

<p><b>IN THE COURT OF SPECIAL JUDGE (POCSO) ::</b></p> <p><b>SONITPUR, TEZPUR :: ASSAM</b></p> <p>Present: S. Gogoi Bora, Special Judge</p> <p>Date of Judgment:</p> <p>Special (POCSO) No. 74 of 2018</p> <p>( Dhekiajuli PS FIR No.606 of 2018 )</p>	
COMPLAINANT:	State of Assam
REPRESENTED BY:	Sri. S.K.Moitra, Ld. Special PP.
ACCUSED:	(1) Pradip Roy (A1)
REPRESENTED BY:	Sri R. Gohain, Learned Advocates.

### **APPENDIX-13**

Date of Offence:	13-08-2018
Date of FIR:	13-08-2018
Date of Charge Sheet:	30-10-2018
Date of Framing of Charge:	26-12-2018
Date of commencement of evidence:	17-01-2019
Date on which Judgment is reserved:	23-08-2022
Date of Judgment:	09-09-2022
Date of the Sentencing Order, if any:	NA

**ACCUSED DETAILS**

<b>Rank of Accused</b>	<b>Name of Accused</b>	<b>Date of Arrest</b>	<b>Date Release on Bail</b>	<b>Offences charged with</b>	<b>Whether Acquitted or convicted</b>	<b>Sentence Imposed</b>	<b>Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.P.C.</b>
A1	Pradip Roy	14-08-18	07-12-18	U/s 6 of POCSO Act	Acquitted	NA	3 months 25 days

**JUDGMENT**

1. Brief fact of the case is that on 13-08-2018 the informant and her husband went to Dhekiajuli Hospital by keeping her 3 years old victim daughter at the house of her mother-in-law. They returned to home at about 3:30 p.m. When she returned home she saw her daughter crying and on being asked she showed her private part and told that accused Pradip Roy inserted his penis. Hence, the FIR was lodged.
2. Based on the said FIR, a case being Dhekiajuli PS Case No. 606/2018 Under Sec. 4/6 of POCSO Act was registered and investigated into and after completion of the investigation,

charge sheet was submitted against accused Pradip Roy u/s12 of POCSO Act.

3. On appearance of the accused person, copies of relevant documents were furnished to him in compliance of the provision of Sec.207 CrPC. Charge u/s6 of POCSO Act was framed against accused Pradip Roy to which he pleaded not guilty and claimed to be tried.
4. The prosecution has examined as many as 6 (six) witnesses. The victim was examined as C.W1. The accused person was examined u/s 313 CrPC. Defence has not adduced any evidence. The argument advanced by the learned counsel for both the sides were heard at length.

### **POINT FOR DETERMINATION**

- *Whether on 13-08-2018 at the house of the grandmother of the victim, accused Pradip Roy committed penetrative sexual assault on the victim, aged about 3 years?*

### **DISCUSSIONS, DECISIONS AND REASON FOR DECISION**

5. I have heard the arguments advanced by learned counsel for both the sides and also gone

through the evidence on record including the law relevant thereto.

6. PW1 Smti Swapna Roy, the mother of the victim is the informant of this case. She stated that on the day of incident she and her husband went to hospital at around 10 a.m. keeping their victim girl in her mother-in-law's house. They returned from hospital at about 4:30 p.m. and brought back her victim daughter from her mother-in-law's house. At that time the victim girl was aged about 3 years. Her victim daughter showing her private part (vagina) once told that Pradip Roy touched her private part and again stated that he had not touched her private part. Her husband reported the incident to some villagers and some of the villagers asked them to lodge the FIR. Police sent her daughter for medical examination.

7. In her cross examination she has stated that the accused is her husband's nephew. Her daughter did not clearly state before her that the accused touched her private part. She lodged the FIR as per instruction of the villagers and on suspicion she lodged the FIR.

8. PW2 Jantu Ch. Roy has deposed in his evidence that on the day of the incident in the

evening he had returned home, his wife told him that his nephew Pradip Roy committed rape on his victim daughter. Then he informed the villagers and they advised him to lodge the FIR. His wife was also not present at the time of incident. At the time of incident his daughter was three years old.

9. In his cross examination he has stated that the accused resides with his parents, wife and minor children. As a minor girl his daughter was loved by all their family members.

10. PW3 Ataur Rahman has deposed in his evidence that on the date of incident in the evening when he was at home, the victim's father Jantu Roy came to his house and told that accused Pradip Roy committed rape to his daughter. Then he along with his elder brother Ajijul Haque and his wife Rabija went to the house of Jantu Roy. On being asked by Rabija, the victim girl raised her clothes, showed them and told that accused Pradip Roy taking her to the tea cultivation of Mantu Roy, elder brother of Jantu Roy, took her on his lap, raised her clothes upward and put his penis in her private part. At that time she was three years old. They also saw

her panty smeared with some gum type substance.

