

GAHC010137992020



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRL.A(J)/67/2020**

Uday Bakali  
S/o Amal Bakali,  
Vill-Bahari Reserve,  
P.O.-Baharihat,  
P.S. Tarabari,  
Dist.- Barpeta, Assam.  
Pin- 781302.

.....Appellant

-Versus-

The State of Assam,  
Represented by the Public Prosecutor, Assam.

.....Respondent

|                             |   |                            |
|-----------------------------|---|----------------------------|
| Advocates for the appellant | : | Mr K Bhuyan                |
| Advocate for the respondent | : | Mr P S Lahkar, Addl. P.P.. |

**BEFORE**  
**HON'BLE MRS. JUSTICE MALASRI NANDI**

Date of Judgment : 29/03/2023

**JUDGEMENT AND ORDER (CAV)**

Heard Mr. K. Bhuyan, learned counsel for the appellant. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State of Assam.

**2.** By the present appeal, the appellant challenges the impugned Judgment dated 30.10. 2019, passed by the learned Special Judge, POCSO, Barpeta, in Special POCSO Case No. 90/2018, convicting the accused appellant for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, in brevity, 'POCSO Act, 2012') and sentenced him to undergo Rigorous Imprisonment for 10 (ten) years and also to pay a fine of Rs. 5,000/-, in default, Simple Imprisonment for one year.

**3.** The brief facts of the case is that one Smt Bhagya Paul lodged an FIR before the Officer-In-Charge, Tarabari Police Station, on 01.01.2019, stating inter alia that on 31.12.2017, at around 8:00 pm, her daughter aged about 12 years went out from their house to watch 'Asta-Prahar' (Naam Yagya) at Bahari Reserve Barowari Durgabari, along with her friends. At about 09:00 pm, she went alone to purchase food stuff from a shop and at the time of returning, the accused appellant gagged her mouth by applying force and dragged her towards Bahari rice market and committed sexual intercourse with her. The accused appellants also threatened the victim not to disclose the fact to anybody, otherwise she would be killed.

**4.** On receipt of the complaint, a case was registered vide Tarabari PS Case No. 01/2018, under Section 4 of the POCSO Act, 2012 and the Investigating Officer had started investigation. During investigation, the Investigating Officer had visited the place of occurrence, interrogated the witnesses. The

statement of the victim was recorded under Section 164 CrPC by learned Magistrate. Victim was also forwarded to the Medical Officer for her examination. The Investigating Officer also seized one birth certificate of the victim to confirm her age. After completion of investigation, charge sheet was submitted against the appellant under Section 4 of the POCSO Act.

**5.** During trial, charge was framed under Section 4 of the POCSO Act, which was read over and explained to the accused appellant to which he pleaded not guilty and claimed to be tried.

**6.** To substantiate the case of the prosecution, 7 (seven) witnesses were examined, including the victim and marked six exhibits. After completion of trial, the statement of the accused appellant was recorded under Section 313 CrPC, wherein the incriminating materials found against him in the evidence of the witnesses were put to him, to which he denied the same. According to the appellant, he has been falsely implicated in this case. However, the appellant did not adduce any witness in support of his case. After hearing the arguments advanced by the learned counsel for the parties, the learned trial Court had delivered the Judgment as aforesaid.

**7.** Being highly aggrieved and dissatisfied with the Judgment and Order, the accused appellant has preferred this appeal, challenging the conviction by the trial Court as aforesaid.

**8.** It is submitted by the learned counsel for the accused appellant that there was one day delay in lodging the FIR and no such explanation was given regarding such delay, which is fatal to the prosecution case.

**9.** Another point raised by the learned counsel for the appellant is that the sketch map was not properly prepared. As the occurrence took place in the market area, the shopkeepers or the nearby people were required to be examined by the prosecution to prove the case. As per sketch map, the shop of Babul was adjacent to the place of occurrence, who was also not examined in the case. It is also the submission of the learned counsel for the appellant

that the appellant is the brother-in-law of the victim. Because of the death of his wife, who was the sister of the victim, this false case has been instituted.

