

IN THE COURT OF ADDL. SESSIONS JUDGE–CUM– SPECIAL JUDGE (POCSO) Morigaon Present: Smti. N.A. Ahmed, Addl. Sessions Judge-cum-Special Judge (POCSO), Morigaon Date of Judgment: 27.08.2024 POCSO Case No.167 of 2022 Jagiroad PS case No. 273/2022	
COMPLAINANT: ASMR010019162022 	State of Assam
REPRESENTED BY	Sri Ajit Bishaya, Special P.P
ACCUSED	Sri Arjun Bhuyan
REPRESENTED BY	Sri D.Hazarika, Advocate

Date of offence	<u>About 5-6 months prior to lodging of ejahar dtd.11.07.2022</u>
Date of FIR	<u>11.07.2022</u>
Date of charge-sheet	<u>07.10.2022</u>
Date of framing of charges	<u>03.11.2022</u>
Date of commencement of evidence	<u>18.01.2024</u>
Date of which judgment is reserved	<u>05.08.2024</u>
Date of Judgment	<u>27.08.2024</u>
Date of the sentencing order, if any	<u>27.08.2024</u>

Rank of the accused	Name of the accused	Date of arrest	Date release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of sec 428 Cr. P.C
<u>1</u>	Sri Arjun Bhuyan	12.07.2022	Had not arisen	<u>Section 376AB IPC r/w section 6 of POCSO Act</u>	Convicted	<u>R.I. for 20 years and fine of Rs 20,000/- id RI of 3 months u/s 6 POCSO Act</u>	02 years 01 month 14 days

J U D G M E N T

1. The prosecution case was set into motion with the General Diary Entry No. 207 dated 11.07.2022 of Nellie Outpost entered on a verbal information given by the mother of the victim stating that Sri Arjun Bhuyan (hereinafter referred to as A1) had committed illegal act with her 12-year-old daughter Miss X (name not disclosed to protect her identity and hereinafter referred to as victim/X) and made her 05 months pregnant. PW7 the investigating officer deposed in Court that on the basis of the said GD entry, he recorded the statement of the mother of the victim and advised her to lodge one written ejahar and on the same day at 10:40 p.m. one ejahar was lodged by the mother of the victim.

2. In the ejahar dated 11.07.2022 lodged by one Smti Minati Kurmi before the In-Charge of Nellie Police Out Post, it has been stated that Miss X is 05-06 pregnant. On being asked, it could be known that accused A1 had committed the incident with her daughter and made her pregnant.

3. The In-charge of Nellie Out Post vide GDE no.213 dated 11.07.2022 forwarded the case to the Officer-Incharge of Jagiroad Police Station where the case was registered as Jagiroad PS case No.273/2022 under section 376AB I.P.C. r/w Section 6 of POCSO Act.

4. Police started investigation and on completion thereof, submitted Charge-Sheet against the accused A1 under section 376 AB IPC r/w section 6 of POCSO Act. On appearance of A1 and after furnishing him with the

relevant copies, charge was framed against him under sec 376AB IPC r/w section 6 of the POCSO Act to which he pleaded not guilty and claimed to be tried.

5. Prosecution examined 9 (nine) nos. of witnesses including the I.O. and M.O. Statement of A1 had been recorded under section 313 Cr.P.C. Defence plea is of denial. Defence did not adduce any evidence. Heard argument advanced by the learned counsels of both the sides. Perused the evidence on record carefully.

POINTS FOR DETERMINATION

- (I) Whether the victim/X was less than 12 years of age at the time of incident?
- (II) Whether about 05-06 months before the lodging of the ejahar dated 11.07.2022, A1 committed rape/penetrative sexual assault of the victim and made her pregnant and thereby committed offence punishable under Section 376 AB IPC r/w section 6 of POCSO Act?

DISCUSSION, DECISION AND REASONS THEREOF

Point For Determination no.(1)-

6. PW-1 is the victim and she deposed in Court that at the time of incident she was aged 12 years. That she was born in the year 2010. PW1 during cross denied suggestion that her age presently is more than 18 years. PW1 during cross denied suggestion that with the expectation that A1 will marry her once she attain majority, she had falsely implicated him in this case.

7. PW2 is the informant-cum-mother of the victim and she deposed in Court that the victim was aged 12 years at the time of incident. That police had seized one Xerox copy of birth certificate of her daughter. That Exhibit-P2 is the Xerox copy of birth certificate of her daughter (under objection). During cross, PW2 denied suggestion that her daughter was aged above 18 years at the time of incident. PW2 during cross stated that she had not tried to obtain duplicate copy of birth certificate of her daughter.

