

DISTRICT : DHUBRI

IN THE COURT OF THE SPECIAL JUDGE, DHUBRI

PRESENT: - Shri D. Thakuria,
Special Judge,
Dhubri.

Special Case No. 03 OF 2018

U/S 376 D IPC, r/w section 6 of POCSO Act

Corresponding to G.R. Case No.4102/2017

State of Assam

Versus

1. Eyajul Ali and
2. Rosid Sheikh

Charge framed on

: 01-02-2018

Evidence recorded on

: 13-03-2018, 10-04-2018, 20-04-2018,
17-05-2018 and 14-06-2018

Statement recorded on

: 03-07-2018

Argument heard on

: 29-09-2018.

Judgment delivered on

: 10-10-2018



Advocates who appeared in this case

Shri B. Basumatary, Special P.P. for the Prosecution

Shri Aminur Rahman Ahmed, Advocate, for the Defence

JUDGMENT

1. Accused persons Eyajul Ali and Rosid Sheikh stand trial for the offences punishable under Section 376 D/366-A IPC read with section 6 of POCSO Act for allegedly committing kidnapping a minor girl and also committing gang rape on her.

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2. Facts of the case, in brief, as appears from the ejahar are as follows: That on 13-09-2017 at about 7:30 pm the above mentioned accused persons with another who subsequently declared as child-in-conflict with law took away 13 year old daughter of the complainant to a nearby jute field by gagging her mouth and committed rape on her forcefully. Thereafter, the accused persons left that place by keeping her in unconscious condition. At night about 2:30 am while the complainant went outside to response nature's call, he found his daughter in unconscious condition in the jute field and brought her to the house. After regaining sense, his daughter told him about the incident. Villagers assured the complainant that they would settle the matter but, the matter was not settled. So, the complainant lodged a written ejahar before the Superintendent of Police, Dhubri 18-09-2017. The Superintendent of Police Dhubri forwarded the ejahar to the O/C, Tamarhat P.S. where a case as Tamarhat P.S case no. 215/17, u/s 366A/376 G/120-B/201/506 IPC, r/w section 4 of POCSO Act was registered.

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3. During investigation, the accused persons were arrested and produced them in the Court. The victim girl was medically examined and her statement was recorded through Judicial Magistrate u/s 164 Cr.P.C. I.O. recorded the statements of the witnesses u/s 161 Cr.P.C. and by completing the investigation, submitted charge sheet against the accused persons Rosid Sk, Eyajul Ali and child-in-conflict with law u/s 366/376 D IPC, r/w section 6 of POCSO Act.
4. One of the accused was declared as child-in-conflict with law and the case was split up accordingly against him.

5. After taking cognizance of the case, copies were furnished to the accused persons and after hearing both the parties and perusal of the case record and case diary, formal charge against the accused u/s 376-D IPC, read with section 6 of POCSO Act was framed. Charge so framed was read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. Subsequently section 366-A IPC was added and after framing charge under section 366-A IPC the same was read over and explained to the accused persons which they pleaded not guilty and claimed to be tried.

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6. Prosecution has examined altogether nine witnesses including medical and investigating officers and closed evidence. Judicial Magistrate who recorded the statement of the alleged victim under section 164 Cr. P. C. was examined as Court witness.
7. After completion of the prosecution evidence, the statement of the accused persons were recorded u/s 313 Cr. P. C. by putting questions to them from all incriminating evidence appearing against them on record and thereby giving them an opportunity to meet the same. In response to which, the accused persons denied the allegations as well as evidence on record and also declined to adduce evidence in defence .
8. Heard argument advanced by learned counsels appearing for the parties.
9. Following points have been set up for determination:



1. *Whether the accused persons on 13-09-2017 at about 07:00/07:30 p.m., at village Bherbheri, under Tamarhat Police Station, constituted a group and committed rape on the minor daughter of the complainant and thereby the accused persons are liable to be punished u/s 365-D IPC?*
2. *Whether the accused persons on the same day, time and place, committed aggravated penetrative sexual assault on the minor daughter of the complainant, a child under 18 years of age and thereby committed an offence punishable u/s 6 of POCSO Act?*
3. *Whether the accused persons on the same day time and place kidnapped the minor daughter of the complainant and handed over her to another to do illicit intercourse with him and thereby the accused persons are liable to be punished under section 366-A IPC?*

