

IN THE COURT OF SPECIAL JUDGE (POCSO)
NALBARI

SPL. (P) CASE NO. 29/2019

U/s 448/ 376(3)/ 506 Indian Penal Code

R/W S.4 Protection of Children from Sexual Offences Act, 2012

State of Assam

- Vs -

Ishak Ali

..... Accused

Present

Smti Munmun B.Sarma

Special Judge (POCSO),

Nalbari

Counsel for Prosecution : Mr.K.K.Sarma, Spl. PP

Counsel for Defence : Sri Jayanta Kalita, Advocate

Evidence : 01/10/2019, 15/11/2019, 12/12/2019, 22/01/2020

Argument : 08/06/2020

Judgment : 20/06/2020

JUDGMENT

1) On 04/07/2019 the informant Majnur Ali lodged a FIR at Nalbari Sadar PS, stating inter alia that, on 03/07/2019 the informant and his wife were working in the field & their daughter Victim 'X' (15 years old) was alone at home. At about 11-30 am - 12.00 pm, when Victim 'X' was in the kitchen, the accused Md. Isahak Ali came and closed all the doors of the

house and raped Victim 'X' after threatening her with a *dao*. The accused also threatened to kill victim's parents if she disclosed the incident to anyone. Hence, the FIR was lodged.

2) On receipt of the FIR it was registered as Nalbari PS Case No. 438/2019 u/s 448/ 376(3)(2)(i)/ 506 IPC r/w s.4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act) against accused Ishak Ali. The police went to the place of occurrence and examined the available witnesses. Statements of the witnesses were recorded, medical examination of the victim 'X' was done and her statement u/s 164 CrPC was duly recorded. On completion of investigation, a prima facie case having appeared against the accused, the IO submitted charge sheet against accused Ishak Ali u/s 448/ 376(3)(2)(i)/ 506 IPC r/w s.4 POCSO Act.

3) Cognizance was taken u/s u/s 448/ 376(3)(2)(i)/ 506 IPC r/w s.4 POCSO Act and the accused Ishak Ali appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on Case Record and Case Diary and prima facie case having appeared u/s 448/ 376(3)/ 506 IPC r/w s.4 POCSO Act, charge was framed and the content of the offence was read over and explained to the accused Ishak Ali, to which he pleaded not guilty and claimed to be tried.

4) To prove the offence u/s 448/ 376(3)/ 506 IPC r/w s.4 POCSO Act against the accused person, the prosecution side examined the following 10 (ten) witnesses & exhibited 8 documents. To substantiate his claim,

accused stood in the dock as DW-1. The accused person's case, as could be ascertained from cross-examination of the prosecution witnesses & his statement u/s 313 CrPC, was that of total denial.

5) The **points for determination** are as follows –

- a) Whether on 03/07/2019 at about 11:30 am – 12 pm the accused Ishak Ali committed house trespass by entering into the house of Majnur Ali with intent to commit rape upon his minor daughter 'X', thus, punishable u/s 448 IPC?
- b) Whether the accused on the same day, date, time and place committed rape upon the victim 'X' who is under the age of 16 years, thus, punishable u/s 376 (3) IPC?
- c) Whether the accused on the same date, date, time and place committed criminal intimidation by threatening the victim with a *dao*, with intent to cause alarm to her and preventing her from reporting the incident to anyone, thus, punishable u/s 506 IPC?
- d) Whether the accused on the same date, date time and place committed penetrative sexual assault upon the victim, who is under the age of 18 years, thus, punishable u/s 4 POCSO Act?

Arguments Forwarded by Both Sides –

6) Ld. Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused trespassed into the house of the

informant and after locking the doors he brutally raped the minor victim. She became unconscious because of the incident. Neighbors saw the victim in unconscious condition and informed her parents. He prayed that maximum punishment should be given.

