IN THE COURT OF THE SESSIONS JUDGE, KHURDA AT BHUBANESWAR.

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 24th July'14.

T.R. Case No.24 of 2013.
(Arising out of Mahila P.S. Case No.142, dated 16.06.2013.)

S T A T E

-V e r s u s-

Buala Suklal Soren, aged about 22 years, S/o. Ananta Soren of Village – Asana, P.S. - Baripada Town, Dist. - Mayurbhanj.

... **Accused.**

Counsel :

For prosecution -- Shri B.B. Mohanty (P.P. in charge).
For defence -- Shri B.B. Kar, Shri L. Mohanty & Shri U. Pattanaik.

U/s.376(2)(i), I.P.C. & U/s.4, Protection of Children From Sexual Offences Act, 2012.

Date of conclusion of argument : 08.07.2014.
Date of judgment : 24.07.2014.

J U D G M E N T

Accused stands charged under section 376(2(i) of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short, "the Act") for committing rape and penetrative sexual assault respectively upon a three-year-old girl, who has not seen the light of the day

in so-called orderly society.

2. The factual matrix leading to the case of the prosecution is that informant and her husband reside at Jharanasahi in Mancheswar Industrial area of Bhubaneswar. On 15.06.2013 at evening hour, accused visited the house of the informant and called her three-year-old daughter (hereinafter called "the victim") with assurance to give her snacks (Kur-kure). As such, accused took the victim with him. Long after two hours, accused returned to the house of the informant with the victim and left her there. When the victim cried, informant asked her about the reason of her crying to which the victim replied that the accused had opened her wearing pant, put his saliva on her private part and applied his mouth to her vagina. Further, she narrated that the accused penetrated his penis on her vagina, but she cried and the accused threatened her to assault if she would disclose the matter in her house. She further narrated that thereafter the accused brought her back to their house. It is further alleged that the mother of the victim, who is the informant in this case, also saw injury mark on the vagina of her daughter. Then, they searched for the accused, but did not find him. On the next day of the occurrence, FIR was lodged. During investigation, victim was examined on police requisition. Witnesses were examined. Statement of the victim under section 164 of the Cr. P.C. was also recorded. In course of investigation, wearing frock of the victim was seized. After arrest of the accused, he was also examined by doctor on police requisition

and his wearing apparels were also seized. The doctor collected pubic hair and semen of the accused, which were also seized. After following due procedure, the seized materials were sent for chemical examination and chemical examination report was also obtained. After due investigation, police submitted Charge-sheet against the present accused.

3. Plea of the accused is squarely denial to the charge levelled against him and, according to him, he has been falsely implicated.

4. The main points for determination are :

(i) Whether the accused committed rape on the victim, a woman under the age of 16 years; &

(ii) Whether the accused committed penetrative sexual assault on the victim, who was under the age of 18 years ?

5. Prosecution, in order to bring home the charge, has examined altogether ten witnesses, out of whom P.W.1 is the informant; P.W.2 is the husband of the informant; P.W.3 is a relative of the victim; P.W.4 is the victim herself, who could not be examined as she was unable to give rational answers to the questions put by the Court; P.W.5 is another relative of the victim; P.W.6 is a witness to the seizure; P.W.7 is a Police Constable, who carried the victim for medical examination; P.W.8 is the doctor, who examined the victim; P.W.9 is the I.O.; and P.W.10 is another doctor, who examined the accused. Defence has examined none.

6. It is well settled law that in a rape case, the evidence

of prosecutrix does not need corroboration and if her evidence inspires confidence and appears reliable, it must be acted upon without seeking corroboration from the statements and all material particulars. It is also well settled law that evidence need not be counted, but should be weighed. The Court should separate the grain from the chaff. In sexual offence cases, the Court should be more sensitive to award even justice. Bearing in mind these principles, let me find out whether the prosecution has been able to bring home the charge against the accused.

7. In the instant case, the victim, who is arrayed as P.W.4, was brought before the Court and on being questioned, she failed to give rational answers for which the Court did not examine her as a competent witness, as required under section 118 of the Indian Evidence Act. In the case of ***Basudev Tandi*** Vs. ***State of Orissa*** **[(1998) 14 OCR – 322]**, His Lordship has observed at para-7 of the judgment that :

> ".....In the absence of the victim being examined in court, the question of culpability of the appellant has to be judged on the basis of circumstantial evidence available on record."