8. PW8 Dr.Dibya Jyoti Bordoloi is the Incharge of Nellie State Dispensary and he deposed in Court that the birth certificate in the name of Miss X has been issued from Nellie State Dispensary on 09.07.2015. That the said certificate was issued by the Registrar, Birth and Death of Nellie State Dispensary. That he had brought the office counter folio of the said birth certificate, wherein the date of birth of Miss X had been entered as 15.03.2010. The relevant counter foil had been exhibited as Exhibit-P9 and the signature of then Registrar, Birth and Death of Nellie State Dispensary had been exhibited as Exhibit-P9(1).

9. During cross by defence, PW8 stated that he had not brought the Birth and Death Register of their State Dispensary. That the registration no.1296 is seen to have been cut by pen, That the date of birth appears to be in light ink. PW8 during cross denied suggestion that Exhibit-P9 has been manipulated and entered subsequently to be produced in the Court. PW8 during cross denied suggestion that Exhibit-P9 is not legally acceptable.

10. In answer to Court, PW8 stated that presently birth certificates are not issued from their dispensary and the same are issued from the districts after online was introduced. That the serial number appearing in Exhibit-P9 is 0620703 and the same tally with the copy of birth certificate shown to him and available in the record. That the registration number appearing in Exhibit-P9 as 1296 is seen to be cut lightly and he cannot say whether it has been really cut or not.

11. Now, in the instant case the investigating officer had seized only a Xerox copy of birth certificate of the victim, which had been exhibited as Exhibit-P2 (under objection). The informant as PW2 deposed in Court that the original birth certificate had been damaged by rat. Accordingly, the counter foil of the said birth certificate had been bought on record by prosecution and exhibited as Exhibit-P9, wherein the date of birth of Miss X given as 15.03.2010. PW8 has exhibited as Exhibit-P9(1) the signature of Dr. Ajit Doloi then Registrar, Birth and Death of Nellie State Dispensary. PW8 in answer to Court stated that the serial number appearing in Exhibit-P9 is 0620703 which tally with Exhibit P2.

12. Now, as reveals, the signature appearing in Exhibit-P9 and the signature appearing in Exhibit-P2 looks exactly the same and seems to be of the one and the same person. The serial number in both Exhibit-P2 and Exhibit-P9 is also the same. PW8 during cross by defence denied suggestion that Exhibit-P9 has been manipulated and

entered subsequently to be produced in the Court. Now, the registration number in Exhibit-P2 and exhibit-P9 is also the same. The plea taken by defence during cross of PW8 is that the registration number in Exhibit-P9 is seen to have been cut by pen. In answer to Court, PW8 clarified that the registration number in Exhibit-P9 is seen to be cut lightly and he cannot say whether it has been really cut or not.

13. From the evidence as discussed, it can be held that Exhibit-P9 is the counter foil of the birth certificate issued in the name of Miss X and same being bought on record by an official of the Nellie State Dispensary, I find no ground to doubt the same. And the entries in Exhibit-P9 and Exhibit-P2 are the same. The Xerox copy of the birth certificate of the victim had been exhibited as Exhibit-P2 but under objection by defence. And PW2 during her in-chief itself stated that the original birth certificate had been damaged by rat, and the same had not been challenged and disputed by defence during her cross-examination. And as reveals, PW1 and PW2 are illiterate persons because both of them had put thumb impressions in their deposition forms. So the ground shown by PW2 for not producing the original birth certificate does not create any doubt. Thus Exhibit-P2, though a Xerox copy and secondary evidence, is admissible under section 65 of the Evidence Act and the same being substantiated by Exhibit-P9.

14. Now, as per Exhibit-P2 and Exhibit-P9, the date of birth of the victim is 15.03.2010. Accordingly, her age on

the date of lodging the ejahar on 11.07.2022 was 12 years 03 months 26 days. It reveals from the evidence on record that the victim was 06-07 months pregnant at the time of lodging the ejahar, which implies that the incident ought to have taken place at least 06-07 months before lodging the ejahar and at that time the victim will be aged less than 12 years.

15. In the light of the discussion aforesaid made on the evidence on record it is held that the victim was less than 12 years of age at the time of incident.

