## **IN THE COURT OF SPECIAL JUDGE :: KAMRUP :: AMINGAON**

District: Kamrup, Amingaon

Present: Smti. B. Kshetry

Special Judge,

Kamrup, Amingaon

Special Sessions (POCSO) case No.01/2015

U/S- 448 of IPC R/W Section 4 of the POCSO Act, 2012

State of Assam

-Versus-

Sri Madhu Talukdar

s/o-Mohan Talukdar

resident of vill -Uparhali, Ward No.5

P.S.-Palashbari

Dist.-Kamrup

-----Accused

Appearance:

Mr. A.K. Baruah. Addl. Public Prosecutor ------for the State

Mr. M. Hussain and Smti. D. Nath, Advocates ------for the accused

Date of evidence:10.07.2015, 05.10.2015, 06.06.2016, 01.02.2018,

02.06.2018, 26.09.2018.

Date of Argument: 20.11.2018

Date of Judgment: 03.12.2018

### **JUDGMENT**

- 1. The Prosecution case in brief is that—on 09.10.2014 the complainant Sri Ajit Talukdar lodged an ejahar alleging that on 23.05.2014 at about 6.30 p.m the accused Madhu Talukdar forcibly committed sexual intercourse on his minor daughter (aged about  $4 \frac{1}{2}$  years old) when she was alone in her house. Hence, this case.
- 2. On the basis of the said ejahar, Palashbari P.S Case No. 409/2014 U/S- 4 of the POCSO Act, 2012 was registered. Investigation was conducted into the case and after completion of investigation, charge-sheet was submitted against the present accused person U/S- 4 of the POCSO Act, 2012.
- 3. The case was duly committed and the Court after hearing both the parties, framed charges U/S- 448 of IPC r/w Section 4 of the POCSO Act, 2012 against accused—Madhu Talukdar. The aforesaid charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 4. During the trial, the Prosecution side examined as many as seven (7) numbers of witnesses including the informant, the victim girl, I/O and M.O. Statement of the accused person U/S-313 Cr. P.C is recorded. He has denied committing the offence and declined to adduce evidence.

### 5. POINT FOR DETERMINATION:

- (I) Whether the accused person on 23.05.2014, at village Uparhali, Palashbari P.S committed penetrative sexual assault on the minor daughter of the informant by inserting his penis into her vagina and thereby committed an offence of penetrative sexual assault U/S-3 which is punishable U/S 4 of the POCSO Act, 2012?
- (II) Whether on the same date, time and place the accused committed house trespass by entering into the house of Sri AjitTalukdar, with intent to commit the offence of criminal trespass (Section 441 IPC) and house trespass (Section 442

IPC) and you have thereby committed an offence punishable U/S 448 IPC?

## **DISCUSSION, DECISION AND REASONS THEREOF**

- 6. Perused the record. Heard Ld. Counsels for both the sides. Prosecution examined as many as 7 (seven) numbers of witnesses.
- 7. P.W.1, Sri Ajit Talukdar is the informant of this case. Accused is his covillager. The incident took place on 23.05.2014 at about 6.30 p.m. He deposed that on that day his daughter (prosecutrix) was raped by the accused. At the time of incident, he was outside the house for work. His wife (P.W.3) was busy in the kitchen. But, when she went outside to purchase onions, the accused came to their house. Thereafter, when his wife returned home, she saw the accused running away from their house. When his wife inside the house, she saw the prosecutrix was crying on the bed and she was without her panty. Then, his wife enquired from the prosecutrix who told her that she was having burning sensation in the genitals. But she said nothing more. Prosecutrix remained in pain that night. And next morning, prosecutrix was taken to Uparhali Govt. Hospital where she was given some medicines. Thereafter, P.W.1 and his wife made repeated enquires about the incident from the prosecutrix, then she told them that the accused gagged her mouth and inserted his fingers and also inserted his genital into her genital. On hearing the incident, P.W.1 called the parents of the accused to their house and told them about the incident. At that time, accused was not at home. The parents of the accused requested pw-1 not to file any case and that they would try to settle the matter. P.W.1 further stated that accused was a drunkard and he fled away after the incident while the prosecutrix was unwell after the incident and she had exam also. P.W.1 thought that the accused might have died as he was a drunkard, so he did not lodge the ejahar immediately. Subsequently after few months when P.W.1 saw the accused in his house, he gave the ejahar. P.W.1 disclosed that prosecutrix was aged about 4 ½ years old at the time of occurrence and she was a student of Ankur Preparatory and now, she is 6 years old and a student of class-I. This witness further stated that the ejahar was written by one Rabinullah Ahmed, a clerk of the police station as per his instruction and was read over to him and then he put his signature. Ext.1 is the ejahar. Ext. 1(1) is his signature.

