# IN THE COURT OF THE SESSIONS JUDGE, KARBI ANGLONG, DIPHU, ASSAM.

Present : Md. A.U.Ahmed, AJS

Special Judge, Karbi Anglong, Diphu.

Special Case No. 105 of 2015 corresponding to Kheroni Police Station Case No. 23 of 2014

Under Section 4 of the POCSO Act.

State of Assam

Versus

Wilson Sangma

### Name of informant/complainant:

Smt. Malika Sangma S/o Shri Wilson Sangma

Village: Maimaru P.S : Kheroni

District: Karbi Anglong

#### Name of the accused person facing trial:

Shri Wilson Sangma S/o Shri Robinson Marak

Village: Maimaru

P.S: Kheroni, District: Karbi Anglong

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### Advocates appeared:

For the prosecution: Mr. D. Deka, Public Prosecutor.

For the defence : Mr Jitu Paul.

Argument heard on : 06.9.2018.

Judgment pronounced & delivered on: 14-09-2018

#### **JUDGMENT**

1. It is a case of aggravated penetrative sexual assault upon a female child having age of 13 years by her step father.

2.

The prosecution case in brief is that on 11-05-2014 one Smt. Molika Sangma lodged a written ejahar with Kheroni Police Station stating inter-alia that while she went out of the house for work, her accused husband taking advantage of her absence was making sexual intercourse with her victim daughter who was 13 years old as a result of which she became pregnant. As the accused person threatened her victim daughter to kill her if she would disclosed the occurrence to anybody, she refrained from disclosing the same to her and others out of fear. On receipt of the written ejahar, Kheroni Police Station registered a criminal case under sections 376(2)(i) of the IPC R/W section 6 of the POCSO Act and started investigation. During investigation, the accused was arrested and forwarded to Judicial Custody. On completion of investigation, charge sheet was submitted under section 376(2)(i) of the IPC R/W 4 of the POCSO Act against the accused person. Hence the prosecution case.

3.

On completion of appearance of the accused person, copy was furnished to him. The accused expressed his inability to engage any lawyer to defend him and as such Mr. J. Paul, an advocate from Diphu Bar Association has been appointed as State Defence Counsel to defend him. Having very carefully gone through submissions of learned lawyers of both sides as well as case diary, my predecessor found sufficient grounds for presuming that the accused person committed the offence under section 376(2)(i) of IPC R/W section 4 of the POCSO Act and accordingly, the

charge was framed. The particular of the charged offence was duly read over and explained to the accused to which he pleaded not guilty and claimed to be tried. During trial earlier charge framed was altered to the section 6 of the POCSO ACT and accordingly charge was framed. The particular of offence charged was duly read over and explained to him to which he pleaded not guilty and claimed to be tried.

4.

During trial, Prosecution has examined as many as nine witnesses including complainant and the alleged victim of this case. Accused person has been questioned under 313 of Cr.P.C. Defence examined none. Plea of defence is of total denial.

#### 5. **Points for determination are:**

(i)Whether the accused before 11-05-2014 committed aggravated penetrative sexual assault upon the victim child who is the daughter of informant from her earlier husband?

#### 6. **Decisions and reasons thereof:**

I have very carefully gone through the submissions of learned lawyers of both sides as well as evidence on record. In the very beginning, learned lawyer appearing on behalf of the accused has submitted that the prosecution has totally failed to prove its case beyond all reasonable doubts. On the other hand, refuting the aforesaid

submission, learned Public Prosecutor, Mr D.K. Deka has submitted that prosecution has duly succeeded in establishing its case. Prior to forming an opinion on the rival submissions made by the parties, I would like to give a glance at evidence on record.

7.

PW-1 is the medical officer who examined the victim child. She has stated in her evidence on 12-05-2014 the victim child was brought to her by WPC No. 183 Smt Babita Baglary for medical examination. On examination she found no mark of external injury on her body. She also found that her hymen was torn. Vagina examination was not done due to her pregnancy. Ext-1 is the medical report and Ext-1(1) is her signature.

8.