Point For Determination no. (II)-

EVIDENCE IN THE CASE-

16. PW-1 is the victim and she deposed in Court that she knows the accused A1. That they had a love relation since about two months before the lodging of the case. That the accused used to call her over phone to the rice mill of Raghula saying that he wants to talk with her. That the accused used to call her to the said mill at about 4:00-5:00 p.m. That she accordingly used to go to the mill which was at a distance of about 50-60 meter from her residence. That inside the mill, the accused used to sleep with her and after opening the lower part of her clothes established sexual relation with her. That when she used to object, the accused used to say that he will marry her and she has nothing to worry. That the accused established sexual relation with her on 4-5 days inside the mill. That thereafter her monthly periods stopped but she did not know anything at that time. That she went to the house of

her elder sister Ramboti at Barpeta for visit and her sister then told that she was pregnant. That her sister bought a pregnancy test kit and got her pregnancy confirmed. That then she was brought home and her brothers took her to doctor and after tests could know that she was six months pregnant. That her brother Dipak and sister-in-law Dipali asked her about my pregnancy and she told that A1 had made her pregnant. That her brothers then took her to the house of A1 but the accused refused to admit that he is responsible for my pregnancy. That her brother then lodged the case. That after the case was lodged, police interrogated her about the incident. That police sent her to hospital for medical examination and also forwarded her to the Court where her statement was recorded by Magistrate. That after the case was lodged, she gave birth to a male child who is presently aged 1 year. That presently she resides with her parents. That she disclosed the incident to her sister Ramboti and brother Dipak.

17. During cross by defence, PW1 stated that her love affair with A1 was known to everyone in her family. That to her knowledge, A1 used to work as daily wage earner. That she used to love him more than him. That they used to talk with each other over phone. That her mobile was of her friend. That whenever the accused used to call her, she used to go to meet him. That if the accused marry her, she has no objection. PW1 during cross denied suggestion that A1 did not commit bad act with her on the pretext of marriage. PW1 during cross denied suggestions that she

had love elation with one Rahul and also did bad act with him, that she had not given birth to any child, that with the expectation that the accused will marry her once she attains majority, she has falsely implicated him in this case by saying that she has given birth to his child. That girls of their community generally marry at the age of 14-15 years. PW1 during cross stated that she attained her puberty when she was 11 years of age and since then she has been having her periods regularly except after attaining the age of 12 years. That for about one month her period was stopped. That she has not submitted any document to police regarding the birth of her child.

18. PW2 is the informant-cum-mother of the victim and she deposed in Court that she knows A1 since the case. That when her victim daughter was three months pregnant, she came to know of her pregnancy. That her daughter told her that she was in a love relation with the accused and that the child is from him. That when they asked accused about it, he declined to admit that he was responsible for the pregnancy of her daughter. That she then lodged the case. That after the case was lodged, her daughter gave birth to a male child who is presently aged about 01 year. That her daughter is presently residing with her with her child.

19. PW2 during cross stated that she was not aware of the love relation of her daughter with A1. That she did not witness any incident. That her daughter later told her that she was in love relation with A1. That their family members

reside in Barpeta. PW2 during cross denied suggestion that her daughter did not had any relation with the accused and that she had relation with others. That her daughter once visited Barpeta to her sister's house and stayed for about one month. PW2 during cross denied suggestion that she had lodged a false case against A1 with intent to give her daughter in marriage with him.

20. PW3 Dipak Kurmi deposed in Court that informant is his maternal aunt-cum-step mother. That he knows A1. That victim Miss X is his cousin sister. That the incident took place about one year back. That Miss X informed them that she is pregnant of three months from the side of A1. That they then tried to compromise the matter but A1 refused to accept that he had made Miss X pregnant. That thereafter the case was lodged. That Miss X has a son aged about 01 year. That before Miss X told them about the incident he did not know anything.

21. PW3 during his cross stated that he is not aware if there was love relation in between the accused and victim. That he had not seen the accused and the victim together.

22. PW4 Smti. Dipali Kurmi deposed in Court that the informant is her step mother-in-law. That she knows A1. That victim Miss X is her sister-in-law. That the incident took place about one year back. That mother of Miss X told her that she is pregnant from the side of accused. That they tried to compromise the matter but A1 did not accept. That then the case was lodged. That Miss X also told before her that A1 had made her pregnant.

23. PW4 during her cross stated that she is not aware if there was love relation in between A1 and victim. That she had not seen A1 and the victim together.

