IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE JOYMALYA BAGCHI
And
The Hon'ble JUSTICE BIVAS PATTANAYAK

C.R.A. 37 of 2017

(CRAN 2 of 2021)

Md. Israil
-Vs-
The State of West Bengal.

For the Appellant:	Mr. Sourav Chatterjee, Adv. Md. M. Nazar Chowdhury, Adv. Ms. Priyanka Saha, Adv.
For the State:	Mr. Binay Panda, Adv. Mrs. Puspita Saha, Adv.
Heard on:	22.12.2021
Judgment on:	02.02.2022

BIVAS PATTANAYAK, J. : –

1.This appeal is directed against the judgement dated 16.11.2016 and order dated 17.11.2016 passed by Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur in Sessions trial no. 04(03)15 arising out of POCSO Case No. 43 of 2014, convicting and sentencing the appellant for offence punishable under Section 448 of the Indian Penal Code for simple

imprisonment for a term of one year and to pay fine of Rs.1000/- in default to suffer simple imprisonment for two months; for offence punishable under Section 506 (part-II) of the Indian Penal Code to suffer simple imprisonment for a term of seven years and pay fine of Rs.5,000/-in default to suffer simple imprisonment for six months; and to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- in default to suffer further rigorous imprisonment for six months for offence punishable under Section 6 of POCSO Act, 2012.

2.The prosecution case in brief is that the appellant used to come to the house of the victim for last 7/8 years and the appellant used to call the victim as "grand-daughter". Taking advantage of the absence of other family members namely brother, father and grand-mother of the victim girl, the appellant trespassed into the house of the victim and forcibly committed rape on her repeatedly on different occasions for the last 6-7 months. On the basis of the aforesaid complaint dated 10.06.2014, lodged by the victim herself, Goalpokher PS case no. 292 of 2014 dated 10.06.2014 under Section 376(2)(i) of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 *(hereinafter referred to as POCSO Act, 2012),* was initiated against the appellant.

3.Upon completion of investigation police submitted charge-sheet against the appellant under Section 376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act, 2012.

4.Charge under Section 448/376(2)(i)/506 of the Indian Penal Code and Section 6 of POCSO Act, 2012, was framed against the appellant, who stated to be not guilty and claimed to be tried.

5.The prosecution in order to prove its case examined 13 witnesses and proved number of documents. The defence case appearing from answers given by the appellant during his examination under section 313 of CrPC is of falsity due to old animosity and of innocence. The defence adduced the evidence of DW1, Lakh Debi Singha in order to substantiate the fact that the appellant is not the actual perpetrator of the crime rather some other person has committed the crime upon the victim, who used to visit her.

6.Upon considering of materials on record and the evidence led on behalf of the prosecution and the defence the learned trail court convicted and sentenced the appellant as aforesaid.

7.Mr. Chatterjee learned advocate appearing on behalf of the appellant submitted that the grand-mother of the victim girl who has been examined on behalf of the defence as DW 1 is also resident of the same household and she deposed that some other boy used to come to their house to meet the victim girl and has impregnated the victim, which aspect makes the prosecution case against the appellant suspicious and unacceptable.

Further, PW2 Bipin Singha, father of the victim girl deposed before the Court that the family consists of himself, his aged mother, two sons and daughter,

but curious enough in corroboration none of the sons of PW2 has been examined by the prosecution to unearth the truth in the prosecution case.

Moreover, it is submitted that the victim girl who is the complainant herself did not state in her written complaint that she got impregnated due to repeated sexual assault upon her by the appellant and therefore, such fact hit the root of the prosecution case and creates cloud over the same. Moreso, there are material omissions and discrepancies in the statement of the victim, which make the prosecution case improbable.

Furthermore, he drew the attention of the court to the fact that there has been substantial delay in lodging the written complaint by the victim which has not been duly explained and thus such aspect of unexplained delay in lodging FIR makes the prosecution case questionable in the eye of law.

Moreover, as per PW11 Dr Subhendu Basak, Radiologist, the victim was pregnant with 26 weeks foetus, however, the DNA test of the child which was imperative to establish case of the prosecution never saw the light of the day.

It has been further argued that no injuries were detected in the body or private parts of the victim and hence the case of the prosecution is skeptical.

In summation he contended that the prosecution has failed to bring home the vital charges framed against the appellant and as such the appeal needs to be allowed and the appellant be acquitted from the present case.

