:: IN THE COURT OF THE SESSIONS JUDGE ::::: NALBARI ::

<u>Present</u>: Mrs. S. Begum. Sessions Judge, Nalbari.

SESSIONS SPL (P)CASE NO: 38/2017 u/s-376/307 IPC R/W Sec. 4 of the POCSO Act.

State of AssamComplainant -Vs-

Sri Bipul Khan @ Khaund......Accused person.

Appearance:-

For the prosecution : Mr. K.K. Sarma Prosecutor For the defence : Mr. P. Sarma, Advocate.

Date of argument : 10/09/2018. Date of Judgment : 30/11/2018.

<u>JUDGMENT</u>

The prosecution case which is unfolded in the ejahar lodged by Dipak Talukdar is that, on 24/04/17 his daughter. Priyanka Talukdar, (hereinafter referred as Miss "X") aged 14 years who is a student of Class VI of Chankuchi Public High School went to her school at about 9 am. As his daughter did not return back from her school till 2-30 pm after closing of the school they searched for his daughter and could know that his daughter was rapped by accused Bipul Khan @ Khaund in a deserted place near Polytechnic Institute by dragging her from the road. It is stated that the accused was caught by local public while he was trying to commit murder of Miss "X".

2. On the strength of the ejahar Nalbari PS Case No.265/17 dated 24/4/17 has been registered u/s-376/307 IPC r/w section 4 of the POCSO Act and police started investigation. After completion of the investigation police submitted charge-sheet u/s-376/307 IPC r/w Sec. 4 of POCSO Act. After submission of the charge-sheet Sessions special (P) Case No.38/17 has been registered.

- 3. The accused who is in judicial custody while produced before the court, getting prima-facie material to charge the accused u/s-376/307 IPC r/w section 4 of the POCSO Act charge is framed accordingly and read over to the accused to which he pleaded not guilty and claimed to be tried.
- 4. During trial the prosecution examined as many as 10 witnesses including the I/O. The defence case is of denial. However, the accused did not adduce any evidence.

5.

POINT FOR DETERMINATION.

- (i) Whether the accused on 24/04/2017 at village Chankuchi under Nalbari P.S committed penetrative sexual assault upon Miss 'X', aged about 14 years and thereby committed an offence punishable u/s-4 of the POCSO Act?
- (ii) Whether the accused on 24/4/2017 at village Chankuchi under Nalbari PS committed rape upon Priyanka Talukdar and thereby committed an offence punishable u/s-376 IPC?
- (iii) Whether the accused on 24/4/2017 at village Chankuchi under Nalbari PS attempted to kill Priyanka Talukdar and thereby committed an offence punishable u/s-307 IPC?

DECISION AND REASONS THEREFOR

6. Now to arrive at a judicious decision let me discuss and appreciate the testimony of the prosecution witnesses. At the very out set let me discuss the evidence of Dilip Talukdar who is the informant cum father of the victim. He revealed during his evidence that victim Miss "X", aged 14 years who is his daughter studied at Chankuchi Public High School in class VI during the period of occurrence. On 24/4/17 she went to her school and he also left for his work. It is stated that at about 4 pm while he was at his working place, his eldest daughter Manisha and his wife informed him over phone that Miss 'X' did not arrive at her house from the school. On getting the information while he was returning back to his house on his way he got information in mobile from his cousin brother Ajit Talukdar that Bipul Khaund committed rape upon his daughter Miss 'X' at the

jungle near the polytechnic Institute of Chankuchi and that accused was brought to the police station. Receiving the information he immediately visited Nalbari police station and noticed his daughter Miss 'X' at the police station. He lodged ejahar Ext-1 at the police station on that very day. He exhibited his signature in the ejahar as exhibit-1(1). He revealed that his daughter was brought to the hospital and she was treated as indoor patient for one day. On 26/4/17 she was brought before the Magistrate by police and her statement got recorded by Magistrate. Later on he stated that her statement was recorded by Magistrate 3/4 days subsequent to the occurrence. He also revealed that his daughter is partially mentally retarded.

