as 15-1-

- 2003. So PW-5 was almost six year at the time of her admission in the said L.P.School. It reveals from the said documentary evidence that other children in the age group of five /six years were admitted in class (ka) along with PW-5. In rural area , it is the common practice that the parents admit their child at the age of five/six in the vernacular school for the first time. It is the specific evidence of CW-1 that he entered the date of birth of PW-5 as 15-1-2003 after verifying the birth certificate supplied by her father (PW-1). As per evidence of IO (PW-8) , PW-1 could not produce the birth certificate of his victim daughter.
- 26. Apparently PW-1 is an illiterate and poor labourer , so he could not be expected to properly keep the birth certificate of his daughter at a safe place. So in my considered view , non production of birth certificate of PW-5 is not at all fatal to determine her actual age at the time of occurrence. Even if the age of PW-5 is presumed to be one year more than what is calculated on the basis of her date of birth (15-1-2003) , she would be around 14 years in the month of March 2017 when she was subjected to sexual intercourse. That being so , she was palpably much less than 18 years at the relevant time of occurrence .As such she was a child as defined in the POSCO Act.
- 27. In <u>Mahadeo -vs- State of Maharashtra and Others</u> [2013] 11 SCC 637, the Apex court has held that Rule 12 (3) of the Juvenile Justice (Care and Protection)Rules 2007 can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well. Therefore, in view of the clear proposition of law laid down by the Apex court, we can safely rely on Ext-9 (1) & Ext-9(2) for determination of the age of PW-5. There is absolutely nothing in the evidence to show that Ext-9 is not an authentic document and the date of birth of PW-5 as mentioned in Ext-9(3) is not at all reliable and correct. So , we need not require to depend on the radiological determination of age of PW-5 as per Rule 12(3)(b) of the aforesaid Rules.
- 28. Relying Ext-9(3), we find that PW-5 was 14 years and odd at the relevant time (particularly in the month of march 2017 as her LMP as per Ext-14 and PW-10 was 6-3-2014)
- 29. In the light of above analytical discussion of evidence and aforesaid decision of the Hon'ble Apex court, it is held beyond reasonable doubt that PW-5 being much below 18 years at the relevant time of sexual intercourse was a child as defined U/S -2(d) of the POSCO Act.
- 30. PW-5 being the victim as well as the star witness has categorically stated that accused Nantu Nath in absence of his wife and sons called in her to his house and forcible committed

sexual intercourse with her and threatened her with dire consequence not to disclose the occurrence to others. After the first occurrence, he committed bad work (sexual intercourse) with her at his house three/four times. As a result, she became pregnant and ultimately gave birth of a female baby.

- 31. The defence side did not dispute the delivery of a baby by PW-5 at Nagaon B.P.Civil Hospital. It has been already observed that by giving suggestion to PW-5, it was admitted on behalf of the accused Nantu Nath that he committed sexual intercourse with her will and consent as she was a major girl at the relevant time. But it has been already held that she was much below 18 years and a child. That being so , sexual intercourse even if with her consent becomes immaterial. Because , in the eye of law , minor's consent is not consent. She has given the vivid picture regarding sexual intercourse with her. The factum of giving birth of a child itself is the conclusive proof of the fact that the accused inserted his penis in to her vagina more than one occasion for which her mensuration got stopped.
- 32. The said evidence of PW-5 is fully corroborated by her statement U/S-164 crpc(Ext-9). Her said evidence that accused Nantu Nath had made her pregnant is also fully corroborated by the evidence of PW-1 and PW-6. Their credible evidence is that when her pregnancy became prominent, on being asked by the villagers in the village sitting, she disclosed that accused Nantu Nath made her pregnant. On scrutiny of her entire cross examination, there appears nothing to raise any doubt that she would falsely implicate accused Nantu Nath in sexual intercourse with her. Her evidence corroborated by medical evidence inspires confidence to believe her credence and is sufficient to record his conviction. In view of the said evidence of PW-5, the court can also draw the statutory presumption U/S-29 of the POCSO Act that accused Nantu Nath committed " aggravated penetrative sexual assault" upon her. The defence side has failed to rebut this presumption.
- 33. The evidence of PW-7 who was a judicial Magistrate 1st class, Nagaon clearly establishes that on 18-12-2017, accused Nantu Nath was produced before her to record confessional statement in connection with aforementioned Batadrava PS case and after explaining him that he is not bound to make a confession and if he does so , it may be used against him during trial , she sent him to jail for reflection with a direction to produce him on 18-12-2017. And on 19-12-2018, he was produced before her for the said purpose. After explaining to him the said warning , she having found that he was voluntarily and truly making the confession recorded the same vide Ext-13. A conjoint reading of

Ext-13(2) & 13(3) , ti becomes clear that before recording the confessional statement of accused Nantu Nath, she asked the following questions and recorded his answers-

Q No-1: Do you know that I am not an officer of police but a Magistrate?

