DISTRICT: KAMRUP (M), GUWAHATI

IN THE COURT OF THE SPECIAL JUDGE, KAMRUP (M) GUWAHATI

PRESENT: - Shri A. Chakravarty, M.A., LL.M., AJS

Sessions Case No. 128/2017

Under Section 8 of the POCSO Act

State of Assam ...Complainant

-Versus-

Shri Manoj Kr. Nath ... Accused

Charge framed on : 03.04.2018

Evidence recorded on : 26.06.2018, 31.10.2018, 12.02.2019, 06.03.2019

Arguments heard on : 03.04.2019

Judgment delivered on: 20.04.2019

Advocates who appeared in this case are:

Smt. Deepa Bezbaruah, Special P.P., for the Prosecution

Shri K. P. Gogoi, Advocate, for the Defence

JUDGEMENT

- 1. This case was registered on 16.09.2016, at Chandmari Police Station, under Section 354(B) of the Indian Penal Code, 1860 (in short "the IPC"), read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act"), based on a First Information Report (in short "the FIR") filed by one Motiram Bora against accused Manoj Nath.
- 2. The case of the prosecution, as stated in the F.I.R., is that on 11.09.2016, at around 12 noon, at Ganeshnagar, Chandmari, taking advantage of the absence of the informant and his wife in their house, the accused Manoj Nath trespassed into his house, closed the door of the house and sexually assaulted his 10 years old daughter (hereinafter referred to as "the victim girl"). Having learnt about the same from his wife, the informant filed the FIR of the instant case with the Chandmari Police Station on 16.09.2016.
- **3.** Based on the F.I.R., the Officer-in-charge of the Chandmari Police Station registered Case No. 676/2016, for commission of offences under Section 354 (B) IPC, read with Section 8 of the POCSO Act and entrusted A.S.I. of Police Smt. Pallabi Das to investigate the case. Accordingly, A.S.I. of Police Smt. Pallabi Das investigated the case.
- 4. During the course of investigation, the investigating officer recorded the statements of the witnesses and sent the victim girl to the Gauhati Medical College and Hospital, Guwahati for medical examination. The investigating officer also got the statement of the victim girl recorded by the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C."). After completion of investigation, the investigating officer submitted charge sheet for offences under Section 4 of the POCSO Act and Section 506 IPC against the accused Manoj Nath in this

court as the offences under the POCSO Act are triable by the Special Court and this Court has been designated as the Special Court for trying cases under the said Act.

- **5.** During trial, my learned predecessor framed a charge under Section 8 of the POCSO Act against the accused Manoj Kr. Nath. When the contents of the charge were read over and explained to the accused person, he pleaded not guilty and claimed to be tried.
- **6.** The prosecution, in order to prove its case, examined six witnesses. The accused did not examine any witness.
- **7.** In his examination under Section 313 Cr.P.C., the accused has denied the prosecution case and have stated that the allegations levelled against him are false and baseless.
- **8.** The point for determination in this case is:-

Whether on 11.09.2016, at around 12:00 pm, at Ganesh Nagar, under Chandmari Police Station the accused Manoj Nath sexually assaulted on the victim girl, who at the relevant time was a child under 18 years of age?

If so, what punishment does he deserve?

DECISION AND REASONS THEREOF

9. I have carefully examined the evidence on record, gone through the relevant documents on record and after hearing the arguments advanced by the learned counsels for both the sides, give my decision on the above point as follows:-

- 10. The victim girl (PW-1) has deposed that about one year ago, one afternoon, at around 04:30 pm, while she was alone in their house, the accused Manoj Nath came to their house. She knows the accused Manoj Nath. He was not a good man. Once, he had taken away her elder sister namely, Pooja Bora. Later on, her elder brother brought back her elder sister and Manoj Nath was sent to jail. On the day of the occurrence, after entering into their house, the accused Manoj Nath entered into her room, grabbed her and touched her body parts. When she tried to shout, the accused threatened her that if she shouts, he will kill her. Thereafter, he removed her inner garments and touched her private parts. He also kissed on her private parts. After touching her private parts, suddenly he left their house. Thereafter, when her elder sister came home, she told her about the incident. Her elder sister told her mother and her mother reported the incident to her father. Then her father lodged the FIR. Police took her to the doctor and doctor examined her. Police also took her to the court and she gave a statement before the Magistrate. Ext. 1 is her said statement and Ext. 1(1) to Ext. 1(4) are her signatures therein.
- 11. In the cross-examination, she has denied the suggestion that to send the accused Manoj Nath to jail, she has narrated a fabricated story on being tutored by her parents. She does not know whether her mother had a tea stall near the ABC. She has denied the suggestion that as because Manoj Nath did not marry her elder sister, her mother has conspired and has filed a false case against him with her help. She has denied the suggestion that she has deposed falsely. She has also denied the suggestion that the accused Manoj Nath did not sexually abuse her.
- 12. PW-2 Shri Motiram Bora, the father of the victim girl has deposed that the occurrence took place about one year ago. Prior to that, they had a tea stall on the footpath at ABC. The accused person used to come to their tea stall regularly. In that way, they came to know him. Subsequently, the accused told his wife that, one day, he would come to their house. His wife

