## Special (POCSO) Case No. 1/15

U/S:4 Of POCSO Act, 2012.

(Arising out of G.R. Case No: 1416/14)

Present: Smti.M. De, AJS.

Special Judge (FTC),

Rangia, Kamrup

State of Assam

- Vs-

Sri Tapash Paul, S/o late Ramani Paul, Vill.- Tulshibari, P.S. – Rangia, Dist.- Kamrup, Assam.

.....accused

For the state: Sri H. Choudhury..... Addl. P.P.

For the accused: Sri. B. Baruah, ...... Advocate.

Date of recording evidence: 20.02.16, 30.03.16, 16.06.17,29.08.17,

22.11.17, 02.06.18.

Date of argument : 24.08.2018.

Date of judgment : 29.09.2018.

## **JUDGMENT**

1. The case of the prosecution as unfolded in the trial can be briefly mentioned as below:

- 2. The complainant, who is the mother of the victim, lodged an FIR on 25.10.2014 stating inter-alia that, on the previous night i. e. on 24.10.2014, accused came to their house and called on the victim and thereafter, committed penetrative sexual assault upon her in the backyard in their house. Thereafter, when the informant called upon the victim then the accused fled away and the victim stated the incident to her. Hence, this case.
- 3. Based on this First Information Report, police registered a case, against the accused person.
- 4. On completion of investigation, police laid charge-sheet against the accused person and forwarded the same to the court of the Ld. SDJM(M),Rangia.
- 5. The Ld. SDJM(M),Rangia however made over the case to the court of the Ld. Judicial Magistrate, Rangia for disposal. The Ld. Court furnished copies to the present accused and having found the offence involved to be triable exclusively by the Court of Sessions committed the case to the Hon'ble Sessions Court, Kamrup, Amingaon. The Hon'ble Session Court, however, made over the case to this court for disposal.
- 6. After receiving the case record on transfer for disposal my learned predecessor after hearing both sides framed charges u/s 4 POCSO Act and same on being read over and explained to the accused pleaded not quilty and claimed to be tried.
- 7. During the course of trial the prosecution side examined in all nine witnesses including the M/O and the I/O. Thereafter the accused was examined u/s 313 Cr.P.C. In his examination aforementioned, the accused denied that he had committed the offence alleged to have been committed by him.
- 8. The defence adduced 2 nos. of defence witnesses in support of the defence case.

9. Argument of both sides heard.

#### **POINTS FOR DETERMINATION:**

**10.** Whether the accused person committed penetrative sexual assault on the victim as alleged u/s 4 POCSO Act?

#### 11. DECISION AND REASONS FOR THE DECISION:

For the sake of brevity and convenience of discussion all the above points are taken up together for determination. It is to be reiterated here that in a criminal case the burden of proof of its case as well as the charge levelled against the accused person lies squarely upon the shoulder of the prosecution which the prosecution shall discharge independently irrespective of the plea of the accused person. It is also to be noted here that the standard of proof is to the extent of beyond all reasonable doubt.

The prosecution, to prove the charges against the accused tendered oral as well as documentary evidence.

To prove the guilt of the accused to the hilt, the prosecution examined as many as PWs including the M/O and the I/O.I have meticulously gone through the entire evidence on record wherein PW1 is the informant Smti Rupali Devnath that is the mother of the victim as well as the informant, PW2 is the victim herself, PW3 is the Anil Devnath, PW4 is Sri Narayan Paul, PW5 is Sri Amar Paul, PW6 is Khitish Paul, PW7 is one Ratan Devnath and PW8 and PW9 were the formal witnesses that is the M/O and the I/O being Dr.R.Chaliha (M/O), and last but not the least is the I/O Homeswar Talukdar.

