

**IN THE COURT OF THE SPECIAL JUDGE, NAGAON.****SPECIAL CASE NO. 48(N) OF 2016**

PRESENT : Smti. Rita Kar,
Special Judge,
Nagaon

State of Assam **Complainant**

-Versus -

Ramdhan Namusudra **Accused Person**
@ Monoranjan

ADVOCATES WHO APPEARED IN THIS CASE

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For the Complainant : Smti. B.Phukan,
Public Prosecutor &
Sri. M.Neog, Special P.P., POCSO.

For the accused : Sri S.N.Talukdar,
Sri P.Bordoloi,
Advocates.

Date of evidence : **29-11-2016, 20-01-2017, 16-03-2017,
07-04-2017, 05-05-2017, 23-06-2017,
21-07-2017, 18-08-2017, 01-09-2017,
15-09-2017, 26-09-2016.**

Date of final Argument : **22-03-2018,**

Date of Judgment : 24-04-2018.



JUDGMENT

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- 1.** The prosecution case as unfolded from the FIR is that on 27-12-2015, informant Nitai Namasudra, resident of 2 No. Sariahbari, lodged an FIR before the Samaguri Police Station alleging that on 27-12-2015, at 5.30 p.m. accused Ramdhan Namasudra offered Rs.10/- to his sister namely 'X' for purchasing chocolates and took her enticingly from her house and later on as she did not return for a long time, her mother searched for her daughter and found her in naked dead condition in a abandoned latrine of Hemendra Biswas which is located in the backyard. It is as such suspected that accused Ramdhan Namasudra after committing rape had killed her and thrown in the latrine. Hence, the F.I.R.
 - 2.** On basis of the said FIR, the Officer-in-Charge of Samaguri P.S. registered a case vide Samaguri P.S. Case No.472/15 U/S 302 IPC R/W Sec.4 of the Protection of Children from Sexual Offence Act 2012 against the accused and police started usual investigation thereon. Upon completion of the investigation police laid charge sheet in the case U/S 302 IPC R/W Section 4 of POCSO Act against accused Ramdhan Nomosudra @ Monuranjan. Thereafter, the case was received in this court for trial.
 - 3.** The accused person was furnished with all the necessary copies as required U/S 207 of Cr.P.C by the court. The case being exclusively triable by the Court of Special Judge,, the learned Judicial Magistrate, 1st Class, Nagaon committed the case for trial to the Court of Special Judge.
 - 4.** After receiving the case the accused person was furnished with all the necessary copies as required U/S 207 of Cr.P.C by the court. Formal charge U/S 302/376(2)(i) of Indian Panel Code Read with Section 4 of the POCSO Act against accused Ramdhan



Namasudra was framed by my learned predecessor after perusal of police papers U/S. 173 of Cr.P.C. and also after hearing the learned counsels for both sides. The charge was also read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

5. During trial of the case the prosecution side examined altogether 15 P.Ws. The accused person was examined u/s 313 Cr.P.C. Defense plea is total denial of the prosecution case. Accused has adduced evidence of two Dws including himself.

6. After hearing arguments for both sides, I hereby proceed to deliver my judgment in the case.

7. Points for decision :-

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i) Whether on 27-12-2015 at about 5.30 p.m. at 2 No. Sarioh-bari under Samaguri P.S. accused person committed murder by causing the death of victim, namely, 'X' and thereby committed an offence punishable u/s 302 I.P.C ?

ii) Whether on or about the same day, time and place the accused person committed rape on 'X' a minor girl of 7 years and thereby committed an offence u/s 376(2)(i) IPC ?

iii) Whether on or about the same day, time and place the accused person did the act with sexual intent which involves penetrative sexual assault upon a minor girl of 7 years namely, 'X' and thereby committed an offence u/s 4 of the POCSO Act.

8. Discussion, decision and reasons thereof :-

Before entering into the discussion, the gist of the prosecution evidence is laid down below.



PW 1 Kartik Namadas has deposed that the age of the deceased at the time of her death was 6/7 years and was reading in school. PW 1 further deposed that incident took place a little less than one year from his deposition. PW 1 further deposed that incident took place in the evening at about 5/6 p.m. PW 1 further deposed that at the time of incident he was sleeping at his home then his wife told him that in the deserted latrine of Hemendra, deceased 'X' was found. PW 1 further deposed that on hearing hue and cry he went to the house of his uncle (father of deceased) and found the dead body of deceased 'X' covered with a white cloth. PW 1 further deposed that he came to know that in the evening 'X' was taken by accused Ramdhan by offering Rs.10/- for taking chocolate and thereafter 'X' was untraceable. PW 1 further deposed that thereafter people called Gaonburah, Barnabas Orang and then Gaonburah informed the police. PW 1 further deposed that police came there and recorded the statement of witnesses. PW 1 further deposed that on the next day, police came and seized school skirt, some article used in hair, sleeper (Sandal) and panty of 'X'. PW 1 further deposed that school skirt was stained with blood and soil. PW 1 further deposed that he put his signature in the seizure list in Ext.1 wherein Ext.1(1) is his signature. PW 1 further deposed that Ext.2 is another seizure list and Ext.2(1) is his signature. PW 1 further deposed that Mat. Ext.1 is a blue colour skirt, panty and a pair of sleeper(Hawai Sandal). PW 1 further deposed that Mat. Ext.2 is a man long pant and jungia.

PW 2, mother of deceased has deposed that informant Netai Namasudra is her nephew and deceased 'X' was her daughter. PW 2 further deposed that incident took place in the month of December. PW 2 further deposed that on the day of incident, in the evening at about 4 p.m. while she was boozing her house, then accused Ramdhan came to their house and enquired for her husband. PW 2 further deposed that at that time her 7 years daughter was warming herself by sitting around fire in their

