IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>46 OF 2018</u>

(Under Section 4 of the POCSO Act, arising out of G.R. Case No.

1727/18)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Matrika Bhattarai

Son of late Chandalal Bhattarai,

Resident of Bapubheti Police Station – Tezpur Dist:- Sonitpur, Assam

Date of framing Charge : 17/07/2018

Date of Recording Evidence :- 14/08/2018 & 20/09/2018.

Date of examination of accused :- 28/09/2018.

u/s 313 Cr.P.C

Date of Argument :- 14/11/2018

Date of Judgment :- 17/11/2018

Date of sentence hearing and

final Judgment.

:- 19/11/2018

Counsel for the Prosecution :- Mr. M.Ch. Baruah,

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. B. Kotoki, Advocate.

JUDGMENT

- **1.** In this case accused Sri Matrika Bhattarai is put for trial for allegation of charge under Section 4 of the POCSO Act, 2012.
- 2. The factual matrix according to the FIR, in brief, is that on or about three months ahead of date of filing of the ejahar by complainant, one day at about 11 a.m. in absence of other family members of the complainant, accused trespassed into their house and forcefully committed rape to her daughter against her will. As a result of such sexual torture she became pregnant for three months. The accused threatened her if she disclosed the matter to others she will be killed. Hence, this prosecution case. The ejahar was filed by the informant Sri Geeta Thapa before the Incharge of Tezpur Police station on 06-05-2018.
- 3. On being receipt the ejahar, O/C Tezpur Police Station registered a case being Tezpur P.S. Case No. 910/18 under section 4 of the POCSO Act. After completion of usual investigation, the O/C Tezpur Police Station sent up the case for trial against the accused Sri Matrika Bhattarai u/s 4 of the POCSO Act.
- **4.** On being appeared the accused before this Court, after hearing both parties, framed charge under section 4 of POCSO Act, 2012 against the accused Sri Matrika Bhattarai and particulars of the charge was read over, explained to the accused to which he pleads not guilty and claims to be tried.
- **5.** To substantiate the case prosecution examined as many as 6 (six) numbers of witnesses which includes the informant, victim, other material witnesses and the Investigating Officer and Judicial Magistrate.
- **6.** After completion of prosecution evidence, accused is examined u/s 313 Cr.P.C. All the allegations made against the accused and evidence appears against the accused are put before him for explanation where he denied the evidence and allegation and declined to give defence evidence.
- **7.** I have heard the argument put forward by the learned counsels of both sides.

8. The point for decision in this case is that:

1. Whether on or about 11 a.m. of 3 months ahead of date of filing of the ejahar i.e. on 06-05-2018, at Bapubheti under Tezpur Police station, accused committed penetrative sexual assault on Miss X (aged about 16 years) and thereby committed an offence punishable u/s 4 of the POCSO Act ?

Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 10. PW- 1 Smti Geeta Thapa, complainant of this case, stated that victim is her daughter, aged about 19 years. The incident took place about 4 months ago. Her victim daughter became pregnant. That has come to know when she was brought to the hospital for treatment. The accused Matrika used to visit their house frequently. When they came to know about the incident, her victim daughter was 3 months pregnant. On being came to know about the pregnancy of her daughter, she asked her from whose side she became pregnant. Then she told her that from the side of accused Matrika Bhattarai she become pregnant. Then she lodged the ejahar. Ext. 1 is the ejahar and Ext. 1(1) is her signature. Police recorded her statement. Her victim daughter was sent to KCH, Tezpur for medical examination and she was sent to the learned court for recording her statement. Thereafter, her daughter was given zimma to them. After attaining pregnancy for about three months, she was miscarriage. During investigation, I.O. has seized the birth certificate of her victim daughter. Ext. 2 is the seizurelist and Ext. 2(1) is her signature. Thereafter, the original certificate is given zimma to them.