- 8. In his cross-examination, P.W.1 deposed that he has not stated in the ejahar, the cause of delay in lodging the same. He also stated that the doctors of Uparhali Hospital did not inform the police.
- 9. P.W.2, is the Prosecutrix. She has stated in her evidence that informant is her father. She knows the accused person—Madhu Talukdar and her father had lodged the case against him. The incident took place about a year ago. On that relevant day, at around 6.30 p.m, she was studying by lying on the bed in her house and her mother was cooking in the kitchen. Thereafter, her mother along with her elder sister went to a shop to bring some onions. And she was alone at home and studying. This witness stated that accused came from the backyard of the house and entered inside the room where she was studying alone, then he removed her panty and he touched his genitals on her genitals and inserted his genitals into that of hers. Then, P.W.2 cried and screamed but the accused gagged her mouth and told her not to tell her parents. The accused saw her mother (P.W.4) coming and then he ran away from there. P.W.2 further disclosed that she got hurt on her genitals and had pain. Later she had difficulty in passing urine. Her mother asked her about the incident and washed her genitals. Next day her mother took her to the hospital. At that time also she was having pain in her genitals. The doctor gave her ointment and medicines Pw-2 stated that while applying ointment she had burning sensation. Next day , pw-2 told her mother about the incident. After several days, her father (P.W.1) gave a case against the accused. Thereafter, police came to her house and enquired from her about the incident. She narrated the entire incident before the police. Then police brought her before the Magistrate for recording her statement U/S-164 Cr. P.C. Ext.2 is the statement, Ext.2 (1) is her signature. Police also took her to the doctor for medical examination and her mother accompanied her. Further Pw-2 disclosed that at the time of incident she was aged about 4 ½ years old.
- 10. In her cross-examination, P.W.2 has stated that she has one elder brother but at the time of the incident, her elder brother had gone to her maternal Uncle's home. P.W.2 further stated that nobody tutored her to give evidence in the Court. She denied that her parents tutored her.
- 11. P.W.3, is the M/O, Dr. Sainjalee Haflongbar. She has deposed in her evidence that on 10/10/2014, the prosecutrix (daughter of Ari AjitTalukdar) was brought

to her for medical examination by WHG Anna Das with reference to Palashbari P.S Case No. 409/2014, U/S-4 of the POCSO Act, 2012.

## **History:-**

As per the forwarding letter of the Police and the statement of the mother of the victim – a boy named Madhu Talukdar , who stayed in the neighbourhood came in to the house when prosecutrix was alone in her room. He pulled her panty and covered her mouth with his hands and inserted his finger inside her vagina. Then, he put his penis inside her vagina. When he heard her parents returning home, he ran away. When her parents found out the incident, they gave a case against him on 09.10.2014 at round 4.30 p.m in Palashbari P.S. According to her mother, her panty had whitish coloured stain which she already washed. She was brought for medical examination on 10.10.2014 at about 1.30 p.m in Forensic Department, GMCH.

## On the General examination of the victim it is found---

Her height—106 cm, weight—15 kg, chest—50 cm, abdominal girth—51 cm, total 21 temporary teeth (11/10). Scalp hair-10-12 cm in length. Axillary pubic hair present, her breast child like. Upon genital examination, it is found that genital organs are developed. In vulva. Labia majora covers labia minone in lithotomy position. Redness and abrasion is present in both the vestibular area around the hymenal orifice which is tender on touch. Hymen is intact. Vagina and cervix could not be examined. Uterus is not palpable per abdomen. Evidence of venereal disease not detected. Vaginal swabs were collected from hymenial orifice and clitoris. No injury was detected on her body. Evidence of struggle and stain not detected on her wearing garments. Mental condition was normal and no abnormality detected. She was co-operative and good. Her intelligence and memory was average and gait was normal.

**Radiological Investigation:-** X-ray of wrist, elbow and shoulder joint shows that epiphyseal union of bones is not completed.

**<u>Laboratory Investigation:-</u>** Microscopic examination of the vaginal smears does not show the presence of spearmatozoma and genecocc.

