IN THE COURT OF THE SPECIAL JUDGE, SIVASAGAR

Present – Shri Biprajit Roy, AJS. Special Judge, Sivasagar.

Spl. (P) Case No. 14/2019

U/S sec. 451/376(2)(I)/511 of IPC

& section 8 of POCSO

Act

State

-Vs-

Dipak Das

Advocates appeared:

For the State : - Mr. S. Gogoi,
For the accused : - Mr. I. Hussain,

Date of evidence : - 21.05.2019, 22.05.2019,10.06.2019,23.07.2019,

19.10.2019, 04.11.2019,30.11.2019.

Date of argument : - 11.12.2019

Date of judgment : - 21.12.2019

JUDGMENT

1. The case of the prosecution is that on 05.12.2018 at about 9.00 p.m. the OC of Nazira PS received a phone call from VDP informing that the local people of Bihubar has apprehended a suspected criminal and the public has assaulted him physically. Accordingly the Nazira police station GD entry no. 126 dated 05.12.2018 was made. ASI Jayanta Kumar Das was immediately sent to the place of occurrence. Jayanta Kumar Das returned back to the police station along with the suspected person. After his medical examination, the person was kept in the police station. The GD entry 129 was accordingly made. Thereafter the next day i.e. on 06.12.2018 the informant Anjali Das lodged an FIR in the Nazira police station stating that on 05.12.2018 the accused Dipak Das attempted to commit rape on a minor deaf and dumb girl 'X'(name withheld) aged about 13 years who used to stay under care of Anjali and Gagan.

2. The Officer-in-charge of Nazira Police Station received the said FIR and registered Nazira P.S. case no. 247/2018 u/s 448/376/511 of IPC read with section 8 of POCSO Act

- 3. The case was investigated by WSI(P) Marchila D. Sangma .On completion of investigation charge-sheet was submitted against the accused Dipak Das u/s 448/376(2)(I) of IPC and read with section 6 of the POCSO Act.
- 4. As the accused was in jail custody legal-aid-counsel Mr. I. Hussain was engaged as legal-aid-counsel to defend the accused and he defended the accused till the end of the trial.
- 5. Copy of relevant documents were furnished. After hearing Id. counsel of both sides and taking into consideration the materials available on record, charge u/s. 451 of IPC, 376(2)(I) of IPC and section 8 of POCSO Act were framed against the accused which were read over and explained to the accused to which he pleaded not guilty.
- 6. In the course of trial prosecution side examined 10 (ten) witnesses. 1(one) Court witness was examined. The defence plea was of denial.
- 7. The accused person was examined u/s 313 Cr.P.C. During examination u/s 313 of Cr.P.C. The accused stated that at the relevant point of time he was under intoxication and did not know what he was doing.
- 8. Heard argument of learned counsel of both sides.
- 9. The points for determination in this case are:
 - (i) Whether the victim ' X ' was aged about 13 years?
 - (ii) Whether on 05.12.2018 at about 6.00 p.m. the accused Dipak Das entered inside the house where the victim girl was staying?
 - (iii) Whether the accused attempted to commit rape of the minor victim?
 - (iv) Whether the accused committed any other offence?

Decision, discussion and reasons:

Point no. - 1:

