

**IN THE COURT OF THE SPECIAL JUDGE, BARPETA**

**Special POCSO Case No. 51 of 2017**  
**(Arising out of Barpeta P.S. Case No.1350/2017)**  
**U/S 6 of PROTECTION OF CHILDREN FROM SEXUAL**  
**OFFENCE ACT, 2012.**

**PRESENT: Sri Chatra Bhukhan Gogoi**  
**Special Judge,**  
**Barpeta.**

**Charge framed on:- 29.01.2018**

State of Assam

- Vs -

Sri Somnath Sutradhar @ Fukka.....Accused.

Date of Recording Evidence on - 02.04.2018, 06.08.2018, 29.11.2018  
& 10.01.2019.

Date of Hearing Argument on - 28.05.2019

Date of Delivering the Judgment on-13.06.2019

**Appearance:**

Advocate for the State-----Mrs. P. Das, Ld. Addl. P.P.

Advocate for the Accused-----Mr. Radhikananda Das, Ld Advocates.

**JUDGMENT**

1. The prosecution case, in brief, as narrated in the FIR is that on 05.08.2017 one Sri Subhash Sutradhar lodged an ejahar in Barpeta police station alleging inter-alia that on 03.08.2017 at about 8:30 pm while his minor daughter (X) went to the shop to purchase candle from nearby shop accused by persuading her, took her in his scooter saying that he will gave her a ride on his scooter and then took her to a

nearby lonely place and committed penetrating sexual assault on her by putting her mouth shut. Thereafter, accused again took her in his scooter and left by dropping her in the place from where he took the girl. Henc the case.

2. Following the information as above, Barpeta police station registered a case being Barpeta PS Case No.1350/17 u/s 6 of POCSO Act and took up investigation of the case.

3. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses, drew sketch map, sent the victim girl to court for recording her statement before Magistrate u/s 164 Cr.P.C. and also sent the victim girl for medical examination and collected the medical report. On conclusion of investigation, I/O finally laid the charge sheet against accused Somnath Sutradhar @ Fukka u/s 8 of POCSO Act, 2012 with a view to stand trial.

4. During the course of time, accused was summoned to court to face trial. On his appearance, having supplied the copies as required u/s 207 Cr.P.C. the then Hon'ble Special Judge, Barpeta vide order dated 29.01.2018 framed charge u/s 6 of POCSO Act. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.

5. During the course of trial, prosecution altogether examined 7 witnesses including the alleged victim girl, the informant, the medical officer as well as the investigating officer. PW-1 is doctor Mamata Devi, PW-2 Sri Subhash Sutradhar (informant), PW-3 is the victim girl (referred her as X), PW-4 Subir Choudhury, PW-5 Biki Karmakar, PW-6 Rajesh Saha and PW-7 Abhijit Kumar Baruah, the I/O respectively.

6. In order to establish the case, the prosecution also exhibited the medical report as Ext.1, Ext.1(1) signature of doctor Mamata Devi, Ext.1(2) is the signature of doctor Monoj Kumar Singha, Ext.2 ejahar, Ext.2(1) signature of Subhash Sutradhar, Ext.3 164 Cr.P.C. statement of the victim girl, Ext.3(1), 3(2) and 3(3) are the signatures of victim girl.

7. Concluding prosecution evidence, accused was examined u/s 313 Cr.P.C. but accused, denied the prosecution evidence as false and concocted. However, on being asked, accused declined to adduce defence evidence. His plea is total denial of the prosecution case.

8. **Now point for determination** :-

1. Whether on 03.08.2017 at about 8:30 pm accused committed aggravated penetrative sexual assault on the victim (X) as alleged?

9. **Discussion, Decision and reasons for such decision** :-

Before going to discuss the arguments of the learned lawyers it is apposite to discuss the evidence available on record first.