**Opinion:-** P.W.3 has further deposed that on the basis of physical examination, radiological and laboratory investigation, she opined that-

- i) Her age was about 6 years and below 7 years.
- ii) There was no evidence of recent sexual intercourse detected on her person,
- iii) And injury was detected on her person as described earlier.

Ext.3 is the medical report and Ext. 3 (1), 3 (2), 3 (3) and 3 (4) are her signatures thereon and Ext. 3 (1) is the signature of Dr. R. Chaliha, Head of Department, Forensic Medicine, GMCH. Ext.4 is the requisition for medical examination and Ext. 4 (1) is her signature and Ext.4 (2) is the signature of Dr. R. Chaliha, Head of Department, Forensic Medicine, GMCH, Ext.5 is the Command certificate and Ext. 5 (1) is his signature and Ext. 5 (2) is the signature of Dr. R. Chaliha.

- 12. In her cross-examination P.W.3 has deposed that he injuries described in column No. 17 (b) of medical report (Ext.3) would be within 2-3 days old from the time of examination.
- 13. P.W.4, Smti. Gita Talukdar is the wife of the informant and mother of the prosecutrix. She stated that accused is her co-villager and the incident took place on 23.05.2014 at about 6.30 p.m. At the time of incident prosecutrix was 4 ½ years old. At the relevant time, prosecutrix was studying in her room in their house. But due to stortage of onions while cooking in the kitchen, she along with her elder daughter—Panchi Talukdar went out to purchase onions. But the prosecutrix was alone in the house and she was studying. When Pw-4 returned back, she saw the accused going out from their house. She further stated that she saw the prosecutrix with her pant half opened and she was crying. On asking her, prosecutrix did not tell anything at that time. Later, when prosecutrix went to urinate, then she told pw-4 that she was unable to urinate and she was having pain in the genitals. On hearing this, P.W.4 brought her inside the house and on examining her, she saw that her genitals were very red, there were tears on both sides and there were marks of finger nails on her genitals. Though P.W.4 asked

prosecutrix about it but she did not tell her anything. Next day, P.W.4 took her to Bijoynagar Government Hospital and doctor said that it was a case of rape. Doctor gave the prosecutrix tablet and an ointment. After coming back from doctor, P.W.4 asked the prosecutrix again. Then prosecutrix told her that on the day of incident, the accused had penetrated his genital into her genital. Thereafter, Pw-4 told the incident to her husband(pw-1). They called the parents of the accused and told them about the incident. At that time, the accused was not present in the house. P.W.4 disclosed that considering the future of their daughter (prosecutrix) they had initially not lodged any case in the police station. But after 4/5 months of the incident, when they saw the accused, they lodged the ejahar. After lodging of the ejahar, police enquired the incident from her and recorded her statement. The Prosecutrix was sent for medical examination and she accompanied her for such medical examination. Ext.3 is the medical report. Ext. (6, 7 and 8) are her signatures on the medical report. Prosecutrix was also taken to the Court by police.

- 14. In her cross-examination, P.W.4 denied the suggestion that the injuries found on the person of the prosecutrix was inflicted by them in order to falsely implicate the accused person out of personal grudge.
- 15. P.W.5, ASI, Sri Balan Kalita, is the I/O of this case, who has investigated the case. In his deposition, he has stated that on 09.10.2014 while he was working at Bijoynagar Out Post as Attached Officer, then on that day one- AjitTalukdar came to the police station and informed him verbally that his 4 ½ years old daughter was raped while she was alone at his home at 6.30 p.m. Accordingly, he made a G. D. Entry No. 180 dated 09.10.2014. Again on the same day, he also received a formal FIR from the complainant which was registered. Pw-5 was entrusted by the I/C to investigate the case. Accordingly, Pw-5 went to the place of occurrence, prepared a sketch map, examined the witnesses and he also examined the Prosecutrix. He also deposed that the Prosecutrix was taken to medical for her examination and she was produced before the Magistrate for recording her statement U/S-164 Cr. P.C. P.W.5 also collected the medical report. He arrested the accused and forwarded him to the Court. P.W.5, further stated that after completion of investigation, he submitted the case diary to the I/C on 11.10.2014 and on the basis of his investigation, the charge-sheet was submitted by the S.I-Ajoy Kumar Handique U/S-448 of IPC R/W Section 4 of the POCSO Act. Ext. 1 is the ejahar. Ext. 1 (2) and Ext. 1 (3) are the signatures of the then O/C of Palashbari P.S. Ext.3 is the medical