11. In his cross examination has denied the defence suggestion that he did not state to police that they had seen her panty smeared with some gum type substance.

12. PW4 Mantu Chandra Roy has deposed in his evidence that in the evening at around 8 p.m. when he returned home, his wife Champa Roy and mother of the victim namely Swapna Roy told him that when mother of the victim was not at home and the victim was playing in the premises of Pradip Roy, then the accused raped the girl. Swapna Roy also told him that when she returned home the victim by crying narrated the incident. The neighbours gathered there and as per their advice the case was lodged.

13. In his cross examination PW4 stated that he had not seen the incident and hence he could not say the truthfulness of the incident.

14. PW5 Md. Taibur Rahman is the investigating officer. He has investigated this case, visited the place of occurrence, and recorded the statement of witnesses. He also forwarded the alleged victim girl to the Hon'ble

Court for recording her statement U/s.164 of the Cr.P.C. and also to hospital for medical examination. He also arrested the accused and forward to the Court. After completion of investigation, he submitted charge sheet against accused Pradip Roy u/s 12 of the POCSO Act.

15. In his cross examination has stated that he has not prepared the sketch map of the place of occurrence. He has not seized any wearing apparel of the alleged victim girl.

16. PW6 Dr. Rika Engtipi has deposed in her evidence that on 16-8-2018 at about 12.20 p.m. she examined one Sri Sangeeta Roy, female, daughter of Sri Jantu Chandra Roy of Tarajan Bengali Gaon under Dhekiajuli PS in reference to Dhekiajuli PS case No.606/18 u/s 4/6 of the POCSO Act. She was accompanied and identified by AHG Kunjalata Kakati. On examination she found the followings :

Identification mark : (a) black mole over the abdomen in the left side of pin point size and (b) scar mark of size 1 x 1cm present over the abdomen in midline.

Case History : According to the father of the victim (Jantu Chandra Roy) on 13-8-18 when he took his wife for antenatal check up,

he kept his 3 years old daughter namely Sangeeta Roy in his mother in law's house. One Pradip Roy, a neighbor came to his in law's house and sexually assaulted her daughter at around 2:45 p.m. He came to know about the incident when his daughter told him at 3 p.m. She was crying and he saw blood and white discharge in his daughter's private parts and they informed police at around 9 p.m.

Height :- 33 CM

Weight :- 10 KG

Chest : 45 cm

Teeth: 5/ 5, 6/ 5

On examination she found the

followings :

Hairs (a) scalp – black colour approx 7 cm in length

Breast – normal. No injury mark seen

Menstrual history – not attended.

General examination :

(a) Genital organs - healthy

(b) Vulva – healthy, (c) hymen – no tear

(d) vagina – healthy,

(g) evidence of venereal disease – not detected

(h) vaginal swabs collected from – collected.

Injury on the body – not detected.



Wearing garments (a) evidence of struggle – not detected,

(b) evidence of stain – not detected.

Mental condition at the time of examination – normal.

Co-operation and behavior – cooperating.

Intelligence and memory – normal

Gait normal.

Report of Radiological investigations – X-ray AP view of right wrist joint – two carpel bones are ossified. Epiphysis of lower end of radius has appeared but not fused. Epiphysis of lower end of ulna has not appeared on radiograph.

X-ray AP and lateral view of right elbow joint : capitulum of humerus has appeared but not fused.

Radial head has not appeared.

X-ray AP view of right shoulder joint : (i) upper end of humerus is not fused

(ii) medial end of clavicle is not fused.

X-ray of AP view of pelvis : Iliac crest and ischial tuberosities are not seen at present.

Vaginal swab examination – No spermatozoa seen.

**Opinion** : (1) evidence of recent sexual intercourse not detected.

(2) Evidence of violence mark on her private part not detected.

(3) Age of the victim is above 2 (two) years and below 5 (five) years.

17. In her cross examination PW6 has stated that she did not find any sign and symptoms of rape or sexual intercourse of the victim during examination. White discharge may cause due to infection of vagina. Blood may ooze out due to some injury on the private part. She further stated during cross that she did not find any injury on the body of the victim girl including her private part.

18. The victim as C.W1 stated in her evidence that the person shown to her stays near her house and the person is not a good person. He touched her vagina (pesab kora jaga). She was alone when he touched her. The court observed that the victim is keeping mum most of the time. She stated that she had not visited court earlier and this was her first visit. She has also not met the police on earlier occasions. In her cross she admitted that he has forgot what had happened to her when she was a small child. She

admitted that her mother told her earlier that the accused touched her vagina (pesab kora jaga). The incident occurred at the house of her paternal grandmother. She was playing at that time. She admitted that she could not remember who was with her at that time. She also does not remember that whether she was crying as she was alone. She also does not remember to whom she told about the incident.