This witness was cross-examined by defence side at length. During cross-examination it is admitted by him that as his daughter is mentally retarded so she had to read in lower class in comparison to her age. It is also admitted by him that accused is a drunkard and the villagers wanted to chase him from the village.

7. PW-2, Jyoti Talukdar who is the mother of the victim testified that on the date of occurrence her daughter Miss'X' went to Chankuchi Public High School where she studied in class VI. As the victim did not return back from the school in spite of her school was over, so she asked her eldest daughter Manisha to search the victim. After sometimes Manisha returned back and informed her that the victim could not be traced out. She raised hue and cry and villagers gathered and she informed the villagers about missing of the victim. She on being accompanied by the villagers went in search of the victim. It is disclosed by her that she noticed the wearing chappal of the victim at the road near the school where victim studied and informed the persons accompanied her. Thereafter while they searched the victim at the jungle near the said place, they noticed accused Bipul and the victim inside the jungle. The victim was found almost in naked condition and Bipul was doing bad work with the victim. She also noticed blood at the private part of the victim. She clothed the victim's body by the "mekhela" which she (PW-2) was wearing. It is disclosed that accused was caught by the public and he was assaulted. In the mean time the village Headman appeared and police was informed accordingly. The victim was brought to the house and while she and the villagers inquired the victim then she informed that while she was returning back from school alone, then the accused gagging her mouth dragged her to the jungle and did bad work with her. pw-2 revealed that the victim was admitted at Nalbari Civil hospital and she was kept for one day at the hospital. She disclosed that while her husband returned back from his work she informed him about the occurrence and then he lodged the ejahar at Nalbari PS.

She was cross-examined at length. It was admitted by her that she did not state before police that she noticed victim in naked condition and that the accused was doing bad work with the victim. It is also admitted that she did not state before police that she noticed blood at the private part of the victim. It is also disclosed by her that accused was in drunken condition while they noticed him inside the jungle.

8. The victim has been examined as PW-3. Prior to recording her deposition, this court ascertained about proper understanding and maturity of the victim by putting some questions and after recording the answers of the victim while it appeared that she has proper understanding and maturity, then her deposition was recorded. The victim during her evidence disclosed that the incident happened on the previous year few days subsequent to the Bihu Festival. At that time she was studying at Chankuchi Public School. It is disclosed that at about 3 pm after closing of the school while she was returning to her house, on her way the accused taking her in his lap brought her to the jungle. It is revealed that while the accused took her to the jungle she cried but the accused gagged her mouth by his hands. He laying down her over the ground unclothed her and pressed her breast and bite her at her breast. He also touched her cheek and thereafter entered his "chuma" (penis /male organ) at her private part (vagina) as the result of which blood oozed out from the vagina. At that moment her mother and the village people arrived at the said place and her mother clothed her body by her "mekhala" and then brought her to the house. It is revealed that she informed her mother and the village people about the whole occurrence. She was brought to the hospital. It is revealed that on the subsequent day she was brought before the Magistrate and her statement got recorded by Magistrate. She exhibited Ext-2 as her statement before the Magistrate and Ext-2(1) as her signature. She was cross-examined by the defence side. She denied not having stated before the police about the fact that accused entered his "chuma" (penis, male organ) at her private part (vagina) as the result of which blood oozed out from the vagina, that at that moment her mother and the village people arrived at the said place and her mother clothed her body by her "mekhala" and then brought her to the house. The suggestion of the defence that no such incident of rape had been committed by the accused is straight away denied by the victim.

