# IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE ::::UDALGURI

Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.

# Special (POCSO) 03/2018 Under Section 06 of POCSO Act

### State of Assam -Vs-

Umesh Baraik......Accused.

For the Prosecution: Mr. M. Khaklari, Addl. Public Prosecutor.

For the Accused: Mr. Bhaskar Sarma, Learned Advocate.

Date of Evidence : 28-05-18: 18-08-18: 03-01-19: 21-01-19:

04-02-19.

Date of Argument : 10-07-2019.

Date of Judgment : 23-07-2019.

#### **JUDGMENT**

- 1. The prosecution case in brief is that on 08-11-17, informant Harikrishna Brahma lodged an FIR with the In-Charge of Borabazar Police Out Post alleging that on 07-11-17, at about 03 pm the accused had committed rape upon his 13(thirteen) years old physically handicapped daughter(victim-A).
- 2. On the basis of the FIR, Rowta PS Case No. 134/17, under Section 4 of POCSO Act was registered and after completion of investigation Police

submitted charge-sheet under Section 6 of POCSO Act against the accused person Umesh Baraik.

- 3. In consideration of the submission of the learned counsel for both the parties and materials on record and having found sufficient grounds for presuming that the accused person had committed offence under Section 6 of POCSO Act, learned Special Judge framed charge thereunder and the ingredients of charge under Section 6 of POCSO Act were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Thereafter, the learned Special Judge vide Order dated 17-07-18, transferred the case to this court for disposal.
- 4. The prosecution in order to prove its case examined the following 08(eight) witnesses:

PW1- Dr. Bhadra Kanta Sarma.

PW2- Harikrishna Brahma

PW3- Bijay Brahma.

PW4- Rongila Brahma.

PW5- Victim-A.

PW6- Namita Brahma.

PW7- ASI, Dimbeswar Deka.

PW8- JMFC, Kumari Arti.

- 5. The statement of the accused person had been recorded U/S 313 Cr.P.C. The defence plea was of total denial. Defence had declined to adduce defence evidence.
- 6. Situated thus, the point for determination in the instant case is set up as follows:-
  - (I) Whether the accused person committed aggravated penetrative sexual assault upon Victim-A who is a minor girl aged about 13 years, and

thereby committed an offence punishable under Section 6 of POCSO Act ?

#### **DISCUSSION, DECISION AND REASON FOR DECISION:**

- 7. I have heard learned Addl. PP Mr. M. Khaklari for the prosecution and learned defence counsel Mr. Bhaskar Sarma.
- 8. Learned Addl. P.P. has argued that prosecution has proved the case beyond all reasonable doubt. The victim of the instant case is a minor girl. the accused had committed penetrative sexual assault upon the victim as evident from the testimony of the victim.
- 9. Per contra learned defence counsel has argued that the material and vital witnesses of the case are PW5 and PW6. Their evidence has been recorded through interpreter but no oath was administered to the interpreter. The statement of the victim under Section 164 Cr.P.C. had been recorded by learned Magistrate with the help of interpreter but the interpreter was not administered oath by the learned Magistrate. In this regard learned defence counsel has relied on the decision reported in 2015 (2) GLJ 355 Lalmalsawma Vs. State of Mizoram wherein the Hon'ble Gauhati High Court discarded the evidence of the prosecutrix in view of the fact that the evidence of the prosecutrix has been recorded with the help of interpreter who was not administered oath. Learned defence counsel has argued that as oath was not administered to the interpreter, hence, the evidence of PW5 and PW6 are liable to be discarded. If the evidence of PW5 and PW6 are discarded there is no eye witness to the incident.
- 10. Learned defence counsel has further argued that in the instant case on examination of the victim, the doctor found no sign of sexual assault. Relying on the decision reported in 2018 (2) GLJ 585 Ranjit Hazarika Vs State of Assam, learned defence counsel has submitted that in absence of any

injury on the private parts of the victim and her hymen remaining intact a reasonable doubt arises as to the prosecution case. He has further argued that in this case according to medical evidence the age of the victim is 14-16(fourteen-sixteen) years. There is no birth certificate or school certificate produced to prove the age of the victim. In such a case there is margin of error of two years on either side for determining the age on radiological test. The benefit of such margin of error goes in favour of the accused. Therefore, in the instant case the victim was not a minor on the date of occurrence and as such the accused is liable to be acquitted of the charges leveled against him.