- 10. The P.W.1 Ram Das in his evidence stated that the victim 'X' is deaf and dumb. He stated that he does not know her present age. The PW-2 Gagan Das in his evidence stated that the victim girl is deaf and dumb but later on the PW-2 stated that the victim girl can hear but she cannot speak. She also cannot read and write and she is aged about 8/9 years. The PW-2 further stated that the victim girl is an orphan and she lives with him. The PW-3 Feru Das stated in his evidence that the victim girl is deaf and dumb. The PW-4 Anjali Das is the informant. She stated that the victim girl is deaf and dumb and she is aged about 13/14 years old. The PW-5 Boby Tanti stated in her evidence that the victim girl was aged about 10/12 years. The PW-6 Manoj Das stated in his evidence that the victim girl is deaf and dumb. The PW-8 Dr. S. Changmai in his evidence stated that on the basis of the report of the Radiologist he is of the opinion that the age of the victim girl in between 15 to 18 years. Ext. 4 is the medical report wherein Ext. 4(1) is his signature. The PW-8 in his report also stated that the general behaviour of the victim girl was non-cooperative and she was mentally reiterated.
- 11. In his examination u/s 313 of Cr.P.C. the accused admitted that the victim girl is deaf and dumb. The accused also stated that the victim girl is aged about 13/14 years only.
- 12. From perusal of the report of the Radiologist it appears that the lower and upper epiphysis of the radius and ulna were not fused and therefore, her age was determined in between 15 to 18 years.
- 13. From the above discussion it is clear that the accused himself admitted that the victim girl was aged about 13/14 years. The other prosecution witnesses also stated that she was 13/14 years old. The PW-4 who normally takes care of the said victim stated in her evidence that she was aged about 13/14 years old.
- 14. The victim girl was produced before the Id. JMFC, Sivasagar for recording her statement u/s 164 of Cr.P.C. with the assistance of interpreter Smt. Papari Bora who is a teacher at the school for hearing impaired at Jorhat. The Id. JMFC, Sivasagar after observing the victim girl recorded her age as 13 years. Therefore

it cannot be safely concluded that the victim girl was aged about 13/14 years (below 18 years) and she is deaf and dumb. The interpreter also stated that the victim girl did not respond to her and the statement could not be recorded.

Point no. 2:

- 15. The PW-1 Ram Das stated in his evidence that on 05.12.2018 he went to the house of Kacchu Das for charging his mobile phone. At that time Anjali came there and informed him that a man was raping the victim in the house of Gagan Das. Then the PW-1 along with Anjali Das went to the house of Gagan Das. They pushed the door and saw the accused inside the house committing rape on the victim girl. Immediately the PW-1 went inside and pulled up the accused from the victim's body. The accused asked him as to who he was to do that. He then slapped the accused. In the meantime villagers gathered. They were armed with 'lathi', 'axe' etc. So the PW-1 took the accused to the cowshed and locked him inside. The PW-3 Feru Das stated in his evidence that on 05.12.2018, hearing hue and cry he went to the house of GaganDas and saw the accused Dipak Das with his pant removed. He also saw the victim girl without clothes. Public tried to assault Dipak Das but he was kept confined in a cowshed for safety. The PW-4 Anjali Das in her evidence stated that on the date of occurrence in the evening she was preparing tea. At that time she heard cry of the victim girl. Her house is near the house of Gagan Das where the victim girl used to stay. She looked inside the house and pushed the door and saw the accused Dipak Das upon the victim girl. She then called Ram Das and till then he accused was in the same position. The PW-5 Boby Tanti stated in her evidence that at the time of incident she was working in the kitchen. The victim girl used to live in the house of Gagan Das which is adjacent to her house. She saw the victim crying and the accused was upon her. The victim was nude and he accused had also removed his pant. She saw the incident through the hole of the wall of her house. She stated that in between her house and the house of Gagan Das, there is a bamboo fencing. She immediately came out and saw Anjali there. Then a large number of public gathered and the accused was dragged from the place and he was kept in a room.
- 16. From the evidence of the prosecution witnesses as discussed above it appears that the accused was found inside the house of Gagan Das where the minor victim girl used to live. From perusal of the cross-examination of the

prosecution witnesses it appears that the presence of the accused inside the house of Gagan Das is not disputed by the defence. During cross-examination the PW-1 and other prosecution witnesses were contradicted on some minor discrepancies but those were not confirmed by the defence while cross-examining by the I.O.

- 17. Hence it is held that on the date of occurrence at the relevant point of time the accused Dipak Das had entered inside the house of Gagan Das with intention to commit offence.
- 18. It is pertinent to mention here that during examination u/s 313 of Cr.P.C., the accused took the plea that he was under intoxication at the time of occurrence and did not know what he was doing. Intoxication when voluntary is no defence and therefore, it cannot be said that the accused did not have any intention to commit the crime against the minor, deaf and dumb victim girl.