invited him. He came to their house. For earning their livelihood, they used to remain outside the house for most of the time. The accused person used to come to their house sometimes. In the last year, one day, he took away his elder daughter Pooja Bora. He informed the police about the matter and the Police recovered his daughter and handed over her to them. At that time, she was studying in Class-VIII. The Police also arrested the accused person. However, his father met him and requested him to get him released. His father also told him that as his son had kidnapped his daughter, he would arrange his marriage with his daughter after she becomes 18 years old. He then went to the court and withdrew the case and also got the accused Manoj Nath released on bail. However, after one month of the said incident, the accused sexually assaulted his younger daughter (the victim girl). On that day, they were not present in their house and the victim girl was alone in the house. Taking advantage of the same, the accused person committed rape on the victim girl. The victim girl reported the incident to her elder sister and her elder sister reported the incident to his wife. His wife told the same to him. He then went to the house of Mani Kalita and told him about the incident. He asked him to contact the accused person to know his whereabouts. He contacted him over phone and asked him to come there. Then Mani Kalita apprehended him and handed over him to the Geetanagar police. The Geetanagar police sent him to the Chandmari Police Station. He lodged the FIR at the Chandmari Police Station. There was a delay of four/five days, because the incident was not reported to them immediately. Ext. 2 is the FIR and Ext. 2(1) is his signature therein. Ext. 3 is the printed form of FIR and Ext. 3(1) is his signature. After lodging of the FIR, the Police took his daughter to the GMCH. She was examined by doctor. She was also taken to the court and her statement was recorded on oath.

13. In the cross-examination, he has denied the suggestion that as the accused Manoj Nath had kidnapped his daughter, out of grudge, he had filed the instant case. He has stated that he does not know about the medical report of the victim girl. He has denied the suggestion that only to harass the

accused ManojNath, he had lodged the FIR. He has denied the suggestion that he has deposed falsely.

14. PW-3 Smt. Dipa Bora, the mother of the victim girl has deposed that she work in a restaurant and sheused to go out everyday in the morning at around 06:00 am and return home at around 09:00 pm. Her husband returns home at around 10:00pm and her elder son comes back after that. They workin different places. The occurrence took place about one year ago. On the date of occurrence, she returned to her home at around 9:00 pm and her elder daughter Puja Bora reported to her that she had returned homeat around05:00pm from her tuition and the victim girl had told her that the accused Manoj Nath had come to their house in their absence and committed rape on her. The accused Manoj Nath used to come to their house regularly and she came to know that he had affairs with her elder daughter Puja Bora. Before the said incident, once he had taken away her elder daughter Puja Bora. After that, her son lodged an FIR against him. On the basis of the said FIR, the Police recovered her daughter from Narengi and the arrested accused. He was sent to jail and he remain in jail for a long time and thereafter, his father came to their house and requested her husband to get the accused person released. Accordingly, the prayer was submitted and the accused Manoj Nath was released on bail. But, on the very next day, he again came to their house. He told them that he would marry Puja Bora. They told him that she was not of marriageable age and when time comes, they would arrange her marriage. But, he went on insisting them to arrange her marriage with him. Her husband told the accused Manoj Nath to call his parents, but he did not agree to that and insisted for arranging the marriage of Puja Bora with him. In spite of their request, he did not stop visiting their house. He used to come to their house frequently and used to disturb her daughter Puja Bora for entering into marriage with him. He also demanded Rs.3,00,000/- for entering into marriage with her daughter Puja Bora and to keep her in separate rented accommodation, to which they could not agree. After a few days of the same, he committed the offense with the victim girl.

