#### **HEADING OF JUDGEMENT IN SPECIAL CASES:**

**DISTRICT: DHUBRI.** 

IN THE COURT OF SPECIAL JUDGE: DHUBRI.

SPECIAL CASE NO: 08/2017

UNDER SECTIONS: 376 (2) (i) IPC

READ WITH SECTION 4 OF THE POCSO ACT.

VS.
AZIRUL HAQUE

PRESENT:- DIPAK THAKURIA,
SPECIAL JUDGE,
DHUBRI.

#### **APPEARANCES:-**

B. R. BASUMATARI, SPECIAL P. P. FOR THE STATE. S. K. AHMED, ADV. FOR THE DEFENCE.

**DATE(S) OF EVIDENCE:- 29-07-2017, 18-09-2017,** 

13-11-2017.

**DATE OF ARGUMENT:- 28-06-2019.** 

**DATE OF JUDGMENT:- 12-07-2019.** 

### J U D G E M E N T

- **1.** Accused Azirul Haque stands trial for the offences punishable under sections 376 (2) (i) IPC read with section 4 of the POCSO Act.
- 2. The facts of the case, as revealed from the ejahar, in brief, are as follows:- that on 20-09-2016 the complainant filed a written ejahar before the Officer-in-charge of Dhubri Police station with an allegation that on 19-09-2016 at about 4 p.m. the accused eloped

his 13 year old daughter with a promise to marry her and on that day near Chandkhola Bridge the accused committed rape on her. Thereafter the accused took his daughter to Dhubri town and fled away. His daughter getting no alternative took shelter in the house of a person for that night and next day morning the person sent his daughter to his house. The accused committed rape on his daughter one month earlier too, but threatened her not to disclose the same to anyone.

- **3.** After receiving the ejahar, a case as Dhubri P. S. Case No. 988/2016 under sections 366-A/376 (i) IPC read with section 4 of POCSO Act was registered.
- **4.** The investigating officer arrested the accused and produced him before the Court and remanded to judicial custody, recorded the statements of witnesses under section 161 Cr. P. C. and statement of the victim was also recorded under section 164 Cr. P. C., the victim was medically examined and submitted charge sheet against the accused person to prosecute him under sections 376 (i) IPC read with section 4 of POCSO Act.
- **5.** During investigation the accused was granted bail.
- **6.** After taking the cognizance of the case, process was issued to the accused. Accused appeared and he was allowed to remain on previous bail. Copies were furnished to the accused and after hearing both the parties and perusal the case record and case diary my learned predecessor was pleased to frame formal charges against the accused under section 376 (2) (i) IPC read with section 4 of POCSO Act. Charges so framed were read over and explained to the accused which he pleaded not guilty and claimed to be tried.
- **7.** The prosecution examined five witnesses and closed the evidence.
- **8.** After completion of the prosecution evidence, the statement of the accused was recorded u/s 313 Cr. P. C. by putting questions to him from all incriminating evidence appearing against him on record and thereby giving him an opportunity to meet the same. In response to which, the accused denied the allegations as well as evidence on record and examined him as D. W. 1.
- **9.** Heard learned counsels appearing for the parties and perused the evidence on record.

#### FOLLOWING POINTS HAVE BEEN SET UP FOR DETERMINATION

Whether the accused on 19-09-2016 at night near Chandkhola Bridge under Dhubri police station committed rape on the minor daughter of the complainant and thereby accused is liable to be punished under section 376 (2) (i) IPC?

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

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

- 10. In order to establish the charges against the accused, the prosecution has examined five witnesses. Among them P. W. 1 Dr. Mazida Sultana is the medical officer, P. W. 2 is the complainant, P. W. 3 is the victim girl, P. W. 4 is the uncle of the victim and P. W. 5 Gazibar Rahman is the investigating officer.
- **11.**The accused examined him as D. W. 1.
- 12. Learned Special Public Prosecutor has submitted that the offence is heinous in nature. The accused promised to marry the victim girl who was a minor and eloped her. On that day he committed rape on the victim girl near a bridge and abandoned her. The victim in her evidence has depicted the whole incident elaborately and her deposition has corroborated by other prosecution witnesses. There is nothing to disbelieve the prosecution witnesses. The prosecution is able to establish the charges framed against the accused beyond all reasonable doubt. So, has prayed to hold the accused guilty under framed charges and impose adequate punishment to him.
- 13. On the other hand learned counsel appearing for the defence has submitted that the allegation against the accused is serious in nature. To prove the charges the prosecution has to establish the charges against the accused beyond all reasonable doubt which the prosecution has failed to do so. The medical officer has not supported the case of the prosecution. Besides it the victim was not a minor as shown by the prosecution. She was major girl at the time of the incident. The complainant borrowed an amount of Rs. 50,000/ from him by executing a deed with a promise to return the same within six months; but he had not returned the money. When the accused sought back the money then the complainant filed a false case against him just to harass him. As the

prosecution has failed to establish the charges framed against the accused; so, he deserves benefit of doubt. Hence, has prayed to acquit the accused.