Though she has been exposed to long cross-examination except giving many suggestions, the evidence as to, her daughter became pregnant on or about four months ago, on being came to know about the pregnancy of her daughter and while she asked from whose side she became pregnant she told her that she became pregnant from the side of the accused has remained unchallenged.

11. PW-2 Smt. Sabitri Devi, who is the grandmother of the victim girl, stated before the court that the incident took place about 3 months ago. At the relevant time, her daughter Geeta Thapa was not at home, she was at Bengalore. Though she herself, victim Miss X and Padum Thapa are resides together but at the relevant time she has been to Na-bil. After arrival from Na-bil, she came to know that victim become three months pregnant. Padum Thapa was born after 6 years of birth of victim girl. The victim girl did not state anything to her as to how she became pregnant.

In cross-examination, she admitted that she has not personally seen any incident.

12. PW-3, victim Miss X stated before the court that accused whom they called as "Khura" (uncle). The incident took place about three months ago. Actually, the incident took place in the month of February. At about 11 a.m. she was in reading at her home as she had to appear in Unit Test examination. During that time one of her friend Pallabi Chetry asked her loudly from the road whether she would go to school or not. Then she left. Thereafter, she was alone in home. During that time there was no other family members. Then accused secretly entered into her room and asked her what she was doing. He advised her to write correctly in examination. Then he went out. Again he entered into her room and asked her whereabouts of other family members. She told the accused that other family members went to attend the "Bhagawat recitation" in their village. Then accused hugged her from back side, opened her clothes forcefully and open his clothes. She raised alarm. He laid her down in the bed and committed rape upon her. Inspite of her raising alarm, he did not pay any heed to her. He gagged her mouth. The accused also threatened her if she disclosed the incident to other he would kill her and her brother. Then she became senseless. Then she went to school. As the accused continuously threatened her not to disclose the matter to others so out of fear she did not report about the incident to others. One day, when she went to school she felt pain in her abdomen. Then her mother took her to doctor and doctor reported that she was three months pregnant. One day during raining she suddenly fell down in the toilet and in the toilet her still baby was

miscarriage. Then she has been taken to the doctor and the doctor reported that she was pregnant. Then her mother filed the ejahar. Thereafter, police sent her to the doctor for examination. Then she has been taken to the learned Magistrate to record her statement. Ext. 3 is her statement u/s 164 Cr.P.C. and Ext. 3(1) and 3(2) are her signatures. During investigation police seized her birth certificate. In the birth certificate her date of birth was mentioned as on 06-09-2002. After seizing the original birth certificate, it was given zimma to them by taking a photocopy of the said original certificate. When doctor reported that she is pregnant of three months then her mother asked her from whose side she became pregnant. Then she stated that accused Matrika Bhattarai caused her pregnancy and reported her details about the incident.

Though she has been exposed to long cross-examination, except giving many suggestions, the evidence as to at the relevant time when the family members of the victim went to attend "Bhagawat Recitation" in their village, accused came to their house, hugged her, opened her closed, gagged her mouth, accused also opened his clothes, laid her down in bed and committed rape upon her has remained unchallenged.

13. PW-4 Miss Juhi Gogoi stated that on 07-05-2018 she was posted as Judicial Magistrate, 1st class, Sonitpur, Tezpur and on that day in reference to Special POCSO Case No. 46/18 u/s 4 of the POCSO Act, she has recorded the statement of victim namely Miss X, D/O Bhakta Bahadur Tappa, resident of village Puthimari, aged about 16 years u/s 164 Cr.P.C. She has recorded the statement of the victim at her court chamber in presence of her mother Smti Geeta Thappa. The victim witness was escorted and identified by WHG Deepali Devi. The victim made statement voluntarily. After recording her statement, the statement was read over to her and on acceptance she put signature in her statement. Ext. 3 is the said statement and 3(3) is her signature. Ext. 4 is her order dated 07-05-2018 and Ext. 4(1) is her signature.

In cross-examination, she admitted that she has recorded her statement as per POCSO Act.