report. Ext.4 is the forwarding of medical report. Ext.4 (3) is my signature. Ext.5 is the command certificate. Ext. 5 (3) is his signature. Ext.6 is the extract copy of the G.D. Entry No. 180 dated 09.10.2014. Ext.6 (1) is his signature. Ext.7 is the sketch map Ext. 7 (1) is his signature. Ext.8 is the printed form of FIR. Ext. 8 (1) is the signature of the then O/C of Palashbari P.S. Ext.9 is the charge-sheet and Ext. 9 (1) is the signature of S.I. Ajoy Kumar Handique which he knew.

- 16. In his cross-examination, P.W.5 deposed that he examined the witness from the locality and there is no eye witness except the victim herself.
- 17. P.W.6 is S/I Sri Ajoy Kr. Handique, has deposed in his evidence that on 30.11.2014 while he was at Palashbari P.S, he received the CD of the present case for further investigation. After going through the CD he found that the investigation has already been completed by previous ASI, Bolen Kalita (P.W.5). P.W.6 only submitted the charge sheet against the accused. Ext.9 is the charge-sheet and Ext.9 (1) is his signature.
- 18. In his cross-examination, P.W.6 has stated that he did not make any attempt to examine any of the witnesses including the doctor who examined the victim of the present case before filing of the FIR.
- 19. P.W.7, Smti. Rashmita Das, is the Judicial Magistrate, who has recorded the statement of the victim girl U/S-164 Cr. P.C. In her deposition, she has stated that on 13.10.2014 she was posted as Addl. CJM in Amingaon and on that day she received an order of Ld. CJM, Kamrup, Amingaon for recording statement of victim U/S-164 Cr. P.C. Her aged about 4 ½ years U/S- 164 Cr. P.C. Ext.10 is the said order dated 13.10.2014. On the same day, the victim was produced before her. Since the victim was a minor girl, so she was given sufficient time for reflection. Thereafter, her statement U/S-164 Cr. P.C was recorded by her. The victim was identified and escorted by Home Guard—Anna Das. P.W.7 gave a certificate regarding the capability of the victim to give her statement. After recording her statement, it was read out to the victim and she put her signature. Thereafter, P.W.7 put her signature. Ext.2 is the statement and Ext. 2(2), Ext.2 (3) are her signatures. The victim was allowed to go to the zimma of her mother on execution of bond of Rs.1000/-.

- 20. In her cross-examination P.W.7 stated that she gave the option to the victim that it is not compulsory for her to give her statement and stated that she recorded the statement of the victim on the same day after giving her sufficient time for reflection.
- 21. Perused the evidences on record. Heard the Learned Counsels for both sides. The Learned Additional Public Prosecutor has argued that there is sufficient evidence to show that the accused had committed the offence of penetrative sexual assault by entering into the house of the victim and the victim herself narrated all the facts of the crime perpetrated upon her in her testimony and there appears no any contradiction in her testimony. On the other hand, Learned Defence Counsel submitted that there has been considerable delay of 4 months in lodging the ejahar. And the doctor who had examined the prosecutrix on the very next day of the occurrence has not been examined by the I.O and made witness in this case. He further submitted that there are contradictions in the evidences of the witnesses and the accused has been falsely implicated in this case.
- 22. Now , in this instant case, the accused has been alleged to have committed the offence of house trespass and penetrative sexual assault on the minor victim girl when she was alone by inserting his genitals inside her genitals. So, it has to be seen from the evidences on record if the offences as alleged had taken place. So, before discussing the evidences on record, let us go through the definition of penetrative sexual assault which is defined in Section 3 of the POCSO Act, 2012.
- 23. **Section 3 of the POCSO Act** deals with penetrative sexual assault.
  - **3. Penetrative sexual assault**—A person is said to commit "penetrative sexual assault" if—
    - (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
    - (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
    - (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person; or