24. PW5 Smti. Anjana Urang deposed in Court that she knows the informant Minati Kumari. That she knows the victim Miss X as their neighbour. That she knows A1. That there was love relation between A1 and the victim. That she saw both of them talking with each other over phone and also saw them meet each other. That later she heard that A1 committed rape on the victim and she became pregnant. That the victim later gave birth to a child. That however, she does not have personal knowledge of the incident.

25. PW5 during her cross stated that she knows that the house of the maternal uncle of the victim is at Barpeta. That she is not aware if the victim used to visit and reside at Barpeta sometimes.

26. PW6 Smti. Moni Bhuyan deposed in court that she does not know the informant and the victim. That she knows A1. That she does not know anything about the case. That when A1 was arrested, she went to see him in the police station. That police then obtained her thumb impression. That she is not aware why the said thumb impression was taken. Cross-examination of PW5 had been declined by defence.

27. PW9 Dr. M.K. Bora Radiologist at Morigaon Civil hospital deposed in Court that on 28.06.2022, he was posted as Radiologist at STHG Civil Hospital, Morigaon.

That on that day he conducted USG of Miss X, aged 13 years - pregnancy at Kapili Ultrasound Centre. The results were given as- *Single live intrauterine pregnancy is seen in cephalic presentation, Fetal somatic and cardiac activity normal, Fetal tone normal, Placenta is fundus-body anterior & not low lying, grade II matured, Liquor volume adequate for the period of gestation, Largest pocket measures- 7.3 cm., No loop of cord noted in the fetal neck, BPD measures= 76 mm, HC measures= 281 mm, AC measures= 284 mm, FL measures= 58 mm, Heart Rate= 152 b/min, Estimated fetal weight measures 1804+-270 gms, CUA (By measurement)= 30 weeks 5 days +-1 week, EDD (by measurement)= 01.09.2022. IMPRESSION: Single live intrauterine fetus of 30 weeks 5 days (BY FL) of gestation in cephalic presentation.* The report has been exhibited as Exhibit-P10.

28. PW9 deposed in Court that on 14.07.2022, he conducted scan of upper abdomen/lower abdomen/whole abdomen/KUB (M) of Miss X and found the following:-

Liver- Liver is normal in size, GB- Partially distended, CBD- Normal, Pancreas- NAD, Spleen- NAD, Kidneys- NAD, Bladder- Normal. A single live intrauterine pregnancy with AGE=31 weeks, 6 days in cephalic presentation. Weight- 1800 gm. FHR= 149 bpm. Placenta FBA, not low lying. The report has been exhibited as Exhibit-P11.

29. During cross, PW9 stated that they maintain the pregnancy related cases in a separate register which is

available in their hospital. That he did not collect any ID proof from the patient to ascertain her identity.

30.PW7 is the Investigating Officer and he deposed in Court that after the ejahar was lodged and after registration of the case, the O.C. entrusted the investigation to him. That through WHG Asma Begum, he recorded the statement of the victim. That on 11.07.2022 he found A1 at Nellie market and brought him to the Outpost for interrogation. That he interrogated A1. That he seized the birth certificate of Miss X. That he recorded the statement of the seizure witnesses. That he arrested A1 and forwarded him to the Court under arrest. That he again interrogated the informant. That he proceeded to the place of occurrence near the rice mill of Babula at Nellie Borpaik. That he prepared the sketch map of the place of occurrence and interrogated the available witnesses. That he seized one birth certificate of A1. That the victim was kept at Shelter Home, Morigaon and she was sent to hospital for medical examination and also to the Court for recording her statement under section 164 Cr.P.C. That thereafter the victim was given in zimma of her mother. That in the meantime the victim delivered a child and after three months of the birth, the blood sample of the baby was collected and sent to FSL, Kahilipara along with the blood report of the accused and the victim. That prior to the receipt of the FSL report on completion of the other investigation, he submitted the charge-sheet against the accused under section 376 AB IPC r/w section 6 of the

POCSO Act. That as he got transferred, he has no knowledge about the FSL report.