10. PW-1 Mamata Devi is the medical officer who examined the victim girl on 05.08.2017 in connection with Barpeta P.S. case No.1350/17 u/s 6 of POCSO Act. On X-ray investigation the doctor found the age of the victim girl above 7 years and below 9 years but did not find any injury mark on her private part and did not find any injury on her ear. There was no evidence of recent sexual intercourse detected on her person.

11. PW-2 Sri Subhash Sutradhar is the informant, who deposed that the incident occurred about 7/8 months back from the date of his deposition in court on 02.04.2018 at about 6/7 pm. On that day "Julon Puja" was celebrated and villagers were present there including his wife and his daughter. But in the meantime, his daughter along with her colleague went to nearby shop to purchase candle from where accused took her on his scooter to the "Makhani Bhitha" belongs to one Goda where accused touches the body of her daughter and tried to commit sexual offence by removing her pant. Thereafter, accused

again took her on his scooter and left by dropping her. Then his daughter coming home weeping and told her mother about the incident. Then his wife went to the house of accused but accused was not found there. Nevertheless, his mother was informed who denied the same. Thereafter, mother also informed the matter to village head who advised to file a case. Accordingly, a case was filed.

12. In his cross examination he stated that there are residence of Barun Karmakar, Dibakar Sutradhar, Sanjib Karmakar and Samar Karmakar etc nearby his house. While his daughter returned home weeping, the mother Ritika Sutradhar and her brother Basudev Sutradhar, mother Asarani were present. When he reached home he met all of them and his daughter was weeping. He further deposed that when his daughter went to purchase candle she was accompanied by Sivasankar Karmakar. The accused was also belonged to the same village. He was addressed by his daughter as "uncle" and there was good family relation. He had not seen the accused taking his daughter. He orally informed the matter to the village head. The place where accused took his daughter is also residential place where there is residence of Bimal Ghosh, Ashim Ghosh, Goda Ghosh, Nilim Ghosh etc who are all alive. He, however, denied that a false case has been filed against accused.

13. PW-3 is the victim girl, who deposed that she knows accused whom she addressed as 'Fukka'. Incident occurred at about 8:30 pm on the day of "Julan Puja" she went to nearby shop to purchase candle. Then "Fukka" took her on his scooter to give her a ride. Though she was initially reluctant but at the insistence of accused she agreed who then took her to a vacant house belong to one Goda where he touched her breast and put his hand inside her pant and gave a teeth bite on her ear. Thereafter, he again took her back and dropped nearby her house and left. Then she came home weeping and told the incident to her mother. Thereafter, her father also reached home whom she

informed about the incident. Thereafter, her father filed the case after three days. Police came and sent her for medical examination. Also sent her to court for recording her statement. Ext.3 is her statement and Ext.3 (1), 3(2), 3(3) are her signatures.

14. In her cross examination she stated that accused is a co-villager and there is a good family relations. She could not remember the date of incident but there were Pritom, Abhijit, Sivsankar, Mousumi, Moumita along with her. She also stated that along with her Sivsankar and Pritom also seated in the scooter but they were dropped nearby temple but she was taken by "Fukka". She denied that she was not taken by accused to the vacant house on the side of the road belong to Goda. She denied that accused did not touch her private part and did not bite on her ear. She first told the incident to her mother and then her father. There were several persons in her house but she did not disclose it to others as well as police. No village head came to her house. His mother and one Biki also visited the police station but she was not asked by any question by police. She denied that accused did not took her in the name of giving her a ride on his scooter.

15. PW-4 Subir Choudhury deposed that he knows informant and his daughter as well as accused person. The incident occurred in the month of August. He has a workshop near Chowalkhowa Bridge. One day morning at about 10 to 10:30 am informant along with his wife and daughter came to his shop and told him that two days ago on the day of "Julan Puja" accused took their daughter in his scooter and molested/subjected her sexual torture. Though the girl tried to shout accused restrained her and then he again brought her nearby his house and left. When he asked the victim girl, she told him that accused touched her body.