14. PW- 5 Dr. Amarjit Kaur, stated that on 07-05-2018 she was posted as Sub-Divisional Medical & Health Officer in the Kanaklata Civil Hospital, Tezpur and on that day at about 2:00 p.m. in the labour room complex of KCH, she examined Miss X (victim), 16 years, D/O Bhakta Bahadur Thapa of village Puthimari Bapubheti, PS Tezpur, in reference to Tezpur PS Case NO. 910/18 u/s 4 of POCSO Act, on being escorted and identified by WHG Dipali Devi, vide Hospital Registration No. 42695.E/118. She was examined in presence of GNM Jinu noni Das. On examination she found the following:

Menstrual history: Regular, LMP - 16-02-2018

History of sexual exposure: present, three months back.

On examination: At the time of examination, she was well dressed, neat and tidy. Her built was average, gait was normal. Height - 145 cm, Weight - 35 kg. Secondary sexual characters were well developed, vulva and vagina - healthy, engorged and areola blacken (dark). Hymen absent.

Investigation advised and report:

Vaginal smear – spermatozoa not seen. KCH Lab No. 39 dated 7-05-2018 Urine for HCG – positive. Patient ID NO. 34520 dated 08-05-2018 Pathologist Dr. D. Mahanta.

X-ray – (AP view of left wrist, elbow joint and Iliac crest for age proof) Age of the person under investigation appears to be just under 18 years.

USG pelvis. •

Reports: Gravid uterous with a live fetus of 14 weeks 4 days gestational age. (X-ray and USG done at AXCL, Tezpur).

OPINION: 1. There was no sign and symptoms of recent sexual intercourse

- 2. No marks of violence seen on her body and private parts.
- 3. Actual Age of the victim girl under investigation appears to be just under 18 years
- 4. Victim girl was pregnant, duration of gestational age 14 weeks 4 days.

Enclos: Advice slip cum hospital registration card, Vaginal smear report, Urine HCH report, X-ray plates and reports and USG flims and report.

Ext. 5 is the Medical Report and Ext. 5(1) is her signature. Ext. 6 is the Urine for HCG report and Ext. 6 (1) is the signature of Dr. D. Mahanta which she knows. Ext. 7 is the vaginal smear report and Ext. 7(1) is the signature of laboratory technician of KCH. Ext. 8 is the X-ray report and plates and USG report with films and Ext. 8(1) is the signature of Dr. P.K. Barman, Radiologist.

In cross-examination, the doctor stated that the ossification tests are not surer text. It may not vary two years in either side.

15. PW 6 SI Khargeswar Deka stated that on 06-05-2018 he was posted as SI of Police at Tezpur Police station. During that period she has been asked to look after the day to day works of Bihaguri Police Out Post. On that day, the then O/C Tezpur PS on being receipt an ejahar from Gita Thapa and registered a case being Tezpur PS Case No. 910/18 and entrusted him to investigate the case. Ext. 1(2) is the signature of the then O/C Ranjit Saikia of Tezpur PS. Accordingly, he has visited the place of occurrence and prepared a sketch map of the place of occurrence. Ext. 9 the sketch map and 9(1) is his signature. Then he recorded the statement of witnesses. He has sent the victim for medical examination. He has also sent the victim to record her statement u/s 164 Cr.P.C. After collecting report of doctor, he has filed the charge-sheet against the accused Matrika Bhattarai u/s 4 of POCSO Act. At the time of recording the statement of the accused, he admitted his guilt. Ext. 10 is the chargesheet and Ext. 10(1) is his signature.

In cross-examination the I.O. has admitted that the complainant filed this ejahar on 06-05-2018. After recording the statement of the victim he has visited the place of occurrence. During that time he has been accompanied by WHG. She was also in her uniform. He has not asked the guardian of the victim in which place the statement of the victim was recorded. The victim made statement in Assamese. He has not asked the victim whether any interpreter is required. He has enquired about the surrounding people of place of occurrence

but neighbouring people refused to give statement. He sent the accused to judicial custody through the learned Magistrate.