31.PW7 during cross stated that in the printed form of the FIR, the GDE No. given 003 dated 11.07.2022, 22:40 hrs. That the place of occurrence has been kept blank in the printed form of the FIR. That the date and time of occurrence not mentioned therein. That on 11.07.2022, WSI was available at Nellie Outpost. That he recorded the statement of the victim at 07:20 p.m. That he seized one Xerox copy of birth certificate of victim. That the statement of the informant Minati Kurmi was recorded at about 09:10 a.m. on 12.07.2022. That the earlier statement of the informant was recorded on 11.07.2022 at 7:20 p.m. That he went to the place of occurrence on 12.07.2022. That he did not examine the owner of the rice mill as he does not reside there. That in Exhibit-P4 the four directions of the place of occurrence has not been mentioned.

ARGUMENT ADVANCED BY THE PARTIES-

32. Learned Counsel for defence submitted that the accused is completely innocent and he has no knowledge about any of the allegations made by the victim and the informant in this case. Learned counsel for defence submitted that the victim had a love relation with an unknown person and on being ditched, she and her family members had made a conspiracy and forced A1 to marry her and on his refusal lodged the instant case. Learned counsel on behalf of the accused also submitted that there are several contradictions in the statement of the victim

made before the Court and made before the Magistrate and thus her evidence is doubtful. Moreover, the date and time of the alleged incident also could not be stated by any of the witnesses. Learned counsel on behalf of the accused also submitted that failure on the part of the prosecution to bring the original FSL report in the record is a loophole on their part and creates doubt in their case.

APPRECIATION OF EVIDENCE-

33. Now, as per the evidence of the victim (PW1), she had a love relation with A1 and on being called by him she used to meet him and A1 then established physical relation with her. PW1 deposed in Court that when she used to object, A1 used to say that he will marry her and that she has nothing to worry. Defence during her cross also elicited from her that she used to love A1 more than him and they used to talk over phone and that whenever A1 used to call her, she used to go to meet him. Defence during cross of PW1 also elicited from her that if A1 marry her, she has no objection. Suggestion had been given to PW1 that A1 did not commit bad act with her on the pretext of marriage, to which she denied. The said suggestion amounts to an admission on the part of defence that A1 committed bad act with her, but not on the pretext of marriage.

34. During further cross of PW1, defence had taken the plea that the victim had love relation with another boy and also did bad act with him. Defence also had taken the plea that A1 did not establish physical relation with her. So as

reveals, defence themselves had taken contradictory pleas during the cross of PW1.

35. Now, as per the evidence of PW1, when her monthly periods stopped, she did not know anything and thereafter during her visit to the house of her elder sister, she came to know of her pregnancy and then on being asked by her brother Dipak and sister-in-law Dipali, she told before them that A1 had made her pregnant. The evidence of PW1 has been corroborated by the evidence of PW3 Dipak Kurmi and PW4 Dipali Kurmi.

36. The evidence of PW1 that A1 refused to admit that he was responsible for her pregnancy has been corroborated by the evidence of PW2, PW3 and PW4.

37. Now, PW1 during her cross stated that after the case was lodged, she gave birth to a male child who is presently aged 01 year. During cross of PW1, suggestion had been given to her that she had not given birth to any child. PW2 and PW3 deposed in Court that Miss X has a child aged about 01 year. PW5 also deposed in Court that the victim later gave birth to a child. During cross of PW2, PW3 and PW5, defence did not put any question to them in denial of their assertion that the victim later gave birth to a child. Also, that the victim was pregnant at the time of lodging the ejahar has been substantiated by the evidence of PW9. On the evidence on record, it is held that the victim was pregnant at the time of lodging the ejahar and later she also gave birth to a child.

38. Now, the Investigating Officer as PW7 deposed in Court that after three months of birth of the child of the victim, the blood sample of the baby was collected and sent to FSL, Kahilipara along with the blood report of the accused and the victim. PW7 deposed in Court that prior to the receipt of the FSL report, he submitted the charge sheet in this case. The record reveals that on being sought for, the Officer-Incharge of Jagiroad Police station forwarded a Xerox copy of the FSL report and could not trace out the original report. It is a very sorry state of affairs to misplace the original FSL reports. Be that as it may, in the decision of Hon'ble Supreme Court in the case of **Pattu Ranjan Vs The State of Tamil Nadu reported in (2019) 4 SCC 771**, it has been held that- *It cannot be said that the absence of DNA evidence would lead to an adverse inference against a party, especially in the presence of other cogent and reliable evidence on record in favour of such party.*

39. In a catena of judgments passed by Hon'ble Supreme Court, it has been held that only the deposition of the prosecutrix by itself is sufficient to record conviction for offence of rape if that testimony inspires confidence and has complete link of truth. In **Md.Ali @ Guddu Vs State of U.P., 2015 (3) SCALE 274**, Hon'ble Supreme Court has held that- *'Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the victim, if it is unimpeachable and beyond reproach, a conviction can be based.* In **Mohd.Ikbal & ano. Vs State of Jharkhand**

reported in (2013) 14 SCC 481, the Hon'ble Supreme Court has held that –*'There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the victim and the law does not require that her statement may be corroborated by the statements of other witnesses'*.

