

**IN THE COURT OF THE ASSISTANT SESSIONS JUDGE,  
SONITPUR AT TEZPUR**

**PRESENT** : Sri M. Kalita,  
Assistant Sessions Judge,  
Sonitpur, Tezpur.

**SESSIONS CASE NO. 176 OF 2006**

**GR Case No. 954/ 2004**

Under Section 366 /376(g) of Indian Penal Code

State of Assam ..... **Complainant**

**–Versus –**

1. Md. Kamaluddin,  
2. Aminul Haque,  
3. Akbar Ali,  
4. Miraj Ali,  
5. Musstt. Amiran Nessa ..... **Accused Persons**

**ADVOCATES APPEARED:**

For the State : Sri Mahendra Bora,  
Additional Public Prosecutor

For the accused person : Sri R.R. Kalita,  
Sri B. Northakur and  
Sri P.S. Sethi,  
Defence Counsel.

**Date of evidence** : **03– 08– 2007, 15– 11– 2007  
05- 03- 2008, 28–03–2008, 26-02-  
2010,18-08-2010 and 15-09-  
2010.**

**Date of Argument** : **25- 06 – 2012 & 24-07-12**

**Date of Judgment** : **24– 07 – 2012.**

## J U D G M E N T

**1.** A Criminal case set in motion with the lodging of written ejahar by informant Abdul Mazid before the Incharge of Borghat Police Out Post under Tezpur Police Station on 28-06-04. The informant who is the resident of village Tengabasti under Tezpur Police Station, stated interalia in the ejahar that his niece who is the victim of the case was found missing while she was going towards the school on 08-06-2004 at 10 a.m. by wearing school dress. In that connection one information regarding missing of the girl was lodged before the police on 11-06-04. But subsequently the informant came to know that the accused Kamaluddin in association with one Inamul Haque had forcibly taken away the victim from the road near Panchmile with the help of othermiscreants. After the incident the accused Kamaluddin was found absconding for some days. Then the accused came back to his residence and started to stay at his residence. But other person Inamul Haque was found absconding still to the lodging of ejahar. So, the informant came to know that accused Kamaluddin had taken away his niece from the road forming a conspiracy. At that time the age of his niece was 14 years. So, the informant brought before the police for taking necessary action including recovery of his niece.

**2.** After receiving the aforesaid written ejahar, the Incharge of Borghat Police Out Post made one GD Entry bearing GD Entry No. 455 dt. 30-06-04 and forwarded the ejahar to Officer-in-Charge of Tezpur Police Station for registering a case. The Incharge of Borghat Police Out Post also undertook to investigate the case. Thereafter on receipt of the said ejahar, the Officer-

in-Charge of Tezpur Police Station registered a case bearing Tezpur Police Station Case No. 415/04 u/s 366 (A) of IPC. The Investigating Officer investigated the case. During the period of investigation, the Investigating Officer produced the victim before the court for recording her statement by the Magistrate u/s 164 CrPC. The victim was also produced for medical examination. During the period of investigation, the Investigating Officer also seized one Maruti Van bearing registration No. AS 12 C 0372 from the possession of the driver Sri Sanjay Singh in connection with the case along with the registration Certificate in presence of witnesses. He also arrested some accused during that period. And after conclusion of investigation, the Investigating Officer submitted the Charge sheet against the accused persons u/s 366 (A)/376/34 of IPC. Hence, the prosecution case.

**3.** After appearance of the accused persons, the learned Judicial Magistrate committed the case to the learned Sessions Judge, Sonitpur, Tezpur. Then the case was made over to this Court. Accordingly, trial was taken up by this Court. Considering the materials available on case record and on relevant documents of case diary, the charge was framed against the accused persons under Sections 366(A)/376(g)/34 of IPC. Then the contents of charge was read over and explained to the accused persons, to which, all of them pleaded not guilty and claimed to be tried.

**4.** During the trial, the prosecution has examined as many as 12 (twelve) PWs including the victim, 4 Nos of Investigating Officers and the learned Judicial Magistrate to bring home the case. But during the tiral period, the

case was filed against accused Najrul Islam as he was found absconding on the basis of report of Executing Officer given on P & A issued earlier against the accused. The case was also filed against accused Salimuddin due to his death. Thereafter, the accused persons were examined u/s 313 CrPC, wherein all of them have denied the prosecution case totally. Only accused Amiran Nessa examined two DWs in support of her defence. Other accused have declined to adduce evidence for their defence. Then the argument has been heard from learned Addl. P.P. as well as learned defence counsels. And after the close of trial, judgment is delivered.

