### **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.17/2019

U/S- 6 of the POCSO Act, 2012

State of Assam

-Versus-

Sri Raju Boro

s/o- Lt. Indra Boro

Resident of vill -Lampara

P.S.-Boko

Dist- Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor

-----for the State

Md. Jeherul Islam, Legal Aid Counsel

-----for the

accused

Date of evidence: 10.04.2019, 08.05.2019, 21.05.2019,

16.07.2019, 30.07.2019, 27.08.2019, 13.08.2019

Date of Argument: 11.11.2019, 03.12.2019, 17.12.2019

Date of Judgment: 21.12.2019

#### **JUDGMENT**

- 1. The Prosecution case in brief is that—the informant Kumud Boro, President of Lampara Gaon lodged an ejahar on 02.10.2018 alleging inter-alia that the accused—Raju Boro being the father of the victim/prosecutrix used to commit rape upon her. Hence, this case.
- 2. On the basis of the said ejahar, Boko P.S Case No. 722/2018 U/S-294 of IPC R/W Section 6 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the accused person U/S-294 of IPC R/W Section 6 of the POCSO Act, 2012.
- 3. The case was duly transferred and this Court after hearing both the parties, framed charge U/S- 6 of the POCSO Act, 2012 against accused—Raju Boro. The aforesaid charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as eight (8) numbers of witnesses including the informant, the victim girl, I/O and M.O. Statement of the accused person U/S-313 Cr. P.C is recorded. He has denied committing the offence and declined to adduce evidence.

### 5. **POINT FOR DETERMINATION:**

(I) Whether the accused person being the relative of the child through blood committed aggravated penetrative sexual assault on the child U/S-5 (n) of the POCSO Act, 2012 and, thereby, committed an offence punishable U/S 6 of the POCSO Act, 2012?

#### **DISCUSSION, DECISION AND REASONS THEREOF**

6. In this instant case, the accused is charged U/S-6 of the POCSO Act for committing the offence of aggravated penetrative sexual assault on the victim, who is the daughter of the accused. Section 6 of POCSO Act provides for the punishment for aggravated penetrative sexual assault and Section 5 provides the definition of aggravated penetrative sexual assault.

Now, **Section 5 (n) of the POCSO Act** reads as—" whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child'

**Section 6 of the POCSO Act** which deals with punishment for aggravated penetrative sexual assault reads as.—"Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine".

- 7. This is a case U/S-6 of the Protection of Children from Sexual Offences Act, 2012. So, the essence of charge is penetrative sexual assault upon the victim. Penetrative sexual assault is defined in Section 3 as follows:-.
  - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
    - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
    - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the

- urethra or anus of the child or makes the child to do so with him or any other person; or
- (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or
- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- 8. Let us go through the evidences on record to find out how far the prosecution has succeeded to prove the case against the accused.
- 9. P.W.1, Sri Kumud Boro is the informant of this case. At the time of occurrence he was the President of Lampara Gaonsabha. He knows the accused person and the Prosecutrix also. He stated that prosecutrix was 13 years old at the time of occurrence and studying in class-VI. The incident took place about 6 months ago in the year 2018. Accused is the father of the prosecutrix. He came to hear from the members of the village Mahila Samity including one Bimala Boro that the prosecutrix is two months pregnant from her father (accused). The pregnancy was detected when she complained of frequent stomach pain to the Asha workers, when they went to her school for vaccination of the school students. The Asha workers informed the village Mahila Samity regarding the frequent stomach pain of the prosecutrix. Thereafter the Mahila Samity members took the prosecutrix to the doctor for her medical examination and the doctor informed them that the prosecutrix was two months pregnant. On enquiry, the prosecutrix told the Mahila Samity members that the accused had sexual intercourse with her since 1 year and she was pregnant from him. Thereafter, when P.W.1 came to know about the incident, he called for a village meeting on three occasions. But the accused did not attend the meeting. So, P.W.1 lodged the ejahar. Ext.1 is FIR, Ext. 1

(1) is my signature. Ext. 2 is the seizure list. Ext. 2 (1) is his signature. Police recorded my statement.