Answer- Yes I know.

Q No-2: Whether any influence, promise, force or threatening was made to you by police or any other person making the confession?

Answer: Not. No one has forced or threated me.

QNo-3: Do you Know that you are not bound to make a confession?

Answer: Yes, I do know I am not bound.

Q No- 4: Do you know that if you confess the accusation, it may be used as evidence against you?

Answer: Yes, I know that it will be used against me.

Q No-5 Why do you want to confess?

Answer: Since I have committed the crime, therefore, I confess my guilt.

Q No-6 Do you know that you should say nothing which is untrue and that you should not say because others have told you to say it but is at liberty to say whatever really you desire to say?

Answer: I know. I say it by my own will.

Q no-7: Do you that there is no police officer associated with the investigation in the vicinity and you are completely under the supervision of the court and you need not be afraid of the police?

Answer: Yes, I know.

Q No-8: Whether the police promised or assured you that you would be made approver?

Answer: No, police has made no such promise or assurance.

Q No-9: Do you know that you may be convicted on your own confession?

Answer- Yes . I know.

Q 10: I assure you that you will not be remanded /sent back in the police custody even if you do not confess. Are you clear about it?

Answer: I know that still I want to confess.

- 34. After being satisfied to the answers given the accused on the aforesaid questions , PW-7 recorded his confession the relevant portion of which is –
- "I don not remember the date of occurrence. About 9/10 months back, on the relevant day, I called in PW-5 to my house with an intention to commit bad work (sexual intercourse) with her. My two sons had gone to the school and my wife had gone to the unit meeting of self-help group. I laid her on my bed and removed her wearing cloth (suridar). She did not resist me. I inserted my penis into her vagina (private parts). She did not raise cry. I did the work for five minutes and released my semen inside her vagina. I sent back her and asked her not to say this to any one. After this incidence, each after one week or ten days, I shared physical relation with her on six/ seven occasions spreading over one and half month. I came to know she became pregnant only when village sitting was held. I am the father of her baby."
- 35. Thus, it is proved that said confessional statement was made voluntarily and truly by the accused before PW-7. And she after giving him warning, adequate and proper reflection and observing all formalities as prescribed U/S-164 crpc recorded his confessional statement. At the time of production of accused Nantu Nath before her, she did not find any injury mark or violence and he also did not complain about it.
- 36. The said confessional statement made by accused Nantu Nath , although , he retracted in his statement U/S-313 CRPC , alone can be safely relied on to convict him. Defence during cross examination did not give any suggestion to PW-8(it was wrongly marked as PW-7) that accused never made any confession before her. Rather , it was merely suggested that she did not record his confessional statement as per mandatory requirement of S-281(5) of crpc with regard to the certificate. It is observed that PW-8 did not sign the certificate appended to the end of the Ext-13 confessional statement but she herself filled the name of Nantu Nath in the certificate although did not put her signature at the end. So this was a mere inadvertent mistake which of course would not vitiate the voluntarily made judicial confession of the accused.

- 37. Ext-19 clearly proves that DNA test of the blood sample baby of PW-5 [marked as Ext-No-DNA-1496 (A)/18] matches with DNA of the blood sample of PW-5 herself [marked Ext No-DNA-1496(B)/18] and DNA of the blood sample of Nantu Nath [marked 1497/18]. Thus it is conclusive proof that accused Nantu Nath is the father of female baby of PW-5. Ultimately, Ext-19 also proves that the confession (Ext-13) made by accused that he is the father of the baby of PW-5 is true. Needless to say that to prove an offence of aggravated penetrative sexual assault upon a victim, the paternity of her baby if born is not an essential requirement.
- 38. It is also proved from the evidence of PW-1, PW-5 and PW-6 that when her pregnancy became prominent, village sitting was held. And accused Nantu Nath confessed before the villagers that he committed sexual inter course with PW-5. So the extrajudicial confession of accused Nantu Nath also proves his involvement in the occurrence and guilt.
- 39. The prosecution, in order to sentence an accused U/S-6 of the POCSO Act, has to prove, the following (i) that the accused committed aggravated sexual -assault upon the child. Section -5 of the Act defines "aggravated penetrative sexual assault"," Whoever commits penetrative sexual assault upon a female child and makes her pregnant as a consequence of sexual assault said to commit aggravated penetrative as defined U/S-5(ii) of Act. Committing penetrative sexual assault upon a child for more than once also falls in the category "aggravated penetrative sexual assault" as per S-5(I) of the Act.
- 40. In the foregoing discussion, it has been already proved that accused Nath committed sexual intercourse with PW-5 on six/seven occasions for which she became pregnant and delivered a female baby. PW-5 was a child being below 18 years at the relevant time. Insertion of penis in to the vagina to any extend is penetrative sexual assault as per S-3 of the Act.
- 41. So, it is held that prosecution has proved beyond all reasonable doubt that accused Nath Nath committed offence U/S-5 of the POCSO Act. As such he is convicted uS-6 of the Act.
- 42. PW-5 has not stated before this court that accused Rajib Nath and Rinku Nath committed sexual intercourse with her. Statement U/S-164 crpc is not a substantive evidence but may be used for corroboration or contradiction of the witness. In her cross examination, she has clearly stated that she stated the names of Rajib Nath and Rinku Nath as because , accused Nantu and his wife had assaulted her to disclose their names. So, PW-5 contradicts her statement with regard to the involvement of