PW-2 is the victim child who has stated in her evidence that the informant is her mother and the accused her step father. The occurrence took place about 3 years back on a night. At the time of occurrence her mother was in the house but only she and the accused were there. After taking meal she went for sleeping. She went to deep sleeping. On awaking she found the accused on her bed and her pant being removed. The accused seeing me awaken pointing knife threatened to kill if she would raise shouting and as such out of fear she remained silent. There after the accused removed his pant and penetrated his penis into her vagina and went away. Again after one hour the accused came to her bed while she was sleeping. On awaking she found the accused removing her pant and again he penetrated his penis to her vagina. In this way the accused started making sexual intercourse with her against her will forcibly as a result of which she became pregnant. She gave birth to a steel baby. She refrained from disclosing the matter to her mother as the accused threatened to kill her if she would disclose her mother. He mother got married the accused with her and another sister on death of her father. Police got her medically examined and her statement recorded in the court. At the time of occurrence she was 13 years old.

9.

PW-3 is Malika Sangma who stated in her statement that she is the informant of this case. The victim girl is her daughter from her earlier husband who already died. The accused is her second husband. He got married with the accused on death of his earlier husband with two daughters from his side. Her daughters used to sleep on a separate bed in a separate room for 2/3 days. The house belongs to her. She saw the victim getting day by day thin and her abdomen big. One day one Bihari women who is residing near her house told her that perhaps the victim conceived pregnancy and advised her to get her medically examined. Thereafter one day she went to Kheroni Hospital the victim wherein the victim was got medically examined. On examination attending physician informed her that the victim was carrying 6 months pregnancy. Thereafter on being asked the victim informed her that the accused in her absence forcibly started making sexual intercourse with her as a result she became pregnant. The victim also informed her mother

that the accused threatened to kill her if she would inform her about the occurrence. Thereafter she approached to Mahila Samiti and ultimately he lodged a written ejahar with Kheroni P.S. Police got the victim medically examined and her statement recorded in the court. Police also got her statement recorded in the court. The victim gave birth to a steel baby. Police arrested the accused.

10.

PW-4 is Smt. Nikumoni Nath who stated in her evidence that she knows the informant, victim, and the accused. The informant got married to accused with her two daughters from her earlier husband who died already. The informant was staying along with the accused and her daughters in her own house. One day she came to know that the victim was carrying 6 month as declared by physician, the accused came home back and he was apprehended by the local people. About 2 months back from the date on which the accused was apprehended, he left the house. The accused disclosed before her and the local people who assemble in the house of the informant that he made forcibly sexual intercourse with the victim for several times. At the time of occurrence the victim girl was 14/15 years old.

11.

PW-5 is Purobi Bordoloi who stated in his evidence that he knows the informant, victim and the accused. The informant got married to accused with her two daughters from her earlier

husband who died already. The informant was staying along with the accused and her daughters in his own house. The occurrence took place in the year 2013. When it was revealed that the victim was carrying pregnancy, on being asked by the villagers , the victim disclosed that the accused made sexual intercourse with her forcibly for several times as a result she became pregnant. At that time she was also present. The victim told them that the accused threatened to kill her if she would disclose the matter to anybody else. When the accused was apprehended by the local people, he disclosed before them that he made sexual intercourse with the victim for several times. The victim gave birth to a steel baby. At the time of occurrence the victim girl was about 13 years old.

12.

PW-6 is Rokhila Marak who has stated in her evidence that she knows the informant, victim and accused. The informant was got married to accused with her two daughters from her earlier husband who died already. The informant was staying along with the accused and her daughters in his own house. While it was revealed that the victim was carrying 6 months pregnancy, the informant told her that by the accused the victim became pregnant. The victim gave birth to a steel baby.

13.

For attracting the section 6 of the POCSO Act, the victim needs to be below 18 years as section 2 (1)(d) of the Act. While the ejhar was lodged, the victim was carrying 6 months pregnancy. The

concerned investigating officer got the victim medically examined in order to ascertaining her age. Ext-1 is the medical report of the medical officer who examined the victim which shows that the medical officer could not examine her as she was carrying pregnancy. The victim marked as PW-2 has stated in her evidence that she was 13 years old at the time of occurrence. Supporting evidence of the victim regarding her age, PW-5 who is the neighbourer of the informant has stated that at the time of occurrence the victim was 13 years old. PW-4 who is the immediate neighbourer of the informant has stated in her evidence that at the time of occurrence the victim was 14/15 years old. No birth certificate of the victim has been submitted. The evidence of informant mother is silent that at the time of occurrence the victim was 13 years old. There is no dispute that the mother of the victim lodged the ejahar where in she stated that at the time of occurrence, the victim was 13 years old. That apart she stated the same in her statement recorded investigating officer. She is a rustic illiterate woman. Certainly due to nervous she forgot to depose in her deposition that at the time of occurrence the victim was 13 years old. The defence has not disputed evidence of the victim that at the time of occurrence she was 13 years old. That apart her aforesaid evidence has been corroborated by the evidence of PW-4 and PW-5. PW-4 and PW-5 are immediate neighbourers of the victim. The victim has been being raised before their eyes. For the reasons that above, it can be

held comfortably that at the time of occurrence, the victim was below 18 years.