7) Ld. Counsel for the accused argued that the manner in which the incident occurred, couldn't be established by prosecution. **PW1/informant Majnur Ali** claimed that the victim was gagged and raped, however, he didn't state the same to the I/O that accused gagged his daughter from behind & also threatened to kill her. **PW2 Anju Begum** is the mother of the victim girl and she deposed that on being informed, she and her husband came to the PO & victim told her that the accused showed the victim a *Dao* & raped her. **PW-7 Parbin Sultana** told the I/O that the victim told her that the accused committed '*beya kam*' with victim after giving her something to eat. It was also argued by Id. Counsel that PW1 claimed that the shop in his compound was closed but PW3 deposed that it was open. So, it is seen that PW1 directly contradict PW3 and this piece of evidence is sufficient to test the veracity of the evidence of PW1 and PW3 and they have not spoken the truth before the Hon'ble Court. It is seen from the evidence of PW1, PW2, PW3 (victim) & PW7 that they have given contradictory version as how the incident happened. The omission of PW1 and PW2 amounts to contradiction which goes to the root of the case. In supported of his argument, Id. Defence counsel cited the decision of the Hon'ble Apex Court in the case of **Pankaj Vs State of Rajasthan, 2016 AIAR (Criminal) 886, SC**, wherein it was observed that –

"It is well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted... When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence."

8) Ld. Defence counsel also argued that though both **PW5 Inamul Ali** & **PW6 Monowara Begum** deposed that they were told that the accused had raped the victim, however, during cross-examination PW5 stated that he didn't tell the I/O the same as he wasn't asked, on the other hand, I/O deposed that **PW6 Monowara Begum** did not state before him that parents of the victim told her that accused committed rape on the victim. **PW7 Parbin Sultana** evidence is full of contradiction as she gave one version before the I/O & another before the Court. That, **PW9 Jitu Ahmed** is the nephew of the informant Majnur Ali claimed during his evidence that next morning when he again went to the house of Majnur Ali to inquire about the health of the victim, he came to know from informant and his wife that the victim was raped by the accused. However, the I/O later clarified that the PW9 never told him so. Thus, this amounts to a contradiction. PW9 also didn't tell the I/O that hearing commotion of the village people he went to the house of Majnur Ali and saw the victim lying unconscious on bed of one of the rooms. Thus, these omissions amount to contradiction. In support of his argument, Ld. Counsel for the accused cited the decision of Hon'ble Supreme Court of India observed in **Dr. Sunil Kumar Sambhudayal Gupta & Ors Vs. State Of Maharashtra, 2010 STPL 26096 SC**, wherein it was observed that –

"Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence."

Another decision relied upon by Id. Defence counsel, for understanding the difference & relation between discrepancies and contradictions, is the decision of Hon'ble Supreme Court in the case of **Sampath Kumar –Vs- Inspector Of Police, Krishnagiri, (2012) 2 SCC (Cri) 42**, wherein it was observed that –

"The difference between discrepancies and contradictions was explained by this Court in State of H.P. v. Lekh Raj. Reference may also be made to the decision of this Court in State of Haryana v. Gurdial Singh where the prosecution witness had come out with two inconsistent versions of the occurrence. One of these versions was given in the Court while the other was contained in the statement made before the police. This Court held that these were contradictory versions on which the conclusion of fact could not be safely based..... Reference may also be made to the decision of this Court in Kehar Singh v. State Delhi Admn.). This Court held that if the discrepancies between the first version and the evidence in court were material, it was safer to err in acquitting than in convicting the accused."

9) It was also argued that the sequence in which the PWs came to the PO & their contradictory evidence makes the prosecution case unreliable. PW1 (informant) claimed they found victim unconscious in the kitchen floor & Nurun Nessa, Ajad Ali and Jitu Ali were present at the PO. On the other hand, PW2 (victim's mother) claimed that when she reached home with PW1 and saw PW3 unconscious, she railed *hulla* & hearing her hue and cry other villagers rushed to their house & village *Kabiraj* (PW8) was called. Thus, evidence of PW2 contradict the evidence of PW1 regarding the time and manner of appearance of PW8 Ajad Ali. Interestingly, PW8 Md. Ajad Ali deposed PW1 Majnur Ali asked him to check on PW1 & therefore, PW8 went to PW1's house. Even PW5 evidence doesn't support evidence of PW1 & PW2 as he deposed that when he returned to PO with PW1 & PW2 several other villagers were gathered in house of PW1. PW6 deposed that other villagers came to the house of PW1 after hearing Nurun Nessa's hue and cry, thus, contradicting PW2's claim that villagers came after hearing her hue and cry. Furthermore, non-examination of the most material witness Nurun Nessa strikes at the foundation of prosecution case itself. So, considering the entire evidence of PWs regarding who appeared when at the house of victim girl, the truth cannot be separated from falsehood and their evidence are to be discarded. The Hon'ble Apex Court observed in **Kanbi Nanji Virji V. State of Gujarat, AIR 1970 SC 219** that –

"Having come to the conclusion that right from the beginning a prosecution witness was giving a distorted version of the incident, the appellate Court is not right in holding that any portion of evidence deposed by such prosecution witness can be relied upon merely because that some portion of his

testimony in Court accords with the version given by him to another prosecution witness. It is true that oftentimes the Courts have to separate the truth from falsehood. But where the two are so intermingled as to make it impossible to separate them, the evidence has to be rejected in its entirety."