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verandah. PW 2 further deposed that at that time accused Ramdhan sat beside her daughter and puffed a biri(smoke) and engaged himself in some chit-chat talk with her daughter. PW 2 further deposed that thereafter accused Ramdhan departed from there. PW 2 further deposed that after a while her daughter told her(PW 2) that accused Ramdhan would offer chocolates, as such she wants to go to the house of Ramdhan but she resisted her to go there. PW 2 further deposed that then the deceased told that she would go to the house of Niranjan for warming herself around fire and as such she went there. PW 2 further deposed that when her daughter did not return in half-an-hour, then she went to the house of Niranjan and asked, if deceased came to their house but they replied that deceased had not come there. PW 2 further deposed that she went to the house of accused Ramdhan and enquired about Ramdhan, then the sister of the accused told that the accused after keeping his bicycle in the house went out somewhere but they do not know where he has gone. PW 2 further deposed that while they were searching the deceased, then the wife of Hemendra Namasudra, namely, Niyati Namusudra told that they heard crying of a child behind their house near the latrine but as it is a cremated place they have not come out. PW 2 further deposed that thereafter she called the villagers and went in the garden near the latrine and found that her daughter was inside the latrine in kneel down position while backside of her body was without clothes. PW 2 further deposed that she also noticed bleeding from her urinal organ. PW 2 further deposed that then she picked up the deceased in her lap and from her, deceased was taken by Kanu. PW 2 further deposed that thereafter they brought her daughter in their veranda and she wanted to shift it to hospital but the people told her that she was already dead. PW 2 further deposed that then they covered her daughter with a cloth. PW 2 further deposed that when gaonburah and police were intimated they came there and took them to the place of occurrence. PW 2 further deposed that near the latrine they found blue colour school skirt stained with blood and mud, hair clip, sleeper with red

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ribbon (scandal), yellow colour jangia of her daughter were lying there and police seized those things. PW 2 further deposed that she put her thumb impression on the seizure list. PW 2 further deposed that Mat. Ext.1 is the said seized articles and police recorded her statement. PW 2 further deposed that police took the dead body of her daughter and later on police caused recorded her statement in the Court of Kaliabor.

PW 3, Nitai Namasudra has deposed that incident took place one year ago and on the day of incident he was in his house. PW 3 further deposed that then someone told his mother that deceased 'X' was killed by somebody. PW 3 further deposed that getting the news he came to the house of deceased and found that the dead body of deceased was lying in the verandah and it was covered with a dhoti. PW 3 further deposed that dhoti was stained with blood and there was bleeding from the female organ of the deceased. PW 3 further deposed that many persons thronged at that place. PW 3 further deposed that while he asked her uncle (mama), he told him that accused Ramdhan called the deceased enticing her to offer chocolates and thereafter the deceased was untraceable. PW 3 further deposed that though her aunt went to the house of accused Ramdhan in search of her daughter but she was not found in the house of Ramdhan. PW 3 further deposed that later on the dead body of the deceased was found behind the house of Hemendra near an old latrine. PW 3 further deposed that when Gaonburah intimated the police about the incident police came there. PW 3 further deposed that police seized the clothes and took the dead body. PW 3 further deposed that on the day of incident at night he lodged the ejahar. PW 3 further deposed that Ext.3 is the ejahar, Ext.3(1) is his signature and during investigation police recorded his statement.

PW 4, father of the deceased has deposed that incident took place on 27-12-2015 and at the time of occurrence her



deceased daughter was 7 years old. PW 4 further deposed that at the time of incident he was in the market and at that time his elder sister's brother-in-law informed him over phone that his daughter was not in home. PW 4 further deposed that while he was returning home, on the path he got the news that his daughter was killed by Ramdhan. PW 4 further deposed that when he reached home he found the dead-body of his daughter lying in the verandah and he became unconscious. PW 4 further deposed that on the next day, at 9 p.m. inquest on the dead body of his daughter was conducted at Samaguri Police Station. PW 4 further deposed that he put his signature in the inquest report vide Ext.4.

PW 5, Barnabas Orang deposed that incident took place 1 year ago at about 4/5 p.m. of the evening. PW 5 further deposed that at the time of incident he was in his house along with one Hemendra Biswas. PW 5 further deposed that then he heard hue and cry from the side of Sariahbari as such they proceeded forward and found gathering of people in the house of father of the deceased. PW 5 further deposed that at the house of father of the deceased he found 'X' lying in the verandah covered with a white cloth. PW 5 further deposed that when he uncovered the cloth, he found blood on the female organ of the deceased 'X'. PW 5 further deposed that then he rang over to police station and after sometime police came there. PW 5 further deposed that when he asked to the mother of deceased 'X', she told him that accused took the deceased by enticing her that he would offer money for chocolates to the deceased and later on deceased dead body was found behind the house of Hemendra Biswas in an left out latrine from where the dead body was recovered. PW 5 further deposed that police apprehended the accused Ramdhan and took him to police station. PW 5 further deposed that police recovered the dead body when it was covered with blood stained white cloth. PW 5 further deposed that he put his signature in the seizure list vide Ext.3 and Ext.3(1) is his signature. PW 5 further deposed that he also went to the police station and

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police seized the wearing long pant and jungia of accused person. PW 5 further deposed that Ext.2 is the said seizure list and Ext.2(2) is his signature. PW 5 further deposed that police again visited the place of occurrence and he also visited with them. PW 5 further deposed that behind the house of Hemendra Biswas near the latrine police seized a hair rubber, clip, a pair of sandal(Hawai), one jangia and blue colour skirt where he put his signature vide Ext.1(2) in Ext.1 seizure list. PW 5 further deposed that Mat. Ext.3 is the seized white colour cloth, Mat.Ext.1 is the blue colour skirt, clip, sandal, jangia and Mat. Ext.2 is longpant and jangia.

PW 6, Sri Hiralal Sarkar has deposed that the incident occurred a years ago. PW 6 further deposed that in the evening at about 5.30 p.m. while he was at his shop, then the deceased alone had come to his shop and purchased a packet of biscuit, chocolates and Ladu of total cost Rs.10/. PW 6 further deposed that after about half-an-hour or 25 minutes, the mother of deceased came to his shop enquiring about the deceased and then he told about the visit of the deceased to his shop. PW 6 further deposed that later on the dead body of deceased was found behind the house of his uncle Hemendra Namasudra lying near a latrine in the western side. PW 6 further deposed that the dead body was brought to the house. PW 6 further deposed that he noticed blood oozing out from the urinal organ of the deceased. PW 6 further deposed that police recorded his statement.