16. In his cross examination he stated that his house is at a distance of about 200 meter from the house of informant and there are residence of Lakshmon Sutradhar, Sanjib Karmakar, Subodh Karmakar,

Sukumar Bashak, Hardhan Sarkar, Sekhor Sarkar etc nearby the house of informant and they will know first if anything happened in the house of informant. He denied the defence suggestion that he did not state before police that informant, his wife and daughter visited his workshop and told that on the day of "Julon Puja" accused took their daughter in his scooter and subjected her sexual torture.

17. PW-5 Biki Karmakar also deposed that he knows the informant, victim and accused very well. The incident occurred about one year back. On the day of "Julon Puja" when he returned home at about 8:30 pm and taking tea he heard the victim weeping. Then he came out to see what had happened. Then there was exchange of words between accused and mother. After five minutes accused left. The victim told her mother weeping that accused took her into his scooter and touched her breast.

18. In his cross examination he stated that he also accompanied the informant to the police station to lodge the FIR. He stated that he had not seen the incident but heard it.

19. PW-6 Rajesh Saha, who also deposed that informant is his brother-in-law and the incident occurred on the day of "Julan Puja". At about 7:30 to 8 pm the victim went to shop for purchasing candle. On that day informant told him over phone that accused took his daughter on his scooter on the promise to give her a ride on his scooter while she went to shop for purchasing candle and then in a lonely place, touches her breast and belly. He also advised them to inform the matter to the guardian of accused but on his return home he came to know that, misbehaved the informant when he approached the guardian of the accused.

20. In his cross examination he stated that police did not record his statement. He denied that he deposed false evidence in favour of victim.

21. PW-7 is the I/O Abhijit Baruah, who in his evidence deposed that

on 05.08.2017 having received an FIR from one Subhash Sutradhar the officer-in-charge Barpeta police station registered a case being Barpeta P.S. case No.1350/17 u/s 6 of POCSO Act and entrusted him to investigate the case. Accordingly, he visited the place of occurrence, drew sketch map, recorded the statement of the witnesses including the state of the alleged victim girl u/s 161 Cr.P.C. The victim was also forwarded to court for recording her statement before Magistrate u/s 164 Cr.P.C. He also sent the victim girl for medical examination and collected the medical report. Since he was transferred in the meantime, he submitted the case diary to O/C and left but subsequently, his successor S/I Rahul D03+euri submitted the charge sheet u/s 8 of POCSO Act.

22. In his cross examination he stated that as per FIR the incident occurred on 03.08.2017 but FIR was lodged on 05.08.2017. On the same day he prepared prepared the sketch map, recorded the statement of the victim girl and other witnesses on 05.08.2017. He recorded the statement of the victim girl on 06.08.2017 and sent to court for recording her statement on 08.08.2017. He also did not record the statement of the mother of the victim girl and the woman home guard who brought her to court. He did not seize the scooter of the accused and he also did not forward Suho Dhar, Shivsankar, Pritom, Abhijit, Mousumi etc who were present with the victim girl at the relevant time to court for recording their statements u/s 164 Cr.P.C. The mother of the victim girl accompanied her to court while she was sent for recording her statement before Magistrate. He did not record the statement of neighbors namely - Barun Karmakar, Dibakar Sutradhar, Sanjib Karmakar , Samar Karmakar, Bimal Ghosh, Ashim Ghosh, Goda Ghosh, Nilima Ghosh and Nilima Basak etc.

23. He further deposed that PW-2 did not state before him that accused took the victim girl on his scooter to the house of Goda. PW-3 the victim girl also did not state before him that accused had taken her

by force. He denied that he did not record the statement of the PW-5 and PW-6 in accordance with law.