- 11. Before appreciating the arguments put forward by learned Addl. P.P. for the State as well as the rival submission advanced by the learned defence counsel, I would like to discuss the evidences adduced by the prosecution.
- 12. PW1 is Dr. Bhadra Kanta Sarma, the Medical Officer of this case. In his evidence PW1 had deposed that on 08-11-17, he examined the victim-A at Udalguri Civil Hospital and his findings and opinion are as follows:

  No marks of violence, hymen intact, secretion outside vulva present, smear shows no spermatozoa and approximate age of the victim 14-16 (fourteensixteen) years. Ext.-1 is the medical report and Ext.-1(1) is the signature of PW1.

In cross-examination, PW1 had stated that no injury seen on her private parts, no spermatozoa seen and no marks of violence seen.

13. PW2 is Harikrishna Brahma, the informant and father of the victim. In his evidence PW2 had deposed that his physically handicapped daughter victim-A was alone at home. On the day of incident, he and his wife went out for daily work. The accused was cutting firewood in the vicinity of their house. The accused consumes alcohol. When they went out, the accused entered their house and committed rape on his daughter. His other daughter Namita Bramha saw the incident and called the local people. PW2 informed police

and lodged ejahar. In cross-examination, PW2 had stated that he did not see the incident. He was reported about the incident. Thereafter he lodged the ejahar. He had accepted the suggestion that he did not state before the police that his other daughter Namita Brahma saw the incident and informed the local people and his son called him from the place of work. PW2 had stated that his daughter cannot speak properly. She did not speak totally in the outside. He knew the accused prior to the incident. The accused used to consume alcohol. At the time of incident the accused was working in the house of Dansewar Baglari. PW2 had denied the defence suggestion that accused did not commit rape on his daughter and he had falsely implicated the accused.

- 14. PW3 is Bijay Brahma, cousin of victim-A. In his evidence PW3 had deposed that accused used to work as a labour in their village. On the date of incident the accused was cutting fire woods for the village people. Victim-A is a physically handicapped girl. On the day of incident while her parents went out for daily work the accused entered victim's house, bolted the door from inside and committed rape on the victim. When victim's sister came she could not open the door. Thereafter the accused opened the door and the younger sister saw victim in a naked condition. When the younger sister saw them, the accused fled away from the spot. When the sister of victim informed PW3 and others about the incident they went to the house of victim. They could not trace out the accused. In cross-examination PW3 had stated that he did not see the incident. On the day of incident the accused was cutting fire woods with them. When they went to the house of victim the accused was not found. When the accused was working with them he consumed alcohol. PW3 had denied the defence suggestion that the accused did not commit rape on Hirimba and he had falsely implicated the accused.
- 15. PW4 is Rongila Brahma, mother of the victim-A. In her evidence PW4 had deposed that on the date of occurrence, she and her husband went to paddy field to work. Their two daughters victim-A and Namita Brahma were present

in the house. When she and her husband returned to home their daughter Namita Brahma informed them that accused Umesh Baraik committed rape on their elder daughter victim-A in their house. After knowing about the incident her husband and some other brought the accused to their house from the house where he used to work. On being asked victim told them that accused muffled her mouth by his hand and made her lie on the ground and committed rape on her. Victim also told that she tried to go out of the house but accused forcibly prevented her from leaving the house. In crossexamination, PW4 had stated that after the incident Police had recorded her statement. When she gave statement before the Police she told her age as 25 years. Her elder daughter is aged about 11 years. PW4 had denied the defence suggestion that she stated before the Police that the age of the victim was 13 years at that time. She could not say what was her age at the time of her marriage. At the time of incident she was in the paddy field. The paddy field is at a distance of 5 km of her house. The accused works in the house of her brother-in-law Nagen Brahma. On the date of occurrence the accused was under the influence of intoxication. The accused was working in their village for two months before the incident. There were no instances of any misdeed committed by the accused in their village during that two months period. PW4 had stated that her daughter victim-A could not speak properly. PW4 had denied the defence suggestion that accused had not committed rape on her daughter and she had deposed falsely.

