HEADING OF JUDGEMENT IN SPECIAL CASES:

DISTRICT: DHUBRI.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 20/2016

UNDER SECTIONS: 366-A/376 IPC

READ WITH SECTION 4 OF THE POCSO ACT.

STATE OF ASSAM

VS.

- 1. SOLEMAN HAQUE &
- 2. RAJIB MIAH

PRESENT:- DIPAK THAKURIA, B.A., LL.M., AJS
SPECIAL JUDGE,
DHUBRI.

APPEARANCES:-

B. R. BASUMATARI, SPECIAL P. P. FOR THE STATE.
Y. A. BEPARI & E. HUSSEIN, ADVS. FOR THE DEFENCE.

DATE(S) OF EVIDENCE:- 30-08-2016, 29-09-2016,

02-06-2017, 28-06-2017,

30-03-2019, 24-04-2019.

DATE OF ARGUMENT:- 08-05-2019.

DATE OF JUDGMENT:- 22-05-2019.

J U D G E M E N T

1. Accused Soleman Haque and Rajib Miah stand trial for the offences punishable under sections 366-A/376 IPC read with section 4 of the POCSO Act for allegedly kidnapping and committing rape or penetrative sexual assault to a minor girl on 06-07-2014 at about 5.30 p.m. at village Pubergaon under Mankachar police station.

- 2. The facts of the case, as revealed from the ejahar, in brief, are as follows:- that on 11th July 2014 at about 5.30 p.m. the 13/14 year old daughter of the complainant was returning home from her tuition class. In the mean time, from hospital road of Pubergaon the accused persons and another by force boarded the girl into a tempo towards Kakaripara and on the road the accused persons committed rape on her and threw her on the road. The victim girl after getting sense was able to go to the house of her paternal aunt who is a resident of village Sialtari.
- **3.** After receiving the ejahar, Officer-in-charge of Mankachar P. S. registered a case as Mankachar P. S. Case No. 310/2014 under sections 366-A/376/34 IPC.
- **4.** During investigation the I. O arrested the accused Rajib Mia, produced him before the Court and the Court remanded him to judicial custody, recorded the statements of witnesses under section 161 Cr. P. C. Also recorded the statement of the victim girl under section 164 Cr. P. C., medically examined her. By completing the investigation, I. O. has submitted charge sheet against the accused persons to prosecute them under sections 366-A/376/34 IPC showing accused Soleman Haque as absconder.
- **5.** During investigation the accused Rajib Miah was granted bail.
- **6.** Accused Soleman Hague was arrested and subsequently he was also granted bail.
- **7.** Learned SDJM (M) Hatshingimari furnished the copies to the accused persons and committed the case to this Court as the offences were exclusively triable by the Court of Session.
- **8.** One of my learned predecessors after hearing both the parties and perusal the case record and case diary formal charges against the accused persons under sections 366-A/376 IPC read with section 4 of POCSO Act were framed. Charges so framed were read over and explained to the accused which they pleaded not guilty and claimed to be tried.
- **9.** The case was registered as Sessions Case No. 100/2016. Vide order dated 27-06-2016 one of my learned predecessors directed to register the case a Special Case and accordingly the case was renumbered as Special Case No. 20/2016.
- **10.** The prosecution examined six witnesses including medical and investigating officers and

closed the evidence.

- **11.** During trial the accused persons defaulted and NBW/As were issued against them. The accused persons were arrested by police and produced them in the Court. So, they were taken judicial custody and remanded to hajot.
- **12.**After completion of the prosecution evidence, the statements of the accused persons were recorded u/s 313 Cr. P. C. by putting questions to them from all incriminating evidence appearing against them on record and thereby giving them an opportunity to meet the same. In response to which, the accused denied the allegations as well as evidence on record and examined two witnesses in defence.
- **13.**Heard learned counsels appearing for the parties and perused the evidence on record.

FOLLOWING POINTS HAVE BEEN SET UP FOR DETERMINATION

Whether the accused persons on 06-07-2014 at about 5.30 p.m. at village Pubergaon No. 1 under Mankachar police station kidnapped the minor daughter of the complainant with the intent to illicit intercourse with another person and thereby accused persons are liable to be punished under section 366-A IPC?

Whether the accused persons on the same day time and place committed rape on the minor daughter of the complainant and thereby the accused persons are liable to be punished under section 376 IPC?

Whether the accused persons on the same day time and place committed penetrative sexual assault on the minor daughter of the complainant and thereby the accused persons are liable to be punished under section 4 of the POCSO Act?