24. Based on the evidence as discussed above, the learned counsel appearing for the accused persons contended that the evidence of PW-2 Subhash Sutradhar, PW-3 the victim girl (X) and PW-6 Rajesh Saha are interested witness being the father, daughter and brother-in-law. So, it is natural that father and his brother-in-law deposed evidence to support the version of the victim (PW-3) as such no reliance can be placed on their evidence. According to the learned counsel Sri Radhikananda Das, PW-4 Subir Choudhuary and PW-5 Biki Karmakar are independent witnesses but in their cross examination PW-5 stated that he was not examined by police during investigation. So, his evidence in court carries no evidentiary value.

25. It is further contended by the learned defence counsel that PW-1 the medical officer doctor Mamata Devi who examined the victim girl on 05.08.2017 did not find any injury or violence mark on her person. Doctor did not state that on examination she found any teeth bite injuries on the ear of the victim as deposed by PW-3 the victim girl in her deposition in court. So, the medical evidence negated the prosecution case.

26. It is the further argument of the learned defence counsel that during investigation I/O did not examine the material witnesses namely-the mother of the victim and Barun Karmakar, Dibakar Karmakar, Sanjib Karmakar, Samar Karmakat etc who were next door neighbors of the informant. Moreover, the colleagues of the victim girl namely-Shivsankar, Pritam, Abhijit Mousumi etc were also not examined by I/O as witness who were present with the victim girl at the relevant time nor they were sent to court for recording their statement before Magistrate u/s 164 Cr.P.C. Therefore, the learned counsel vehemently contended that there is no credible evidence to support the prosecution case. The sole version of the victim girl who is



minor cannot be relied on. There is no other witness who saw the incident. Therefore, there is no direct evidence in the case except version of the victim girl. It is contended that the victim girl being extremely minor there is every probability of tutoring her by her parents to depose false evidence against accused. The I/O caused delay in recording her statement u/s 161 and 164 Cr.P.C. because the incident occurred on 03.08.2017 but I/O recorded her statement on 06.08.2017 and sent her to court on 08.08.2017. During this intervening period parents got sufficient time to influence the victim girl to depose false evidence against accused.

27. The learned defence counsel Sri Radhikananda Das vehemently contended that non-examination of the mother of the victim girl by the prosecution to whom the victim girl narrated her ordeal first in point of time raises serious doubt about the authenticity of the prosecution case because mother is the best witness to tell the truth as to what has been narrated to her by her daughter immediately after the incident. But conspicuous absence as prosecution witness renders the prosecution case highly doubtful. The learned defence counsel further contended that there is contradiction in the evidence of PW-4 and PW-5 with that of their statement given before the I/O u/s 161 Cr.P.C. Therefore, their evidence is not at all credible and trustworthy. The learned counsel further contended that during the course of evidence of the prosecution witnesses it transpires that as per evidence of informant the place of occurrence is the "Bhitha" of Goda and in her statement before police u/s 161 Cr.P.C. the victim girl narrated the place as to the side of the residence of Goda and in her 164 Cr.P.C. statement she stated that the place of occurrence is near the road on the side of residence of Goda. In his evidence I/O stated that in the sketch map (Ext.4) he has shown the place of occurrence as indicated in "C" and mark "C" indicates shop of one Goda. Therefore, the learned counsel contended that there is apparent contradiction regarding the

actual place of occurrence. Hence the learned counsel contends that no reliance can be placed on the evidence of the prosecution on the basis of such huge contradictory and inconsistent evidence.

28. Reliance was placed on behalf of the accused on the verdict of the Hon'ble Supreme Court reported in 2002 Supreme Court cases Crl 780 **Kalyan and others...appellant Vs. State of U.P....respondent** wherein the division bench of Hon'ble Supreme Court justice M.B. Shah and R.P. Sethi held in paragraph 19 that keeping in view the facts and circumstances of the case, particularly the variance between the FIR and the depositions made in the court, the mention of gunshot injuries in the panchnama and their absence in the FIR, the conflict between the statements of the eye witnesses and the medical evidence and major contradictions and improvements in the depositions of the eye witnesses, we are of the view that the prosecution failed to prove their case against the appellants beyond all shadow of doubt. The appellants are, therefore, held entitled to the benefit of reasonable doubt. To form an opinion giving the appellant-accused the benefit of doubt we have kept in mind the defence as projected and suggested by them to the witnesses during their cross examination.