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**DISCUSSION ON THE POINTS FOR DETERMINATION AND DECISION
ARRIVED THEREON WITH REASONS**

10. In order to establish the charges framed against the accused persons, the prosecution has examined altogether nine witnesses. Among them, PW-1 is the complainant, PW-2 is the alleged victim, PW-8 is the brother-in-law of the complainant, PW-3 is Abdul Mojid Sk, PW-4 Abdul Rahim Talukdar, PW-6 Nurul Islam Sheikh and PW-7 Shonaullah Mondal, are independent witnesses, PW-5 Rinku Ahmed is the Medical Officer and PW-9 Abdul Motaleb Sheikh is the Investigating Officer.

11. Debabrata Kalita, Judicial Magistrate 1st Class, Dhubri is examined as CW-1.

12. The defence examined none. The plea of defence is total denial of the case.

13. For proper appreciation of the evidence on record let us reproduce material parts of the oral testimonies of the prosecution witnesses.

13.1 PW-1 is the complainant and the father of the alleged victim. His deposition shows that on 13-09-2017, at about 07:00/07:30 p.m., he was returning home from market and found none in his house. One of his aunts told him that his wife went to the house of his father-in-law. He called his wife who returned home shortly. But his daughter was not with her. On being asked about his daughter, his wife told him that she went to her parents' house keeping her daughter in the residence. As his daughter was not in the residence, so they searched her but found no clue of her. At about 02:00 a.m., to attend natures call, he went to nearby paddy field and heard a sound. He went to the source of the sound and found that his daughter was lying on the ground without sense. He carried his daughter to home. In the meantime, he called his brother-in-law (P. W. 8). At about 03:00 a.m., his daughter regained her sense. P. W. 8 asked his daughter what had happened and she disclosed before P. W. 8 that while she was sitting at Varanda and watching mobile



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phone then Rashid and Eyajul came to his house and had taken away her. Except this P. W. 8 disclosed nothing. After 20 days of the incident, the complainant asked his daughter what had happened on the day of incident then his daughter told him that Rashid and Eyajul took her and handed over to child-in-conflict with law who misbehaved her. Villagers assured him that they would settle the matter; but, the matter was not settled. So, after five days, he lodged the ejahar. Ejahar was written by one Advocate's clerk. The ejahar was read over to him. Ext-1 is the ejahar and ext-1 (1) is his signature. In cross examination, he has deposed that Tamarhat Police Station is situated just 2 k.m. away from his house. Tamarhat PHC is situated just half kilometer away from Tamarhat Police Station. After the incident he came to Dhubri, consulted with a Lawyer and drafted the ejahar. On the night of incident, he searched his daughter in the house of Amu, Azid and many others. The houses of accused persons are near to his house. He searched his daughter in their houses too; but, he did not find his daughter. After recovery of his daughter at paddy field, he raised no alarm and did not call any person. He could not say the colour of dress of his daughter. The dress of his daughter was not handed over to police. The mobile handset was not given to police. He cannot say how his daughter went away from his house. In the ejahar he mentioned the names of seven persons and alleged that all of them committed gang rape on his daughter. After the incident, no medical treatment was given to his daughter. The ejahar was written at Dhubri. The scribe drafted the same as told by him and his daughter. In the ejahar it was written that his 13 year old daughter was taken to a jute field by the accused persons and child-in-conflict with law after inducing her. The accused persons called his daughter in her mobile phone. The child-in-conflict with law called his daughter. He heard that his daughter visited the house of Arman Ali after receiving the phone call and from there she was missing.

