Special Case No.32/2017

State of Assam
Versus
Md Amzad Ali Accused

Present: Smti M. Thakuria, M.Sc, LLB, Special Judge, Kokrajhar

Ld. advocate for the State : Mr M.K.Ghose, Special P.P.

Ld. advocates for the accused: Mr P.S.Purkayastha and

Mr A.R.Mondal

Evidence recorded on :17.5.18, 02.7.18, 25.7.18, 13.9.2018,

10.10.18, 12.12.18, 02.02.19, 30.4.19,

31.5.19 and 13.6.2019.

Argument heard on : 18.7.2019, 02.8.2019 and 17.8.2019

Judgment delivered on: 27.8.2019

J U D G M E N T

1. The prosecution initiated the case on receipt of the first information report lodged by the informant Mosstt Mursida Bibi against her husband Md Amzad Ali alleging that on 10.9.2017 at about 11 A.M. her husband was sexually assaulting her own minor daughter and when she saw the incident accused left his daughter and went outside the house. On enquiry her daughter reported that the accused had sexually assaulted her with threatening to kill her if she does not allow him to fulfill his wish. It is further alleged that prior to the said incident also the accused had committed the same nature of misdeed with his own daughter in two days and hence, the first information report.

- 2. On receipt of the first information report in Salakati Police Out Post the same has been sent to the Officer-in-charge of Kokrajhar P.S. for registration of the case making Salakati O.P. GDE No.576 dated 21.9.2017. Accordingly the case has been registered as Kokrajhar P.S. case No.589/2017 under section 4 of the Protection of Children from Sexual Offences Act and case was endorsed to S.I. Sri Ritul Moni Das for investigation. During investigation the I.O. visited to the place of occurrence and recorded the statement of the witnesses, arrested the accused, medically examined the victim, her statement recorded under section 164 Cr.P.C., sent the wearing apparels of the accused and victim to FSL and after ascertaining the minor age of the victim, the charge sheet has been filed by the I.O. under section 4 of POCSO Act against the accused Md Amzad Ali. Relevant copies also furnished to the accused person and framed the charge under section 4 of POCSO Act against the accused finding a prima-facie case. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 3. But, while writing the judgment it has come to the notice that charge ought to have been framed under section 6 of the POCSO Act as the allegation of sexual assault brought against the father of the victim. Accordingly the charge is altered under the provision of section 216(1) Cr.P.C. and charge is framed under section 6 of the POCSO Act. The charge is accordingly read over and explained to the accused to which he pleaded not guilty. Both the prosecution and the defence side are also given chances for adducing evidence in fresh in respect of altered charge. But, both the parties declined to adduce evidence and hence argument heard afresh and judgment is prepared accordingly.

4. The prosecution side examined as many as 19 (Nineteen) number of witnesses including the informant, victim, M.O. and I.O. as follows:-

PW 1 Md Haider Ali,

PW 2 Md Amir Ali,

PW 3 Musstt Resmina Khatun Victim),

PW4 Md Jafar Ali,

PW5 Md Rahim Ali,

PW6 Md Samsul Hoque,

PW7 Md Kudus Ali,

PW8 Mosstt Mursida Bibi (Informant),

PW9 Md Pagaira Sk.,

PW10 Mosstt Abiran Bewa,

PW11 Md Tumser Ali,

PW12 Md Fulsan Ali,

PW13 Md Jaidul Ali,

PW14 Md Azad Ali,

PW15 Md Selim Sk.,

PW16 Md Samad Ali,

PW17 Dr Monisha Boro Phukan (M.O.),

PW18 Smti R.Bora Handique (Scientific Officer) and

PW19 S.I. Ritul Moni Das (I.O.)

5. The accused person took the plea of total denial while recording his statement under section 313 of Cr.P.C. and declined to adduce any defence witness in support of his case.

6. **Point for determination:**

Whether the accused committed the offence of penetrative sexual assault to his own minor daughter?