**5. Point for determination of the case:**

1. Whether the accused persons induced the victim to go from the road while she was going to the school at the time of occurrence ?
2. If so, whether the accused persons induced her to go with intent to force her or to seduce to illicit intercourse with the accused persons ?
3. If so, whether the victim was under the age of 18 years at the time of occurrence ?
4. If so, whether the accused persons committed gang rape on the victim at the time of occurrence ?

**Discussion, Decision and reasons for Decision:-**

- 6.** Before deciding the above points, I like to discuss briefly the evidence adduced by the PW 1 first.

7. PW 1, is the mother of the victim. She has deposed that the accused persons were not known to her. The occurrence took place about 3 years ago. On the day of occurrence her daughter had gone to school to attend the class at 9:30 a.m. But she did not return to the residence on that day. At that time she was reading in Class VIII and her age was 14 years. Then the search was made but she could not be traced out. After 28 days from the date of occurrence her daughter found loitering at Bhojkhowa Chapori like a mad person. When a person namely, Jatin noticed her daughter then he informed to her son Moinul Haque and other village persons and thereafter her son and other village persons brought her daughter (victim) to the residence. Then police sent her daughter to Civil Hospital. Before recovery of her daughter, her brother Abdul Mazid had lodged the ejahar and after recovery her daughter disclosed before her that the accused persons had taken her away forcibly in a Maruti car to a jungle and thereafter they raped on her. At that time she could identify the accused Salimuddin and one woman. Police also produced her before the Magistrate for recording her statement and then the victim was given to the zimma of her son.

In the cross-examination, PW 1 has stated that the school situated at a distance of 3 mile from her residence. On the date of occurrence her daughter had gone to school on foot by wearing white coloured dress (mekhala chadar and blouse). As she did not return to the residence till to the night, so she along with her husband and son started to search for her. After incidence of missing of her daughter she came to know that her daughter did not apply for admission at her school though

Rs. 600/- was given to her and she was also found irregular in attending the school. PW 1 has denied the fact that her daughter was mentally reiterate girl and her age was 18 years. There was school certificate of her daughter. Her daughter was admitted in the hospital immediately on the next day after recovery and doctor gave medical treatment for psychiatric problem. After recovery, her daughter was found behaving like mad person. PW 1 has also denied some suggestions put to her by defence.

**8.** PW 2 is the victim. She has deposed that she could identify all the accused persons (the accused have been identified by pointing each of them). She has also stated that one person who was present at the time of occurrence has not been present before the Court. The occurrence took place on 08-06-04 while she was going to attend the class in Charimile H.S School as she was reading in class VIII at that time. When she was going to school then two persons teased her. Then she immediately informed the matter to a nearby shopkeeper. Then one woman staying near the shop helped her to board a bus for going to school. In the Bus accused Amiran Nessa was also travelling and accused Amiran Nessa asked her not to go to school and accused Amiran Nessa also asked her to get down from the bus. Thereafter, she found one Maruti Car parking near the road after getting down from the bus. The driver of the vehicle informed her that as he was going to the hospital so he would bring her to the residence of her maternal uncle. Then she along with accused Amiran Nessa boarded the Maruti car. Thereafter she found other persons inside the van. One of them gagged her mouth by a gamosa. Her hands were also tied by rope and she was kept beneath the seat of the van by

pushing her. She became senseless. She also found other accused Kamaluddin and Salimuddin also had boarded the vehicle. Accused pushed injection on her waist. One person called the other one as Inamul. So, she could know the name of one person as Inamul. Then she heard the discussion made by the accused that she would be brought near the Bogibil Bridge and her kidney would be taken away by cutting her head. Then she became senseless after hearing the said discussion. Then she was brought to the jungle. She was detained for four days inside the jungle and all of the accused persons committed rape on her during that period. Thereafter she was handed over to other persons. Then one of her neighbourer noticed her at Bhojkhowa Chapori. But at that time she could not say how she came to Bhojkhowa Chapori as she was loitering like a mad person. Thereafter she was recovered by maternal uncle and then she was brought to Tezpur Hospital. During her confinement by the accused, the accused fed her rotten roti (sukan roti). She was confined by tieing her hands. When she was medically recovered, then she was brought before the Magistrate and her statement was recorded by Magistrate. She has proved her statement as Ext.1. She sustained injury on every part of her body.