8.In reply to the aforesaid contention raised on behalf of the appellant, Mr.Panda, learned Additional Public Prosecutor appearing on behalf of the State submitted that evidence of PW1(victim girl) is very much consistent with regard to the fact that the appellant is the sole perpetrator of crime of penetrative sexual assault upon the victim girl. He fairly submitted that though in the written complaint or in her statement before the Judicial Magistrate the victim did not state of her pregnancy yet such aspect *per se* does not absolve appellant from the charges brought against him. Moreover, oral evidence of prosecution witnesses namely the father (PW2), aunt (PW10) of the victim girl, Councillor of Childline (PW6) as well as medical evidence of doctors namely PW4 and PW11 reveals of pregnancy of the victim girl. In cross-examination the investigating officer (PW12) clearly indicate that he received a message on 01.12.2014 with regard to the fact that the victim gave birth to a still born baby on 29.08.2014. The DNA test was not conducted, however, such inadequacy in conducting the DNA test does not make the prosecution case altogether false in the light of the clinching evidence of the victim girl.

In view of his aforesaid submissions he prayed that the judgement of conviction and order of sentence passed by the trial court be upheld by dismissing the present appeal.

9.All the offences with which the appellant is charged with namely 448/506/376(2)(i) of the Indian Penal Code and Section 6 of the POCSO Act,

2012 are interlinked and therefore, it is profitable to discuss them as a whole in order to avoid needless repetition.

9.1. The 6th clause to Section 375 of the Indian Penal Code which defines 'Rape' as follows:

" A man is said to commit rape who, except in the case hereinafter excepted, has sexual intercourse with a woman under the circumstances falling under any of the six following descriptions:

*First-*******.*

*Secondly-*******.*

*Thirdly-*******.*

*Fourthly-*******.*

*Fifthly-*******.*

Sixthly-With or without her consent, when she is under sixteen years of age.

Section 376(2)(i) of the Indian Penal Code contemplates the penal provision for commission of rape on a woman when she is under 16 years of age *[provision as it stood after introduction of Criminal Law (Amendment) Act, 2013, which came into force on 03.02.2013].*

Section 5 of POCSO Act, 2012, defines aggravated penetrative sexual assault on a child and Section 6 of POCSO Act, 2012, envisages the penal provision for

such offence. Section 2(d) of the POCSO Act, 2012 defines "Child" as person below the age of 18 years.

Therefore, the first and foremost aspect which needs scrutiny for primary application of both the aforesaid penal provisions is the age of the victim girl at the time of the commission of the offence. As per the prosecution case the age of the victim at the time of the incident was 15 years.

PW1 (victim girl) stated in her evidence that at the time of incident she was a student of class X in Dharampur High School, which has been corroborated by her father PW2, Bipin Singha. The prosecution in order to establish the age of the victim girl examined PW13, Kanai Lal Singha, Head clerk of Dharampur High School (H.S) where the victim girl used to study. This witness proved the attested photocopy of the admission register **(Exhibit 14)** and authenticated the issuance of certificate dated 26.06.2014 **(Exhibit 12)** by the Teacher-in-charge, Dharampur High School (H.S) collected during the course of investigation. Both **Exhibit 12** and **Exhibit14** show the date of birth of the victim girl to be 16.12.1999. Such date of birth of the victim girl has remained unchallenged and uncontroverted during trial. A register maintained in a school is admissible in evidence to prove the date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. ***[See State of Chhattisgarh versus Lekhram reported in (2006) 5 SCC 736].*** There is also no contrary evidence to invalidate or disprove the entries

appearing in the school admission register and the certificate issued on the basis of the same. Therefore the date of birth of the victim (as 16.12.1999) appearing in the school admission register **(Exhibit 14)** and the certificate dated 26.06.2014 **(Exhibit 12)** issued on the basis of the admission register is acceptable as a proof of her date of birth.