- (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- **24. Section 4 of the POCSO Act** deals with punishment for penetrative sexual assault. It reads as "Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."
- 25. After hearing the rival contentions of the Learned Counsels of both sides, I have perused the entire record including the evidences adduced by the prosecution witnesses. A perusal of Ext-1 suggests that pw-1 had lodged the ejahar against the accused with an allegation that the victim girl was raped by him. Prosecution has proved Ext-1(ejahar) and the informant was examined as PW-1 . He narrated that the accused had committed rape on his daughter/victim when she was alone in the house. This witness was cross-examined but nothing abnormal to the prosecution emerged . PW-2 is the victim girl, who was aged about 4 ½ years at the time of deposition before the court. Her statement u/s 164 Crpc was recorded by the Magistrate (Pw-7). It is in the evidence of the victim girl ( Pw-2) before the court that on the date of occurrence at around 6.30 p.m, she was studying on the bed in her house and her mother was cooking in the kitchen. Thereafter, her mother along with her elder sister went to a shop to bring some onions and she was alone studying at home. Then the accused came from the backyard of the house and entered inside the room where she was studying alone. Her evidence reveals that the accused removed her panty and he touched his genitals on her genitals and inserted his genitals into that of hers. Then, P.W.1 cried and screamed but the accused gagged her mouth and told her not to tell her parents. The statement of the victim girl does not show any kind of tutoring in evaluation of her evidence, which clearly shows that she was raped by the accused. At the time of occurrence, the victim girl was only 4 and 1/2 years old. This aspect is not challenged by the defence. Her statement u/s 164 Cr.p.c was recorded by the Magistrate (Pw-7 ) where she clearly narrated the incident as stated in her evidence before the court. Thus, on analyzing her evidence before the court, her statement made before the Magistrate u/s 164 Crpc and her statement before the police u/s 161 Cr.p.c , she has remained intact and her statements are consistent with each other. Therefore, it is well proved from the evidence of pw-2 that at the time of incident, she was alone at her house and her parents were out of home and the accused—Sri Madhu Talukdar entered into her house from the backyard

and he committed penetrative sexual assault with her. Pws-1 and 4 (parents of the victim) made it clear in their evidences that they were not present in the house at the time of incident.

- 26. It is well settled that the testimony of a victim in cases of sexual offences is vital and courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused.
- 27. The argument of the defence side relating to delay of submission of the ejahar before the police has no force in view of the materials on records and considering the legal pronouncement that it is settled law that the ejahar is not a substantive piece of evidence. It is the duty of the court to scrutinize the evidence regarding the actual occurrence with care and caution. Accordingly, the court has to appreciate the contents of the ejahar, reason for delay and other attending facts and circumstances regarding the actual incident. In this instant case, the ejahar discloses the factum of rape and victim herself as well as her father and mother have given a corroborative evidence that the victim was raped by the accused person. In this context, statement of the victim recorded u/s 164 Cr.p.c is also another corroborative piece of evidence which has clearly stated that the accused committed rape upon her and, thereby, some sort of sexual activities had taken place between them. The statement of the victim girl does not show any kind of tutoring in evaluation of her evidence. So, there is no other conclusion other than the fact that the accused committed sexual intercourse with the victim. It is pertinent to note that at the time of occurrence, the victim girl was studying in Preparatory class and was aged only 4 ½ years. She has stated clearly this fact in her evidence before the Court.
- 28. Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of the FIR. But, there may be cases where delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witness has no motive for falsely implicating the accused. Pw-1 has no motive to falsely implicate the accused. He has stated clearly in his evidence that on hearing the incident, he called the parents of the accused to their house and told them about the incident. At that time, accused was not at home. The parents of the accused requested pw-1 not to file any case and that they would try to settle the matter.