DISCUSSIONS ON THE POINTS FOR DETERMINATION AND THE DECISION ARRIVED THEREON WITH REASON:

14.In order to establish the charges framed against the accused persons, the prosecution has examined six witnesses. Among them P. W. 5 is the complainant and mother of the victim girl. P. W. 1 is the victim girl and P. W. 2 is her father. P. W. 3 Dr. Rinku Ahmed is

the medical officer, P. W. 4 is the relative of the victim girl and P. W. 6 Israil Haque is the investigating officer.

- **15.**The defence examined Yasmin Begum as D. W. 1 Moulana Md. Samsul Haque as D. W. 2.
- 16. Learned Special Public Prosecutor B. R. Basumatary has submitted that the victim girl at the relevant time was a student and on the day of the incident she was returning home after attending her tuition classes. On the road the accused persons and another who subsequently declared as Child-in-conflict with law, kidnapped the victim girl into an isolated place and committed rape on her. In this case the prosecution examined all the material witnesses and they have supported the case of the prosecution. The principal witness for the prosecution is the victim girl and she has given a detailed account what had happened with her. The statement of the victim girl given before Judicial Magistrate and the deposition given by her in the Court are found consistent and trustworthy. There is nothing to disbelieve the prosecution witnesses. The prosecution is able to establish the charges framed against the accused persons beyond all reasonable doubt. So, has prayed to hold the accused persons guilty under framed charges and impose adequate punishment to them.
- 17. On the other hand learned counsel appearing for the defence Y. A. Bepari has submitted that the charges framed against the accused persons are very serious in nature. It is the duty of the prosecution to establish the charges against the accused persons beyond all reasonable doubts. In the case in hand the contents of the ejahar do not tally the statement of the victim girl. The mother of the victim girl lodged the ejahar after hearing about the incident from her daughter as the ejahar was filed after three days of the alleged incident; so, there found material contradiction between the contents of the ejahar and the oral testimony of the victim girl. The medical officer has not supported the case of the prosecution. Besides it the prosecution has failed to examine independent witnesses, particularly the tempo driver in whose tempo the victim was allegedly had taken away. The case against the Child-in-conflict with law has been done in JJB and he was acquitted of the charges. Learned counsel for the defence has further submitted that on the day of the alleged incident accused Rajib Mia solemnized his marriage and the defence is able to prove the same by examining two witnesses. So, it is not believable that on the day of his marriage the groom engaged him in an offence of rape. The prosecution has failed to establish the charges against the accused persons

beyond all reasonable doubts. So, the accused persons deserve benefit of doubt. Hence, has prayed to acquit the accused persons.

18. The contents of the ejahar (Ext. 5) show that the alleged incident took place on 06-07-2014 at about 5.30 p.m. on the public road of village Pubergaon No. 1 while the alleged victim was returning home from her tuition class. The complainant mentioned the names of the accused persons in the ejahar and the accused persons compelled the victim girl to board into a tempo and proceeded towards Kakripara and in the midst of the road the victim was raped by them and threw her near the road in unconscious condition. The victim girl regained her sense after some times and somehow was able to go to the house of her paternal aunt. The ejahar was lodged by the mother of the victim girl whom prosecution examined as P. W. 5. She put her thumb impression in the ejahar. So, the prosecution exhibited the ejahar through the investigating officer Israil Haque (P. W. 6). P. W. 5 being the complainant and the mother of the victim is an important witness for the prosecution. The complainant has deposed that accused Soleman proposed to marry her daughter. She refused the proposal as at that time her daughter was 14 years old and reading in school. Thereafter the accused kidnapped her daughter and raped on her. Later on they found her daughter in the house of the husband of the sister of her husband. P. W. 5 though lodged the ejahar but she has not disclosed from whom she got the information that the accused persons kidnapped her daughter and committed rape on her. From her cross-examination it transpires that at the time of incident she was in her residence. She has denied the suggestion of the defence that she did not disclose that one of the accused Soleman proposed to marry her daughter which she refused as her daughter was just 14 years old and the accused persons kidnapped and committed rape on her daughter. Undoubtedly the alleged victim is the star witness for the prosecution whom the prosecution has examined as P. W. 1. Her deposition shows that on the day of the incident at about 5 p.m. she was returning home and she met the accused persons who confronted with her on the way and dragged her and put her into an auto rickshaw. They took her to a very isolated place covered by vegetation. The accused persons chocked her and then striped her clothes and had sexual intercourse with her against her will. Around 11 p.m. she was dropped at Kakripara daily market where she met a person who helped her and took her to his house in a tempo and kept her in his house in that night. The person informed about the incident to his house and later he took her to her house. She was 13 years old and she has exhibited her birth and school certificate as Ext. 1 and Ext. 2 respectively. Her