The deposition of PW1(victim girl) was recorded on 25.05.2015 and she stated that the incident took place one year before. On 16.06.2014 she made her statement before the Judicial Magistrate under section 164 of the CrPC **(Exhibit 3)** wherein she stated that the incident took place 6/7 months ago. PW4, Dr Sukumar Roy, Medical Officer (surgeon), Islampur Sub-Divisional Hospital, who examined the victim girl, deposed that on 10.06.2014 upon abdominal examination of the victim he found about 24 weeks fundal-height of uterus. PW11, Dr Subhendu Basak, Medical Officer, Radiologist, Islampur Sub-Divisional Hospital, deposed that on 16.06.2014 he examined the victim and also conducted USG of whole abdomen of the victim and opined that there exists single live foetus with maturity of 26 weeks 4 days plus minus 2 weeks. Upon analysis of the aforesaid evidence it is found that the incident took place in the early part of 2014. Considering the same it is found that during the period of occurrence the victim girl was aged just above 14 years. Accordingly the requirement of age of the victim for applicability of the penal provisions embodied under section 376(2)(i) of Indian Penal Code and Section 6 of the POCSO Act, 2012 is fulfilled and thus attracts the above provisions in the facts and circumstances of the case.

9.2. In a case relating to sexual assault and rape, the evidence of the victim girl is very much vital and if found reliable can form the basis of conviction of the accused without seeking for further corroboration. The Hon'ble Apex Court in its decision passed in ***State of Punjab versus Gurmit Singh and Others*** reported in ***(1996)2 SCC 384*** held as follows:-

> *"The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained an injury in the occurrence , which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape.*

Corroboration as a condition for judicial reliance on the testimony of the prosecutirx is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

Keeping in mind the above observation of the Hon'ble Supreme Court let me assess and analyze the evidence of the victim girl and ascertain the extent of its reliability. PW1 (victim girl) deposed that the incident took place one year before in an evening when she was alone in the house. The appellant who was known to her since childhood and whom she called *"dadu"* came to their house. He enquired whether any other person is present in the house. On reply from the victim as to the absence of other family members the appellant pressed her mouth and forcibly brought her inside the room and bolted it from inside. He dashed the victim and she fell down. She tried to resist but the appellant committed rape upon her forcibly. The appellant committed such act forcibly 5/6 times when she was alone in the house. He also threatened her not to disclose the fact to anyone otherwise, he would murder the victim and her

brother. On going through her cross-examination it is found that there are no notable contradictions to her aforesaid evidence. The victim herself lodged the written complaint **(Exhibit 1)** on 10.06.2014, wherein as well she has categorically stated that the appellant, who called her grand-daughter, committed rape upon her many times. She tried to protest against such unsocial nasty work but the appellant threatened her of killing her along with her younger brother, father and grand-mother. During the course of investigation the victim made statement before the Judicial Magistrate which has been recorded under Section 164 of the CrPC **(Exhibit 3)**. Upon perusal of her such statement made before the Judicial Magistrate **(Exhibit 3)** it is found that she has made categorical statement that 6/7 months ago in the absence of other family members the appellant forcibly caused rape upon her and also threatened her that he would kill her along with her brother and father.

It has been strenuously argued on behalf of the appellant that there are material omissions and discrepancies in the statement of the victim, which make the prosecution case improbable.

In her cross-examination the defence has indicated certain omissions in the written complaint (FIR) lodged by the victim herself *vis a vis* her statement made in court during deposition which are reproduced as follows:-

(i)It is not mentioned in her complaint that due to sexual assault several times caused by Md. Israil (the appellant) she conceived.

(ii)It is not mentioned in her complaint that there was bleeding from her mouth.

(iii)She cannot recollect whether she stated in her written complaint that there was bleeding from her genital organs.

(iv)She did not specifically mention that the appellant used to threaten her with *"hasua"*.

Upon perusal of the written complaint it is found that above facts have not been stated in the complaint. Be that as it may, it is observed that the FIR is never an encyclopedia rather it is information made at the first instance which sets the criminal law into motion. Criminal courts should not be fastidious with mere omissions in the first information statements, since such statements cannot be expected to be a chronicle of every detail of what happened nor to contain an exhaustive catalogue of events which took place ***[See Rattan Singh versus State of H.P reported in (1997) 4 SCC 161].*** Further those are minor omissions or discrepancies and are not of fatal nature to throw away the prosecution case altogether. Thus the omissions indicated in the cross-examination as above in the written complaint is of hardly any consequence in view of the clinching evidence of the victim that the appellant ravished her on several occasions, which has also been consistently stated by her in the written complaint (**Exhibit 1**).