In his cross-examination, pw-1 denied the defence suggestion that he did not tell before the police that—" He came to hear from the members of the village Mahila Samity including one Bimala Boro that the prosecutrix is two months pregnant from her father (accused). The pregnancy was detected when she complained of frequent stomach pain to the Asha workers, when they went to her school for vaccination of the school students. The Asha workers informed the village Mahila Samity regarding the frequent stomach pain of the prosecutrix. Thereafter the Mahila Samity members took the prosecutrix to the doctor for her medical examination and the doctor informed them that the prosecutrix was two months pregnant". He also denied the defence suggestion that he did not tell before the police that—"when he came to know about the incident, he called for a village meeting on three occasions. But the accused did not attend the meeting".

10. P.W.2, Smti. Dharitri Boro is the mother of the prosecutrix and wife of the accused. She deposed that prosecutrix gave a complaint before the village people that the accused had sexual intercourse with her. But he did not see the incident. This witness further stated that at present, prosecutrix does not stay with her and she does not know if prosecutrix was pregnant or not.

In her cross-examination, pw-2 stated that she does not know if the accused had sexual intercourse with the prosecutrix. She did not see the accused and the prosecutrix engaged in sexual acts before the incident. She also does not know if the prosecutrx had sexual relationship with some other person and became pregnant.

11. P.W.3, is the prosecutrix. She knows the informant of this case. Accused is her father. She stated that the incident took place about a year ago. She further stated that during the night hours, she sleeps on the floor

with her mother. Her father sleeps in another room but he would come during the night time on several occasion and have forcible sexual relationship with her. P.W.3 told her mother but she ignored her. P.W.3 would resist her father but he did not listen to her. Thereafter, she told to her Aunt—Santi Boro and Paternal Uncle—Gajen Boro that her father does bad act with her during the night time. Then, they informed the village people and the ejahar was lodged by them and they informed the Child Line also. P.W.3 was also brought to the police station. Police sent her for her medical examination and brought her before the Magistrate for recording her statement. During medical examination, P.W.3 came to know from the doctor that she was 2 months pregnant. Thereafter, P.W.3 was sent to Naba Jibon, NGO (Women's' home), Mirza for care and shelter. About 11 days back, P.W.3 gave birth to a male child and at present she is staying in the shelter home with her newly born baby. Ext.3 is the statement and Ext. 3 (1 &2) are my signatures.

In her cross-examination, P.W.3 stated that she used to sleep on the floor with her mother and younger brother while her father slept in bed in another room. Her younger brother is 11 years old. This witness revealed that her father did sexual intercourse with her since she was studying in class-VI but she did not tell anybody. And she was studying in class-VII at the time of occurrence. P.W.3 denied the defence suggestion that the accused did not do any bad act with her and that she became pregnant by having physical relationship with some other person. She also denied the defence suggestion that out of fear that the accused will beat her on coming to know about her pregnancy, she gave a false complaint before the village elders and also to her Uncle and Aunt.

12. Pw-4 Smti. Bimala Boro knows both the parties. She deposed that prosecutrix was studying in class-VI at Lampara High School. She heard from the Asha Worker in the month of August, 2018 that prosecutrix was suffering from severe stomachache and she was taken to Boko Govt hospital for treatment. On urine test of the prosecutrix, it was detected that she was 2 months pregnant. Then, prosecutrix told them that she has been made

pregnant by her father. A village meeting was held but the accused (father of the prosecutrix) did not come. So, the ejahar was lodged. Later, prosecutrix was brought to Shelter Home, where she delivered a baby boy. Ext. 2 (2) is her signature in the seizure list (Ext.2). Material Ext. A is the medical document of the prosecutrix. Police recorded her statement.

In her cross-examination, P.W.4 deposed that she was not present when the prosecutrix was taken for medical treatment by Asha Worker.

13. Pw-5 Smti. Minati Boro knows both the parties. She deposed that on 02.10.2018, she heard from the Asha Worker on the vaccination day in the school that prosecutrix was suffering from stomachache. Then prosecutrix told the Asha worker and before the village people that she was not having menstruation for 2 months. Prosecutrix was taken to Boko hospital by Asha workers. There, the doctor told them that prosecutrix was 2 months pregnant. When, they enquired about her pregnancy, she told them that she has been made pregnant by her father. She was 13 years old at the time of incident. A village meeting was held but the accused (father of the prosecutrix) did not come. So, the ejahar was lodged. Later, prosecutrix was brought to Shelter Home, where she delivered a baby boy. Ext. 2 (3) is her signature in the seizure list Ext.2. Material Ext. A is the medical document of the prosecutrix. Police recorded her statement.

