IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR

<u>SPECIAL (POCSO) CASE NO.</u> :- <u>08 OF 2015</u>

(Under Section 6 of the POCSO Act, arising out of G.R. Case No. 741 of

2015)

Present :- Sri Ashok Kumar Borah, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Md. Safigul Islam,

Son of Md. Nurul Haque, Resident of Komarchuburi, Police Station – Thelamara Dist:- Sonitpur, Assam

Date of framing Charge :- 20/05/2015

Date of Recording Evidence :- 30/06/2015, 03/08/2015,

04/09/2015, 05/10/2015 22/02/2017 & 14/08/2017

Date of examination of accused :- 26/03/2017 & 14/08/2017.

u/s 313 Cr.P.C

Date of Argument :- 21/10/2017

Date of Judgment :- 31/10/2017

Counsel for the Prosecution :- Mr. Munin Chandra baruah

Special Public prosecutor

Sonitpur.

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

JUDGMENT

- **1.** In this case accused Safiqui Islam is put for trial for allegation of charge under Section 6 of the POCSO Act, 2012.
- 2. The prosecution case according to the FIR in brief is that on or about 1 p.m. of 08-04-2015 accused called informant's 5 years old minor daughter from the paddy field to the site of Belsiri riever and committed rape on her under Banana tree. When the girl reported the informant about the incident by arising alarm then informant came to know about the incident. The ejahar was lodged by Musstt Aleka Khatoon before the O/C of Thelamara Police Station on 08-04-2015.
- **3.** On receipt of the ejahar, the Officer-In-Charge of Thelamara Police Station registered a case being Thelamara P.S. Case No. 18/15 u/s 376(f)/511 of the IPC read with section 6 of the POCSO Act. After completion of usual investigation, the O/C Thelamara Police Station sent up the case record for trial against the accused by filing charge sheet u/s 376(2)(f)of the IPC read with section 6 of the POCSO Act.
- 4. On being appeared the accused before this Court, after hearing both parties, my learned predecessor, framed charge under section 6 of the POCSO Act, 2012 against the accused 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 nine numbers of witnesses. After completion of prosecution evidence, accused was 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 his explanation where he denied the allegations, evidence and declined to adduce defence evidence.
- **6.** I have also heard argument put forwarded by learned counsels of both the parties.

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- **7.** The point for decision in this case is that -
 - (1) "Whether, on 08-04-2015 at about 1 p.m. under the Banana Trees situated near Belsiri river, under Thelamara Police Station, the accused committed penetrative sexual assault on the victim Miss "X", aged about 5 years and thereby committed an offence punishable under section 6 of the Protection of Child from Sexual Offences Act?

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. six years old victim Miss "X examined by my PW 1. predecessor-in-court after making enquiry by putting some questions and recorded her statement on satisfaction that the victim was able to give answers to the questions asked to her. She stated that her brother's name is Majid Ali. Her elder sister is Taslima. She knows the accused. On the day of incident, she went to the bank of the river to see goats. On that day, she did not go to school. Safiqul called her to give "Tarmuj" (water melon) and took her near Banana tree and there Safigul opened her pant and made her lie down and did sexual intercourse with her(Mok Putki Marisile). Accused removed his lungi. After that her stomach pained. Thereafter, her aunt Ajuba Khatoon brought her from the place of occurrence to her house. Her mother and father had gone to work at that time. Her father came to house lateron. On that day she was brought to police by her father and she was also taken to Doctor.

In cross-examination, she admitted that her father told her to tell that accused did her (putki marisile). On the day of incident the accused was wearing a black lungi. In the place of occurrence there were banana trees. On the day of incident she herself, Somu, Hasan and Bantu also went there. At that place there was cultivation of watermelon. In the place of occurrence there was Tarmuj cultivation of the accused. Accused had kept watermelon near Banana trees. Her friends also have their own goats. Their goats were kept under Banana

trees. They also took watermelon from the accused's field. Accused chased them and she fell down in the drain. She suffered pain in her leg. She knows Miraj Ali.