8. With due respect to the above decision, I find in the instant case that the victim being not examined and there being no occurrence witness, the case solely rests on circumstantial evidence available on record. In the case of circumstantial evidence, certain facts are to be proved from which the existence of a given fact can be inferred i.e. (a) chain of evidence must be so far complete as not to leave the reasonable ground consistent

with the innocence of the accused; and (b) as to show that within all human probability, the act must have been done by the accused. Their Lordships of the Hon'ble Supreme Court in the case of ***Govinda Reddy*** Vs. ***State of Mysore*** **(AIR 1960 SC 29)** and in the case of ***Swami Shradddananda*** Vs**.** ***State of Karnatak*** **(AIR 2007 SC 253)** have observed that facts or circumstances alleged must be proved by satisfactory evidence, as indicated in the above paragraph.

9. So, the chain of circumstances must be proved and there should not be missing link in the case. It is not essential that everyone of the link must appear on the surface of evidence, as some of the links must be inferred from the proved facts. Bearing in mind about appreciation of evidence based on circumstantial evidence, let me find out if at all the prosecution has been able to establish the charge against the accused.

10. It is revealed from the evidence of P.W.1, who is the informant in this case, that the victim is her daughter and she is about 3 to 4 years old. It is further revealed from her evidence that accused was a frequent visitor to their house and he used to take her daughter on several occasions and give her biscuits and chocolates. In cross-examination, she stated that accused is known to them since long, as he was staying in their Basti from their childhood. It is also revealed from her cross-examination that accused was staying in the house of her elder brother-in-law, with whom they were not pulling on well. But, there is nothing found from her cross-examination that she was in inimical term

with the accused. On the other hand, she has admitted at para-5 of her cross-examination that accused was working as a labourer under her brother-in-law and, at times, accused used to take her daughter for playing. So, the evidence of P.W.1 is very much clear and consistent to show that the accused was in visiting terms to their house and had good relationship with their family.

11. It is further revealed from the evidence of P.W.1 that on the afternoon of Raja Sankranti in the year, 2013, accused took her daughter at about 3 P.M. and brought her back home at about 7 P.M. and then the victim told her crying that accused took her to a sand heap, removed her pant, put his saliva on her private part, used his tongue surrounding the private part and then inserted his penis inside her vagina. She stated to have found injury on her vagina. So, she came to Police Station and lodged FIR. She proved the FIR vide Ext.1. On the contents of the FIR, there is no fruitful cross-examination to this witness; but the FIR shows the exact occurrence, as revealed by her in the Court. She has been vividly cross-examined. During cross-examination, she stated that the victim was examined by a male Medical Officer in her presence. About the occurrence, she has stated at para-6 of her cross-examination that accused left her daughter at a little distance from her house in the evening and she came to her crying. The victim had 3 to 4 injuries around and inside her private part and she also sustained injuries on her back, scalp and swelling injury on her head. P.W.1 further stated in cross-examination that there was slight bleeding from her

private part as there was a tear. It was suggested to the witness in para-8 that her daughter sustained injury while she was playing in the nearby bushy field or while urinating in that place to which P.W.1 denied. The suggestion given by the defence may not have much effect, but the fact remains that accused knew about the injuries upon the victim for which he has suggested in such a manner. Of course, sustaining of injuries by the victim on her back, scalp and swelling on head neither has been stated in the FIR, nor in examination-in-chief, for which this part of evidence of P.W.1 may be an exaggeration. During cross-examination, defence has not been successful to discredit the testimony of P.W.1 so far as injury caused to the private part of the victim is concerned. Since she has no inimical term with accused, there is no bar to rely on her sole testimony. On the whole, it is revealed from her evidence that immediately after the occurrence, victim reached house and narrated occurrence to P.W.1. It is reported in the case of ***Krishan Kumar Malik*** Vs. ***State of Haryana*** **(AIR 2011 SC 2877),** where Their Lordships have observed :

> "Section 6 of the Act has an exception to the general rule where under hearsay becomes admissible, but as for bringing such hearsay evidence within the ambit of section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statement said to be admitted has forming part of *res gestae* must have been made contemporaneously with the act or immediately thereafter".