Another decision relied upon is that by Hon'ble Supreme Court of India in the case of **Bhanda Garh Vs. State of Assam, 1983 STPL 2271 Gauhati**, wherein it was observed that –

"In our opinion, it will not be safe to place any reliance on their testimony which suffers from intrinsic infirmity in each case as well as from mutual contradictions. Three witnesses have given different and materially discrepant version on different points. But the most material point to be noted is that if P.W.2 is to be believed and there is no reason to disbelieve him....."

10) Another stand taken by the defence is that the place where the victim was found by each PWs is different, and their contradictory evidence collapses the prosecution case. When none of the witnesses is completely reliable or unreliable, their evidence cannot be ignored to give weightage to another witness. The Hon'ble Supreme Court observed in **Dilip Debnath V. State Of Tripura, (2007) 2 GLR 769** that two contradictory statement cannot exist together and in the absence of other corroborative reliable evidence in support of either of the two sets, both contradictory evidences are to be discarded.

11) Coming to physical evidence of rape, Id. Counsel for the accused argued that victim in her statement u/s 164 CrPC claimed that the accused tore at her clothes, however, in her evidence she claimed he removed the clothes. None of the PWs stated that they saw the victim in torn clothes. PW5 specifically stated that the victim was properly dressed when PW5 saw. It was also pointed out by Id. defence counsel that in her statement u/s 164 CrPC the victim stated that she became unconscious during rape as she couldn't tolerate. All the PWs claimed that the victim was unconscious and regained sense only at night and was not in good state. Thus, if presumption can be drawn from this, the rape must be of very violent nature & under such circumstances, the victim will sustain injury in her body and private parts. However, medical evidence completely rules out the occurrence of rape. Furthermore, PWs found no sign of injury on the victim PW1 has not deposed that PW3 received any injury. PW2, PW5, PW7, PW8 & PW9 deposed that she did not see injury on the body of PW3 (victim). PW3 (victim) herself has neither stated in her evidence nor in her statement recorded u/s 164 CrPC that she sustained any injury. PW6 claimed that she saw abrasion & nail mark on the body of the victim, however this evidence is not corroborated by PW3 (victim) or the medical evidence. PW4 Dr. Dipti Chowdhury deposed that there was no injury present over body or private parts of the victim and that, a 14 to 16 years old girl with no injury over body or private parts and not consistent with recent sexual intercourse or assault. It was also deposed that hymen was intact. In case of rape there will be injury marks on labia majora and labia minora.

12) Ld. Defence counsel cited the decision of Hon'ble Supreme Court of India in the case of **Mahavir Singh v. State of Madhya Pradesh, 2017 AIAR (Criminal) SC**, wherein it was observed that when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. He also argued that the words of the victim cannot be taken as gospel truth, mainly when medical evidence doesn't support her claim of being raped. Reliance was made in the observation of Apex Court in the case of **Tameezuddin Alias Tammu Vs State Of (NCT) Of Delhi, 2009 STPL 1499 SC**. Similar observations were made in the case of **Yerumalla Latchaiah Vs. State Of A.P, 2006 STPL 4174 SC, Chandan Muhuri & Anr Vs. State of Tripura, 2010 STPL 18582 Gauhati & Santosh Prasad @ Santosh Kumar –Vs- The State of Bihar, Criminal Appeal No. 264 of 2020**.

DISCUSSIONS, DECISIONS & REASONS THEREOF –

13) The charge u/s 448/ 376(3)/ 506 IPC r/w s.4 POCSO Act is analyzed herein below, in view of the materials available on record and the argument forwarded by both sides.

Charge U/s 376 (3) IPC r/w s.4 POCSO Act

14) The ingredients of s.376 (3) IPC & s.4 POCSO Act being closely related, are discussed together for sake of convenience & brevity. **S.376 (3) IPC** reads as follows –

"Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than

twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine"

Rape has been defined in s.375 IPC & it reads as follows –

A man is said to commit "rape" if he—

- a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
- b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
- d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:*
 - 1. Against her will.*
 - 2. Without her consent.*
 - 3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.*
 - 4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another*

man to whom she is or believes herself to be lawfully married.

