

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Session Case No- 272 of 2013

u/s 376/511 IPC

STATE

Versus

Anowar Hussain

Accused person

(Committed by Sri Y. Azaz, then Ld. SDJM (M) Bilasipara in GR (BLP) case No- 107/12 u/s 376/511 I.P.C.)

Advocate appeared:-

For the state:- Mr. T. Kr. Bhattacharya, Addl. P.P

For the accused:- Mr. Hekmat Ali Sk., Advocate.

Date of institution of the case :- 15-02-12

Date of commitment :- 04-10-13

Date of Framing charge :-27-03-14

Date of prosecution evidence :- 28-08-14, 15-05-15, 16-10-15
01-11-16, 03-02-17

Statement of accused recorded on :- 21-02-17

Date of defence evidence :- 29-01-18, 06-04-18

Date of Argument :- 17-05-18 & 31-05-18

Judgment delivered :- 04-06-18

Sentence Hearing :- 04-06-18

Sentence Pronounced :- 04-06-18

JUDGMENT

Prosecution Case

1. Prosecution case as reveal from Ext-1 ejahar is that prosecutrix was working as cook at 1892 Surjya Khata Public LP School for last three year prior to the date of incident on 10-01-12 and accused is the headmaster of the said school. Accused headmaster Anowar at first behaved good with prosecutrix but later on day by day accused started to behave indecently with prosecutrix, gives her lucrative offer, tried to outrage her modesty entering silently in the lavatory after asking her to clean the lavatory and prosecutrix being poor lady with fear to lose her jobs continued the works bearing all kinds of sexual assault and accused continuously sexually abused her. On 10-01-12 at about 09.00 am accused headmaster Anowar instructed prosecutrix to clean lavatory and when she was cleaning lavatory accused silently entered and embraced her and holds her and tried to commit rape on her. As door was opened prosecutrix somehow managed to escaped from accused and disclosed about the incident to village responsible person and responsible village person tried to mutually settled the dispute but no settlement was took place and therefore prosecutrix filed complaint petition before SDJM(M), Bilasipara court and then learned SDJM (M) Bilasipara forwarded complain petition to OC Bilasipara PS to registrar a case and to submit FF of the case before the Court.

Investigation

2. Officer-in On receipt of complaint petition forwarded by court of Ld. SDJM (M) Bilasipara, O/C Bilasipara registered a police case vide Bilasipara police case No. 107/12 under section 376/511 I.P.C. and SI Jamir Ali was entrusted to conduct the investigation of the case and after completion of investigation IO submitted charge sheet against the accused Anowar Hussain u/s 376/511 I.P.C.

Committal

3. On receipt of the charge sheet, then Ld. SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused person committed the case before the Learned. Sessions Judge, Dhubri for trial and Learned Sessions Judge, Dhubri made over the case to court of Ld. Addl. Sessions Judge, Dhubri

for trial and finally Ld. Addl. Sessions Judge, Bilasipara made over the case to this court for trial as case falls under jurisdiction of this court.

Charge

4. My then Ld. Predecessor after hearing learned counsel for both sides and perusal of material on record framed charge u/s 376/511 IPC against the accused person Anowar Hussain and when charges are read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

Trial

5. In order to prove the prosecution charges against the present accused persons, prosecution adduce evidence of all together 7 numbers of witnesses and exhibited 3 numbers of documents. PW-1 Prosecutrix, PW-2 Abdul Khaleque, PW-3 Sahida Bibi, PW-4 Tofil Ali, PW-5 Hadish Ali, PW-6 Eusuf Ali Ahmed, PW-7 SI Jamir Ali. Ext-1 complaint petition, Ext-2 Sketch map, Ext-3 Charge sheet. After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. At the time of recording of statement of accused person u/s 313 Cr.P.C accused took plea of denial and inclined to adduced defence evidence in support of his defence plea and accordingly accused person adduced evidence of 7 witnesses including accused, DW-1 Anowar Hussain (accused), DW-2 Musst. Jahanur Alom, DW-3 Rosida Khatun, DW-4 Jeleka Bibi, DW-5 Binota Devi, DW-6 Morjina Begum, DW-7 Sofiqul Islam and exhibited 6 numbers of documents. Ext-A copy of resolution of appointment of three cooks, Ext-B complaint of public made against prosecutrix, Ext-B(1) relevant portion of forwarding of Deputy Inspector of Schools, Ext-C resolution dated 05-07-11, Ext-D copy of the complaint of prosecutrix before SMC, Ext-E resolution dated 22-01-12, Ext-F Certified copy of ejahar of Bilasipara PS case No. 155/12.

6. **POINTS FOR DETERMINATION:-**

- i) Whether accused on 10-01-12 at village Surya Khata LP School under Bilasipara PS attempted to commit rape on prosecutrix?

ARGUMENT

7. Ld. Addl. P.P contended that accused is headmaster of 1892 L.P. School and he sexually assaulted and outraged modesty of victim who worked under him and he attempted to commit rape on victim who worked under him and other witnesses heard incident from her and evidence of prosecutrix together with the evidence of other witnesses established the prosecution charge against the accused person. He further contended, defence evidence failed to rebut the prosecution evidence and all the defence witnesses are working under accused and all of them are interested witness.
8. Ld. defence counsel argued according to prosecutrix incident was took place on 10-01-12 and lodged ejahar on 08-02-12 and delay not explained. He argued admittedly prosecutrix was cook of the school when accused is headmaster cum secretary of the school management committee (in short SMC) and apart from prosecutrix, two other cooks works in the school. He again contended that SMC removed prosecutrix from the post of cook of the school due to her rough behaviors and public complaint and prosecutrix thought accused's hand is there for her removal and came to school and creates nuisance, vandalized in the kitchen and at that time school headmaster was not present at school and he was at market. Ld. Counsel submits all the PWs are relative of victim and none is eye witness and they stated incident was took place at prosecutrix' home and they contradict prosecutrix statement. Learned counsel submits prosecutrix filed one complaint before SMC against the accused and SMC found same was false and as per direction of DI of school, accused lodged ejahar against the accused and IO did not recorded statement of teachers, student, of school and prosecutrix daughter who studied at the school at the relevant time and defence evidence thrown out the prosecution case against the accused.

