IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SPECIAL (POCSO) CASE NO. :- **11 OF 2015**

(Under Section 6 of the POCSO Act, arising out of G.R. Case No. 1503 of

2014)

Committed by Dr. M. Baruah, Chief Judicial Magistrate, Sonitpur, Tezpur.

Present :- Mridul Kumar Kalita, AJS

Special Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- Sri Loknath Sapagai.

Son of Sri Bhakta Sapagai, Village – Purani bheti, Police Station – Jamuguri, Dist:- Sonitpur, Assam

Date of framing Charge :- 04/06/2015

Date of Recording Evidence :- 21/10/2014,19/11/2014

17/12/2014,26/02/2015, 02/04/2015 & 09/04/2015.

Date of examination of accused u/s :- 23/04/2015

313 Cr.P.C

Date of Argument :- 02/07/2015, 13/08/2015 and

17/08/2015.

Date of Judgment :- 21/08/2015

Counsel for the Petitioner :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

Counsel for Opposite Party :- Mr. N.K. Mishra, Legal Aid Counsel.

JUDGMENT

1. On 01-07-2014, the Officer-In-charge of Jamuguri Police Station received an FIR (First Information Report) from one Smt. Niva Devi, wherein it was alleged, *inter alia*, that on 30-06-2014 at about 3.30 p.m. Sri Loknath Sapagai, S/O Late Bhakta Sharma resident of village Puranibheti under Jamugurihat Police Station was caught red handed by the villagers while he was

committing rape on his own daughter (herein after referred to as "*the Victim"*) who is fourteen years of age.

- 2. On receipt of the aforementioned FIR, the Officer-In-Charge of Jamuguri Police Station registered Jamuguri P.S. Case No. 57/14 u/s 376(2) (I) of IPC and entrusted Sri Powal Hazarika, Sub-Inspector of Police to investigate the case. After completion of the investigation formal charge sheet was laid U/s 376(2) (I) of IPC against the accused Sri Loknath Sapagai in the Court of Chief Judicial Magistrate, Sonitpur and the case was transferred to the Court of Sub-Divisional Judicial Magistrate, Tezpur for disposal. On 22-09-2014 the G.R. Case No.1503/14 was duly committed to this Court, after observing all formalities prescribed by the Code of Criminal procedure, by Mr. M. Baruah, learned Chief Judicial Magistrate, Soniptur, Tezpur. The accused was in judicial custody at the time of commitment of this case to this Court.
- 3. This case was transferred to the Court of learned Assistant Sessions Judge, Sonitpur, Tezpur who on 29th day of September, 2014 after hearing the accused as well as the learned Addl. Public Prosecutor and after going through the materials on record framed charge u/s 376 of IPC against the accused Loknath Sapagai. The charge was read over and explained to the accused and on being asked, he refused to plead guilty and claimed to be tried. The trial proceeded in the Court of learned Assistant Sessions Judge, Sonitpur, Tezpur, where learned Assistant Sessions Judge, Sonitpur, Tezpur, recorded the evidence of 10 (ten) prosecution witnesses and also examined the accused u/s 313 Cr.P.C. The case was fixed for argument before the learned Assistant Sessions Judge, Sonitpur, Tezpur, on 20th May, 2015, however, learned Assistant Sessions Judge, vide order dated 20-05-2015 observed that as per materials on record, the age of the victim in this case is below 18 years and therefore, the case ought to be tried by Special POCSO Court under the provisions of "Protection of Children from Sexual" Offences Act, 2012," accordingly, the case was sent back to this Court.
- This Court being a designated Special Court to take up cases under Protection of Children from Sexual Offences (*hereinafter referred to as POCSO*) Act, 2012, directed to re-register this case as a Special POCSO case under Protection of Children from Sexual Offences Act, 2012 and accordingly, this case

was re-registered as Special (POCSO) and the Case No. 11 of 2015. After going through the materials on record and after hearing the learned counsel of both sides, this Court was of view that there is ground for presuming that the accused has committed u/s 6 of the Protection of Children from Sexual Offences Act, 2012 and accordingly, a formal charge u/s 6 of the Protection of Children from Sexual Offences Act, 2012, was framed against the accused Loknath Sapagai. The same was read over and explained to the accused, and on being asked, he refused to plead guilty and claimed to be tried.

