

**IN THE COURT OF SPECIAL JUDGE, SONITPUR AT TEZPUR**

**SPECIAL (POCSO) CASE NO.** :- **23 OF 2015**

*(Under Section 4 of the POCSO Act, arising out of G.R. Case No. 2720 of 2014)*

**Present** :- **Mridul Kumar Kalita, AJS  
Special Judge, Sonitpur  
Tezpur**

**Prosecutor** :- **State of Assam**

**Accused** :- **-vs-  
Md. Abdul Kalam,  
Son of Md. Harjat Ali  
Resident of Pabhamari  
Police Station – Missamari,  
Dist:- Sonitpur, Assam**

Date of framing Charge :- 03/08/2015.

Date of Recording Evidence :- 07/09/2015, 06/10/2015  
30/11/2015 & 07/01/2016.

Date of examination of accused :- 25/01/2016.  
u/s 313 Cr.P.C

Date of Argument :- 05/02/2016, 26/02/2016

Date of Judgment :- 10/03/2016

Counsel for the Prosecution :- Mr. Hari Prasad Sedai  
Public prosecutor  
Sonitpur.

Counsel for Accused :- Smt. Dulumoni Sinha, Advocate.

**JUDGMENT**

**1.** On 11/11/2014, the Officer-In-charge of Missamari Police Station received an FIR (First Information Report) from one girl, who is herein after referred to as "***the Victim***", wherein it was alleged, *inter alia*, that about five months prior to filing of FIR, the accused Md. Abdul Kalam, by promising the victim that he will marry her, committed sexual intercourse with her three times, as a result of which, she became pregnant. It is also stated that in this connection, village meetings were

also held, however, the accused refused to confess his guilt in the village meetings also. The first informant has stated that the delay in lodging the FIR was due to the promise given by the accused to marry the victim and also due to an expectation that the matter would be resolved in the village meeting.

**2.** On receipt of the aforementioned FIR, the Officer-In-Charge of Missamari Police Station registered Missamari P.S. Case No. 117/15 u/s 419/376 of IPC, and entrusted Sri Ramen Borah, Sub-Inspector of Police to investigate the case. After completion of the investigation formal charge sheet was laid U/s 493/376(2)(i) of IPC r/w section 6 of the POCSO Act against the accused Md. Abdul Kalam in the Court of Chief Judicial Magistrate, Sonitpur. The case was transferred to the Court of Smt. J. Bora, Judicial Magistrate 1<sup>st</sup> Class, Sonitpur and as the charge sheet laid under the provision of POCSO Act also, this case was sent to this Court and a POCSO Case was registered on 23/07/2015.

**3.** The accused Md. Abdul Kalam appeared before this court to face trial. After hearing the accused as well as the learned Addl. Public Prosecutor and after going through the materials on record, charge u/s 4 of POCSO Act, 2012, was framed against the accused Md. Abdul Kalam. The charge was read over and explained to the accused and on being asked, he refused to plead guilty and claimed to be tried. During trial, prosecution side examined 8 (eight) witnesses. The accused was examined u/s 313 Cr.P.C. during which, he denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. The accused declined to adduce any evidence in defence.

**4.** The point to be determined in this case is as follows:-

***"Whether the accused, five months before 11/11/2014 (i.e. the date of filing the FIR), at Pabhamari, under Missamari police Station, committed penetrative sexual assault on "the Victim" and thereby committed an offence punishable under section 4 of the Protection of Child from Sexual Offences Act?"***

5. I have gone through the entire materials on record, including the oral testimonies of the witnesses and the statement of the accused recorded under section 313 Cr.P.C, very carefully as well as heard argument advanced by Ld. Public Prosecutor and learned Defence counsel, at length.

6. Let me, at the very beginning scrutinise the evidence adduced by the prosecution witnesses.

7. P.W-1, the Medical Officer, Dr. Tutumoni Handique, has stated that on 11-11-2014 she was posted as Medical & Health Officer-1 in the Kanaklata Civil Hospital, Tezpur and on that day at about 3.30 p.m. in the labour room complex of KCH, she examined Musstt Aibina Khatoon, D/O Abdul Nabed Ali of village Pabhamari, PS- Missamari, in reference to Missamari PS case No. 117/14 u/s 419/376 of IPC on being escorted and identified by Woman PC AB 170 Prabhabati Nazary, in presence of GNM Jitumoni Das. On examination she found the following:

No menstruation for last five months.