PROSECUTION EVIDENCE

9. PW-1 is the prosecutrix of this case. Her evidence is that accused is the headmaster of LP school at Suryakhata where she worked as mid-day meal cook for 2/3 years and on the date of incident she went to school at about 09.00-10.00 am. Accused headmaster called her up and asked her to wash bathroom and latrine of the school and accused illegally entered into the

lavatory and tried to rape her, she shouted and resisted accused attack and assault on her hence, accused could not rape her and failed in his attempts but embraced her from behind and torn her clothes. She managed to escape from the detention of accused, run away from the bathroom and went to her house and informed her family members and thereafter, she lodged the complaint before Bilasipara court. She deposed when accused attempted to commit sexual intercourse in the bathroom, students did not start coming to school as incident took place at about 09.00 – 09.30 am and students and other teachers normally came to school at about 10.00 am. She deposed after lodging of case she had lost her cooking job from school. **In cross** she stated she was assigned for the job of cooking mid-day meal verbally and no formal appointment issued to her and no discharged letter handed over to her for termination of her job from 05-07-11. She stated on 17-01-12 she lodged complaint before SMC and she was discharged from her job when she lodged compliant against the accused. She stated she was called by headmaster at 09.00 am and school starts at 10.00 am. She stated Rasida Begum, Manju & Jahanur are lady teachers working in the school and Jeleka and Binita were working as cook in the school. She has no knowledge if accused lodged a case against her which is registered as Bilasipara PS case no. 155/12 u/s 447/294/196 IPC and she has no knowledge if Deputy Inspector of school have given any instruction for discharging her from her job. She denied that she stop going to school since 07-5-11, she was discharged from the school, other lady teachers were present and she do not have any relation with the school after 5/7, her complaint before SMC dated 17-01-12 was baseless, school start at 09.00 am and student of the school arrived at school at 08.30 am.

10. PW- 2 Abdul Khaleque is the father of the prosecutrix. His evidence is that his daughter was working as cook in Suryakhata Public LP School where accused was head master at the time of incident and his daughter residing in an adjacent house to his residence. He deposed accused frequently visit his daughter's house and when he questioned reason of his frequent visit to this daughters house he could not reply properly accused. He deposed he requested accused not to come to his house but accused did not follow his request. His further evidence is that on the day of incident his daughter went to the school for her work, at that time accused was present and when his daughter was cleaning the bathroom of the school, accused entered into the bathroom from behind and embraced her from back side with intention of committing rape on her and his daughter restricted him not outrage her, scuffle

was took place between them. His daughter run out from the detention of the accused, came to his house and told him crying that accused outraged her modesty and wanted to rape her and one Hadis Ali was also present while prosecutrix was explaining the incident to him. Thereafter meeting was held and later on his daughter lodged ejahar. **In cross** he stated he does not know when his daughter joint as cook in the school. He stated school is situated after two houses from his residence where two other cooks namely Jeleka and Binita were also engaged and three lady teachers were working and incident with his daughter took place at about 08.00- 08.30 am. He denied that school started at 9 am and school student come at 08.30 am and his daughter did not go to school at 05-07-11 and was discharged by SMC as per direction of DI of school after 05-7-11. He stated wife of Hadis Ali Anjuwara Begum was the vice chairman of SMC of the school and his daughter lodged written complaint to the SMC on 17-01-01 for illegal act of the accused and SMC arranged meeting on 22-01-01 for this issue and secretary of the SMC was accused.

11. PW-3 Sahida Bibi is mother of prosecutrix. Her evidence is that at the time of incident her daughter was working as cook at Suryakhata Public LP School where accused is the teacher and her daughter resides near her house. She deposed on the day of incident accused came to her daughter's house and her daughter was shouting and when she went to her house, her daughter told her that accused had outraged her modesty by putting his hand on her chest. She deposed she chased the accused by giving him slap and reported the matter to neighboring people and her daughter lodged the case against the accused. **In cross** she stated her daughter was working in Suryakhata Public LP School for about 3 years. Thereafter her contract was terminated and after termination she never visited the school. She denied that accused did not enter into the house of her daughter, did not put his hand on the chest of her daughter. However, she was told about the incident by her daughter.
12. Evidence of PW-4 Tofil Ali is that he knows accused and prosecutrix. He deposed prosecutrix used to work in Suryakhata Public LP School as cool and accused was the teacher of that school. He deposed one day while prosecutrix was working as a cook in the school, accused called prosecutrix and asked her to wash lavatory of the school and while prosecutrix was washing the lavatory, accused outraged prosecutrix by touching her body and accused tried to hamper chastity of prosecutrix. He deposed he came to know about the incident from prosecutrix and he told the same incident before the police. **In cross** he stated he did not see the occurrence and cannot say exact date of

the incident. He stated prosecutrix raised complaint before SMC and a meeting was held for that purpose. Prosecutrix raised complaint before SMC regarding the illegal behavior made by the accused on her and he was present in the meeting of SMC where prosecutrix raised complaint but he does not know outcome of decision of SMC regarding the dispute. He stated prosecutrix left her job as a cook from the school due to illegal behavior made by the accused. He denied that prosecutrix was chased out from her job by the school inspector upon getting complaint from the SMC.

13. Evidence of PW-5 Hadish Ali is that at the time of incident he was not member of the SMC of the school. At that time accused was head master of the said school and prosecutrix used to work as cook in the said school. He deposed prosecutrix told him that accused had been looking and speaking towards her with bad intention and therefore prosecutrix lodged ejahar and for this reason accused had suspended prosecutrix from job. **In cross** he stated his wife Anjuwara is the vice president of SMC of the said school. He denied that his wife did not tell him about the incident and villagers filed a complaint against Prosecutrix and based on said complaint DI of school directed the headmaster to discharge prosecutrix from her job. He stated on 17-01-12 prosecutrix lodged a complaint to the SMC regarding the illegal behavior of the accused headmaster. He stated he does not know about the meeting called by SMC in connection with the complaint and he also does not know whether his wife was present in the meeting or not.
14. PW-6 Eusuf Ali Ahmed deposed he knows prosecutrix and accused. He is a member of school Managing Committee and prosecutrix was appointed as a cook on temporary basis. He deposed he came to know from the prosecutrix that head master of school had committed illegal behave with her. After that he went to the house of headmaster but he did not find headmaster. **In cross** he stated at the time of incident he was not member of the SMC committee of school. A new committee was made after his resignation from the committee and Saiful is the president of the new committee. He stated he does not know whether DI directed the headmaster to discharge prosecutrix.
15. PW-7 SI Jamir Ali is the IO of the case. His evidence is that O/C Bilasipara PS endorsed him to investigate the Bilasipara PS case no. 107/12 u/s 376/511 IPC. After taking charge of the investigation he recorded the statement of complainant, visited the place of occurrence , drawn sketch map of the place of occurrence vide Ext-2 and he also recorded the statement of other witnesses and after completion of the investigation submitted charge sheet against the

accused Anowar Hussain u/s 376/511 IPC. **In cross** he stated the complaint petition was filed on 08-02-12 which was forwarded to PS and registered on 15-02-12 by the O/C Bilasipara PS. He stated the alleged incident was took place on 10-01-12 at Suryakhata Public LP school at about 09.00 am. He stated he did not record the statement of two cooks of the said school and there was cross case between the parties of the same incident and he was not IO of the cross case. He denied that he did not investigate the case properly.