- 9. PW-4, Ajit Talukdar testified that on 24/4/17 Manisha who is the eldest sister of the victim informed him at about 2-30 pm that Miss "X" did not arrive at her house from the school. He disclosed that on being accompanied by other villagers and the mother of the victim he went in search of the victim. He also disclosed that they in search of the victim went near Chankuchi Public School. On the way victim's mother found one chappal of the victim near the Polytechnic school. In the jungle near the polytechnic school they noticed the victim in naked and senseless condition and also noticed accused near her. They caught the accused and victims mother covered her body by cloth and took her to the hospital. Police was also informed. During cross-examination it is revealed by him that victim is a drunkard and he often takes liquor.
- 10. PW-5, Sanjib Talukdar during his evidence narrated that on 24/4/17 at about 2-30 pm Manisha who is the sister of the victim informed him that the victim did not return back from the school. Hearing the news he along with some persons of the village and mother of the victim went in search of the victim. They went towards the road leading to the school of the victim. They searched for the victim in the jungle near the polytechnic school as because during search operation the mother of the victim noticed wearing chappal of the victim near the said school. It is disclosed by him that inside the jungle they noticed victim in naked and senseless condition. They also noticed the accused standing near the victim. It is disclosed that they caught the accused and brought him near to the school. On that very day, the victim was brought to the hospital. While police was informed about the incident then police came and arrested the accused.
- 11. PW-6, Bipul Talukdar also disclosed in the same way to that of PW-5. He revealed about the information given to him by the victim's mother on the date of occurrence that the victim did not return back from her school. He along with the mother of the victim as well as other people went towards the Chankuchi Public School in search of the victim and on the way at the road near the

polytechnic school the wearing chappal of the victim was noticed by the mother of the victim and they immediately went to the jungle near the polytechnic school and noticed the victim in senseless and naked condition at the jungle. They also noticed the accused near the victim. The villagers apprehended him and victim was sent to the hospital. It is disclosed that police came and arrested the accused.

- 12. PW-7, Bina Talukdar is the teacher of the school where the victim studied. She heard about the commission of rape upon the victim by a persons at the jungle while she was coming back from the school.
- 13. PW-8, Dr. Urmi devi Choudhury is the Medical Officer of this case. On 24/4/17 while she was working as M & H.O-1 at SMK Civil Hospital, Nalbari on that day she examined Miss 'X', aged 15 years, D/O-Dipak Talukdar of village chankuchi, who was brought by WPC 492 Kamini Sarania in connection with Nalbari PS GDE No.847/17. Medical examination of the patient was done in presence of Pratibha Patowary. The history of the case as narrated by the patient was that the patient was forcefully taken away by a man to a jungle when she was coming from school and the man established physical relationship with her forcefully one time at about 3-30 pm on 24/4/17. On examination of the patient she found the following:-

Her external genitalia was found healthy. Labia majora, labia minora, vulva and perineum were healthy. A tear was seen at the posterior part fourchette (surrounded area of vaginal opening) of 5 cm x 5 cm size. Vagina and cervix were found healthy. Her LMP was day20. Vagina admits 2 fingers with difficulty. Vaginal swab was sent for microscopic examination for sperm determination to SMK Civil Hospital, Nalbari and FSL Kahilipara. Report from SMK civil Hospital Nalbari showed negative result. Report of FSL Kahilipara was not received till time of submission of her medical report.

It is disclosed that one brown colour panty, one black colour "semis" which were wearing by the victim and two numbers of glass slides containing vaginal swab along with 3 nos of sample containing dried vaginal swab of the victim were handed over to police for onward transmission to FSL, Kahilipara for forensic test. USG of lower abdomen was advised; normal study was found from the report. Adv- normal study was found. X-Ray was advised for age

determination and from the X-Ray report estimated skeletal age is found to be above 14 years and bellow 16 years.

Doctor opined that victim is consisted with recent sexual assault or forceful vaginal penetration. It is disclosed that as two fingers can be entered into the vagina definitely there is vaginal penetration. She exhibited Ext-3 as the medical report and Ext-3(1) is his signature.

14. PW-9, Manalisha M. Bhakta is the I/O of this case. On 24/4/17 while she was working as attached Officer at Nalbari PS, on that day the OC, Nalbari PS received an information from the Gaonburah of Chankuchi village that at Jengpara Chuburi of chankuchi village one differently abled girl Priyanka Talukdar was raped by some miscreant and public gathered at the PO and physically assaulted the miscreant. On receipt of the information the O/C, Nalbari PS entered the information in Nalbari PS GDE register as GDE bearing No.847 dated 24/4/17 and entrusted her with the charge of investigation. She visited the PO which is near the polytechnic Institute, Chankuchi village, Nalbari. She met the accused Bipul Khaund at the said place. She identified the accused present at the dock as the person whom she met at the PO. She sent him to SMK Civil Hospital Nalbari as he was injured due to the assault by the public. She prepared sketch map of the PO. Ext-5 is the sketch map of the PO and Ext-5(1) is her signature. She visited the house of the victim which is at Chankuchi village and he recorded the statement of the victim as well as some other witnesses. She brought the victim to SMK Civil Hospital, Nalbari for medical examination. The victim was examined by Doctor.