**10.** It is further submitted that the wearing apparel of the victim has not been seized. There was discrepancy in the statement of the victim, under Section 161 and 164 CrPC and her evidence before the Trial Court. Learned counsel for the accused appellant also contended that where two views are possible, the accused be acquitted on benefit of doubt.

**11.** In support of his submission, the learned counsel for the appellant has relied on the following Case Laws:-

- 1) AIR 2018 SC 5361; (*Reena Hazarika vs. State of Assam*)
- 2) 2021 (5) GLT 626; (*Sh Ramvanneia vs. State of Mizoram & Anr.*)
- 3) 2022 (2) GLT 413; (*Dhiren Tanti vs. State of Assam & Anr.*)

**12.** On the other hand, learned Additional Public Prosecutor has argued that the sole testimony of the victim is sufficient to convict a person when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

**13.** Learned Additional Public Prosecutor, by referring to the Judgment of *State of Punjab vs. Gurmit Singh & Others*; reported in (1996) 2 SCC 384, has contended that 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. Minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

**14.** Learned Additional Public Prosecutor also relied on another case law reported in (2022) 2 SCC 74 (*Phool Singh vs. State of Madhya Pradesh*) and pointed out that the Hon'ble Supreme Court has observed in several cases that the Court should examine the broader probabilities of the 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. [*Ganesan vs. State*, (2020) 10 SCC 573; *State of Maharashtra vs Chandra Prakash Kewalchand Jain*, (1990) 1 SCC 550; *State of Orissa vs. Thakara Besra*, 2003 SCC (Cr.) 1080; *Wahid Khan vs. State of Madhya Pradesh*, (2010) 2 SCC 9; *Krishna Kumar Malik vs State of Haryana*; (2011) 7 SCC 130; *State (NCT of Delhi) vs. Pankaj Chaudhary*, (2019) 11 SCC 575.]

**15.** Learned Additional Public Prosecutor also has submitted that in a case where the accused is prosecuted for offence committed under Sections 3, 4, 5, 7 and 9 of POCSO Act, the Court is empowered to draw presumption of guilt of the accused under Section 29 of the POCSO Act. Therefore, having regard to the facts and circumstances of the case as well as the evidence brought on record, the learned Special Judge has rightly held that the accused was guilty and sentenced him under Section 4 of POCSO Act. In such view of the matter, no interference with the impugned judgment and order dated 30.10.2019 by this Court is called for.

**16.** I have heard the rival contentions of learned counsel for the parties at length and have carefully considered all the evidence and documents on record. The impugned judgment and the order on sentence have also been carefully perused.

**17.** This Court is to consider whether the learned Trial Court was in error in convicting the appellant for the offence charged based on the prosecution evidence. It is also to be considered whether the learned Trial Court was in error in concluding that the victim was a minor based on Exhibit-A, i.e. Birth Certificate of the victim and whether the documents were proved by the prosecution and whether the delay in lodging the FIR has been adequately explained.

**18.** PW-1 is the informant, who is the mother of the victim. From her

deposition, it reveals that on the date of incident a public function ("Asta Prahar") was going on in their locality. Her daughter i.e. victim went to enjoy the function along with her family members. However, while the function was going on, her daughter went nearby shop to purchase some eatables, then the accused came there and gagged her mouth and pulled her nearby paddy field and committed bad act towards her by removing her clothes. Having not found her, PW-1 and his son went in search of her daughter and found her running towards them. On being asked, victim girl narrated the entire incident as to how the accused took her to the paddy field and committed the crime. At that time, her daughter was around 12 years of age. The witness also exhibited the Birth Certificate of her daughter vide Exhibit-A.

**19.** In her cross-examination, PW-1 replied that the incident occurred on 31.12.2017 but she lodged the FIR on 01.01.2018. The police station was at a distance of half a kilometer from her resident. After the incident, PW-1 made a phone call to the police station but they had advised to come in the morning hour.