- **14.**Before we proceed, let us reproduce the material parts of the witnesses examined by the prosecution during trial.
  - P. W. 1, Dr. Mazida Sultana is the medical officer. She has deposed that on 21-09-2016 she examined the victim girl at Dhubri Civil Hospital. The victim girl was 13 years old. She was normal. She did not find any mark of injury on her body. She did not find spermatozoa in the vaginal swabs. She did not find any evidence of recent sexual intercourse on the victim. The approximate radiological age of the victim was 15 years. She has exhibited her report as Ext. 1. Ext. 1 (1) is her signature. Ext. 2 is the radiological report. Ext. 2 (1) is the signature of Radiologist Dr. M. D. Laskar which she identifies.
  - **14.2** In cross-examination she has denied the suggestion of the defence that at the time of medical examination the age of victim was not 15 years.
  - 14.3 P. W. 2 is the complainant and the father of the victim girl. He has deposed that at the relevant time his daughter was a student of class VII. On the day of the incident the accused induced his daughter to go to with him and in an isolated place near the Chandkhola Bridge under Dhubri police station committed rape on her. Thereafter the accused took her to the railway crossing in a tempo vehicle and leaving her there fled away. His daughter was crying and then a person of Jhagrarpar Santosh Sheikh asked her what had happened, then she told him about the incident. Santosh Sheikh took his daughter to his house and over phone informed him about the incident. As at that time it was 11 p.m. so he told him that next day morning he would bring his daughter back. Next day morning said Santosh Sheikh sent his daughter in a public vehicle who told him about the incident. Then he filed the ejahar at Dhubri police station.
  - 14.4 In cross-examination he has deposed that the FIR was written by advocate's clerk. He has three sons. They worked in Guwahati. He has denied the suggestion of the defence that the accused also worked in Guwahati with his sons and his sons had taken an amount of Rs. 50,000/ from the accused as advance and the accused came to his house and asked him to return the money. He has further denied the suggestion of the defence that to avoid the liability of returning the money he filed the case against the accused. P. W. 4

is the elder brother of his wife.

- July 2017. She has deposed that about 11 months ago, one day at about 4 p.m. at village Tisterpar, on the road near her house the accused met her and told her that he loves her, wants to marry her and put her in a motorcycle and took her to the Chandkhola Bridge. Thereafter the accused took her to the jungle near the Chandkhola Bridge and committed rape on her. When she tried to shout, the accused gagged her mouth. Thereafter the accused took her towards Dhubri town and near the railway crossing he jumped from the tempo and fled away. Then she started crying at which one Santosh Sheikh came and asked what the matter was. He told him about the incident. He took her to his house and informed her father about the incident over phone. Next day he sent her to her house where she told about the incident to her father. Her father filed the FIR. Her statement was recorded by the Magistrate and she was taken to hospital. Ext. 3 is her statement and Ext. 3 (1) and Ext. 3 (2) are her signatures.
- In cross-examination she has deposed that she knows the accused before the 14.6 incident. On one side of the bridge there was a market. But the incident occurred in the other side of the bridge. The accused took her away about two hundred meters away from Chandkhola Bridge and committed rape on her. There was tree and some bushes near the place of occurrence. When she prevented the accused from committing rape on her then the accused slapped her. There were 6/7 persons in the tempo where she was taken by accused to Dhubri town from Chandkhola Bridge. The passengers asked her what had happened. She tried to tell them; but the accused prevented her from telling anything to them. Within hour they reached Railway crossing. She has denied the suggestion of the defence that she did not tell before the I. O. that the accused took her near from her house to Chandkhola Bridge in a motorcycle and near the jungle at Chandkhola Bridge committed rape on her. She has also denied the suggestion of the defence that she did not disclose before the investigating officer that from Chandkhola Bridge, the accused took her to railway crossing in a tempo vehicle and near railway crossing the accused jumped from the tempo and fled away. She sustained injury in her private parts. From Tisterpar, the accused gagged her mouth by a piece of cloth and forcibly took her in a motorcycle to Dharmasala Market.