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PW 7, Kanu Namasudra has deposed that incident took place more than a year ago from his deposition. PW 7 further deposed that the incident took place in the evening at about 5.30 p.m. PW 7 further deposed that on the day of incident from 4.30 p.m. he was warming himself by sitting around fire along with Niranjan and Niranjan's wife. PW 7 further deposed that at that time accused Ramdhan came to them and talked for some time and thereafter taking a glass of water from the wife of Niranjan, he left



towards the house of daughter of the deceased. PW 7 further deposed that after about 1 hour, Rani Namasudra came to him in search of her deceased daughter and also enquired about accused Ramdhan and then they told that they have not seen them. PW 7 further deposed that thereafter few of them have started to search the deceased. PW 7 further deposed that they also went to the house of accused Ramdhan but the deceased was not found there. PW 7 further deposed that Rani also narrated to them that Ramdhan had told the deceased that he would give Rs.10/- and chocolates to her. PW 7 further deposed that while they were searching for the deceased then wife of Hemendra told them that a little earlier she had heard screaming of a girl in their garden. PW 7 further deposed that thereafter they went towards the garden in search of the girl. PW 7 further deposed that thereafter on the flash of the torch light they noticed a head of girl inside the abandon latrine and backside of the girl was in expose condition. PW 7 further deposed that there were no clothes in the body of the girl and blood was oozing out from the urinal organ. PW 7 further deposed that when the mother of the girl embraced her child asking what was she doing there, then the girl lean down and then he lifted the girl and brought to the house of daughter of the victim. PW 7 further deposed that by that time the deceased was dead and knowing it they covered with a white cloth. PW 7 further deposed that at that time many people gathered there and the Gaonburah Barana Orang intimated to police over phone. PW 7 further deposed that after a while police arrived there and investigated about the matter. PW 7 further deposed that then the villagers caught brought Ramdhan there and then the police took the dead body and accused Ramdhan to the police station. PW 7 further deposed that he also went to the Police Station and police seized the dhoti from the house of father of deceased. PW 7 further deposed that police also seized the wearing long pant and jangia of the accused person and 9 p.m. of the night they came back to their house. PW 7 further deposed that again at 10 p.m. of the night police came to the house of father of deceased and recorded their

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statement and took them to the place of occurrence. PW 7 further deposed that from the place of occurrence police seized wearing skirt, panty, sandal, clip of the deceased girl. PW 7 further deposed that Ext.1, Ext.2 and Ext.3 are the seizure lists and Ext.1(3), 2(3) and 3(2) are his signatures. PW 7 further deposed that Mat.Ext.1 is the blue colour skirt, sandal, jangia, clip and rubber band, Mat.Ext.2 is the long pant and jangia and Mat.Ext.3 is white colour dhoti. PW 7 further deposed that police caused recorded his statement at Kaliabor Court vide Ext.5 wherein Ext.5(1), Ext.5(2) and Ext.5(3) are his signatures.

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PW 8 Hemendra Biswas has deposed that the incident was of one year old from his deposition. PW 8 further deposed that on the day of incident at about 5/6 p.m. he was in the house of Barnabas Orang and at that time they heard hue and cry outside the house and was alighting torch. PW 8 further deposed that then he and Barnabas Orang came outside and found many people and went towards the house of father of deceased. PW 8 further deposed that there they found the deceased 'X' lying in the verandah covered with white cloth. PW 8 further deposed that when someone removed the cloth they saw bleeding in the urinated organ and at that time Rani Namasudra was lamenting told that accused Ramdhan killed her daughter. PW 8 further deposed that then on being informed by Barnabas Orang, police came there and people brought Ramdhan there. PW 8 further deposed that police took Ramdhan to the Police Station. PW 8 further deposed that from the attending persons he came to know that in the backyard of his house in an abandon latrine the deceased was found lying from where she was brought.

PW 9, Shasti Namasudra has deposed that incident took place 1 ½ years ago at about 6 p.m. PW 9 further deposed that at that time her husband, Kanu and herself were warming themselves around the fire in their courtyard. PW 9 further deposed that at that time Ramdhan came and sat besides them and after taking a glass



of water he went to the house of father of deceased. PW 9 further deposed that about 10 minutes thereafter, mother of the deceased came there and enquired about her daughter and told them that in the evening at about 4 p.m. Ramdhan came to her house and told to her daughter that he would provide money to purchase chocolates. PW 9 further deposed that then mother of the deceased along with Kanu went to the house of Ramdhan. PW 9 further deposed that as the mother of the deceased and Kanu did not find the deceased in the house of Ramdhan, then they themselves carried on the search of deceased in the village and then the village people also came out and searched for the deceased. PW 9 further deposed that he also went for searching the deceased. PW 9 further deposed that then the mother of the deceased, Rani found the deceased near a latrine in upside down position and hug-lifted her but finding deceased in dead condition she became senseless. PW 9 further deposed that then he helped Rani and Kanu picked up the deceased in her lap and brought them to the house father of deceased. PW 9 further deposed that at that time blood was oozing out from the urinated organ of the deceased. PW 9 further deposed that they also noticed bite marks on the face and chest of the deceased. PW 9 further deposed that later on police came and recorded his statement.

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PW 10, Niyati Biswas has further deposed that incident took place 1 ½ years ago, one day, at about 5 p.m. PW 10 further deposed that while she was at her home, then the mother of the deceased enquired about the deceased, then she told her that she has not seen the deceased. PW 10 further deposed thereafter the mother of the deceased along with Kanu again came to her house, then she told that she had heard sound of crying behind their house. PW 10 further deposed that getting the information, mother of the deceased Rani and Kanu went behind their house and she also followed them. PW 10 further deposed that while they were searching the deceased, then Kanu in her torch light noticed the deceased lying in their left out latrine while the head of the



deceased was in the pit. PW 10 further deposed that there was no clothes on the body of the deceased and blood was oozing out from the urinated organ. PW 10 further deposed that seeing such condition of the deceased, the mother of the deceased became senseless and then Kanu brought lifted the deceased to the house. PW 10 further deposed that thereafter there occurred hue and cry and many people gathered there. PW 10 further deposed that when Rani regained senses, she told before the people that accused Ramdhan enticingly took the deceased by giving Rs.10/- . PW 10 further deposed during investigation, police recorded his statement.