Now, coming to the statement of the victim recorded under Section 164 of the CrPC **(Exhibit 3)** the defence indicated certain omissions in her above statement *vis a vis* her statement made in court during deposition which are elucidated herein below:-

(i)It is not mentioned in her statement before the Magistrate that there was bleeding from her mouth at the time of the incident.

(ii)She cannot recollect whether she stated before the Magistrate that there was bleeding from her genital organs.

Upon going through the statement of the victim recorded under section 164 CrPC **(Exhibit 3)** it is found that she did not state of such fact. However, in my opinion such omission did not hit the root of the prosecution, in view of consistent statement of the victim regarding commission of the alleged offence by the appellant.

In its decision passed in ***State of Punjab versus Gurmit Singh and Others (supra)*** the Hon'ble Apex court observed as follows:

> *"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 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 prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook."*

There are no material contradictions or contrary circumstance to disbelieve the evidence of the victim girl. The evidence of the victim girl before the court,

her written complaint and her statement before the Judicial Magistrate is consistent with the fact that the appellant committed forcible rape upon her on several occasions. It is pertinent to note that in her cross-examination the victim girl has deposed that she stated of the misdeed of the accused (appellant) in her complaint before the Magistrate as well as investigating officer. The aforementioned discrepancies or omissions found in the earlier statement and the evidence of the victim girl before the court are minor and not fatal to throw away an otherwise reliable prosecution case. Thus the evidence of the victim girl is very much reliable to act upon. PW6, Dr Sanjoy Seth in his evidence as well as in medical report **(Exhibit 6)** opined that the appellant is capable of performing sexual intercourse. It has been vehemently argued on behalf of the defence that no injuries were detected in the body or private parts of the victim and hence the case of the prosecution is doubtful. Pw4, Dr Sukumar Roy, who examined the victim, in his evidence and medical report **(Exhibit 2)** noted that there was no external injury or injury in the genital of the victim, however, it is apposite to note that the examination of the victim has been done after 5/6 months of the incident upon lodging of the FIR on 10.06.2014 and as such there is every possibility of absence of injuries and thus it was obvious that the doctor did not find any such injuries and further medical examination after a considerable period cannot be expected to corroborate forcible intercourse. ***[See Dildar Singh versus State of Punjab reported in (2006)10 SCC 531].*** Therefore such aspect cannot detract from

her reliability of her consistent evidence that she was ravished by the appellant on several occasions.

9.3. Further, the victim in her evidence-in-chief deposed that the appellant committed sexual assault upon her on several occasions on different days due to which she conceived. The aforesaid evidence is corroborated by the father of the victim namely PW2, Bipin Singha who deposed that he came to learn of such fact of pregnancy of the victim from his mother (grand-mother of the victim). PW3, Reshmi Dutta, Councillor, Child Line deposed that when they along with the local police visited the victim girl she was pregnant of 5/6 months. PW10, Rekha Burman, aunt of the victim also deposed that she came to learn from the victim girl that she conceived and in cross-examination this witness deposed that the victim told her that she was 6 months pregnant after counting from the date of incident. The defence witness DW1, Lakh Debi Singha (grand-mother of the victim) also deposed that the victim was 5/6 months pregnant. PW4, Dr. Sukumar Roy, Medical Officer (Surgeon), Islampur Sub. Divisional Hospital, deposed that on abdominal examination he found 24 weeks fundal-height of uterus. PW11, Dr Subhendu Basak, Medical Officer, Radiologist, Islampur Sub-Divisional Hospital deposed that on 16.06.2014 he examined the victim and also conducted USG of whole abdomen of the victim and opined that their exists single live foetus with maturity of 26 weeks 4 days plus minus 2 weeks. Further it is relevant to note that in cross-examination PW12 (Investigating Officer) deposed that he received message on 01.12.2014 of the fact that the victim girl gave birth to a still born baby on

29.08.2014.Thus, from the evidence on record as discussed above it is quite apparent that the victim was pregnant of 5/6 months at the time of lodging of the complaint and she gave birth to a still born baby.