10. PW 2 Aleka Khatoon stated that she knows the accused. Victim is her daughter. At present she is six years old. The incident occurred about two months ago, at about 1 p.m. At that time, she went to work. At about 2 p.m. she reached her house. When she reached home, she found her daughter in the house of her mother-in-law. She was crying and she told that her stomach is paining and her vagina was irritating. She told her that she went to see goat near water melon cultivation near the bank of Belsiri river. Her daughter told her that she was called by the accused to under banana tree to give her water melon. Accused removed her pant, made her lie down and accused opened his lungi and committed "Putki marisile" with her. She saw private parts of her daughter and her private parts was bleeding. Thereafter, she went to police station. At that time her husband went to Thelamara for work. She lodged an FIR in Thelamara town. The FIR was written by a person near police station. He was told about the incident by her and her daughter. Ext. 1 is the said FIR and Ext.1(1) is her signature. Police took her daughter to Kanaklata Civil Hospital. Lateron, she was discharged. Her daughter was brought to the court for recording her statement on the next day and her statement was recorded. Rubina is at present reading in "Ka" standard.

In cross-examination she admitted the FIR was written on instruction of O/C of Thelamara police station. The meaning of "Putki mara" is rape. She did not report police that her daughter told her that her stomach paining and her private part was irritating. Similarly the fact that accused made her lie down and after opening his lungi he committed sexual intercourse on her and she did not say this to police. The place of occurrence was the watermelon cultivation field of the accused. Their uncle Majid had one goat.

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11. PW 3 Dr. Tutumoni Handique, stated that on 08-04-2015 she was posted as working as Medical & Health Officer-1 in the Kanaklata Civil Hospital, Tezpur and on that day at about 4 p.m. in the labour room complex of KCH, Tezpur she examined Rabina Khatoon, 5 years, female, D/O Md. Taijuddin of village Kamrchuburi, PS Thelamara, in reference to Thelamara PS GD E NO. 153 dt. 08-04- 15, on being escorted and identified by Woman Police Constable 38 Chitralekha Das. She was examined in presence of GNM Kamala Talukdar. On examination she found the following:

Exposure history – Exposure present on 07-04-15.

Height - 102 cm, Weight - 15 Kg, Teeth - 5 in all four quadrants. Identification mark - mole in the left arm. Average built, normal gait. Bruise present in the perineum area. Hymen absent.

Investigations advised and reports-

- X-ray for age determination Age of the person under investigation is below 10 years. Done at Assam X-ray Clinical & Laboratory, Radiologist – Dr. P. K. Barman
- 2. Vaginal smear for spermatozoa no sperm. Done at KCH Laboratory.

OPINION:

- 1. Age of the person under investigation is below 10 years.
 - 2. Bruise present in the perineum area.
 The victim was advised to attend the Gyno OPD.

Enclosure:

- 1. Police requisition, Advice slip
- 2. Vaginal smear for spermatozoa report.
- 3. X-ray report with plates.

Ext. 2 is the Medical Report and Ext. 2(1) is her signature. Ext. 3 & 4 are the advice slip and Ext. 3(1) & 4(1) are her signatures. Ext. 5 is the doctor's advice slip for registration. Ext. 6 is the laboratory

report. Ext. 7 is the X-ray report with plates and Ext. 7 (1) is the signature of Dr. P.K. Barman, Radiologist.

In cross-examination, the doctor admitted that perineum area means the outside of the vagina. She is unable to opine regarding the commission of rape on the victim. The injury caused to victim may also caused by falling on hard substance.

12. PW 4 Sahara Khatoon stated that she knows the accused Safiqul Islam. Victim is also known to her. About 3 / 4 months ago, at about 3 / 4 p.m. she was in her home. At that time victim along with her son and daughter went to look for goats. Thereafter, her son and daughter returned. She met Robina lateron. She informed her that accused committed bad acts on her. She has also stated to her that "Safikul committed putki on her.

In cross-examination, she admitted that the place of occurrence (the watermelon cultivation) is about approximately 200 meters away from her house. The way to the watermelon cultivation of her house is a "katcha" and there are drains on both sides. When accused chased the victim and her children they fell in the drain. All of them were wearing half pants. None of them were injured after felling in the drain. Ajufa Khatoon went to the place of occurrence but she did not go there. Her daughter Sumaya is 2 years one month old and her son's age is about 5 years. She is the aunty of the victim.