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PW 11, Niranjan Namasudra has deposed that incident took place about 1 $\frac{1}{2}$ years ago and at the time of incident deceased was about 6 years old. PW 11 further deposed that incident took place at about 6 p.m. and at that time he was warming outside his house near fire. PW 11 further deposed that at that his wife Sasti and Kanu Namasudra were also with him, then accused Ramdhan came there and after taking a glass of water, he went to the house of father of the deceased. PW 11 further deposed that thereafter about half-an-hour the mother of the deceased, Rani came to their house and enquired about the deceased but they replied that deceased had not come to their house. PW 11 further deposed that the mother of the deceased told them that accused Ramdhan had given Rs.10/-for taking chocolates, as such she might had gone with Ramdhan. PW 11 further deposed that thereafter he, Rani, his wife and Kanu moved in search of the deceased. PW 11 further deposed that while they were searching for the deceased, then Niyati told them that she had heard crying of a girl behind their house near their left out latrine. PW 11 further deposed that then they rushed towards that side and found the deceased in the latrine set in kneel down position while the head was in the sloping end side and there was no clothes in her lower side and blood was also oozing out from the urinal organ of the deceased. PW 11 further deposed that thereafter Kanu lifted the deceased and brought to the house of



father of deceased and by that time the deceased was dead. PW 11 further deposed that thereafter many people gathered there and somebody informed the police and then police came and took the dead body of deceased and the accused Ramdhan. PW 11 further deposed that during investigation police recorded his statement.

PW 12, Dr. P.J.Borah has deposed that on 28-12-2015, while he was serving as M & H.O.I at B.P. Civil Hospital, Nagaon, on that day at 2.00 p.m. he performed post-mortem examination on the dead body of the deceased 'X', in connection with Samaguri P.S. Case No.472/2015 u/s 302 IPC R/W 4 of POCSO Act. PW 12 further deposed that on examination of the dead body he found the following :-

External Appearance : 3 ½ feet long thin body pre-pubertal body with no thelarchy or no pubic and axillary hair seen. Wearing a frock, bleeding seen from vagina, froth is present in nose and mouth.

1. Rt. Cheek - multiple less than 1 cm discrete marks of bruises present.
2. 4 in Nos. in same vertical plane - bruises -in left side of neck - less than 1 cm.
3. 3 Nos. same size marks in right neck posteriorly.
4. Left breast - curvilinear bruise 3 in Nos.
5. Vaginal injury as described.
6. Anal injury as described.

Cranium and spinal canal :- All organs are normal.

Thorax : Larynx and trachea - Thyroid cartilage is broken (torn) in the middle. All other organs are normal.

Abdomen : Stomach and its contents - Normal, digested rice inside.

Other organs are normal.

Organs of generation, excreta and internal :

Vagina is torn, due to forceful penetration. Causing rectum injury, causing complete perennital tear. Laceration present in vagina, Causing pelvic hematoma and circular bruise in vulva. Rigor mortis is present.

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Details : Small bruises in the neck and cheek are like nail marks, bruises in left breast are like teeth marks, No public hair is collected as it is absent. The thyroid cartilage is fractured, vagina is torn, lacerated causing complete perennal tear and rectal injury. Vaginal laceration inside cause pelvic hematoma.

PW 12 further noted that both hand nail clippings, vaginal two swabs are sent for forensic testing as per request in police requisition through the escorted police personal and results are awaited. PW 12 opined that cause of death was (homicide due to) asphyxia due to compression of wind pipe of neck, signs of sexual assault is present in the body, the time of death is within 24 hours of post-mortem done. PW 12 further deposed that signs of throttling is present in the neck. PW 12 further deposed that Ext.6 is his report and Ext.6(1) is his signature. PW 12 further deposed that it is a case of brutal murder besides wild sexual harassment. PW 12 further deposed that sexual assault was so forceful so there was rectal injury causing complete perennal tear.

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PW 13, Mrs. Renu Bora Handique has deposed that on 04-01-2016 while she was serving as Scientific Officer, Serology division, Directorate of Forensic Science, Kahilipara Assam, on that day, he received a parcel through their director which was sent by S.P. Nagaon in connection with Samaguri P.S. Case No.472/15 u/s 302 IPC R/W Sec.4 of POCSO Act vide Memo No.IV/167/16/149 dated 04-01-2016. PW 13 further deposed that parcel consisted of one sealed cloth cover carton box of 9 (nine) exhibits enclosed with a seal cover which was sealed with the impression of seal corresponding with the seal impression forwarded S.P.Nagaon. PW 13 further deposed that exhibits were marked by her as :-

1. One paper enveloped contains both hands nail clippings contains suspected blood and semen, Marked as "A"(victims) and marked it as Sero-3627/A.



2. Two Nos. of smear slide of vaginal swab (bloods mixed), marked as 'B'. Again marked as Sero-3627/B.
3. One navy blue coloured skirt contains stain of suspected blood and semen. Marked as "C". The exh. Mixed with mud. Again marked as Sero-3627/C.
4. One light green coloured (small size) panty contains suspected blood and semen. Marked as "D". Again marked as Sero -3627/D.
5. One white colored Dhuti contains stain of suspected blood and semen. Marked as "E". Again marked as Sero- 3627/E.
6. One air tight glass vial contains nail clippings contains suspected blood and semen. Marked as "F". Again marked as Sero 3627/F.
7. One air tight glass vial contains swab of accused person. Marked as "G". Again marked as Sero-3627/G.
8. One air tight plastic pack contains public hair. Marked as "H". Again marked as Sero-3627/H.
9. One (jocky) underwear (blue and red bordered) and black coloured long pant contains stain of suspected blood and semen. Marked as "I". Again marked as Sero-3627/I.

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PW 13 further deposed that after her careful examination of the above exhibits he found as follows:-

1. Ext.No.Sero-3627/A gave positive test for human blood and negative test for spermatozoa.
2. Ext.No.Sero-3627/B gave positive test for blood and negative test for semen.
3. Ext.No.Sero-3627/C gave positive test for blood and semen.
4. Ext.No.Sero-3627/D gave negative test for blood and semen (spermatozoa)
5. Ext.No.Sero-3627/E gave positive test for human blood and spermatozoa.



6. Ext.No.Sero-3627/F gave positive test for human blood and negative test for semen (spermatozoa)
7. Ext.No.Sero-3627/G gave positive test for spermatozoa & negative test for blood.
8. Ext.No.Sero-3627/H gave positive test for human blood and negative test for spermatozoa.
9. Ext.No.Sero-3627/I gave positive test for spermatozoa and negative test for blood.