Discussion, Decision and Reasons thereof:

- 7. After thorough perusal of the case record, evidences of prosecution witnesses and hearing argument from both the parties, I have decided the case as follows with my reason thereof:-
- 8. The first information report of the case is lodged by Mosstt Mursida Bibi against her husband Md Amzad Ali alleging that on 10.9.2017 at about 11 A.M. her husband was sexually assaulting her own minor daughter and when she saw the incident accused left his daughter and went outside the house. On enquiry her daughter reported that the accused had sexually assaulted her with threatening to kill her if she does not allow him to fulfill his wish. It is further alleged that prior to the said incident also the accused had committed the same nature of misdeed with his own daughter in two days.
- 9. The informant also adduced her evidence as PW8 and narrated the same story corroborating her statement made in the first information report. As per her she was not present in her house and at that time she visited to tea stall to have a cup of tea. But, when she returned home and about to enter her house by keeping the curtain aside she saw the accused and he immediately went away from the house and then she saw that her daughter was not wearing panty and cleaning her vagina with a cloth. On enquiry she reported that her father (accused) entered his penis into her vagina closing her mouth and she felt pain though the accused did not enter his penis fully but, he poured smear on her vagina. She then enquired the matter with the accused and initially he scolded her very badly. But, thereafter he repented and begged apology from her. But, she reported the entire incident to her in laws and they asked her to leave the house along with her three daughters. After one week the accused again returned to his village and then there was a bicher held in

the village. But, during the proceeding of the village bicher her mother-in-law Mosstt Hasina Bibi brought the police and accused was accordingly arrested. Thereafter she lodged the first information report. She also gave her statement before the learned Magistrate and accordingly she exhibited her statement as Ext.4. She also claimed her presence at the time of seizure of wearing apparel of her daughter where she put her signature.

- 10. PW3 is the minor victim of this case and after putting some preliminary questions her capacity of undersigned is assessed and accordingly it is found that she has the ability to give rational answer. Thereafter her statement was recorded as witness. She deposed that at the time of incident she was feeding grass to their goats and when she returned home her father asked her to prepare "Chira and Muhri" and accordingly she prepared for her father. Thereafter her father asked her to give massage on his forehead but, while she was massaging her father, he forcefully opened her panty and thereafter opening his lungi he penetrated his penis into her vagina and she got hurt. She tried to restrain her father but, he threatened to kill her and also told her that if she reported the matter to her mother he would strangulate or hang her. But, while he penetrated his penis, her mother saw the incident. She further deposed that prior to the said incident also her father committed the same nature of act with her. Out of fear she could not disclose anything to her mother.
- 11. Coming to the other witnesses it is seen that PW1 claimed his presence at the time of bicher and he also deposed that the informant Mursida Bibi told him and other villagers that her husband tried to commit rape on her daughter. But, there could not be taken any decision in the bicher and the step mother of the accused brought the police and he was arrested. He also gave his statement before the learned Magistrate.

- 12. PW2 also narrated the same story and as per him also the informant reported before them that the accused committed rape on his own daughter. This witness also gave his statement before the learned Magistrate under section 164 Cr.P.C. He also claimed his presence at the time of seizure by police and he put his signature in the seizure list.
- 13. PWs,4 5, 6 and 7 also claimed their presence at the time of village bicher and corroborating to each other have stated that Mursida Bibi (informant) called for a village bicher with the allegation that the accused committed rape on his own daughter. They also heard about the incident from the informant as well as from the victim. But, during the proceeding of the village bicher the police came and arrested the accused.
- 14. PWs9 and 11 also deposed that they heard about the illicit relationship between the accused and his own daughter for which there was village bicher and they also claimed their presence in the said bicher. But, during the proceeding of the bicher the police came and arrested the accused. PW9 also put his signature in the seizure list whereby the police seized wearing apparel of the victim.
- 15. PW10, mother of the accused and PW13 Jaidul Ali did not support the prosecution case and accordingly they were declared hostile by the prosecution. Both PW10 and PW13 deposed that there was quarrel between the accused and informant but, they have not heard anything about the incident.
- 16. PW12 was not present in the meeting as he was working in Kerala but, after returning home he also heard that the accused committed rape on his own daughter.