40. Now, as per the evidence of the victim (PW1), she had a love relation with the accused and used to go and meet him whenever he used to call her and the accused then committed sexual relation with her on several days. PW1 also deposed that the accused used to say that he will marry her. The evidence on record reveals that after the victim got pregnant in the incident, the accused was approached by her family members but he refused to admit the incident. Now, as already held that the victim was a small girl at the time of incident, aged less than 12 years. As reveals from her evidence, when her monthly periods stopped, she could not make out what had happened with her. Thus the accused can be held to have taken advantage of the age of the victim and indulged in physical relation with her on the pretext of love. And his subsequent conduct of not admitting to the incident when the victim got pregnant implies that his promise to marry the victim was a mere hoax and he had no intention of keeping his promise when he made it, and his promise was only to induce the victim of having sexual relation with him. The consent of the victim to the act of sexual

intercourse with the accused, even if any, amounts to 'no consent'.

41. Now, the present case is under the Protection of Children from Sexual Offences Act and this was enacted with the objective that children of tender age are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. The aims and object of the Act further consider it imperative that law operates in a manner that the best interest and wellbeing of the child are regarded as being of paramount importance at every stage to ensure the healthy physical emotional, intellectual and social development of the child. The Act is a Special Act, which has been enacted bearing in mind the child psychology as well as the latent sexual abuse of children in the society as well as family, which is apparent from the provisions of section 29 and 30 of the Act, reproduced as under-

Section 29- *Where a person is prosecuted for committing or abetting or attempting 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.*

Section 30- (1) *In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for*

the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. (2) For the purposes of this action, 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.

42. In the light of the aim and objects of the Act and the specific provision like section 29 and 30 of the Act, the presumption of innocence of the accused as is available to him under ordinary criminal jurisprudence is not available in child abuse jurisprudence and the presumption, if any, available under the Act are to be considered strictly in accordance with the provisions of the Act and not under the ordinary criminal jurisprudence. A careful reading of sub clause (2) of section 30 mandate that the accused is required to prove his defence beyond reasonable doubt and not merely by preponderance of probabilities.

43. In our case in hand, as discussed, the accused has not led any positive evidence to prove his defence. Defence failed to dismantle the legal presumption against him by way of cross-examining the prosecution witnesses and prove that he is not guilty. Also the evidence of the victim made before the Court as PW1 is found consistent with her statements recorded under section 161 Cr.P.C. and also 164 Cr.P.C. Although defence has pointed out certain contradictions in the statement of the victim made at different stages, but the same are minor contradictions and the substratum of her evidence had remained intact.

The evidence of PW1 has been corroborated by the evidence of PW2, PW3, PW4 and also PW9. Defence as already discussed, had taken contradictory pleas during the cross-examination of PW1. During cross of PW2, defence had taken the plea that she had lodged a false case against the accused with intent to give her daughter in marriage with him. But such plea even if true, can any parent or any victim on such ground only, would like to expose herself to such an incident being committed on her. No reasonable person would do that. Moreover, the accused during his examination under section 313 Cr.P.C. did not take any such plea.

44. Defence thus failed to impute any motive on the part of the informant, the victim and other witnesses in deposing against the accused. In the decision of Hon'ble Supreme Court in the case of **Ganesan Vs State reported in (2020) 10 SCC 573** it has been observed that- *If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.*

45. From the discussion aforesaid made, it can be held that A1 about 6 months prior to the lodging of the ejahar dated 11.07.2022, on several dates established sexual relation with the victim on the pretext of love and marriage and made her pregnant. It is a very sorry state of affairs

that girls of so tender age are exposed to such an offence, that they cannot even understand the consequences of it.

46. Section 4 of the POCSO Act is the penal provision of offence of Penetrative Sexual assault, the definition of which has been laid down in section 3 of the Act as –*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 body of the child or makes the child to do so with him or any other person; or

(d) he applies the mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

47. In our case in hand, the accused inserted his penis inside the vagina of the victim. As such, clause (a) to section 3 of the Act is attracted.