PW 13 further deposed that Ext.7 is her report wherein Ext.7(1) is her signature. PW 13 further deposed that Ext.8 is the forwarding report and Ext.8(1) is the signature of Minendra Narayan Bora, Director of Forensic Science lab. Kahalipara, Guwahati.

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PW 14, Dr. Sahidul Alom has deposed that on 28-12-2015, while he was serving as M & H.O. At B.P.civil Hospital, Nagaon, on that day at 11.00 a.m., he examined Ramdhan Nomosudra, S/O late Rosmoi Namasudra, village Soriohbari, P.S. Samaguri, District Nagaon as per requisition of I/c Salonah P.P. Under Samaguri P.S. Which was escorted by UBC/537 Ananta Nath and Ap Bn. Staff of Salonah P.P. and found the following :-

Pubic hair was collected and sent for examination. Swab of the accused person was collected and sent for examination. Smegma absent. Nails clipped collected and sent for examination. Potency present. No external injuries seen. PW 14 further deposed that Ext.10 is the report and Ext.10(1) is his signature.

PW 15, SI Biju Kingkar Basumatary has deposed that on 27-12-2015 while he was serving as Sub-Inspector of Police and I/C of Salanah P.S under Samaguri P.S, at about 7.30 he received a phone call from Barnabas Orang, Gaonburah of village Rekapahar under Samaguri P.S. Informing that at 6.30 p.m. The deceased of village Soriah bari, namely, "X", aged 10 years was raped and



murdered by someone and left her at tea garden in a latrine. PW 15 further deposed that on the basis of said information, he recorded the Salanah P.P. GDE No.398 dated 27-12-2015 and proceeded towards the place of occurrence. PW 15 further deposed that Ext.10 is the GD entry book and Ext.10(1) is the GD entry record No.398 dated 27-12-2015. PW 15 further deposed that he visited to the house of Rani Namasudra and found the dead body of minor lying in the veradah covered with a blood stained white cloth (dhoti). PW 15 further deposed that he seized the white cloth(dhoti) vide Ext.3 wherein Ext.3(3) is his signature and Mat. Ext.3 is the said 'dhoti'. PW 15 further deposed that he also recorded the statement of witnesses and then shifted the dead body to Samaguri Police Station due to insufficient of light. PW 15 further deposed that in the meantime gathered people confined Ramdhan Namasudra in connection with the occurrence and handed over to him and thereafter he brought him to Samaguri P.S. PW 15 further deposed that he also seized the under wear (jangia) and longpant of the accused person. PW 15 further deposed that accordingly he prepared a seizure list vide Ext.2 and Ext.2(4) is his signature and Mat. Ext.2 is the said jangia and long-pant. PW 15 further deposed that again at 9.35 p.m. he visited the place of occurrence, then the mother of the deceased showed him the place of occurrence which is is deserted latrine of Hemendra Biswas. PW 15 further deposed that he drew the sketch map vide Ext.11 wherein Ext.11(1) is his signature. PW 15 further deposed that in and around the place of occurrence he found a navy blue color school skirt uniform which was stained with mud and blood and he also recovered one Hawai sandal, one jangia of light yellow colour, one rubber band of pink colour and seized the same. PW 15 further deposed that he prepared the seized list Ext.1 while Ext.1(4) is the his signature. PW 15 further deposed that in the meantime he came to know that one Nitai Namasudra has filed one written ejahar at Samaguri P.S. and the O/C of Samaguri P.S. registered the case as as Samaguri P.S. Case No. 472/15 u/s 302 IPC R/W Sec. 4 of POCSOI Act and accordingly entrusted him to take up the investigation of the

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case. PW 15 further deposed that Ext.3(a) is the said FIR wherein Ext.3(a)(2) is the signature of O/C Nabin Chandra Mahanta which is acquainted to him. PW 15 further deposed that he also recorded the statement of complainant at the P.S. and after interrogation he arrested accused Ramdhan Namasudra. PW 15 further deposed that he sent the accused to B.P. Civil Hospital for health check-up and potency test and also to collect pubic hair, nail clippings and semen of the accused.

PW 15 further deposed that Circle Officer-cum-Executive Magistrate held the inquest over the dead body while Ext.4 is the Inquest Report and Ext.4(2) is the signature of Circle Officer, Kalaibor whose signature is acquainted with him. PW 15 further deposed that thereafter he sent the dead-body for post-mortem examination. PW 15 further deposed that he also made requisition to collect the pubic hair and to preserve, collect her swab and to preserve, if snegma found, collect and to preserve, collect the nail clipping and preserve, whether any injury marks on her body and private parts, whether any sign of any recent sexual activity on her body and also requested to conduct the post mortem under the coverage video-graph. PW 15 further deposed that he also forwarded the accused before the Court of learned S.D.J.M., Kaliabor and took the accused in police custody for two days. PW 15 further deposed that materials collected by the B.P.Civil Hospital, Nagaon from the accused and the deceased were sent to Forensic Science Labortary, Kahilipara along with seized articles vide Ext.1,2 and 3. PW 15 further deposed that he got recorded the statement of Kanu Namasudra and Rani Namasudra recorded u/s 164 Cr.P.C. by the learned S.D.J.M., Kaliabor. PW 15 further deposed thereafter he collected the statement recorded u/s 164 Cr.P.C., post-mortem report, medical examination of accused and also collected Forensic lab. Report. PW 15 further deposed that after completion of investigation and having found prima facie materials against accused Ramdhan Namasudra @ Monuranjan, he filed charge-sheet

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against the accused u/s 302 IPC R/W 4 of the POCSO Act while Ext.12 is the charge-sheet and Ext.12(1) is his signature.

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9. DW 1, Ramdhan Namasudra has deposed that two years ago, one Sunday, in the morning at about 8.30 a.m. he went to the house of PW 4 to talk about monetary transaction in regards of weaving of bamboo basket. DW 1 further deposed that as he did not find the father of deceased at his house, so he came back and went to the Jakhalabandha market with basket (locally call 'Duli' used for storing paddy). DW 1 further deposed that while he was returning from Jakhalabandha bazar, it was about 3/3.30 p.m. DW 1 further deposed that while he was cooking vegetable, then the village people along with police came to his house and asked him to go the house of father of deceased. DW 1 further deposed that then he went to the house of father of deceased and subsequently police took him to the Police Station in a vehicle. DW 1 further deposed that police after harassing two days in the police station recorded his statement. DW 1 further deposed that police took his old clothes by exchanging with new clothes. DW 1 further deposed that he did not know anything about the deceased and also did not know how the deceased died.