In her cross-examination, the victim (PW 2) has stated that her school situated at a distance of 2 ½ km from her residence in western side. Sometimes she used to go to school on foot and sometimes by bus. At first accused Kamaluddin and Salimuddin teased her. She got down from the bus at a place about half kilometre away from the school. The name of her maternal uncle is Aftab Hussain. The driver of the Maruti van was not known to

her since earlier. When she was taken to the Maruti she raised alarm but she was gagged by the accused persons. The woman accused brought out the rope from the beneath of the seat. She was taken out from the vehicle inside the jungle at night. At that time she regained her sense. She was confined for four days by tying her hands. About 7 persons committed rape on her during those four days and they used to talk in hindi during that period. When she was handed over to other persons she became mentally ill. She could not know how she was recovered. Her father was also not a mentally retarded person. At the time of occurrence she was wearing blue coloured sari and blouse. Though police saw the clothes which was used by her at the time of occurrence, but police did not take the clothes to the police station. But clothes were produced before the police. The clothes became dirty due to the act of sexual assault committed by the accused persons. Earlier she went to the school by boarding the bus at Uriamguri. After 2/3 minutes she got down from the bus. One aged lady (accused Amiran Nessa) was the neighbour of her residence. One village Panchayat was held in connection with the occurrence and Amiran Nessa confessed the guilt before the Panchayat. She was also present before the Panchayat. Her signature was not taken before the Panchayat/. Accused Amiran Nessa also made attempt to burn herself by pouring kerosine oil when she was asked for giving written confession before the Panchayat. So her maternal uncle assaulted the accused Amiran Nessa. PW 2, the victim has also denied some suggestions put to her by defence.

**9.** PW 3 Allauddin Ahmed, who is the school teacher, has stated in his evidence that in the year 2003

the victim got admitted in Class VII in Panchmile Girls' High School but she did not appear in half yearly and annual examination. In the year 2004 she did not get admitted in the school. He was reported by class teacher regarding irregular attendance of the victim in class and one day her guardian came to school and informed him regarding the missing of victim.

In the cross-examination, PW 3 has stated that in the year 2004 the victim was not the student of his school. The age of the student entered into the Register on the basis of transfer certificate produced by the student. He had no personal knowledge about the occurrence.

**10.** PW 4, the owner of the Maruti van, has stated that he did not engage any permanent driver for the vehicle as his son used to drive himself. 3 years ago on one day his Maruti van was seized by police from his driver Sanjay Singh. Then the vehicle was given zimma to his custody.

In the cross-examination the PW 4 has stated that he was not interrogated by police in connection with the case. The vehicle was his private vehicle. So, that was used for personal purpose. The vehicle was not given on hire.

**11.** PW 5, the informant Abdul Mazid has deposed that the victim is his niece. The occurrence took place on 08-06-04. On that day at night he came to know about the missing of his niece while she was going to school. Then search was made for tracing her out. The information was also given to the Principal of the school. On 11-06-04 one missing entry was lodged before the police and thereafter

the written ejahar was lodged against accused Kamaluddin and Inamul Haque on suspicion after 15 days from the date of missing of his niece. The victim was noticed by one fisherman near Bhomoraguri Bridge. Then, the said person brought the victim to the residence and on being asked the victim disclosed before him that accused Amiran Nessa took her away by inducing her that she would be brought to the residence of her maternal uncle. She found other accused Salim, Akbar, Kamal, Nazrul, Inamul and Miraj inside the vehicle where she boarded as induced by accused. She was brought to somewhere by pushing injection on her body. She became senseless and the accused persons committed rape on her. When she was recovered her condition was so serious so that she had to immediately brought to the Civil Hospital.

In the cross-examination the PW 5 has stated that the ejahar was lodged before recovery of victim. He came to know about the missing of his niece at about 9 p.m. on the date of occurrence. The residence of father of victim situated adjacent to his residence. The search was made in different places to trace out the victim. The Head Master of the school reported him regarding the irregular attendance of the victim in the class. Though the money was given to the victim for getting the admission but she did not get admitted in the school. He also did not observe whether the victim regularly attended the school or not. He did not know the name of the fisherman who noticed the victim. When the victim was recovered she was wearing skirt and suridar. At that time, the father of the victim was ill. The victim was admitted in the hospital but he has forgot how many days the victim had stayed at hospital. He only stated the name of accused Kamaluddin

and Inamul before police at the time of interrogation by police. He did not state some fact before police which have been stated before the court as he was interrogated by the police before the recovery of victim. PW 5 has also denied some suggestions put to him by defence.