Menstrual history- regular. Exposure history- present.

Identification mark – Mole on right breast.

Height – 148 cm., Weight – 42 Kg, Teeth – 7 in all four quadrants. She was well dressed, neat and tidy with normal gait and average built.

**Per abdomonial examination :**

Uterine size 24 weeks +

Fetal movement positive.

**Breast examination :**

Milk secretion positive.

No injury seen on her body as well as on her private parts.

Investigation reports:

1. Vaginal smear – no sperm seen done at KCH Laboratory, Lab No. 136/14

2. Urine for pregnancy test – weekly positive done at Assam X-ray Clinical Laboratory by Pathologist Dr. D.K. Mahanta. Patient ID - 22027 .
3. X-ray for determination of age :  
Age of the person under investigation is below 18 years.
4. Ultra sonography of abdomen;
5. Normal intra uterine gestation done at Assam X-ray Clinical Laboratory by Radiologist Dr. P.K. Barman. Patient ID – AX 264.

**OPINION:**

1. No sign of recent sexual intercourse
2. No mark of violence in her body as well as in her private parts.
3. Victim is pregnant of five months.
4. Actual age of the victim is below 18 years.

Ext. 1 is the Medical Report and Ext. 1(1) is her signature.

During cross-examination, the doctor has stated that she has assessed the age of the victim as per report of the Radiologist and she has given her opinion on the basis of clinical examination. She has stated that the estimation of age may vary two years on either side. .

**8.** PW 2, Nazbina, who is the mother of the victim, has stated that she knew the accused as he is her neighbour. The accused used to come to her house and used to tell that he will marry her daughter (victim). Thereafter, the accused went to Kerela. Her daughter informed her that she was five months pregnant from the side of the accused. After about 3 months, the accused came back from Kerela. When she asked the accused to marry her daughter, the accused refused to do so. Thereafter there were village meetings for about three times and there also the accused refused to marry her daughter. Thereafter, her daughter lodged an FIR in the Police Station. Her daughter delivered a baby girl (presently six months of age). She is now staying with her. At that time, the age of her daughter was about 15/16 years.

During cross-examination, she has stated that the victim is the second out of her five children. She married 20/25 years ago. Her son was born one year after their marriage. The victim was also born after one year of the birth of eldest son. The victim read up to class V. She left her school one/two months before the incident. This PW has also stated that she came to know about the pregnancy of her daughter when it was five months. She has also stated that when the accused was in Kerela, she called village meeting twice and when he came back village meeting was held once. In the village meeting written proceedings were made. In the meeting the accused has said that the baby born to the victim is not from his side. She denied the suggestion put by learned defence counsel that at the time of the incident, the age of her daughter was 19/20 years and her daughter was not pregnant from the side of the accused.

**9.** PW 3, Abdul Nased Ali, who is the father of the victim, has stated that the occurrence took place about one year ago. At that time the age of his daughter was 17 years. The accused used to come to his house. After coming to know about pregnancy of his daughter, the accused fled away to Chennai. His daughter told his wife about the pregnancy from the side of accused Abdul Kalam. His wife told him about the incident. His wife told him that his daughter had told her that the accused had done this with a promise to marry her. He informed about the incident to the father of the accused. His father assured that he bring his son after one month. After one month the accused came back, but he disowned the pregnancy of his daughter. He also refused to marry his daughter. Later on his daughter lodged the FIR.