DW 2, Chanchala Biswas has deposed that accused Ramdhan is her husband. DW 2 further deposed that incident took place about 2 years ago and on the day of incident, in the evening she was in her house and her husband was cooking food along with her. DW 2 further deposed that at that time few of their villagers enquired for her husband and then her husband came with those villagers and the villagers thereafter handed over her husband to police. DW 2 further deposed that later on she came to know that somebody had killed the deceased and suspecting her husband to be involved with her death local people handed over her husband to police. DW 2 further deposed that her husband did not commit any offence and never brought the deceased to their house.



From the prosecution evidence it is evident that there is no eye witness in this case and the case is based on circumstantial evidence. As such as per established principle of law, it is necessary to scrutinize the evidences carefully so to ascertain whether the entire chain of circumstances is complete or not.

10. Appreciation of evidence.

Out of 15 prosecution witnesses, evidence of PW 2, the mother of the deceased victim carries much importance because it is her evidence which pointed towards the involvement of the accused in commission of offence and chain of circumstance begins from her evidence.

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According to PW 2, on the day of occurrence at about 4 p.m. while she was sweeping her house then the accused came to their house and enquired about her husband. At that time her 7 year old daughter was sitting near the verandah, then Ramdhan talked with her(deceased) for sometime and went away. After some time her daughter told her that Ramdhan told her that he will give her logence (chocolate) and she wanted to go to Ramdhan's house. She (PW 2) restrained her. Then her daughter told that she will go to her uncle's house and by saying this she went away. After half-an-hour when her daughter did not return then she went to the house of Niranjan and asked them about her daughter and in reply they told that her daughter did not come there. Then she went to the house of Ramdhan and then Ramdhan's sister told that keeping his cycle in the house, Ramdhan went out but they cannot say where he has gone.

Now, from the evidence of PW 2, it is evident that Ramdhan came to their house and talked with her deceased



daughter and after some time he went away. PW 7 (Kanu Namasudra), PW 9 (Shasti Namasudra) and PW 11 (Niranjan Namasudra) has confirmed the fact that on the day of occurrence at about 5.30 p.m. accused Ramdhan Namasudra came to the house of Niranjan while they were sitting around the fire and after drinking a glass of water went to the house of PW 4 and after $\frac{1}{2}$ / 1 hours PW 2 came to their house and enquired about her daughter. PW 7 (Kanu Namasudra) has stated that he along with PW 2 went to the house of Ramdhan in search of her daughter but did not find her there. In his cross-examination he has stated that while they asked Ramdhan's wife then she told that Ramdhan came with a girl.

PW 6 (Hiralal Sarkar) is the owner of a shop. According to him on the day of occurrence at about 5.30 p.m. the deceased girl came to his shop and purchased one packet biscuit, morton(chocolate), laddu. She purchased the whole items by paying Rs.10/-.

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It is evident from the evidence of PW 2, PW 7, PW 9, PW 11 that while they were searching the deceased girl then Niyati Biswas (PW 10) told them that she heard cry of a girl from the back side of their house and after search they found the dead body of the deceased in the abandoned latrine in the back side of Hemendra Biswas (PW 8) and PW 10. It is also evident that soon after the recovery of the dead body, police was informed and the accused was handed over to the police and police took him to the police station along with the dead body. According to PW 1(Kartik Namasudra), PW 5(Baunabas Orang) and PW 7 (Kanu Namasudra) police seized the Jangia and long pant vide Ext.2 which the Ramdhan was wearing.

According to PW 15 (I.O.) he arrested the accused Ramdhan and sent the accused to B.P. Civil Hospital for health



Checkup, potency test and to collect pubic hair, nail clipping and semen of the accused.

As per PW 14, Dr. Sahidul Alom on 28-12-2015 at about 11 a.m. he examined Ramdhan Namasudra at B.P. Civil Hospital Nagaon and collected his pubic hair, swab, Nail clipping and sent for examination. He found potency present. Ext.10 is his report.

PW 12, Dr. P.J.Borah conducted the post-mortem examination on the dead body of the daughter of PW 2 and PW 4. He found small bruises in the neck, nail like marks on her cheek and bruises in left breast are like teeth marks.

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PW 13 Mrs. Renu Bora Handique is the Scientific Officer, Serology Division, Directorate of Forensic Science, Assam. From her evidence it is evident that she has examined nail clipping containing suspected blood and semen which has been again marked as Sero 3627/F, she has also examined pubic hair marked as Sero 3627-H. According to her Ext.No. Sero 3627/F (nail clipping) gave positive test for human blood, Ext.Sero.3627/H (pubic hair) gave positive test for human blood and negative test for spermatozoa.

Now, the accused Ramdhan in his statement u/s 313 Cr.P.C. has denied that his nail clipping, pubic hair, swab was collected but in course of his cross-examination as DW 1 he has admitted that at Nagaon Civil Hospital doctor has collected some substance from his body by cotton and collected his pubic hair, nail clipping and also tested his potency. From the evidence it can be seen that within a very short period of time since the incident occurred, accused was taken into police custody and his under wear and long-pant were seized. It is also evident that on the next day, at 11 a.m. his nail clipping, pubic hair etc. were collected by PW 14. In his statement u/s 313 Cr.P.C. accused has not given any explanation



regarding presence of blood in his pubic hair and nail clipping. It is evident from the evidence of PW 2 that when she went to the house of accused Ramdhan in search of her daughter then she did not find the accused in his house. Accused Ramdhan in his statement u/s 313 Cr.P.C. has taken the plea of alibi. According to him at the time of occurrence he was in the market. Again in his evidence he has stated that in the morning at 8.30 a.m., he went to the house of PW 4 and PW 4 was not in his house, he went to the Jakhalabandha market and at about 3/3.30 p.m. he came back to his house and while he was cooking then villagers along with police came to his house and took him to the house of deceased father. It can be seen that he has contradicted his own statement. Again it can be seen that in course of cross-examination of PW 2, suggestion was given that at about 1 p.m. Ramdhan went to meet her husband concerning business matter but PW 2 has denied this suggestion. From this suggestion and from the statement of the accused and his evidence it can be seen that accused has admitted that he went to the house of PW 4 although he has given different version regarding the time and this suggestion has falsified his own testimony that in the morning he went to the Jakhalabandha market and came back to home at 3/3.30 p.m. But evidence of PW 7, PW 9 and PW 11 have negated his plea.