**20.** PW-2 is the brother of the victim girl. He deposed in his evidence that on the date of incident, there was a public function ("Asta Prahar") going on in their locality. His sister went to the said religious programme along with Bimala Sutradhar and other family members. When he returned home by closing his shop, his mother told him that his sister has not been returned home. Then he along with his mother went in search of his sister in the locality as well as in the function of "Asta Prahar". In the meantime, he noticed that his sister was coming out from the backside of "Asta Prahar" function with unusual behaviour and immediately thereafter, the accused was also coming out from the paddy field. It was around 9 to 10 p.m. at that time. Then he immediately took his sister to their residence and asked her what had happened. Then she told that while she went to the nearby shop to purchase something, the accused took her to the backside of the function and committed rape on her and asked her not to disclose it to anyone, otherwise

she would be killed.

**21.** In his cross-examination, PW-2 replied that his shop was at a distance of 5 minutes' walk from his residence. He reached home at about 9 p.m. on the date of incident. There was no outsider in their residence at that time. His father was sleeping in a room backside of their house and they did not make hue and cry after the incident. On the next morning, his mother lodged the FIR. PW-2 also replied in his cross-examination that the accused is his brother-in-law, who married his own sister. His sister committed suicide. It was suggested that he deposed falsely out of deep enmity with the accused on being angry for causing death of his sister by committing suicide.

**22.** PW-3 is the victim. From her deposition, it discloses that on the date of incident, she along with Bimala Sutradhar went to "Asta Prahar" function in their village called Durgabari. When the function was going on, she went to the nearby shop and the accused Uday Bakali came there, gagged her mouth and took her to the Dhan market on the backside of the function and by threatening her committed bad act with her. When the accused left her, she ran out and met her bother who took her to their house. On arrival of their home, she narrated the story to her mother and her mother lodged the FIR on the next date.

**23.** In her cross-examination, PW-3 replied that she could not recollect the date of incident. She went to the "Asta Prahar" function with her grandmother and paternal aunt. Colleagues accompanied her also. The incident occurred at about 9 p.m. There were 3/4 shops. The accused took her to paddy field by shutting her mouth under threat to kill her, as such she could not make sound. Shopkeepers had not seen her taking away by the accused. There was no residence at the place where accused committed the act.

**24.** It appears from the evidence of the victim that on the date of incident, one Bimala Sutradhar accompanied her to the "Asta Prahar" function. The said Bimala Sutradhar was examined in the case as PW-5. According to her,

on the date of incident she went to the function of "Asta Prahar" at about 8 p.m. and the victim girl also followed her to the function and she sat beside her. But the victim went to the nearby shop to purchase something. But she did not return back to the function. Then she made a search of the girl within the gathering of the function, but having not found her, she went to the house of the victim and informed her parents about her disappearance. Then mother and brother of the victim went in search of the victim girl and found her while she was returning to the function. On being asked, the victim disclosed that accused had committed bad act towards her.

**25.** PW-6 is one Jiban Sarkar. He was not present when the incident occurred. He came to know from the father of the victim that the accused committed rape on the victim.

**26.** Admittedly, there is no eyewitness to the incident. The victim was the sole witness of the incident in which the accused had committed sexual act towards her. It is true that there are some contradictions in the statements of PW-1, PW-2 and PW-3 regarding coming of the victim from the place of occurrence and narrated the incident towards her mother and PW-2, her brother. But this fact is not too vital upon which the case of the prosecution can be doubted. The Medical Officer who examined the victim on the next date of the incident also supported the fact that the victim was sexually assaulted.

**27.** PW-4 is the Medical Officer, who deposed before the Court that on examination of the victim at Barpeta Medical College & Hospital, she found the following –

*“(i) Victim was advised X-ray but no report was submitted, but her age was recorded as 12 years as per statement of the guardian of the victim.*

*(ii) There is no recent sign of sexual intercourse.*

(iii) *There is no injury mark on her private part, but tenderness on genital region”.*

To the question made by the Court, it was stated by PW-4 that tenderness on genital region was due to sexual assault.

**28.** It reveals that variation in the testimony of the witness is not on basic substratum of the case. Identity of the accused person is not doubtful as the accused is known to all the witnesses, who is the husband of the sister of the victim, who died by committing suicide. Even if some minor contradiction or improvement has taken place that does not affect the substratum of the case. In fact there are catena of decisions to the effect that some minor inconsistencies and discrepancies are bound to occur.