She seized the wearing clothes of the victim i.e one brown colour panty, one black colour semis which were handed over to her by the M.O during medical examination. She also seized two numbers of glass slides containing vaginal stain and three numbers of samples containing dried vaginal swab of the victim which was handed over to her by the M.O. and she exhibited Ext-4 is the seizure list and Ext-4(2) as her signature. She sent the seized articles to FSL, Kahilipara for forensic examination. Thereafter she collected the report of FSL, Kahilipara and medical report from SMK Civil Hospital, Nalbari. The accused was produced before the CJM, Nalbari.

During cross-examination she stated that the accused was also sent to the hospital and he was treated at hospital for three days and semen or blood of the accused was not sent for forensic examination. she also disclosed that witness Jeuti Talukdar during her statement u/s-161 CrPC did not disclose before her that she witnessed her daughter in naked condition; that she witnessed the accused committing rape upon her daughter; that she noticed blood oozing out from the private parts of her daughter and that her daughter informed her that her (victim) mouth was gagged and she was brought to the jungle by the accused. she also disclosed that victim was a bit mentally retarded but she was studying at school during the period of occurrence. she also disclosed that she submitted charge-sheet after investigating the case properly.

- 15. PW-10 Ranu Bora Handique is the Scientific Officer. On 05/05/17 while he was working as Scientific Officer, Serology Division at Directorate of Forensic Science, Kahilipara, on that day she received a parcel from the Director through her departmental in charge which was sealed with cloth cover consisting of 4 exhibits in connection with Nalbari PS Case No. 265/17. There was seal impression of the Addl. SP Nalbari. Following articles were found in the parcel:
- (iv) One brown coloured panty which contains stain of suspected semen, marked as "A", which is again marked as Sero-3803/A.
- (v) One black coloured semis which contains stain of suspected semen, marked as "A1", which is again marked as Sero-3803/A1.
- (vi) Three nos of vaginal swab socks in cotton gauze, marked as "B", which is again marked as Sero-3803/B.
- (vii) Two nos of vaginal semen glass slide of victim (one slide was broken), marked as "C", which is again marked as Sero-3803/C.

On examination of the exhibits, following results were found:

- (i) Ext. No. SERO-3803/A, SERO-3803/A1 and SERO-3803/C gave negative test for semen.
- (ii) Ext- SERO–3803/B gave positive test for human semen.

She exhibited Ext-7 is her report and Ext-7(1) as her signature. Ext-8 is exhibited as the forwarding letter and 8(1) as the signature of Director cum Chemical Analyzer which is known to her

- 16. The learned counsel for the accused in course of his argument pointed out some contradiction between the testimony of the mother of the victim with that of her earlier statement before the I/O u/s-161 CrPC and basing upon the said contradiction submitted that the contradictory evidence of such witness should not be relied upon. It is also submitted that act of the victim during process of attempt of rape was very much surprising. Pointing out to the evidence of victim it is submitted that victim did not raise hullah while she was raped by the accused. It is submitted that victim is a special/ mentally retarded child and there is chance of tutoring and court should not record conviction of the accused on the basis of the testimony of such witness. It is also submitted that though as per the evidence of the scientific officer the vaginal swab which was marked as Sero-3803/B) and which was examined by her at FSL, Kahilipara contains human semen yet it is not established that the same belongs to the accused. It is also submitted that the villagers wanted to sent away the accused from the village as he was found often in drunken condition and hence false ejahar has been lodged against him. It is strenuously argued that if such incident of rape would have been occurred then certainly there would have been sign of injury on the body of the victim but Doctor did not find any external injury on the body of the victim. On the basis of above arguments the learned counsel prayed for acquittal of the accused.
- 17. While considering the evidence on record it is found that the whole prosecution case rest on the evidence of the lone eye witness who is the victim herself and who is a child witness. The other witnesses are reported witnesses. It is well settled principle of law that testimony of a child witness should not be rejected only on the ground of the witness being of tender age but the evidence of such witness has to be scrutinized with care and caution.
- 18. Section 118 of the Indian Evidence Act dealt with the testimony of a child witness. This section contemplates that all person are competent to testify unless the court considers that by reason of tender year, extreme old age, disease or infirmity they are incapable of understanding the questions put to them and giving rational answers to them.