In her cross-examination, she deposed that she did accompany the Asha worker at the time of medical test of the prosecutrix.

14. P.W.6, is the M/O, Dr. Rechma Talukdar. She has deposed in her evidence that on 04.10.2018, she was working as a Medical Officer, Department of Forensic Medicine at GMCH. On that day, P.W.6 examined one Sri Nabami Boro, female, 13 years of age brought in reference to Boko P.S case No. 722/18 U/S-294 of IPC R/W section 4 of the POCSO Act. She was

accompanied and identified by WPC, 582 Dipika Basumatary. The victim stated before her that on 02.10.2018 the accused—Raju Boro, who is her father, had sexually abused her at her residence in the absence of other family members.

On the physical examination of the victim found---

Her height—145 cm, weight—40 kg, chest girth—79 cm, abdominal girth—65 cm, total 28 teeth were present and all were permanent. Scalp hair-30 cm, black in color, Axillary hair-Spare, pubic hair—spare over the pubic part, her breast—well developed. Menarche—at the age of 12 years old, cycle-irregular, last menstrual period—Amenorrhea since 2 months.

#### On genital examination:-

Genital organs—healthy, vulva—labia majora and minora exposed on abduction of legs, Hymen –old tear present at 6, 9 & 3 o'clock position, vagina—rugocity present, Cervix—healthy, Uterus—Not palpable per abdomen, evidence of venereal disease –not detected clinically at the time of examination, vaginal swabs collected from – from around the cervix and posterior fornix, injury on the body—Not detected at the time of examination, her mental condition at the time of examination—Normal, co-operation and behavior—Co-operative and average, intelligence and memory—Average, gait—Normal.

### Laboratory investigation:-

Vaginal smears does not show any presence of spermatozoa or gonococcus.

<u>Opinion:-</u> On the basis of physical examination, radiological and laboratory investigations done, P.W.6 opined that:-

1. There is no evidence of recent sexual intercourse detected on her person at the time of examination.

- 2. No any violence mark noted on her person at the time of examination except old hymenal tear.
- 3. She is pregnant at the time of examination.
- 4. Her present age is above 14 years and below 16 years of age.

## Impression as per the USG early pregnancy

Single live intrauterine pregnancy of approximate gestational age 10 weeks 1 day invariable presentation.

Ext. 4 is the medical report. Ext. 4 (1 to 4) are her signatures.

16. P.W.8 Smti. Nalini Boro stated that she knows the informant and the accused of this case. She also knows the prosecutrix. The incident took place about a year ago. She is a cook and working as a cook in the Lampara M.E. School. She further stated that there is another cook, named Putul Boro in the school. They both cook the Mid-day meal in the school. This witness stated that prosecutrix is the student of class-VII in Lampara M.E. School. Prosecutrix takes the mid-day meal regularly but sometimes she complained of stomach pain and could not take the food. When they both cooks enquired about her stomach pain and menstruation, she told them that she did not have menstruation for 2 months. She also told them that accused, who is her father had sexual intercourse with her during the night hours while she was sleeping. Then, the village people were informed about the incident. A village meeting was held but the accused did not attend the meeting when called for. Accused also misbehaved the people, who went to call him to the meeting. Then the ASHA workers came and the village ladies took the prosecutrix to the hospital. Later, P.W.8 heard that the prosecutrix was pregnant and she gave birth to a child. Police recorded her statement.

In her Cross-Examination, P.W.8 denied the defence suggestion that she did not tell the police that prosecutrix takes the mid-day meal regularly but sometimes she complained of stomach pain and could not take the food and that she did not tell the police that prosecutrix told them that accused, who is her father had sexual intercourse with her during the night hours while she was sleeping. P.W. 8 admitted that she did not tell the police that a village meeting was held but the accused did not attend the meeting when called for and he also misbehaved the people, who went to call him to the meeting.