16. PW5 is victim-A. The evidence of PW5 has been recorded with the help of interpreter learned Advocate Neothwnsona Daimary, who is a practicing advocate of Udalguri Bar. In her evidence PW5 had deposed that on the date of occurrence in the afternoon the accused laid her down on the ground inside her house, gagged her mouth, removed her pant and inserted his penis into her vagina. Then her sister Namita came there. When Namita came there, the accused wore his gamusa and fled away. At the time of incident the parents of PW5 had gone to their work. After sometimes when they returned back, PW5 informed them about the incident. Then her father

lodged the FIR. PW5 had deposed that her statement had been recorded by learned Magistrate. She put her thumb impression in her statement. In cross-examination, PW5 had stated that she was taught by her parents as to how to adduce evidence about the incident. Accordingly she had deposed about the incident. At the time of incident she felt pain on her two forearms. She did not receive any bleeding injury. She had denied the suggestion that accused had not committed any illegal act with her. She had also stated that at the time of incident she did not raise alarm.

- 17. PW6 is Namita Brahma, the younger sister of the victim. The evidence of PW6 is also recorded with the help of interpreter learned Advocate Neothwnsona Daimary. In her evidence PW6 had deposed that on the date of occurrence after returning from school she went to play near her house. At about 3 pm, she returned from playground and while she entered into the bedroom to eat a banana then she had seen that the accused was covering her sister with the pant which was removed from her. Thereafter the accused wore his gamusa and hide himself by the side of the door and look at PW6. Thereafter, the victim came out of the room. Thereafter, the brother-in-law of the accused came there and took the accused away. After the accused left, PW6 informed her sister-in-law about the incident, when the victim was asked by the sisterin-law she started crying and told that the accused gagged her mouth. Later on, their parents returned back. They were informed about the incident and their father lodged the FIR. In cross-examination, PW6 had stated that the police did not ask her anything except her name. she did not state the statement adduced in her evidence before the police. PW6 had deposed that she had not heard any sound of shouting before entering into the bedroom. There was only one door to enter into the bedroom. PW6 had denied the suggestion put forward by the defence.
- 18. PW7 is ASI, Dimbeswar Deka, Investigating Officer of the case. In his evidence PW7 had deposed that on 07-11-2017, he was working as In-charge Borobajar OP under Rowta PS. On that day at about 7 pm, informant Sri

Harikrishna Brahma verbally informed him that the accused Umesh Baraik committed rape upon his minor handicapped daughter. Then, he endorsed GD entry No. 95 dated 07-11-2017 and proceeded to the place of occurrence i.e. the house of the informant, prepared the sketch map and recorded the statements of the witnesses. He had also arrested the accused and brought him to the OP for interrogation. Next day in the morning, informant Harikrishna Brahma lodged written FIR in this connection. He sent the FIR to O/C Rowta PS to register a case. Accordingly, O/C Rowta PS registered Rowta. PS case No. 134/17 U/S 4 of Pocso Act and entrusted him for preliminary investigation. Ext-2 is the FIR. Ext-2(1) is the signature of SI Khagendra Hazarika, Officer In-charge of Rowta PS registering the FIR whose signature is known to him. Ext-3 is the Borobajar OP GD entry No. 95 dated 07-11-2017 as reflected in Case Deary. Ext-3(1) is the signature of PW7. Ext-4 is the sketch map. Ext-4(1) is the signature of PW7. He sent the victim for medical examination and also collected the medial report. He also produced the victim before the Court for recording her statement U/S 164 Cr.P.C. The arrested accused was forwarded to Court. After conclusion of preliminary investigation, he submitted the case diary to Officer In-charge of Rowta PS. Later on, Officer In-charge Dipu Bora submitted charge-sheet against accused Umesh Baraik U/S 6 of Pocso Act. Ext-5 is the charge-sheet. Ext-5(1) is the signature of SI Dipu Bora. PW7 is acquainted with his signature. In crossexamination, he started the investigation on the basis of GD entry. He did not submit the abstract copy of GD entry along with the case record. In the FIR Ext-2, he did not mention the GD entry number. He visited the place of occurrence on the date of occurrence. There were houses of other people near the place of occurrence. As per sketch map, towards the northern and southern side of place of occurrence, the house of Aniruddha Brahma is situated. PW7 did not record statement of Aniruddha Brahma or his family members. He did not seize the birth certificate of the victim girl. He did not record the statement of Nizwm Brahma, the son of the informant as he was too young to give statement. PW7 had denied the suggestion that he did not investigate the case properly.