- 19. Our Hon'ble High Court in (2007) 3 GLR 612 in para 13 held as follows: "A bare perusal of the provisions of law above mentioned would go to manifestly indicate that a person either a minor or lunatic is not incompetent to testify, unless he is prevented by his minority or lunacy as the case may be from understanding the questions put to him and giving rational answers to them."
- 20. On the back drop of above the settled principle of law regarding the competency of child witness now let me scrutinize the testimony of the victim who is examined by the prosecution as PW-3. In the present case to test the competency of the victim who is a slightly mentally retarded child witness and regarding which there is no denial on the part of the defence, various questions were put to ascertain whether she has proper understanding or not so as to depose and after such examination while it was found that she gave rational answers and has proper understanding, then only evidence of the victim was recorded. She during her evidence vividly described how on the date of occurrence at about 3 pm after closing of her school while she was returning back to her house, on her way the accused taking her in his lap brought her to the jungle. It is further revealed that while the accused took her to the jungle she cried but the accused gagged her mouth by his hands and he laid down her over the ground and unclothed her. Thereafter he pressed her breast and bit her at her breast. It is also disclosed that thereafter he touched her cheek and entered his male organ at her private part as the result of which blood oozed out from her private part. At that time her mother and the villagers reached the said place and then brought her to the house. The evidence of this witness is fully corroborated by her 164 CrPC statement which was recorded by Magistrate. Her statement got recorded four days subsequent to the incident and contradiction is found between her testimony before the court and her 164 CrPC statement. Nothing could be elicited by the defence during the cross-examination of the victim to show that she had stated falsely against the accused regarding committing rape upon her by the accused. Nothing could be shown by the defence why the victim would falsely implicate the accused with such type of shamefull occurrence. No motive is found why this child witness would speak falsely about such type of incident implicating the accused. Usually girls of assamese society are very much shy in nature and they would not speak about such type of incident on imagination. From the very childhood the female child of

assamese society tries to conceal their private parts from others and it is unbelievable that child of such assamese society would concoct a story involving herself with such a shameful occurrence. Her evidence shows that her mother and villagers arrived at the place of occurrence just after the incident.

21. The evidence of the victim got credence from the evidence of her mother PW-2 Jeuti Talukdar and independent witnesses PW-4, Ajit Talukdar, PW-5 Sanjib Talukdar and PW-6 Bipul Talukdar. The testimony of the mother of the victim Jeuti Talukdar and the independent witnesses PW-4,5 & 6 fully corroborated the evidence of the victim regarding the fact that they noticed the victim inside the jungle near the Polytechnic school in naked condition and that accused was present near her. According to their evidence they went in search of the victim who did not return back from the school after closing of the school on the date of occurrence. As per the evidence of the mother of the victim her daughter Miss "X" was a student of Chandkuchi Public School at the time of occurrence and she studied in class (VI) during that period. She disclosed that her daughter did not return back from school in spite of her school was over. The villagers PW-4, 5 & 6 were informed by Manisha who is the elder sister of the victim. All of the above villagers and the mother of the victim went towards the school where the victim studied in search of the victim. Their evidence showed that on their way Jeuti Talukdar the mother of the victim noticed the wearing chappal of the victim near Polytechnic school which is situated on the same way to the school of the victim. According to these witnesses noticing chappal they went to the jungle which is near the Polytechnic school, in search of the victim and noticed the victim in naked and senseless condition inside the jungle. They also noticed the accused standing near the victim. They disclosed that the victim was brought to her house and thereafter to the hospital. Mother of the victim disclosed that on inquiry she revealed that she was dragged to the jungle by the accused by gagging her mouth while she was returning back from school and he did bad work with her. The defence could not dislodge the evidence of the above witnesses in spite of vigorous cross. Only except some minor contradiction in the evidence of PW-2 which does not go to the root of the case, no major contradiction could be brought out by the defence. Nothing could be brought by defence why the villagers and the mother of the victim who had no enmity with the accused would falsely implicate the accused. No mother would concoct such