- **16.** These much is the evidence of the prosecution case. Defence plea is of total denial while his statement is recorded u/s 313 Cr.P.C. He stated that he is an innocent person but he denied to give defence evidence.
- 17. Learned counsel for the accused submitted that the prosecution has failed to prove the case beyond any reasonable doubt. Firstly, the medico legal report of the doctor stated that there was no signs and symptoms of recent sexual intercourse, no marks of violence seen on her body or on her private parts. Had the victim forcefully committed penetrative sexual assault she might have sustained some injury not only on her private parts but also on her body but Doctor did not find any injury. Secondly, according to the PW 1, mother of the victim on the day of deposition i.e. on 14-08-2018 the victim was 19 years old. Therefore, she is a major. So, the offence alleged against the accused cannot be comes in POCSO Act. Lastly, the alleged offence is very old one. At the time of filing the ejahar the alleged victim became pregnant, so the case is barred by limitation. Hence, praying for acquit the accused.
- **18.** On the other hand, learned Special Public Prosecutor, Sonitpur, Tezpur submitted that the prosecution has ably proved the case beyond all shadow of doubt, as such required to be convicted under the charged section of law. Firstly, it is not necessary that all the victim of penetrative sexual assault might have sustained injury on her private parts or on her body. If a girl become habituated with sex there is no any question of sustaining any injury. Secondly, it is a fact that PW1 mother of the victim stated that on the day of deposition her daughter was 19 years old. Definitely PW1 the mother of the victim is an illiterate person, so normally it is expected that an illiterate woman may made such contradictory statement. Thirdly, during investigation, the I.O. has seized one birth certificate of the victim where it is shows that her date of birth is on 06-09-2002. Besides doctor's report shows that actually age of the victim girl under investigation appears to be just under 18 years. Fourthly, at the time of

recording the statement of the victim u/s 164 Cr.P.C. victim stated that she was 16 years of age on 07-05-2018. Law is well settled that the date of birth mentioned in the birth certificate or school certificate will prevail over other documents therefore, here in this case, it must be presumed that the date of birth of the victim was 06-09-2002, therefore, on the date of occurrence the victim was aged about less than 16 years. Here in this case, at the time of occurrence, the victim is less than 16 years so definitely, she is a child and such offence committed by accused comes under POCSO Act. Learned Special Public Prosecutor again submitted that PW 1 is the mother of the victim and PW 2 is the grand mother of the victim so they may be interested witnesses.

To rely the interested witnesses in convicting the accused, learned Special P.P. submitted the case of **Gali Venkataiah Vs. State of Andhra Pradesh** reported in **2008 Crl.L.J. 690.** In regard to minor discrepancies, learned Special PP also submitted the case law of **State of UP V. Krishna Master & ors** reported in **2010 Crl.L.J.3889.**

- **19.** Keeping in mind, the rival submissions advanced by the learned counsels of both the parties, I am going to dispose of the case as follows.
- **20.** After going through the evidence of the aforesaid witnesses, it is seen except the victim, there is no eye witness to the incident, but according to PW 1, the mother of the victim, her victim daughter became pregnant on or about 4 months from the date of filing of the case i.e. on 14-08-2018, which they came to know from the doctor of the hospital. She stated that the accused used to visit their house frequently. When they came to know about the pregnancy of her daughter, on being enquired, her victim daughter stated that from the side of accused Matrika Bhattarai she become pregnant. Then she lodged the ejahar. Though she has been exposed to long cross-examination except giving many suggestions, the evidence as to, her daughter became pregnant on or about four months ago, on being came to know about the pregnancy of her daughter and while she asked from whose side she became pregnant she told her that she became pregnant from the side of the accused has remained unchallenged.

21. Learned counsel for the accused submitted that the FIR filed by the informant did not disclose any reasons for filing the same in late.