5. *With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.*
6. *With or without her consent, when she is under eighteen years of age.*
7. *When she is unable to communicate consent.*

On the other hand, **s.4 POCSO Act** reads as follows –

"Punishment for penetrative sexual assault -

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine."

'Penetrative Sexual Assault' has been defined u/s 7 POCSO Act as follows -

A person is said to commit "penetrative sexual assault" if-

- a. *he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or*

- b. he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or*
- c. he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or*
- d. he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.*

15) The evidences of the witnesses are analyzed in light of the contents of the charged section, as mentioned above. The **victim 'X' deposed as PW3**. She stated that at the time of the incident she was alone at home & the accused came from behind and gagged her. He then removed her clothes and committed rape on her and subsequently she lost consciousness because of the gagging. She was cross-examined on the line that as accused caught her talking to her boyfriend on phone and stated he would inform her parent, hence, the victim levied this false allegation. **PW1/ informant Majnur Ali** is the father of the victim and **PW2 Anju Begum** is the mother of the victim girl. Both PW1 & PW2 deposed that on being informed by **PW5 Inamul Ali**, they came home and found the victim unconscious in the kitchen floor. Victim regained consciousness in the night but was not in a condition to say anything. Next morning on being asked by PW2, victim. PW3 informed them that the accused gagged

her from behind and threatened her with a *dao* and then raped her. **PW5 Inamul Ali** deposed that Majnur Ali, Nurun Nessa & **PW6 Manowara** called him and told him that PW3 is lying unconscious in a room & therefore, to inform PW3's parent's, who were in the field. Accordingly, PW5 went and informed PW1 & PW2. Apparently, next day PW1 told PW5 over phone that the accused had raped PW3. However, during cross-examination PW5 admitted that he didn't tell the I/O that PW1 informed him that the accused had raped PW3. **PW6 Manowara Begum** deposed that she heard Nurun Nessa's hue and cry and came rushing to the house of PW1 & PW3 lying unconscious in the kitchen floor. PW6 & Nurun Nessa brought PW3 to the bed. Seeing PW5 on the way, he was asked to inform PW3's parents. Next morning PW3 informed her parent's that the accused raped her. **PW7 Parbin Sultana** deposed that she went to PW1's house after he called her over phone and told her PW3 is lying unconscious. Next morning PW2 informed PW7 that PW3 told her that the accused raped her. PW7 went to the house of PW1 and enquired with PW3/victim, and PW3 reiterated the same facts to her. However, cross-examination of PW7 revealed that she didn't state to the I/O any of the facts stated during examination. Rather, she told the I/O that the victim was being given treatment for exorcism. **PW8 Ajad Ali** was called by PW1 to look at his unconscious daughter PW3. When PW3 didn't regain sense after '*dowa*' PW8 asked PW1 to call for a doctor. He further deposed that next day PW1 informed him that the accused raped PW3. **PW9 Jitu Ahmed** deposed that hearing commotion he went to the house of PW1 and found PW3 unconscious and lying in a bed. Firstly, she was treated for demonic

possession, and when that didn't work, the compounder came and put her on a drip. Next day, PW1 told him that the accused raped PW3.

16) Since this is a case of rape/ penetrative sexual assault, the first thing that needs to be determined is which criteria of type of rape/ penetrative sexual assault the prosecution case is required to establish. The best witness from which statement/evidence this can be understood, is the victim herself. Pertinent to mention that, after amendment of the IPC, applying mouth to the private parts of the victim also amounts to rape. During her evidence the **victim/PW3** deposed that the accused gagged her and then raped her. Her evidence is silent regarding what exactly the accused did that amounted to rape. Thus, the statement of the victim u/s 164 CrPC is perused. In her 164 statement the victim stated that the accused did '*beya kaam*' (bad thing) & she couldn't tolerate it, and therefore, became unconscious. Firstly, the term '*beya kaam*' (bad thing) is very vague and incapable of describing what 'bad thing' the accused did. It is important to remember that we cannot simply presume that 'bad thing' means rape, unless there are more material to support the presumption. Secondly, the victim said she became unconscious as she couldn't tolerate the 'bad thing' that the accused did to her. Thus, if we presume that the 'bad thing' that the accused did was rape, then it means the accused raped her so violently that she couldn't tolerate it and fainted. Pertinent to mention here that the victim has given two different reason for fainting at two different stages of the case. In her 164 statement she claimed that she fainted because she couldn't tolerate the 'bad thing' that the accused was

doing to her, whereas, in her evidence victim/PW3 claimed that she fainted because the accused gagged her.