a case against an innocent person. Though the parents of the victim knew that publication of such type of incident will create stigma in the chastity of the victim and will cause problem in the future life of the victim yet they dared to lodge the ejahar against the accused with a hope that the victim would get justice for the heinous act done by the accused upon her. No father would file a false case against a person involving chastity of his own daughter. Though there is some minor contradiction in the evidence of the mother of the victim with that of her earlier statement before the I/O yet the said contradictions cannot dislodge her whole evidence. It is found from her evidence that she during her evidence disclosed that she noticed the accused doing bad work with the victim while they entered into the jungle but the said fact was not stated by her before the I/O. For the said contradiction her evidence relating to searching the victim as she was missing and finding the victim inside the jungle in naked condition and accused standing near her cannot be thrown away. Because the villagers PW-4,5 & 6 fully corroborated her evidence relating to the fact that they accompanied mother of the victim in search of the victim and noticed the victim in naked condition inside the jungle and also about noticing the accused near the victim. Some exaggeration in the testimony of the mother of the victim cannot negate the trustworthy and cogent evidence of the victim that she was raped by the accused.

- 22. The prompt act of lodging the ejahar also brings credence to the testimony of the victim. The father of the victim immediately on the date of occurrence lodged the ejahar. He on the date of occurrence could know about the incident from his cousin brother Ajit Talukdar over phone and he lodged the ejahar on that very day. The ejahar fully corroborated the testimony of the victim.
- 23. The Doctor's evidence also corroborated the evidence of the victim that she was raped. Doctor's evidence shows that on examination of the victim the doctor found a tear at the posterior part of fourchette area i.e surrounded area of vaginal opening which is $5 \text{ cm } \times 5 \text{ cm}$ in size. Doctor also opined that there is recent sexual assault or forcefull vaginal penetration . Doctor also deposed that as two fingers can be entered into the vagina so definitely there is vaginal penetration. The evidence of the Doctor and the medical report Ext-3 shows that

there is tear in the private part and there is forcefull vaginal penetration. Doctor's evidence brings credence to the evidence of the victim.

- 23. Doctor's evidence also showed that after examination of the victim two numbers of glass slide containing vaginal swab along with three numbers of sample containing dried vaginal swab of the victim were handed over to police for onward transmission to FSL, Kahilipara for forensic test. The I/O also testified that above samples were handed over to her by the medical officer. From the evidence of both M/O & I/O it appears that the panty and 'semij' of the victim which was wearing by the victim at the time of examination by the Doctor were also handed over to the I/O and the I/O established Ext-4 as the seizure list relating to the above mentioned articles. It is also disclosed by I/O that she sent the said articles for forensic examination to FSL Kahilipara. The scientific officer PW-10 Renu Bora Handique examined the seized clothes, two numbers of glass slide containing vaginal swab and three numbers of vaginal swab socked in cotton gauge. As per the scientific officer on examination she found that the three numbers of vaginal swab socked in cotton gauge which is marked as Sero No.3803/B gave positive test for human semen. The evidence of scientific officer and her report Ext-7 fortifide the evidence of the victim that she was raped by the accused.
- 24. The negative test for semen in the wearing clothes of the victim which was handed over to the I/O by the medical officer and which was sent for forensic examination cannot bring any doubt regarding the commission of rape upon the victim by the accused as because the evidence of the mother of the victim as well as the villagers showed that victim was found in naked condition inside the jungle while they recovered her. The victim also testified that she was unclothed prior to the commission of rape upon her. So definitely the clothes which were sent to forensic examination was not on the body of the victim at the time of commission of rape and so it is obvious that there cannot have any sign of semen in those clothes.
- 25. Marshelling the evidence on record it appears that it is established by the prosecution beyond the shadow of doubt that on 24/4/17 at about 2-30 pm the accused Bipul Khound forcibly brought the victim to the jungle near the

Chandkuchi Polytechnic Institute, Nalbari and thereafter removing her clothes committed penetrative sexual offence upon the victim.