Point nos. 3&4:

- 19. The PW-8 Dr S. Changmai stated in his evidence that on 06.12.2018 in connection with Nazira PS case no. 247/2018he examined the minor victim who was produced by HG RabitaSaikia and attendant sister Jyoti (staff). On examination he found the general behaviour of minor victim was non-co-operative and she was mentally retarded. On examination of her private parts no abnormality was detected. No sign of recent sexual intercourse or sign of injury was detected. Ext.4 is the medical examination report wherein Ext. 4 (1) is his signature. From the materials available on record it appears that the incident took place on 05.12.2018 in the evening and the victim girl was produced before the PW-8 for medical examination on 06.12.2018. According to PW-8 there was no sign of any recent sexual intercourse. He also did not find any sign of injury on examination of the victim. From perusal of the written Ejahar it appears that the informant alleged that the accused only attempted to commit rape of the minor victim girl.
- 20. The PW-1 Ram Das in his evidence stated that he had seen the accused committing rape on the minor victim. She was lying on the ground and the accused was upon the victim. The pant of the accused was removed at that time.

He then went inside and pulled out the accused from the victim's body. The accused was under intoxication. He asked the PW-1 as to who he was to do that. Then the PW-1 slapped him. Though in his cross-examination the PW-1 was confronted with some part of his statement u/s 161 of Cr.P.C. but while cross-examining the I.O., those were not confirmed by the defence as contradiction and therefore, those cannot be taken into consideration. The PW-1 in his cross-examination stated that he suspected commission of rape as the victim and the accused were nude and the accused was on the body of the victim girl. He PW-2 Gagan Das in his evidence stated that on 05.12.2018 after returning from market at about 7.00 p.m. he saw Anjali and Ram Das in his house. They scolded him for leaving the girl alone. He saw the accused Dipak Das in the house of Anjali with his pant removed and the victim was without clothes. But in cross-examination he stated that he did not say so before the I.O. He also admitted that he actually did not know what had happened.

- The PW-4 Anjali Das in her evidence sated that on the date of occurrence in the evening she heard cry of the victim girl. As the house was near her house, she looked inside by pushing the door. She saw the accused had removed his pant. The clothes of the victim girl were pulled upwards and she was half naked. She then called Ram Das. Ram Das came and till then the accused was in the same position. Then Ram Das kicked the accused and informed the VDP. Though PW-4 was confronted with his statement recorded by the I.O. but those were not confirmed while cross-examining the I.O. and therefore those cannot be taken into consideration. While cross-examining the PW-4 the defence suggested that the accused only attempted to commit rape and the said suggestion was denied by the said PW.
- The PW-5 Boby Tanti in her evidence stated that her house is adjacent to the house of Gagan Das and in between the two houses there is a bamboo fencing. She stated that at the relevant point of time she saw the victim crying and the accused was upon her body. The victim was nude and the accused had also removed his pant.

In cross-examination the PW-5 stated that she did not state anything before the I.O. because she was not asked anything by the I.O.

23. The PW-6 Manoj Das sated in his evidence that on 05.12.2018 he saw a large gathering in the house of Anjali. On enquiry he came to know from public

that the accused had rapd the victim girl. He also came to know that the rape was committed in the house of Gagan Das. He saw the accused in the courtyard of Anjali and Gagan Das surrounded by the public. In the mean time police arrived. Police seized the pant and belt of Dipak Das and took his signature in the seizure list which is marked as Ext. 2 wherein Ext. 2(1) is his signature. The PW-6 also identified the pant and belt marked as M. Ext.1 and M. Ext.2.

In cross-examination he stated that he came to know that the pant and the belt belonged to accused Dipak Das as at that time Dipak was without any pant.

- The PW-7 JoydeepBaruah stated in his evidence that on 07.12.2018 he was working as Bench Assistant in the Court of Id. JMFC, Nazira. On that day statement u/s 164 of Cr.P.C. of Anjali Das was recorded in the said Court. Ext.3 is the said statement wherein Ext. 3(1) and 3(2) are her signatures. Ext.3 (3) is the signature of Id. JMFC, Nazira which he can recognize.
- 25. The PW-9 Ajay Das in his evidence stated that during investigation police seized one pant of Dipak Das and took his signature in the seizure list which is marked as Ext. 2(2).