With due respect to the said decision, in the instant case, the victim immediately after the occurrence has narrated

the commission of offence to P.W.1 for which the evidence of P.W.1 can be relevant and being hearsay can be admissible under section 6 of the Indian Evidence Act. Also, she has proved by direct evidence that she has seen the injury on the private part of her daughter, which is very much clear from the cross-examination made to her. Thus, P.W.1 has proved by clear, cogent and credible evidence that her daughter was taken away by the accused for outing and in the outside accused committed rape upon the victim and also committed penetrative sexual assault upon victim, who is a child, and she has seen the injury on the private of the victim.

12. P.W.2, who is the father of the victim, stated that he came to know from his wife (P.W.1) that accused committed sexual assault on his daughter and caused injuries to her and he saw tear injury on her private part. He has also heard from his daughter that the accused sexually assaulted her and she has been medically examined. Of course, the evidence of P.W.1 does not disclose that she told P.W.2 about the sexual assault committed by the accused on their daughter. Therefore, the evidence of P.W.2 in this regard is hear-say, but by direct evidence he has stated that he noticed injury on the private part of his daughter. In cross-examination, denying the suggestion of defence, he has stated to have seen injury on his daughter's private part. There is no confrontation of the statement of P.W.2 to the I.O. (P.W.9). Therefore, the evidence of P.W.2 that he saw injury on the private part of the victim remains undisturbed. So, the evidence

of P.W.2 is clear, cogent and consistent to prove that he has seen the tear injury on the private part of his daughter and his daughter has been medically examined. In this regard, he has corroborated the evidence of P.W.1 to prove injury caused to their daughter.

13. P.W.3 has only seen the accused being detained near the house of P.W.1, but she expressed her ignorance about the occurrence. In cross-examination by the prosecution, she denied to have stated before police that accused used to visit their house and on 15.06.2013, accused took the victim with him on the pretext of giving her Kur-kure and accused left her near their house in the evening and Sujit Singh and Pratima disclosed her that the victim was sexually assaulted by the accused; that when she inquired victim, she disclosed that accused removed her pant, licked her private part and inserted his penis inside her vagina and she saw injury on her private part. In fact, this statement of P.W.3 was confronted to the I.O. (P.W.9) and he stated to have examined P.W.3, who has stated the aforesaid fact before him. So, P.W.3 tried to suppress the material facts. It is well settled law that even if the witness is declared hostile, his / her evidence cannot be discarded in toto. On the other hand, the evidence of P.W.3 has proved to the extent that he had seen the accused near the house of P.W.1.

14. P.W.4 is the victim girl. While she was examined by the Court, she could not give rational answers for which this Court opined that she is not competent to give evidence. But, she

had been examined by the learned S.D.J.M., Bhubaneswar under section 164 of the Cr. P.C., before whom she narrated the occurrence as a whole. Such statement of the victim is available on record and has been marked as exhibit. Although she has been examined under section 164 of the Cr. P.C., but the same cannot be a substantive piece of evidence. In the case of ***Ram Kishan Singh*** Vs. ***Harmit Kaur and Another*** **[(1972) 3 Supreme Court Cases 280],** Their Lordships of the Hon'ble Apex Court have observed in para-8 of the judgment that :

> "A statement under Section 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness".

With due respect to the said decision, I find that in the instant case, the statement made by the victim under section 164 of the Cr. P.C. is not a substantive evidence, but can neither be used to corroborate nor can be used to contradict, as the victim has not adduced evidence in Court. But, the fact remains that she has been produced before the learned S.D.J.M., who has recorded her statement vide Ext.9.