During her cross-examination, he stated that he married 17 years ago. He has six children. The name of his elder son is Saiful Islam. He works at Chennai. His elder son was born one year after his marriage. His second child who was a female was born after two years of birth of Saiful Islam. He has also stated that his third daughter was Aibina. She was also born after one year of the birth of second

daughter. His other children were also born after the gap of one to two years in between them. Aibina went to school and she studied upto class V. Aibina was admitted in Phabhamari LP School when she was 9 years old. She studied for 6 years in that school. She left her school one year before the incident. His daughter was not working in any body's house. The house of the accused is near his house. His wife used to work on daily wages occasionally. He has further stated that when his daughter was having pregnancy of about 3/ 4 months, his wife told him about the incident. Prior to that, the accused had left away. Accused Kalam had gone to Chennai for work earlier also. 12 days after coming to know about the incident, he informed the matter to Kalam's father. The village Meeting was held in his house after two days. In that Meeting one Matleb was President and Abdul Salam was Secretary. The proceedings of the meeting were also prepared.

Police took his statement. He has also stated that he has not stated before police that the accused after coming to know about the pregnancy, fled away to Chennai. He has also stated that he has not stated before police that *"my daughter told my wife about the pregnancy from the side of accused Abdul Kalam. My wife told me about the incident. My wife told me that my daughter had told her that the accused had done this with a promise to marry her"*.

He was asked many other suggestive questions by learned defence counsel, he answered all those questions in negative.

**10.** PW 4, the victim, has stated that she knew the accused. She filed this case one year ago. Six months prior to filing of this case, the accused used to come to her house and also used to tell her that the accused loved her and he will marry her. The accused also use to come to her house and use to do bad act with her in her house and in the house of the brother of the accused. The accused also told her that he will marry her and committed bad act with her. PW 4 also deposed that 2<sup>nd</sup> time the brother's son of the accused called her to the house of his brother Sahid Ali. At that time no one was present in the house of Sahid

Ali. At that time she was wearing Churidar semis etc. The accused took her to the kitchen. The accused removed her clothes and also removed his clothes and committed bad act on her. She protested, but the accused committed bad act on her saying that he will marry her. It was night. She stayed there for one hour. House of Sahid Ali is near her house. She did not tell anybody about the incident. She only told about the incident to Yasin, who is her uncle's daughter. After coming to know that she is pregnant, she told about the incident to her mother. After about three days of the incident, the accused went to Kerela. Before going to Kerela, the accused told before her that he will marry her after coming back from Kerela. Her father told about this incident to the father of the accused. The father of the accused called the village meeting. After village meeting, about 8 days after that, the accused came from Kerela. In the village meeting the accused told that he only hold her hand and did not commit any bad acts with her. Thereafter, she lodged an FIR in Missamari Police Station. As per her instruction, one person wrote the FIR. She has exhibited the FIR as Ext. 2 and Ext. 2(1) is her signature. Police sent her for medical examination and she was brought to Court for recording her statement. She gave her statement to the Magistrate.

During her cross-examination, she stated that she studied up to class V in Pabhamari Primary School and she do not know the date of her birth. She has also stated that he failed for two years and her elder brother one year older than her and has two children. She has also stated that the house of Aijul Islam and Hanif are there near their house, however, they have not seen the accused Abdul Kalam coming to her house. She has also stated that when Kalam took her to his brother's house, only her sister Ruksana was in her house and she did not told Ruksana where she was going. She has also stated that the accused Kalam did bad acts on her for about one hour. She has also stated that she did not inform her neighbours that the accused committed bad acts on her. She has also stated that the accused removed her clothes and her clothes were torn when the accused

committed bad acts on her. She has also stated that when she did not had her monthly periods she told her cousin sister Yashin about it. She has also stated that she has delivered a female child five months ago (prior to her deposition). She was asked many other suggestive questions by learned counsel for the defence which were all answered in negative by her. She has admitted that she has not informed police about the fact that she informed about the incident to her cousin sister Yashin.

**11.** PW 5, Abdul Rahman, has stated that he knew both the accused and the victim. One day the father of the victim came to his house and called him to attend the meeting in his house on that day. He went to the meeting and in the meeting he came to know that the victim became pregnant from the side of the accused. He has no personal knowledge about the incident. The accused stayed near the house of the victim. The meeting was held once more after three days. In that meeting the accused was present. In the meeting, the victim alleged that she was pregnant from the side of the accused, but he denied it.