In cross-examination he admitted that from the villagers he came to know that the pant belonged to Dipak Das. He also stated that police took his signature on blank paper but after he had identified the pant of Dipak.

The PW-10 WSI(P) Marchila D. Sangma in her evidence stated that on 06.12.2018 the FIR was lodged by Anjali Das. Prior to that on 05.12.2018 on the basis of telephonic information, GD entry was made and ASI Jayanta Das had visited the place of occurrence and arrested the accused. The rest of the investigation was done by PW-10. She stated that the statement of the victim girl could not be recorded as she was incapable of giving any statement. She was also produced before the Id. JMFC, Sivasagar for recording her statement u/s 164 of Cr.P.C. with the help of interpreter but the same could not be recorded as the victim girl did not respond to the gesture of the interpreter also. It is pertinent to mention here that the victim girl was produced before this Court also from Aahana Children's Home on 16.11.2019. But her evidence could not be recorded as she did not respond to anything.

The PW-10 stated that on completion of investigation she submitted charge-sheet against the accused Dipak Das u/s 448/376(2)(I) of IPC read with section 6 of POCSO Act. Ext. 2 is the seizure list wherein Ext.2(3) is her signature. Ext. 6 is the sketch map wherein Ext. 6(1) is her signature. Ext.7 is the charge-sheet wherein Ex. 7(1) is her signature.

In cross-examination the PW- 10 stated that in the FIR the informant stated that the accused attempted to commit rape of the victim girl. She also stated that the PW Boby Tanti stated before her that she saw the accused dragging the victim girl. She admitted that the seized articles were not sent for forensic examination.

- 28. As stated already the accused took the plea (in his examination u/s 313 of Cr.P.C) that he was under intoxication at that time and did not know what he was doing.
- 29. From the evidence as discussed above it becomes clear that on the date of occurrence the accused who was a resident of the neighbouring area entered inside the house where the victim was staying. The accused was under voluntary intoxication. He removed his pant and then also disrobed the victim and then raised upon the victim. From the evidence of the witnesses it is clear that at the time of the occurrence the accused was nude and the victim was half naked as her clothes were pulled upward. So the intention of the accused was to commit rape. Though he was under the influence of liquor and he could not materialize his intention by inserting his penis into the vagina of the victim but he was on the body of the victim girl and he had also undressed himself and pulled the clothes of the victim girl up and made her half naked. The nature and extent of his intoxication can be inferred from the fact that when the PW-1 Ram Das pulled him up from the body of the victim girl, he charged the PW-1 as to who he was to do that. A normal human being in such a situation will try to run away or try to hide somewhere but the accused acted like an intoxicated man and charged the PW-1. In his examination under section 313 Cr.P.C. the accused also stated this fact. But intoxication when voluntary is no defence.

30. The Hon'ble Gauhati High Court in 2018 SCC OnLineGau2030 : (2018) 6 Gau LR 436 : 2018(5) GLJ Rajendra Kr Dey vs State of Assam on 377/511 IPC observed as follows:

- "6. The petitioner was convicted for attempt to commit an offence under section 377/511, IPC. Though section 511, IPC provided punishment for attempt to commit an offence for which no express provision for punishment is made, the 'attempt' has not been defined in the statute. However, the illustrations to section 511, IPC can be looked into, which may throw some light as to what constitute an 'attempt'. Following are the two illustrations appended to section 511, IPC.
- "Illustrations: (a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and, therefore, is guilty under this section.
- (b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section."
- 7. The above illustrations suggest, that a person shall be liable for attempt to commit a particular offence under section 511, IPC, when the offender with requisite intention, does any act or a series of act, which leads inevitably to the commission of the offence, unless something, beyond control of the offender or something which he never foresaw happens to prevent the completion of the offence. In order to understand the 'attempt' to commit an offence, one has to keep in mind, that there are four stages in the commission of offence, i.e., (i) intention to commit the offence, (ii) preparation to commit the offence, (iii) attempt to commit the offence and (iv) commission of the offence. In order to find out whether certain facts constitute the offence of 'attempt' the court needs to distinguish between the various stages of commission of an offence, though the line between two different stages may be very thin.
- 8. The Apex Court, in Abayananda Mishra, AIR 1961 SC 1698 observed that there is a thin line between preparation for and attempt to commit an offence. Undoubtedly a culprit must intend to commit offence, then makes preparation for committing it and thereafter, attempts to commit the offence. If the attempt succeeds the offence is committed. If he fails due to reasons beyond his control, he is said to have been attempted to commit the offence. Therefore, mere preparation to commit an offence, does not attract section 511, IPC. There must be some overt act after the preparation is made, towards the commission of the offence, and when after preparation is made with the intention to commit an offence, the accused proceeds further to complete the offence, but failed to succeed due to intervention by some external agents beyond his control, had he not been intervened by circumstances beyond his control, the offence would have been completed. In such circumstances only it can be said that there was an attempt to commit the offence. The Apex Court in Aman Kumar (supra) observed in para 9 as under