**29.** In ***Krishna Pillai vs. State of Kerala*** reported in ***AIR 1981 SC 1237***, it was held as under –

*“The prosecution evidence no doubt suffers from inconsistencies here and discrepancies there, but that is a short coming from which no criminal case is free. The main thing to be seen is whether those inconsistencies etc. go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of the incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it. That is salutary method of appreciation of evidence in criminal cases.”*

**30.** In ***Sidhan vs. State of Kerala*** reported in ***1986 Cri.L.J. 470***, it was held–

*“Minor discrepancies regarding minute details of the incident including the sequence of events and overt acts are possible even in the versions of truthful witnesses. In fact such discrepancies are inevitable. Such minor discrepancies only add to the truthfulness of their evidence. If, on the other hand, these witnesses have given evidence with mechanical accuracy that must have been a reason to contend that they were giving tutored versions. Minor discrepancies on facts which do not affect the main fabric need not be taken into account by the Courts if the evidence of the witnesses is found acceptable on broad probabilities.”*

**31.** In view of the above legal propositions, it can be said that the variation in the statement of the witnesses regarding coming of the victim to her house from the place of occurrence or narration of the incident towards her mother and brother which does not affect the substratum case of the prosecution.

**32.** PW-7 is the Investigating officer. He deposed in his evidence that on 01.01.2018, on receipt of an FIR from Bhagya Paul, the Officer-in-Charge, Tarabari P.S. registered a case being Tarabari P.S. Case No.1/2018 under Section 4 of POCSO Act, 2012 and entrusted him to investigate the case. Accordingly, he visited the place of occurrence, drew sketch-map (Exhibit-4), recorded the statement of the witnesses including the victim under Section 161 Cr.P.C. The victim was also sent to the Court for recording her statement before the Magistrate under Section 164 Cr.P.C. He also seized the School Certificate of the victim girl. The victim was also sent for medical examination and thereafter he collected the Medical Report. The accused was subsequently arrested. On conclusion of investigation, he handed over the Case Diary to the O.C., Tarabari Police Station, who then submitted the charge-sheet against the accused/appellant under Section 4 of POCSO Act, vide Exhibit-5.

**33.** In his cross-examination, PW-7 replied that the incident occurred on 31.12.2017. As per FIR, it was lodged on 01.01.2018. But there was no explanation for one day delay in lodging the FIR. During investigation, accused told him that his wife Sima Bakali committed suicide for which there was a misgivings between the accused and family members of his in-laws. He did not record the statement of Babul, who had a wooden shop nearby the place of occurrence. The neighbouring shopkeepers were not examined as witnesses.

**34.** The next point to discuss whether Exhibit-A, the Birth Certificate issued by the Registrar of Birth & Death, Bahari Mini PHC, can be taken into consideration to ascertain the age of the victim. While addressing this issue, it

would be pertinent to recapitulate the provision of Section 35 and Section 74 of Evidence Act, which are reproduced as below :

**“35. Relevancy of entry in public record or an electronic record made in performance of duty.** — *An entry in any public or other official book, register or [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performances of a duty specially enjoined by the law of the country in which such book, register or [record or an electronic record], is kept, is itself a relevant fact.”*

**“74. Public documents.** — *The following documents are public documents: —*

*(1) Documents forming the acts or records of the acts —*

*(i) of the sovereign authority,*

*(ii) of official bodies and tribunals, and*

*(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;*

*(2) public records kept 4 [in any State] of private documents.”*

**35.** In the case in hand, the seizure of Birth Certificate i.e. Exhibit-A has been established by PW-1. Exhibit-A fulfils the requirement of both Section 35 and Section 74 of the Evidence Act. No doubts were raised about the authenticity of Exhibit-A by way of cross-examination of PW-1 before the Trial Court.