DEFENCE EVIDENCE

16. Evidence of DW-1 Anowar Hussain is that he is the headmaster of no. 18 Surjyakata Public L.P School and he is working in the said school from the year 2011. He deposed in the year 2011 Mr. Moinul Hoque was president of SMC of no. 18 Surjyakata Public L.P School at the time of his joining at said school. He deposed at that time he found three mid-day meal cook and including him four teachers working in the said school. Morjina Begum, Rushida Begum, Jahanur Alom was school teacher in the year 2012 and Jeleka Bibi, Binota Devi and prosecutrix worked as cook and all the three cooks joined in the school in the year 2010 and they were appointed in the year 2010 but prosecutrix was appointed purely on temporary basis. Ext-A is the copy of resolution of appointment of the three cooks in the school. He deposed public made complaint against prosecutrix to DI of school vide Ext-B and DI of School forwarded the same vide Ext B-1 to him to take action against prosecutrix by calling SMC meeting. He deposed on receipt of Ext-B from DI, he being secretary of SMC of his school called SMC meeting on 05-07-11 and in the meeting they took resolution vide Ext-C to terminate prosecutrix as she was appointed purely on temporary basis. He deposed after termination of the service of prosecutrix, one day she came to the school, blamed him in the office. He deposed after taking resolution of the termination of appointment of prosecutrix the old SMC was dissolved and new SMC constituted on 16-10-11 and in the new SMC committee Moinul was appointed as president. Subsequently DW-1 stated he forget the name of new president of SMC. DW-1 again stated new president of the SMC is one Bishnu. He deposed prosecutrix filed one complaint before new SMC of the school against him vide Ext-D. On receipt of Ext-D from prosecutrix SMC meeting was called to discuss on the complaint of prosecutrix on 22-01-12 and committee took resolution vide Ext-E that her complaint was fractious, false and committee will take stern action

against her in future if she present any false complaint in future. He deposed on 10-01-12 prosecutrix came to school demanded her wages, rebuked him. On 10-01-12 incident he called SMC meeting and took resolution in the SMC meeting and copy of the said resolution was forwarded of D.I of school for information and action. To that DI of school given him written order to filed criminal case against prosecutrix and accordingly he lodged ejahar against prosecutrix. Ext F is certified copy of ejahar Bilasipara PS case no. 155/12 and this case is still pending. He denied that on 10-01-12 when prosecutrix came to school he instruct her to clean toilet of the school. Thereafter he entered into the toilet, hold her behind her back, embraced her, molested her and made attempt to rape her. **In cross by prosecution** he stated in the year 2011 Moinul Hoque was the president of no. 18 Surjyakata Public L.P School at the time of his joining in the said school and after hi joining in the school Mr. Sofiquil was the president of SMC committee not Bishnui. He stated signature present on Ext A is the signature of Sofiquil the president of SMC and date mentioned in Ext A is 24-01-10. He stated he can't say the signature present on Ext A. Ext B is handed over to him by DI of school. Ext B was given to him by DI personally. He stated in the year 2010 Sofiquil was not the president of SMC. There is no resolution taken in the SMC that give him permission to bring the resolution proceeding book and to produce before the court and he bring it of his own. He denied that to save himself from the case filed by prosecutrix he brought school SMC proceeding books of his own without permission from the SMC.

17. DW-2 Musst. Jahanur Alom deposed presently she is working as a teacher at 1540 Bholanath LP School and earlier during 2010-11 she worked in the no.18 Surjyakata Public LP School. She deposed in the year 2010-11 accused Anowar was the headmaster, Morjina Begum was the first Asst. teacher and she and Rashida Begum was also working in the said school. She deposed two cooks namely Jeleka and Binota working in the said school. She deposed she knows prosecutrix. Prosecutrix being nearby resident of no. 18 Surjyakata LP School used to visit in their school and do certain works as she is poor lady. She deposed on 10-01-12 while she was working in no. 18 Surjyakata Public LP school and reached school at about 09.00 am, prosecutrix came to their school, entered into the kitchen of the school, thrown out cooking utensils. Other two cooks informed them about the said matter and they told other two cooks that let the headmaster of school come as he went to market. Thereafter prosecutrix left the school. She denied that on 10-01-12 school headmaster

engaged prosecutrix to clean up the toilet and while she was cleaning the toilet school headmaster Anowar outraged her modesty and made attempt to commit rape on her. **In cross by prosecution** she stated her house is at Batapara which is about 1 ½ km away from No. 18 Surjyakata Public LP School. She stated she can't say what happened in the school prior to her reaching in the school on 10-01-12. She stated she did not ask anything to prosecutrix. She even did not ask anything to headmaster accused Anowar. She stated there is a toilet in their school at the relevant point of time there was no safai karmachari appointed or engaged by the school to clean up the toilet.

18. DW-3 Rosida Khatun deposed in the year 2012 she was working as Astd. Teacher in the no. 18 Surjyakhata Public LP School and at that time five teachers and other two cook Binita and Jeleka were also working in the said school. Again she deposed at that time six teachers namely Anowar Hussain, Morjina, Jahanur Alom and herself were working in the said school. She deposed she knows prosecutrix as prosecutrix is nearby resident of said school. She deposed on 10-01-12 she reached school at 09.00 am and on that day at 09.00 am herself, headmaster Anowar Hussain, Morjina and two cooks were present in the school. DW-3 again stated that headmaster Anowar reached school at 09.30 am. She deposed on 10-01-12 prosecutrix came to school and made tantrums in the school, thrown utensil. Other two cooks reported this matter to her and she told the cook that let school headmaster be come to sort out the problem but prosecutrix left school before arrival of school headmaster. She deposed she cannot say whether accused engaged prosecutrix to clean toilet on 10-01-12 and then hold prosecutrix, embraced her, outraged her modesty, molested her and made attempt to commit rape on her. She deposed accused headmaster Anowar went to market on 10-01-12 at the time of incident. **In cross by prosecution** she stated school started at 09.30 and they reach school at 09.00 am and prosecutrix sometimes work in the said school. She stated school headmaster Anowar did not restrained prosecutrix to come in to school and to work. She stated there is toilet in their school and school headmaster engaged sweeper to clean the toilet. She stated she made compliant to the school head master Anowar against prosecutrix that prosecutrix had thrown out school kitchen utensil. She stated she can't say whether any resolution was adopted by the school SMC against prosecutrix
19. DW-4 Jeleka Bibi deposed she is working as cook in the 18 Surjyakata Public LP School for about last 9 years. She deposed there are two cooks in the said school including her and prosecutrix was appointed by SMC of the school as