48. The offence of aggravated penetrative sexual assault has been defined in section 5 of the Act and clause (j)(ii) to section 5 of the Act provides- *whoever commits penetrative sexual assault on a child, which in the case of female child, makes the child pregnant, as a consequence*

of such sexual assault is said to commit aggravated penetrative sexual assault. Also clause (m) to section 5 of the Act provides- *whoever commits penetrative sexual assault on a child below twelve years, is said to commit aggravated penetrative sexual assault.* In our case in hand, as held, the victim got pregnant because of the sexual assault committed upon her by the accused. Also the victim was less than 12 years of age at the time of incident. As such, clause (j)(ii) and clause (m) to section 5 of the Act are attracted in the case in hand and accused is held guilty of having committed offence under section 6 of the POCSO Act.

49. The definition of 'Rape' in section 375 IPC and the definition of penetrative sexual assault laid down in section 3 of the POCSO Act is exactly the same, the only difference being that section 3 of the POCSO act is attracted in the case of child only. Also, the nature of proof in both the statutes are different. In a case under the Indian Penal Code, prosecution has to prove its case against the accused beyond all reasonable doubt. In our case in hand, prosecution is held to have proved its case against the accused beyond all reasonable doubt. And as the victim was less than 12 years of age at the time of incident, accused is also held guilty of having committed the offence under section 376AB IPC.

Section 42 of the POCSO Act provides- *Where an act or omission constitutes an offence punishable under this Act and also under Sections 166A, 354A, 354B, 354C, 354D,*

370, 370A, 375, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E, section 509 of the Indian Penal Code or Section 67B of the Information Technology Act, 2000, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for which is greater in degree.

Section 376AB IPC provides punishment with- *rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.*

Section 6 of the POCSO Act provides *(1) punishment with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. (2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.*

50. So as transpires, punishment provided by law under section 6 of the POCSO Act and under section 376AB IPC is the same.

51. The offence in this case has been committed against a woman. The woman was a child of less than 12 years at the time of incident. The harm caused to her in mind and body is irreparable. Therefore, I am not inclined to extend the benefit of probation to the accused. In arriving at such a decision, authority is derived from the decisions of the Hon'ble Supreme Court in the case of **Azhar Ali Vs State of West Bengal,(2013) 10 SCC 31**, and in **State of Rajasthan Vs Sri Chand, Criminal Appeal no.561 of 2009 dated 11.05.2015** wherein it has been held that when the offence is heinous in nature and against women there is no reason for granting benefit of probation to the perpetrator of such crimes.

52. Heard the accused on the point of sentence under section 235(2) Cr.P.C. The accused stated that he has nothing to say.

Heard also the Learned Counsels of both sides on the point of sentence.

53. Now, coming to the quantum of sentence, we find the following aggravating and mitigating factors, discernible from the facts and circumstances on the record.

Aggravating factors:

- i. The accused is a matured person and he was not remorseful of his conduct.

- ii. He was in a dominating position and taken advantage of the age of the victim.
- iii. The victim was a minor girl aged less than 12 years at the time of incident.
- iv. The victim got pregnant in the incident and had to become a mother at such a young age.

Mitigating factors:

- i. No previous conviction is proved against him by prosecution.

54. Now, coming to the point of sentence, I would like to refer to a decision of Hon'ble Supreme Court in the case of **State of Madhya Pradesh Vs Surendra Singh reported in AIR 2015 SC 3980** wherein it has been held that- *Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.*

55. In this connection I would also like to refer to a decision of Hon'ble Supreme Court in the case of **Nawabuddin Vs State of Uttarakhand 2022 LiveLaw (SC) 142** wherein it has been stated thus- *Children are precious human resources of our country; they are the*

country's future. The hope of tomorrow rests on them. But unfortunately, in our country, a girl child is in a very vulnerable position. There are different modes of her exploitation, including sexual assault and/or sexual abuse. In our view, exploitation of children in such a manner is a crime against humanity and the society. Therefore, the children and more particularly the girl child deserve full protection and need greater care and protection whether in the urban or rural areas. As observed and held by this Court in the case of **State of Rajasthan Vs Om Prakash, (2002) 5 SCC 745**, children need special care and protection and, in such cases, responsibility on the shoulders of the Courts is more onerous so as to provide proper legal protection to these children. In the case of **Nipun Saxena Vs Union of India, (2019) 2 SCC 703**, it is observed by this Court that a minor who is subjected to sexual abuse needs to be protected even more than a major victim because a major victim being an adult may still be able to withstand the social ostracization and mental harassment meted out by society, but a minor victim will find it difficult to do so. Most crimes against minor victims are not even reported as very often, the perpetrator of the crime is a member of the family of the victim or a close friend. Therefore, the child needs extra protection. Therefore, no leniency can be shown to an accused who has committed the offences under the POCSO Act, 2012 and particularly when the same is proved by adequate evidence before a court of law.