**12.** PW 6 Asia Begum, the elder sister of the victim has stated that at the time of occurrence the age of the victim was 14 years and she was reading in class VIII in Charimile Girls' High School. The occurrence took place on 06-08-04 when her sister had gone to school. As her sister did not return from school so her elder brother went out to trace her and after 28 days from the date of her missing, her sister (victim) recovered near Morabhoroli river and one person namely, Ismile brought her to the residence. At that time the victim was in serious condition. She could not talk easily so she immediately brought to the hospital and admitted there. She had stayed at hospital for about 19 days. Thereafter on being asked she came to know about the occurrence from her sister and she was informed that about 2/3 boys brought her away by taking her in a car when she was going towards school. One accused Amiran Nessa brought back from the bus in which she was travelling for returning to the residence then she was taken away by a Maruti van. She was taken away under inducement that she would be brought to her maternal uncle.

In the cross-examination, the PW 6 has stated that at the time of occurrence her sister's age was about 16/17 years. She (PW 6) had read upto Class X. At the time of recovery of the victim her dresses was found dirty.

PW 6 has also denied some suggestions put to her by defence in the cross-examination.

**13.** PW 7 is the Medical Officer. The Medical Officer has deposed that on 06-07-04 she examined the victim in connection with Tezpur Police Case No. 415/04 u/s 366(A) of IPC. The victim was escorted by C No. 136 J. Sarmah and during examination she found as follows :

“The patient was directly admitted in maternity Ward due to restlessness. Even the patient could not talk properly and could not reply to any question. Old bruise marks present (multiple over her breasts and inner side of thigh. Vagina admits 2 fingers easily. Breast well developed. Pubic hair and axillary hair present. The patient was admitted and respective on call doctor was informed.

From 6<sup>th</sup> July to 13<sup>th</sup> July, she was treated in the Ward with assisted opinion from ENT and psychiatrist.

The attendant took the victim from the hospital against medical advise.”

Then he submitted the medical report and he has proved the medical report as Ext.3.

In the cross-examination, the Medical Officer has stated that as the patient (victim) could not talk to anybody and could not reply to any questions so patient was referred for consultation in psychiatric department. Though the patient was not discharged, the attendant took the patient from the hospital without permission. As the patient was not found in movable condition so she could not be referred for radiological test.

**14.** PW 8, one of the Investigating Officer has stated that he was given the assignment for completing the remaining part of investigation due to transfer of earlier Investigating Officer. During the period of investigation by him he collected the Medical Certificate of the victim from the hospital. He also arrested accused Kamaluddin and Akbar Ali and forwarded them to Jail and then he handed over the case diary to O/C as he was ordered for transfer.

In the cross-examination, the PW 8 has stated that arrested the accused Kamaluddin on 16-02-05 and Akbar Ali on 05-09-05. He did not prayed for conducting TIP.

**15.** PW 9, the Investigating Officer has stated that on 11-06-2004 while he was working as Incharge of Borghat Police Out Post then he received one missing entry from informant Abdul Mazid regarding the missing of his niece on 08-06-04, while his niece was going to the school. Then one GD Entry was made on the basis of such written missing entry and he started to investigate the case on the basis of such GD Entry No. 166. The GD Entry was actually made on 11-06-04 and he has proved the GD Entry as Ext. 7(1). During the period of investigation by him he interrogated some witnesses, he referred the victim for medical examination. He also produced the victim before the court for recording the statement by the Magistrate. He arrested three persons and forwarded them to the Jail. He also interrogated the informant Abdul Mazid and thereafter he handed over the case diary due to his transfer from the post of Incharge of Borghat Police Out Post.

In the cross-examination, the PW 9 has stated that he has not certified the GD Entry (Ext.7(1)) and he has not also brought the original copy of GD Entry. He only received the written ejahar on 02-07-04. The victim was produced before him on 06-07-04. On 21-07-04 he examined the witness Nurjahan and Nurjahan stated before him regarding the age of the victim as 16 years and she (victim) was irregular in attending the school. She (victim) did not get admitted though the money was given to the victim for getting admission in the school. PW 9 has further stated that he could not recorded the statement of the victim as she was found mentally reiterated. He recorded the statement of informant on 13-06-04.