- 12. Defence also adduced defence evidence that is the accused himself as DW1 and his brother Dulal Paul as DW2.
- 13. **PW1** Smt. Rupali Devnath stated that she is the informant of this case and that at the time of occurrence her daughter i. e. the victim was a minor girl of 14 years of age. She stated that on the day of occurrence i. e. on 24.10.2014, the

Contd. P/4

festival of Kalipuja was taking place and that the victim went to see the Puja alongwith her. Thereafter, the victim asked her the keys of the house for the purpose of changing her dress and she willingly, gave the keys of the house as about ½ an hour has passed, but the victim did not return to the Kalipuja. So, the informant PW. 1 being the mother went to the house but did not find the victim there. At that time two of the victim's friends namely- Parbati Paul and Satna Mollick were also present in the house with her i.e the PW. 1. When the informant asked the two girls about her daughter i. e. the victim's whereabout, then they stated that the accused had taken her with him. Thereafter, PW.1 informant saw the victim coming out from the basti land of their house. When she confronted the victim, then the victim told her that she went out with the accused and when PW.1 scolded her, then the victim started crying and stated to her that accused had sexual intercourse with her at the back of their house and gave her the promise of marrying her, but the accused asked the victim not to say anything to the family members. Thereafter, PW. 1 informed the village men and also the accused's mother and brother. The mother and brother came and stated that the will make the accused to marry the victim by the next morning. But, the next day, when the villagers came, the accused did not come. On enquiry, the family members of the accused stated that accused was in Coach Bihar and would come at about 11.00 p.m. at night. Thereafter, at the time of filing of the ejahar, the accused family members also advised us alongwith the co-villagers to file ejahar against the accused. Thereafter, the ejahar was filed. Ext. 1 is the ejahar and Ext. 1 (1) is the signature of PW.1.

In her cross-examination, PW. 1 stated that she had not given the age certificate of the victim to the police. She stated that she and her daughter, i.e the victim went to see the puja alone. There was no other person accompanying them. PW.1 further stated that she had seen the accused in the Puja Premises. Her daughter i. e. the victim after taking the keys went to the house with her friends

Parbati and Sapna. She stated that near her hose was the house of Haru Deka, Swapan Devnath, Ananta Das and Rina Devnath.

Certain suggestions were put to her mouth that her daughter was more than 14 years of age, that she had the knowledge that her daughter was having love affairs with the accused, that she wanted to give her daughter marriage with the accused, but as the accused did not acknowledge the same, so she had filed this false case, that when she returned home and quarrying about her daughter-victim, she found Swapna and Parbati in her house and she had enquired to them about her daughter, that her daughter was not taken by the accused and did not have any sexual intercourse with her, that the accused did not obstructed the victim from saying the incident to her family members, that she had filed the false case against the accused, that as this was a false case, so the police did not seize anything which she completely denied.

Certain suggestions were also put to her mouth that she had not stated to the police that she did not find Parbati and Swapna sitting at her place, that victim did not accompany her to the Puja Premises, that she had not asked Parbati and Swapna about her daughter's whereabout, that she had not called the mother and brother of the accused, that the mother and brother of the accused did not state to her (PW1) that they would make the accused to marry the victim within next morning, that the accused was in Coach-bihar and that at night at 11 p.m. he would marry the victim were not stated to the police which she denied.

14. PW. 2- the victim-X stated that occurrence took place about one year back from the date of recording the statement. At that time there was the kalipuja festival in their village. She stated that she went to attend the Puja along with her mother. Thereafter, she took keys of their house from her mother and returned home and along with her, her two friends Swapna and Parbati Paul also came. While she was changing her clothes in her house, then accused person came and called her in the

backyard of her house and when she went there, accused promised to marry her and hence she consented and thereafter accused committed rape on her. Thereafter, when her mother called her out, she went to her mother and when she wanted to know the truth the victim told her mother i. e. P.W. 1 that accused had committed sexual intercourse with her. Thereafter, her mother called the villagers as well as the accused and his family members and narrated the incident to them, then the family members of the accused told them that accused would marry her i. e. Victim within the next morning at 10.00 o Clock. But, as the accused did not come, hence this case was filed against the accused. Thereafter, police started investigation and she was medically examined and her 164 Cr.P.C. statement was also recorded by the Magistrate. Ext. 2 is her statement and Ext. 2(1) and Ext. 2(2) are her signature.