- 17. PWs14, 15 and 16 also heard about the commission of rape by the accused to his own daughter and they also deposed in their evidences that when the matter was enquired in the bicher, the victim herself stated before the villagers that her own father committed rape on her and at the same time the accused also confessed his guilt and begged apology. PW15 also deposed that the accused repeated the same thing with his own daughter in earlier occasions also and the victim herself brought the allegation against the accused that the accused used to have sexual intercourse with her in earlier 2/3 occasions. PW16 also deposed in his evidence that on the day of the incident the accused tried to have sexual intercourse with the victim by opening her panty etc., when her mother saw the incident and accordingly she reported the incident before the village bicher. As per theses witnesses also police arrived while the proceeding was going on and after confession by the accused he was handed over to the police.
- 18. PWs17, 18 and 19 are the official witnesses i.e. Doctor, Scientific Officer and I.O. respectively. As per doctor (PW17) she did not find any injury mark on the private parts of the victim and hymen was also found intact and accordingly she opined that coitus did not take place. From her evidence it also reveals that the mother of the victim refused to give vagina smear of the victim for examination. PW18 examined one torn red coloured panty with stain of suspected to be blood and semen and also examined one white and green coloured sporting with stain of suspected semen along with one black coloured jean long pant with staining which is also suspected to be semen and as per her report red coloured torn panty gave positive test for human semen. The evidence of Scientific Officer was recorded through V.C. for convenience of the officer.

- 19. PW19 is the I.O. and he deposed that he visited to the place of occurrence on being reported by one Hajera Bibi that her step son Amzad Ali committed rape on his 11 years daughter which is seen by her mother Mursida Bibi and accordingly she also informed that one village bicher was going on in the office of ABMSU. The I.O. made GDE and immediately rushed to the place of occurrence. On his arrival he saw that the bicher was going on and accordingly he recovered the victim, recorded the statement of the witnesses and on that day at about 1.17 P.M. mother of the victim Mursida Bibi lodged the first information report. Thereafter he sent the victim for medical examination, her statement was also recorded under sections 161/164 Cr.P.C. and he seized wearing apparels of both the victim and accused. After seizure wearing apparels, those were sent to FSL for examination. On completion of investigation he found sufficient materials against the accused person under section 4 POCSO Act and hence he filed the charge sheet against the accused person.
- 20. So from the above discussion of the prosecution witnesses, it is seen that PW3 is the victim of the case and PW8 is the informant and mother of the victim who lodged the first information report and brought the grave and nasty allegation against her husband stating that he committed rape on his own daughter. As discussed above, the informant saw the incident when she returning home from the shop and at that time the accused went away from the house and her minor daughter was cleaning her vagina with a cloth. On enquiry she reported that her father penetrated his penis into her vagina and poured semen on her vagina. She also informed that her father repeated the same act with her in earlier 2/3 occasions and threatened her not to disclose anything to her mother otherwise he would kill her or strangulate her and

hence out of fear she could not disclose anything to her mother. Except the victim herself and informant there is no eye witnesses to the incident and in such case generally it cannot be expected to have any eye witnesses. But, the other witnesses i.e. PWs1, 2, 4, 5, 6, 7, 9, 11, 12, 14, 15 and 16 also corroborated and supported the prosecution case to the extent that they had heard about the commission of rape by the accused with is own daughter. The bicher was accordingly held where all these witnesses also claimed their presence. They enquired the matter and heard about the incident from the informant as well as from the victim.