- 13.2 PW-2 is the alleged victim. Her deposition shows that about eight months back, one day she was alone in her house. At about 7:00/8:00 pm, child-in-conflict with law, Eyajul and Rashid Sk came to her house, gagged her mouth and had taken her away to the nearby jute field. Thereafter, child-

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in-conflict with law committed rape on her. At that time, Eyajul and Rashid Sk were standing on the road. After commission of rape, all the accused persons compelled her to take a tablet. Thereafter, she lost her sense. At about 03:30 am, she regained her sense at her house. After that she told the incident to her father. Next day, there held a bichar in a school field. In that bichar, child-in-conflict with law sought an amount of Rs. 30,000/- and ornaments from her father and told that after getting money and ornaments he would marry her. After five days of the incident, her father lodged the ejahar. She was produced before the Medical Officer and Judicial Magistrate. Her statement was recorded by Judicial Magistrate where she put her thumb impression. In cross examination she has deposed that the I.O. recorded her statement. At the time of incident, she was watching mobile handset. Police did not seize the mobile handset. The house of child-in-conflict with law is near to her house. The houses of accused Eyajul and Rashid Sk are situated at about one furlong away from her house. She received injuries on her body. Her wearing clothes were soaked with blood and stain of mud. The accused persons took her away up to half kilometer distance. She was lying in the field unconscious. As child-in-conflict with law refused to marry her; so, her father lodged the ejahar. On the next day of the incident, in the village bichar, the family members of child-in-conflict with law gave consent to solemnize her marriage with him. But, accused Eyajul and Rashid Sk raised objection. As the accused Eyajul and Rashid Sk raised objection; so, her marriage was not solemnized with him. She was present in the village bichar. Accused persons were involved with exchange of hot words with her uncle P. W. 8 in the village bichar. On the day of filing the ejahar she came to Dhubri with her father and told the incident to the ejahar writer. The child-in-conflict with law called her in her mobile phone and after receiving the phone call she went to the house of Arman Ali. The house of Arman Ali is near to her house. While she was taken by child-in-conflict with law then two persons were with him. On the day of bichar those two persons were present and on that day she came to know that those two persons were Rashid Sheikh and Eyajul Ali. As Rashid Sheikh and Eyajul Ali raised objection in her



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marriage with child-in-conflict with law; so, she told that they were present with child-in-conflict with law on the day of the incident.

- 13.3 PW-3 Abdul Mozid Sk who is an independent witness has deposed that about four months back, the complainant visited his house and told him that accused Eyajul established illicit relation with his daughter. His daughter was found in a paddy field in unconscious condition and she was recovered at about 3:00 a.m. After the incident, a meeting was held in the house of one Amu Sk. In that meeting, the guardian of Eyajul refused to solemnize marriage of Eyajul and the daughter of the complainant as Eyajul was a minor. He advised him to take the help of law.
- 13.4 PW-4 Abdul Rahim Talukdar has deposed that about one year back, there held a meeting near a school at village Ujanpetla. At the end of the meeting, he participated in the meeting and heard that child-in-conflict with law confessed that he committed rape on the victim. Thereafter, he left the meeting. In cross examination, PW-4 deposed that he heard that child-in-conflict with law had taken away the victim girl at night from her house.
- 13.5 PW-5 Dr. (Mrs) Rinku Ahmed is the Medical Officer. She has deposed that on 25-09-2017 she examined the victim, aged about 13 years in connection with Tamarhat PS case no. 215/2017. On being asked, victim told her that on the day of occurrence while she was alone in her verandah, three boys namely Eyajul Sk, Rashid and child-in-conflict with law closed her mouth and took her to her back side of her house and child-in-conflict with law sexually assaulted her. On examination, she found the patient was normal. She did not find any mark of injury on her body. She also did not find spermatozoa in the vaginal smear. She did not find any evidence of recent sexual intercourse on the victim at the time of examination. PW-5 exhibited her report as Ext-2 and Ext-2(1) is her signature. In cross examination, she deposed that the history depicted in column no. 9 of Ext-2 is as per version of the patient.
- 13.6 PW-6 Nurul Islam Sheikh has deposed that about six months back, at village- Ujanpetla near 189 No. Upgrade L.P. School there held a meeting and in that meeting accused persons were present. The victim was also