13. PW 5 Ajufa Khatoon stated that she knows accused. Victim is also known to her. She is about 5 years old. About 3 / 4 months ago, at about 3 / 4 p.m. when the victim went to the river bank to look for goats. She heard the cries of Rabina. Then she went towards watermelon cultivation. She met Rabina she was crying and told her that accused Saifqul opened her pant and committed putkimara on her and thereafter she also look to the private part of Rabina. There was a swelling in the private parts and it was bleeding.

In cross-examination she admitted that the place of occurrence is on the bank of Belsiri river. Victim was accompanied by Arijul to the watermelon cultivation. There was altercation between Safiqul and father of the victim regarding felling of bamboos of victim's father. Safiqul also lodged an FIR in this regard. Rabina's father took bail from the police station. She is the aunt of victim. Her house is situated near the house of the victim girl. Police came to the house of the victim. She also went there. Police has taken away the wearing pant and frock of victim. She saw stains on the pant of victim.

PW 6 SI Tankeswar Bhuyan, the I.O. has stated that on 08-04-14. 2015 he was working as Attached Officer at Thelamapra Police Station. On that day, the Officer-in-charge of Thelamara Police Station Maruf Ashraf Hussain, received an FIR from one Aleka Khatoon, wife of Taijuddin of Kamarchuburi and registered a case being Thelamara PS 18/15 u/s 376(f)/511 of IPC r/w section 6 of the POCSO Act, and endorsed him for the investigation of the said case. Ext. 1 is the said FIR and Ext. 1(2) is the signature of SI Maruf Ashraf Hussain, O/C of Thelamara PS which is known to him. Thereafter, he visited the place of occurrence, i.e. near the bank of Belsiri river and drew up a sketch map of the place of occurrence. Ext. 8 is the sketch map of the place of occurrence and Ext. 8(1) is his signature. He recorded the statement of the witnesses at the place of occurrence. On the same day, he recorded the statement of the victim and sent the victim girl for medical examination. On the same day, as the accused surrendered before the Police Station he arrested the accused Safigul Islam and on the next day, he forwarded him to the Court. On 09-04-2015 he has sent the victim girl for recording her statement u/s 164 Cr.P.C to the court and after completion of preliminary investigation, he collected the medical report and submitted charge-sheet u/s 376(2)(f) IPC r/w section 6 of the POCSO Act against the accused Safigul Islam. Ext. 9 is the charge-sheet and Exhibit 9(1) is his signature.

In cross-examination, he admitted that the time of receipt of FIR is not mentioned in the case diary. He has not mentioned in the case diary the time of himself going to the place of occurrence. On 08-04-2014 he recorded the statement Ajuba, Majida and Sahara in the Police Station.

15. PW 7 Majida Khatoon stated before the court that she knows accused Safiqul. She also knows the Victim girl. The incident occurred about 5 months ago. On the day of incident, at about 10/11 a.m. victim girl and other children of her sister when went to mend their goats, the accused asked other children to sit in the field and he took the victim girl near banana trees and pretext of giving her "Tormuj" (water melon) and committed bad acts on her. Son of her sister, Oijul told her about the incident.

In cross-examination, she admitted that victim girl is her niece. Oijul did not went to the place of incident. After one hour she went to the place of the incident. What she has deposed in the court has been reported to her by Oijul.

16. PW 8 Maruf A.H. Ahmed, SI of police, stated before the court that on 08-04-2015 he was posted at Thelamara Police Station as Officer-in-charge and after receiving the FIR from Aleka Khatoon, registered a case being Thelamara PS Case No. 18/2015 u/s 376(f)/511 of the IPC r.w section 6 of the POCSO Act and endorsed the case to SI Tankeswar Bhuyan for investigation of this case. At the time of inviestigation so far he knows SI Tankeswar Bhuyan was a normal person. At present he heard that said SI Tankeswar Bhuyan is suffering from mental illness.

In cross-examination, he admitted that in fact there is no any certificate to show that at the time of investigation SI Tankeswar Bhuyan was normal.