- P.W.1 further stated that accused was a drunkard and he fled away after the incident while the prosecutrix was unwell after the incident and she had exam also. P.W.1 thought that the accused might have died as he was a drunkard, so he did not lodge the ejahar immediately. Subsequently after few months when P.W.1 saw the accused in his house, he gave the ejahar. His evidence in this regard finds support from his wife( pw-4). So, the delay in lodging the ejahar has been explained properly by the prosecution side.
- 29. On scrutiny of the evidence of PW-1, PW-4 and Pw- 2, the victim of the case, it appears that pw-1 and pw-4 heard the incident from the victim (pw-2) and she corroborated that she disclosed the incident to her parents and they have clearly stated before the court what they heard from the mouth of the victim and therefore, their evidence carried weight. There is no eye-witness to the occurrence as it is a case of penetrative sexual assault.
- 30. The argument of the Learned Defence Counsel is that the medical report does not show any signs of recent sexual assault and the victim has been examined after a long delay. Now, medical jurisprudence is not an exact science with precision but merely opinionative. And, it is settled position of law that if there is conflict in between ocular evidence and medical evidence, then preference is given to ocular evidence as medical evidence only an opinion of the expert. This is a case of rape i.e sexual assault on the victim. Victim was examined by the doctor after some months of the incident . So, there has been delay in her examination. Therefore, there may not be recent sign of rape but the evidence of the victim is consistent with her other statement (Ext-2) . And , this does not go to show that no incident of sexual assault on the victim had taken place and her evidence is corroborated by the evidences of other pws. So, the testimony of the victim is found to be truthful and reliable. Her evidence is free from any doubt and inspires confidence. Defence during cross-examination of the pws failed to bring out any enmity or dispute in between the family members of the prosecutrix and the accused and that the accused has been falsely implicated in the case. So, the defence plea of false allegation against the accused is not acceptable at all. In this case, the contradictions pointed out are not so grave in nature that can prove fatal to the prosecution case.
- 31. For the above circumstances, there is no any reason to disbelieve the testimony of the victim (pw-2) that while she was studying alone in the house , the

accused came and raped her. Now, the question arises as to whether this was done with sexual intent.

- 32. Section 29 of the POCSO Act provides that a Special Court shall presume that the accused had committed the offence of sexual assault unless contrary is proved. Evidence on record clearly pointed that accused committed penetrative sexual assault on the victim by entering into the house when she was alone and the evidence of the victim is unimpeached and believable.
- 33. As per **Section 30 of POCSO Act** , the culpable mental state of the accused should be presumed .The section reads as follows –:
  - (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 this instant case, the accused has miserably failed to rebut the presumption. Mere statement of denial does not inspire confidence of this court , in view of the clear and cogent statement of the victim girl , which remains un-demolished that when she was alone in the house , the accused came and he committed penetrative sexual assault on her. Section 29 of the POCSO Act draws presumption that if sexual assault is alleged by a minor unless it is rebutted by the accused, it is presumed that the accused had committed sexual assault on the minor as alleged. The victim of this case in cogent manner stated that the accused committed penetrative sexual assault on her within the meaning of Section 3 of the POCSO Act and the same is punishable under section 4 of the POCSO Act.
- 35. Thus, prosecution has proved the case beyond reasonable doubt on the basis of the evidence of the pw-2 (victim) supported by pws-1 and 4. When other evidences

against the accused is clear and cogent , absence of motive or insufficiency of motive is of no importance.

- 36. As regard the offence of house trespass, it is well proved that the accused entered into the dwelling house of the victim (P.W.2) with the intent to commit the offence of penetrative sexual assault. This attracts the offence u/s 448 IPC against the accused.
- 37. In order to assess as to whether it was a case of rape, the victim girl has clearly stated in her evidence that the accused inserted his finger and genitals inside her genital when she was alone inside her house. Her testimony has not been challenged by the defence and as a result, that aspect of her evidence has not been demolished. The evidence of the victim is fully supported by other pws. The finding of the medical examination reveals that despite the victim having been examined after several months, the Medical Officer( Pw-3) on examination found redness and abrasion in both the vestibular area around the hymenal orifice which is tender on touch. Therefore, it is concluded that the act of the accused had resulted injury on her person. Having regards to the entire facts and circumstances of the case as well as evidences on record and from the discussions made above, it clearly shows that the accused had entered into the house of the prosecutrix and committed the offence u/s 4 of POCSO Act.
- 38. Therefore, it is concluded that the prosecution has successfully proved the charges levelled against the accused Madhu Talukdar u/s 448 IPC R/W Sec 4 of POCSO Act beyond all reasonable doubt. The accused is held guilty of the offences under the aforesaid sections of law and he is convicted accordingly.
- 39. Considering the facts and circumstances of the case and the nature of the offence committed by the accused, he is not entitled to get the benefit of Probation of Offender Act or section 360 Cr.p.c.

## 40. **SENTENCE**

Heard the accused on the point of sentence. The accused has prayed for leniency in punishment. And submitted that he is innocent and has been falsely implicated in this case.