14.

It is evident that the occurrence took place within four walls of the house belonging. The accused is the step father of the victim and her informant mother got married to the accused with her and her sister. The informant had to go out from the house keeping her two daughters in the house relying upon the victim being deemed father. Sometimes the informant had to come home back in late night or to spend the night in the working place. The matter came to the knowledge of the informant when the victim was carrying 6 months pregnancy. In this case, the victim is most vital witness and entire prosecution case lies on her testimony.

15.

The victim has stated in his testimony the entire facts very vividly that the occurrence took place about 3 years back on a night. At the time of occurrence her mother was in the house but only she and the accused were there. After taking meal she went for sleeping. She went to deep sleeping. On awaking she found the accused on her bed and her pant being removed. The accused seeing me awaken pointing knife threatened to kill if she would raise shouting and as such out of fear she remained silent. There after the accused removed his pant and penetrated his penis into her vagina and went away. Again after one hour the accused came to her bed while she was sleeping. On awaking she found the accused removing her pant

and again he penetrated his penis to her vagina. In this way the accused started making sexual intercourse with her against her will forcibly as a result of which she became pregnant. She gave birth to a steel baby. She refrained from disclosing the matter to her mother as the accused threatened to kill her if she would disclose her mother. The statement of the victim was got recorded in the court where she gave similar story.

16.

PW-3 is the mother of the victim and informant. Her evidence shows that The victim girl is her daughter from her earlier husband who already died. The accused is her second husband. He got married with the accused on death of his earlier husband with two daughters from his side. Her daughters used to sleep on a separate bed in a separate room for 2/3 days. The house belongs to her. She saw the victim getting day by day thin and her abdomen big. One day one Bihari women who is residing near her house told her that perhaps the victim conceived pregnancy and advised her to get her medically examined. Thereafter one day she went to Kheroni Hospital the victim wherein the victim was got medically examined. On examination attending physician informed her that the victim was carrying 6 months pregnancy. Thereafter on being asked the victim informed her that the accused in her absence forcibly started making sexual intercourse with her as a result she became pregnant. The victim also informed her mother that the accused threatened to kill her if she would inform her about the occurrence.

17.

From the evidence of the victim it is revealed that she refrained from disclosing the matter to her mother as the accused threatened her to kill her if she would disclose the same to anybody. A female child of 13/14 years old easily cannot muster courage to disclose any occurrence like the occurrence in question. It cannot be said that as the victim refrained from disclosing the matter for long six months, she was consenting. Considering nature of the fact and circumstances of the instant case I am convinced to hold that out of fear and shame the victim refrained from disclosing the occurrence to her mother and as such on the ground of delay in disclosing the occurrence, the prosecution case cannot be disbelieved and thrown out out-rightly.

18.

The evidence of the informant mother shows that while she came to know from the physician that the victim was carrying six month pregnancy, on being asked the victim informed her that in her absence the accused started making sexual intercourse with her forcibly. There after she approached to Mahila Samiti. Evidence of PW-4 shows that while the victim was carrying six months pregnancy, the accused left the house and came home back after two months. The accused was apprehended by the local people and at that time he disclosed that he made sexual intercourse with victim forcibly for several times. Similarly PW-

5 has stated in her testimony that while the accused was apprehended by the local people, he disclosed before her and others that he made sexual intercourse with the victim for several times. The accused has stated in the statement recorded under section 313 CrPC that the victim made him compelled to make sexual intercourse for one time against his will. The said statement shows that the accused made sexual intercourse with the victim. But his version that the victim compelled him to make sexual intercourse with her. It is corroborative evidence that the accused made extra-judicial confession.

19.