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present. He heard her statement given in the meeting. As per her statement on previous night while she was watching mobile phone in the house of Arman Ali and then accused Eyajul and Rashid came to the house of Arman Ali, lifted her from the house of Arman Ali to a jute filed. The accused persons kept her in the jute filed and called child-in-conflict with law over mobile phone. After arrival of child-in-conflict with law accused Rashid Ali and Eyajul Ali handed her to him and left the place. Thereafter, child-in-conflict with law committed rape on her. In the meeting the accused persons denied the statement of the victim. In cross examination, PW-6 has deposed that the house of complainant is situated just 50 yards away from the house of Arman Ali. Arman has his mother, wife and son. The five brothers of Arman are also resided in the same compound with Arman Ali. He knows the victim was taken to the jute filed which is just behind the house of Arman Ali. He has no personal knowledge about the incident. Next day of the incident police recorded his statement. In the meeting child-in-conflict with law intended to marry the victim and father of victim was also ready to solemnize the marriage between child-in-conflict with law and his daughter. The child-in-conflict with law disclosed in the meeting that he had affairs with the victim. He does not know whether the statement of the victim was correct or false.

- 13.7 PW-7 Shonaullah Mondal has deposed that about six months back, at village- Ujanpetla near 189 No. Upgrade L.P. School there held a meeting and in that meeting accused persons were present. The victim was also present. He heard her statement given in the meeting. As per her statement on previous night she was watching mobile phone in her house and then accused Eyajul and Rashid came to her house, lifted her from her house to a jute filed. The accused persons kept her in the jute filed and called child-in-conflict with law over mobile phone. After arrival of the child-in-conflict with law accused Rashid Ali and Eyajul Ali handed her over to the child-in-conflict with law and left the place. Thereafter, the child-in-conflict with law committed rape on her. In that meeting, the accused persons denied the statement of the victim. In his cross examination, PW-7 has deposed that after his arrival in the meeting accused persons were called to the meeting. His house is situated about 1

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k.m. away from the house of complainant. He does not know whether the statement of the victim was correct or not. He did not ask about the incident to the victim and her father. In the meeting there discussed about solemnization of marriage between the child-in-conflict with law and the victim. He had not seen the place of occurrence.

- 13.8 PW-8 is the brother in law of the complainant. He has deposed that about six months back, one night about 11:00 P.M. complainant called him to his house and told him about missing of his daughter. They searched the victim but could not find out her. Next day morning complainant informed him that his daughter was recovered from jute filed. He visited the house of the complainant and asked the victim what had happened. Then, the victim told him that Eyajul and Rashid lifted her by covering her mouth from her house to jute filed where the child-in-conflict with law committed rape on her. Thereafter, a bichar was held in the village. Accused Rashid and Eyajul denied the allegation that they lifted the victim from her house. In cross examination, PW-8 has deposed that on the day of incident two daughters of the complainant and one son-in-law of the complainant were present in the house of the complainant. At about 11:00 P.M. while he visited the house of the complainant he found the family members of the complainant and the grandmother of the victim girl in the house. While he met the victim, she was found in good health. In presence of him the complainant and his family members did not ask anything to the victim. He had not seen the place from where the victim was recovered. He does not know whether the victim told him the truth or not.
- 13.9 PW-9 is the Investigating Officer. He has deposed that on 23-09-2017, he was working at Tamarhat P.S. On that day, the complainant lodged a written ejahar before the S.P. Dhubri. After receiving the ejahar, S.P. Dhubri forwarded the ejahar to Tamarhat Police Station asking to conduct an enquiry into the matter. After receiving the ejahar, O/C, Tamarhat P.S. registered the case as Tamarhat P.S. case no. 215/17 u/s 366(A)/376 (a)/120(B)/201/506 IPC, r/w section 4 of POCSO Act. O/C, Tamarhat PS entrusted him to investigate the case. On that day, at about 3:40 PM he visited place of occurrence which is 3 kms away from the police station.