At Dharmasala Market the accused removed the cloth from her mouth and took her to the Chandkhola Bridge in a tempo. She did not tell anybody at Dharmasala Market that the accused took her forcibly. She did not tell the passengers of tempo that accused took her forcibly. She has denied the suggestion of the defence that her brothers had taken an amount of Rs. 50,000/ as advance from accused and the accused visited her house and asked her brothers to return the money and then her father filed a false case against him.

- **14.7** P. W. 4 is the maternal uncle of the victim girl. He has deposed that he heard that the accused kidnapped his niece and committed sexual intercourse with her.
- **14.8** In cross-examination he has deposed that the victim girl has three brothers and they work in Guwahati. The accused also works in Guwahati. Dharmasala market is situated at a distance of two kilometers from the house of the victim. He has denied the suggestion of the defence that the brothers of the victim girl borrowed an amount of Rs. 50,000/ from the accused and to avoid the liability of repaying the money they manufactured the case.
- 14.9 P. W. 5 Gaznobi Ahmed is the investigating officer. He has deposed that on 20-09-2016, he was posted at the Dhubri police station as attached officer. On that day the complainant lodged a written ejahar. The Officer-in-charge of Dhubri police station registered the case and entrusted him to investigate the case. He has exhibited the ejahar as Ext. 4 and Ext. 4 (1) is the signature of the Officer-in-charge. During the course of investigation, he visited the place of occurrence and prepared two maps. Ext- 5 is the site plan of the house of the victim and Ext. 6 is the site plan of the place of occurrence. Ext. 5 (1) and Ext. 6 (1) are his signatures. He recorded the statements of the complainant, the victim and other witnesses. He sent the victim girl for medical examination and collected the Medical Report. He also sent the victim girl to the court for recording her statement under section 164 Cr.P.C. and her statement was recorded by the Magistrate. After completion of investigation, he submitted the charge sheet under Sections 376 (2) (i) IPC r/w Section 4 of the POCSO Act. Ext- 7 is the charge sheet and ext- 7 (1) is his signature therein.
- **14.10** In cross-examination he has deposed that in the first line of FIR, the date of registration of the case is mentioned as 20-09-2010. The date of the

signature given by the Officer-in-charge is mentioned as 20-09-2016. In the FIR whitener was used in writing the section 366-A and 376; but there is no signature below the same. The victim girl told him that she was 13 years old. But no document was produced to ascertain her age. He wrote to the doctor to determine the age of the victim. The victim told him that she was reading in class VI at Dharmasala M. E. School; but he did not collect her school certificate to prove her age. The victim girl told him that the accused asked her over phone to go Dharmasala around 8/9 a.m. She also told him that at around 4 p.m. the accused told her over phone that he would marry her and called her to Dharmasala market and she went to Dharmasala market and accused took her to Dhubri in a tempo. He did not examine Santosh Sheikh. The distance from the house of the complainant to Chandkhola Bridge is about 4 km. In Ext. 6, the "A" is the place of occurrence and same is a place below a tree. There were many foot prints in the place of occurrence. The place of occurrence is situated at some distance from the concrete road; but he has not mentioned what was the distance in the Ext. 6. He has not seized the cloth of the victim girl.

- **14.11** Accused examined him as D. W. 1. He has deposed that the son of the complainant and he used to work in Guwahati. By doing labour work he accumulated Rs. 50,000/ and handed over the same to his father. One day son of the complainant asked him for a loan of Rs. 50,000/. He told him that he gave the money to his father. The complainant approached his father and his father gave him an amount of Rs. 50,000/ on 10-03-2015 by executing a deed of agreement by which he had to return the money within six months. He has exhibited the agreement as Ext. A. Ext. A (1) is his signature. The complainant did not return the money. He requested him to return the money. But instead of returning money he filed the case.
- **14.12** In cross-examination he has denied the suggestion of the defence that there is no relation of the incident with the Ext. A.
- **15.**On perusal the evidence on record it appears that P. W. 2, the father of the alleged victim lodged the ejahar before the Officer-in-charge of Dhubri police station on 20-09-2016. The complainant put his thumb impression in the ejahar. So, the investigating officer exhibited the ejahar which the prosecution has marked as Ext. 4. During cross-examination the investigating officer has admitted that Officer-in-charge of Dhubri police

station put his signature in the FIR on 20-09-2016; but in the first line of the FIR the date of FIR is mentioned as 20-09-2010. On perusal the same it appears that the complainant lodged the ejahar on 20-09-2016. After filing the ejahar at police station a form of FIR has been filled up. In that form the date of FIR has been mentioned as 20-09-2010. Apparently it was a mistake committed by the person who filled up the form.