- that no new or further evidence need to be adduced in this case as the case has been earlier charged u/s 376 of the Indian Penal Code, and the offences defined under section 6 of the POCSO Act and Sections 376 IPC are similar in nature. It was also agreed that the evidence tendered earlier, when this case was proceeding u/s 376 IPC can be used in this POCSO Act case also. Learned defence counsel has also submitted that as the charges are similar no prejudice would be caused and no requirement for further cross-examination in view of framing of new charge u/s 6 of the Protection of Children from Sexual Offences Act, 2012.
- **6.** The accused was again examined u/s 313 Cr.P.C. during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. The accused declined to adduce any evidence in defence.
- **7.** The points to be determined in this case are as follows:-

"Whether the accused on, 30/06/2014, at about 3.30 p.m., at Puranibheti, under Jamuguri police Station, committed penetrative sexual assault on "the Victim" and thereby committed an offence punishable under section 6 of the Protection of Child from Sexual Offences Act?

- **8.** I have gone through the entire materials on record, including the oral testimonies of the witnesses and the statement of the accused recorded under section 313 Cr.P.C, very carefully as well as heard argument advanced by Ld. Pubic Prosecutor and Ld. Legal aid counsel, at length.
- **9.** Let me, at the very beginning scrutinise the evidence adduced by the prosecution witnesses. P.W-1, Dr. Sangeeta Sharma, has deposed that, on 30-

06-2004, while she was working as Medical & Health Officer-1 of Kanaklata Civil Hospital, Tezpur, at about 10.40 p.m., she examined "the victim" (name withheld) ,14 years, female, D/O Loknath Sapagai of Puranibheti, Panpur, PS Jamuguri, in reference to Jamuguri PS Case GDE No. 1005 dated 30-06-14 being escorted and identified by WPC Anju Hazarika of Jamuguri PS, in presence of staff nurse Manika Dutta after taking consent from Guardian Josada Devi. On examination she found the following:-

General Examination:

Last menstrual period – 22 days back as told by the guardian. *She did not give any history of sexual assault*. Identification mark - a brownish mole in the cetre of the right cheek.

Height - 143 cm., Weight - 40 kg, Teeth 14/14. At the time of examination, the victim was shabbily dressed with untidy hair and dirty exposed skin. Gait was waddling. She was mentally retarded. Internal examination could not be done as she did not allow. She did not even allow to remove her clothes for examination of her secondary sexual characters and injuries if any on her body parts. Vaginal smear for examination of spermatozoa could not be taken.

Investigation advised : - 1. Urine for pregnancy test, 2. USG of pelvis, 3. X-ray for age determination – i) Left wrist joint, ii) Left elbow joint, iii) left iliac crest. Reports of any of the above investigation not received till writing of this report. Opinion as per the police requisition could not be given henceforth.

She was admitted to the obstetrics and Gynaecology ward and was referred to O & G specialist for further examination and management if required. So, further report may be collected from the Obstetrician and Gynaecologist. Ext. 1 is the medical report and Ext. 1(1) is her signature.

During cross-examination, the Doctor has stated that as no X-ray report was submitted to her, so she could not ascertain the age of the victim.

10. PW 2, Smt. Niva Devi, has deposed that she know both the accused as well as the victim. Victim is the daughter of the accused Loknath Sapagai. She has deposed that on 30-06-2014 the accused committed rape on his

victim daughter and as a result of which, the victim felt difficulty in movement. In the morning there was a hue and cry and the victim told the village people that her father has committed rape on her. Later on, the accused was apprehended by the villagers and handed over to the police. She has also stated that the accused has confessed his guilt and his confessional statement is in custody of Secretary of Development Committee Sri Narayan Adhikari. She has further deposed that she had filed the FIR in the Police Station which is exhibited as Ext. 2 and her signature as Ext. 2(1).