15. P.W.5, who is another relative of the victim, admitted that P.W.1 is her sister-in-law and the victim is her niece. According to her, on Raja Sankranti day, at about 7.30 P.M., P.W.1 called her to her house saying that the victim is crying. When she went to the house of P.W.1 and asked the victim as to why she was crying, victim disclosed that accused took her on a pretext of giving Kur-kure, then removed her pant,

applied saliva on her private part and inserted his penis inside her vagina. She stated to have seen tear injury on her private part. In cross-examination, she admitted that the accused is living in their Basti. In para-3 of her cross-examination, she stated to have seen a small tear wound on the private part of the victim, but did not find any other injury on her body. There is no other fruitful cross-examination to this witness. Even if she is a relative of the victim, there is no bar to rely upon her evidence. Her evidence does not disclose that she has got any enmity with the accused. Their Lordships of the Hon'ble Apex Court in the case of ***Bhagga*** Vs. ***State of Madhya Pradesh*** **(AIR 2008 SC 175)** have been pleased to observe that mere relationship does not make anyone interested. Relying upon such decision, I find that the statement of P.W.5 does not disclose that she is an interested witness. No fruitful cross-examination is made to disturb her evidence. Her evidence is clear, cogent and trustworthy to show that she has seen the tear injury on the private part of the victim, which lends sufficient corroboration to the evidence of P.Ws.1, 2 and 3.

16. P.W.8, who is the doctor, has stated that on 16.06.2013, he examined the victim on police requisition and found the following injuries :

> Abrasion of 0.5 cm x 0.25 cm at forchette. The presence of injury at forechette would be possible with forcible penetration of penis or nail scratch. The absence of spermatozoa in vaginal smear may be due to non-ejaculation by the penetrated penis.

P.W.8 has proved his medical report vide Ext.6. There is no meaningful cross-examination to this witness. The medical report vide Ext.6 shows that the victim has been examined on the consent by her parents and it shows that there was abrasion of 0.5 m. x 0.25 m. at forchette extending below and the finger was not admitted. Further, it is revealed from Ext.6 that the doctor opined that the presence of tear at forchette can be due to forcible penetration of penis or due to scratch of nail. Absence of spermatozoa in vaginal smear may be due to non-penetration of penis into the vagina. But, in the instant case, the possibility of sexual assault cannot be ruled out. So, the statement of P.W.8 coupled with the certificate vide Ext.6 granted by him amply proves that the victim has sustained tear injury due to forcible penetration of penis over her vagina. But, there was no ejaculation of spermatozoa. On the other hand, his evidence amply lends corroboration to the evidence of P.Ws.1, 2, & 5 that the victim sustained injury on her private part due to commission of rape or penetrative sexual assault upon her.

17. The evidence of P.W.10 shows that on 17.06.2013, he being the Medical Officer has examined the accused and found three injuries on different parts of his body. He proved his report vide Ext.12. Similarly, he admitted in para-2 of his examination-in-chief that there was absence of smegma on glans penis and possibility of recent sexual intercourse cannot be ruled out. Again he has stated that nothing is suggestive if the accused is not capable of committing sexual intercourse. His report vide

Ext.13 amply corroborates his evidence. It is, therefore, held that the evidence of P.W.10 shows that the accused has undertaken sexual intercourse resulting absence of smegma on glans penis. Be that as it may, the evidence of the doctor corroborates the prosecution story. In view of the above oral evidence of P.W.1 and post-occurrence witnesses coupled with the evidence of the doctor and the report prepared by him go to prove that the victim sustained injury on her vagina due to the forcible sexual intercourse with her by the accused.

18. P.W.9, who is the I.O., stated to have seized the wearing apparels of the victim vide Ext.2 and he has sent the same for chemical examination. The evidence of P.W.1 lends corroboration to the evidence of P.W.9 as to the seizure of wearing apparels of her daughter vide Ext.2. A frock of the victim being produced in the Court has been marked as M.O.I. The chemical examination report does not disclose that such M.O.I has any semen or blood stains on it. P.W.9 also proved the seizure of wearing apparels of the accused vide Ext.4. He stated to have sent the same for chemical examination. Ext.11, which is the chemical examination report, shows that there was some human blood on the half pant. Such examination report is of help to the case of the prosecution, as it is evident from the evidence of P.W.8 that accused had no ejaculation of spermatozoa. Thus, the seizure of the properties and Ext.11 lend support to the case of the prosecution to the extent that there was penetration to the private part of the victim, but no ejaculation

was there by the accused.