16. P.W.7, S/I, Afazuddin, is the I/O of this case, who has investigated the case. In his deposition, he has stated that on 02.10.2018, he was working as S/I under Boko P.S. On that day, O/C, Boko P.S made a G.D. Entry being No. 41/2018 dated 02.10.2018 on receiving an information over phone about the incident from the Secretary, Kumud Boro of village— Lumpara. It was reported to him that victim was confined by the villagers. Thereafter, the O/C, Boko P.S directed him to visit the place of occurrence at about 1.30 p.m. P.W.7 found mob gathering there and he rescued the victim along with the father (accused) and brought them to the police station. The statements of the victim was recorded by him in the police station. Thereafter, said Kumud Boro lodged an ejahar at 5.00 p.m. Thereafter, O/C, Boko P.S registered a case bearing Boko P.S Case No. 722/2018 U/S- 294 of IPC R/W section 4 of the POCSO Act, 2012 and directed him to investigate the case. P.W.7 recorded the statement of the informant, mother of the victim in the police station. Accordingly, on 02.10.2018 P.W.7 visited the place of occurrence along with the staffs. P.W.7 prepared the sketch map. P.W.7 recorded the statements of the remaining witnesses. P.W.7 seized one medical advice slip from the informant. Victim was also produced before the CWC, Kamrup, Amingaon and kept in the shelter there for her safety and security. Victim was sent for medical examination and produced her before the court for recording her statement U/S-164 Cr.P.C. Thereafter, she was given in the custody of her mother. P.W.7 arrested the accused and forwarded him to the Court. P.W.7 collected the medical report of the victim. Thereafter, P.W.7 completed the investigation and on finding sufficient evidence against the accused person-Raju Boro, P.W.7 submitted the charge-sheet against him U/S- 294 of IPC R/W section 6 of POCSO Act. Ext.6

is the charge-sheet and Ext.6 (1) is his signature. Ext.5 is the sketch map Ext.5 (1) is his signature. Ext. 2 (4) is his signature in the seizure list Ext. 2. Material Ext. 'A' is the seized document vide Ext.2 (seizure list).

In his Cross-examination, P.W.7 deposed that P.W.1 did not state before me that he heard from the members of the village Mahila Samity including one Bimala Boro that the prosecutrix is two months pregnant from her father (accused). The pregnancy was detected when she complained of frequent stomach pain to the Asha workers, when they went to her school for vaccination of the school students. The Asha workers informed the village Mahila Samity regarding the frequent stomach pain of the prosecutrix. Thereafter, the Mahila Samity members took the prosecutrix to the doctor for her medical examination and the doctor informed them that the prosecutrix was two months pregnant. P.W.1 also did not tell P.W.7 that when he came to know about the incident, he called for a village meeting on three occasions. But the accused did not attend the meeting. P.W.4 did not tell him that that the prosecutrix was suffering from stomach pain. P.W.5 did not tell before P.W.7 that she heard on 02.10.2018 from the Asha worker on the vaccination day in the school, prosecutrix was suffering from stomach pain. She told the Asha worker and before the village people that she was not having menstruation for 2 months. Prosecutrix was taken to Boko hospital by Asha worker. There, the doctor told that the prosecutrix was 2 months pregnant. When, they enquired about her pregnancy, she told them that she has been made pregnant by the accused. Prosecutrix was 13 years old at the time of incident. a village meeting was held but accused did not come. The neighbouring people mentioned in Ext.5 told P.W.7 that they did not know anything about the incident. P.W.7 did not seize the material Ext. 'A' from the doctor. P.W.8 did not tell P.W.7 that that prosecutrix takes the mid-day meal regularly but sometimes she complained of stomach pain and could not take the food. P.W.8 did not tell P.W.7 that prosecutrix told them that accused, who is her father had sexual intercourse with her during the night hours while she was sleeping. P.W.8 told before P.W.7 that she knew about the pregnancy of the prosecutrix since long time as they are the inhabitants of the same village. Later, after completion of the investigation P.W.7 was informed by the Child Line that the prosecutrix gave birth to a male child. But P.W.7 did not take any step for conducting DNA test for ascertaining the paternity of the child.