- 26. Now let me come to the point relating to the age of the victim at the time of occurrence. The I/O of the instant case did not seize the school certificate and birth certificate of the victim. However, the victim's father testified that the age of his daughter, Miss "X" was 14 years at the time of occurrence. The evidence of the parents of the victim showed that the victim was a student of class VI at the time of occurrence. The defence side did not agitate about the age of the victim which is disclosed by the parents of the victim. The medical evidence showed that radiological age of the victim is above 14 years but below 16 years. The defence nowhere challenged the age of the victim as described by the M.O. It is established by the prosecution that victim who is a minor girl aged below 16 years was raped by the accused on the date of occurrence. The prosecution has well established a case u/s-376 IPC r/w section 4 of the POCSO Act,2012 beyond all reasonable doubt against the accused and accordingly accused is convicted under the above sections of law.
- 27. In the instant case charge was also framed against the accused u/s-307 IPC. But the evidence is lacking in this regard. Prosecution has miserably failed to prove a case u/s-307 IPC against the accused beyond doubt, so he is acquitted from offence u/s-307 IPC.
- 28. The prosecution has established a case u/s- 4 of the POCSO Act and u/s-376 IPC against the accused beyond all the reasonable doubt. Prosecution has failed to establish a case u/s- 307 IPC against the accused. Accused is acquitted from the offence u/s- 307 IPC.
- 29. Heard the accused on the point of sentence. He prayed for showing him leniency. After hearing the accused on the point of sentence. He is sentenced to undergo R/I for Life and also to pay a fine of Rs.5,000/- i/d, further S/I for another 6 (six) months for committing offence u/s- 4 of the POCSO Act. Accused is also sentenced to undergo R/I for Life and also to pay a fine of Rs.5,000/- i/d, further S/I for another 6 (six) months for committing offences u/s- 376 IPC. Both the sentences will run concurrently. The period of detention already

undergone by the accused shall be set off against the period of sentence u/s-428 CrPC. The fine, if realize, be paid to the victim.

30. Seized articles be destroyed in dew course of time.

31. It appears from the record that the victim who is a minor girl has suffered

from trauma due to the commission of rape upon her by the accused.

Considering the mental and physical suffering of the minor victim for the act

done by the accused, I feel that compensation should be given to the victim. The

matter of compensation is recommenced to the District Legal Service Authority,

Nalbari. The District Legal Service Authority, Nalbari will decide the quantum of

compensation to be awarded to the victim.

32. Judgment is pronounced at the open court in presence of the accused.

33. Judgment written in separated sheet be kept with record.

34. Furnish a copy of judgment free of cost to the accused. Send a copy of

judgment to the District Magistrate, Nalbari and District Legal Service Authority,

Nalbari.

Given under my hand and the seal of this court on this the 30th day of

November/2018.

Send a copy of judgment to District Magistrate, Nalbari.

Dictated and corrected by me

Session Judge, Nalbari.

Sessions Judge, Nalbari.

Contd.

APPENDIX

A. <u>Prosecution witness</u>.

PW-1 Sri Dilip Talukdar.

PW-2 Smt. Jeuti Talukdar.

PW-3 Miss "X".

PW-4 Sri Ajit Talukdar.

PW-5 Sri Sanjib Talukdar.

PW-6 Sri Bipul Talukdar.

PW-7 Smt. Bina Talukdar.

PW-8 Smt. Urmi Devi Choudhury(M.O).

PW-9 Smt. Manalisha M. Bhakta (I.O).

PW-10 Smt. Renu Bora Handique(scientific Officer).

B. <u>Defence witness.</u>

C.

Nil.

D. <u>Prosecution Exhibit.</u>

Ext-1 Ejahar.

Ext-2 Statement u/s-164 CrPC.

Ext-3 Medical report.

Ext-4 Seizure list.

Ext-5 Sketch map.

Ext-6 Charge-sheet.

Ext-7 FSL report.

Ext-8 Forwarding letter.

E. <u>Defence Exhibit.</u>

Nil.

Sessions Judge, Nalbari.