- 21. PWs14, 15 and 16 also claimed that the accused confessed his guilt in the village bicher that he committed rape on his own daughter and this part of evidence of prosecution witnesses could not be rebutted by the defence neither by cross examining the witnesses nor by adducing any rebuttal witnesses. However, PW10 and PW13 did not support the prosecution case and they were declared hostile by the prosecution. For the PW10, it is nothing absurd to deny the prosecution case as she is the mother of the accused. Generally no mother can be expected to say something against her own son or daughter. But, from the discussion of other prosecution witnesses it is evident that there was a village bicher on the allegation of commission of rape by the accused with his own daughter and in the said meeting the accused also confessed his guilt.
- 22. During the course of argument the learned defence counsel raised the following points:-
 - (i) There is no eye witness to the incident.
 - (ii) It is only the informant who told about the incident to all the witnesses.

- (iii) There is no medical evidence of rape in the medical report of PW17 and hymen of the victim was also found intact.
- (iv) No semen was found in the frock of the victim by the Scientific Officer.
- (v) The medical evidence does not support the ocular evidence.
- (vi) There is no mention of size of the panty which give positive test of semen.
- (vii) There is no scientific report that semen found in the panty of the victim is the semen of the accused.
- (viii) The police did not seize lungi of the accused which he alleged to have been wearing at the time of incident.
- 23. So the learned counsel for the accused raised the above mentioned points and has submitted that the mother of the victim is interested witness who reported about the incident to all villagers and all the prosecution witnesses also came to know about the same in the village meeting which was called by the informant. None of the witnesses have seen the occurrence and they heard about the incident only in the meeting where it is claimed that the informant as well as the victim narrated the story before them.
- 24. The prosecution case is that the father of the victim i.e. accused committed offence of penetrative sexual assault with his 11 years own daughter and as soon as the informant entered into the room he immediately left the house and the informant saw her daughter while she was cleaning her vagina with a cloth. On enquiry she reported the entire incident to her mother and also stated that her father had committed the same nature of act with her in earlier two occasions and threatened her to kill by strangulating her if she discloses the matter to her mother. Out of fear she remained silent. This part

of evidence of both the informant and victim remained unrebutted. It is admitted that at the time of incident none of the witnesses have seen the occurrence and it is also not probable to bring any other eye witness by the prosecution as the entire incident happened inside own house of the accused and informant being the wife of the accused entered into the room suddenly and saw the incident. At the time of recording the statement of the accused under section 313 Cr.P.C. he took plea that he had guarrelled with his wife for some monetary dispute and out of angerness he assaulted her and went to Guwahati. But, while he was preparing to go Guwahati, his wife told him that she will take revenge and will teach him a lesson. After 12 days, staying in Guwahati when he returned home his elder daughter informed him that his wife lodged a complaint before ABMSU and they are searching him. When he was going to appear in ABMSU office, his step mother informed the police and all the villagers assaulted him very badly and hence, only to save his life he confessed before the villagers though he had not committed any such offence as alleged. But, the accused did not adduce any evidence to prove his case that a false and concocted case lodged by his wife with such nasty allegation only for the quarrel which took place between him and his wife. So merely statement given by the accused only at the time of recording his statement is not at all sufficient to rebut the evidence of prosecution witnesses and the case of the prosecution. More so it is also not believable that a lady will bring such an allegation of commission of rape against her daughter by her father only to take revenge against her husband for a simple quarrel of monetary dispute. It is well settled principle of law the sole testimony of the prosecutrix can be based for conviction of the accused if it is reliable and inspires confidence.

- 25. The Hon'ble Supreme Court in a case reported in (1983) 3 SCC 217 Bharwada Bhoginbhi Hirjubhai V. State of Gujrat has held that"testimony of victim of sexual assault is vital and unless there are compelling reasons which necessitates looking for corroboration of her statement, the Court should not find difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused when her testimony inspires confidence and found to be reliable. Seeking corroboration of her statement before relying upon the same as rule in such cases amounts to adding insult to the injury".
- 26. Our Hon'ble High Court also in another case reported in **2017 (4) GLT 395 Shiv Charan Talukdar Vs State of Assam** expressed the same view relying on the decision of the Hon'ble Supreme Court reported in **2017 (2) SCC 51 and paragraph 31** of the said judgment reads as follows:-
- "31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondents, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons, which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it

difficult to accept her version, it may seek corroboration from evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated the material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief of suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma V State of H.P.). Notwithstanding this legal position, in the instances case, we even find enough corroborative material as well, which is discussed herein above."