helper. She deposed prosecutrix was not regularly employed and she occasionally came to school. She deposed on 10-01-12 she reached school at 08.30 am and while she was making preparation for the cooking, prosecutrix entered into the cooking room and quarreled with her and other cook. Thereafter they called other school female teachers and at that time prosecutrix left and at that time two school teachers Jahanur Alom and Rasida was present and headmaster went to market at that time. She deposed on 10-01-12 prosecutrix came to school as usual and at that time daughter of prosecutrix was also present who is reading in the said school. She deposed school toilet is present in front of the cooking room in the same line and if toilet became dirty it was clean by sweeper. She deposed when school headmaster came to the school they informed the matter to the school headmaster. She denied that on 10-01-12 when prosecutrix came to school, school headmaster engaged her to clean the toilet and then he hold her, embraced her, molested her , outraged her modesty and made attempt to commit rape on her. **In cross by prosecution** she stated prosecutrix was working in the Surjyakata Public LP School since the days of her joining and subsequently head master of her school restrained her from coming to school to work and headmaster informed the SMC that he had restrained prosecutrix to work in the school. She deposed she cannot say what happened thereafter. She deposed she does not know the sweeper who comes to clean toilet.

20. DW-5 Binota Devi deposed she had joined in the no. 18 Surjyakata Public LP School as cook in the year 2010 and along with her Jeleka and prosecutrix too joined as cook and at that time four teachers Anowar Hussain, Jahanur, Rasida and Marjina were working in the said school. She deposed prosecutrix came to school and quarrel with them when she was discharged from the service of cook by the school authority in the year 2012. She deposed on 10-01-12 she reached school at 08.30 am, female teachers of school reached school at 09.00 am and school head master accused Anowar at that time went to market. She deposed on 10-01-12 prosecutrix came to school, quarrel with them and at that time school teacher Rasida and Jahanur present. They informed about the incident of quarrel by prosecutrix to female school teachers and female teachers of said school told them not to wait for school headmaster. She deposed they also informed about the incident to school headmaster but prosecutrix left prior to it. She deposed school toilet is adjacent to the school cooking room. She denied that on 10-01-12 when prosecutrix came to school, school headmaster engaged her to clean the toilet and then he hold her,

embraced her, molested her, outraged her modesty and made attempt to commit rape on her. She deposed in the year 2012 daughter of prosecutrix Mausumi was studied in their school in fifth standard. She further deposed head master was present when prosecutrix came to school. **In cross by prosecution** she stated school head master always reached school at 09.30 am and they start cooking at 08.30 am. She stated there are two toilets in their school and school toilet never got dirty and whenever it got dirty sweeper was called to clean up the toilet. Prosecutrix came to school on 10-01-12 and at that time female school teachers were present in the class room.

21. DW-6 Morjina Begum deposed she had retired from 18 Surjyakata Public LP School in the year 2013. Prior to her retirement while she was working in the said school during 2010-2012 herself, Jahanur Alom, Rasida was working as Asst. Teacher and accused Anowar Hussain was working as head master in the said school and Binota and Jeleka was working as a cook. She deposed child of prosecutrix also studied in the said school. She deposed she only heard about the fact that quarrel was took place in between prosecutrix and cooks. She denied that on 10-01-12 when prosecutrix came to school, school headmaster engaged her to clean the toilet and then he hold her, embraced her, molested her, outraged her modesty and made attempt to commit rape on her. She deposed she does not know the reason behind the controversy in between prosecutrix and accused school headmaster. She deposed when prosecutrix came to school and thrown out the cooking utensil of school, school headmaster was present in the market. **In cross by prosecution** she stated sometimes she see prosecutrix helping cook in preparation of the food and prosecutrix took out left over vegetable to feed her cattle. She stated she have no actual knowledge about the incident that took place in between prosecutrix and school headmaster Anowar Hussain.

22. Evidence of DW-7 Sofiquil Islam is that he knows prosecutrix who hails from his village and he also knows the accused Anowar Hussain who worked in 1892 No. Surjyakhata Public L. P. School. He deposed from the period Jan/12 to Dec/14 he was serving as President SMC of 1892 No. Surjyakhata Public L. P. School and during his tenure four persons working as Teacher including head master and Jeleka and Minoti Nath were working as Cook in the said school. He deposed on 17-1-2012 prosecutrix submit one complaint before him vide Ext- D and after getting said complaint he called SMC meeting on 22-01-2012. In the said meeting himself, other members of SMC, school teacher were also present and after discussion they find that allegation leveled by the prosecutrix

in her complaint petition against the head master of the school is baseless and took resolution vide Ext-E and if prosecutrix entered in to the school they will inform her entry to the school to the DI of School. He further deposed prosecutrix did not mention any occurrence of incident before him while she submitted her complaint petition before him. **In cross by prosecution** he stated he did not visit the school daily. He only visit the school when there is a meeting called by the SMC and therefore he is not aware what activities going on in the school daily. He stated they did not serve any notice to prosecutrix in the meeting held on 22-01-12.

23. Evidence of DW-7 Sofiqul Islam is that he knows prosecutrix who hails from his village and he also knows the accused Anowar Hussain who worked in 1892 No. Surjyakhata Public L. P. School. He deposed from the period Jan/12 to Dec/14 he was serving as President SMC of 1892 No. Surjyakhata Public L. P. School and during his tenure four persons working as Teacher including head master and Jeleka and Minoti Nath were working as Cook in the said school. He deposed on 17-1-2012 prosecutrix submit one complaint before him vide Ext- D and after getting said complaint he called SMC meeting on 22-01-2012. In the said meeting himself, other members of SMC, school teacher were also present and after discussion they find that allegation leveled by the prosecutrix in her complaint petition against the head master of the school is baseless and took resolution vide Ext-E and if prosecutrix entered in to the school they will inform her entry to the school to the DI of School. He further deposed prosecutrix did not mention any occurrence of incident before him while she submitted her complaint petition before him. **In cross by prosecution** he stated he did not visit the school daily. He only visit the school when there is a meeting called by the SMC and therefore he is not aware what activities going on in the school daily. He stated they did not serve any notice to prosecutrix in the meeting held on 22-01-12.