What the Hon'ble Apex Court holds in the case of **Kumar v. State of T.N. reported in " (2013)**12 SCC 699" in respect of extra judicial confession is reproduced below- "16. The law is well settled as to what extent extra-judicial confession can be relied on. If the same is voluntary and made in a fit state of mind, it can be relied upon along with other materials. It is true that the extra-judicial confession is a weak type of evidence and depends upon the nature of circumstances like the time when the confession was made and the credibility of the witnesses who speak to such a confession."

20.

In the case of **Sahadevan v. State of T.N.** reported in " (2012) 6 SCC 403" in respect of extra judicial confession it is held thus- "14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due

appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and corroborated is prosecution evidence. If, however, the extrasuffers from iudicial confession material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In circumstances, the court would be fully justified in ruling such evidence out of consideration."

21.

There is no evidence on record showing that the accused was assaulted by the villagers after his apprehending and as such it can be presumed that the accused voluntarily confessed before PW-4, PW-5 and others that he made sexual intercourse with the victim forcibly for several times. It is found that the extra-judicial confession finds corroboration.

22.

Regarding credibility of the child witness it has been observed by Hon'ble Apex Court in the case law of Raj Kumar V State of MP reported in " (2014) 5 SCC 353" thus:-" Evidence of child witness must be evaluated carefully and with more areater circumspection because a child is susceptible to be swayed by what others tell him." Similarly the Hon'ble Apex Court has also observed in case of Alagupandi V State of TN reported in " (2012) 10 SCC 451" thus:-" While assessing evidence of child witness, court must carefully observe his/her demeanour to eliminate likelihood of tutoring. Conviction can be allowed to stand without any corroboration but as a rule of prudence it is always desirable to seek corroboration of such evidence from other reliable evidence on record.

23.

The informant has stated in her testimony that at the time occurrence she had to stay in the house where she worked for 2/3 days. The facts remains that the accused taking advantage of absence of the informant made sexual intercourse forcibly with the victim on threat. There is evidence that the victim gave birth to a steel baby. In such a case court can convict the accused on the sole evidence of the victim child if it inspires the confidence of the court. In this regard I would like to refer to the case of Narender Kumar v. State (NCT of Delhi) reported in "(2012) 7 SCC 171" and relevant paragraph re-produced its is below:-"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts

circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case." Taking all aspects into consideration I find no way to disbelieve the evidence of the victim.

24.

In this case the prosecution could not examine the investigating officer in-spite of sufficient opportunities allotted. In the instant there is no contraction which needs to be confirmed by examining the investigating officer. Nothing was seized in connection with this case which needs to be proved by the investigating officer. For the reasons stated above no dent resulted in the prosecution case.

25.

Aggravated penetrative sexual assault is defined in the section 5 of the POCSO Act which reads thus:-" **Aggravated** penetrative sexual assault.-a. Whoever, being a police officer, commits penetrative sexual assault on a child within the i. limits of the police station or premises at which he is appointed; or ii. in the premises of any station house, whether or not situated in the police station, to which he is iii. in the course of his appointed; or duties or otherwise; or iv. where he is known as, or identified as, a police officer; or

whoever being a member of the armed b. forces or security forces commits penetrative sexual assault on a child- i. within the limits of the area to which the person is deployed; o in any areas under the ii. command of the forces or armed forces; o iii. in the course of his duties or otherwise; or iv. where the said person is known or identified as a member of the security or armed forces; or c. whoever being a public servant commits penetrative sexual assault on a child; or d. whoever being on the management or on the staff of a iail, remand home. protection home. observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody care and protection; whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or f. being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or g. whoever commits gang penetrative sexual assault on a child. Explanation.- When a child is subjected to sexual assault by one or more persons of a group in furtherance of their intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or h. whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance: or i. whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or whoever commits penetrative sexual assault on a child, whichi. physically incapacitates the child or causes the child to become mentally ill as defined under clause (I) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily permanently; or ii. in the case of female child, or makes child the pregnant as consequence of sexual assault iii. inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform

regular tasks: or k. whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or l. whoever commits penetrative sexual assault on the child more than once repeatedly; m. whoever commits penetrative sexual assault on a child below twelve years; or whoever being a relative of the child n. through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or o. being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or p. whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or q. whoever commits penetrative sexual assault on a child knowing the child is pregnant; orr. whoever commits penetrative sexual assault on a child and attempts to murder the child; or s. whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; t. whoever commits or penetrative sexual assault on a child and who

has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or u. whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault

26.