56. Drawing premises from the aforementioned guidelines, let us now proceed to determine the quantum of sentence. I have placed the aggravating as well as the mitigating factors, as discussed above, in juxtaposition and find that the aggravating factors outweigh the mitigating factors.

57. Taking note of all the facts and circumstances of the case, I am of the view that the sentencing the accused to undergo rigorous imprisonment of 20 years and also to pay a fine of Rs. 20,000/-(Rupees ten thousand only), in default to undergo further R.I. for 3 (three) months under section 6 of the POCSO Act, will advance the cause of justice.

ORDER

Accused Arjun Bhuyan is convicted under section 6 of the POCSO Act and sentenced to undergo Rigorous imprisonment for 20 (twenty) years and also to pay a fine of Rs. 20,000/-(Rupees twenty thousand only), in default to undergo further R.I. for 3 (three) months. As the accused has been sentenced under section 6 of POCSO Act, no sentence is awarded under section 376AB IPC.

The period undergone by the accused in jail has to be set off against the sentence of imprisonment imposed upon him.

The fine amount, if realised, be paid to the victim as compensation.

The convict is informed that he has a right to prefer to appeal against the judgment. He has been apprised that

if he cannot afford to engage an Advocate, he can approach the Legal Aid Cell functioning in the District Jail, Morigaon, or write to the Secretary, District Legal Services Authority, Morigaon.

A copy of judgment be supplied free of cost to the convict forthwith.

A copy of the judgment be forwarded to the District Magistrate, Morigaon, in compliance with section 365 Cr.P.C.

Coming now to the aspect of compensation to the victim, Hon'ble Supreme Court has time and again observed that Subordinate Courts trying the offences of sexual assault have the jurisdiction to award compensation to the victims, being an offence against the basic human right and violative of Article 21 of the Constitution. The suffering to which she was subjected to, cannot be compensated in terms of money. But, it will definitely help her in the process of rehabilitation in the society. After taking into consideration the totality of the facts and circumstances of the case, this Court is of opinion that the victim should be awarded an amount of Rs. 4 lakhs (rupees four lakhs only) for the injury suffered by her and for her rehabilitation, from the relevant compensation scheme available.

A copy of this order be forwarded to the learned Secretary, District Legal Services Authority, Morigaon for information and necessary action under intimation to this Court.

Given under my hand and seal of this Court on this
27th day of August, 2024.

Dictated and corrected by me

(N.A Ahmed)
Special Judge (POCSO)
Morigaon

(N.A Ahmed)
Special Judge (POCSO)
Morigaon

APPENDIX

Prosecution exhibits:

Exhibit P1/PW1-Statement of victim u/s 164 Cr.P.C.
 Exhibit P2/PW2- Xerox copy of birth certificate of victim (under objection)
 Exhibit P3/PW7- Seizure list
 Exhibit P4/PW7- Sketch map
 Exhibit P5/PW7- Charge sheet
 Exhibit P6/PW7- Extract copy of GDE no.207 dtd.11.07.2022
 Exhibit P7/PW7- Ejahar
 Exhibit P8/PW7- Printed form of FIR
 Exhibit P9/PW7- Counter foil of birth certificate
 Exhibit P10/PW9- Medical report
 Exhibit P11/PW9- Medical report

Defence Exhibits: None

Court Exhibits: None

Prosecution Witness:

PW1 Victim/X
 PW2 Smti Minati Kurmi
 PW3 Sri Dipak Kurmi
 PW4 Smti Dipali Kurmi
 PW5 Smti Anjana Urang
 PW6 Smti Moni Bhuyan
 PW7 Sri Upen Ch Bordoloi (I.O.)
 PW8 Dr.Dibya Jyoti Bordoloi
 PW9 Dr.M.K.Bora

Defence Witness None

Court Witness None

(N.A. Ahmed)
 Special Judge (POCSO)
Morigaon