27. Further regarding the acceptance of evidence of child witness a case of Hon'ble Apex Court reported in (2008) 12 SCC 565 Nivrutti

Pandurang Kokate Vs State of Maharashtra can be cited which was relied on the case of Hemmat Sukhadeo Wahurwagh Vs State of Maharashtra (2009) 6 SCC 712 (FB), the Hon'ble Supreme Court of India has held that-

"...... Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and molded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

As per section 118 of the Evidence Act, 1872, all persons shall be competent persons to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions.

- 28. Coming to the medical evidence it is seen that doctor found no injury or mark of violence on the body and private parts of the victim and hymen of the victim was also found intact and thus the doctor opined that there was no sexual intercourse with the victim.
- 29. The learned counsel for the accused submitted that the medical evidence does not corroborate the ocular evidence and as per medical evidence it is very clear that there was no commission of rape on the victim.
- 30. In this regard the learned Special P.P. submitted that to attract a case under section 4 of POCSO Act the extent of penetration is immaterial and it amounts to penetrative sexual assault if the accused entered 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. Accordingly there might not be ruptured of hymen of the victim but only for the said piece of medical evidence it cannot be held that there was no penetrative sexual assault with the victim.
- Now, coming to the evidence of the victim it is seen that she stated that her father penetrated his penis into her vagina and she got hurt. But, she did not say anything that blood came out from her vagina nor she stated there was bleeding from her vagina. But, her evidence to the extent that her father entered his penis into her vagina remained unrebutted.
- 32. The learned Special Public Prosecutor submitted that to constitute a case under section 4 of POCSO Act as well as under section 376 of IPC, complete penetration of penis is not necessary. He further submitted that degree of penetration is not material to constitute a case under section 3 of POCSO Act or to fulfill the ingredient of Section 375 IPC. In this context the learned Special P.P. also relied on the decision of the Hon'ble Apex Court

- 33. Here in the instant also it is admitted that as per medical evidence the doctor did not find any mark of violence on the body and private parts of the victim and hymen was also found intact. Absence of mark of violence is quite acceptable as accused is the father of the victim and it is stated by the victim herself that her father used to have sex with her with threatening that he would kill her if she discloses anything to her mother. In that case absence of mark of violence on the private parts of the victim is quite obvious. More so, the victim did not complain of rupture of hymen for the penetration of penis of her father.
- 34. Section 3 of the Protection of Children from Sexual Offences Act reads as follows:-
 - "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 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."

And as per section 5(n) of the said Act reads as follows:-

"whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child"

- As per the provision of the Act even the manipulation of any part of the body of a child so as to cause penetration would amount to penetrative sexual assault which is punishable under section 4 of the Act. [2017 SCC Gau 576 Sri Kamakhya Roy Vs State of Assam].
- 36. So as per the section 3 (a) even penetration of penis, to any extent, into vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or penetrative sexual assault under this Act.
- 37. It is admitted that there is no eye witness in this case. But, mother of the victim i.e. PW8 claimed that when she entered into the room she saw the accused coming out from the house and her daughter was cleaning her vagina with a cloth and as per the I.O. he seized wearing apparels of the victim and accused and those were sent for examination before the Scientific Officer. PW18 examined wearing apparels of both the accused and victim and accordingly the Scientific Officer opined that one torn red coloured panty gave positive of human semen on examination. But, long pant