- 15. In her cross examination she stated that while she was returning she was accompanied by her friends Sapna and Parbati. She also stated that there was electricity connection in her house. She further stated that when she went to the kali Puja festival she was wearing churidar as well as panty and she stated that accused had opened her pant of the churidar as well as the wearing panty. She also stated that her dress got dirty. She also stated that at the time of occurrence she was a student of class VIII. Innumerable suggestions and suppositions were put to her mouth but she flatly denied the same.
- 16. PW.3- Anil Debnath stated that occurrence took place about one year back. On that day, there was the festival of Kali Puja and he was attending the same. Thereafter, he heard the hulla in the house of the informant and he went there and saw the victim girl there. On enquiry to the victim girl, she stated to him that accused had raped her. She was also crying. Thereafter, immediately he i. e. the PW. 3 called the accused's mother and brother and they informed him that they would come on next day alongwith the accused. But, the next day, they never came and thereafter, case was filed. He further stated that he had not seen the accused.

In his cross-examination, he stated that Bimal Paul is known to him and that the informant is his maternal aunt (mami). Certain suggestions were put to his mouth that the victim PW. 2 has not stated to him that accused has committed raped upon her and that he was told lies, that he did not call the accused's mother and brother and that they did not tell to him that they would bring the accused and give him in marriage to the victim and that PW. 3 has given all false statement, that the informant had earlier a case against Bimal Paul as he had not married her daughter i. e. the victim and that she had expressed all false news in the village and to hold the village meeting, that in the said meeting she i. e. the informant tried to give the victim in marriage to Bimal Paul as she failed in her attempt, so she conspired against this instant accused and filed this false case, that PW. 3 had stated false statement as he was related to the informant and the victim, that no any occurrence took place on the fateful night.

17. PW. 4 Narayan Paul stated that the accused as well as the informant were known to him. On the date of occurrence there was a festival of Kali Puja and a cultural function was going on and he was present at the Puja. Thereafter, PW. 3 Anil Debnath rang him up and the informant told to him that accused has committed rape upon her daughter- victim. Thereafter he alongwith Bhubaneswar Lahkor, Jatin Kalita, Pankaj Kalita, Kitish Paul went to the house of the informant and found the victim on sitting. On asking her, she stated to them, that accused gave her promises of marriage and thereafter committed sexual intercourse with her. Thereafter, they asked the informant and the victim to take the help of law machinery. He further stated that at that time they searched for the accused, but did not find him.

In his cross-examination, certain suggestions were put to his mouth that he has not stated to the police that he alongwith Bubaneswar Lahkor, Jatin Kalita, Pankaj Kalita, Khitish Paul went to the house of the informant, that when they went to the informant's house they found the victim sitting and on asking her, she told

that accused had sexual intercourse with her, that victim had not stated to him that accused had given her false pretence and committed rape upon her which she denied.

Some other suggestions were put to him that no any village meeting was held and that accused could not be found, that informant had given similar complaint against one Bimal Paul, that as the informant could not give her daughter in marriage to Bimal Paul, hence she filed this false case against the accused, that as he had good relation with the informant, he has deposed falsely on her behalf which he denied.

18. PW.5 Amar Paul he has also stated in the similar tune as PW. 4 stated that when he went to the informant's house on hearing the incident, he saw the victim was sitting and that she had stated to him that accused had committed rape upon her in their backyard and that he did not find the accused in search. Thereafter for the purpose of solving the problems, they called the accused's mother and brother, but they did not appear. Hence, this case.

In cross-examination he had admitted that he has not stated to the police that they had called the accused's mother and brother for solving the problems. It was suggested to him that he has not stated to the police that victim had stated to him that accused committed rape upon her which he denied.

19. PW. 6 Kitish Paul also stated in the same tune of PW. 5 that he was called by PW. 5 Amar Paul. Thereafter, he came to the house of the informant and came to know that accused has committed bad act with her. He further stated that accused could not be found as he was in Coach-Bihar. A meeting was also held, but the mother and brother of the accused came and told that accused was not there. Later on, case was filed against the accused.

In his cross-examination he admitted that he had not stated to the police

that victim told him that accused had committed bad act with her, and that accused Tapash Paul was in Cooch- Bihar ,and that a meeting was held in the presence of the accused's family members. He further stated that Bimal Paul was also know to him and he further stated that about 1 year back victim's mother give a similar case against Bimal Paul and that time also she could not give the victim marriage to Bimal Paul . He further stated that on hearing the incident from victim and victim's mother, he has given his evidence and did not know whether the incident was at all true or not.