29. Reliance was also placed on behalf of the accused on the verdict of the Hon'ble Supreme Court reported in **2017 (2) Acquittal 110 (SC)** in which the division bench of Hon'ble justice N.V. Ramana and Prafulla Chandra Paut JJ held in paragraph 26 as follows:

"26". Thus, applying our dispassionate judicial scrutiny to the facts and circumstances of the case, we feel that the prosecution story is not trustworthy to show the guilt of the accused. The material on record portrays huge suspicion in the mind and the evidence adduced on record is full of contradictions and basing on such evidence, it is not safe to fasten the liability on the accused. It appears to us that the investigating agency ignored its paramount duty of bringing evidence

of guilt of the accused with probable evidence as admissible under law. Rather, the investigating agency appears to have spent time in creating two occurrence and submitting the same with the circumstances. The prosecution failed to exonerate itself from the facts of proving the guilt of the accused beyond reasonable doubt.

30. Reliance was also placed on behalf of the accused on the verdict of the Hon'ble Bombay High Court reported in **2003 CRL. L.J. 4718 (Bombay High Court (Patiram....appellant vs. State of Maharashtra...respondent))** the division bench held in paragraph 22 as follows:

"22". As far as the evidence of Gopikabai (PW-4) is concerned, she has stated in her chief that at the relevant time deceased Someshwar was sitting on the swing of the house of the accused. Accused Patiram Picked up an axe and then dealt a blow with the axe on the head of deceased Someshwar. However, we cannot turn the Nelson's eye to the fact that her statement under section 164 of the Code was recorded by the Magistrate only after fifteen days of the incident. This witness is also a resident of the same village and the wife of the complainant PW-1. The investigating agency was well aware of these facts and ought to have taken immediate steps to record the statement of this witness u/s 161 of the Code, since this witness Gopikabai was the eye witness to the incident. However, there is no explanation forthcoming from the investigating officer in this regard. Since the statement of this witness was recorded after a considerable delay, which has not been explained by the prosecution at all, it will be highly unsafe to rely on the evidence of such witness, who admittedly was not on visiting terms with the accused. In the facts and circumstances of the case, there is a serious doubt about the authenticity in respect of the material particulars of the prosecution case disclosed by this witness in her evidence and, therefore, in our view, the testimony of Gopikabai (PW-4) is not truthful and difficult to rely.

31. Reliance was also placed on behalf of the accused on the verdict of the our Hon'ble Gauhati High Court reported in In **2011 (1) GLJ 662 (Rajesh Kumar...appellant vs. State of Assam.....respondent) wherein** the division bench of our Hon'ble High Court held in paragraph 14 and 15 as under:

"14". In the backdrop of the evidence adduced by the prosecution witnesses as recited herein above, we are of the unhesitant opinion that the charge against the accused-appellant has remained unproved. Not only there is no eye witness in the instant case in support of the charge, the evidence of PW-11 leading to discovery does not inspire the confidence of this court. Not only this witness has contradicted himself about the disclosure made by the accused-appellant to this effect before the investigating officer, the persons before whom the same is claimed to have been made have not supported the prosecution in this regard. Not only the investigating officer has not recorded the statement of the accused-appellant stated to have made to this effect before him, the signature of the accused-appellant has also not been obtained on the seizure list (Ext.6). It is intriguing as to why the investigating officer had not enquired about the whereabouts of Rupadhar Chabar and Rajesh Kurmi in course of the night during which the incident had occurred. This is more so as two persons were mercilessly hacked to death as would be evident from the multiple incised wounds detectable on their bodies.