**16.** PW 10, another Investigating Officer has stated that on 22-09-04 he was directed to complete the remaining part of the investigation. During the period of investigation by him he arrested accused Miraj Ali, Najrul Islam and forwarded them to Jail. He also seized the vehicle bearing No. AS 12 C 0372 which was used at the time of occurrence from the driver Sanjay Singh by preparing a seizure list. Then he handed over the vehicle to the zimma of the owner. He has proved the seizure list as Ext.4.

In the cross-examination, the PW 10 has stated that he arrested accused Miraj Ali on 22-09-04 and accused Najrul on 16-11-2004.

**17.** PW 11, another Investigating Officer has stated that on 22-12-05 as he was directed for completing remaining part of the investigation so after going through

the case diary he found that the investigation had already been completed by earlier Investigating Officers. So he submitted the chargesheet against the accused persons u/s. 366(A)/376/34 of IPC. He has proved the chargesheet as Ext.5.

**18.** PW 12 is the learned Judicial Magistrate who had recorded the statement of victim u/s. 164 Cr.P.C.. The learned Judicial Magistrate has stated that on 21-07-04 she recorded the statement of the victim as the case record of GR Case No. 954/04 was endorsed to her by learned Chief Judicial Magistrate, Sonitpur, Tezpur. At that time the victim was produced and identified by Constable Sitaram Phukan and after recording the statement the case record was returned back to the learned CJM, Sonitpur, Tezpur. The learned Judicial Magistrate has proved the statement of victim as Ext. 1 and the GR Case record as Ext.6.

**19.** From the above discussions of evidence of PWs, it is found crystal clear that the victim (PW 2) has gave a clear and vivid picture of the acts done by the accused during the period of occurrence. The victim also narrated the facts before her mother and maternal uncle (PW 5), who have stated in their evidence with unambiguous words that the victim was found loitering at the place namely, Bhojkhowa Chapori like a made person and one fisherman noticed the victim first. Thereafter she was recovered and brought to the residence. The PW 5 (informant) has stated that after making all attempt, the victim could not be traced out and thereafter he (PW 5) lodged a missing entry before the police on 11-06-04. PW 9, one of the Investigating Officer has revealed that he received the written missing entry on 11-06-04 and he made GD Entry on same day on the basis of such written

missing entry and thereafter he started to investigate the case. So, on appreciation of evidence of PW 1 (mother of the victim) and PW 2 (the victim herself) it is found that the evidence of the victim has been adequately corroborated by the evidence of PW 1 and PW 5 regarding the date of occurrence and regarding the circumstances when and how the victim was recovered. On close scrutiny of the statement of the victim recorded by learned Judicial Magistrate u/s 164 Cr.P.C. it is found that the victim narrated the same story in her statement. So, I find no ground to disbelieve the evidence of victim. Because, her evidence is found coherent, corroborative and trustworthy as her evidence has been adequately corroborated by evidence of other PWs.

20. In this context I like to cite the submission made by the learned defence counsels during the course of argument as I have given anxious consideration to the submission of learned defence counsels. The learned counsels submitted that the medical evidence has not corroborated the prosecution story and as the victim was a mentally reiterated person so on the basis of evidence of victim accused can not be held guilty for committing such offence. The learned counsels have also one part of each of the evidence of PW 1, who is the mother of the victim and PW 6, who is elder sister of the victim wherein both PWs have revealed that prior to the occurrence, the victim was irregular in attending in the school though the money was given to her to get her admission in the school. The concerned Head Master has also admitted the fact that as he was reported by the class teacher he found the victim was irregular in attending the school. Considering the above submissions made by the learned counsels, it is found that the learned counsels have only insisted on the

mental condition of the victim prior to the occurrence. But considering the evidence of PWs in its entirety, it is found that the defence has failed to bring out the material fact in the cross-examination of PWs to establish that the victim was actually a mentally reiterate person prior to the occurrence. Though, the PWs 1 and 6 have admitted that the victim was irregular in attending in the school but such fact can not discard the reliability the evidence of PWs in regards to the occurrence. Moreover, though the learned counsels have submitted that the evidence of the victim has not been corroborated by the evidence of Medical Officer but it is also settled law that in case of sexual assault the evidence of victim needs no corroboration either by medical evidence or by evidence of other PWs if the evidence of victim inspire the confidence.