**12.** During cross-examination, this PW has stated that he has no personal knowledge as to how and from whom the victim became pregnant.

**13.** PW 6, Saiful Islam, has stated that he knew the accused and the victim is his sister. At the time of the incident, he was in Kerala. After coming back, he came to know that his sister is pregnant from the side of the accused Abdul Kalam. His sister lodged the FIR.

**14.** During cross-examination, this PW has stated that he was in Kerala for eight months. When he went to Kerala his sister was not pregnant and he has no personal knowledge as to how and from whom the victim became pregnant.

**15.** PW 7, Rahila Khatoon, has stated that she knew the accused and the victim is her sister-in-law. Accused used to come to the house of the victim. She does not know what they used to talk. Her sister-in-law told



her that she had love affair with the accused and she is pregnant from the side of the accused Abdul Kalam.

**16.** During cross-examination, this PW has stated that she was married seven years ago. Victim lived in her house. The victim informed her about the incident after the village meeting. Before that she did not know about the incident. Her husband and the accused stayed in Kerala. The accused also used to visit their house like other villagers.

**17.** PW 8, Sri Ramen Borah, S.I. of Police, has stated that on 11-11-2014 he was posted at Missamari Police Station as Attached Officer. On that day, SI Nurul Hussain, O/C of Missamari Police Station received an FIR from one victim and O/C SI Nurul Hussain registered a case being Missamari PS Case No. 117/2014 u/s 419/376 of IPC and endorsed him to investigate the case. Ext. 2 is the FIR and Ext. 2(2) is the signature of SI Nurul Hussain, O/C of Missamari Police Station which is known to him. On being endorsed him for investigation of this case, he went to the place of occurrence at Pabhamari near the house of Md. Abdul Kalam. He drew the sketch map of the place of occurrence which is exhibited as Ext. 3 and Ext. 3(1) is his signature. He also recorded the statement of the victim at the Police Station. He also recorded the statement of witnesses. On 12-11-2014 he sent the victim for medical examination and recording her statement u/s 164 Cr.P.C. On 11-11-2014 he arrested the accused person and on the next day he was produced before the Court. Lateron, after completion of investigation, he laid the chargesheet against the accused Md. Abdul Kalam u/s 493/376(2) (i) of IPC read with Section 6 of POCSO Act. Ext. 4 is the charge-sheet and Ext. 4(1) is his signature.

During cross-examination, the I.O. has stated that the victim showed the Place of occurrence at "Bahoni bari" (bamboo bush). As per FIR, the incident occurred five months prior to lodging of the FIR. In the FIR which is exhibited as Ext. 2, the name of the scribe is mentioned on the back side. At the first instance, the case was registered u/s 419/376 of IPC.

During cross-examination, the I.O. has stated that the witness Nousad Ali did not state before him during investigation that when he informed about the incident to the father of the accused, accused's father assured him that he will bring his son after one month and after one month the accused came back but disowned the pregnancy of Nousad's daughter. The I.O. has also stated that the victim Aibina did not state before him during investigation that the accused took her to the house of his brother at night. Victim Aibina also did not state before him during investigation that she has informed about the incident to her cousin sister Yasmin. Victim Aibina also did not state before him during investigation that accused Kalam has stated before the village meeting that he only held her hands. Witness Abdul Rahman did not state before him during investigation that the meeting was held on three occasions.

He denied the suggestion put by learned defence counsel that he has not investigated this case properly and wrongly laid the charge-sheet against the accused.

**18.** During examination under section 313 Cr.P.C the accused pleaded his innocence and has stated that victim accompanied him on her own and she has lodged false case against him.

**19.** The Offence under section 4 of the Protection of Child from Sexual Offences (POCSO) Act deals with punishment for penetrative sexual assault and Section 3 of the POCSO Act defines penetrative sexual assault. The offence of penetrative sexual assault under POCSO Act and for that matter other offences also under this Act can be committed only on a child. The definition of child u/s 2 (d) of the POCSO Act is as follows :-

**"Child" means any person below the age of 18 years.**

Thus, a person can be convicted for an offence under POCSO Act only if the victim is below the age of 18 years. In the instant case, let us

see as to whether the victim was a child, at the time of commission of offence, or not.