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He examined the complainant in his residence. The complainant told him that the victim was dragged from the verandah of his house to nearby jute field. He prepared two sketch maps of place of occurrence. One is the verandah of the complainant and another is the jute field. The statement of victim was recorded in her house. The victim was medically examined at Dhubri Civil Hospital and also sent her to the court for recording her statement u/s 164 Cr.P.C. On 27-09-2017, he visited again the house of the complainant and examined other witnesses. He arrested the accused Ejajul Ali on 13-10-2017 and accused Rashid Sk on 27-12-2017 and produced them in the court. During investigation, birth certificate of the victim girl was seized and given jimmah to the complainant. After collecting the medical report of the victim, he has completed investigation and submitted charge sheet against accused persons and the child-in-conflict with law u/s 366/376(D) IPC, r/w section 6 of POCSO Act. He exhibited the sketch maps as Ext-3 and Ext-4, seizure list as Ext-5, Charge sheet as Ext-6. He also exhibited his signatures which are marked as Ext-3(1), 4(1), 5(1) and 6(1). He has also exhibited the seized birth certificate of the alleged victim which the prosecution has exhibited and marked as M. Ext. 1. In cross examination, PW-9 has deposed that the place of occurrence is situated 3 kms East from the police station. O/C, Tamarhat P.S. received the ejahar from the Office of S.P. Dhubri through official Dak. The name of the person who brought the ejahar has not written in the case diary. Seal of S.P. office has not contained in the ejahar. In the ejahar, Crime Branch of SP Office, Dhubri requested O/C, Tamarhat P.S. to conduct an enquiry, but he could not recognize the signature appears in the ejahar. The incident took place on 13-09-2017, the case was registered on 23-09-2017 and the victim was examined at Dhubri Civil Hospital on 25-09-2017. There is no report that family members of the victim produced her before any Medical Officer for her treatment after the incident. Tamarhat PHC is situated just 3 and 1/2 kms away from the place of occurrence. During investigation, he found no evidence of threatening to the complainant in case of filing case at police station. He seized no mobile handset during investigation. As shown to him the place of occurrence is a jute field which is situated 1 and 1/2



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furlong away from the house of the complainant. The adjacent jute field to the house of complainant was not shown to him as place of occurrence. As he inspected the place of occurrence after several days of the incident, so he found no mark of happening of incident in the jute field. The owner of the jute field was not examined by him. He seized no cloths of the victim. The victim told him that the accused persons compelled her to drink liquid substance. The victim told him that accused Eyajul and Rashid came to her house and taken her away, but she has not disclosed the name of the child-in-conflict with law. P. W. 8 told him that he heard about the incident from the complainant. He did not disclose that he heard the incident from the victim.

- 13.10 Debabrata Kalita, Judicial Magistrate 1st Class recorded the statement of the alleged victim under section 164 Cr. P. C. As he has not cited as witness; so he has been examined as CW-1. He has deposed that one 25-09-2017 while he was working as Judicial Magistrate First Class at Dhubri, Special Judge, Dhubri directed him to record the statement of the victim u/s 164 Cr.P.C. in connection with Tamarhat PS case no. 215/17. Accordingly, he recorded the statement of the alleged victim u/s 164 Cr.P.C. After recording the statement, the same was read over and explained to her. The victim put her thumb impression in the statement. The thumb impression was obtained by the Bench Assistant in his presence. CW-1 exhibited the same as Ext-7 and Ext-7(1) is his signature. In cross examination, he has deposed that the victim girl disclosed before him that the child-in-conflict with law, Rosid Sk and Eyajul Ali took her to the nearby field behind her house and they committed rape on her. The victim girl did not disclose before him that while the child-in-conflict with law was committing rape on her, then Rosid and Eyajul were standing on road.

14. Learned Special Public Prosecutor during argument has submitted that the case is serious in nature. In the case in hand the prosecution examined all the material witnesses. The victim girl who is the principal witness for the prosecution has depicted how she was kidnapped by the accused persons and committed rape on her by one of the associates of the accused persons. The



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accused persons were the associates of the main accused whom the Court subsequently found child-in-conflict with law. Her deposition is fully corroborated by the complainant who is her father. The prosecution is able to establish the charge framed against the accused persons beyond all reasonable doubt. So, has prayed to hold the accused persons guilty under framed charges and impose adequate punishment to them.