"An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and,

possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in section 51 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt."

9. In Aman Kumar's case, the Apex Court further held in para 8 of the judgment as under:

"A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of section, 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice.

Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under section 122 (waging war against the Government of India) and section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation."

10. In order to convict a person for attempt to commit an offence against human body with the aid of section 511, IPC, prosecution must prove beyond reasonable doubt that the accused with the requisite intention to commit a particular offence made the preparation and thereafter does any act or series of acts towards completion of such offence, notwithstanding any resistance from the victim, but failed to succeed for the circumstances beyond his control. Therefore, in order to convict a person for attempt to commit an offence, the court must distinguish an attempt to commit offence from intention to commit it and preparation, though the line between the two is very thin, reason being that mere intention to commit offence is not punishable and preparation for committing an offence is also not punishable, except in case of certain offences, where preparation itself is made punishable by the statute."

31. Therefore keeping in mind the above observations and also taking into consideration the evidence adduced by the prosecution, it is clear that the prosecution has been successful in bringing home the guilt of the accused beyond all reasonable doubt. From the discussion made above it is clear that the accused attempted to commit rape of the victim girl who is physically and mentally retarded and thereby committed an offence punishable under section 511 of IPC read with section 376 (2) (I) of IPC.

The act committed by the accused also constitutes an offence punishable under section 18 of POCSO Act read with section 6 of the POCSO Act but charge was framed under section 8 of POCSO Act which is a lesser offence and so the power under section 222 Cr.P.C. cannot be exercised in this case so far as the offence under section POCSO Act is concerned.

But so far section 511 read with section 376 (2) (I) of IPC is concerned, the same is a lesser offence than section 376 (2) (I) of IPC and so the power under section 222 Cr.P.C. can be exercised.

Hence by exercising the power conferred under section 42 of POCSO Act the accused Dipak Das is held guilty and convicted under section 511 read with section 376 (2) (I) of IPC.

- 32. I have considered the applicability of section 3 & 4 of the Probation of Offenders Act in this case. Taking into consideration the nature of the offence, the manner of commission and the physical and mental condition of the victim makes it clear that it is not a fit case to give benefit under the said provision of law.
- 33. Heard the accused on the point of sentence. His statement is recorded in a separate sheet. I have also heard the ld. advocates of both sides.
- 34. The Hon'ble Supreme Court on the point of sentencing in a rape case observed as follows in ShyamNarain-vs-State(NCT of Delhi) reported in (2013)7 SCC 77:

"18. In State of Andhra Pradesh v. BodemSundra Rao[6], this Court noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general. After so observing, the learned Judges had to say this: -"The Courts have an obligation while awarding punishment to impose

appropriate punishment so as to respond to the society's crime for justice

against such criminals. Public abhorrence of the crime needs a reflection

through the Court's verdict in the measure of punishment. The Courts must

not only keep in view the rights of the criminal but also the rights of the

victim of crime and the society at large while considering imposition of the

appropriate punishment."