DISCUSSION, DECISION & REASON THERE OF:-

24. It has been alleged in Ext-1 ejahar that prosecutrix was working as cook of 1892 Surjya Khata Public LP School for last three year prior to the date of incident on 10-01-12 and accused is the headmaster of the said school. It is alleged that accused behave indecently to prosecutrix, gives her lucrative offer, tried to outrage her modesty entering silently in the lavatory asking her to clean the lavatory and prosecutrix being poor lady with fear to lose her jobs

continued the works bearing all kinds of sexual assault and accused continuously sexually abused her and on 10-01-12 accused instruct her to clean lavatory and when she was cleaning lavatory accused silently entered and embraced her and holds her and tried to commit rape on her and as door was opened she managed to escaped and disclosed incident to village responsible person and responsible village person tried to mutually settled the dispute but no settlement was took place so she forced to lodge ejahar.

25. Prosecutrix in her evidence stated accused is the headmaster of LP school where she worked as mid-day meal cook for 2/3 years and on the date of incident she went to school, at that time student and other teachers not started coming at school and accused asked her to wash bathroom and latrine of the school and accused illegally entered into the lavatory and tried to rape her, she shouted and resisted accused attack and assault hence accused could not rape her and failed in his attempts but embraced her from behind and torn her clothes. She managed to escape and informed her family members. In cross she stated she was assigned the job of cooking mid-day meal verbally and no formal appointment issued to her and no discharged letter handed over to her for termination of her job from 05-07-11. She stated on 17-01-12 she lodged complaint before SMC and she was discharged from her job when she lodged compliant against the accused. She stated she was called by headmaster at 09.00 am and school starts at 10.00 am.
26. She stated Rasida Begum, Manju & Jahanur are lady teachers working in the school and Jeleka and Binita were working as cook in the school. She has no knowledge if accused lodged a case against her which if registered as Bilasipara PS case no. 155/12 u/s 447/294/196 IPC and she has no knowledge if Deputy Inspector of school have given any instruction for discharging her from her job. She denied defence suggestion that:- 'she stop going to school since 07-5-11, she was discharged from the school, other lady teachers were present and she do not have any relation with the school after 7-5-11, her complaint before SMC dated 17-01-12 was baseless, school start at 09.00 am and student of the school arrived at school at 08.30 am'.
27. PW- 2 is the father of the prosecutrix. He stated his daughter was working as cook in Suryakhata Public LP School where accused was head master at the time of incident and his daughter residing in an adjacent house to his residence and accused frequently visit his daughter's house and when he questioned reason of his frequent visit to his daughter's house accused could not reply properly. He deposed he requested accused not to come to his house but

accused did not follow his request. His further evidence is that on the day of incident his daughter went to the school for her work, at that time accused was present and when his daughter was cleaning the bathroom of the school, accused entered into the bathroom from behind and embraced her from back side with intention of committing rape on her and his daughter restricted him not to outrage her, scuffle was took place between them. His daughter run out from the detention of the accused, came to his house and told him crying that accused outraged her modesty and wanted to rape her and at that time one Hadis Ali was also present. Thereafter meeting was held and later on his daughter lodged ejahar. In cross he stated he does not know when his daughter join as cook in the school. He stated school is situated after two houses from his residence where two other cooks namely Jeleka and Binita were also engaged and three lady teachers were working and incident with his daughter took place at about 08.00- 08.30 am. He denied that school started at 9 am and school student come at 08.30 am and his daughter did not go to school after 05-07-11 and was discharged by SMC as per direction of DI of school on 05-7-11. He stated Anjuwara Begum, wife of Hadis Ali was the vice chairman of SMC of the school and his daughter lodged written complaint to the SMC on 17-01-01 for illegal act of the accused and SMC arranged meeting on 22-01-01 for this issue and secretary of the SMC is accused person.

28. PW-3 is the mother of the prosecutrix. Her evidence is that her daughter work as cook at Suryakhata Public LP School where accused is the head master and her daughter resides near her house. She stated on the day of incident accused came to her daughter's house and her daughter was shouting and when she went to her house, her daughter told her that accused had outraged her modesty by putting his hand on her chest. He chased the accused by giving him slap. In cross she stated her daughter was working in Suryakhata Public LP School for about 3 years. Thereafter, her contract was terminated and after termination she never visited the school. She denied that accused did not entered into the house of her daughter, did not put his hand on the chest of her daughter. However, she was told about the incident by her daughter.
29. PW-4 Tofil Ali stated accused is teacher of Suryakhata Public LP School and prosecutrix worked as cook in the said school. One day accused called her and asked her to wash lavatory of the school and when prosecutrix was washing the lavatory accused outraged her by touching her body. Accused tried to hamper the chastity and he came to know about the incident from the prosecutrix. In cross he stated he cannot say exact day of occurrence of the

incident and prosecutrix raised complaint before the SMC and meeting was also held for that purpose. He stated he is not member of the SMC and he does not know the decision of the SMC. Prosecutrix left her job from the school due to the illegal behavior of the accused. He denied that accused not made any illegal behavior with the prosecutrix and complainant was chased out from her job by School Inspector upon getting complaint from the SMC.

30. PW-5 stated he knows the prosecutrix and the accused persons and prosecutrix used to work as cook of mid-day meal of the school where accused is the headmaster. He stated he came to know about the incident from prosecutrix that accused had been looking and speaking towards her with bad intention and therefore she lodged the case and because of this reason, headmaster suspended her from her job. In cross he stated his wife Anjuwara was the vice president of the SMC. He denied that his wife did not tell him about the incident. He denied that villagers filed complaint against prosecutrix and based on the said complaint DI of school directed the headmaster to discharge prosecutrix from her job. In cross he stated on 17-1-12 prosecutrix lodged a complaint to the SMC regarding illegal behavior of the headmaster but he does not know about the meeting and also does not know whether his wife was present in the meeting or not. He denied the fact that prosecutrix lodged this case after termination of her job.
31. PW-6 stated he knows prosecutrix and accused persons and he is the member of the SMC. He stated prosecutrix was appointed as a cook on temporary basis and he came to know from the prosecutrix that headmaster of the school illegally behaved with her. He went to the house of headmaster but he was not found. In cross he stated at the time of incident he was not member of the SMC. He does not know whether DI directed the headmaster to discharge prosecutrix. He denied that prosecutrix lodged the complaint against the headmaster as she was dismissed from service.
32. On scrutiny of the evidence of prosecutrix it is seen that prosecutrix in her ejahar and in her evidence before the court stated that accused misbehaved her, spoke indecent word, looked at her with bad intention and asked her to clean lavatory and while she was cleaning the lavatory accused silently entered into the lavatory and tried to outraged the modesty of prosecutrix and on the day of occurrence on 10-1-12 also at about 09.00- 10.00 am in the morning, accused called her asked her to wash bathroom and latrine of the school and when she was cleaning, accused illegally entered into the lavatory and tried to commit rape on her, holds her behind her back. She remained consistent in

her statement made in the ejahar as well her statement made before the court. The minor omission in her evidence may be due to passes over the time. She stated that she narrated the incident to her parents and others. PW-2, PW-3 who are the parents of the prosecutrix, PW-4, PW-5, PW-6 neighbour of the prosecutrix and village people stated before the court that they heard incident from the prosecutrix. From the evidence of the PW-2, PW-3, PW-4, PW-5, PW-6, it is seen that on the day of incident accused, who is the headmaster of the school tried to outrage the modesty of victim and they heard incident from the mouth of prosecutrix and there statement before the court is that what they have heard from the prosecutrix and therefore, there piece of testimonies is primary evidence. Victim in her evidence stated accused had embraced her behind her back and torn her clothes. Embracing, holding woman/girl without her consent and will and tearing of the cloth of woman amounted to outraging the modesty of woman. Defence could not falsified this piece of evidence of prosecutrix and evidence of other witnesses and their evidence is consistent with earlier statement made before the police and carries weight.