- 19. PW8 is Munsiff-cum-JMFC, Smti. Kumari Arti. In her evidence PW8 had deposed that on 09-11-2017, she was working as Munsiff cum JMFC Udalguri. On that day, she recorded the statement of victim-A U/S 164 Cr.P.C in connection with Rowta PS case no. 134/2017 U/S 4 of POCSO Act. Ext-6 is the statement U/S 164 Cr.P.C of the victim girl. Ext-6(1) and Ext-6(2) are the signatures of PW8. Ext-7 is the order dated 09-11-17 in respect of recording of statement of the victim girl. Ext—7(1) is the signature of PW8. She recorded the statement of the victim with the help of interpreter namely Smti. Rupeswari Boro, office peon in the Office of District & Sessions Judge, Udalguri. In cross examination, PW8 had stated that it is not necessary to take signature of the mother of the victim girl in the statement of the victim girl recorded U/S 164 Cr.P.C. In her statement, she did not mention that she administered Oath to the interpreter. The interpreter Rupeswari Boro is not a' trained interpreter. In the certificate given in the statement of the victim girl recorded U/S 164 Cr.P.C, she did not mention the name of the interpreter. PW8 had stated that in her order dated 09-11-17, she did not mention the name of the interpreter. The interpreter was verbally called to assist in interpretation of statement of the victim girl. She did not take signature of the interpreter in Ext-6.
- 20. With regard to the submission of learned defence counsel that evidence of PW5 and PW6 whose evidence had been recorded through interpreter are liable to be discarded as no oath was administered to the interpreter. I have gone through the relevant provision of law in this regard. Learned defence counsel has relied on the decision reported in 2015 (2) GLJ 355 Lalmalsawma Vs. State of Mizoram. In the said decision Hon'ble Gauhati High Court in view of the decision reported in 2012 (5) SCC 789 State of Rajasthan Vs. Darshan Singh @ Darshan Lal, held that "in case the interpreter is provided, he should be a person of the same surrounding but should not have any interest and he should be administered oath. Obviously the interpreter in this case was never administered oath by the Magistrate or trial Court. Secondly, PW6 who has acted as the interpreter

while recording the statement of prosecutrix has also admitted that she is a relative of the prosecutrix. If that is so, she is an interested witness and she should not have been allowed to act as an interpreter. In view of the legal position reiterated by the Apex Court in Darshan Singh(Supra), the statement of the prosecutrix and as interpreted by the interpreter is not admissible in law."