19. In State of Punjab v. Gurmit Singh and others[7], this Court stated with

anguish that crime against women in general and rape in particular is on

the increase. The learned Judges proceeded further to state that it is an

irony that while we are celebrating women's rights in all spheres, we show

little or no concern for her honour. It is a sad reflection of the attitude of

indifference of the society towards the violation of human dignity of the

victims of sex crimes. Thereafter, the Court observed the effect of rape on

a victim with anguish: -

"We must remember that a rapist not only violates the victim's privacy and

personal integrity, but inevitably causes serious psychological as well as

physical harm in the process. Rape is not merely a physical assault – it is

often destructive of the whole personality of the victim. A murderer

destroys the physical body of his victim, a rapist degrades the very soul of

the helpless female."

20. In State of Karnataka v. Krishnappa[8], a three-Judge Bench opined

that the courts must hear the loud cry for justice by the society in cases of

the heinous crime of rape on innocent helpless girls of tender years and

respond by imposition of proper sentence. Public abhorrence of the crime

needs reflection through imposition of appropriate sentence by the court. It

was further observed that to show mercy in the case of such a heinous

crime would be travesty of justice and the plea for leniency is wholly

misplaced.

21. In Jugendra Singh v. State of Uttar Pradesh[9], while dwelling upon the

gravity of the crime of rape, this Court had expressed thus: -

"Rape or an attempt to rape is a crime not against an individual but a crime

which destroys the basic equilibrium of the social atmosphere. The

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consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu."

22. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for

reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mind-set that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court."

35. Keeping in view the facts and circumstances of the case, the manner of commission of the offence and the helpless condition of the minor victim girl, I am of the opinion that the accused does not deserve leniency.

36. Accordingly the accused Dipak Das is sentenced to undergo rigorous

imprisonment (RI) for 10(ten) years for committing the offence punishable under

section 511 of Indian Penal Code read with section 376(2)(I) of IPC and also to pay

a fine of Rs. 1,000/- (one thousand) only, in default, to undergo simple

imprisonment for of one month.

37. Seized clothes be destroyed in due course of time.

38. Considering the fact of imposing minimum amount of fine due to poor

financial back ground of the convict, no order is passed for payment of

compensation to victim U/S 357 Cr.P.C.

39. Considering the fact and circumstances of the case, I am of the opinion

that it is a fit case for referring the matter to DLSA for granting

compensation/make such provision for the victim under section 357A Cr.P.C. for her

future life.

40. The convict is entitled for the benefit of Section 428 Cr.P.C. for the period

already undergone during investigation and trial, if any.

41. Let a free of cost copy of the judgment be given to the convict

immediately as per the provisions of Section 363(1) Cr.P.C.

42. Convict is informed about his right of appeal against the judgment and

order of conviction and sentence either by appointing his own advocate or though

legal aid panel advocate or by way of Jail Appeal.

43. Send a copy of the judgment to District Magistrate, Sivasagar under

section 365 Cr.P.C.

Given under my hand and seal of this Court on this 21st day of

December, 2019.

Special Judge, Sivasagar.

Special (P) Case No. 14/2019

Date: 21-12-2019

APPENDIX

1. <u>Prosecution witnesses:</u>

- PW 1 Ram Das,
- PW 2 Gagan Das,
- PW 3 Feru Das,
- PW 4 Anjali Das,
- PW 5 BobyTanti,
- PW 6 Manoj Das,
- PW 7 JoydeepBaruah,
- PW 8 Dr. SundarChangmai,
- PW- 9- Ajoy Das,
- PW 10- WSI(P) Marchila D. Sangma,

2. Exhibits by prosecution-

- Ext.1 statement of Ram Das,
- Ext.2 Seizure list,
 - Ext.3 Statement of Anjali Das,
- Ext.4 Medical report,
 - Ext.5 GD Entry register
 - Ext.6 Sketch map
 - Ext.7 Charge-sheet
 - M. Ext. 1- One sky blue jeans,
 - M. Ext. 2- One black belt.
- 3. <u>Defence witnesses</u>- Nil
- 4. <u>Defence exhibits</u>- Nil

5. <u>Court witnesses</u>-

CW1- SI(P) DulumoniTalukdar.

6. <u>Court exhibits</u>- Nil

Special Judge,

Sivasagar.