17. PW 9 Mrs. Meenakshi Sarma, stated that on 09-04-2015 she was working as Judicial Magistrate, 1st class, Tezpur and on that day in

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reference to Missamari PS Case No. 18/15 she has examined one minor witness i.e. the victim namely, Miss X and recorded her statement u/s 164 Cr.P.C. in her court chamber and she was escorted and identified by WPC Chitralekha Das. Since the victim is less than 12 years, so oath was not taken. Further, the victim being 5 years old, certain questions were asked to her inorder to come to a conclusion as to whether she could state the manner of incident. The victim answer the aforesaid questions put to her easily. However, since seventy percent of the language could be understood, her mother Aleka Khatoon was taken as interpreter for proper and better understanding of what victim is stating. Accordingly, statement of the victim was recorded in presence of her mother Aleka Khatoon. The victim made statement voluntarily. After recording her statement, she has read over the contents of the statement and on satisfaction, her mother put signature thereon. Ext. 9 the statement of the victim and Ext. 9(1) is the signature of her mother Aleka Khatoon. Her mother put her signature in her presence and Ext. 9(2) is her signature.

- **18.** These much is the evidence of the prosecution case. Defence plea is total denial while his statement was recorded u/s 313 of Cr.P.C.
- **19.** I have heard the arguments put forwarded by learned counsels of both the sides.
- 20. Learned counsel for the accused submitted that the prosecution has failed to prove the case beyond any reasonable doubt. Firstly, the victim herself admitted that her father told her to tell that accused did her (Putki Marisele). On the day of incident, the accused was wearing black lungi. In the place of occurrence there were Babanas trees, therefore, victim made such statement as she was tutored by father. Secondly, at the place of occurrence, according to the victim Somu, Hasan and Bantu were also there but prosecution has failed to examine the aforesaid witnesses for which it caste doubt about the evidence of the prosecution. Thirdly, according to the doctor who examined the victim stated that "bruise present in the perineum area"

but there is a clear evidence of victim that when the accused chased them while they took watermelon from the accused's field, they ran and fell down in the drain as such she suffered pain in her leg. Besides, PW 4 also admitted that at the relevant time accused chased the victim and her children, they fell in the drain, therefore, the injury as found by the doctor may be caused by falling on a drain. **Fourthly,** though PW 2 mother of the victim and PW 5 Ajufa Khatoon stated that after complaining about the alleged incident they saw the victim's private parts was found bleeding but victim nowhere whisper about any injury, bleeding or swelling on her private parts in the court. Fifthly, PW 5 Afuja Khatoon, aunt of the victim herself stated that there was a guarrel in between the father of the victim and accused as she also admitted that there was an altercation between father of the victim and accused regarding felling of bamboo of victim's father. Therefore, the accused had also lodged an FIR where the victim's father took bail from the police station. Therefore due to said grudge the complainant filed this case against the accused with a concocted story. Under such circumstances, accused is required to be acquitted.

- **21.** On the other hand, learned Special Public Prosecutor submitted that the prosecution has ably proved the case beyond any doubt against the accused, hence, the accused is required to be convicted under the charged section.
- **22.** Keeping in mind the argument advanced by learned counsels of both sides, I am going to dispose of the case.
- **23.** Before entering into the record, I am inclined to see what is the ingredients of section 5 of the POCSO Act to convict the accused u/s 6 of the POCSO Act.
- **24.** To prove the charge under section 6 of the Protection of Child from Sexual Offences (POCSO) Act, prosecution must prove that –

Section 5- sexual assault-

- " 5. Aggravated penetrative sexual assault.-(a) Whoever, being a police officer, commits penetrative sexual assault on a child-
- (i) within the limits of the police station or premises at which he is appointed; or
- (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or
 - (iii) in the course of his duties or otherwise; or
 - (iv) where he is known as, or identified as, a police officer; or
- (b) whoever being a member of the armed forces or security forces

commits penetrative sexual assault on a child-

- (i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or
- (iv) where the said person is known or identified as a member of the

security or armed forces; or

- (c) whoever being a public servant commits penetrative sexual assault on a chil d; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) whoever being on the management or staff of a hospital, whether Government or private. commits penetrative sexual assault on a child in that hospital; or
- (f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or
- (g) whoever commits gang penetrative sexual assault on a child.