- 21. In the decision reported in 2012 (5) SCC 789 State of Rajasthan Vs. Darshan Singh @ Darshan Lal, the Hon'ble Supreme Court while discussing the procedure to be followed for recording evidence of deaf and dumb witness held that the interpreter should not have any interest in the case and he should be administered oath. The relevant portion of the judgment have been reproduced below:
  - "21. We have also gone through the entire evidence and concur with the findings recorded by the High Court.
  - 22. The basic argument which has been advanced by both the parties before us is on the admissibility and credibility of sole eye-witness Geeta (PW.16).
  - 23. Admittedly, Geeta (PW.16) had not been administered oath, nor Jaswant Singh (PW.1), her father who acted as interpreter when her statement was recorded in the court. In view of provisions of Sections 4 and 5 of the Oaths Act, 1969, it is always desirable to administer oath or statement may be recorded on affirmation of the witness.
  - 24. This Court in Rameshwar S/o Kalyan Singh v. The State of Rajasthan, AIR 1952 SC 54, has categorically held that the main purpose of administering of oath to render persons who give false evidence liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only touch credibility and not admissibility. However, in view of the provisions of Section 7 of the Oaths Act, 1969, the omission of administration of oath or affirmation does not invalidate any evidence.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the Court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

- 22. Upon perusal of decision of Hon'ble Gauhati High Court reported in 2015 (2) GLJ 355 Lalmalsawma Vs. State of Mizoram, it appears that the sole ground for discarding the evidence of the witnesses not that the interpreter was not administered oath in the said case the statement of the witness has been recorded by an interpreter who is relative of the prosecutrix and that being so the interpreter is interested in the case.
- 23. In the case reported in **2012 (5) SCC 789 State of Rajasthan Vs. Darshan Singh @ Darshan Lal,** the interpreter was an interested witness of the case who had assisted during the trial, investigation and was examined without administering oath and therefore the Hon'ble Apex Court came to a finding that evidence recorded with the help of such interpreter is unreliable.
- 24. In the instant case the evidence of PW5 and PW6 have been recorded with the help of interpreter who is a practising advocate of the bar. She is neither related to the victim girl nor in anyway have interest in the case of the prosecution. Both PW5 and PW6 could speak and the interpreter only aided to translate the statements made in Bodo language. The counsel appearing for the prosecution is also from Bodo community and conversant with the Bodo language. But this Court as a measure of abundant caution took the help of a member of the bar who is not anyway connected with the case. Though oath

was not administered to the interpreter but as she is neither interested nor related to the victim, there is no possibility of misinterpreting the statements adduced by the witnesses by the interpreter. Hence, in this case merely because oath was not administered to the interpreter does not make the testimony of PW5 and PW6 unreliable and as such I find no force to the contention of the learned defence counsel.

- 25. In this case the victim has adduced evidence implicating the accused in the alleged incident of sexual assault upon her. She had deposed consistently and in a straightforward manner that on the date of occurrence the accused insider her house laid her down on the ground, gagged her mouth, removed her undergarment and inserted his penis into her vagina. The evidence of the victim(PW5) is consistent with her previous statement recorded by learned Magistrate under Section 164 Cr.P.C. The evidence of the victim is corroborated by her sister (PW6) who had seen the accused covering the victim with the undergarment which was removed from her. The evidence of the parents of the victim had also corroborated the testimony of PW5 and PW6. They were informed about the incident on the date of occurrence itself after they returned from their workplace to their home. PW3, the cousin of the victim was also informed about the incident by PW6. He then immediately went to the house of the victim but could not trace the accused there. All the prosecution witnesses were cross-examined in length by the defence but failed to extract anything so as to demolish the credibility of their testimony. The evidence of all the prosecution witnesses is consistent and there are no discrepancies in their evidence on material point. Defence has also failed to bring out anything as to why the parents of the victim would file a case falsely against the accused putting the dignity of their daughter at stake.
- 26. Learned defence counsel has contended that the medical evidence did not support the prosecution case. The prosecution has failed to prove the charges of offence of aggravated penetrative sexual assault upon the victim beyond all reasonable doubt as on her examination by the doctor no sign of sexual

assault is found on the person of the victim. He had relied on the decision reported in **2018 (2) GLJ 585 Ranjit Hazarika Vs State of Assam** and contended that in absence of any injury on the private parts of the victim and her hymen remaining intact a reasonable doubt arises to the prosecution case.