17) In light of the above evidences of the other PWs, mainly the victim/PW3, evidence of the Medical Officer **PW4 Dr. Dipti Chowdhury** is scrutinized. PW4 examined the victim within 48 hours of the incident & prepared the Medical Reports. She deposed that there was no injury present over body or private parts of the victim and that her hymen was intact. It is also important to point out that none of the PWs, including the victim herself, mentioned of any injury marks on the victim/PW3 as a result of the rape. Though, **PW6 Monowara Begum** initially claimed that she saw abrasion & nail marks on the victim, however, her cross-examination revealed that she never told the I/O regarding the same. Thus, the argument forwarded by Id. Defence counsel appears to be correct that medical evidence is contradictory to the evidence of the victim/PW3, and that, the prosecution couldn't establish that the victim was raped. In the case of **Mahavir Singh v. State of Madhya Pradesh** (Supra), Hon'ble Supreme Court of India observed that –

"The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes far that it completely rules

out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

While answering the question as to whether the evidence of a prosecutrix needs corroboration, the Apex Court observed in **Tameezuddin @ Tammu Vs. State Of (NCT) Of Delhi**, (Supra) that –

"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence of in a criminal matter. We are of the opinion that story is indeed improbable."

In the case of **Ranjit Hazarika Vs. State of Assam, 2019 STPL 7406 Gauhati** the Hon'ble Supreme Court India held that –

"It is no doubt true, that in a case of sexual assault, primary importance is required to be given to the testimony of the victim and conviction can be based on the sole testimony of the victim, unless there are compelling circumstances requiring the Court to seek corroboration. Be that as it may, the ultimate test to rely on the testimony of a witness is whether the testimony of such witness is believable and inspiring confidence. If the prosecutrix or the victim of sexual assault is not found to be reliable, no conviction can be based on the sole testimony of such witness for the simple reason that the basic principal of administration of criminal justice that prosecution has to prove the

guilt of the accused beyond all reasonable doubt equally applies in the case of sexual assault too.”

18) There are few other factors that needs consideration, same being, the contradictions in the evidence of the PWs and the witnesses stating different versions of the same incident. **PW1/informant Majnur Ali** claimed that on being informed by PW5 Inamul Ali, PW1 & PW2 Anju Begum came home rushing and found PW3/victim lying unconscious on the kitchen floor & Nurun Nessa, PW8 Ajad Ali and PW9 Jitu Ali at the PO. On the other hand, **PW2 Anju Begum** claimed that when she reached home with PW1 and saw PW3 unconscious in the kitchen floor, she railed *hulla* & hearing her hue and cry other villagers rushed to their house. Subsequently, village *Kabiraj* (PW8 Ajad Ali) was called. However, **PW8 Ajad Ali** claimed that PW1 Majnur Ali met him on the road & asked him to come & check on PW3. Thus, it appears that that the sequence in which the witnesses came to the PO itself is unsettled as each PW is giving a different version of the same facts. Another area where the witnesses failed to corroborate each other & rather gave different versions, is where the victim was. PW1 & PW2 claimed that they found the victim unconscious in the kitchen floor when they reached home. However, **PW6 Manowara**, who was the 2nd person at PO, deposed that she & Nurur Nessa (1st person in PO) moved the victim to the bed. If that is the case, PW1 & PW2 are deposing falsely, and therefore are unreliable. However, if they are deposing truthfully, then PW6 is deposing falsely, and is unreliable. Thus, the argument forwarded by Id. Defence counsel is correct and when evidence of a witness cannot be totally relied upon because of intrinsic

aberrations, it is essential that their evidence should be accepted only if it is corroborated.

19) Hence, in view of all the above discussions, it is held that prosecution **failed to prove the guilt of the accused Ishak Ali u/s 376(3) IPC r/w s.4 POCSO Act** beyond all reasonable doubt.

Charge U/s 506 IPC

20) To be convicted u/s 506 IPC it must be proved that the accused Ishak Ali criminally intimidated the victim 'X'.