- 41. Considering the nature of the offence, facts and circumstances of the case, the mental agony suffered by the victim girl in view of the penetrative sexual assault committed on her , her status and future life in the society , the accused does not deserve any leniency. Moreover, the penal provisions of the POCSO Act is stringent in nature, which shall have to be imposed in case a person is found guilty. Section 4 of the POCSO Act prescribes for punishment with imprisonment for a term which shall not be less than seven years but which may extent to imprisonment for life , and shall also be liable to fine. This court has no jurisdiction or discretion to lesser the sentence from the prescribed minimum sentence.
- 42. Having regard to the entire aspect of the case , accused- Madhu Talukdar is sentenced to undergo rigorous imprisonment for a period of 7 (seven) years and to pay a fine of Rs. 5000/- (Rupees five thousand) only i.d to undergo rigorous imprisonment for another 6 (six) months for the offence U/S-4 of the POCSO Act, 2012. Furthermore , the accused is sentenced to undergo rigorous imprisonment for 7 (seven) months and to pay a fine of Rs. 500/- (Rupees five hundred) only i/d of fine another S.I for 15 (fifteen) days for the offence u/s 448 IPC. Both the sentences shall run concurrently. Fine amount, if realized be given to the victim as compensation as per provision u/s 357 Cr. p. c.
- 43. The period of detention already undergone by the accused shall be set off from the sentence awarded.
- 44. Let a free copy of the judgment be furnished to the accused person.
- 45. Having regard to the nature of the instant case, this court finds it to be a fit case for awarding compensation to the victim girl U/S- 357 A Cr. P.C under Victim compensation scheme and Learned Secretary District Legal Services Authority, Kamrup, Amingaon will determine the quantum of the compensation payable to the victim of this case.
- 46. Send a copy of this judgment to the Learned Secretary, District Legal Services Authority, Kamrup, Amingaon for determination of the quantum of compensation under Victim compensation scheme as providing section 357 A Cr. P.C.

- 47. Send a copy of the judgment to the Learned District Magistrate, Kamrup, Amingaon under the provision of Section 365 Crpc.
- 48. Judgment is pronounced and delivered in open court under the hand and seal of this court on this  $03^{rd}$  day of December, 2018

Special Judge, Kamrup, Amingaon

# **APPENDIX**

## **Prosecution Witness:**

P.W.1, AjitTalukdar

P.W.2, is the Prosecutrix

P.W.3, is the M/O, Dr. Sainjalee Haflongbar

P.W.4, Smti. Gita Talukdar

P.W.5, ASI, Sri BalanKalita

P.W.6 is S/I Ajoy Kr. Handique

P.W.7, Smti. Rashmita Das

# **Prosecution Exhibit**

Ext.1 is the ejahar.

Ext.2 is the statement made before the Court U/S—164 Cr. P.C of Prosecutrix

Ext.3 is the medical report.

Ext.4 is the forwarding of medical report.

Ext.5 is the command certificate.

Ext.6 is the extract copy of the G.D. Entry No. 180 dated 09.10.2014.

Ext.7 is the sketch map.

Ext.8 is the printed form of FIR.

Ext.9 is the charge-sheet

Special Judge, Kamrup, Amingaon

## SPL 1/15

To bring home the charge levelled against the accused , prosecution has examined as many as witnesses

Heard arguments from both the sides. The Learned Additional Public Prosecutor has argued that there is sufficient evidence to show that the accused had committed and the victim herself narrated all the facts of the crime perpetrated upon her, in her testimony and there appears no any contradiction in her testimony. On the other hand, Learned Counsel for the accused submitted that

After hearing the rival contentions of the Learned Counsels of both sides, I have perused the entire record including the entire record including the evidence adduced by the prosecution witnesses. A perusal of Ext-1 suggests that pw-1 had lodged the ejahar against the accused with n allegation that the victim girl was raped by him. Prosecution has proved Ext-1, the ejahar and the informant was examined as PW-1. He narrated that the accused had committed rape on his daughter/vicim and when he h . This witness was cross-examined but nothing abnormal to the prosecution emerged . PW-2 is the victim girl , who was aged about 6 years at the time f deposition before the court. According to her Her statement u/s 164 Crpc was recorded by the Magistrate.PW- is the Medical Officer , who examined the victim girl. The statement of the victim girl does not show any kind of tutoring in evaluation of her evidence, which clearly shows that she was raped by the accused. At the time of occurance , the victim girl was only 4 years old. This aspect is not challenged by the defence.