- **16.**On perusal the contents of the ejahar (Ext.4) it appears that the complainant has claimed that at the time of the incident the age of the victim girl was 13 years. On 19-09-2016 the accused at about 4 p.m. promised to marry his daughter and had taken her away from his house. On that day near Chandkhola Bridge the accused committed rape on her against her will. Thereafter the accused abandoned his daughter at Dhubri. She was compelled to stay the night in the house of a stranger who next day morning sent his daughter to his house. Another allegation against the accused is that prior to one month of the incident the accused committed rape on his daughter near his house.
- 17. The investigating officer in his cross-examination has admitted that he had not collected any document to ascertain the age of the victim girl. Neither the complainant nor the victim girl has produced any document in the Court to ascertain her age. The investigating officer has stated that he requested the medical officer to examine the victim to ascertain her age. P. W.1 Dr. Mazida Sultana has deposed that at the time of examination the victim was 13 years old. She has exhibited the radiological report of the victim which was prepared by Dr. M. D. Laskar as Ext. 2. In cross-examination the medical officer denied the suggestion of the defence that the radiological age of the victim girl was not 15. On perusal the Ext. 2 it appears that the Radiologist after examination has opined that at that time the victim girl was about 15 years old. There may be a variation of age of two years in either side. If two years is added still the age of the victim is found 17 years at the time of the incident. From the evidence it transpires that at the time of the incident the victim was a student of class VII. Though the investigating officer has failed to collect any document to ascertain the age of the victim girl; but after considering the report of radiologist it can safely be concluded that at the time of the incident the alleged victim was below the age of 18 years.
- **18.**As per the complainant the accused on 19-09-2016 at about 4 p.m. promised to marry his daughter and took her to Chandkhola Bridge and against her will committed rape on her. The complainant while deposed in the Court has testified that the accused on the

day of the incident induced his daughter to go with him and in an isolated place near Chandkhola Bridge committed rape on her. The evidence of the complainant is based on the information of his daughter. So, the star witness for the prosecution is the victim girl whom the prosecution examined as P. W. 3. She has deposed that on the day of the incident the accused met her at village Tisterpar on the road and expressed his affairs towards her and intended to marry her and put her in a motorcycle and took her to Chandkhola Bridge. After the incident the statement of the victim girl was recorded by the Judicial Magistrate and the victim girl has exhibited the same as Ext. 3. On perusal the Ext. 3 it appears that it was recorded on 21-09-2016. She has stated before the Judicial Magistrate that day before yesterday i.e. 19-09-2016 at about 9 a.m. the accused over phone asked her to come to Dharmasala and promised to marry her. So, at about 4 p.m. she arrived at Dharmasala and from Dharmasala she contacted the accused over phone. From the cross-examination of the investigating officer it appears that while he examined the victim girl during investigation she has disclosed before him that on the day of the incident at about 8/9 a.m. the accused over phone asked her to go to Dharmasala at about 4 p.m. and assured that he would marry her. Accordingly she went to Dharmasala market.

- **19.**After proper scrutiny of the evidence on record, particularly the evidence of the alleged victim and the investigating officer and the statement of the victim girl recorded by Judicial Magistrate under section 164 Cr. P. C. it transpires that on the day of the alleged incident the accused did not pick up the alleged victim from her house. He asked the alleged victim to go to Dharmasala which the alleged victim followed and on that day at about 4 p.m. the alleged victim as per call of the accused person visited Dharmasala market where they met each other.
- **20.** Allegation of rape and penetrative sexual intercourse are very serious allegations. To establish the charge of rape and penetrative sexual intercourse to the victim the prosecution has to establish the essential requirements as per section 375 IPC and section 3 of POCSO Act. As there was no eye witness in this case; so, the deposition of the alleged victim is most important. There is no bar to convict the accused on the basis of sole testimony of the vital witness. As per section 134 of the Indian Evidence Act no particular number of witnesses shall in any case be required for the proof of any fact. Before accepting the evidence of the sole witness regarding a fact, the duty of the Court is to scrutinize whether the sole testimony of the vital witness is reliable or not.