It is evident that because of sexual intercourse, the victim became pregnant and that she gave birth to a steel baby. It is also evident that the accused made sexual intercourse with the victim for several times.

27.

The section 6 of the POCSO Act relates to punishment for committing aggravating penetrative sexual assault which reads thus-:"6. Punishment for aggravated penetrative sexual assault.-Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

28.

Under section 29 of the POCSO Act, 2012 the court can draw presumption that the accused person was involved in the occurrence in question if the defence fails to prove contrary to the fact where upon the prosecution relies. The said section reads thus:-"29. Presumption as to certain offences.-Where a person is prosecuted for

committing or abetting or attenuating to commit any offence under sections 3,5,7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved." In the instant case the defence has only taken plea that he was no way involved in commission of alleged occurrence. In the instant case the defence the defence has failed to bring the contrary to the prosecution version.

#### **Order**

29.

In the result, I find the accused Sri Wilson Sangma guilty under section 6 of the POCSO Act and accordingly he is convicted.

30.

On the point of sentence, the accused is heard and to that effect his statement is recorded where he has prayed for leniency in sentencing him.

31.

It has been argued by the learned defence counsel that it is a fit case where the court can shower leniency in sentencing the accused person. On the other hand the learned Public Prosecutor has submitted that in the instant case the accused deserves to be punished with life imprisonment and huge fine.

32.

It is a case of a female child having aged about 13/14 years who became pregnant before her marriage. She carried her unexpected pregnancy till giving birth to a steel baby. It is so hard job for female having age of 13/14 years to carry a pregnancy. It was the accused person who snatched away her entire beautiful childhood. It is not easy for a rape victim to spend her life after the occurrence in context of feeling and attitude of Indian society.

33.

Regarding object of the POCSO Act, the Hon'ble Apex has observed in case of **Eera v.** State (NCT of Delhi) reported in "(2017) **15 SCC 133"** thus :-"20. The purpose of referring to the Statement of Objects and Reasons and the Preamble of the Pocso Act is to appreciate that the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and wellbeing are regarded as being of paramount importance at every stage to ensure the

healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing childfriendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the Pocso Act.".

34.

It appears that the female child is not at all protected in their house also and they become victimized in the hands of their own nearest relatives. To curve sexual atrocity inflicted upon child this legislation has been brought as reflected from the observation made in the above case laws. The accused appears to be a person having of 56 years. In Garu Community women are dominating role. The accused has nothing to lose.

35.

Taking all aspects into consideration I order the accused person Shri Wilson Sangma to suffer RI of 10 years and to pay fine of Rs. 25000/-i/d SI for 2 years. Set off his earlier detention period. Let the fined money be paid to the victim if realized. Let a certified copy of the order and Judgment be supplied to the accused person at free of cost. Let a copy of this Judgment be furnished to the District Magistrate, Diphu Karbi Anglong in terms of section 365 of the CrPC.

36.

It is not a fit case wherein the victim deserves to be awarded with compensation for immediate rehabilitation as per section 33(8) of the POCSO Act. However for her rehabilitation she needs strong financial assistant. State has failed to protect small helpless girl who lost the shadow and affection of her father while she was infant. Now the State needs to come forward to compensate she suffered. Hence I do hereby recommend adequate compensation to be paid to the victim through her informant mother under the Victim Compensation Scheme as laid down in the section 357 A of the CrPC after due inquiry by DLSA, Karbi Anglong, Diphu. Inform accordingly.

37.

Given under my hand and seal of the Court on this  $14^{\text{th}}$  September, 2018 at Diphu, Karbi Anglong.

## Dictated and Corrected by me

(Md. A.U.Ahmed, AJS)

(Md. A.U.Ahmed,

AJS)

Special Judge

Special Judge

#### **APPENDIX**

**Prosecution Witnesses** 

**Prosecution Exhibited** 

PW-1 is Dr. Kari Kropi

Ext-1 Medical Report

PW-2 is Purnima Sangma

<u>Defence Exhibited:</u>

<u>Nil</u>

PW-3 is Malika Sangma

PW-4 is Nikumoni Nath

PW-5 is Purobi Bordoloi

PW-6 is Rokhila Marak

<u>Defence Witnesses: Nil</u>

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(Md. A.U Ahmed, AJS)

Special Judge, Karbi Anglong, Diphu