**36.** In the case of ***Murugan alias Settu vs. State of Tamil Nadu***, reported in **(2011) 6 SCC 111**, the Supreme Court has held as follows –

*“26. In the instant case, in the birth certificate issued by the Municipality, the birth was shown to be as on 30.3.1984; registration was made on 5.4.1984; registration number has also been shown; and names of the parents and their address have correctly been mentioned. Thus, there is no reason to doubt the veracity of the said certificate. More so, the school certificate has been issued by the Head Master on the basis of the entry made in the school register which corroborates the contents of the certificate of birth issued by the*

*Municipality. Both these entries in the school register as well, as in the Municipality came much before the criminal prosecution started and those entries stand fully supported and corroborated by the evidence of Parimala (PW.15), the mother of the prosecutrix. She had been cross examined at length but nothing could be elicited to doubt her testimony. The defence put a suggestion to her that she was talking about the age of her younger daughter and not of Shankari (PW.4), which she flatly denied. Her deposition remained un-shaken and is fully reliable."*

**37.** In the case of ***Sham Lal alias Kuldip vs. Sanjeev Kumar & Others***, reported in **(2009) 12 SCC 454**, the Supreme Court has held as follows –

*"21. One of the documents relied upon by the learned District Judge in coming to the conclusion that the plaintiff is the son of the deceased Balak Ram is Ex.P.2, the School Leaving Certificate. The learned District Judge, while dealing with this documents has observed:*

*"on the other hand, there is a public document in the shape of school leaving certificate Ex.P.2 issued by Head Master, Government Primary School, Jabal Jamrot recording Kuldip Chand alias Sham Lal to be the son of Shri Balak Ram. In the said public document as such Kuldip Chand alias Sham Lal was recorded son of Shri Balak Ram."*

*The findings of the learned District Judge holding Ex.P.2 to be a public document and admitting the same without formal proof cannot be questioned by the defendants in the present appeal since no objection was raised by them when such document was tendered and received in evidence.*

*It has been held in [Dasondha Singh and Others v. Zalam Singh and Others](#) [16 (1997) 1 PLR. 735 (P&H)] that an objection as to the admissibility and mode of proof of a document must be taken at the trial before it is received in evidence and marked as an exhibit. Even otherwise such a document falls within the ambit of [Section 74, Evidence Act](#), and is admissible per se without formal proof."*

**38.** Thus the above ratio clarifies that where a public document

had been admitted without formal proof the same cannot be questioned by the defence at the stage of appeal since no objection was raised by them when such document was tendered and received in evidence.

**39.** It is pertinent to say here that PW-1 has exhibited the Birth Certificate of the victim during trial and no any question was put to her regarding authenticity of Exhibit-A by the drfence counsel. In view of the law enunciated by the Hon'ble Supreme Court as the Exhibit-A which is a public document while admitted before the Trial Court without any objection the same cannot be questiond by the defence on subsequent stage.

**40.** Now the next question is with regard to the belated lodging of the FIR, the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh vs. Prem Singh***, reported in ***(2009) 1 SCC 420***, has held as follows –

*“6. So far as the delay in lodging the FIR question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR.”*

**41.** In the case in hand, it appears from the evidence of the witnesses that immediately after the incident, the victim while arrived in her house, she narrated the incident to her mother and brother, i.e. PW-1 and PW-2 respectively, that the accused had committed bad acts towards her. The medical evidence also supported the fact that she sustained injuries on her private parts. It also appears from the evidence on record that accused is brother-in-law of the victim. Although the victim has not stated that the

appellant had used force on her and committed the offence and in all probability the act was consensual, however, the fact remains that the victim was a minor at the relevant time and her consent would, therefore, be irrelevant.

**42.** Section 375 of IPC which defines the offence of rape and can be extended to the matter at hand, which at clause six provides that a man is said to commit rape with consent or without consent of the victim, if she is under eighteen years of age. Besides, Section 30 of the POCSO Act, 2012 provides for presumption of culpable mental state which reads as follows :

***“30. Presumption of culpable mental state.-***

*(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*

*(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”*

**43.** It is evident from the provision delineated that the absence of culpable mental state has to be established beyond a reasonable doubt. It is also relevant to point out that in the reverse burden of proof as postulated in Section 30, it is not a preponderance of probability but "beyond reasonable doubt" thereby distinguishing it from rebuttable presumption such as required under Section 304B of the IPC which is to the extent of existence of a preponderance of probability.