- I have heard the arguments advanced by the Learned Counsels for both the sides. Learned Defence Counsel argued that the accused has been falsely implicated and the allegation made by the prosecutrix of sexual intercourse by the accused is not supported by her own mother. He further argued that the Asha worker and the Aunt to whom the prosecutrix told the incident have not been examined by the prosecution to prove the case. Per contra, the Learned Public Prosecutor submitted that the prosecutrix and other supporting witnesses by their cogent and reliable evidence has established the prosecution case against the accused beyond doubt.
- 18. In order to attract any offence under the provisions of the POCSO Act , it should be proved by the prosecution that on the date of commission of the crime, the victim was a child . The term 'child ' has been defined in Section 2 (d) of the POCSO Act , which states that child means any person below the age of 18 years. In the instant case, prosecutrix stated her age to be 13 years before the court and before the Magistrate in her statement u/s 164 Crpc. Pw-6 (M.O) confirmed the age of the prosecutrix to be above 14 years and below 16 years. Therefore, it is held that on the day of commission of the alleged offence, victim girl was a child under 18 years of age.
- 19. Now, the question comes as to how far the evidence of the victim in the instant case is reliable and convincible to convict the accused.
- 20. From a close scrutiny of the evidences on record , it appears that there is only one eye-witness i.e the victim herself (pw-3). The law is

settled that the main evidence in all such cases is that of the victim herself. In practise, a conviction for rape almost entirely depends upon the credibility of the woman, so far as the essential ingredients are concerned, the other evidence being merely corroborative. There must be some additional evidence rendering it probable that the story of the victim is true and that it is reasonably safe to act upon it.

- 21. In the case of **Md Iqbal and Another —vs-State of Jharkhand, AIR 2013 SC 3077**, it is held that there is no prohibition in law to convict the accused of Rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.
- 22. In the case of **State of Punjab –vs-Gurmit Singh and others** reported in **AIR 1996 SC 1383** , the Hon'ble Supreme Court held that –

"In cases involving sexual harassment, molestation etc, the Court is duty bound to deal with such cases with utmost sensibility. Minor contradictions or insignificant discrepancies in the statement of prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court may look for some assurance of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice."

23. I have carefully scrutinized the evidence of the prosecutrix, who adduced evidence as Pw-3. It is in her evidence that the accused is her father

and he would forcibly have sexual relationship with her on several occasions during night time. According to her , she slept on the floor with her mother during the night time while the accused slept in another room but he would come and have forcible sexual intercourse with her. Though she told the incident to her mother (pw-2) but she ignored her. P.W.2 has revealed in her evidence that prosecutrix gave a complaint before the village people that the accused had sexual intercourse with her. From the evidence of the prosecutrix (P.W.3), it comes out that she told the incident to her Aunt – Santi Boro and Uncle- Gajen Boro that the accused does bad act with her during the night time. And they informed the village people, who gave the FIR and informed the Childline. Pw-3 revealed that it was during her medical examination that she got to know from the doctor that she was 2 months' pregnant and she gave birth to a male child. Her evidence revealed that at present the prosecutrix is staying with her child in Women Home. Coming to her crossexamination , pw-3 clearly disclosed that her father (accused) had sexual intercourse with her since she was studying in class VI but she did not tell anybody and at the time of occurance, she was studying in class VII . She denied the defence suggestion that that she became pregnant by having physical relationship with another person. It is crystal clear from her evidence that accused had forcible sexual intercourse with her and she became pregnant from him . Defence inspite of through cross-examination , could not elicit anything to discredit her testimony. Defence also failed to prove that the presecutrix had sexual relationship with some other person and became pregnant from another. It has come out from the evidences of Pw-4 and Pw-5 that they heard from the Asha Worker that the prosecutrix was suffering from stomach ache on the vaccination day in the school And she was taken to Boko Govt. Hospital by the Asha Workers. Pw-4 testified that on urine test of the prosecutrix, it came to light that she was 2 months' pregnant and the prosecutrix told them that she has been made pregnant by her father. Both pw-4 and pw-5 confirmed that the prosecutrix was kept in the Shelter Home and she gave birth to a male child. It is in the evidence of the informant (pw-1) that he hear from the members of the village Mahila Samity including