21) The victim/PW3 deposed that the accused gagged her from behind & threatened to kill her and her parents if she told anyone about the incident, and then he raped her. However, PW3 (victim) did not disclose anything in her 161 statement about "Dao". The victim's parents deposed as PW1 & PW2 and they claimed that the victim/PW3 told them that the accused threatened PW3 by showing her a *dao* and then raped her. However, during cross-examination of PW1 & PW2 it revealed that they didn't tell the I/O about the accused threatening with a *dao*. Rest of the PWs are silent regarding any threat being rendered by the accused. Thus, above appreciation of evidences reveal that the victim is silent regarding the *dao* being used to threaten PW3, however, her parents claimed that PW3 told them that he threatened her by showing a *dao*. Furthermore, PW1 & PW2 were silent regarding this before the I/O. Thus, I am of the opinion that there isn't ample evidence to show that the accused caused criminal intimidation to the victim/PW3. Hence, under the circumstances, the

prosecution failed to prove the guilt of the accused person Ishak Ali u/s 506 IPC beyond all reasonable doubt.

Charge U/s 448 IPC

22) To be convicted u/s 448 IPC it must be proved that the accused Ishak Ali committed criminal trespass into the house of the informant PW1.

23) During discussion of the charge u/s 376 (3) IPC r/w s.4 POCSO Act it revealed that prosecution failed to prove that charges beyond all reasonable doubt. Furthermore, the evidences of the PWs, except for the victim/PW3, none of the witnesses saw the accused in the PO or its vicinity. No evidence appeared that could point to the fact that the accused had in fact entered the house of the informant/PW1 and raped PW3 or committed any other crime. Hence, under the circumstances, the **prosecution failed to prove the guilt of the accused person Ishak Ali u/s 448 IPC** beyond all reasonable doubt.

ORDER

24) In view of the above discussions, it is held that the prosecution failed to prove the case against the accused person **Ishak Ali** u/s 448/ 376(3)/ 506 IPC r/w s.4 POCSO Act beyond all reasonable doubt. **Hence, Ishak Ali is acquitted on benefit of doubt and set at liberty.** Bail bond are cancelled and the bailor discharged.

25) The seized article, if any, shall be disposed as per procedure. Send a copy of the judgment to the District Magistrate, Nalbari, u/s 365 CrPC.

Zimma of the Birth Certificate is made absolute.

Let the case record be consigned to record room after completing the formalities.

Given under my hand and seal of this Court on this the **20th day of June'2020.**

(Smti Munmun B.Sarma)

Special Judge (POCSO),

Nalbari

APPENDIX

(A) Prosecution Witnesses:

- i. PW1- Majnur Ali (Informant)
- ii. PW2- Anju Begum
- iii. PW3- 'X' (Victim)
- iv. PW4- Dr. Dipti Choudhury (Medical Officer)
- v. PW5- Inamul Ali
- vi. PW6- Monowara Begum
- vii. PW7- Parbin Sultana
- viii. PW8- Md. Azad Ali
- ix. PW9- Md. Jitu Ahmed
- x. PW10- WSI Rajashri Buragohain (Investigation Officer)

(B) Prosecution Exhibits:

- a) Ext.1 – FIR
- b) Ext.1 (1) – Signature of PW1 Majnur Ali (Informant)
- c) Ext.1 (2) – Signature of Inspector Tapan Kalita
- d) Ext. 2 – Seizure list,
- e) Ext.2 (1) – Signature of PW-1 Majnur Ali (Informant)
- f) Ext.3 – Statement of victim recorded u/s 164 CrPC.
- g) Ext.3 (1) to (3) – Signature of Victim
- h) Ext.4 – Medical Report
- i) Ext.4 (1) to (2) – Signatures of PW 4
- j) Ext.5 – Vaginal Swab report
- k) Ext.6 – X-Ray report
- l) Ext.6 (1) – Signature of Dr. Prabodh Kr. Sarma, Radiologist
- m) Ext.7 – Sketch Map
- n) Ext.7 (1) to (2) – Signatures of PW 10
- o) Ext.8 – Charge-sheet
- p) Ext.8 (1) – PW-10/ WSI Rajashri Buragohain (IO) Signature
- q) Ext.8 (2) – Signature of Inspector Tapan Kalita

(C) **Defence Witnesses:**

i. DW1- Ishak Ali (Accused)

(D) **Defence Exhibits:**

None

(Smti Munmun B.Sarma)

Special Judge (POCSO),

Nalbari