- 21. From the evidence of the alleged victim it appears that after meeting the accused at Dharmasala market, both of them boarded into a tempo and went to Chandkhola Bridge. The victim girl alleged that the accused took her to the jungle of Chandkhola Bridge and committed rape on her. But the alleged victim while given her statement before the Judicial Magistrate depicted a different story. In her statement (Ext. 3) she has stated that after reaching Dharmasala market she called the accused over phone, he came and both of them returned Dhubri. On the road, near Chandkhola Bridge the accused and she got down from the tempo. The accused took her behind the nearby school and committed rape on her. Now the question is actually where the accused committed rape on the alleged victim. Was it in the jungle of Chandkhola Bridge as deposed in the Court by the alleged victim or behind the school building as stated in the statement by her?
- 22. The alleged incident of rape or penetrative sexual intercourse on the victim had been taken place on 19-09-2016 after 4 p.m. The place of incident was a jungle. As per alleged victim the accused committed the sexual intercourse by force by gagging her mouth. On 21-09-2016 at about 11.30 a.m. the Medial Officer (P. W. 1) examined the victim girl at Dhubri Civil Hospital. The report (Ext. 1) of the medical officer shows that she examined the victim carefully. She detected no injury marks on her body. There was no swelling, tears bruises, abrasion in her labia majora, there was no scratch, bruising, fingernail marks tear, infection in her labia minora. There was no tear, bleeding, discharge in her vagina and cervix. The hymen was absent. But the medical officer has stated nothing whether the hymen was recently ruptured or it was ruptured earlier. The medical officer collected swabs and sent the same for examination and pathology department reported that there were no spermatozoa seen. After performing the clinical examination her finding was not consistent with recent sexual intercourse/assault on the victim girl.
- **23.**It is clear that the medical examination does not help any way to the prosecution in proving the fact of rape. There is only one point in favour of the prosecution that the medical officer found absence of the hymen. But the medical officer has not stated anything about the reason of absence of hymen. She has not stated that due to penetration of male organ it was torn. She has stated nothing whether it was recent or not. Under such circumstances it is not safe to hold that the absence of hymen was due to penetration of male organ of the accused.

- **24.** The place of occurrence is important. It was a jungle. If a girl was committed rape by a person without her consent definitely she would resist and as it was a jungle definitely she would have been received scratch marks of the branches of the bushes. In this case also the accused committed rape on the victim girl in a jungle without her consent. So, it was natural to receive scratch marks on her person. But the medical officer detected no injury marks on her body. While the accused committed rape, the chance of tearing the wearing apparel of the victim girl was imminent; but the victim girl has stated nothing that her wearing apparel were torn or damaged. The investigating officer has deposed that he had not seized the wearing apparel of the victim girl.
- 25. From the evidence of the alleged victim and her father it appears that after the incident the accused kept her at Dhubri Railway crossing where she met one Santosh Sheikh before whom she told the incident who gave her shelter for that night, informed about the incident to her father and next day sent the victim girl to her parents house. But the investigating officer did not examine the said witness. The address of said Santosh Sheikh is not available in the case record. So, the Court could not call him as Court witness to examine the veracity of the deposition of the victim girl. So non examination of vital witness by the investigating officer makes the prosecution case weak.
- 26. The Hon'ble Gauhati High Court in Lukba Rime vs. State of Arunachal Pradesh (2010) 3 Gauhati Law Reports 321 has opined that conviction can be based solely on the testimony of the prosecutrix when the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which would cast a shadow of doubt over her veracity. Evidence of the prosecutrix must be of such quality, that it may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the case of Abdul Aziz vs. State of Assam (2012) 2 Gauhati Law Reports 539 the Hon'ble Gauhati High Court has opined that accused could be convicted on the sole testimony of the prosecutrix if it is capable of inspiring confidence in the mind of the court and if the version given by the prosecutrix is supported by medical evidence and whole surrounding circumstances make the case set up by the prosecutrix highly probable and believable. The Hon'ble High Court has further observed that in case of no medical and other documentary evidence supporting the allegation, the evidence of prosecutrix found to be artificial, imaginary and due to subsisting rivalry between her family and the accused.
- **27.** In the case in hand the medical evidence does not support the case of the prosecution.

Besides it the deposition of the victim girl has also not found consistent. She has stated different story while depose in the Court and while giving her statement before the Judicial Magistrate and the investigating officer during investigation.