**20.** In the instant case, if we peruse the testimony of the witnesses, it appears that the Doctor, who examined the witness on, 11-11-2014, found that the victim was less than eighteen years of age on the date of examination. Her examination was based on the radiological reports of the victim. Hon'ble Supreme Court of India dealing with a case where question of determination of the age was involved observed that: - "***one can take judicial notice that the margin of error in age ascertained by radiological examination is 2 years on either side.***" Though, the Doctor, has stated during cross-examination that the estimation of age on the basis of radiological examination may vary two years on the either side, however, it is to be noted that the Doctor has not estimated a specific age of the victim from which two years addition or two year subtraction could have been done, she has only observed that the age of the victim is less than eighteen years on the date of the examination. Otherwise also, in view of the aforesaid observation of Hon'ble Supreme Court of India, it appears that the testimony of Doctor, as regards assessment of the age, is not the conclusive evidence and for coming to a conclusion, as regards the age of the victim, other materials on records has to be taken into consideration. In the instant case when the victim was examined under section 164 Cr.P.C, on 12/11/2014, she deposed her age to be eighteen years. Admittedly, the incident occurred much before her examination and thus if her statement is to be believed, she was less than eighteen years at the time of alleged offence. Learned counsel for the accused has submitted that the mother of the victim, who deposed before this court as PW 2, has stated that she was married 20/25 years ago and the victim was born after one year of birth of her eldest son, who was born after one year of her marriage. She has submitted that as the victim was the second child of the PW 2 and from her own testimony, it appears that she was born within 2 years of her marriage, so if her marriage was held 25 years ago, the victim apparently has to be major.

However, if we peruse the testimony of PW 2 it appears that she has only stated that her marriage was held 20/25 years ago that means that it could be either 20 years or 25 years or anytime in this range. When we look at the testimony of PW 2, who is the mother of the victim, we cannot ignore the testimony of PW 3 who is the father of the victim who has categorically stated that his daughter was 17 years of age when the incident occurred. He has also stated that the victim is his third child and after the birth of elder son one another daughter was born who died and only after the death of second child, the victim was born. Thus, if we take into consideration the testimony of parents of the victim it cannot be said that they have admitted that the victim was major, rather it appears that they have deposed that the victim was minor when the alleged offence was committed. This court is also of considered opinion that if benefit of doubt of variation of two years in estimation of age on the basis of the Radiological report by Doctor is given to the accused in POCSO cases, no child who do not have a birth certificate and who is above the age of 16 years will get justice under the Provisions of the Protection of Child from Sexual Offences Act, 2012. Under Section 34 (2) of the Protection of Child from Sexual Offences Act, 2012, if any question arises in any proceeding before the Special Court as to whether a person is a child or not, such question shall be determined by the Special Court and after satisfying itself about the age of such person and it shall record in writing it's reason for such determination. Therefore, it is for this Court to ascertain as to whether the victim was child or not.

Looking at the entire evidence on record as regards the age of the victim, if we consider the testimony of victim who deposed as PW 4, her parents who deposed as PW 2 and 3 and the Doctor who deposed as PW 1, this Court is of considered opinion that the materials on record clearly suggests that the age of the victim was less than 18 years on the date of the alleged offence and therefore, she can be regarded as the child within the meaning of Section 2(d) of the Protection of Child from Sexual Offences Act, 2012.