- 15. In the cross-examination, she has stated that the occurrence might have taken place in the year 2016. She has no education and she cannot say the exact time. She has denied the suggestion that as the accused person refused to marry herelder daughter Puja Bora, the instant case has been filed on false ground. After the incident, she took the victim girl to the Gauhati Medical College and Hospital, Guwahati for medical examination. She does not know what the report of the doctor is. The victim girl is a student of Class-VI. She is aged about 12 years. She has denied the suggestion that she insisted Manoj Nath to go to their house for marrying her daughter. She has denied the suggestion that with intent to compel the accused Manoj Nath to marry her daughter, they have filed this case against the accused. She has denied the suggestion that they have filed a false case and she has deposed falsely.
- 16. PW-4 Puja Bora, the elder sister of the victim girl has deposed that her father and mother used to come late at night from work. Her elder brother also used to come to the house late at night. She and her sister are students. The occurrence took place about one year ago. On the day of occurrence, after coming back from School, she went to private tuition. The victim girl was alone in their house. She came back to the house at around 05:30 pm and saw that the victim girl was crying. When she asked her why she was crying, she told her that the accused Manoj Nath had come to their house, forcibly disrobed her and sexually assaulted her. As she was crying, she asked her not to cry and told her that she would report the matter to her mother when she comes home. When her mother came, she told her about the incident. Her mother discussed the matter with her father and elder brother. Thereafter, her father went to Anil Nagar where Manoj Nath used to work and asked him to come to their house. Accordingly, the accused Manoj Nath came to their house and when he was told about the incident, he denied the same. Thereafter, his father lodged the FIR against the accused Manoj Nath. The accused Manoj Nath was known to her from before. He used to come to their tea stall near ABC regularly and in that way he also came to their house. He proposed her by saying that he had developed love for her. At

first, she ignoredhim but, after sometime, she too fell in love with him. Oneday in the evening, he took her away with him. She does not know the place where he had taken her. But, on the next morning, they came to know about filing of the case by her elder brother and then they came back. The Police arrested the accused and sent him to jail. He was in jail for about three months and even after coming out from jail, he went on insisting her to marry him. She ignored the same, but he used to come to their house. He also demanded Rs.3,00,000/- from her father for marrying her. Thereafter on the date of occurrence, he committed the misdeed tothe victim girl.

- In the cross-examination, she has denied the suggestion that her parents had filed the instant case only to harass the accused Manoj Nath. She has denied the suggestion that the accused person or his father never demanded any money from her father. They have no capacity to pay Rs.3,00,000/- and as such, they cancelled the proposal for marriage. She has denied the suggestion that the victim girl falsely reported to her and no such occurrence had taken place. She has denied the suggestion that she has deposed falsely.
- **18.** PW-3 Smt. Anupama Kalita, has deposed that on the day of occurrence, she had been to the house of the accused person to keep her daughter in his house. The accused was sleeping in his house with backache. She knows nothing about the alleged occurrence.
- 19. PW- 6 Smt. Pallabi Das, the investigating officer of the case has deposed that on 16.09.2016, she was posted at the Geetanagar police station as an attached officer. On that day, the officer-in-charge of the Chandmari police station entrusted her to investigate this case as the case relates to sexual assault on a child and there was no woman police officer at Chandmari police station to investigate the case. Accordingly, she investigated the case. During the course of investigation, she recorded the statements of the witnesses. She also sent the victim girl to the Gauhati Medical College and Hospital, Guwahati for medical examination. She also got the statement of the

victim girl recorded by the Magistrate under section 164 Cr.P.C. After collecting the medical report, finding sufficient evidentiary materials against the accused Manoj Nath regarding commission of offences under Section 4 of the POCSO Act and Section 506 IPC, she filed charge-sheet against him under the said Sections of law. Ext. 4 is the charge-sheet and Ext. 4(1) is her signature therein.

- eight witnesses. She has denied the suggestion thatmost of the witnesses deposed against the accused due to their enmity with him. She has denied the suggestion that the accused had love affairs with the elder sister of the victim girl and for not marrying her, her father has filed this case against the accused. She has denied the suggestion that she did not properly investigate the case and without any evidence, has filed the charge-sheet against the accused person. She has denied the suggestion that she has deposed falsely.
- As can be seen from the discussion made above, the victim girl has deposed that the accused Manoj Nath had entered into her room, grabbed her and touched her body parts. When she tried to shout, the accused threatened her that if she shouts, he will kill her and thereafter, the accused removed her inner garments, touched her private parts and also kissed on her private parts. Defence did not challenge the victim girl in the cross-examination that the accused did not do so. In the cross-examination, the learned counsel for the accused merely suggested to the victim girl that she has falsely implicated the accused. She has denied the suggestion. The parents and the elder sister of the victim girl,who are reported witnesses, have fully corroborated her. Therefore, the accused Manoj Nath must be held guilty of sexually assaulting the victim girl.
- **22.** Further, though the PW-5 has deposed that she knows nothing about the alleged incident and on the day of the occurrence, she had been to the house of the accused to keep her daughter in his house and she found the accused sleeping with backache, does not prove that the accused has not

committed the alleged offence at the alleged time as PW-5 did not depose that at the time of occurrence, she had been to the house of the accused and found the accused sleeping with backache.