19. It is revealed from the evidence of P.W.1 that her daughter, who is the victim girl, is three to four years old. There is no cross-examination to P.W.1 on this score. So, her evidence proves that victim is three years old. P.W.2, who is the father of the victim, stated that victim is three to four years old. No challenge is made to his statement. So, his evidence proves that victim is three years old. Of course, no Birth Certificate is filed. Ext.6, which is the medical report of the victim, shows that victim is three years old. Thus, it is proved by the prosecution that the victim is three years old on the date of occurrence. Consent for the three-year-old child is immaterial for commission of the offences of rape and penetrative sexual assault by the accused on the victim, inasmuch as in terms of definition of rape under section 375 of the I.P.C., rape can be construed with or without consent of a woman, when she is under eighteen years of age.

20. Motive is to be proved by prosecution as it is a case based on circumstantial evidence. From the evidence of P.W.1, P.W.6 read with Ext.6 and I.O. (P.W.9), it is revealed that accused had the motive of satisfying his lust instinct by committing sexual offences like rape and penetrative sexual assault upon victim, with whom he had prior acquaintance. Accused in his statement under section 313 of the Cr. P.C. has simply denied his involvement with the entire occurrence. He has not explained as to how the injury on the private part of the victim occurred. So,

the denial of accused and non-explanation of injury caused to the victim is a link to the chain of circumstance against the accused.

21. It is revealed from the FIR that occurrence took place on 15.06.2013, but FIR was lodged on 16.06.2013. The FIR vide Ext.1 shows that informant already went on searching for the accused after hearing occurrence from P.W.1. The evidence of P.W.5 shows that on the occurrence day evening, there was a discussion in the Basti about the incident and it was finally decided to lodge FIR before the police. So, in such sensitive matter, due to such deliberation in their community, it is proved by the prosecution that FIR was lodged on the next day. Since delay is not more than 24 hours of the occurrence, it is not fatal to the case of the prosecution particularly when the occurrence has been proved by the circumstantial evidence, as discussed above.

22. From the aforesaid analysis, it is found that there is clear,cogent and consistent evidence adduced by the prosecution to prove the following circumstances :

(a) Accused is a frequent visitor to the house of the informant and he used to take the victim to outside having closed acquaintance with her since her childhood.

(b) On the date of occurrence, he had taken her to outside on the plea of giving her Kur-kure and after two hours brought her back to her house.

(c) Just after arrival at her house, the victim cried and informed her mother about the occurrence of rape and penetrative sexual assault committed by the accused upon her.

(d) P.Ws.1, 2 & 5 found tear injury on vagina of the

victim.

(e) The doctor also found tear injury on the vagina of the victim.

(f) The victim is a three-year-old girl.

(g) Motive is well made out, as discussed above.

(h) Denial of occurrence and non-explanation to the circumstances of injury to the private part of the victim by the accused in his examination is a link to the circumstance.

All these proved facts and circumstances clearly give an inference that it is the accused who has committed rape and penetrative sexual assault upon a three-year-old victim girl, who is the daughter of P.Ws.1 & 2.

23. Learned defence counsel submitted that as the victim is a child witness, her evidence should not be taken into confidence. In this case, since the victim has not been examined, the question of her competency does not arise. He also submitted that the delay in examination of smegma cannot give a positive result. He cited a decision reported in **AIR 1978 SC 1753** ***(Dr. S.P. Kohli*** Vs. ***The High Court of Punjab and Haryana)***. I went through the said decision, wherein Their Lordships of the Hon'ble Apex Court have observed that :

> "It is well known in the medical world that the examination of smegma loses all importance after 24 hours of the performance of the sexual intercourse".

24. On going through the above decision, it appears that in that case, there was smegma present on glans penis and he was examined within 24 hours of the case of rape. But, in the instant case, there is absence of smegma, although accused was

examined beyond 24 hours but within 48 hours of the occurrence of penetration. Therefore, the facts and circumstances of the cited case have no relevance to the facts of this case. Had there been appearance of smegma, the matter would have been otherwise. But, in the case at hand, no smegma was present and no suggestion has been given by the defence to any of the witnesses that under what circumstances, smegma was absent on glans penis of accused on 17.06.2013, as the occurrence took place on 15.06.2013. So, the contention of learned defence counsel does not convince to prove the innocence of the accused.