- 11. During cross-examination, she has deposed that her house is about half km away from the house of the victim. She has also deposed that on the date of occurrence of offence, she met the victim at the place of occurrence of offence, however, she did not find the accused there. However, about one thousand people had gathered there. She has deposed that she had written the FIR as per the instruction given by the villagers. She has also deposed that the victim has ability to communicate properly. She has also stated that she herself does not know about the incident and she has lodged the FIR as per instructions of the villagers. She was put many other suggestive questions by learned defence Counsel, which all were answered in negative by her.
- PW 3, who is the 'victim' herself, has deposed that the accused is her father and on the night of incident she slept with her father. She has deposed that when she was sleeping, the accused forcibly committed sexual intercourse with her. She has deposed that the accused also groped her breast .she has also deposed that she suffered injuries on her private parts. She has also deposed that the accused usually did not allow her to sleep .she has also stated that the accused had committed sexual intercourse with her on many occasions. She has also deposed that she has stated about the incident to her aunty who lives near her house and when her aunty told the incident to the villagers and when all other ladies enquired her about the incident, she also told them about the incident. She has also deposed that she was sent for medical examination by the police and also sent for recording her statement to the Court. Her statement was recorded and she gave signatures on her statement.

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- **13.** During cross-examination, she has deposed that her mother has expired and her step mother has also expired and her step brother lives in Gohpur and when her father stays at Gohpur, she used to remain alone in her house. She has also stated that she lives in the house of her uncle and used to take food there only. She has also stated that the land of her father is now in possession of her uncle. She has also stated that she has deposed before this Court as taught by her aunty who has accompanied her to the court on that day. She was also asked several suggestive questions by learned defence counsel, which all were answered in negative by her.
- elder brother and the victim is his niece, whose age is about 13 to 14 years. He also knows the first informant of this case who is the President of Mahila Samity. He has deposed that about 5/6 months ago, one day, in the morning, he went to the house of the elder brother and saw the victim in complete naked condition. He also saw injury in the private parts of the victim and semen on her body. When he asked the victim about what has happened, she informed him that her father has committed bad acts on her. She was crying in pain at that time and his elder brother fled away from his house. He has deposed that he made hue and cry on which the villagers gathered there and someone from village telephoned the police and police arrived there and took away the victim as well as his elder brother from there.
- away from home for about last 30 years and he came back only two months prior to the incident. He has deposed that in absence of his brother, victim used to stay in her house alone. He also stated that in absence of his brother, he used to enjoy and possess all ancestral land. He has also stated that when the question of partition of land arose between himself and his brother, their relationships worsen. He has also stated that other villagers have also seen the victim in naked condition, however, he do not know who put on clothes on the victim. He has admitted that it is true that he has not stated before police that he saw the victim in naked condition and saw semen on the body of the victim. He was put several

suggestive questions by learned defence counsel which all were answered in negative by him.

- that she knows the accused only seven months prior to the date of incident and she also know the victim as well as the first informant. She has also deposed that on the day of incident, her husband went to the house of the victim and saw the victim in a bad situation and when her husband informed her, she also went to the house of the victim and saw that the victim was lying in injured condition on her bed and there is no clothes on her lower parts. The victim was not in a position to get up from the bed. Thereafter, PW 5 informed the villagers, villagers came there and later on police also came, She has also stated that the accused was staying with the victim since 7 months prior to the date of incident. She has further stated that prior to the partitioned of properties in between accused and her husband, their relationships was cordial. She was also put several suggestive questions by learned defence counsel which all were answered in negative by her.
- 17. PW 6, Sri Narayan Sapagai @ Sarmah, has deposed that he know the accused, victim as well as the first informant. He has stated that the accused used to stay away from the house and the incident occurred about 6 months prior to deposing before the Court. He has stated that he was informed about the incident by Indra Sapagai (PW 4) that on the day of incident at about 10/11 a.m. that the accused has committed rape on his daughter. He has further stated that as he is the President of Village Development committee he came to the place of incident and he was informed that the victim was lying in a naked state and she was limping. He has also stated that the victim informed that she was raped by her father.
- **18.** During cross-examination, he has stated that at the place of incident he saw the victim but he did not talk with her. He has stated that police has not recorded his statement during investigation. He was put several suggestive questions by learned defence counsel to which he answered in negative.