- **23.** Therefore, the only question that remains to be answered now is whether the accused Manoj Nath can be held guilty of committing the offence punishable under Section 8 of the POCSO Act?
- **24.** Section 7 of the POCSO Act reads as follows:-
- "7. Sexual Assault.- Whoever, with sexual intent touches the vagina, penis, anus or breasts of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault". (Emphasis added).
- **25.** The scope of the provision of Section 7 is crystal clear. Section 8 is the penal provision for Section 7.
- 26. In order to attract any offence under the provisions of the POCSO Act, it should be proved by the prosecution that on the date of the commission of the crime, the victim was a child. The term "child" has been defined in Section 2(d) of the POCSO Act, which states that child means any person below the age of 18 years. Thus, for the purpose of any offence under the POCSO Act, the age of the victim should be proved to be below 18 years as on the date of commission of the alleged crime.
- 27. In the instant case, as can be seen from the discussion made above, on the day of the alleged occurrence, the victim girl was about 11 years old. The accused did not even challenge the victim girland the other prosecution witnesses in the cross-examination that on the day of the alleged occurrence, she was not about 11 years old or was not a child under 18 years of age.
- **28.** Further, as can been seen from the testimonies of the victim girl, her parents and her elder sister, they have all along been consistent about their

case. Further, at the time of adducing evidence, the age of the victim girl is recorded as 11 years and the victim girl has deposed that she was reading in Class-V at Ganeshnagar L.P. School. The Ld. Counsel for the accused did not challenge her in the cross-examination that her age was not 11 years and that she was not reading in Class-V. Therefore, it must be held that on the day of the alleged occurrence, the victim girl was studying in Class-V and her age was around 11 years as that is the age at which a child normally study in Class-V.

- Further, the elder sister of the victim girl, that is, the PW-4 has stated that her age was 18 years. Therefore, as the accused had earlier kidnapped her and he was arrested for the same and was sent to jail, though the accused wanted to marry her after she attains majority, as the accused did not challenge her in the cross-examination that same was not true, the accused had admittedly kidnapped a minor girl. Further, as the counsel for the accused has suggested to the PW-3, that is, to the mother of the victim girl that with intent to compel the accused to marry her elder daughter, they have filed this case against the accused person, makes the testimonies of the prosecution witnesses that he had earlier kidnapped the PW-4 true. The said suggestion can also be held to be applicable against the accused that as he had earlier kidnapped the elder sister of the victim girl and must have committed sexual intercourse with the PW-4 and he has done so with the victim girl.
- **30.** Further, by cross examining the PW-3, the defence has proved that on the day of adducing evidence, i.e. on 31.11.2018, (the alleged incident occurred on 11.09.2016), the victim girl was studying in Class-VI and her age was about twelve years. Therefore, on the day of the occurrence, the victim girl was a child under 18 years of age.
- **31.** Further, as the PW-4 has stated in the cross-examination that as they had no capacity to pay Rs. 3,00,000/- to the accused, they cancelled the

proposal for marriage, proves that the accused wanted to marry her, who at the relevant time was also a child under 18 years of age.

- 32. Therefore, in the instant case, the prosecution has been able to prove beyond all reasonable doubt that on the date of the commission of the alleged offence, the victim girl was a child under 18 years of age. As such, in the instant case, the accused Manoj Nath must be held guilty of sexually assaulting a child under 18 years of age, as per the definition of "Sexual Assault" as given in Section 7 of the POCSO Act, which is punishable under Section 8 of the said Act, as enumerated above.
- **33.** Regarding the culpable mental state of the accused, Section 30 of the POSCO Act is relevant, which reads as follows:
- "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 the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- (2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".
- **34.** In the instant case, the accused did not adduce any evidence to prove the fact that he did not have culpable mental state for committing the offence charged with and the evidence on record does not prove the same. Therefore, it must be held that the accused had committed the crime with culpable mental state. The point is decided in the affirmative, accordingly.
- **35.** The minimum sentence prescribed under Section 8 of the POCSO Act is Rigorous Imprisonment for three years, which cannot be modified or altered. Therefore, the Probation of Offenders Act is not applicable to the

instant case. As such, the accused is not entitled to get the benefit of the ameliorative relief as envisaged under the said Act.