**44.** In this case, the accused took the plea that he got married to the sister of the victim and his wife committed suicide prior to the alleged incident for which this false case has been instituted against him alleging that he had

committed rape towards the victim. But in support of the fact, the appellant did not adduce any evidence that he has been falsely implicated in this case to prove such rebuttal presumption as per Section 30 of the POCSO Act.

**45.** Now the question comes whether non-examination of the shopkeepers including Babul materially affects the trustworthiness of the prosecution version or put differently whether it really creates any dent in the testimony of the other witnesses including the victim and the surrounding circumstances on which the prosecution has placed reliance to bring home the guilt of the accused.

**46.** In this context, the following decisions of the Hon'ble Supreme Court can be looked into.

**47.** In the case of *Namdeo vs. State of Maharashtra*, reported in **(2007) 14 SCC 150**, it has been laid down that neither the legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. The legal system in this country has always laid emphasis on value with a quality of evidence rather than on quantity, multiplicity or plurality of witnesses.

**48.** In the case of *Bipin Kumar Mondal vs. State of West Bengal*, reported in **(2010) 12 SCC 91**, the Court reiterated the principle stating that it is not the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible, trustworthy and reliable.

**49.** In the case of *State of Himachal Pradesh vs. Gian Chand*, reported in **(2001) 6 SCC 71**, it has been ruled that non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court

levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution.

**50.** From the exposition of law, it is quite clear that it is not the number and quantity, but the quality that is material. It is the duty of the Court to consider the trustworthiness of evidence on record which inspires confidence and the same has to be accepted and acted upon and in such a situation no adverse inference should be drawn from the fact of non-examination of other witnesses. That apart, it is also to be seen whether such non-examination of a witness would carry the matter further so as to affect the evidence of other witnesses and if the evidence of a witness is really not essential to the unfolding of the prosecution case, it cannot be considered a material witness.

**51.** In the instant case, it reveals from the evidence of the witnesses including the victim that except the victim no other witnesses were present at the time of incident which took place at night on the backside of the place where the function was going on, on the relevant date of incident. From the evidence of the Investigating Officer (PW-7), it appears that during investigation he did not record the statement of the shopkeepers including Babul, who had a shop adjacent to the place of occurrence. According to the PW-3, there were 3/4 shops nearby the place of occurrence but it also appears from her statement that shopkeepers had not seen her taking away by the accused. The other witnesses examined by the prosecution also did not make any whisper that any of the shopkeepers or Babul had seen the incident and in spite of that they were not examined by the Investigating Officer during investigation. Under such backdrop, non-examination of shopkeepers or Babul is of no consequence.

**52.** Regarding discrepancy in the statement of the victim is concerned, it is seen that from the very beginning the victim categorically stated that while

she came out from the function of 'Asta Prahar' to purchase something from nearby shop, she was taken by the accused and had committed bad act towards her. The statement of the victim was recorded by the Magistrate under Section 164 Cr.P.C, wherein she also reiterated that on the date of incident she was along with her paternal aunt went to enjoy 'Asta Prahar' (religious function) and it was about 9 p.m. she went to the nearby shop and at that time his brother-in-law i.e. accused pulled her towards the paddy field and committed rape on her. It is true that the accused/appellant is the brother-in-law of the victim and due to death of his wife, who had committed suicide, the relation between the appellant and the family members of the victim was not cordial at the relevant time of incident. But it cannot be said that under the facts and circumstances of the case, a false FIR has been lodged by the mother of the victim alleging that the accused/appellant had committed such heinous crime towards the victim. The accused/appellant has also failed to prove the fact that due to death of his wife, this false case has been instituted by adducing any evidence. While recording the statement of the accused/appellant under Section 313 Cr.P.C, he did not utter a single word that as his wife had committed suicide, the relation between him and the family members of the victim became strained for which they had lodged a false FIR against him.

**53.** In view of the above discussion, I do not find any ground to interfere with the impugned Judgment & Order dated 30.10.2019 passed by the learned Special Judge, POCSO, Barpeta in Special POCSO Case No.90/2018.

**54.** The appeal is accordingly dismissed. Send back the LCR.

**JUDGE**