Rajib Nath and Rinku Nath. Accordingly, the said two accused are acquitted on benefit of doubt. The bail bonds and sureties shall continue for further six months from this date in terms of S-437(A) Crpc.

43. Victim's compensation U/S-357(A) crpc read with Rule -7 of the Protection of Children From Sexual Offences Act ,2012 :-

It has been already proved that as a direct consequence of committing aggravated penetrative sexual upon PW-5, she gave birth of female baby at Nagaon B.P.Civil Hospital. She has suffered damage both physically and mentally. Now she is burden with maintaining her baby which is a very difficult task. Palpably, she has not source of income and is totally dependent on her adoptive father (PW-1) who is an illiterate and poor labourer. God for bids, if he dies, there would be none in this world to look after her and her baby. In such eventuality, she along with her bay would be shelter less and die in starvation.

- 44. Therefore, under the entire facts and circumstances of the case, this court finds that she is entitled to get compensation in the higher side as provided in the Notification dated 1st February 2019.
- 45. Accordingly, this court recommends that Secretary DLSA, Nagaon , after due inquiry may pay compensation to PW-5 by cheque payable in any Nationalised Bank in her account preferably within three months from the date of receipt of a copy of this judgement. Secretary DLSA shall also help PW-5 in getting opened bank Account in her name, if already she does not have such account.
- 46 .Convicted accused Nantu Nath be remanded to jail custody and he shall be produced before this court on 18 /9/2019 for hearing on sentence.

The sentencing part shall be an integral part of this judgment.

- 47. Before parting with the judgment, I appreciate the valuable assistance rendered by Mr.R. Ullah, learned legal aid counsel during the trial. He is entitled to his fees which may be paid by secretary DLSA, Nagon as per existing norms.
- 48. A copy of this judgement shall be sent each to the Secretary DLSA and District Magistrate Nagaon for information and necessary action.
- 49. Furnish a certified copy of judgement free of cost to the convicted accused forthwith.

50. Judgement declared and delivered in the open court under my hand and seal of this court on this 17th Day of September 2019.

(A Rahman, AJS)
Special Judge , Nagaon.

Judgment prepared& corrected by me.

(A Rahman, AJS)

Special Judge , Nagaon

APENDIX

Prosecution Witnesses

PW-1 is the adoptive father of the victim child.

PW-2 Smt. Pallavi Saikia, Child Protection Officer, Nagaon.

PW-3 Partho Protim Nath.

PW-4 Deepan-jali Devi

PW-5 is the Victim Girl.

PW-6 Aideu Devi.

PW-7 Smt. Ajanta Sonowal.

PW-8 Smt Pronami Dutta, learned JMFC, Nagaon

PW-9 SI Maheshwar Saikia.

PW-10 Dr. Jayeeta Pandit

Court Witness

CW-1 Dilip Kumar Bordoloi, Headmaster of Bhumuraguri Lalung Gaon L.P School.

Prosecution Exhibits

Ext-1 seizure List

Ext-2 Order Sheet

Ext-3 Case summary maintained by CWC.

Ext-4 Order of short term placement pending inquiry.

Ext-5 Statement of Sri Khiradhar Nath.

Ext-6 Statement of Banti Devi.

Ext-7 Statement of Smt. Rekhamoni Devi.

Ext-8 Statement of Nantu Nath.

Ext-9 Copy of School Register.

Ext-10 FIR

Ext-14 sketch map of PO

Ext-15 & Ext-16 seizure list.

Ext-18 FSL Report

Ext-19 is the DNA

Ext-20 charge sheet

Defence Witness and Exhibits.

NIL

(A Rahman, AJS)

Special Judge , Nagaon