33. Defence plea is that accused at the time when victim came to the school, was not present at the school and he went to the market and prosecutrix came to school entered into the kitchen and created nuisance , thrown out cooking utensils and thereafter she left the school and she filed this false case. The defence took further plea that she was not working in the school from 05-7-11 and as she was discharged from her service, as per the instruction of the DI, due to her misbehavior so, she filed this false complaint against the accused and SMC found her complaint was false and as directed by DI of School, accused lodged case against the prosecutrix. In support of this, accused exhibited resolution of appointment of prosecutrix as Ext-A, complaint petition made against prosecutrix as Ext-B and instruction of DI as Ext-B(1). Resolution dated 05-07-11 as Ext C, copy of her complain as Ext-D, resolution of SMC dated 22-1-12 as Ext-E and certified copy of Bilasipara PS case No. 155/12 u/s 447/294/186 I.P.C as Ext F. Accused adduced his evidence as well as evidence of 6 other defence witnesses in support of his plea of denial.

34. I have scrutinized the evidence of D.W. Defence plea is that prosecutrix was discharged from her job as per the direction of DI of school. Defence exhibited the same as Ext B. Ext B containing of 3 pages. The size of page no. 1 and next two pages are of two different sizes. The first page is written only on one side but other two pages where some signature shown to be present are written on both sides. The content of the Ext B is not proved by any of the

signatories numbering from 1 to 153. Ext B-1 note of the DI of the school dated 29-06-11 does not show that prosecutrix was specifically directed to discharge from her job. The note of DI of school which defence exhibited as Ext B-1 read "*As government approved appointment of one cook and one helper. So, SMC is directed to relinquish one helper*". Thus Ext B (1) content does not say that DI of school given specific direction to the school SMC to discharge the prosecutrix from the school from her service of mid-day meal cook on public complain. It is also not proved that signatory of the Ext-B actually written the complaint Ext-B and signature of Ext- B(1) with the note is also not proved as per evidence Act Section 67 of the Evidence Act. When content of the document is not proved as per statutory provision of section 67 of the Evidence Act by the signatories and writer of the document it is not proved that public made complain against the prosecutrix and Ext-B cannot be acted upon. Furthermore, Ext B-1 of Ext B does not point that DI of the school specifically given instruction or order to discharge prosecutrix. There is no specific order of discharge of prosecutrix passed by the D.I. and therefore the plea taken by the defence as per order of D.I of school prosecutrix was discharged from the school is against their piece of document and same is baseless and against the defence document.

35. Contradicting to the aforesaid plea of the accused, Id. defence counsel at the time of argument submitted that admittedly prosecutrix was working as a cook in the school along with two other cooks. Therefore, the defence argument is itself contradictory. Accused took plea that on 10-01-12 he went to the market. Admittedly on 10-01-12 school was open. According to the defence plea, when prosecutrix came to school, at that time school children and other teachers were present but the school headmaster is absent and went to the market. School headmaster during school hour went to market without approval and permission of the higher authority is not only illegal but also negligence on official duty. Be it what may be. Accused took plea of alibi so he is to prove his plea of alibi beyond all reasonable doubt that he went to market on 10-1-12 during school hour at 8.30 to 9.30 AM. But to prove the same accused did not submit voucher/bill of that day marketing. It is also not disclosed by the accused why on 10-1-12 on working day at 08.30- 09.30 am, during school hour he had to visit the market. Accused did not disclose what marketing he did which he must have to disclose as he took plea 'of alibi'. To prove his plea that he attend school after 9.30 AM after attending of other teacher of the school on the day of incident, is also not established by cogent piece of

evidence such as attendance registrar before the court. Thus, accused's plea that on the day of incident at 9.00 to 9.30 AM he was not present at school and he was indeed present in the market is not substantiated by documentary evidence.

36. From the scrutiny of evidence of DW-1 accused Anowar it is seen that in his evidence in chief he stated that on 10-1-12 prosecutrix came to his school and meet him and his plea is that on that day she demanded her wages and rebuked him. Thus shown that accused Anowar was present when prosecutrix came to school. Accused's plea that he went to the market at the time when prosecutrix came to the school is totally false, concocted and contradictory plea and it is not believable that on that very day prosecutrix came to school and entered into the kitchen room, thrown up utensils are false story made by the defence to save his skin from the prosecution allegation.
37. From the evidence of defence witness it is established beyond all reasonable doubt that on 10-1-12 prosecutrix came to the school. Evidence of DW-2 further established that prosecutrix was engaged by the school and did certain works as she is a poor lady. It is further established that on 10-01-12 prosecutrix was engaged in the cleaning of the lavatory of the school by the accused headmaster. Statement of DW-3 itself contradictory. She stated that on the day of incident at 9.00 am school headmaster was present and she was present and two other cooks were present. Again this witness stated headmaster reached at school at 9.30 am and DW-3 in her chief stated she can't say whether prosecutrix was engaged by the headmaster to clean toilet and on 10-01-12 hold prosecutrix, embraced her modesty. This witness in cross by prosecution stated that school headmaster did not restrained prosecutrix to come in the school and to work. Thus, defence plea that prosecutrix was restrained to enter into the school prior to the date of incident by the accused Anowar is appeared to be frivolous story. DW-4 stated presently prosecutrix is not engaged by the school. From reading of evidence of DW-6 it is seen that she was not present at the time of incident because she stated she heard only quarrel that took place in between prosecutrix and accused and she do not know the reason behind the controversy in between the prosecutrix and accused school headmaster. Which implied that there is controversy in between prosecutrix and school headmaster and quarrel was took place in the school in between accused headmaster and prosecutrix on 10-01-12. Her cross pointed that she has no actual knowledge about the incident that took place

in between prosecutrix and accused Anowar. Evidence of DW-6 not helped defence rather it suffice the prosecution allegation against the accused person.