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- 19. PW 7, Smti Bhubeneswari @ Jiboneswari Devi, has deposed that she knows the victim. The incident occurred about one year ago. On the day of incident, there was hue and cry in the house of the victim and many people gathered there and she also went there and heard that the victim has been raped by the accused. She has also stated that later on, the accused was apprehended by the villagers and he admitted his guilt before the villagers.
- **20.** During cross-examination, this PW has stated that she do not know the date of the birth of the victim and she has stated the age of the victim as 15/16 years on a rough estimation. She has denied the suggestions given by learned defence counsel that she did not state before the police that the accused admitted his guilt before the villagers. She was put many other suggestive questions by learned defence counsel to which she answered in negative.
- P.W-8, Dr. Halimuddin Ahmed, has deposed that on 03-07-2014, he was posted at Tezpur Medical College and Hospital as Assistant Professor, Department of Radiology and on that day, on requisition of Dr. Sangeeta Sarma of Kanaklata Civil Hospital, Tezpur, he examined 'the Victim' daughter of Loknath Sapagai. X-ray was done after identification of the patient. As per X-ray, he found following:
- (i) Epiphysis around the elbow joint are fused except epiphysis of medial epicondyle, which is not fused.
- (ii) Epiphysis of lower ends of radius and ulna are not fused with parent bone,
 - (iii) Epiphysis of bilateral iliac crest have appeared, but not fused.

In his opinion, the age of the patient is between 15 years to 17 years. He exhibited the X-ray report as Ext. 3 and his signature as Ext. 3(1). During cross-examination he has stated that he has not mentioned in the opinion in his medical report.

PW- 9, Sri Powal Hazarika, who is the Investigating Officer of this case, has deposed that on 30-06-2014, he was posted at Jamuguri PS as attached Officer. On 01-07-2014, one Niva Devi lodged an ejahar before the PS and Officer-in-Charge of Jamuguri PS registered a case, endorsed him to investigate the case. Accordingly, the informant on being available at the police station, he recorded

her statement. The accused person was handed over by the public and then he interrogated and then arrested him. At the same time, the victim was brought by the police to the Police Station and after recording her statement, sent her for medical examination and also produced before the Court for recording her 164 Cr.P.C statement. Thereafter, he rushed to the place of occurrence, recorded the statement of other witnesses and prepared the sketch map of the place of occurrence. He collected the medical report of the victim girl. After completing the investigation, he laid the charge sheet u/s 376(2) (1) of IPC against the accused Loknath Sapagai. Ext. 4 is the sketch map of the place of occurrence and Ext. 4(1) is his signature. Ext. 5 is the charge sheet and Ext. 5(1) is his signature.

23. During cross-examination, PW- 9, Sri, Powal Hazarika, has stated that he did not know as to whether any telephonic information was received on 30-06-2014 or not. He has also stated that at the time of lodging the ejahar, the victim herself, the accused, Indra Sapagai, Niva Devi, Josoda Devi, Narayan Sharma and Jiboneswari Devi came to the police Station and he recorded their statements as witnesses. The I.O. has deposed that he has not seized any articles from the place of occurrence of offence. He has also stated that PW 2 Niva Devi did not state before him that the victim girl narrated the incident to public. He has also stated that PW 4 Indra Sapagai did not state before him that at about 10 a.m. when he went to the house of Loknath Sapagai he saw the victim girl in naked and injured condition. He has also stated that PW 4 did not state before him that he saw semen on the private parts of the victim girl. He also stated that PW 4 did not state before him that he made hue and cry and his brother i.e. the accused fled away. The Investigating Officer has further stated during crossexamination that PW 5 Josoda Devi did not state before him that her husband saw the victim girl woke up lately at about 10 a.m. and her husband saw the victim lying in bad condition. He has also stated that PW 5 has not stated before him that she came to the place of occurrence of offence and she saw the victim girl lying in naked condition. He has also stated that PW 5 also did not state before him that victim told her that her father did bad acts with her. He has also stated that PW 6 Narayan Sharma did not state before him that on enquiry by Mahila Samity, the victim girl replied that her father committed bad acts on her.