pw-4 that the prosecutrix is 2 months' pregnant from her father (accused) and the pregnancy was detected when prosecutrix complained of frequent stomach pain to the Asha Workers when they went to her school for vaccination of the school students . This witness stated that the Asha Wokers informed the Village Mahila Samity regarding frequent stomach pain of the prosecutrix, who then took her to the doctor for medical examination and the doctor informed them that the prosecutrix was 2 months' pregnant. Thereafter, on enquiry by the members of the Village Mahila Samity, prosecutrix told them that the accused was having sexual intercourse with her since one year and she was pregnant from him. The version of pw-1 is that he called for a village meeting on three occasions but the accused did not attend the meeting. His evidence is supported by pws-4,5 & 8 whose version is that in the village meeting that was held regarding the incident, the accused did not attend. PW-8 is the cook of the school where the prosecutrix studied She testified that prosecutix sometimes complained of stomach pain and could not take mid-day meals and on their enquiry, prosecutrix told them she did not have menstruation for 2 months and that the accused, who is her father had sexual intercourse with her during night hours while she was sleeping. The village people were informed . This witness further stated that the Asha workers and village ladies came and took the prosecutrix to the hospital . Even pw-8 stated that she heard that the prosecutrix was pregnant and she gave birth to a child. It is in the evidence of the Medical Officer (pw-6) that prosecutrix alleged that the accused, who is her father had sexually abused her at the residence in the absence of other family members. Pw-6, upon examining the prosecutrix found old hymenal tear and she was pregnant. this instant case , accused father raped his minor daughter . There is no rhyme or reason as to why daughter should depose falsely against her father sacrifying thereby her chastity and also expose entire family to shame . Her testimony is corroborated by pws-1,4,5 &8 and medical evidence inspires confidence. Minor contradictions or insignificant discrepancies and omissions in her evidence and in the evidences of other pws are immaterial. Evidence of the prosecutrix is found reliable and trustworthy as there was no reason to falsely implicate the accused.

- 24. Here , in this case , prosecutrix /victim is the sole witness. It is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement , the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, would amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole and her evidence can be acted upon without corroboration. Non finding injury on the private part of the victim as well as on her body cannot be a ground to distrust the testimony of the victim.
- 25. The testimony of the prosecutrix is found to be corroborated by her statement recorded u/s 164 Crpc (Ext.3). Only upon the sole testimony of the prosecutrix , conviction against the accused can be recorded , if the evidence of the prosecutrix is trustworthy. In view of the above , in this instant case, the testimony of the prosecutrix must be accepted to be true.
- 26. There is nothing to show any hostile relation prior to the occurance between the accused and the prosecutrix. As such , there appears no occasion for false implication of the accused father by his daughter. The accused was not able to give any satisfactory explanation in his statement recorded u/s 313 Crpc nor was he able to adduce any defence evidence to show that he has been falsely implicated in the case.
- 27. Upon evaluation of the evidence on record, the testimony of prosecution is trustworthy and inspires confidence of the Court. She is a reliable witness and other evidence available on record lends credence to her testimony.

- 28. Let us refer to the provisions of Section 29 and 30 of the POCSO Act. U/S-29 of the POCSO Act, a mandatory presumption for certain offence is to be drawn against the accused in a prosecution for certain offence.
- 29. Section 29 of the POCSO Act provides that a Special Court shall presume that the accused had committed the offence of sexual assault unless contrary is proved. Evidence on record clearly pointed that accused committed penetrative sexual assault on the prosecutrix and the evidence of the prosecutrix is unimpeached and believable. She is a reliable witness.
- 30. Similarly as, per Section 30 of POCSO Act, the culpable mental state of the accused should be presumed. The section reads as follows –:
  - (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental State with respect to the act charged as an offence in that prosecution.
  - (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
- 31. In the present case, the accused has completely failed in discharging his burden adducing any defence evidence. From the above discussion, it is crystal clear that the accused committed the offence of penetrative sexual assault U/S 5 (n) of the POCSO Act on the prosecutrix, who is his daughter and aged 13 years and this attracts Section 6 of the POCSO Act. Prosecution has established a case u/s 6 of POCSO Act beyond reasonable doubt.