**21.** From the evidence on record as discussed above, it appears that the victim had love affairs with the accused. However, the fact that she was a child during that period cannot be ignored. She has very categorically stated that the accused did bad acts with her and as a result of which she became pregnant. Learned counsel for the defence has submitted that u/s 4 of the Protection of Child from Sexual Offences Act, 2012, the punishment prescribed is for penetrative sexual assault and the evidence has to be very clear as regards the ingredients of the said offence. She has also stated that by merely stating that the accused has committed bad acts with the victim is not sufficient for convicting the accused u/s 4 of the Protection of Child from Sexual Offences Act, 2012. Though there are rulings of Hon'ble Gauhati High Court wherein it has been observed that when a major girl is testifying before a Court it is not sufficient to state that the accused has committed bad acts, she has to specifically narrate as to what bad acts were done with her. However, this Court cannot ignore the fact that this Court is dealing with a minor victim. The victim before this Court is a child, it is not expected from a child that she will narrate the entire act of the sexual intercourse in detail as stated by learned counsel for the defence. It is also apparent that the PW 4 while deposing before this Court has also stated that the accused did bad acts with her on more than one occasion and on one occasion she was taken to the kitchen where the accused removed her clothes and then he removed his clothes and committed bad acts. The phrase "*bad acts*" as used by victim in the instant case, if we consider it in relation to her other statements where she has stated that she became pregnant and ultimately delivered a girl child will only lead to a conclusion that she meant sexual intercourse by the phrase "*bad acts*".

**22.** Learned counsel for the accused has also submitted that from the testimony of the victim, it appears that she never shouted or made any hue and cry if the accused had committed any bad acts on her. Learned counsel has also submitted that if anything has happened, the victim is a consenting party to the act. However, u/s 4 of the Protection of Child from Sexual Offences Act, 2012 consent is an immaterial

consideration as consent is not an ingredient of offence as defined in Section 3 of the Protection of Child from Sexual Offences Act, 2012. For the sake of convenience, Section 3 of the Protection of Child from Sexual Offences Act, 2012 is quoted herein below:-

**"3. Penetrative sexual assault.** - 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 .....***"

From above, it appears that mere penetration is enough to constitute of an offence of penetrative sexual intercourse against a child and consent is immaterial for commission of the said offence.

**23.** Learned counsel for the defence has also submitted that there is considerable delay in lodging the FIR by the victim which itself creates doubt on the veracity of the prosecution story. However, it appears from the evidence on record that the accused promised to marry the victim and it is only after detection of the pregnancy of the victim, he retracted from his promise and in this regard various village meetings were held. The delay in lodging the FIR was due to an expectation that the accused would marry the victim and some solution will come out in village meetings and same can be regarded as a reasonable cause for delay in lodging the FIR. From the testimony of PW 2 i.e. the mother of the victim, it appears that ultimately the victim delivered a girl child. The victim is admittedly an unmarried girl, so the circumstances in which an unmarried girl delivered a baby cannot be regarded as a normal circumstance and this fact cannot be ignored by this Court that it is only on failure of the village meetings to resolve the dispute, the FIR was lodged and therefore, merely on account of delay in registration of the FIR, the story of the victim cannot be doubted.

Learned counsel for the defence has also stated that the I.O. of this case, has stated during his deposition that the victim has stated before him that the place of occurrence of offence was a "Bahoni Bari" (bamboo bush) and therefore there is a contradiction as regards the place of occurrence of offence itself. However, from the testimony of the victim, it appears that the accused committed bad acts, by which she means sexual intercourse, on more than one occasion. This is not a case where the offence was committed only once but it was repeated many times on the false promise of marriage given by the accused to the child victim.

**23.** In the instant case, as this Court has held that the victim was a child when the offence was committed, though the act may have been consensual between the accused and the victim, however, the consent was immaterial as this offence was under Section 4 of the Protection of Child from Sexual Offences Act, 2012 and otherwise also the consent obtained by giving false promise of marriage by the accused. If a child is subjected to penetrative sexual assault then even if there was consent, even if the child was having love affairs with the accused are immaterial facts and if the Court comes to the conclusion that there was penetrative sexual assault within the meaning of section 3 of the Protection of Child from Sexual Offences Act, 2012, there is no escape from the conclusion that the accused has committed an offence punishable u/s 4 of the Protection of Child from Sexual Offences Act, 2012.

**24.** For the reasons stated above, accused Md. Abdul Kalam is hereby convicted of offence punishable u/s 4 of the Protection of Child from Sexual Offences Act, 2012.