- **24.** PW 10, Sri Dhireswar Baishya, Bench Assistant of SDJM(Sadar), Tezpur, has deposed that on 01-07-2014 the statement u/s 164 Cr.P.C statement of the victim was recorded by the learned Sub-Divisional Judicial Magistrate(Sadar), Tezpur. In the 164 Cr.P.C statement the victim put her RTI. The thumb impression was taken and endorsed by him. He knew the signature of Abdul Kadir, the then Sub-Divisional Magistrate (S), Tezpur.
- The accused was examined u/s 313 Cr.P.C. During his examination u/s 313 Cr.P.C., accused Loknath Sapagai has denied the allegation levelled against him by prosecution witnesses and pleaded his innocence. He has also stated that his own brother Indra Sapagai, in order to take his property, has instituted this false case against him.
- Learned Public Prosecutor has argued that no daughter would make false allegation of rape on her own father. Ld. Public Prosecutor has also fairly argued that though there are contradictions in the testimony of prosecution witnesses, however, the accused can be convicted on the basis of sole testimony of the Prosecutrix. On the other hand learned Legal Aid Counsel has argued that as the offence alleged is grave having serious consequences and harsh punishment, it is the duty of the prosecution side to prove the guilt of the accused beyond reasonable doubt, however, he has argued, that in the instant case none of the prosecution witness, including the victim, can be relied because of inherent contradictions in their testimonies.
- Learned legal Aid counsel for the accused has also submitted that the investigation of this case has been done very perfunctorily. The I.O. has not seized the wearing clothes of the victim. The I.O. has also not collected any material evidence from the crime scene. He has also argued that the statements of witnesses recorded by the I.O, during investigation, are not taken in detail so that true facts in this case could be unveiled. I am not in disagreement with the learned counsel for the accused that the investigation of this case has not been done in the manner in which it ought to have been done. The I.O. has not endeavoured to find out many aspects of different facts involved in this case, however, it is also settled position of law that due to defective investigation, the

accused may not get benefit, in all circumstances, if otherwise the case could end in conviction.

- As regards age of the victim, as the PW 8 who is the Radiologist has opined that the age of victim is 15 to 17 years and his assessment is based on Ext.3 which is the X-ray report and as I do not find anything to disbelieve the testimony of the PW 8. I also hold, relying on the opinion given by PW 8, that the victim is a minor.
- 29. In the instant case, it appears from the testimony of the witnesses discussed in foregoing paragraphs that the first informant of this case has not witnessed the incident and she is a reported witness. In the FIR she has stated that the accused was caught red-handed while committing rape on his daughter, however, none of the witnesses has deposed that any of them has seen the accused in the crime scene. PW-1 has stated that the accused was apprehended by villagers, however, no witness has deposed as to from where the accused was apprehended, there is no evidence on record as to who apprehended the accused and under what circumstances he was apprehended. Though the FIR mentions that the accused was apprehended red handed, even the IO has stated that the accused was brought to the police station by the public, however, he has not enquired as to from where and under what circumstances the accused was apprehended.
- Sapagai, has stated during his examination in Chief that "he went to the house of the elder brother and saw the victim in complete naked condition. He also saw injury in the private parts of the victim and semen on her body. When he asked the victim about what has happened, she informed him that her father has committed bad acts on her. She was crying in pain at that time and his elder brother fled away from his house." However, during his cross-examination he admitted that he has not stated so before the investigating officer. P.W.-9, who is the investigating officer, has also deposed that PW 4, Sri Indra Sapagai, has stated has not stated before him that he saw the victim in complete naked condition and injury in the private parts of the victim and semen on her body. He has also not stated that her father has committed bad acts on her and she was

crying in pain at that time and his elder brother fled away from his house. In view of such contradictions in the testimony of PW 4, Sri Indra Sapagai becomes unreliable. More so, when he has himself stated that due to the partition of ancestral property the relationship between him and his elder brother is not conducive.