"15". The investigating officer had been wholly callous and superficial in his probe is apparent from the fact that not only he failed to forward the seized articles to the Forensic Science Laboratory to ascertain as to whether the same could in any way be correlated to the incident, he did not even ensure that the seized articles were produced in court for their identification by the witnesses of the prosecution. It passes our comprehension as to how if really the accused-appellant had made a statement in presence of a host of persons as claimed by him, none

had supported the said fact in course of the trial on oath. According to us, the investigation has been wholly sloppy and shoddy, as a result whereof, the actual assailants have made good their escape from the clutches of law. Had the investigating officer been careful and enterprising as was expected of him, in all probability the real offender could have been apprehended and made to stand trial. In the true sense of the term such indifferent and inept investigation has resulted in a mockery of the process. A crime against society, therefore, would go unpunished for such faulty and sketchy investigation. We are therefore, of the opinion that stringent action should be taken against the investigating officer, both departmentally and otherwise in accordance with law.

32. In this context this court profitably refer a judgment of the Hon'ble Delhi High Court **In Raghav vs State on 24 May, 2018**, which is impregnated with the law rendered by Hon'ble Apex Court as well as its own findings as under-

Analysis

“13. Various issues arise, for consideration, in the present case, which may be addressed, seriatim.

Statement of the prosecutrix \_M'

14. That conviction, for rape, can be sustained solely on the basis of the statement of the prosecutrix is, by now, almost axiomatic. Several judicial pronouncements, on the issue, were digested, by the Supreme Court in paragraphs 9 to 14 of the report in Vijay @ Chinee vs State of Madhya Pradesh, (2010) 8 SCC 191, which may be reproduced thus:

—Sole evidence of prosecutrix

9. In State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court

observed as under: (SCC p. 559, para 16) —16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. 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.||

10. In *State of U.P. v. Pappu*, (2005) 3 SCC 594 this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there

was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12) —12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.||

11. In *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even

properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21) —8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

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21.... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon



without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

12. In *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* [(2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [AIR 1952 SC 54 : 1952 Cri LJ 547] .

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix. (Emphasis supplied)

15. *Vijay @ Chinee* (supra) was followed, by another 2-judge bench of the Supreme Court (speaking through Madan B. Lokur, J.), in *State of Haryana vs Basti Ram*, (2013) 4 SCC 200. As in the present case, the prosecutrix, in that case, who was less than 16 years of age, alleged misbehaviour and, thereafter, rape, by her maternal uncle, intermittently over a period of time. The High Court acquitted the accused, finding the sole testimony of the prosecutrix to be insufficient to indict him. The Supreme Court was critical of the approach of the High Court, opining, thus, in paras 2 and 25 of the report:

—2. In our opinion, the High Court committed an error of law in not considering the evidence put forward by the prosecutrix (who was less than 16 years when she was raped) and ignoring the settled position in law that if the sole testimony of the prosecutrix is credible, a conviction can be based thereon without the need for any further corroboration.

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25. The law on the issue whether a conviction can be based entirely on the statement of a rape victim has been settled by this Court in several decisions. A detailed discussion on this subject is to be found in *Vijay v. State of M.P.*, (2010) 8 SCC 191. After discussing the entire case law, this Court concluded in para 14 of the Report as follows: (SCC p. 198) —14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

16. Profitable reference may also be made to one of the most recent authorities on the point, *State of Himachal Pradesh vs Sanjay Kumar*, (2017) 2 SCC 51. There, too, a 9 year old girl was ravaged by her uncle. The Supreme Court took pointed note of this fact, at the very beginning of its reasoning in the judgement, in para 21 of the report, thus:

—Here is a case where charge of sexual assault on a girl aged nine

years is levelled. More pertinently, this is to be seen in the context that the respondent, who is accused of the crime, is the uncle in relation. Entire matter has to be examined in this perspective taking into consideration the realities of life that prevail in Indian social milieu.