21. In this context, I like to cite the decision in the case of **Dwarika Bhuyan Vs State of Assam** reported in (2007) 1 GLR 281 regarding the importance of Medical evidence to prove the offence of rape. In para 18 the Hon'ble Gauhati High Court has observed that -

“ .....a victim of sexual assault is not an accomplice and her evidence needs no corroboration from any kind of evidence, medical or otherwise, the facts remains that in order to enable a court to base, in a case of sexual assault, conviction of an accused on the sole testimony of the victim of assault, the court must be satisfied that the victim's testimony has withstood the test of cross-examination and inspires confidence of the court ....”

Hence, by taking the note of above observation made by Hon'ble Gauhati High Court, I am of the considered opinion that the submission of learned Defence counsels is found not appealable.

22. Acused Amiran Ness has examined 2 DWs in support of her defence. I deem it necessary to discuss briefly the evidence of DWs to examine whether the evidence of DWs is sufficient to establish the plea of alibi taken by accused in her statement recorded u/s 313 Cr.P.C.

23. DW 1 Afajuddin has stated that on 05-06-04 his mother-in-law Amiran Nessa came to his residence as his wife got advanced stage of pregnancy and Amiran Nessa had stayed at his residence for 10 days from 05-06-04. Thereafter, two persons namely, Javed Mahaldar and Abdul Mazid brought her mother-in-law to Tezpur. In the cross-examination, the DW 1 has admitted that he has forgot the exact date when his mother-in-law was taken away by two persons. He has no knowledge about the occurrence of the case.

24. DW 2 Imran Hussain has stated that on 15-06-04 when he went to the pharmacy of Harej Ali then he saw one pregnant woman was coming with one old lady to the said pharmacy. Then two persons came and took away the old aged lady in a car. Then on being enquired he came to know that said old aged lady had earlier taken away one girl. In the cross-examination, the DW 2 has admitted that he has been brought to the court by DW 1. He did not know the name of the pregnant woman who had come with Amiran Nessa to the pharmacy. He has no knowledge regarding the occurrence.

25. On close scrutiny of evidence of DW 1 and DW 2 it is found that both the DWs have stated some contradictory fact in their evidence. The DW 1 has stated that Amiran Nessa who is his mother-in-law had stayed in

his residence for 10 days from 05-06-04 for looking after his wife as his wife delivered a baby during that period and when he along with his wife went to the pharmacy of one Harej Ali then two persons came and took away his mother-in-law to Tezpur. But in the cross-examination he has admitted that he has forgot the exact date when he brought his wife to the pharmacy along with his mother-in-law. DW 2 has admitted that Amiran Nessa was taken away to Tezpur on 15-06-04 when she had come to the pharmacy of Harej Ali as on that day, DW 2 also went to the said pharmacy. So, considering the evidence of DW 1 and DW 2 in its entirety, it is found that both the DWs have failed to substantiate the plea of accused Amiran Nessa that at the time of occurrence she was present at the residence of her son-in-law at Nagon. Though the accused Amiran Nessa has taken the plea that she was present at the residence of her son-in-law at Nagon, but such plea has not been adequately substantiated by the evidence of DWs. So, the defence case is not found reliable and trustworthy to disprove the prosecution story.

**26.** Now, I like to discuss the the material on record in the light of points for determination of the case for coming to the final conclusion.

**27.** In regards to the first point for determination, it is found from whole discussion that the prosecution has proved beyond reasonable doubt that the accused persons took away the victim by a Maruti van from the road in association with other accused Amiran Nessa while she was coming to the school under inducement. On appreciation of evidence of PWs, it is also found that the accused Kamaluddin and one Inamul induced the victim that they would brought her to the residence of her

maternal uncle. So, due to inducement made by the accused persons she boarded the maruti van and thereafter she was taken away to the jungle for committing sexual assault. So, the evidence of PWs is sufficient enough to establish the fact that the victim was induced to go out from the place (from road) during the returning journey from school.

**28.** Regarding the second point for determination of the case, it is found that the prosecution has proved with sufficient reliable evidence that the victim was induced to go out from the place with intent to force or seduce her to sexual intercourse with them as it appears from the evidence of PWs.

**29.** Regarding the third point for determination of the case, it is found that there is no such material in the evidence of PWs to establish that the victim was minor at the time of occurrence.