- **28.**The accused examined him as defence witness and alleged that the family of the victim girl borrowed an amount of Rs. 50,000/ from him and did not return the same. While he requested them to return his money then a false case initiated against him by the father of the victim girl. The non-official prosecution witnesses have denied the same in their cross-examination. The accused exhibited the deed of agreement as Ext. A. Ext. A shows that on 10-03-2015 the complainant put his thumb impression. The contents of Ext. A show that he borrowed an amount of Rs. 50,000/ from the accused with a promise to return the same within six months. The prosecution while cross-examined the accused simply stated that Ext. A has no relation with the incident which the accused denied. But the prosecution has neither denied the execution of Ext. A nor denied the allegation of borrowing money from the accused. The Ext. A shows that there was rivalry between the family members and the accused.
- **29.**In the ejahar the complainant has alleged that one month prior to the incident the accused committed rape on her daughter near his house. But the complainant and his daughter do not whispers a single word while depose in the court about that incident.
- **30.**In a criminal case burden of proof of the case always lies on the prosecution. The Hon'ble Gauhati High Court in **Abdul Sufan and others vs. State of Tripura 2009 Legal Eagle 620** has opined that:
  - "11. In a criminal jurisprudence, the case of the prosecution should rest on its own strength and not in the absence of explanation plausible defence by the accused. While dealing with serious question of guilt or innocence of persons charged with crime, the following general rules have been laid down for the guidance of courts:- (i) The onus of proving everything essential to the establishment of the charge against the accused, lies on the prosecution; (2) The evidence must be such as to exclude to moral certainty every reasonable doubt of the guilt of the accused; (iii) In matters of doubt it is safer to acquit than to condemn; for it is better that several guilty persons should escape than that one innocent person suffer; (iv) There must be a clear and unequivocal proof of the corpus delecti. (v) The hypothesis of guilt should be consistent with all the facts proved. With due respect, we may add

that it is not the duty of courts to make up the loopholes of the prosecution howsoever suspicious the involvement of the accused in the crime. In other words, this Court cannot take over the duty of the prosecution. We understand that a reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based reason and common sense. In the case at hand, a fair doubt is created in the case of the prosecution the appellants are entitled to the benefit of doubt. In our anxiety to punish persons accused of murder, we must not overlook the cardinal principles of criminal law that the accused is presumed to be innocent until his guilt is established by the prosecution. Until and unless Parliament amends the Evidence Act, 1872 changing the law of burden of proof, it is not expected of criminal courts, in our anxiety to increase the number of convictions, to dilute the standard of proof required in a criminal trial or give different complexion, covertly or otherwise, to the concept of fair trial according to law. In the instant case, even if it can be said in favour of the prosecution that the evidence is equally balanced, which appears to be a correct view, conviction of the appellants cannot be upheld. In a criminal case, if there can be two possible views on the evidence adduced by the prosecution, the accused is entitled to acquittal on the benefit of doubt. In the instant case, a fair or reasonable, not imaginary, possible or trivial, doubt looms large in the case of the prosecution to bring home the charges against the appellants, and they are, therefore, entitled to the benefit of doubt in the view that we have taken, it is difficult to uphold the impugned judgment of conviction and sentences."

- **31.** In view of the above discussion and observation it is concluded that the prosecution has failed to establish the charges framed against the accused beyond all reasonable doubts. So, the accused deserves benefit of doubt. Accordingly the accused is acquitted of the charges on benefit of doubt and he is set at liberty.
- **32.** The liability of the bailor will remain in force for next six months as per law.
- **33.**Given under my hand and seal of this Court this the, 12<sup>th</sup> day of July 2019.

(D. Thakuria)
Special Judge, Dhubri.

#### IN THE COURT OF SPECIAL JUDGE: DHUBRI.

# **SPECIAL CASE NO: 88/2017**

# UNDER SECTIONS: 376 (2) (i) IPC READ WITH SECTIOM 4 OF THE POCSO ACT.

# STATE OF ASSAM VS.

## **AZIRUL HAQUE**

## <u>APPENDIX</u>

A. Prosecution exhibits:

Ext. 1 : Medical report.

Ext. 2 : Radiological report.

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

Ext. 4 : Ejahar.

Ext. 5 & 6 : Site plans.

Ext. 7 : Charge sheet.

B. Defence Exhibits:

Ext. A : Deed of agreement.

C. Court Exhibits : Nil.

D. Prosecution Witnesses:

P. W. 1: Dr. Mazida Sultana,

P. W.2: The complainant,

P. W.3: The victim,

P. W.4: Uncle of the victim &

P. W.5: Gaznobi Ahmed.

E. Defence Witness:

d. w. 1: Azirul Haque

F. Court Witness: Nil.

(D. Thakuria)

Special Judge, Dhubri.