19. Heard the Id counsel for the accused as well as Id Spl P.P. and perused the evidences and statement of the PWs and other documents present in the case record. This is a case charged under Sec 6 of the POCSO Act against the accused Pradip Roy for committing aggravated penetrative sexual assault on the three years old daughter of the informant Swapna Roy, for committing offence under section 5(m) of The POCSO Act. On the day of the incident the informant and her husband went to hospital by keeping their three year old victim daughter at the house of her grandmother i.e the mother of the informant's husband where the accused who is the uncle of the victim committed the offence.
20. There is no eye witness in this case. Hence, this case has to be decided on the sole evidence

of the victim and the circumstantial evidences. It is a known proposition of law that an accused can be convicted on the basis of sole evidence of the victim but it must be cogent and reliable. In the case of ***Ganesan VS State Represented by its Inspector of Police, AIR 2020 SC 5019*** Hon'ble Supreme Court discussed many cases including the case where it has been decided that conviction can be made on the basis of sole testimony of the victim including the case of Raghbir Singh holding that, "***In State of H.P. v. Raghbir Singh, (1993) 2 SCC 622*** this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity."

21. The victim was about 3 years old at the time of the incident and though in her 161 CrPC statement the victim stated that the accused whom she called as "Luta Deuta" hold her but her 164 CrPC statement could not be recorded by the magistrate as it has been mentioned that the

victim was not rational enough to answer the questions put to her by the magistrate. It has also been mentioned that the victim was constantly in her mother's lap and she refused to communicate with the Id magistrate. Hence her statement U/s164 CrPC could not be recorded. After examining all the PWs this court recorded the statement of the victim as CW-1 on 18-8-2022 and the alleged incident occurred on 13-8-2018 i.e after 4 yrs. At the time of recording her evidence as CW-1 the victim was studying in Class II. Her statement was recorded without taking Oath as she was below 12 years. In her statement she kept mum but only stated that the accused person shown to her was not a good person. She also stated that the accused person touched her vagina. In her cross she admitted that she could not remember any incident when she was a small child and the statement that the accused touched her vagina was told to her by her mother. She stated that the incident took place in the house of her paternal grandmother while she was playing. She admitted that she cannot remember who was present at that time. She could not remember why she was crying or to whom she told about the incident. The grandmother in whose house the incident

occurred was not examined as a witness. **P.W1 Smti Sapna Roy**, the informant, who is the mother of the victim stated in her evidence that at about 4:30 PM, after she and her husband returned from hospital, her three years old victim daughter showing her private part once told that Pradip Roy touched her private part and again stated that he had not touched her private part. In her cross examination she stated that her victim daughter did not clearly state before her that the accused touched her private part. Prior to the incident the accused being her 'bordeuta' used to take her on his laps. She stated that she lodged the ejahar as per instruction of the villagers and on suspicion. The said PW1 Swapna Roy in her 161 CrPC statement before police stated different facts by stating that her victim daughter showed her "susu" and told that Lutadeota (Pradip Roy) touched her "susu" with his "susu". On looking at the vagina of the victim she saw some liquid type substance. Again in the ejahar the informant stated that after returning to home when she found her victim daughter crying she asked her and the victim replied by pulling her legs and told her that Lutadeuta (Pradip Roy) entered his "susu" in her private part. She saw blood and some liquid type substance in her

vagina. There are major contradictions between the statement given U/s161 CrPC, 164 CrPC and in her evidence by the PW1. No any wearing clothes or panty of the victim was seized or sent to the FSL for examination. The medical report also does not support the same facts. **P.W2, Sri Jantu Chandra Roy**, who is the father of the victim girl stated in his evidence that on the day of the incident when he returned to home in the evening, his wife told him that his nephew Pradip Roy raped his victim daughter. Later he heard that Pradip Roy did nothing to the victim girl. **P.W3 Ataur Rahman** who is an independent witness and is a neighbour of the informant stated in his evidence that on the day of the incident at evening time, he heard from the husband of the informant Sri Jantu Roy that the accused committed rape on the victim. He alongwith his wife went to the house of the informant and on being asked to the victim, the victim showed by raising her clothes and told them that the accused by taking her to the tea cultivation of Mantu Roy took her on his lap, raised her clothes and put his penis into her private part. He also saw the panty smeared with some gum type substances. But in his statement before the police he had not stated the same. He