**30.** After appreciation of evidence of PWs it is found that though the mother of the victim and elder sister of the victim have revealed that at the time of occurrence the age of the victim was 14 years. But no such reliable documentary evidence has been produced in support of the age of the victim. Moreover, the medical evidence is completely silent regarding the age of the victim. So, considering the above material of the evidence of PWs regarding the evidence of victim, I am of the considered opinion that the prosecution has failed to prove that the victim was minor at the relevant point of time. So prosecution's version regarding the age of victim as minor can be belief. It can not be held that the victim was

actually minor at the relevant point of time on the sole basis of oral evidence of PWs 1, 5 and 6.

**31.** The sum and substance of the foregoing discussion is that the prosecution has proved beyond reasonable doubt that all the accused persons were involved for abducting the victim at the time of occurrence and all the accused persons are found taking part for committing the offence u/s 366 of IPC only as the evidence appears on record is not sufficient to prove the ingredients of offence U/s 366 (A) IPC as the charge has been framed u/s. 366(A) of IPC against the accused persons.

**32.** It is pertinent to mention that though the charge has been framed against the accused persons U/s. 366 (A) of IPC but the prosecution has been able to prove with sufficient material, reliable and coherent evidence that the accused persons committed the offence U/s. 366 of IPC only because what is stated by the PWs is not enough to establish the charge against the accused persons for commission of offence U/s. 366 (A) of IPC. Moreover, in view of section 222 of Cr.P.C., I find that there is no bar to convict the accused u/s 366 of IPC if charge is framed u/s 366 (A) of IPC as both offences are cognate offence with common ingredients. Hence, all the accused persons are found guilty for committing the offence U/s. 366 of IPC only.

**33.** Regarding the fourth point for determination of this case, it is found from the appreciation of evidence as discussed above that the victim has stated clearly that all the accused persons except accused Amiran Nessa committed the rape inside the jungle continuously for four days. During that period she was confined by tying her

hands and after 4 days she was handed over to other persons. The evidence of PW 2 (victim) has been sufficiently corroborated by the evidence of PW 1 and PW 5 as they were immediately reported by the victim after her recovery. Though the learned counsels vehemently submitted that the evidence of prosecution regarding the sexual assault has not been supported by the medical evidence but considering the evidence of PWs in its entirety, I find that the evidence of PW 2 supported by the evidence of her mother, her maternal uncle and her elder sister is sufficient enough to prove the ingredients of offence U/s. 376 (g) of IPC. Because, all the 6 accused persons committed gang rape on the victim for four days continuously by confining her with tying her hands for which the victim became mentally ill. Due to such fact the victim had to suffer serious psychological problem as well as physical harm. The accused not only destroyed the victim physically but also destroyed the personality of the victim for which she had to loiter near the river.

**34.** So, from the discussion stated above, it is found crystal clear that the prosecution has proved beyond reasonable doubt with sufficient reliable material, the ingredients of offence U/s 366 of IPC against all the accused persons. The prosecution has also proved beyond reasonable doubt the ingredients of offence U/s. 376 (g) of IPC against all other accused persons except Amiran Nessa as the prosecution has failed to prove with sufficient reliable evidence that the accused Amiran Nessa was present inside the jungle at the time of commission of sexual assault on the victim. So, I am of the considered opinion that the accused Amiran Nessa can not be held guilty for committing offence U/s. 376(g) of IPC on the basis of evidence of PWs even by virtue of Section 34 of IPC (in aid common intention). So, all the accused persons are liable for committing the offence

U/s. 366 of IPC and all the accused persons except Amiran Nessa is found liable for committing offence U/s. 376(g) of IPC. Hence, the accused Amiran Nessa is entitled to acquittal from the charge u/s. 376(g) of IPC.

35. Considering the facts and circumstances of the case and also considering the gravity of offence committed by accused, I am of the considered opinion that it is not a fit case to invoke the provision of section 360 of Cr. P. C as the accused are found committing sexual assault on the victim by causing immense hurt on her psychology.

36. Heard from accused persons on point of sentence u/s 235 (2) CrPC. Though the accused persons have stated that when they were examined U/s. 313 Cr.P.C that they were noway connected with the occurrence and the case was completely false but such plea taken by the accused is found not acceptable in view of the material found in the evidence of PWs. So, the accused persons liable for conviction under the said sections of law for which they are found guilty. Considering the reasons stated above, I find that the accused persons are deserved to be convicted with sentence of imprisonment as well as fine. But considering the age factor of accused Amiran Nessa I find sufficient ground and special reason to pass sentence of lesser imprisonment in comparison to other accused.