of the accused gave negative test for semen. In this regard the learned advocate for the accused raised the point that there is no clarification as to whether panty which gave positive test for human semen belonged to the informant i.e. mother of the victim or victim. But, as per the I.O. he seized the frock and panty of the victim which produced by the informant though the size of the panty was not mentioned by the I.O. However, material exhibit was produced before the court and judicial notice was given and accordingly it is seen that panty which was seized by the police is small panty and it cannot be used by a grown up lady. Further the accused failed to produce any rebuttal evidence in this regard. Another point raised by the learned advocate that the I.O. failed to seize lungi which is alleged to have been wearing by the accused at the time of committing the offence. The I.O. was also crossexamined in this regard and it is stated by the I.O. that at the time of apprehension the accused, he was wearing long pant which was accordingly seized by the I.O. and they could not seize lungi which was used by the accused at the time of committing the offence. It is also seen from the report of PW18 that long pant of the accused with suspected stain of semen gave negative test for human semen. But, presence of human semen on the panty of the victim goes unrebutted. Further the Scientific Officer could not give any opinion as to whether semen which is found in the examination belonged to the accused or not as they were not supplied with any other sample to compare the same.

38. At the time of recording the statement of the accused under section 313 Cr.P.C. the accused took plea that the informant lodged a false and concocted case against him only to teach him a lesson as he slapped his wife

after quarrel with her. But, as discussed above the accused failed to substantiate his plea by adducing any rebuttal evidence or by cross-examining PWs that the victim filed the case against him with such a grave allegation of commission of sexual offence against his own daughter.

- 39. Section 29 of POCSO Act provides for presumption that the accused had committed or abetted or committed the offence of penetrative sexual assault unless the contrary is proved.
- 40. But, here in the instant case the accused could not rebut the presumption in any manner and also failed to prove that the accused has no mental state to do the act as provided under section 30 of POCSO Act. More so he also stated in his statement recorded under section 313 Cr.P.C. that he was compelled to confess before the villagers only to save his life. But, he could not produce any of the person present in the village meeting to say that situation compelled the accused to confess before the villagers in the meeting. PWs14, 15 and 16 claimed in their evidence that the accused confessed his guilt before the village bicher and also begged apology before them. So the question arises as to why all the prosecution witnesses will speak against the accused? PWs14, 15 and 16 will say about the confession of the accused before the village bicher? Further there is no evidence from the accused side that all the witnesses specially PWs14, 15 and 16 deposed against him due to any previous enmity or grudge. Thus, it is seen that the prosecution not only able to establish the case under section 6 of POCSO Act against the accused but there is also evidence of extra-judicial confession by the accused in regard of commission of sexual offence with his own daughter.
- 41. Extra-judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. In order to accept extra-judicial confession, it

must be voluntary and must inspire confidence. If the court is satisfied that the extra-judicial confession is voluntary, it can be acted upon to base the conviction. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra-judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad Vs Naval Dubey and Another (1992) 3 SCC 204, the Apex Court after referring to Piara Singh and Others Vs. State of Punjab (1977)4 SCC 452 held that "the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstances mentioned in the confession must be separately and independently corroborated".

- 42. Here in the instant case the prosecution not only brought the evidence of extra-judicial confession by the accused but also able to produce sufficient corroborative evidence to prove the commission of offence by the accused.
- 43. So considering the detail discussion made above, it is held that the prosecution is able to establish the case against the accused Md Amzad Ali under section 6 of POCSO Act and accordingly the accused is convicted under the said section of law.
- I have considered section 360 Cr.P.C. to release the accused on probation. But, the heinous crime of committing penetrative sexual assault with his own daughter of 11/12 years old shakes our judicial conscience. The offence is inhuman. Rape is not only a crime against the person of a woman (victim), it is a crime against entire society. It destroys the entire psychology of a woman and pushes her into emotional crisis. Sexual violence apart from being dehumanizing act is an unlawful intrusion of right of privacy and sanctity of a female and as such the accused does not deserve such leniency.