15. On the other hand learned defence counsel has submitted that the allegations against the accused persons are serious in nature and it is the duty of the prosecution to establish the charge framed against the accused persons beyond all reasonable doubt. The prosecution examined altogether nine witnesses; but none of them corroborated each other. The ejahar was lodged lately without showing any sufficient grounds. The prosecution has failed to locate the actual place of occurrence. From the evidence of the prosecution witnesses it appears that the complainant attempted to solemnize the marriage of his daughter, the alleged victim, with the child-in-conflict with law. But the accused persons protested as it was illegal as per law as at the relevant time the alleged victim was a minor girl. For the objection of the accused persons the marriage of the minor daughter of the complainant was not solemnized; so, the complainant just to take revenge filed the false case against the accused persons. Learned defence counsel has prayed to hold the accused persons as honest and acquit them.

16. From the case record it appears that the complainant on 18-09-2017 lodged a written ejahar against seven persons including the accused persons and the child-in-conflict with law before the Superintendent of Police Dhubri. The prosecution exhibited the ejahar and marked the same as Ext. 1 and the author authenticated his signature in the ejahar which has been marked as Ext. 1 (1). From the contents of the ejahar it appears that the alleged incident took place on 13-09-2017 at about 7/7.30 p.m. The allegations against the ejahar named accused persons are that on the day of the incident i.e. 13-09-2017 at about 7/7.30 p.m. while the complainant was not at his residence then the accused persons lifted his 13 year old daughter to a jute field and committed rape on her repeatedly. On that night at about 2/2.30 a.m. while he came out from his house



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to respond nature's call, he heard sound and found his daughter and found her in unconscious condition. He brought her to his house. After gaining the sense she told entire facts to him. The complainant while deposed in the Court has corroborated the contents of the ejahar except that his daughter after gaining the sense told him about the incident. He (P. W.1) has deposed that he called his brother who asked his daughter what had happened and his brother told him that while his daughter was sitting in veranda and watching mobile phone then the accused persons came to his house and had taken her away. From oral testimony of the complainant it appears that at the time of the alleged incident his daughter was sitting in the veranda of his house and he found his daughter in senseless condition at nearby paddy field. The alleged victim (P. W. 2) has deposed that on the day of the incident she was alone in her house. Around 7/8 p.m. accused persons and child-in-conflict with law came to her house, gagged her mouth and had taken her away to the nearby jute field where the child-in-conflict with law committed rape on her and the accused persons were standing on the road. After commission of rape all the accused persons compelled to take her a tablet and she lost her sense. P. W. 2 being the alleged victim is the star witness for the prosecution. She, in clear terms has stated that the child-in-conflict with law committed rape on her and the accused persons were standing on the road. After filing the ejahar the statement of the alleged victim was recorded by Judicial Magistrate under section 164 Cr. P. C. The alleged victim put her thumb impression in her statement. So, the Judicial Magistrate Debabrata Kalita who recorded her statement was examined as Court witness who exhibited the statement of the victim girl as Ext. 7 and authenticated his signature thereon and marked as Ext. 7 (1). The statement of the victim girl was recorded on 25-09-2017 though the alleged incident was reported to police on 18-09-2017. In the statement recorded under section 164 Cr. P. C. the alleged victim stated that the accused persons and the child-in-conflict with law lifted her to the field which is just behind their house and committed rape on her. But while she deposed in the Court during trial she has deposed that only the child-in-conflict with law committed rape on her. P. W. 5, the medical officer examined the alleged victim on 25-09-2017; but she did not find any mark of injury on the person of the alleged victim and also not find any evidence or recent sexual intercourse on the alleged victim at the time of examination.



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17. Charges under section 376 D IPC and section 6 of POCSO Act are very serious in nature. The alleged victim while given her statement to Judicial Magistrate under section 164 Cr. P. C. implicated all the accused persons including the child-in-conflict with law. But while she deposed in the Court during trial she only implicated the child-in-conflict with law. According to her while the child-in-conflict with law was committing rape on her the accused persons were standing on the road. Learned defence counsel by relying a decision of the Hon'ble Gauhati High Court passed in **Abdul Hussain Laskar vs. State of Assam & Another 2017 (4) GLT 97** has submitted that the testimony of the alleged victim is not at all reliable as she stated two different story. The Hon'ble Gauhati High Court in Abdul Hussain Laskar's decision has opined that statement of prosecutrix during the trial found inconsistent with her statement recorded under section 164 Cr. P. C. raising doubt about authenticity of the allegation. In the case in hand also the alleged victim stated two stories. In her statement while recorded under section 164 Cr. P. C. implicated the accused persons so far commission of rape is concerned; but while deposed in the Court simply implicated only the child-in-conflict with law.