20. PW. 7 Ratan Devnath stated that informant is his wife and victim is his daughter and that accused is also known to him. On the fateful night he was in Rangia and informant stated to him over phone about the incident and thereafter he reached home and found a gathering of people in his house at night. Thereafter, his wife told him that accused has committed bad act with his daughter. He stated that he did not asked his daughter and that they did not get the accused. Thereafter, his wife filed this case against the accused.

In his cross-examination he had admitted that he had not told to the police that accused had committed bad act with his daughter and that huge gathering of people was in his house. Certain suggestions were put to him that he was all alone in his house and that no any incident had occurred, and that similar case was filed against one Bimal Paul one year back which he denied.

21. PW.8-M. O. stated that the victim was brought to her for the purpose of examination, wherein she had stated that the age of the victim was above 14 years and below 16 years and exhibited the medical report as Ext. 3 which was signed by Dr. S. Haflagbar, and Dr. P. K. Thakuria whose signature was known to PW. 8.

22. PW. 9- I/O – Sri Homeswar Talukdar stated that on 25.10.2014 while he was working as S.I. in Tulsibari OP, then an ejahar was filed and he recorded the G.D. entry No. 383, dated 25.10.2014 and on the basis of the G.D. entry had taken presteps and thereafter send the ejahar to Rangia P.S. for registration and thereafter he was endorsed with the investigation of this case. He stated that he has visited the place of occurrence, drew the sketch map, had recorded the statements of the victims and others, send the victim for medical investigation and conducted search of the accused, but did not get the accused, had taken 164 Cr.P.C. statement before the Magistrate, thereafter on completion of investigation, submitted charge sheet against the accused. Ext. 4 is the charge sheet and Ext. 4(1) is his signature. Ext. 5 is the sketch map, Ext. 5 (1) is his signature.

In his cross-examination, he has stated that PW. 1 had not stated to him that Parbati and Swapna were sitting, but he stated that PW. 1 stated to him that she met Parbati and Swapna. PW. 1 stated to him that victim accompanied her to the Kali Puja. PW.1 had not stated to him that Parbati and Swapna told her that accused had taken the victim with him. PW. 1 had not stated to him that she had called accused's mother and brother who had stated to her that they would give the accused in marriage with the victim, within the 10.0 Clock in the next morning and that when the accused did not come in the next morning, then the mother and brother of the accused were given time till 1.00 p.m. in the afternoon.

PW. 2 had not stated to him specifically that she was called by the accused and under the betel nut tree accused disrobed her and committed bad act with her. But she had stated that accused committed bad act with her.

PW. 3 had not stated to him that Bhubaneswar Lahkar, Jatin Kalita, Pankaj Kalita and Khitish Paul accompanied him that is the PW3.

PW. 4 had not stated to him that Bhubaneswar Lohkar, Jatin Kalita, Pankaj Kalita, Khitish Paul did not accompanied him. PW. 4 did not stated to him that the victim told PW. 4 that accused induced her and committed rape on her.

PW. 5 did not stated before him that accused called the victim and committed bad act with her. PW. 5 had not state to him that he called the accused's mother and brother for some settlement.

PW.6 did not state to him that victim had stated to PW. 6 that accused committed bad act with her. PW. 6 had not stated to him that victim told PW. 6 that accused was in Cooch-Bihar when PW. 9 searched for the accused. PW. 6 did not state to him that they called the family members of the accused in a meeting.

PW. 7 had not stated to him that his wife told PW. 7 that no bad act was committed on the victim. He came to know of the bad act upon the victim. PW. 7 had not stated to him that the brother of the accused was called. The I/O further stated that he had not taken any school age proof certificate.

TO THE COURT: PW. 9 the I/O stated that in the FIR, it was written that victim was a student of Class-VIII and hence, he has not made investigation regarding the same. He stated that date of occurrence was not informed to him. He further stated that near the house of the informant, were the houses of other people. But in the back-side it was vacant. That the house of the informant was about 50 meters distance from the PWD Road. The place of occurrence was about 300 meters distance from Tulsibari Out Post. That he had not investigated that whether the accused was present in the place of occurrence or not. He had not made any seizure. O/C Rangia P.S. had registered the case U/ s 8 of POCSO Act, read with Section 376(i)/420 of IPC. He stated that he did not submit the charge sheet under POCSO Act. Certain suggestions were put to his mouth that as the age of the victim was more than 18 years, hence he did not file charge sheet under the POCSO Act, that he had been influenced by the false ejahar of the informant and filed the charge sheet, he had perfunctorily conducted the investigation.