**25.** Heard the accused person in person on the question of sentence. Also heard learned Public Prosecutor and the learned defence counsel on the question of sentence. The accused has stated that he has not committed any offence. He has further stated that he is the earning member of his family and his blind father, unmarried elder sister are

dependent on his earning and therefore, a lenient view of the matter may be taken. The offence u/s 4 of the Protection of Child from Sexual Offences Act, 2012, prescribes the minimum punishment of 7 (seven) years, the Court is of considered opinion that the penal provisions of Protection of Child from Sexual Offences Act, 2012 are very stringent in nature. Almost all the penal provisions prescribe the minimum sentence which shall have to be imposed in case a person is found guilty. Under such circumstances, this Court do not have any jurisdiction or discretion to impose a lesser sentence than the minimum sentence as prescribed by the statute. Considering entire aspects of this case, I sentence the convicted accused, Md. Abdul Kalam to undergo Rigorous Imprisonment for 7 (seven) years and to pay a fine of Rs. 1000/- (Rupees one thousand only) in default to undergo further Simple Imprisonment for 1 (one) month under Section 4 of the Protection of Child from Sexual Offences Act, 2012.

The period of detention already under gone, by the accused shall be set off from the sentence imposed.

**26.** In the instant case the victim, who is a child suffered from pregnancy on false promise of marriage and she actually delivered a girl child. She remained unmarried. The facts and circumstances of this case show that the victim is dependent on her parent and now she has also to undergo various rigours of being an unmarried child maternity. The facts and circumstances justify allocation of compensation to the victim of this case. Therefore, it is hereby, recommended u/s 357-A Cr.P.C. that the District Legal Services Authority, Sonitpur, shall give appropriate compensation to the victim within two months of the date of receipt of this Judgment by the District Legal Services Authority, Sonitpur. However, in interim, District Legal Services Authority, Sonitpur, shall pay an amount of Rs.25,000/- (Rupees Twenty five thousand only) to the victim within a period of one month from the date of receipt of the Judgment which shall be adjusted against the final quantum of compensation decided by the District Legal Services Authority, Sonitpur.



**27.** The accused/convict has been informed about his right to appeal against this judgment before the Hon'ble Gauhati High Court.

**28.** Let a copy of this Judgment be given free of cost to convicted accused immediately. Let also a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my Hand and Seal of this Court on this the 10<sup>th</sup> day of March, 2016.

**(Mridul Kumar Kalita)**  
**Special Judge**  
**SONITPUR: TEZPUR**

Dictated and corrected by me

**(Mridul Kumar Kalita)**  
**SPECIAL JUDGE,**  
**SONITPUR : TEZPUR**

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

## **APPENDIX**

### **Prosecution Witness**

- |                             |    |                            |
|-----------------------------|----|----------------------------|
| 1. Prosecution Witness No.1 | :- | Dr. Tutumoni Handique,M.O. |
| 2. Prosecution Witness No.2 | :- | Nazbina                    |
| 3. Prosecution Witness No.3 | :- | Abdul Naosed Ali           |
| 4. Prosecution Witness No.4 | :- | Victim                     |
| 5. Prosecution Witness No.5 | :- | Abdul Rahman               |
| 6. Prosecution Witness No.6 | :- | Saiful Islam               |
| 7. Prosecution Witness No.7 | :- | Rahila Khatoon             |
| 8. Prosecution Witness No.8 | :- | Sri Ramen Borah, I.O.      |

### **EXHIBITS.**

- |              |    |                         |
|--------------|----|-------------------------|
| Exhibit 1    | :- | Medical report          |
| Exhibit 1(1) | :- | Signatures of the M.O.  |
| Exhibit 2    | :- | FIR                     |
| Exhibit 2(1) | :- | Signature of the victim |
| Ext. 3       | :- | Sketch map              |
| Ext. 3(1)    | :- | Signature of the I.O.   |
| Exhibit 4    | :- | Charge-sheet.           |
| Exhibit 4(1) | :- | Signature of the I.O.   |

**(M. K. Kalita)**  
**SPECIAL JUDGE**  
**SONITPUR : TEZPUR**