18. In the case in hand except the alleged victim there was no eye witness of the incident. As per the complainant and the alleged victim at the time of the incident the alleged victim was alone in her house. From the evidence it transpires that the houses of the accused persons are situated about one furlong away from the house of the complainant and the house of the child-in-conflict with law is near to her house. As per the complainant and the alleged victim the alleged victim was lifted from the house of her veranda while she was watching mobile phone and she was dragged to nearby field and committed rape on her by the child-in-conflict with law. So, there are two places of incident. The investigating officer drew two sketch maps [Ext 3 and Ext. 4] where he shows the house of the complainant and jute field of the place of occurrence. From the evidence of the complainant it appears that on the night of the incident he searched his daughter; but could not trace her out. At about 3 a.m. while he was coming out to response nature's call he found his daughter in his field which is just back side of his residence in unconscious condition. The alleged victim in her



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cross-examination has deposed that the accused persons had taken her away up to half kilometer distance.

19. From the evidence on record it appears that on the next day of the alleged incident there conveyed a bichar and in that bichar the complainant, the alleged victim, the independent witnesses, accused persons and the child-in-conflict with law were present. The alleged victim has deposed that the child-in-conflict with law demanded Rs. 30,000/ and ornaments from her father and after getting money and ornament he would marry her. In cross-examination the alleged victim has deposed that the family members of the child-in-conflict with law gave consent to solemnize her marriage with the child-in-conflict with law; but the accused persons raised objection; so, her marriage was not solemnized with the child-in-conflict with law. The independent witnesses have deposed that they were present in the village bichar where the alleged victim gave her statement and according to her the accused persons lifted her to the jute field and handed over the child-in-conflict with law who committed rape on her. But P. W. 6 Nurul Islam Sheikh has deposed that the accused persons lifted the victim from the house of one Arman Ali. The independent witnesses in their cross-examination have deposed that they do not know whether the statement of the alleged victim was true or false. From the oral testimonies of the independent witnesses it appears that the accused persons denied the statement of the alleged victim.

20. From the oral testimonies of the alleged victim given by her in the Court during trial it transpires that the accused persons committed no rape on her on the night of the alleged incident. So, the charge framed against the accused persons under section 376 D IPC and 6 of POCSO Act have not established against the accused persons.

21. Now let us scrutinize whether the accused persons kidnapped the alleged victim and handed over her to the child-in-conflict with law for illicit intercourse or not.

22. From the oral testimonies of the independent witnesses it appears that in the village bichar held on the next day of the alleged incident the alleged victim gave a statement where she stated that the accused persons lifted her to the jute field



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and handed her over to the child-in-conflict with law who committed rape on her. But the independent witnesses could not say whether the statement of the alleged victim was true or not.

23. The birth certificate of the alleged victim (M. Ext. 1) shows that on the day of the alleged incident the alleged victim was 13 year 1 month 14 days old. From the evidence on record it transpires that the father of the alleged victim intended to solemnize her marriage with the child-in-conflict with law. As the alleged victim was a minor; so, such type of attempt was illegal. Though the alleged victim in her cross-examination has deposed that the accused persons raised objection while the child-in-conflict with law agreed to marry her. But it is not clear as to why the accused persons raised objection. Learned defence counsel during his argument has submitted that as the alleged victim was a minor girl; so, the accused persons were against her marriage.

24. To arrive at just decision of the case charge under section 366-A IPC was added and the defence re-crossed P. W. 1, the complainant and P. W. 2, the victim. On perusal the re-cross-examination of the complainant and the victim it appears that on the day of the alleged incident the victim received a phone call from the child-in-conflict with law and then she went to the house of Arman Ali which is near to her house. The child-in-conflict with law arrived at the house of Arman Ali and lifted the victim from his house. The victim (P. W. 2) has deposed that two persons were with the child-in-conflict with law; but she could not recognize them. On the day of bichar those two persons were present and then she could recognize that those two persons were none but other than the accused Rashid and Eyajul. She has further deposed that as accused Rashid and Eyajul raised objection in her marriage with the child-in-conflict with law in the village bichar; so, she told that they were present with the child-in-conflict with law at the time of incident.