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Defence side has extensively cross-examined PW 2, PW 6, PW 7, PW 9, PW 11 but they have failed to shake their evidence.

11. Argument of Prosecution side.

It is the argument of prosecution side that although there is no direct evidence in this case but from the cogent evidence of PW 2, PW 6, PW 7, PW 9, PW 11 and the evidence of PW 13 and PW 14, it is clearly established that it is only the accused who has committed such heinous crime.



12. Argument of Defence side.

Refuting the argument of prosecution side learned defence counsel has submitted that there is discrepancy in the statement of Pws. It is the contention of the learned defence counsel that mere finding of semen in the undergarment of the accused is not the conclusive proof that he has committed rape. I.O. has not taken any step for matching the semen of accused with the semen found in the skirt of the deceased. It is the contention of the learned defence counsel that the accused is a married man and finding of semen in his undergarment is not unnatural. It is also their contention that presence of blood in the pubic hair of the accused is also not sufficient to establish the guilt of the accused because it is not known how the doctor has collected the pubic hair of the accused and there is possibility that at the time of collecting his pubic hair blood might have come out. It is also the contention of the defence side that PW 7, PW 9 and PW 11 have seen accused Ramdhan going to the house of PW 4 but they have not seen the accused coming out from his house. Moreover, no one has seen the deceased along with the accused . Overall argument of the defence side is that the prosecution has failed to establish the chain of circumstance completely which is the golden principle in respect of circumstantial evidence. In support of his contention learned counsel has placed reliance on the following citations seeking acquittal of the accused.

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- (i) **2008 Cri.L.J.3052, Supreme Court (Ventatesan V. State of Tamil Nadu)**
- (ii) **2014 Cri. L.J.2371 Supreme Court (Dharam Deo Yadav V. State of U.P).**
- (iii) **AIR 1973 SC 343 (Rahim Beg and ano. Vs. State of U.P)**

13. Now, from the FIR it can be seen that on 27-12-2015 around 5.30 p.m. occurrence took place. It was the winter season and during winter season it is almost dark by that time. It is already established from the evidence of PW 2, PW 7, PW 9 and PW 11 that accused Ramdhan came to the house of PW 4. PW 2 has stated that Ramdhan came to their house and talked with her daughter sitting near her (deceased) and after some time he went away. Her daughter told that Ramdhan told her that he will give her logence (chocolate) and she wants to go to his house and when she (PW 2) resisted her daughter she(deceased) went away telling lie. Now age of the deceased is about 6/7 years, as such it is quite natural that she could not resist the temptation of eating chocolate and went away by telling lie. PW 7, PW 9 and PW 11 stated that they did not see when Ramdhan went away from the house of PW 4. Now PW 7 has stated in his cross-examination that there is another path near the courtyard of PW 4 to go to the main road. PW 9 (Shasti Namasudra) stated in her cross-examination that there are three paths which go to the main road from the house of PW 4. Thus, it can be seen that the path which the accused used first, is not the only path for his exit from the house of PW 4 and as such the accused has used any other path at the time of leaving the house of PW 4, so that no one can see him. Had he did not nurture any guilty intention, he might have used the same path through which he came to the house of PW 4.

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Now defence side has cross-examined PW 14 (Dr. Sahidul Alom) who collected pubic hair, nail clipping, swab etc. of the accused, but in course of his cross-examination neither question was put to him regarding the manner of collection of pubic hair nor it was challenged and as such contention as raised by learned defense counsel in this regard is not tenable. Attitude of the accused does not point towards his innocence because in his statement u/s 313 Cr.P.C., he has stated that his pubic hair, nail clipping etc. was not collected. Again in his (DW 1) cross-examination he has admitted that those things were collected by the doctor. PW 12 Dr. P.J.Borah



found small bruises in the neck and cheek are like nail marks. PW 13 (Mrs. Renu Bora Handique), the Scientific Officer has substantiated the fact that nail clipping (Ext.-Sero-3627/F) of the accused gave positive test for human blood but the accused has failed to give any explanation regarding presence of blood in his nail clipping and pubic hair.

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Now, it can be seen within one hour since the deceased left her house search was made. During that period accused was not found in his house by PW 2, PW 7 and others. Thus false and contradictory plea of the accused regarding his presence in his house has established the important link and strengthened the prosecution case. Evidence of PW 6 has further strengthened the prosecution story as he has substantiated the fact that the deceased bought chocolate, biscuit and laddu from his shop by paying Rs.10/- From the time of arrival of the accused in the house of PW 4 and meeting the deceased and her mother till the recovery of the body of the deceased, time span is very short and within such time no other person met the deceased. As soon as the accused left their house, the deceased followed him. PW 6 has fully substantiated the testimony of PW 2 regarding the fact that the accused told her daughter that he will give her logence(chocolate).

From the prosecution evidence it can be seen that after crossing the main road there is the house of PW 8 (Hemendra Biswas) and PW 10 (Niyati Biswas) and thereafter is the house of the accused. PW 8 in his cross-examination has stated that in the back side of his house is the abandoned katcha latrine which is surrounded by garden and open and from there one can go to any direction. Thus, it was not difficult for the accused to reach his house when the PW 2, PW 1 and other were searching the deceased. Evidence of vital witnesses like PW 2, PW 6, PW 7, PW 9, PW 11 is consistent and steady and defence could not shake their evidence and as such I do find their testimony trustworthy. Apart from their



evidence there is medical evidence and expert scientific evidence. Mere lacuna on the part of the I.O. for not taking any step for matching the semen of the accused with that found in the skirt of the deceased does not appear to be fatal for the prosecution when there are other clinching evidence against the accused regarding commission of the offence.

I have gone through the citations so referred by the learned defence counsel and I am of the opinion that those citations will not help them as the facts and circumstance of the instant case is different.

In view of discussion of evidence so far made, I am of the opinion that prosecution has succeeded to establish the chain of circumstances against he accused regarding his involvement in commission of the offence as alleged in the FIR.