25. Learned defence counsel further submitted that no outside witnesses have been examined, whereas all the close relatives of the victim and the informant have been examined in this case and for that prosecution case should not be relied upon. In this connection, learned Public Prosecutor submitted that there is no bar in law to rely upon the evidence of relatives if their evidence is otherwise acceptable. In the foregoing paragraphs, there has been vivid discussion about evidence of witnesses, who are related to the victim girl, and after meticulous examination, their evidence has been accepted even if they are relatives. So, the contention of learned defence counsel has no force.

26. As per the Criminal Law (Amendment) Act, 2013, the definition of “rape” has been amended by inserting new clause in section 375 of the Indian Penal Code. Cl.(a) of the said section says that a man is said to commit rape if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus

of a woman or makes her to do so with him or any other person. Again, it has been said in section 375(d) that if a man applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person is also called rape. Section 376(2)(i) of the I.P.C., as amended in 2013, speaks that whoever commits rape on a woman when she is under sixteen years of age is punishable under the law.

27. In the instant case, it has been proved by the prosecution through circumstantial evidence, as discussed above, that the accused applied his mouth to the vagina of the victim girl, who is three years old and also penetrated his penis although there was no ejaculation to the vagina of the victim. So, the accused has committed the offence punishable under section 376(2)(i) of the I.P.C. Not only this, but also section 4 of the Protection of Children from Sexual Offences Act, 2012 speaks about the punishment for penetrative sexual assault, as defined under section 3 of the said Act. Section 3 of the Act defines penetrative sexual assault. According to Cl.(a) of the said section, if a person 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 is called penetrative sexual assault. Similarly, Cl.(d) of section 3 says that a person is said to commit sexual assault if he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

28. In the instant case, it has been proved by the

prosecution that the victim is aged about three years old. It has also been proved by the prosecution that the accused has applied his mouth to the vagina of the victim girl and then penetrated his penis to a little extent, although there was no ejaculation. So, the ingredients of section 3(a) & (d) of the Act has been well proved by the prosecution and, consequently, charge for the offence under section 4 of the Act has been well established against the present accused by the prosecution.

29. In view of the aforesaid discussion, I find that prosecution has well proved the offences punishable under section 376(2)(i) of the I.P.C. and section 4 of the Act against the accused beyond all reasonable doubts. Resultantly, I hold the accused guilty of the offences punishable under section 376(2)(i) of the I.P.C. and section 4 of the Protection of Children from Sexual Offences Act, 2012 and I convict him thereunder.

Sessions Judge, Khurda
at Bhubaneswar.
24.07.2014.

Dictated, corrected by me and pronounced this day the 24th July, 2014.

Sessions Judge, Khurda
at Bhubaneswar.
24.07.2014.

30. Heard the convict, learned defence counsel and learned Public Prosecutor. Learned defence counsel submitted to release the convict on Probation of Offenders Act as he is a first offender. Learned Public Prosecutor opposed to release him

under the said provision as it is a matter of sexual offence against a child. I find in the present case that a girl has been ravished for which I do not feel it expedient to extend the provisions of the P.O. Act to the convict. At the same time, for the self-same reason, I also do not feel it proper to release him under section 360 of the Cr. P.C.

HEARING ON THE QUESTION OF SENTENCE.

31. Learned defence counsel submitted that since the convict is a labourer and first offender, a lenient view may be taken in awarding the sentence. Learned Public Prosecutor submitted that since a heinous crime has been committed by the convict, he may be awarded deterrent punishment.

32. Sentencing depends on two factors – one is mitigating and the other one is aggravating and balancing both, sentence is made available to convict. In the present case, aggravating factors are that it is the faith of the family and the child herself which has been shattered by the convict while he committed such brutal act upon a three-year-old girl child. The child was taken on the plea of giving Kur-kure, but ultimately she was subjected to sexual assault by the convict, which is very gruesome and betrayed act on his part. The child, who has not seen the world, has got a terrible shock in her mind for ever. Not only this, but also the trauma caused to the child in her early stage of life can be remembered for years to come. It is a man who is much older to the child could not think for a while what horrendous act has been committed by him, although

penetration, to a full extent, could not be possible because of tenderness of the private part of the victim. On the other hand, the mitigating factor is only that the convict is a first offender and he is a labourer. May be, the fact that the vagina of the child has not been totally teared, but it has been teared to certain extent. So, for the larger interest of the society and the girl child and the balancing factors, as discussed above, I find that it is a fit case where the convict should be awarded proportionate proper punishment.