- **36.** Heard the convict on the question of sentence. He has pleaded leniency in awarding the punishment on the ground that he is a first offender.
- **37.** In the case of **State of A.P. v. Bodem Sundara Rao, reported in (1995) 6 SCC 230,** dealing with a case of reduction of sentence from 10 years R.I. to 4 years R.I. by the High Court in the case of rape of a girl aged between 13 and 14 years, the Hon'ble Supreme Court has observed as follows:

"In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane." The sentence was enhanced to 7 years R.I. in the said case.

38. In the case of CHANDER SINGH Vs. STATE,reported in (2016)2 Crimes 792, in a case under Section 8 of the POCSO Act, the Hon'ble Delhi High Court has held as follows:--

"20. Consequently, the conviction of Chander Singh is altered to one for offence defined under Section 7 and punishable under Section 8 of Pocso Act. The punishment for sexual assault prescribed under Section 8 is imprisonment for not less than 3 years which may extend up to 5 years and to pay fine as well. The conduct of Chander Singh in sexually assaulting a deaf and dumb girl who was not in a position to protect herself fully warrants maximum punishment. Consequently, the order on sentence of Chander Singh is altered and modified. Chander Singh is directed to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 10,000/- in default whereof to undergo simple imprisonment for a period of 1 month.

39. In the case in our hand, the convict has sexually assaulted a minor girl inside her house. Earlier, also admittedly, the convict had kidnapped the elder sister of the victim girl, who was also a child under 18 years of age at the relevant time. Therefore, the accused seems to be a habitual offender and he has scant regards to the civilized norms and no child will be safe from him. Therefore, I do not think it proper to punish the convict leniently. Deterrent punishment is his just deserts.

<u>ORDER</u>

40. Considering the entire facts and circumstances of the case, I sentence the convict Manoj Nath to undergo rigorous imprisonment for five years and to pay a fine of Rs. 10,000/- (Rupees ten thousand) only, in default to undergo rigorous imprisonment for six months each, for committing the offence under Section 8 of the POCSO Act, which, in my opinion, will meet the ends of justice in this case. The period of detention already undergone by the convict during investigation and trial shall be set-off from the sentence of imprisonment. The bail bond of the accused stands cancelled. Issue Jail warrant.

- **41.** The act of the accused must have caused immense mental pain and agony to the victim girl. Hence, I deem it proper to award her some compensation.
- **42.** In the case of **MANOHAR SINGH Vs. STATE OF RAJASTHAN AIR,** reported in (2015) 3 SCC 449, the Hon'ble Supreme Court observed as follows:-

"Just compensation to the victim has to be fixed having regard to the medical and other expenses, pain and suffering, loss of earning and other relevant factors. While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable Under Section 357 and 357-A. While Under Section 357, financial capacity of the accused has to be kept in mind, Section 357-A under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation."

- 43. In the instant case, the victim girl must have undergone trauma and agony of the sexual assault perpetrated on her by the convict. But, there is no evidence about the financial capacity of the convict to pay compensation to the victim girl. In view of the above, I do not think any fruitful purpose will be served if the convict is directed to pay any compensation to the victim girl. Therefore, I deem it proper to award compensation as per the provisions of Section 357 (A) of the Cr.P.C. Therefore, the Secretary, District Legal Services Authority, Kamrup (M) Guwahati is directed to pay the compensation to the victim girl as per the Victim Compensation Scheme formulated by the State Government for such cases.
- **44.** Send a copy of the judgment to the Secretary, District Legal Services Authority, Guwahati, for payment of compensation to the victim girl.

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- **45.** Furnish a copy of the judgment to the convict free of cost, immediately.
- **46.** Signed, sealed and delivered in the open Court on this the 20th day of April, 2019, in Guwahati.

(Shri A.Chakravarty)
Special Judge, Kamrup (M),Guwahati

Dictated & corrected by me.

(Shri A. Chakravarty)
Special Judge, Kamrup (M),Guwahati

APPENDIX

A. <u>Prosecution Witnesses:</u>

PW-1 The victim girl
 PW-2 Motiram Bora
 PW-3 Dipa Bora
 PW-4 Puja Bora
 PW-5 Anupama Kalita
 PW-6 Pallabi Das

B. Prosecution Exhibits:

- 1. Ext.- 1 Statement
- 2. Ext.- 2 FIR
- 3. Ext-3 Printed Form of FIR
- 4. Ext-4 Charge Sheet

(Shri A.Chakravarty)
Special Judge, Kamrup (M),Guwahati