- 27. In the instant case, PW1, the medical officer on examination of the victim found no marks of violence, hymen intact, secretion outside vulva present and smear shows no spermatozoa. It is clear from the evidence of the victim that when the accused inserted his penis into her vagina her sister PW6 arrived at the place of occurrence and thereafter the accused fled away. The evidence of PW5 had been corroborated by her sister(PW6), so evidently there is no full penetration as such hymen was intact. In the decision reported in (1992) 3 SCC 204 Madan Gopal Kakkad Vs. Naval Dubey and Another, the Hon'ble Supreme Court has held that partial penetration within the labia majora or the vulva or pudenda without rupturing the hymen in the legal sense is sufficient to constitute the offence of rape.
- 28. Similarly, in the case of Ranjit Hazarika Vs State of Assam, reported in (1998) 8 SCC 635, the opinion of the doctor was that no rape appeared to have committed because of the absence of rupture of hymen and injuries on the private part of the prosecutrix, the Apex Court took a view that the medical opinion cannot throw over board and otherwise cogent and trustworthy evidence of the prosecutrix.
- 29. Similar views have been expressed in Rafique Vs. State of UP reported in (1980) 4 SCC 262 where "the appellant contended that the absence of injuries on the person of the victim was fatal to the prosecution and corroboration was necessary. Rejecting these contentions the Supreme Court held that corroboration as a condition for judicial reliance on the testimony of prosecutrix is not matter of law, but a guidance of prudence under given circumstances. When rapists are revelling in their promiscuous

pursuits and half of human kind—women kind—is protesting against its helpless lot, where no women of honour accuse another of rape, since she sacrifices thereby what is dearest to her, the court cannot cling to a fossil formula and insist on corroborative testimony, even mind as probable."

- 30. The facts and circumstances of the case reported in 2018 (2) GLJ 585 Ranjit Hazarika Vs State of Assam, relied on by learned defence counsel is totally different from the facts and circumstances of the instant case. In the instant case the victim had revealed in her evidence that she did not receive any bleeding injury as a result of the assault upon her. It is clear from the sequence of events as narrated by the PW5 that when the accused inserted his penis into her vagina the sister of PW5 arrived at the place of occurrence and then the accused left her. Thus, evidently there is partial penetration and as such medical evidence with regard to the absence of violence and hymen remaining intact does not affect the credibility of the testimony of victim. Moreover, it is settled position of law that in a case of rape sole testimony of victim can be the basis of conviction without any corroboration if the testimony of the victim is found to be inspiring confidence. In the instant case also the evidence of the victim does not suffer from any inherent improbabilities and discrepancies and as such her evidence is inspiring confidence and worthy of credence.
- 31. With regard to the age of the victim it appears that except the medical evidence there is no birth certificate or school certificate of the victim girl produced by the prosecution in evidence to prove the age of the victim. The medical evidence reveals that the age of the victim is 14-16 (fourteen-sixteen) years. In determining the age on the basis of radiological test the margin of error of two years on either side is applicable. The benefit of such margin of error always goes in favour of the accused. In this case the age of the victim is stated in the FIR as 13 years. The mother of the victim in her evidence stated that the victim is aged about eleven years. It appears that her evidence is not consistent with regard to the age of the victim. She could

not even state about her own age at the time of her marriage. Thus in absence of consistent evidence from the parents of the victim with regard to her age the radiological age of the victim should be believed. Thus, if the margin of error of two years is applied to the radiological, the age of the victim should be decided as eighteen years at the time of incident. To constitute an offence under Section 06 of POCSO Act, the victim must be a person below eighteen years. As in the instant case victim is aged not below eighteen years hence, Section 6 of POCSO Act is not attracted in this case. However, it appears from the evidence on record that on the date of occurrence the accused forcefully committed rape upon the victim (PW4) who is suffering from physical disability. It is clear from the evidence on record that the victim has physical disability, she could not speak properly. Hence, prosecution has proved beyond all reasonable doubt that the accused has committed an offence of rape punishable under Section 376(2)(I) IPC.