17. Para 31 of the report precisely sets out the legal position, regarding the admissibility, and acceptability, of the evidence of a victim of rape, and the advisability of seeking corroboration thereof, before seeking to base conviction, thereon, in the following words:

—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 respondent, 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 the 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 some 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 in 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 or suspicion? The plea about lack of corroboration has no substance (See Bhupinder Sharma v. State of H.P., (2003) 8 SCC 551). Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove. || (Emphasis supplied

Having said that, we do have, with us, the statements of the prosecutrix 'M' herself, both under [Section 164](#) of the Cr.P.C., as well as during trial, which are consistent regarding the allegation of threat having been held out, to her, by the appellant. The statements inspire confidence, especially as they are supported by the depositions of Seema (PW-3) and Gauri Shankar (PW-6).”

33. Now coming back to the facts of this case, it is evident that the victim girl is very much consistent and confident in her statements before Magistrate under section 164 CrP.C. as well as in her deposition in court. She has been subjected to lengthy cross examination by defence but failed to discredit her in material particulars. In her evidence she categorically deposed that she knows accused whom she addressed as 'Fukka'. The incident occurred at about 8:30 pm on the day of “Julan Puja” when she went to nearby shop to purchase candle. Then “Fukka” took her on his scooter to give her a ride. Though she was initially reluctant but at the insistence of accused she agreed who then took her to a vacant house belong to one Goda where he touched her breast and put his hand inside her pant and gave a teeth bite on her ear. Thereafter, he again took her back and dropped nearby her house and left. Then she came home weeping and told the incident to her mother. Thereafter, her father also reached home whom she informed about the incident. Thereafter, her father filed the case after three days. Police came and sent her for medical examination. Also sent her to court for recording her statement. Ext.3 is her statement and Ext.3(1), 3(2), 3(3) are her signatures.

34. In her cross examination she stated that accused is a co-villager

and there is a good family relations. She could not remember the date of incident but there were Pritom, Abhijit, Sivsankar, Mousumi, Moumita along with her. She also stated that along with her Sivsankar and Pritom also seated in the scooter but they were dropped nearby temple but she was taken by "Fukka". She denied that she was not taken by accused to the vacant house on the side of the road belong to Goda. She denied that accused did not touch her private part and did not bite on her ear. She first told the incident to her mother and then her father. There were several persons in her house but she did not disclose it to others as well as police. No village head came to her house. His mother and one Biki also visited the police station but she was not asked by any question by police. She denied that accused did not took her in the name of giving her a ride on his scooter.

35. In her statement before Magistrate under section 164 CrPC she reiterated the same fact baring few omission which is bound to occur in a criminal case more so when the victim being a minor girl of 7 and half years old. She is not expected to recollect all the details in cinematographic fashion. Her deposition cannot be looked in the perspective of the evidence of an adult person. As it appears her evidence inspires confidence in the mind of the court because defence failed to bring any such circumstance to show that accused has no visiting terms with the house of the victim girl or has any personal grudge and enmity. In her evidence the victim girl stated that they have good relation with the house of accused. Had there been no such ill intention accused has no occasion to take her to the "Vitha" at about 8.30 to 9 p.m. Accused did the offence with criminal intent. Non examination of the other two children who were also taken by accused along with the girl in his scooter and dropped them midway no way affects the merit of the prosecution case. Non examination of the mother of the victim girl also does not weaken the prosecution case as the evidence of the victim girl is found credible and trustworthy.

Otherwise what benefit a minor girl will derive by falsely implicating the accused.

36. It is to be noted that the Protection of Children from Sexual Offence Act, 2012 was annexed by Parliament with the objective of securing that the tender age of children 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.

37. In this backdrop, reading the definition of Section 7 of the POCSO Act would be useful which reads as under:

**Section 7. sexual assault-** “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”

38. The above being the evidence of the witnesses, this court has come to unerring findings that accused evidently invaded the privacy and sexuality of the victim girl and attempts to violate her dignity as a person by touching her breast and private part by taking her to the “Vitha” at odd hours. Even though she is a minor girl, she is very much entitled to protection of her person from aggression of intruders. Doctor not finding any teeth bite mark in the ear as deposed by the victim girl is no ground to discard her evidence as there may not be any mark if the teeth bite was mild. So, this court comes to definite finding that accused undoubtedly committed the offence as define u/s 7 of POCSO Act punishable u/s 8 of POCSO Act. Accordingly, accused is found guilty for the offence u/s 8 of POCSO Act and he is convicted accordingly.