In state Vs. Gurmit Sing, the Hon'ble Apex Court , stated that –

"The court cannot over looked the fact that in sexual offence, delay in lodging the FIR can be due to variety of reasons particularly the reluctant of the prosecutrix or her family members to go to the police and complained about the incident which concern the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual assault is generally lodged."

In the instant case, the complainant, the mother of the victim has filed the case only when she came to know that her daughter became pregnant from the side of the accused. Before that there is no any evidence of visible pregnancy of the victim. Here in the present case when the prosecution has ably prove the case beyond all reasonable doubt as such mere delay in filing the FIR cannot discard the prosecution case.

- **22.** Learned counsel for the accused further argued that the victim changed her version in different times, before the court and before the learned Magistrate while her statement recorded u/s 164 Cr.P.C. whose statement cannot be considered to convict the accused.
- 23. Here in the present case, as details discussed herein before, the victim stated before the court that her date of birth was mentioned as 06-09-2002. In the Birth certificate which was seized in connection with the instant case (In MR Case No. 156/18, Zimma No. 90/18) clearly stated that her date of birth was on 06-09-2002. In her statement recorded u/s 164 Cr.P.C. also she clearly stated that her date of birth was on 06-09-2002. She has consistently stated in different stage that her date of birth was on 06-09-2002.
- 24. In the case of **K. Muthu Mariappan Vs State**, represented by the Inspector of Police, **Criminal Appeal (MD) No.98 of 2015**, it was held that it is true that primary evidence to prove the date of birth of the

individual may be preferably the birth certificate. But, it cannot be said that in absence of birth certificate, the date of birth cannot be proved. When the age of the individual is not disputed, the question of proving the same does not arise at all. It is the settled law that a fact in issue or any relevant fact or any fact relevant to the issue, which is disputed by the adverse party alone, needs proof. If it is not disputed, there is no need to lead any evidence in proof of the said admitted fact.

However, her mother stated that her daughter on the date of deposition i.e. on 14-08-2018 was 19 years. No doubt, her mother is quite illiterate, therefore, these are minor contradictions which may erupt in the statement of such an illiterate person.

25. In Boya Ganganna Vs. State of Andhra Pradesh reported in AIR 1976 SC 1541 wherein it is held —

"Minor contradictions are bound to appear when ignorant and illiterate women are giving evidence. Even in case of trained and educated persons, memory sometimes plays false and this would be much more so in case of ignorant and rustic women. It must also be remembered that the evidence given a witness would very much depend upon his power of observation and it is possible that some aspects of an incident may be observed by one witness while they may not be witnessed by another though both are present at the scene of offence."

As stated above as raised by learned counsel for the accused, these are some slight minor contradictions. Even if admitted the said contradictions, the prosecution case would not change.

It is also interesting to note that, though the complainant and victim and other witnesses were duly cross-examined by the defence lawyer but they have not been cross-examined on the point of age. Thus, the evidence of PWs in respect of age of the victim remains unchallenged.

26. A careful perusal of the whole case record, it appears that the statement of the victim made before the court is corroborated by her earlier statement u/s 161 Cr.P.C. before the police and also the statement 164

Cr.P.C. before the learned Magistrate. Though she has been exposed to long cross-examination the evidence as to the accused entered into the room of the victim, hugged her from back side, fell her down, opened her and his clothes and committed penetrative sexual assault has remained unchallenged. Besides, according to the prosecution story immediately after detecting her pregnancy by the doctor while enquired by her mother from whose side she became pregnant she clearly stated that it is the accused who caused her pregnancy. There is no any evidence that accused has any enmity with the victim to implicate him in a false case. On the other hand, there is no any evidence that victim was involved in sexual relation with any other person.