23. DW. 1 accused Tapash Paul deposed that informant was known to him and this false case was registered against him. He further stated that in the year 2014, five days prior to the Kali Puja and 3 days after the Kali Puja, he was in Tangla house of his elder brother Dulal Paul and his brother used to celebrate Kali Puja in a big way. He further stated that every year during Kali Puja he remains with his brother in Tangla and that year also i. e. 2014 was in Tangal attending Kali Puja in his brother's house. He stated that on 28.10.2014 he was in Tangla. He further stated that in the year 2013 the victim was to get married to one Bimal Paul, but Bimal Paul objected to marry the victim and regarding the same, the informant held a village meeting wherein he i. e. the accused had supported Bimal Paul and hence, this false case was filed against him. He further stated that the age of the victim is presently i. e. in the year 2017 25 years. He stated that he and the victim used to study in Tulshibari School together and that when he was in Class-VIII victim studied in Class-IV. Thereafter, the victim failed in Class-IV and left study and thereafter pursued study in a different school. He further stated that he was no way connected with this case and that he never had any relation with the victim earlier or at present. Indrajit Das accompanied him to Tangla in the year 2014 and three days after Kali Puja, Indrajit Das came back. Thereafter, he came back to Rangia. He further stated that he is based in Tangla but he moves to and fro to Rangia. He stated that he had taken Bail in Rangia Court and thereafter he went to the Police Station.

In his cross-examination he stated that his house is at a distance of ½ kilometres from the house of informant. He further stated that victim his still unmarried. Certain suggestions were put to him that he had love affair with the victim, that she was 14 years of age which he denied. He further stated that victim left her studies about 9 years back from the date of deposition of evidence.

TO THE COURT :- The accused DW. 1 stated that he did not know educational qualification of the victim. He further stated that the Kali Puja was on

27.10.2014. He further stated that case was lodged next day of Kali Puja. He stated that his brother works as a tailor and he has three machines and that his brother has a three room house. Five days prior to the Kali Puja, he bought fruits. He used to work in the tent house. Tailoring shop was open. He was present in the Puja. His accomplish also marketed fruits and 150 people gathered in the puja. That he was not accompanied by any brother. His second brother used to stay at home and was a cultivator. The Puja was held in between his house and the victim's house. He further stated that he does not stay in Tulsibari Puja. In the meeting that was held regarding Bimal Paul, he supported Bimal Paul.

24. DW. 2 —Dulal Paul stated that accuse is his younger brother and house of the informant was near their Tulsibari house. He stated that he had been staying in Tangla for the last 25 years. He further stated that every year he celebrates Kali Puja and the accused used to attend the Kali Puja about 4/5 days prior to the Puja and after completion of Puja, he is to stay for 4/5 days and thereafter used to go back to Rangia. In the year 2014 also accused went to Tangla 4/5 days prior to the Puja and after three days of the Puja while he was in Tangla their other brother Manik Paul informed over phone telephone that informant has lodged the case against the accused. He further stated that at that point of time accused was in Tangla and thereafter, accused came to Rangia Court and secured bail.

In his cross-examination he stated that he did not know why the informant lodged this case against his brother and why she had not lodged any case against any other person.

For the purpose of appreciation of the evidence, let us first take the evidence adduced by the victim. It transpires from the cross examination of the victim PW2 that accused opened the wearing apparel of the victim and thereafter committed the act and this fact of the commission of the bad act was reiterated by the victim PW2 to the I/O. Moreover, in the history narrated by the victim to the

M/O that is the Ext 3 she stated that the accused pressed her face with a handkerchief and then the accused opened up her wearing pant of the churidar and the panty and thereafter committed the sexual act with her. In her 164 Cr.P.C statement before the Magistrate that is the Ext 2 she stated that the accused had raped her in the daytime on the promise of marriage at her home when she was all alone and thereafter again in the evening on her returning from the "mela" accused called on her and committed rape on her and when she screamed then the accused pressed her face with a handkerchief. It is seen that on all vital points of her repeated examinations her evidence remained intact and un-impeaching.