25. From the examination-in-chief of the victim girl it appears that she knows that accused persons and on the day of the incident while she was alone in her house the accused persons with child-in-conflict with law came to her house and had



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taken her to nearby jute field. But in cross-examination she has depicted a different story. As per her cross-examination, at the time of the incident she was not at her residence; but was in the house of Arman Ali. She came to the house of Arman Ali as the child-in-conflict with law by calling her in her mobile phone asked to do so. From the house of Arman Ali she was lifted by the child-in-conflict with law and two persons whom she could not recognize at the time of incident. The victim and the accused persons are the resident of same village. As per the victim the houses of the accused persons are just one furlong away from her house. So, question of not recognizing the accused persons on the day of incident does not arise as she has stated nothing that the accused persons covered their faces. But the victim could not recognize them. There might be some other persons with the child-in-conflict with law whom the victim could not recognize. The most important revelation from the victim is that on the day of the village bichar the accused persons were present and they raised objection against the propose marriage of the victim with the child-in-conflict with law; so, she implicated the accused persons that they were present with the child-in-conflict with law at the time of the incident.



- 26.** The general presumption in a criminal case is that the accused is innocent unless the contrary is proved and, in general, the more serious the crime the more clearly must it be proved. But there is another presumption that every man is to be presumed to have intended the natural and probable consequences of his acts. In all criminal trials, where the accused pleads "not guilty" the general rule is that the prosecution must prove the guilt of the accused beyond all reasonable doubt. In the case in hand after meticulous perusal the evidence on record it appears that the evidence of the victim creates doubt regarding presence of the accused persons at the time of the incident with the child-in-conflict with law. From her evidence it transpires that she has admitted the version of the defence that the accused persons raised objection in the village bichar when the marriage of her with the child-in-conflict with law was discussed. She clearly stated that as the accused persons raised objection in her marriage; so, she told the name of the accused persons that they were present with the child-in-conflict with law.

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27. Hence, coming to the decision on the points of determination, to sum up, in view of foregoing discussions and finding, I am of the considered opinion that the prosecution could not establish and prove the charge under sections 376-D/366-A IPC read with section 6 of POCSO Act against the accused persons beyond all reasonable doubts. The accused persons, therefore, acquitted of the charge on benefit of doubts and they are set at liberty.

28. Return the seized article to the person from whom it was seized after expiry of the appeal period.

29. The accused persons are in judicial custody. So, they are allowed to go bail of Rs. 10,000/ each with a surety of like amount in default they will remain in jail for next six months as per provision of section 437-A Cr. P. C.

30. Given under my hand and seal of this Court today the 10th day of October 2018.



Dipankar Thakuria
10/10/18

(D. Thakuria)
Special Judge,
Dhubri.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 03/2018

**UNDER SECTIONS: 366-A/376-D IPC READ WITH SECTION 6 OF
THE POCSO ACT.**

**STATE OF ASSAM
VS.
EYAJUL ALI & ANOTHER**

APPENDIX

A. Prosecution exhibits:

- | | | |
|------------|---|-------------------------------------|
| Ext. 1 | : | Ejahar. |
| Ext. 2 | : | Medical report. |
| Ext. 3 & 4 | : | Sketch maps of place of occurrence. |
| Ext. 5 | : | Seizure list. |
| Ext. 6 | : | Charge sheet. |
| M. Ext. 1 | : | Birth Certificate of the victim. |

B. Defence Exhibits : Nil.

C. Court Exhibits :
Ext. 7 : Statement of the victim.

D. Prosecution Witnesses:

P. W. 1: Complainant.

P. W. 2: Victim.

P. W. 3: Abdul Mazid Sheikh.

P. W. 4: Abdul Rahim Talukdar.

17/9/18
Special Judge
Dhupri