9.4. It has been vociferously argued on behalf of the defence that during the course of investigation or thereafter no DNA test of the child was done to conclusively establish that the victim girl was impregnated by the appellant and moreover DW1, Lakh Debi Singha (grand-mother of the victim girl) deposed that some other boy used to visit the victim which has resulted in the pregnancy of the victim. As per PW12 (Investigating Officer) he received message on 01.12.2014 that the victim delivered a still born baby on 29.08.2014. However, no such DNA test of the said child was done. Although this might be drawback on the part of the investigating officer in not conducting the DNA test but that cannot be a ground to discredit the testimony of the victim girl. The victim girl had no control over the investigating agency and any negligence of the investigating officer cannot affect the credibility of the evidence of the victim girl.***[See State of Punjab versus Gurmit Singh and Others (supra)].*** Therefore from the consistent evidence of the victim as discussed above regarding the sexual assault perpetrated upon her by the appellant which resulted in her pregnancy and the other evidences on record that of PW 2 (father of the victim), PW 3 (Councillor, Childine), PW10 (Aunt of the victim), DW1 (grandmother of the victim) and the medical evidence stating of pregnancy, there cannot be any doubt that due to such sexual assault by the appellant upon the victim, she became pregnant.

Although the defence tried to establish that some other boy, who used to visit the victim, is responsible for the pregnancy of the victim but nothing specific has been established by the defence. There are no contrary evidence against the statement of the victim as regards the sexual assault by the appellant upon her resulting in subsequent pregnancy. Further, the defence has tried to establish a case of falsity on the ground of animosity. It is pertinent to note that the defence witness DW1, Lakh Debi Singha has stated that there was neither land dispute nor there was previous enmity or rivalry between her son and the appellant. No evidence of land dispute has been established by the defence. Therefore the case of the defence of falsity and animosity does not stand to reason and cannot be accepted.

Thus, the evidence of the victim girl and other evidence as discussed above unerringly point to the guilty of the appellant as the person who ravished the victim on several occasions by entering into their house during the absence of other family members resulting in her pregnancy and also of threatening the victim with consequences to kill her and her family members in order to coerce her from disclosing such fact to her family members.

9.5. Lastly, it has been fervently argued that the case of the prosecution is shrouded with suspicion as there is immense delay in lodging of the FIR. It is a fact that there is delay in lodging FIR. I am not oblivious to the fact that the victim is of tender age. In her evidence before the court as well as in the written complaint **(Exhibit 1)** and in her statement under section 164 CrPC **(Exhibit 3)**

she has consistently stated of continuous threatening by the appellant. The victim girl belonging to a traditional non-permissive Indian society would be extremely reluctant to admit occurrence of any incident that would reflect upon her chastity, leading to being looked down upon and ostracized by the society. Therefore her not informing to anyone under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to anyone, overpowered by feeling of shame and her natural inclination would be avoid talking about it to anyone, lest the family name and honour is brought into controversy. The courts cannot overlook the fact that in sexual offences delay in lodging FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving cool thought that a complaint of sexual offence is generally lodged.***[See State of Punjab versus Gurmit Singh and Others (supra)].*** PW2, Bipin Singha, father of the victim, deposed that he came to learn from his mother that the victim had conceived due to misdeed committed by the appellant, upon enquiry about the change in the physical appearance of the victim. PW10, Rekha Barman, aunt of the victim, also deposed that she came to learn from the victim that she conceived and that appellant committed rape upon her. The evidence of PW3, Reshmi Dutta, Councillor, Childline, shows that they received information over

telephone and visited the victim along with the local police and found the victim 5/6 months pregnant. They talked with the victim and thereafter the victim lodged complaint. Therefore it is quite apparent from the above evidence that the victim did not inform about the incident due to continuous threatening by the appellant and only when her pregnancy was discovered, she lodged the complaint. I am also not unmindful of social stigma attached to the nature of the offence which might have also attributed to the delay in lodging FIR. Even otherwise, the mere factum of delay in filing complaint in regard to an offence of this nature by itself would not be fatal so as to vitiate the prosecution case. ***[See State of Chhattisgarh versus Derha reported in (2004) 9 SCC 699].*** Further there is no evidence of concoction of a false version or embellishment. Accordingly, the argument advanced in this regard does not stand to reason.

10. The 6th Clause of Section 375 of the Indian Penal Code defines "rape" as when a man has sexual intercourse with a woman when she in under 16 years of age with or without her consent. From the evidence discussed above it is apparent that the appellant committed rape upon the victim aged just above 14 years forcibly. Therefore, as per the defining provisions of the Indian Penal Code as above, the consent of the victim becomes immaterial. Accordingly, the presumption of law under Section 114(A) of the Evidence Act that the act has been committed without the consent of the victim is of no relevance in the facts and circumstances of the present case.