38. DW-2 Jahanur Alom in her very first line of statement made before the court, stated she worked in the Suryakhata Public LP School in the period 2010-11. That means she was not working in the school on 10-01-12. Incident was took place on 10-01-12. Therefore, she came to Suryakhata Public LP School on 10-01-12 is not established beyond all reasonable doubt and is self-contradictory. School attendance register of the teacher and student not produced before the court to show that on 10-01-12 DW-2 Jahanur Alom with other teachers DW-3 and DW-6 reached school at 09.00 am. Evidence of DW-6 pointed that she was not present at the school when incident was took place. DW-4 and DW-5 also not stated presence of DW-6 in the school when incident was took place. Defence plea is that sweeper clean toilet whereas prosecutrix categorically stated that accused headmaster engaged her to clean the toilet. On the point of cleaning of the toilet the statement of witness DW-2 and DW-3 deferred. DW-4 evidence shown her total ignorance who come to clean the toilet. Therefore defence plea that toilet was clean by sweeper and prosecutrix is not engaged by the accused to clean up the toilet is also not established and defence failed to rebut the prosecutrix allegation that she was engaged by the accused to clean the school lavatory by the accused head master.
39. DWs are working under accused and he being headmaster of the school is the immediate boss of the witnesses and DW-7 is the member of new Managing Committee which was formed after joining of the accused.
40. DW4 and DW-5 are the other two cooks and both of them are working under the accused DW-1 till date when they adduced evidence before the court. They are controlled by the DW-1 and accused is the secretary of the SMC of school and he called meeting of the school and participate in all the meeting of the SMC and therefore, there is every possibilities that they are being influenced by DW-1 accused. With regard to presence of accused at school at the time of incident it is crystal clear from the evidence of accused that he meet prosecutrix on the date of incident. Accused as DW-1 deposed before the court that prosecutrix came to school and demanded wages and rebuked him. The word rebuked him shown that he was present at school and it nullify the defence story that at 9/ 9.30 AM accused went to market.
41. Admittedly on 17-01-12 one complaint was made by the prosecutrix before the SMC and defence mark it as Ext-D. Evidence of DW-7 pointed that when they sit to discuss the complaint, they did not notice prosecutrix. Ext-D is not the

original document. It is copied document. It has never been shown to the prosecutrix while she was cross examined by the accused. Evidence of DW-7 and resolution Ext-E dated 22-01-12 shown that accused was present but prosecutrix was not heard when decision was taken against her. Therefore Ext-E resolution which is ex parte without applying natural justice and without being heard the prosecutrix by a committee of sexual harassment as per Visakha Case is not an acceptable piece of document.

42. As per Hon'ble Apex Court guidelines given in the Visakha case, all public/private office/institution/organization must constitute one Internal Committee to hear any complain of sexual harassment of working woman at work place. But School SMC is not the said committee. Complain of the prosecutrix was not heard and disposed off by the internal committee formed as per guidelines of the Hon'ble Apex Court and it was discussed on the meeting of SMC of school as called by the accused where he was present as secretary of the SMC. Thus Ext-E resolution has no force in the eye of law.
43. In view of the aforesaid discussion I hold that ext-E does not made improvement in the defence version. Rather evidence of accused and his other witnesses shown that on 10-01-12 prosecutrix came to the school. Evidence of DW-1 accused Anowar Hussain shown that on that day prosecutrix met him in the morning. Thus, plea of the accused is contradictory one. One plea is that on 10-01-12 he was not present at the school, went to market when prosecutrix came to school and he did not met prosecutrix but his evidence shown on 10-01-12 prosecutrix came, met with him she demanded her wages and rebuked. That, prosecutrix was engaged in the school is admitted by all the DWs. That school having toilet is admitted by all DWs. DW-5 stated there are two toilets. I have perused the sketch map of the place of occurrence which is exhibited by prosecution as exhibit-4. One toilet is present in front of the kitchen of school and other one is present at the end corner of the building where class II, III and IV held and the toilet which is present at the end corner of this building where class II, III and IV held is the place of occurrence and this toilet is not present in front of the kitchen. Prosecutrix stated in this toilet incident was took place. Thus when incident was took place in this toilet other did not seen the incident. Prosecutrix stated as door was open she managed to run away and disclosed the matter to her family who are her close well-wisher. I find from the evidence of accused that defence evidence failed to overturn the prosecution case and prosecution evidence and prosecution evidence remains stands at high footing and testimonies of defence evidence

does not derive confidence, failed to make any improvement over the prosecution version of the evidence and therefore, defence evidence not acted upon and prosecution evidence relied on which is found un-rebuttable, consistent, believable, reliable and acceptable piece of evidence.

44. In a catena of decision, Hon'ble Apex court made observation that no straight jacket formula can be adopted in a case for delay in filing ejahar and there are various reason appended to the delay in lodging the ejahar in a sexual assault case and most important factor is fear, honour of the self and family and after math situation and circumstances that often face by the victim of the sexual offence after filing of the case against the accused.
45. Hon'ble Apex court in *State of Punjab vs Gurmeet Singh & Ors*, (1996) 2 SCC, 384 observed "The courts cannot over-look the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged".
46. Upon minute scrutiny of the evidence of Prosecutrix, I find her piece of testimonies is believable beyond all reasonable doubt. She disclosed incident to village responsible persons but with no result and then she made complaint to the school SMC but she was not heard and did not get any justice and then she lodged ejahar. She remain stood firmly in the cross and made consistent statement in all the stages. Delay has not been explained reasonably.
47. The Hon'ble Supreme Court in *State of Himachal Pradesh vs Sanjay Kumar @ Sunny* (2017) 2 SCC 51 held that " By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix- has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it is difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to

equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell as woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