- 27. In the case in hand, the victim has been consistent on the material particulars with regard to the incident that on the day of incident, the accused entered into her reading room, hugged her, fell her down and by opening her and his clothes forcefully sexual intercourse with her as a result, she became pregnant, when her pregnancy was detected by doctor, on being asked her by her mother she stated that it is the accused who caused her pregnancy. The evidence of the victim is cogent and reliable. There cannot be any doubt to disbelieve the evidence of the victim.
- **28.** Undoubtedly in a criminal trial any such lapse on the part of accused is not leading any defence evidence would not have mattered much as prosecution is supposed to prove its case beyond shadows of all reasonable doubts. However, in a case under POCSO Act, the situation is not so. In this regard, it will be worthwhile to refer to the provisions of Section 29 and 30 of POCSO Act.
- **29.** U/s. 29 of POCSO Act, a mandatory presumption for certain offence is to be drawn against the accused in a prosecution for certain offences and same reads as under:
- "29. Presumption as to certain offences Where a person is prosecuted for committing or abetting or attempting to commit any offence u/s.3, 5, 7 and

Section 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved.

- **30.** Similarly, Section 30 of POCSO Act mandates that the Special Court shall draw a presumption of the existence of culpable mental state of the accused where culpable mental state is required on the part of the accused. Section 30 reads as under:
- "30. Presumption of culpable mental state (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 that 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 purpose 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 probabilities.
- **31.** The use of expression "shall presume" has been defined in Section 4 of the Indian Evidence Act. As contrasted from the expression "if presume", the expression "shall presume" whenever used connotes "legal presumption" or "compulsory presumption" as contrasted from "factual presumption" or "discretionary presumption" emanating from the expression "may presume". "Legal presumptions" or "compulsory presumption" as are signified by the use of expression "shall presume" are inferences or proposition established by law, which the law peremptorily requires to be made whenever the facts appear which it assumes as the basis of that inference. The presumptions of law are in reality rules of law, and part of the law itself and the court may draw inference whenever the requisite facts are developed in pleadings.
- **32.** Similarly whenever any law prescribes that the Court shall presume the existence of culpable mandatory state or to draw a presumption regarding commission of any offence, unless the contrary is proved, the onus to prove the contrary undoubtedly shifts upon the accused. Certainly, it does not discharge the prosecution of its duty to first establish and prove the facts, the existence of which can only lead to drawing of any such

compulsory presumption or legal presumption by the use of the expression "shall presume". Thus, as per Section 29, if a person is prosecuted for committing or abating or attempting to commit any offence u/s.3, 5, 7 and 9 of POCSO Act, the Special Court shall presume that such person has committed or abated or attempted to commit the said offence as the case may be unless the contrary is proved. However, in the present case, the accused has completely failed in discharging his burden even by preponderance of probabilities much less beyond reasonable doubt.

33. Coming now to the fact as to whether conviction can be recorded on the sole testimony of a child witness or not? This issue was dealt by the Hon'ble Apex Court in **Virendra – Vs – State of U.P., (2008) 16 SCC**, which are reproduced as under:

"The Evidence Act does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that who may testify – all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

34. Coming to the present case, it appears that prosecution story is such that on the day of incident while the victim was in her room and all other family members were went to attend "Bhagawat Recitation" accused secretly came to her room, hugged her, laid her down on the bed, opened her and his clothes committed penetrative sexual assault to her, on being came to know the cause of her pregnancy by her mother filed the ejahar. While the accused was recorded u/s 313 Cr.P.C. he only denied the allegations but inspite of availing opportunity the accused did not adduce any evidence

On appreciation of evidence given by the victim, her mother, her grand mother and other independent witnesses, I find that the victim was sexually assaulted by the accused. It appears that there is no materials of penetrative sexual assault found by the doctor on the victim as the doctor stated that there was no signs and symptoms of recent sexual intercourse, no marks of violence seen on her body and private parts., actual age of the

victim girl is under investigation appears to be just under 18 years. Here in the present case, the victim is below 18 years at the time of occurrence according to the doctor. Considering all these aspects, I think that the prosecution has failed to prove the allegation of charge u/s 4 of the POCSO Act i.e. penetrative sexual assault but prosecution has ably proved the charge u/s 8 of the POCSO Act beyond all shadow of doubt. Accordingly, I convict Sri Matrika Bhattarai u/s 8 of the POCSO Act.