- 32. Moreover, Section 42 of The Protection of Children from Sexual Offences Act lays down that "Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 3540, 370, 370A, 375, 376, 376A, 376C, 3760, 376E or section 509 of the Indian Penal Code, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."
- 33. The offence of penetrative sexual assault by penis into vagina as defined in Section 03 of The Protection of Children from Sexual Offences Act is nothing but a rape as defined in Section 375 IPC. It is ipso facto clear that rape as defined in Section 375 IPC and penetrative sexual assault by penis into vagina have got all common ingredients. In the instant case though no charge under Section 376 IPC has been framed but in view of the provision of Section 42 of The Protection of Children from Sexual Offences Act, the accused is liable to

- be punished under Section 376(2)(I) IPC. Accordingly the accused Umesh Baraik is held guilty under Section 376 (2)(I) IPC.
- 34. In the present case the accused Umesh Baraik has been found guilty and convicted under Section 376 (2)(I) I.P.C. Section 376(2)(I) I.P.C. prescribes punishment 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. Hence, considering the nature and gravity of the offence in my considered view no benefit under Section 360 Cr.P.C. or under Section 3/4 of the Probation of offenders Act 1958 can be extended to the convicted accused person.
- 35. Before passing sentence, I have heard the convicted accused person on the question of sentence under Section 235(2) of the Cr.P.C. and recorded his statement. The accused has pleaded innocence.
- 36. I have considered the facts and circumstances of the case. The accused belongs to poor strata of the society and the record does not display past blemish of the convict. Considering all, in my opinion imprisonment of the accused for a minimum period prescribed under Section 376(2)(I) IPC would meet the ends of justice.

#### **ORDER**

- 37. In the result accused Umesh Baraik is sentenced to undergo 10(ten) years rigorous imprisonment under Section 376(2)(I) I.P.C. and to pay fine of Rs. 10000/- only in default rigorous imprisonment for six(6) months.
- 38. It is ordered that the period of jail detention if any, already undergone by the convicted accused person during the period of investigation, enquiry or trial, shall be set off under Section 428 of the Cr.P.C. against the term of imprisonment imposed on him.

39. Considering the facts and circumstances of the case I am of the considered view that this is a fit case for recommendation for compensation under Section 357-A Cr.P.C. Hence, the case is recommended to District Legal Service Authority to decide the quantum of compensation to be awarded to the victim under the victim compensation scheme. Sent a copy of the

Judgment to the District Legal Service Authority, Udalguri.

40. The convicted accused person shall be furnished with a copy of this Judgment

free of cost forthwith.

41. Let one copy of the Judgment be sent to the learned District Magistrate,

Udalguri in view of the provision under Section 365 Cr.P.C.

42. Judgment is signed, delivered and pronounced in the open court today the

23<sup>rd</sup> day of July, 2019.

**Dictated and Corrected** 

(N.Talukdar)

**Addl. Sessions Judge** 

Udalguri.

(N.Talukdar)

**Addl. Sessions Judge** 

Udalguri.

# IN THE COURT OF ADDL. SESSIONS JUDGE:::::::::::UDALGURI. SPECIAL (POCSO) 03/2018

### **APPENDIX**

(A) Prosecution Exhibits:

Ext.1 : The medical report.

Ext.2 : FIR.

Ext.3 : GD entry no. 95 dated 07-11-17.

Ext.4 : Sketch map. Ext.5 : Charge-sheet.

Ext.6 : Statement of victim recorded U/S 164 Cr.P.C.

Ext.7 : The order dated 09-11-17 in respect of recording statement of the

victim.

(B) Materials Exhibits : Nil.(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.
(E) Court Exhibits : Nil.

(F) Prosecution witnesses:

PW1- Dr. Bhadra Kanta Sarma.

PW2- Harikrishna Brahma

PW3- Bijay Brahma.

PW4- Rongila Brahma.

PW5- Victim-A.

PW6- Namita Brahma.

PW7- ASI, Dimbeswar Deka.

PW8- JMFC, Kumari Arti.

(G) Defence witnesses : Nil.

(H) Court witnesses: Nil.

(N.Talukdar) Addl. Sessions Judge. Udalguri