- 45. Heard the accused on the point of sentence under section 235 (2) Cr.P.C. which is written in separate sheet and tagged the same with case record. He submitted that he is poor person and has family burden and there is none to look after his old ailing mother who solely depend on him and accordingly, he prays for his release without any sort of punishment.
- 46. The object of the sentence should be to protect the society and deter the criminal. Gravity of the offence, mitigating factors, manner in which the offence was planned and committed, prescribed punishment and the social abhorrence of the offences etc. are indicators for sentencing. Reference in this regard made to the Judgment of the Hon'ble Supreme Court reported in **2016** (16) SCC 441 (Jasbir Singh Vs Tara Singh).
- 47. One of the prime objective of criminal law is imposition of adequate, just and proper punishment which commensurates with the gravity, nature of crime and manner in which the offence is committed. One should keep in mind social interest and consideration of the society while considering the determinative factors of sentence with the gravity of the crime.
- 48. In **Rajendra Prasad Vs State of Uttar Pradesh [(1979)3 SCC 646]** it is held that- "Judges are entitled to hold their own views, but it is the bounden duty of the Court to impose proper punishment, depending upon the degree of criminality and the desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders".
- 49. In the present case the accused is own father of the victim who did not hesitate to commit such an offence with his own daughter. Further it is also established that he committed the same offence earlier in two occasion that too with his own daughter. So considering the entire circumstances of the case, I find that it is a fit case for sentencing the accused with the maximum punishment of imprisonment for life with fine.

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ORDER

- In the result, the accused Md Amzad Ali is hereby convicted under section 6 of the Protection of Child from Sexual Offences Act and hereby sentence with **Imprisonment for life along with a fine of Rs.5,000**/-. In default of payment of fine will undergo **Rigorous Imprisonment for six months.** The period of custody of the accused shall be set off from the period of sentence, if any.
- 51. Free copy of the judgment be furnished to the convicted Md Amzad Ali under section 363 of Cr.P.C. and also a copy of the Judgment be furnished to the learned District Magistrate, Kokrajhar complying the provision of under section 365 of Cr.P.C.

The judgment is delivered in the open court and given under my hand and seal of the Court on this 27th August/2019 at Kokrajhar Court.

Dictated & corrected by me

Special Judge,

Special Judge,

Kokrajhar

Kokrajhar

Appendix

The prosecution witnesses are:

PW 1 Md Haider Ali,

PW 2 Md Amir Ali.

PW 3 Musstt Resmina Khatun (Victim),

PW4 Md Jafar Ali.

PW5 Md Rahim Ali,

PW6 Md Samsul Hoque,

PW7 Md Kudus Ali,

PW8 Mosstt Mursida Bibi (Informant),

PW9 Md Pagaira Sk.,

PW10 Mosstt Abiran Bewa,

PW11 Md Tumser Ali,

PW12 Md Fulsan Ali,

PW13 Md Jaidul Ali,

PW14 Md Azad Ali,

PW15 Md Selim Sk.,

PW16 Md Samad Ali,

PW17 Dr Monisha Boro Phukan (M.O.),

PW18 Smti R.Bora Handique (Scientific Officer) and

PW19 S.I. Ritul Moni Das (I.O.)

<u>The Court Witness is</u>: Nil <u>The Defence witness is</u>: Nil.

The exhibited documents are:

- 1. Ext-1 ... Statement of witness Haider Ali recorded us/164 Cr.P.C.,
- 2. Ext.2 ... Statement of witness Amir Ali recorded u/s 164 Cr.P.C.,
- 3. Ext.3 ... Village bicher proceeding,
- 4. Ext.4 ... Statement of informant recorded u/s. 164 Cr.P.C.,
- 5. Ext.5 & 6...Seizure lists,
- 6. Ext.6AMedical report of victim,
- 6. Ext.7FSL report,
- 7. Ext.8Extract copy of GDE 576 dated 21.9.17,
- 8. Ext.9Seizure list,
- 9. Ext.10Charge sheet,
- 10.Ext.11Sketch map.
- 11.Material Ext.1.. Red colour panty of the victim and
- 12.Material Ext.2 .. Skirt top.

The Defence witness and exhibit: Nil.

Special Judge, Kokrajhar