Explanation.-When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) whoever commits penetrative sexual assault on a child, which-

- (i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (1) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;
- (iii) inflicts the child with Human Immunodeficiency Virus or anyother life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (1) whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (0) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has -teen previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

This clause defines the offence of aggravated penetrative sexual assault. It provides that a person is said to commit aggravated penetrative sexual assault, if he-

(a) being a police officer, commits penetrative sexual assault on a child -(i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed;

- or (iii) in the course of his duties or otherwise; or (iv) where he is known as, or identified as, a police officer; or
- (b) being a member of the armed forces or security forces commits penetrative sexual assault on a child -(i) within the limits of the area to which the person is deployed; or (ii) in any areas under the command of the forces or armed forces; or (iii) in the course of his duties or otherwise; or (iv) where the said person is known or identified as a member of the security or armed forces; or
- (c) being a public servant commits penetrative sexual assault on a child; or
- (d) being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) being on the management or staff of an educational institution, commits penetrative sexual assault on a child in that institution; or
 - (g) commits gang penetrative sexual assault; or
- (h) commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) commits penetrative sexual assault causing grievous hurt or causing injury t6 the sexual organs of the child; or
- (j) commits penetrative sexual assault upon a child which (i) physically incapacitates the child or causes the child to become mentally ill or to become mentally unfit to perform regular tasks, temporarily or permanently; or (ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, mentally ill or mentally unfit to perform regular tasks; or

(k) commits penetrative sexual assault on a child taking advantage of his mental or

physical disability; or

- (I) commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) commits penetrative sexual assault on a child below twelve years; or
- (n) being a relative of the "child through blood or adoption or marriage or guardianship or in foster care, or having a domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) commits penetrative sexual assault on a child knowing the child is pregnant; or
 - (r) commits penetrative sexual assault on a child and attempts to murder the child; or (s) commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force. (Notes on Clauses).
- **25.** A close scrutiny of the record, it appears that in this type of case, the evidence of the victim is most important.

Law is well settled that in a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and her mother have falsely implicated the accused. The main

evidence in all such cases is that of the victim herself. In practice a conviction for rape almost entirely depends on the credibility of the woman, so far as the essential ingredients are concerned, the other evidence being merely corroborative. It is not necessary that there should be independent corroboration of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the complainant is true and that it is reasonably safe to act upon it. The evidence, no doubt, should not only make it safe to believe that the crime was committed but must in some way reasonable connect or tend to connect the accused with the crime. Corroboration may be by facts and circumstances.

26. Here in the present case, the victim is the only eye witness. The prosecution has failed to adduce any witness who could have stated that he or she seen the accused in committing the penetrative sexual assault to the said minor victim. PW 1- victim, who was only 6 years old on the date of deposition, stated that on the day of incident, she went to the bank of the river to see goats. On that day, she did not go to school. Accused called her to give "Tarmuj" (water melon) and took her near Banana trees where accused opened her pant, made her lie down and did sexual intercourse with her (Mok Putki Marisile). In cross-examination, she admitted that her father told her to tell that accused did her (putki marisile). Therefore, she herself admitted that according to the direction of her father she stated that accused did sexual intercourse with her (Mok Putki Marisile).

Another point is to be discussed in the present case as raised by learned counsel for the accused is that according to the victim at the relevant time she herself, Somu, Hasan and Bantu also went there. The accused had kept watermelon near Banana trees. Her friends also have their own goats. Their goats were kept under Banana trees. They

also took watermelon from the accused's field. But the prosecution has failed to examine any of the said witnesses.

Another point is to be discussed in the present case is that according to the doctor, PW 3 who examined the victim opined after thorough examination of the victim that –

- 1. Age of the person under investigation is below 10 years.
- 2. Bruise present in the perineum area.

The victim was advised to attend the Gyno OPD.

No doubt the perineum area means outside of the vagina. The doctor also opined that she is unable to opine regarding the commission of rape on the victim. There is a suggestion that the injury caused to victim may also be caused by falling on hard substance.