- 32. In the result, it is held that the prosecution has succeeded in bringing home the charge U/S 6 of the POCSO Act against accused— Raju Boro beyond all reasonable doubt. Hence, he is held guilty of committing the offence punishable under section 6 of the POCSO Act and is convicted under the said section of law
- 33. Keeping in view the serious nature of the offence and the fact the offence of penetrative sexual assault has been committed by the accused father upon the prosecutrix, who is his own daughter, the Probation of Offenders Act is not applicable in this instant case. As such, the accused is not entitled to get the benefit under the said Act.

## 34. **SENTENCE**

Heard the accused—Raju Boro on the point of sentence. The accused submitted that he has been falsely implicated in the case and pleaded for leniency in punishment. I have also heard the Learned Counsel for the accused as well as the Learned Additional Public Prosecutor.

- 35. In this instant case, the prosecutrix has been subjected by her father to such sexual conduct which is vulnerable to the society at large. A minor girl was sexually exploited and the provision of POCSO Act has provided severe punishment to a person, who indulge in such unacceptable sexual behaviour to minors. The statutory punishment cannot be reduced or altered.
- 36. Considering the serious nature of the offence , facts and circumstances of the case, the mental agony and pain suffered by the child victim in view of the penetrative sexual assault committed on her by her father , whereby she became pregnant and delivered a male child, her status and future life in the society and also keeping in view the fact that the accused being the father upon whom a child relies upon as the most trusted being in life has broken all the trust , so the accused does not deserve any leniency in punishment . On the other hand, he deserves a higher punishment

- . Moreover, it is seen that the penal provisions of the POCSO Act is stringent in nature, which shall have to be imposed in case a person is found guilty.
- 37. In this instant case, accused committed penetrative sexual assault upon his minor daughter on several occasions and made her pregnant. For a daughter, her father is the innermost security layer of her chastity and safety. Breaching this faith is not only diabolical or heinous but also a threat to the civilized society. Considering the grave and serious nature of offence, I am of the opinion that deterrent punishment is required to restrain commission of such crime in future. The accused is sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs 10,000/- i/d to further simple imprisonment for another 6 (six) months for committing the offence u/s 6 of POCSO Act. The period of detention, if any be set off u/s 428 Crpc.
- 38. Now, coming to the aspect of compensation to the victim, it is found that in this instant case, Victim is a child, so she is entitled to get the compensation. The victim has suffered tremendous mental agony and harm as a result of the act committed upon her by her father. She became pregnant and delivered a male child. Therefore, the Learned Secretary, District Legal Services Authority, Kamrup, Amingaon is, hereby, directed to assess and grant adequate compensation to the victim. The said compensation amount shall be used by the victim to meet her needs and for the welfare of her child.
- Issue Jail Warrant.
- 40. A free copy of the judgment be furnished to the accused person.
- 41. The Judgment is prepared in separate sheets and kept in the case record.
- 42. Send a copy of this judgment to the Learned Secretary, District Legal Services Authority, Kamrup, Amingaon for determination of the quantum of compensation under Victim Compensation Scheme as provided under section 357 A Cr. P.C.

- 43. Send a copy of the judgment to the Learned District Magistrate, Kamrup, Amingaon under the provision of Section 365 Crpc.
- 44. Judgment is pronounced and delivered in open court under the hand and seal of this court on this  $21^{ST}$  day of December, 2019.

Dictated and corrected by me

Special Judge, Kamrup, Amingaon

Special Judge, Kamrup, Amingaon

# **APPENDIX**

### **Prosecution Witness:**

P.W.1, Sri Kumud Boro

P.W.2, Smti. Dharitri Boro

P.W.3, is the prosecutrix

Pw-4 Smti. Bimala Boro

Pw-5 Smti. Minati Boro

P.W.6, M/O, Dr. Rechma Talukdar

P.W.7, S/I, Afazuddin

## **Prosecution Exhibit**

Ext.1 is FIR

Ext. 2 is the seizure list

Ext.3 is the statement of the victim girl recorded U/S-164 CR. P.C

Ext. 4 is the medical report

Ext.5 is the sketch map

Ext.6 is the charge-sheet

Special Judge, Kamrup, Amingaon