statement was recorded in the Court under section 164 Cr. P. C. Ext. 3 is her statement and Ext. 3 (1) to Ext. 3 (4) are her signatures. From her cross-examination it reveals that there were two girls of her locality were doing tuition with her. By the side of the place from where she was forced into auto rickshaw there was a grocery shop. She raised alarm; but none from the shop had come to rescue her. Kakripara was 20 miles away from where she was forced into three wheeler and the road was a busy one. At 12 midnight she came to main road from jungle and she asked the name of the driver of the auto rickshaw who brought her to his house. She could not say the name of that person who took her to his house and the next day brought her to her house. Her statement was recorded by police after 10/15 days and police seized her wearing apparel. She has denied the suggestion of the defence that on the day of the incident accused Rajib Mia entered into marriage with one Yasmin of Kakripara and the marriage was solemnized at Diyara Bazar.

- 19.P. W. 2 is the father of the victim. He has also deposed that accused persons had taken his daughter forcibly while she was returning home from her tuition classes. The accused persons demanded an amount of Rs. 2,00,000/ from him over phone for release of his daughter. On being asked his daughter told him that the accused persons committed rape on her. His cross-examination shows that after two days he brought back his daughter from the house of his son-in-law Abdul Nur of Sialtari. Police did not interrogate him during investigation. His daughter told him that there was a superi processing unit near the place of occurrence. P. W. 4 is the cousin of the victim girl. His deposition shows that on the day of the incident at about 11 p.m. the victim knocked the door of his house. He opened the door and the victim told him that three youths brought her from her house and left her in front of his house. The victim told the names of the accused persons. The girl stayed the night in his house and the next day morning he informed the matter to her quardian who took away her from his house. In crossexamination he has stated that he did not inform about the incident to her parents immediately after she came to his house. He did not see how the victim girl came to his house.
- **20.** The prosecution examined two official witnesses Dr. Rinku Ahmed as P. W. 3 who examined the victim girl on 14-07-2014 and found that the girl was normal, she detected no mark of violence during the examination and no spermatozoa was seen on the vaginal smear. Her opinion was not consistent with recent sexual intercourse. She has

exhibited the report as Ext. 4 and authenticated her signature in the report as Ext. 4 (1). Israil Haque (P. W. 6) is the investigating officer. His evidence shows that he was entrusted to do preliminary investigation of the case. During the course of investigation he visited the place of occurrence, prepared the sketch map of place of occurrence, recorded the statements of the witnesses and also recorded the statement of the victim under section 164 Cr. P. C. After completing the preliminary investigation he handed over the case diary to O. C. Mankachar and later on SI Bipul Ch. Hazarika on the basis of his preliminary investigation submitted charge sheet vide Ext. 6. Ext. 6 (1) is the signature of Bipul Ch. Hazarika which he is acquainted with. His cross shows that the alleged incident took place on 06-07-2014 and he recorded the statement of the witnesses on 11-07-2014. There was a grocery shop at a distance of fifty meters from the place of occurrence. He did not record the statements of the shop keeper. He did not prepare site plane of the place where the alleged rape was committed.

21. Now let us appreciate the evidence on record. From the evidence of the non official witnesses it appears that the alleged incident took place at about 5 p.m. As per contents of the ejahar after the incident the victim girl visited the house of her paternal aunt and took shelter for that night. The complainant has also deposed in the same tune. But the alleged victim has depicted a different story. As per her, on the night of the incident at about 11 p.m. she was dropped at Kakripara daily market and she met one person who helped her. The person took her to his house in a tempo and kept her in that night. Next day morning he took her to his house. She does not know the name of the person as she did not ask his name. From the evidence of the alleged victim it appears that the person who helped her was not her relative as she does not know his name. If she visited the house of her paternal aunt as stated by her mother definitely she would have been disclosed that she took shelter in the house of her paternal aunt. The interesting fact is that the prosecution examined one of the cousins of the victim (P. W. 4) who disclosed another story. According to him on the night of the incident at about 11 p.m. the victim knocked the door of his house and the victim told him that the accused persons kidnapped her from her house. The allegation is that the accused persons kidnapped her from the road while she was returning from tuition classes. It is very doubtful actually where the victim girl was on the night of the incident. Was she in the house of her paternal aunt as stated by her mother or in the house of one person who met her in the road or in the house of P. W. 4.