From the above it appears that in cross examination except confronting her that is the victim with some suggestions, no material contradiction or omission or discrepancy has been extracted by the defence to demolish the credibility of the P.W.2 victim as a reliable witness. Her evidence on oath completely lends corroboration to her earlier statements i.e. the Ext. 2 which is the statements made before the Ld. Magistrate u/s 164 Cr.P.C in material particulars.as well as the Ext 3 that is the medical report. The un-rebutted testimonies of the P.W.2 free from any material contradiction, omission and discrepancy gives no room for disbelieving her. It is the plea of defence of the accused that the P.W. 1 filed this false case against the accused as she wanted the victim to get married to him. But to prove such fact no iota of evidence is there in the case record.

Another plea of alibi taken by the accused was that at the time of the occurrence he was in Tangla attending Kali Puja festival in his brother's place as stated by the accused as DW1 and it was reiterated or rather parroted by the Dw2 another brother of the accused. But while appreciating the evidence of the PWs as a whole it came out that when after the commission of the offence came into light and the householders of the accused were confronted by the PW1 and the others then the householders of the accused stated that the accused went to Siliguri and that they would give the accused in marriage to the victim the next morning of the

date of occurrence. Hence such shift of stance regarding the place where the accused had gone only confirm the fact that accused had in fact committed the offence and thereafter fled away.

When the accused took the plea that he has been falsely implicated by the prosecution it was the bounden duty of the accused to bring in record a probable case to presume that there was genuine ground for the P.W. 1 and the PW2 or the prosecution to implicate him falsely. Even if for argument sake it is believed that the victim has falsely implicated the accused then the logical question that comes to the mind of any person of ordinary prudence as to why only the accused has been implicated and not any other person? This question is without any answer. No enmity or stained relationship of the accused with the P.W.2 or her family members is in record to show, even remotely, that there was genuine ground for the P.W. 2 or her family members to falsely implicate him. So it appears that there is no ground to disbelieve the testimonies of the P.W. 2.

19. In a criminal case direct and eye witness evidence weigh much in the eye of law compared to indirect or circumstantial evidence in determining the guilt or innocence of the accused. In this case the accused is levelled with the charges U/S 4 of the POCSO Act. In such a case the most important prosecution witness is none other than the prosecutrix/victim herself as from her mouth comes direct account of the occurrence.

# 25. In its decision reported in the **AIR 1983 S.C. 753 the Hon'ble Supreme Court observed** :

"corroboration is not the sine quo non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a general rule is adding insult to injury. Why should the evidence of a girl or the woman who complains of rape or sexual molestation be viewed with the spectacles fitted with lenses tinged with doubt, disbelief or

suspicion? To do so is to justify the charge of male chauvinism in a male dominated society". The settled principle of law is that conviction can be based on testimony of sole witness provided he is wholly reliable.

26. It is not the quantity but the quality which is relevant. Evidence is to be weighted not counted.

# Hon'ble Apex Court in 2008 Cri. L.J.1023 (S.C.) held as follows:

"On the basis of a solitary evidence conviction can be maintained Sec. 134 of Evidence Act clearly states that no particular number of witnesses is required to establish the case. Conviction can be based on the testimony of a single witness if he is wholly reliable, corroboration may be necessary when he is only partially reliable. If the evidence of unblemished and beyond all possible criticism and the court is satisfied that the witness was speaking the truth then on his evidence alone conviction can be maintained."

In the case of State of Punjab-Vs-Gurmit Singh and Others (AIR 2010 SC 1) The Hon'ble Apex Court held that:

" In this regard, the most celebrated observations of Justice Vivian Bose in the case of Rameshwar v State of Rajasthan MANU/SC/0036/1951 :AIR 1952 SC 54 may be quoted:

The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as are matter of prudence, except where the circumstances made it safe to dispense with, must be present to the mind of the judge .............

"It is also matter of common law that in Indian society any girl or woman would not made such allegations against a person as she fully aware of the repercussions flowing therefrom. If she found to be false, she would be looked by the society with contempt throughout her life. For an un-married girl it would be difficult to find a suitable groom. Therefore, unless an offence has been really

committed, a girl or a woman would be extremely reluctant even to admit that such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.