#### O R D E R

37. As the prosecution has proved the case beyond reasonable doubt against the accused namely, Kamaluddin, Aminul Haque, Akbar Ali, Miraj Ali and Amiran Nessa for committing offence u/s 366 of IPC, so accused persons namely, Kamaluddin, Aminul Haque, Akbar Ali, Miraj Ali are convicted with sentence of Rigorous imprisonment for 5 (five) years and to pay the fine of Rs. 2,000/- (rupees two thousand) in default Rigorous Imprisonment for another 2 (two) months for the offence committed u/s 366 of IPC and

accused Amiran Nessa is convicted with sentence of Simple imprisonment for 2 (two) years and to pay the fine of Rs. 2,000/- (rupees two thousand) in default Simple Imprisonment for another 1 (one) month for the offence committed u/s 366 of IPC by considering the special reason that the accused is found an old aged lady and she has no criminal record as stated by her when she is heard u/s 235 (2) of Cr.P.C. As the prosecution has proved the case beyond reasonable against accused Kamaluddin, Aminul Haue, Akbar Ali and Miraj Ali for committing offence U/s. 376(g) of IPC so accused persons namely, Kamaluddin, Aminul Haque, Akbar Ali, Miraj Ali are convicted with sentence of Rigorous imprisonment for 7 (seven) years and to pay the fine of Rs. 5,000/- (rupees five thousand) each in default Rigorous Imprisonment for another 3 (three) months for the offence committed u/s 376(g) of IPC. The past criminal records of these accused, are considered as special reason while passing the sentence of less imprisonment for offence u/s. 376(g) of IPC. The accused Amiran Nessa is acquitted on benefit of doubt from the charge u/s 376(g) of IPC. The sentence of imprisonment for both offence shall run concurrently.

**38.** It is also ordered that the period of detention, if any, shall be set off from the period of imprisonment.

**39.** The fine mount, if realised, shall be given to the victim as compensation.

**40.** Considering the facts and circumstances of the case I find that the seized articles shall be given to the custody of the owner if it was not done earlier in due course of time as the owner has claimed the vehicle was not use on hire purpose and as the vehicle is found not used for committing offence with malafide intention.

**41.** Let a copy of judgment be furnished to the accused with free of cost as per section 363 of Cr.P.C.

42. Let a copy of judgment also be furnished to the District Magistrate, Sonitpur, Tezpur.

43. Given under my hand and seal of this Court on this day, the 24<sup>th</sup> day of July, 2012.

( M. Kalita)  
Assistant Sessions Judge,  
Sonitpur, Tezpur.

Dictated and corrected by me.

(M. Kalita)  
Assistant Sessions  
Judge,  
Sonitpur, Tezpur.

Dictation taken and  
transcribed by me :

( R. Hazarika)  
Steno.

**A P P E N D I X****Prosecution witnesses :**

PW 1	:	Musst. Noorjahan Begum
PW 2	:	Musstt Nazira Begum,(victim)
PW 3	:	Allauddin Ahmed,
PW 4	:	Abdul Rafique
PW 5	:	Abdul Majid,(informant)
PW 6	:	Musst. Asia Begum,
PW 7	:	Dr. Jahanara Begum (MO)
PW 8	:	S.I Ananta Das,
PW 9	:	Inspetor Nagen Bora,
PW 10	:	Sri Tilak Ch. Bora. I.O.,
PW 11	:	Sri Pradip Kr. Das,I.O.
PW 12	:	Judicial Magistrate.

**Defence Witness :**

DW 1	:	Afajuddin
DW 2	:	Imran Hussain.

**Court Witness :****Prosecution Exhibits: :**

Exhibit 1	:	statement
Exhibit 2	:	Ejahaar
Exhibit 3	:	Medical report
Exhibit 4	:	Seizurelist
Exhibit 5	:	chargesheet
Exhibit 6	:	GR case record

**Material Exhibits: :** Nil**Defence Exhibit :** Nil**Court Exhibit :** Nil**Exhibit produced by witness :** Nil

(M. Kalita)  
Assistant Sessions Judge,  
Sonitpur : Tezpur.