- Similarly, the testimony of PW 5, Smti Josoda Devi, who is the wife of the PW 4, can also not be relied upon as she has also not stated before the IO what she has stated before this Court. The contradiction in her statement is proved by the IO when he deposed that "PW 5 has not stated before him that she came to the place of occurrence of offence and she saw the victim girl lying in naked condition. He has also stated that PW 5 also did not state before him that victim told her that her father did bad acts with her". The submission of learned Legal Aid Counsel that because of the contradictory statement of PW 5, Smti Josoda Devi she is not a reliable, cannot be brushed aside.
- **32.** Though, it is stated in the FIR that the accused was caught red-handed, none of the other witnesses have deposed that they had seen the accused committing rape on his daughter.
- Regarding the confession of guilt by the accused, though PW 2, Smt. Niva Devi, has stated that the accused has confessed his guilt and his confessional statement is in custody of Secretary of Development Committee Sri Narayan Adhikari, however no such statement could be produced during trial by the prosecution side. As regards testimony of PW-6 and PW-7 that the accused confessed his guilt before the villagers, learned Counsel for the accused has argued that none of the witness has deposed that the accused confessed his guilt before him. He has also submitted that as no witness has stated that the accused confessed the guilt before him and that the accused nowhere has admitted that he made such a confession. Learned Counsel for the accused has also argued that there was no attempt on the part of the investigating officer to get the confessional statement recorded by a judicial Magistrate and, therefore, the evidence regarding confession should not be relied upon. I see logic and force in the submission made by learned Counsel for the accused

- **34.** Learned legal aid Counsel has also submitted that the P.W-1, Dr. Sangeeta Sharma, who examined the victim on police requisition, during investigation, has also deposed that the victim resisted the examination of her private parts and therefore should no opinion as regards sexual assault could be given. She has also stated that the victim did not give any history of sexual assault before her. Ld. Legal aid counsel has submitted that as the victim is mentally retarded as found on examination by the Doctor, her uncorroborated statement should not be relied upon for the purpose of giving conviction to the accused.
- **35.** Thus, the other prosecution witnesses who adduced the evidence in support of the prosecution case suffers from one or other weakness making their testimony unreliable for convicting the accused person. Now let me look at the testimony of the victim girl (P.W.-3). The victim is the daughter of the accused and there is no denial of this fact. She has categorically stated that on the night of incident she slept with her father. She has deposed that when she was sleeping, the accused forcibly committed sexual intercourse with her. She has deposed that the accused also groped her breast .she has also deposed that she suffered injuries on her private parts.
- 36. Now the question arises, how far this submission of the learned legal aid Counsel that as the victim has resisted her medical examination, on this ground alone her testimony should not be relied upon, is acceptable. It is true that if victim had consented for her medical examination by the doctor, the picture would have been clearer and there would have been probability of corroborative medical evidence, however, merely because the victim resisted her medical examination and therefore has testimony should not be relied upon, in my considered opinion, do not appear to be reasonable. It is true, that because of the inherent inconsistencies, pointed out in foregoing paragraphs, the other prosecution witnesses could not be relied upon, however, the same may not be the case with the PW-3, who is the victim in this case. Learned Legal Aid Counsel for the accused has vehemently argued that the victim is a mentally retarded person and she was tutored by her uncle and aunt, who want to exclude the accused from taking share in the ancestral property, to give evidence against her father. On perusal of the cross examination portion of P.W-3 it appears that she

had stated that "she has deposed before this Court as taught by her aunty who has accompanied her to the court on that day", however, she has not stated anywhere that she has deposed falsely before this Court or what she has stated was not true. She has not stated that her aunty taught her to depose 'falsely' before this Court. The doctor who examined her has stated that though she appears to mentally retarded person she is able to communicate properly. Merely because she has stated that she has deposed before this Court 'as taught by her aunty' who has accompanied her to the court on that day, I'm not inclined to believe that she has stated falsely as when her statement was recorded by judicial Magistrate u/s 164 Cr.P.C (Ext.-6) then also she had stated that the accused, who is her father, had sexual intercourse with her as a result of which she suffered pain. The doctor was examined the victim has stated that the gait of the victim on the date of examination was "waddling". The defence side has not made any attempt to find any contradiction the statement of the victim by putting the same before the investigating officer when he was examined. I see logic and force in the submission of learned public prosecutor that no daughter would make a false statement of rape against her own father.