Section 29 of the POCSO Act 2012, provides that 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. It is placed on record that there is no contrary evidence forthcoming from the side of the defence to hold otherwise. Therefore, the presumption of law envisaged under Section 29 of the Act is also up against the appellant to have committed aggravated penetrative sexual act upon the victim as the same has not been rebutted.

11. In the light of the above discussion and considering the evidence of the victim girl (PW1) and other evidences on record the offence under Section 376(2)(i) of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, 2012, has been well established by the prosecution beyond the shadow of reasonable doubt. As there are also evidence of trespass into the house of the victim by the appellant for committing the heinous offence of rape and subsequent threatening of killing the victim and her family members for not disclosing the fact to anyone the ingredients of Section 448 and Section 506 (II) of the Indian Penal Code is also established.

Although the trial court held that the charge under Section 376(2) (i) of Indian Penal Code and Section 6 of the POCSO Act, 2012 has been established but on the ground of congruency of punishment in both the above sexual offences did not record conviction under Section 376(2)(i) of Indian Penal Code in the

ordering portion. Be that as it may, such aspect is of hardly any consequence as the ingredients of both the offences are held to have been proved and moreso , both offences carry similar degree of punishment.

Accordingly, the conviction of the appellant made by the trial court is upheld.

12. Now coming to the aspect of sentencing, the trial court has convicted the appellant for offence under Section 6 of the POCSO Act, 2012 for rigorous imprisonment for life. In a criminal trial the aspect of sentencing has remained a vital question bearing upon the aggravating circumstances before the court. Crime against woman is increasing as a whole. Such type of crime is a direct insult to the human dignity of the society and therefore imposition of any inadequate sentence not only results in injustice to the victim and the society in general but also stimulates criminal activities. Obligation is thus bestowed upon the court for imposing appropriate punishment against such criminals in response to the cry of the society. While considering the appropriate punishment the court has not only to keep in view the rights of the criminal/accused but also the rights of the victim who suffers in the hands of the perpetrator of crime. The offence of rape and sexual assault not only cause physical scar but also cause mental scar which the victim has to bear throughout her life. In the present case, offence of penetrative sexual assault has been committed upon a helpless victim of 14 years which is inhumane and shakes the judicial conscience. However, keeping in mind the entirety of the circumstances I am of the opinion that the quantum of sentence imposed by

the trial court for rigorous imprisonment for life in respect of offence under section 6 of the POCSO Act, 2012, which is the maximum one, needs to be re-looked. Ordinarily sentence should be commensurate with the gravity of offence and should act as deterrent to commission of such offences. Section 6 of the POCSO Act, 2012 contemplates punishment with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life and shall also be liable to fine. In the present case in hand it is found that there was repeated sexual assault upon the victim by the appellant resulting in her pregnancy, which is an aggravating circumstance. Thus keeping in mind the entire gamut of circumstances, in my view, a term of 14 years of rigorous imprisonment will be commensurate with the nature of offence and accordingly sentence for rigorous imprisonment for life imposed in respect of Section 6 of POCSO Act, 2012, is reduced to rigorous imprisonment for a term of 14 years. The sentence of fine together with default clause as imposed by the trial court is maintained. The sentence in respect of offence under Section 6 of the POCSO Act, 2012 is modified to the aforesaid extent.

The compensation granted to the victim under the 'Victim Compensation Scheme' and disbursement of the fine amount to the victim, if recovered from the appellant, is also maintained.

The sentence imposed in respect of other offences under Section 448 and 506 (II) of the Indian Penal Code is upheld.

All the sentences shall run concurrently.

The period of detention undergone by the appellant during investigation, inquiry or trial of the case shall be set-off in terms of Section 428 of the Criminal Procedure Code.

13. In the light of the above discussion, the conviction of the appellant is upheld and sentence passed by the learned trial court is modified to the extent as aforesaid.

14. The instant appeal is, accordingly, allowed in part to the extent of modification in the sentence imposed in respect of offence under Section 6 of the POCSO Act, 2012 as indicated in foregoing paragraph.

15. Copy of the judgement along with the lower court records be sent down to the learned trial court at once.

16. C.R.A 37 of 2017 along with CRAN 2 of 2021 stands disposed of.

17. Urgent Photostat Certified copy of this judgement, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Joymalya Bagchi,J) **(Bivas Pattanayak,J)**