## Special (P) Case No. 40/18

04/09/19

Accused Lohit Kalita is present. On perusal of case record it is seen that my learned predecessor framed charge u/s- 376(2)(i) IPC and u/s- 6 of the POCSO Act against the accused. Date of incident is in the month of September, 2018. Vide The Criminal Law (Amendment) Act 2018 No. 22 of 2018, which come in to force from 21<sup>st</sup> April, 2018, amended the Indian Penal Code, Evidence Act 1872, Criminal Procedure Code and POCSO Act 2012 and as per amendment clause (i) of subsection (2) of section 376 IPC is omitted and after subsection (2) of section 376 IPC, subsection (3) is inserted under section 376 IPC which read as bellow:

"(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim."

The above Criminal Law (Amendment) Act, 2018 clearly pointed that clause (i) of subsection (2) of section 376 IPC is omitted and it is replaced by subsection (3) of section 376 IPC which came into force from 21st April, 2018.

In view of the above, the charge framed by my learned predecessor against the accused dated 11/03/19 is need to be modified as the ingredient of clause (i) of subsection (2) of section 376 IPC is same with subsection (3) of 376 IPC. Accordingly, after hearing both sides, charge framed against accused Lohit Kalita u/s- 376(2)(i) IPC is replaced with section 376(3) IPC and written in the formal charge head form along with the charge u/s- 4 of the POCSO Act and read over and explained to the accused to which he pleaded not

guilty and claimed to be tried.

Three PWs present. All the Pws are examined and after cross examination discharged. Learned Special PP submitted that as the prosecutrix and other witnesses do not support the prosecution case, examination of I/O and other witnesses will not improve the prosecution case and he prays for closing the evidence. Learned defence counsel submitted that he has no objection, if evidence is closed. After perusal of evidence on record prayer of learned Special PP is allowed. Accordingly, PW closed. Fixed 23/09/19 for SD.

Special Judge Nalbari