- 37. For the reasons stated in foregoing paragraphs, though I am not inclined to rely on the testimony of other prosecution witnesses, I find no reason to disbelieve the testimony of PW-3, who is the victim in this case. There are innumerable judgements of Hon'ble Supreme Court of India, which I refrain myself from reproducing here, to the effect that uncorroborated testimony of the Prosecutrix can be relied upon for the purpose of giving conviction in sexual offences. In the instant case also for the reasons stated hereinbefore, I rely upon the testimony of the victim in this case where she has clearly stated, during trial as well as while giving statement u/s 164 Cr.P.C, that her father has committed sexual intercourse with her.
- **38.** For the reasons stated above, I hereby hold that the accused Sri Loknath Sapagai has committed penetrative sexual assault on "the Victim" and thereby committed offence under section 6 of the Protection of Children from Sexual Offences Act, 2012. In my considered opinion the charge under section 6 of POCSO Act is proved against the accused person. The accused Sri Loknath

Sapagai is accordingly convicted under section 6 of the Protection of Children from Sexual Offences Act, 2012.

- 39. I am of the considered opinion that the victim has suffered severely both mentally and physically due to the offence committed upon her by her own father and therefore, she needs adequate support for her rehabilitation. This Court, therefore, recommends that under the facts and circumstances of this case, the Victim may be compensated with an amount of Rs. 20,000/- (Rupees twenty thousand only) u/s 357 (A) of Cr.P.C from the Victim Compensation Scheme of the State of Assam. The District Legal Services Authority, Sonitpur, is requested to do the needful for paying the said amount to the "victim" from the Victim Compensation Scheme, within two months from the date of this Judgment.
- The accused has been convicted section 6 of the Protection of 40. Children from Sexual Offences Act, 2012, where minimum punishment prescribed is 10 years imprisonment and which may extent up to life imprisonment and also fine. I have heard the accused, in person, on the point of sentence. He has pleaded that he is an old person of 60 years of age. He has also pleaded that he has two minor children from another marriage and they are dependent on him. He has pleaded for leniency. I have also heard learned counsel (Legal Aid Counsel) for the accused who has submitted that considering the old age of the accused, a lenient view may be taken. The learned Public Prosecutor has submitted that though the victim in this case is a minor and though the Special Act i.e. POCSO has been legislated to act as a deterrent, however, he has also submitted that considering the old age of the accused, the Court may perhaps take a lenient view of the matter. Considering the fact that minimum prescribed punishment under section 6 of the Protection of Children from Sexual Offences Act, 2012, is itself sufficiently deterrent, I am of the considered opinion that imposing minimum punishment prescribed in law would serve the ends of justice. I, therefore, sentence the accused Sri Loknath Sapagai to undergo Rigorous Imprisonment for 10 (ten) years with a fine of Rs. 1000/- (one thousand) in default Simple Imprisonment for 1 (one) month section 6 of the Protection of Children from Sexual Offences Act, 2012. The period of detention already under gone, by the accused shall be set off from the sentence imposed.

The accused /convict has been informed about his right to appeal against this Judgment before the Hon'ble Gauhati High Court. Let a copy of this Judgment be given free of cost to convicted accused immediately.

42. Let a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my Hand and Seal of this Court on this day the 21^{st} day of August, 2015.

(M. K. Kalita) SPECIAL JUDGE SONITPUR : TEZPUR

Dictated and corrected by me

(M. K. Kalita)
SPECIAL JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

(R.Hazarika), Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Dr. Sangeeta Sharma, M.O.

2. Prosecution Witness No.2 :- Smt. Niva Devi, informant,

3. Prosecution Witness No.3 :- Victim.

4. Prosecution Witness No.4 :- Sri Indra Sapagai

5. Prosecution Witness No.5 :- Smt. Joshada Devi,

6. Prosecution Witness No. 6 :- Sri Narayan Sapagai @ Sarma,

7. Prosecution Witness No.7 :- Smt. Bhubaneswari Devi @ jibaneswari,

8. Prosecution Witness No.8 :- Dr. Halimuddin Ahmed.

9. Prosecution Witness No.9 :- Sri Powal Hazarika I.O.

10. Prosecution Witness No.10 :- Smt. Dhireswar Baishya, Bench Asstt to

the SDJM, sonitpur, Tezpur.

EXHIBITS.

Exhibit 1 :- Medical report.

Exhibit 2 :- Ejahar

Exhibit 3 :- X-ray report.

Exhibit 4 :- Sketch map

Exhibit 5 :- Chargesheet

Exhibit 6 :- 164 Cr.P.C statement of victim.

(M. K. Kalita) SPECIAL JUDGE SONITPUR : TEZPUR