*SJ
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Now let us see whether prosecution has been succeeded to bring home the charges against accused person. PW 12 (Dr. P.J.Borah) conducted the post-mortem examination on the dead body of 'X'. From his evidence and from the PM Report (Ext.6) it is evident that there are several injuries on her body. PW 12 found following injuries on the organs of generation- external and internal :-

Vagina is torn due to forceful penetration, causing rectum injury, causing complete perineal tear. Laceration present in vagina, causing pelvic haematoma and circular bruise in vulva.

Apart from the above injuries on the private parts, PW 12 has found other external injuries which are as follows:



1. Rt. Cheek - multiple less than 1 cm discrete marks of bruises present.
2. 4 in Nos. in same vertical plane - bruises -in left side of neck - less than 1 cm.
3. 3 Nos. same size marks in right neck posteriorly.
4. Left breast - curvilinear bruise 3 in Nos.

As per PM report (Ext.6) Thyroid cartilage is found broken (torn) in the middle and PW 12 has opined that cause of death was (homicide due to) asphyxia due to compression of wind pipe of neck. Sign of sexual assault is present. PW 12 has deposed that it is a case of brutal murder besides wild sexual harassment. Signs of throttling is present in the neck.

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Defence has not challenged the medical evidence.

Now from the PM Report (Ext.6) as well as from the evidence of PW 12 it is found that the age of the deceased was 7 years. From the oral evidence of PW 2, PW 6, PW 7, PW 9 and PW 11 coupled with medical and expert scientific evidence it is established that the accused has committed wild penetrative sexual assault on the child of 7 years and as such he is found guilty of committing aggravated penetrative sexual assault punishable u/s 6 of the POCSO Act, 2012.

It is pertinent to mention herein that maximum punishment prescribed for Section 4 and Section 6 is life imprisonment as such alteration of charge is not necessary.

Since the accused is found guilty u/s 6 of the POCSO Act as such finding on Section 376(2)(i) IPC is not necessary.



Considering the medical evidence accused Ramdhan Namusudra is also found guilty of committing offence u/s 302 IPC.

14. Finding :- I have heard submission of both sides and gone through the evidence and materials on record. I have arrived at the finding that prosecution has succeeded to establish its case against accused Ramdhan Namasudra @ Monoranjan U/S 6 of the POCSO Act and Section 302 IPC beyond all reasonable doubt and accordingly he is convicted under these sections.

Considering the punishment prescribed for the offences, I am of the opinion that the accused is not entitled to get any benefit either under the provision of Probation of Offender Act or u/s 360 Cr.P.C.

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15. Sentence hearing: I have heard the accused person on sentence and his statement in this regard is recorded separately and kept with the case record. Accused has prayed for showing leniency.

16. Sentence :- Under the facts and circumstance, the instant case does not come within the category of rarest of the rare case so far as Section 302 IPC is concerned and as such the convict is sentenced to undergo Rigorous Imprisonment for life and also to pay fine of Rs.10,000/- in default R.I. for another 6 (six) months under Section 302 IPC. The accused is also sentenced to undergo Rigorous Imprisonment for life and also to pay fine of Rs.10,000/- in default R.I. for another 6 (six) months under Section 6 of the POCSO Act. Both the sentences will concurrently.

Seized materials shall be destroyed in due course of law.

The accused person is already in custody. Issue Imprisonment Warrant against the accused to serve the sentence passed against him.



Free copy of judgment be furnished to the convict immediately.

Copy of the judgment be sent to learned District Magistrate of Nagaon u/s 365 Cr.P.C.

The DLSA, Nagaon will make necessary enquiry to provide compensation to the next of the kins of deceased 'X' under the victim compensation scheme as envisaged u/s 357-A of Cr.P.C
Copy of the judgment be sent to the DLSA, Nagaon accordingly.

The Judgment is written on separate sheets and pronounced in open court.

Given under my hand and seal of this court, I have signed and delivered this Judgment on this 24th day of April, 2018 at Nagaon.

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(R.Kar) Judge,
Nagaon :: Assam
Special Judge,
Nagaon.

Dictated & corrected by me.

24-4-18
(R.Kar) Judge,
Nagaon :: Assam
Special Judge,
Nagaon.

Dictation taken & transcribed by

Nipen Rajkhowa
(Nipen Rajkhowa)
Stenographer.



ANNEXURE

Prosecution Witnesses

- | | |
|-----------|-------------------------------|
| 1. P.W.1 | - Kartik Namadas |
| 2. P.W.2 | - Rani Namasudra |
| 3. P.W.3 | - Netai Namasudra |
| 4. P.W.4 | - Gourmoni Namasudra |
| 5. P.W.5 | - Barnabas Orang |
| 6. P.W.6 | - Hiralal Sarkar |
| 7. P.W.7 | - Kanu Namasudra |
| 8. P.W.8 | - Hemendra Biswas |
| 9. P.W.9 | - Shasti Namasudra |
| 10.P.W.10 | - Niyati Biswas |
| 11.P.W.11 | - Niranjan Namasudra |
| 12.PW 12 | - Dr.P.J.Bora |
| 13.PW 13 | - Mrs. Renu Bora Handique |
| 14.PW 14 | - Dr. Sahidul Alom |
| 15.PW 15 | - SI Biju Kingkar Basumatary. |

Prosecution Exhibits.

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- | | |
|------------|---------------------------------|
| 1.Ext.1 |Seizure list. |
| 2.Ext.2 |Seizure list. |
| 3.Ext.3 |Seizure list. |
| 4.Ext.3(A) | FIR. |
| 5.Ext.4 | Inquest Report Form |
| 6.Ext.5 | Statement u/s 164 Cr.P.C. |
| 7.Ext.6 |Post-mortem Report |
| 8.Ext.7 |FSL Report. |
| 9.Ext.8 |FSL acknowledgement. |
| 10.Ext.9 | |
| 11.Ext.10 | Injury certificate. |
| 12.Ext.11 |Sketch-map. |
| 13.Ext.12 | Charge-sheet. |

Mat.Exhibits:

1. Mat.Ext.1 is the blue colour skirt, sandal, jangia, clip and rubber band,
2. Mat.Ext.2 is the long pant and jangia and
3. Mat.Ext.3 is white colour dhoti

**Defence Witness.**

1. DW 1 Ramdhan Namasudra
2. DW 2 Chanchala Biswas

Defence Exhibit

Nil

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(Smti. R.Kar.)
Special Judge
Nagaon.ASSAM.