On the other hand, victim admitted that when the accused chased them they ran and fell down in the drain and she suffered pain in her leg. PW 4 Sahara Khatoon also admitted in the cross examination that when accused chased the victim and her children, they fell in the drain. All of them were wearing half pant. Therefore, the presence of bruise in the perineum area of the victim may also be sustained by falling the victim cannot be ruled out.

It has been held in **Bhagawan Singh Vs. State of Madhya Pradesh** reported in **AIR 2003 SC 1088** that –

"The law recognises the child as a competent witness but a child particularly at such a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the Court to be a witness whose sole testimony can be relied without other corroborative evidence. The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the Court looks for adequate corroboration from other evidence to his testimony."

Coming to the present case as discussed herein before the victim herself admitted that as told by her father to tell that accused did her sexual intercourse (mok putki marisile), so there is every possibility to make such statement by the victim. Secondly, the prosecution has failed to produce any of the companion/friends namely, Somu, Hasan and Bantu who were with the victim and who were also took watermelon from the accused's field. Non examination of the said witnesses definitely raised doubt about the alleged occurrence. Thirdly, as admitted by PW 5 Afuja Khatoon, the aunt of the victim that victim was accompanied by Arijul to the watermelon cultivation and there was an altercation took place between the accused and victim's father regarding felling of bamboos of victim's father where accused had lodged an FIR, as a result victim's father had to took bail from the police station. PW 5 being the own aunt of the victim supposed to give evidence in favour of her own niece who was victim in the case therefore, her evidence is much more important but she herself stated that there was a guarrel in between the accused and the father of the victim where accused had lodged an FIR in the said case, victim's father had to take bail from the police station. Therefore, enmity between the parties cannot be ruled out.

The law is well settled that it is trite that enmity is a double edged weapon as it may provide a motive for the crime and also for false implication.

Here in this case, there appears an enmity between the accused and the father of the victim, therefore, concoctedness of the story cannot be ruled out to implicate the accused as false allegation.

Fourthly, bruise found in the perenium area may be caused by falling by the victim when accused chased them as admitted by victim herself. Under such circumstances, the witness in this case cannot be relied on to convict the accused in the instant case. In a criminal case prosecution must prove the case beyond any shadow of doubt. Here in

this case as discussed above, the statement of the victim does not inspire confidence to convict the accused on her sole testimony.

The onus of proving the facts essential to the establishment of the charge against an accused lies upon the prosecution, and the evidence must be such as to exclude every reasonable doubt about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicion. Here in this case as discussed here in above a reasonable doubt arisen in my mind, after taking into consideration, the entire material before it regarding the complicity of the accused, so benefit of doubt given to the accused.

- 27. In view of the aforesaid discussion, I am bound to hold that the prosecution has categorically failed to prove the charge levelled against the accused beyond any reasonable doubt. As such, the accused Safiqui Islam is entitled to get acquittal and set him at liberty forthwith.
- **28.** The liability of the bailor is hereby discharged.
- **29.** Send back the GR Case record being No.741/15 to the learned committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the $31^{\rm st}$ day of October, 2017.

(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

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Victim

2. Prosecution Witness No.2 :- Aleka Khatoon

3. Prosecution Witness No.3 :- Dr. Tutumoni Handique,M.O

4. Prosecution Witness No.4 :- Sahara Khatoon 5. Prosecution Witness No.5 :- Ajufa Khatoon

6. Prosecution Witness No.6 :- SI Tankeswar Bhuyan

7. Prosecution Witness No.7 :- Smt. Majida Khatoon

8. Prosecution Witness No.8 :- SI Maruf A.H. Ahmed.

9. Prosecution Witness No.9 :- Mrs. Meenakshi Sarmah

EXHIBITS.

Exhibit 1 : Ejahar

Exhibit 2, : Medical report,

Ext. 3,4,5 : Advice slips,

Exhibit 6 : Laboratory report

Exhibit 7 : X-ray report.

Exhibit 8 : Sketch map

Exhibit 9 : Chargesheet.

(Ashok Kumar Borah) SPECIAL JUDGE SONITPUR: TEZPUR