33. The convict has already been found guilty under section 376(2)(i) of the I.P.C. and under section 4 of the Act. Section 42 of the Act prescribes that where an act or omission constitutes an offence punishable under this Act and also under some sections of the I.P.C., including section 376, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the I.P.C. as provides for punishment which is greater in degree. No doubt, the punishment under section 376(2)(i) of the I.P.C. is greater in degree in comparison to the punishment prescribed under section 4 of the Act.

34. In such circumstances, considering the magnitude of the offence, the nature of the act committed, the age and character of the offender and all other factors, as discussed above, I sentence the convict to undergo Rigorous Imprisonment for a period of 12 (twelve) years and to pay a fine of Rs.20,000/-

(Rupees Twenty Thousand), in default, to undergo Rigorous Imprisonment for a further period of 1(one) year for the offence punishable under section 376(2)(i) of the Indian Penal Code. The period undergone by the convict as UTP be set off.

35. The fine amount of Rs.20,000/- (Rupees Twenty Thousand), if realised, be paid to the mother of the victim girl towards compensation for the loss of injury caused by the offence to the victim in terms of section 357 of the Cr. P.C. Since the amount of compensation is not sufficient in commensurate to the injury caused to the victim girl, this case is recommended to the District Legal Services Authority, Khurda at Bhubaneswar under section 357-A of the Cr. P.C. to award more compensation under Victim Compensation Scheme to the victim, who is represented by her mother-informant.

36. The seized articles, including M.Os.I & II, be destroyed four months after expiry of the appeal period if no appeal is preferred; in the event of appeal, the same be disposed of in accordance with the direction of the Appellate Court.

Sessions Judge, Khurda
at Bhubaneswar.
24.07.2014.

Dictated, corrected by me and pronounced this day the 24th July, 2014.

Sessions Judge, Khurda
at Bhubaneswar.
24.07.2014.

List of witnesses examined for prosecution.

P.W.1	--	Smt. Pratima Singh,
P.W.2	--	Sujeet Singh,
P.W.3	--	Smt. Puja Singh,
P.W.4	--	Victim,
P.W.5	--	Minati Singh,
P.W.6	--	Sagarika Kar,
P.W.7	--	Smt. Geetanjali Naik,
P.W.8	--	Dr. Chitta Ranjan Patra,
P.W.9	--	Smt. Subhasini Mohapatra, &
P.W.10	--	Dr. Dasmath Hembrum.

List of witnesses examined for defence.

Nil.

List of documents admitted in evidence for prosecution.

Ext.1	--	F.I.R.,
Ext.1/1	--	Signature of P.W.1 in Ext.1
Ext.2	--	Seizure list,
Ext.2/1	--	Signature of P.W.1 in Ext.2,
Ext.2/2	--	Signature of P.W.2 in Ext.2,
Exts.3 & 4	--	Seizure lists,
Exts.3/1 & 4/1		Signatures of P.W.6 in Exts.3 & 4,
Ext.5	--	Command Certificate,
Ext.5/1	--	Signature of P.W.7 in Ext.5,
Ext.6	--	Medical Examination Report,
Ext.6/1	--	Signature of P.W.8 in Ext.6,
Ext.1/2	--	Endorsement of IIC in Ext.1,
Ext.1/3	--	Formal F.I.R.,
Ext.7	--	Spot Map,
Ext.8	--	Prayer of I.O. for recording statement of the victim under section 164, Cr. P.C.,
Ext.9	--	Statement of the victim girl,
Ext.10	--	Forwarding report,
Ext.11	--	C.E. Report,
Ext.12	--	Injury report, &
Ext.12/1	--	Signature of P.W.10 in Ext.12.

List of documents admitted in evidence for defence.

Nil.

List of M.Os. marked for prosecution.

M.O.I	--	Wearing frock of the victim &

M.O.II -- Wearing half pant of the accused.

List of M.Os. marked for defence.

Nil.

Sessions Judge, Khurda
at Bhubaneswar.
24.07.2014.