39. It is to be noted that the then Hon'ble Special Judge, Barpeta vide order dated 29.01.2018 framed charge u/s 6 of POCSO Act. No separate charge under section 8 of POCSO Act was framed. However,

since the punishment prescribed under section 8 of POCSO Act is lesser than the punishment prescribed under section 6 of POCSO Act so there is no legal impediment in convicting the accused under section 8 of POCSO Act though no separate charge under section 8 was framed. Therefore, accused is convicted under section 8 of POCSO Act, 2012.

40. I have considered the provision of section 360 Cr.P.C. but after due consideration of the attending facts and circumstances of the case and the age of the accused the nature of the offences committed, this court is not inclined to extend the benefit of Probation of Offenders Act in favour of accused.

#### **SENTENCE HEARING**

41. I have heard the accused person on the point of sentence as provided u/s 235(2) Cr.P.C. It is submitted that accused person hails from very poor strata of society. He is very young 30 years old unmarried. He was having his old ailing mother to maintain. So, in the event he is put behind bar his innocent family members would suffer a lot. Hence, accused pleaded clemency.

42. Having considered all the attending facts and circumstances and the extenuating and mitigating circumstances of the case and the punishment prescribed in section 8 of POCSO Act, 2012 accused is convicted and sentenced to undergo Rigorous imprisonment for a term of 3 years (three years) and fine of Rs.1000/- (one thousand) i/d S/I for 3 three months.

43. The period of detention, if any, undergone by accused during the course of investigation, enquiry or trial shall be set off against the term of imprisonment as provided u/s 428 Cr.P.C.

44. Let a copy of the judgment be furnished to accused person free of cost as provided in section 363 Cr.P.C.

45. Let copy of the judgment be forwarded to the learned District

Magistrate, Barpeta as provided in section 365 Cr.P.C.

46. Let the case record be consigned to record room after completing the formalities.

47. Given under my hand and seal of this Court on this 13<sup>th</sup> day of May 2019.

Dictated & corrected my me

Sd/-  
(Sri C.B. Gogoi)  
Special Judge, Barpeta

Sd/-  
(Sri C.B. Gogoi)  
Special Judge, Barpeta



**APPENDIX**

1. The prosecution has examined the following 7 nos. of witnesses :-

- PW-1 = is doctor Mamata Devi, the M/O.
- PW-2 = is Sri Subhash Sutradhar, the informant.
- PW-3 = is the victim girl (X).
- PW-4 = is Subir Choudhury.
- PW-5 = is Biki Karmakar.
- PW-6 = is Rajesh Saha.
- PW-7 = is Abhijit Baruah, the I/O.

2. The prosecution has exhibited following document:-

- Ext.1 = is the medical report.
- Ext. 1(1)= is the signatures of doctor Mamata Devi.
- Ext.1(2)= is the signature of doctor Manoj Kumar Singha.
- Ext.2 = is ejahar.
- Ext.2(1) = is the signature of informant Subhah Sutradhar.
- Ext.3= is the statement of the victim recorded u/s 164 Cr.P.C.
- Ext.3(1), 3(2) & 3(3) = are the signature of victim (X).
- Ext.3(4)= is the signature of lady H.G. Arati Das.
- Ext.4 = is the sketch map.
- Ext.4(1) = is the signature of I/O Abhijit Kumar Baruah.
- Ext.5= is the charge sheet.
- Ext.5(1)= is the signature of Rahul Deuri.

Sd/-

(Sri C.B. Gogoi)  
Special Judge, Barpeta.