- **22.**The father of the victim girl depicted a new story which had not been depicted by any other witnesses. According to him after kidnapping his daughter the accused persons demanded rupees two lakhs from him. Demand of rupees two lakh is a serious matter. But the same has not been disclosed by other witnesses is shocking. So, it is not safe to accept the evidence of the father of the alleged victim that accused persons demanded rupees two lakhs from him for release of his daughter.
- 23. The alleged victim has deposed that the accused persons removed her clothes and committed rape on her. The investigating officer in his deposition has confirmed that the alleged victim did not disclose before him that the accused persons removed her clothes and committed rape on her. This portion of the evidence of the alleged victim is nothing but development of the case during trial. If the statement of the alleged victim is assumed to be true that after removing her clothes three persons committed rape on her definitely her wearing apparel would have been torn. From the evidence of P. W. 4 it appears that after the incident the victim girl visited his house; but he detected no abnormality with her. Even the victim girl did not disclose him that she was raped by the accused persons. So far allegation of rape is concerned the medical evidence does not support the prosecution case.
- **24.** After conclusion of the prosecution evidence the defence examined two witnesses in defence. D. W. 1 is Yasmin Begum who is the wife of accused Rajib Miah. She has deposed that on 06-07-2014 her marriage was solemnized with the accused Rajib Miah and the ceremony of marriage was performed from 6 p.m. to 7.30 p.m. In cross-examination she has stated that at 6 p.m. accused Rajib Miah arrived at her house with his relative. D. W. 2 Moulana Md. Samsul Haque has also deposed that on 06-07-2014 he performed marriage ceremony of accused Rajib Miah and Yasmin. He has exhibited the Kabin Nama as Ext. A and authenticated his signature there on as Ext. A (1). On 08-07-2014 the kabin nama was issued by Kazi Abdul Rahman. Ext. A (2) is the signature of Kazi Abdul Rahman which he is acquainted with. In cross-examination he has stated that he does not know where accused Rajib Miah was before he reached the house of Yasmin.
- **25.**On perusal the Ext. A it appears that on 06-07-2014 marriage of accused Rajib Miah was solemnized with Yasmin in the house of Yasmin. The oral testimonies of both DWs are found consistent and the prosecution has failed to discard the same by asking appropriate cross-questions. Ext. A, the Kabil Nama, confirmed the marriage of the

accused Rajib Miah on the day of the incident.

26. If the marriage of Rajib Miah was solemnized on the day of the incident at about 6 p.m.

in the house of Yasmin now the question arises how the same person kidnapped the

victim girl from 5 p.m. After proper scrutiny of the evidence of the alleged victim it

appears that after she was kidnapped at about 5 p.m. the accused persons kept her till

11 p.m. If that is so, accused Rajib Miah cannot solemnize his marriage with Yasmin on

that night. On the other hand if accused Rajib Miah was marrying Yasmin and his

marriage ceremony was performing from 6 p.m. to 7.30 p.m. so, question of kidnapping

the victim by him with other accused persons does not arise.

27. The basic principle in criminal jurisprudence is that the prosecution has to establish the

charge against the accused beyond all reasonable doubt. In the case in hand, after

carefully scanning the evidence of the prosecution witnesses and the defence witnesses,

it is concluded that the prosecution has failed to establish the charges against accused

persons beyond all reasonable doubt. Hence, accused persons deserve benefit of doubt

and accordingly they are acquitted of the charges on benefit of doubt and they are set

liberty.

28. The accused persons are in judicial custody. So, they are allowed to go on bail of Rs.

10,000/ each with a surety of like amount in default they will remain in jail for next six

month as per provision of section 437-A Cr. P. C.

29. Given under my hand and seal of this Court this the 22nd day of May 2019.

(D. Thakuria)

Special Judge, Dhubri.

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 20/2016

UNDER SECTIONS: 366-A/376 IPC READ WITH SECTIOM 4 OF THE POCSO ACT.

STATE OF ASSAM

VS.

RAJIB MIAH & ANOTHER

<u>APPENDIX</u>

A. Prosecution exhibits:

Ext. 1 : Birth certificate.

Ext. 2 : School certificate.

Ext. 3 : Statement of the victim u/s 164 Cr. P. C.

Ext. 4 : Medical report.

Ext. 5 : Ejahar.

Ext. 6 : Charge sheet.

B. Defence Exhibits:

Ext. A : Kabin Nama.

C. Court Exhibits : Nil.

D. Prosecution Witnesses:

P. W. 1: The victim girl,

P. W.2: Father of the victim,

P. W.3: Dr. Rinku Ahmed,

P. W.4: Relative of the victim,

P. W.5: Complainant &

P. W.6: Israil Haque.

E. Defence Witness:

D. W.1: Yasmin Begum &

D. W.2: Moulana Md. Samsul Haque.

F. Court Witness: Nil.

(D. Thakuria)

Special Judge, Dhubri.