Coming to the provision of the POCSO Act

#### Coming to the provision of POCSO Act

Apparently, the matter related to delay of submission of the ejahar bfore the police has no force in view of the materials on records and considering the legal pronouncement that it is settled law that the ejahar is not a substantive piece of evidence. It is the duty of the court to scrutinize the evidence regarding the actual occurance with care and caution. Accordingly, the court has to appreciate the contents of the ejahar, reason for delay and other attending facts and circumstances regarding the actual incident. In this instant case, the ejahar discloses the factum of rape and victim herself as well as her father and mother have giver a corroborative evidence that the victim was raped by the accused person. In this context, statement of the victim recorded u/s 164 Crpc is also another and thereby some corroborative piece of evidence which has clearly stated that the accused sort of sexual activities had taken place between them. The statement of the victim girl do not show any kind of tutoring in evaluation of her evidence. So, there is no other conclusion other than the fact that the accused committed sexual intercourse with the victim. It is pertinent to note that at the time of occurance, the victim girl was studying in class and was aged above . She has stated clearly this fact in her evidence.

For the above circumstances, there is no any reason to disbelieve the testimony of the victim (pw-) that while she was . Now, the question arises as to whether this was done with sexual intent.

Section 29 of the POCSO Act provides that a Special Court shall presume that the accused had committed the offence of sexual assault unless contrary is proved. In this instant case , the accused has miserably failed to rebut the presumption . Mere statement of denial does not inspire confidence of this court , in view of the clear and cogent statement of the victim girl , which remains undemolished that when she was .

Thus, prosecution has proved the case beyond reasonable doubt on the basis of the evidence of the pw- (victim) supported by .

When other evidences against the accused is clear and cogent, absence of motive or insufficiency of motive is of no importance.

Medical jurisprudence is not an exact science with precision: but merely opinionative. In this case, the contradictions pointed out are not so grave in nature that can prove fatal to the prosecution case.

Delay in setting the law into motion by lodging the complaint is normally viewed by the courts in suspicion because there is possibility of concoction of evidence against the accused. In such cases, it becomes necessary for the prosecution to satisfactorily explain the delay in registration of the FIR . But , there may be cases where delay in registration of FIR is inevitable and the same has to be considered. Even a long delay can be condoned if the witnesshas no motive for falsely implicating the accused. Pw-1 has no motive to falsely implicate the accused . Being saddened by the ,it must have taken sometime for pw- to come out of her shock and then proceed to the police –station to lodge the FIR.

In order to assess as to whether it was a , the victim girl has clearly stated in her evidence that the accused . Her testimony has not been challenged by the defence and as a result , that aspect of her evidence has not been demolished. The evidence of the victim is fully supported by other pws. The

finding of the medical examination reveals that despite the victim having been examined after several months, the medical officer found . Therefore . it is concluded that the act of the accused had resulted injury for which hymen of the victim was found absent. So, there was penetration into her vagina . Having regards to the entire facts and circumstances of the case as well as evidence on recordand from the discussions made above , it clearly shows that the accused had committed the offence u/s of POCSO Act.

Therefore, it is concluded that the prosecution has proved the charge levelled against the accused person — u/s beyond all reasonable doubt. The accused is held guilty of the offence under the aforesaid sections of law and he is convicted accordingly.

#### **SENTENCE**

Heard the accused on the point of sentence. The accused has prayed for leniency in punishment. The penal provisions of the POCSO Act is stringent in nature, which shall have to be imposed in case a person is found guilty. Section of the POCSO Act prescribes . This court has no jurisdictionor discretion to lesser the sentence from the prescribed minimum sentence.

Having regard to the entire aspect of the case , accused—is sentenced to undergo rigorous imprisonment for a period of—and to pay a fine of Rs—i.d to undergo rigorous imprisonment for another 6 months .

The period of detention already undergone by the accused shall be set off from the sentence awarded.

Let a free copy of the judgment be furnished to the accused person.

Having regard to the incident of the instant case, this court finds it to be a fit case for awarding an amount of Rs as compensation to the victim girl by the District Legal Services Authority u/s 357 (A) of Crpc. Accordingly, it is recommended for compensation u/s 357 (A) Crpc. Furnish a copy of this judgment to the Learned Secretary, District Legal Services Authority, Kamrup, Amingaon for information and compliance.

Furnish a copy of the judgment to the Learned District Magistrate, Kamrup, Amingaon under the provision of Section 365 Crpc.

Judgment is pronounced and delivered in open court under the hand and seal of this court on