- **35.** The accused is heard on the point of sentence where he praying for leniency stating that he is the only bread earner of his family. Besides he has been in custody for a long time. Hence praying for leniency.
- **36.** I have heard learned counsel for the accused as well as learned Special Public Prosecutor, Sonitpur.
- Turning to the question of sentence, it is the settled law that while **37.** deciding the quantum of punishment, it is required that the Court should strike a balance between aggravating circumstances and mitigating circumstances. The aggravating circumstances relate to the crime and mitigating circumstances relate to the criminal. In this case, so far as the aggravating circumstances are concerned, a minor girl was sexually exploited. The wound caused to the girl is not only to the body but also to the mind of not only to the victim but that of entire family members, but considering the mitigating circumstances, the accused was hardly 52 years of age at the time of the incident. It is not brought to the notice of this Court that before this incident, the accused had committed any other offence. There is likelihood of his reformation, but the statute u/s.8 of POCSO Act prescribes minimum punishment for a term of three years with fine. When the intention of the legislator is to impose stringent punishment for not less than three years, this court has no option but to impose minimum punishment of three years.

ORDER

38. I convict the accused Sri Matrika Bhattarai u/s. 8 of POCSO Act and sentence him to Rigorous Imprisonment for 3 (three) years and also to pay a fine of Rs.10,000/- (Rupees ten thousand only), in default, Rigorous Imprisonment for 3 (three) months. The period, which he detained in

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custody, during the period of investigation, trial etc. shall be set off u/s 428 of Cr.P.C.

39. As per provision of section 357 (A) of the Cr.P.C, the victim compensation is permissible in law. After going through the statement of witnesses, I think the victim is entitled to get the compensation. To mitigating the mental agony and trauma suffered by the victim, an amount of Rs.50,000/- (Rupees Fifty thousand) only is awarded as compensation. The Secretary, District Legal Services Authority, Sonitpur, Tezpur be asked to give the compensation to the father of the victim after proper enquiry.

Let a copy of the Judgment be sent to the Secretary, District Legal Services Authority, Sonitpur, Tezpur for her necessary action.

40. A copy of this judgment be furnished to the accused free of cost immediately.

Let another copy of Judgment be sent to learned District Magistrate, Sonitpur, Tezpur, u/s 365 of Cr.P.C.

Given under my Hand and Seal of this Court on this the **19th day of November, 2018**

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR: TEZPUR

Dictated and corrected by me

(Ashok Kumar Borah) SPECIAL JUDGE, SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

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APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Smti Geeta Thapa, complainant

Prosecution Witness No.2 :- Smt. Sabitri Devi,
 Prosecution Witness No.3 :- Victim Miss X

4. Prosecution Witness No.4 :- Miss Juhi Gogoi, Judl. Magistrate.

5. Prosecution Witness No.5 :- Dr. Amarjit Kaur,
6. Prosecution Witness No.6 :- SI Khargeswar Deka.

EXHIBITS.

Exhibit 1 :- Ejahar

Exhibit 2 :- seizurelist.

Exhibit 1(1) & 2(1) :- signatures of the complainant.

Exhibit 3 :- 164 Cr..P.C. statement of the victm

Exhibit 3(1) & 3(2) :- signatures of the victim.

Exhibit 4 :- Order of learned Jdl. Magistrate.

Exhibit 3(3) & 4(1) :- signatures of the Jdl. Magistrate.

Exhibit 5,6,7 & 8 :- Medical report, HCG report, vaginal smear,

USG & X-ray reports.

Exhibit 9 :- sketch map

Exhibit 10 :- Chargesheet.

Exhibit 9(1) & 10(1) :- signatures of the I.O.

(Ashok Kumar Borah)
SPECIAL JUDGE
SONITPUR: TEZPUR