exaggerated many things in his evidence before this court. Before police he only stated that he heard from the father of the victim, whereas before court he stated that he asked the victim, victim showed him by raising her clothes, told that the accused took her to the tea plantation of Mantu Roy, took her on his lap and put his penis on her private part, he also saw gum type substances on her panty. Hence, his evidence cannot be relied upon. **PW4 Sri Mantu Chandra Roy** stated in his evidence that he heard about the incident from the mother of the victim Swapna Roy who told him that when she returned home the victim by crying, the victim narrated the incident. The neighbours gathered there and as per the advice of the neighbours this case was lodged. He admitted that he had not seen the incident. **PW6** is the MO **Dr Rika Engtipi** opined that she found no evidence of recent sexual intercourse and evidence of violence mark on her private part of the victim was not detected. She stated that she examined the victim girl on 16-8-2018 and the incident occurred on 13-08-2018. In her cross she admitted that white discharge may be caused due to infection in vagina and blood may ooze out due to some injuries on the private part. She did



not find any injury on the body of the victim girl including her private part. The victim girl was not admitted in hospital. She also did not find any sign and symptoms of rape or sexual intercourse of the victim during examination. **PW5** is the investigating officer of this case **Md. Taibur Rahman**. He admitted in his cross that he has not prepared any sketch map. The residence of the witnesses Aatur Rahman and Manik Chandra Roy are far away from the place of occurrence. He has not seized any wearing apparel of the victim girl. The victim spoke as a tender child. The medical examination of the victim was done on 16-8-18. There are lapses on the part of the investigating officer in investigation of this case. The **C.W1 the victim** admitted that she does not remember who was present, why she was crying at the time of the incident. It is also not possible for a child of three years to remember an incident after 4 years. The victim stated in her 161 statement that the accused touched her, her 164 CrPC statement could not be recorded as she did not stated anything and in her evidence she admitted that she cannot remember what happened on the day of the incident and she has been told by her mother that the accused touched her private part with his private part. On

taking the evidence of the victim on whole as C.W1 I find that the same cannot be trustworthy as the victim child does not remember anything of the day of the incident that who was present, where it happened and how it happened. It is quite natural for a child of three years to forget. The grandmother where she was kept by the parents of the victim was not examined.

22. In the case of **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**, Hon'ble Supreme Court observed that "*The court may look for some assurances of her (victim) statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.*" In this present case in hand, also I find that on the above adduced evidence of the prosecution, and upon relying on the said evidences, conviction cannot be accorded as the victim could not say anything and the other witnesses cannot be relied upon. There are many major contradictions in the evidences. The place of occurrence is not clear. None of the P.Ws stated anything about the place of occurrence. The I.O did not draw up the sketch map. The I.O has not properly investigated this case.

23. The P.W3, Aatur Rahman stated that the place of occurrence is the tea plantation of Sri Mantu Roy who is the brother of the father of the victim.
24. From the above discussions decisions and reasons, submission of both sides, after going through the evidences adduced by the prosecution and materials on record, I find that the prosecution has failed to prove the offence punishable u/s 6 of the POCSO Act against accused Pradip Roy (A1). Accordingly, accused Pradip Roy (A1) is acquitted from the charge punishable u/s 6 of the POCSO Act and set him at liberty forthwith. The bail bonds shall stand cancelled after six months.
25. Let the seized articles, which are books of record, prescriptions and registers be returned to the concern hospital after due course of time.
26. Send a copy of this judgment to the Learned District Magistrate, Sonitpur u/s 365 CrPC.

***Given under my hand and seal of this court on the 9<sup>th</sup> day of September, 2022.***

Judge,  
Special Court, POCSO

Sonitpur:: Tezpur.

**APPENDIX-14****LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS )
PW1	Smti Swapna Roy	Informant
PW2	Sri Jantu Ch. Roy	Reported witness
PW3	Ataur Rahman	Reported witness
PW4	Sri Mantu Ch. Roy	Reported witness
PW5	Md. Taibur Rahman	Police witness
PW6	Dr. Rika Engtipi	Medical Witness

**B. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES )
<b>NIL</b>	<b>NIL</b>	<b>NIL</b>

**C. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b> (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESSES )
<b>NIL</b>	<b>NIL</b>	<b>NIL</b>

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS:**

**A. Prosecution:**

<b>Serial No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-1/PW1	FIR
2	Ext-2/PW5	Charge sheet
3	Ext-3/PW6	Medical Report

**B. Defence:**

<b>Serial No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NIL</b>	<b>NIL</b>	<b>NIL</b>

**C. Court Exhibits:**

<b>Serial No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NIL</b>	<b>NIL</b>	<b>NIL</b>

**D. Material Objects:**

<b>Serial No.</b>	<b>Exhibit Number</b>	<b>Description</b>
<b>NIL</b>	<b>NIL</b>	<b>NIL</b>

Judge,  
Special Court, POCSO  
Sonitpur:: Tezpur.