Thus, in a case of rape, testimony of a prosecutrix stand as per with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible."

- 26. In view of the above observation of the Apex Court I hold the testimony of the prosecutrix to be truthful and sacrosanct. And her solitary testimony alone can form the basis of conviction.
- 27. Moreover, under section 29 of the POCSO Act, when a person is prosecuted for committing or abetting or attempting to commit any offence under section 3,5,7 and 9 under 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 or the contrary is proved.
- 28. Here in this case at hand, it is seen that the victim is a young girl between that age of 14 to 16 years of age and that she was a student of class VIII at the time of the occurrence. Evidence also show as to how the accused person with the promise of marriage, inspite of the victim resisting took her consent and there after committed rape on her by pressing a handkerchief on her face. But it is to be noted that the victim being a minor girl her consent has got no value. Evidence also reveal that when the mother of the victim called her then the victim told her mother i. e. P.W. 1 that accused had committed sexual intercourse with her.
- 29. Moreover, under section 30(1) and 30(2) of the POCSO Act,
  - (i) 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.

(ii) For the purpose 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.

In the present case at hand, it can be presumed that the accused had the culpable mental state at the time when he gave false promises of marriage to the victim and after gaining her over, she being a girl of tender impressionable age, he committed the act with her.

The defence cited certain citations being:

- (i) 2010 (1) SCC 742 Sunil Vs. State of Haryana regarding the age of the victim.
- (ii) 2014 (11) SCC 355 Jumni & Ors. Vs. State of Haryana regarding the plea of alibi.
- (iii) 2012 (7) SCC 171 Narendra Kr. Vs. State (NCT) of Delhi regarding corroboration of evidence.

Perused the above citations and it can be stated that facts and circumstances in each of the cases differ and are different from that of the present case at hand .

- 30. Hence, it can be summed up that the prosecution has been successful to prove the charges U/S 4 of the POCSO Act against the accused beyond all reasonable doubt. As such the accused is found guilty of the offence on that count.
- 31. The offence committed by the accused is heinous in nature, and, if any leniency is shown to him, then people's confidence in our law enforcing mechanism will be shaken.

Heard the convict on the point of sentence.

The convict prayed for leniency being the sole bread earner of his family.

#### 32. **ORDER**

Therefore considering all aspects, accused Tapas Paul is sentenced to undergo R.I for 7(seven) years and to pay a fine of Rs10,000/- i/d to undergo S.I for another 1(one) year for committing the offence u/s 4 of the POCSO Act .

However, the period of detention undergone if any, during the trial and investigation period are set off against the term of conviction imposed u/s 428 Cr.p.C.

Convict Tapash Paul is taken into custody and remanded to jail hazot for serving out the sentence.

Judgment is pronounced in open court in presence of the accused person. Furnish a free copy to the convict immediately.

Send a copy of the judgment to the Hon'ble District Magistrate, Kamrup, Amingaon as per provision of Sec 365 Cr.P.C.

Given under my hand and seal of this Court on this 29<sup>th</sup> day of September, 2018.

(Smti.M. De),
Special Judge,(FTC)
Kamrup,Rangia.

Dictated and corrected by me.

Smt. M. De, Special Judge, (FTC), Rangia.

# **Appendix**

# **Prosecution witnesses**

- P.W. 1 Smt Rupali Devnath,
- P.W. 2- Victim,
- P.W. 3- Sri Anil Devnath
- P.W. 4- Sri Narayan Paul
- P.W. 5- Sri Amar Paul
- P.W.6 Sri Khitish Paul,
- P.W.7 –Sri Ratan Devnath
- PW.8- Dr. R. Chaliha, (M/O)
- PW.9- Sri Homeswar Talukdar (I/O)

# **Prosecution Exts.**

- Ext. 1 is the FIR.
- Ext. 2- is the statement of victim
- Ext. 3 is the medical report
- Ext. 4- is the Chrage sheet.
- Exts. 5- is the Sketch map.

## Defence evidence.

- DW. 1- Sri Tapash Paul,
- DW.2- Sri Dulal Paul
- **Defence exhibit :- Nil.**

Special Judge Kamrup, Rangia.