48. Prosecutrix is a rustic, poor village woman and accused is the headmaster of the school where she worked. Her evidence and plea in her ejahar shown she constantly suffering the sexual abuse from accused and she with the fear of losing job did not disclosed the same to other and she lost her job when she made complain to school SMC about the incident of 10-1-12 and she filed the case. Thus shown the cogent explanation of delay in filing ejahar.
49. Upon scrutiny of entire evidence on record, I find that evidence of prosecutrix is consistent, cogent and her testimonies carries weight and force and her piece of evidence is corroborated by other PWs and her testimonies is believable beyond all reasonable doubt and therefore, her testimonies accepted and acted upon and I find that defence evidence failed to rebut the prosecution evidence.
50. From the evidence of prosecutrix it is evident that on the date of occurrence, accused called victim and engaged her to clean the toilet and bathroom of the school and when she was cleaning the lavatory, accused entered into the lavatory behind her back, embarrassed her and torn her cloth and prior to it also accused continuously harass her at work place by demanding sexual favour, passing and talking sexually colour remarks and act of the accused squarely covered the ingredients of section 354 IPC that is outraging the modesty of woman which is punishable u/s 354 IPC.
51. Here allegation against accused is that, accused made attempt to commit rape. So prosecution has to bring on record that accused did certain act as enumerated in section 375 I.P.C. in order to commit rape on victim. Here accused passed sexually coloured remarks on prosecutrix, asked for sexual favour earlier and on 10-1-12 accused holds her entering into the lavatory behind her back and torn cloth of victim. He did not undress himself and no other attempt is made by accused to penetrate the victim except holding her tearing her dress and passing sexual colored remarks and asking for sexual favour. Therefore, ingredient of section 376/511 I.P.C. does not comes to play. However from the evidence on record it is crystal clear that accused holds

prosecutrix torn her cloth on 10-1-12. Removing of cloth of woman/girl amounted to indecent act. Here accused used criminal force on victim and he by using criminal force removes her cloth and removing of cloth of victim is amounted to outraging the modesty of the woman/girl and evidence on record bring home all the ingredient of section 354 I.P.C. against the accused beyond all reasonable doubt.

52. In the case in hand charge framed against the accused is u/s 376/511 I.P.C. and sum total of the evidence on record bring home the ingredients of section 354 I.P.C. which is a minor offence. As evidence on record bring home ingredient of section 354 I.P.C. against the accused beyond all reasonable doubt, the section 222 Cr.P.C can be brought to impart justice to the victim woman.

53. Section 222 Cr.P.C says when offence proved included in offence charged.

1. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.
2. When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.
3. When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
4. Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.
 - In this section, two illustrations have been given which would amply describe that when an accused is charged with major offence and the ingredients of the major offence are missing and ingredients of minor offence are made out then he may be convicted for the minor offence even though he was not charged with it. Both the illustrations given in the said section read as under:

"(a) A is charged under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section

406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code."

54. In *Shamnsaheb M. Multtani Vs State of Karnataka*, decided on 24 January, 2001, Hon'ble Apex Court observed "What is meant by a minor offence for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence." This decision is also followed in *Tarakeswar Sahu Vs State of Bihar (now Jharkhand)* (2006) 8 SCC. Hon'ble Apex court in a catena of decision held that-'It is true that section 222 Cr.P.C entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried'.

55. The word Modesty is associated with female human beings in a class and it is the female propriety. The essence of a woman modesty is her sex. Any act which connect with intention to lower the decency of the woman such as pulling of a woman dress, unwanted touching of a woman, asking for sex attributes to outraging modesty of a woman. In the case in hand accused entering into the lavatory while prosecutrix was cleaning lavatory embarrassed her torn her using force and this act of accused amounted to outraging the Chasity of woman. Tearing/Removal of cloth of prosecutrix by accused amounted to indecent act of accused and is amounted to outraging the modesty of the woman.

56. Section 354 I.P.C says :- Whosoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description of term which shall not be less than one year but which may extend to five years and shall also liable to fine. **In State of Punjab vs Major Singh AIR 1967 SC 63** Hon'ble Apex Court in a case of seven month baby girl possess

modesty or not held "The offence punishable under section 354 IPC is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define "modesty". What then is a woman's modesty? I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under section 354 IPC. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section. A female of tender age stands on a somewhat different footing. Her body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sex."

57. Evaluation of the entire evidence on record only goes to show that accused holds prosecutrix behind her back, embarrassed her and torn her cloth is using of criminal force on her .The act of removing, tearing of a woman/girl's dress, unwanted hugging, holding, touching, physical contact of any degree, talking sexually flavored version, words, embarrassing of woman by a person amounted to outraging the very modesty of the woman/girl and it is indecent act and accused by holding prosecutrix behind her back, tearing her cloth, using abusive language, talking sexually flavored version amounted to outraging of the modesty of prosecutrix by the accused. The entire evidence on record squarely covered the ingredients of the section 354 I.P.C and I find that prosecution fairly able to bring home all the ingredients of section 354 I.P.C against the accused Anowar Hussain beyond all reasonable doubt.

58. Situated thus, coupled with the aforesaid settled legal position of law, the provision of law as enumerated u/s 222 Cr.P.C is invoked to impart justice to the victim of the case. Accordingly I hold accused Anowar Hussain guilty of commission of offence punishable u/s 354 I.P.C and accused Anowar Hussain is convicted u/s 354 I.P.C. Bail stand cancelled.

59. Considering the nature of the offence committed by the accused on a female child, I do not find any justified ground to consider the accused under the provision of section 360 Cr.P.C and Probation of Offender Act and therefore, benefit under the said benevolent provision is not extended to convicted accused Anowar Hussain.

HEARING OF THE ACCUSED ON THE POINT OF SENTENCE

60. Accordingly convicted accused person Anowar Hussain is heard on the point of sentence and his plea of sentence is reduced into writing in a separate sheet and keep with case record. I heard Ld. defence counsel as well Ld. Addl. PP for the state on the point of sentence. Accused pleaded mercy and prays for considering leniently.

61. Accused pleaded mercy. After hearing Ld. Counsel for both sides and going through the material on record and considering the nature of the offence which convicted accused Anowar Hussain has committed, I do not find any just reasoning to consider convicted accused leniently and accordingly accused is dealt with and is sentenced to undergo rigorous imprisonment of 2 years and to pay fine of ₹ 15000/-i/d 4months month RI u/s 354 I.P.C.

ORDER

62. Accused Anowar Hussain found guilty u/s 354 I.P.C and he is convicted u/s 354 IPC. Convicted accused Anowar Hussain is sentenced to undergo rigorous imprisonment of 2 years and to pay fine of ₹ 15,000/- i/d 4 month RI u/s 354 I.P.C. Bail stands cancelled, surety discharged. Fine if paid by the accused be given to the victim of the case as compensation for loss of dignity and decency due to the conduct of the accused. The period of detention already undergone by the convict accused shall be set off against the period of imprisonment.

63. The convicted accused is told that he has right to appeal against the judgment and order of this court before Hon'ble High court through the jail authority or independently of his own. Convicted accused is further informed that he is entitled free legal aid to prefer appeal before the Hon'ble High court. Let furnish free copy of Judgment to convicted accused.

64. Send copy of judgment to learned District Magistrate Dhubri u/s 365 Cr.P.C.

65. Send back the GR case record to the learned committal Court with a copy of the judgment.

66. Given under hand and seal of this Court on this 4th day of June 2018 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

PW-1 Prosecutrix,
PW-2 Abdul Khaleque,
PW-3 Sahida Bibi,
PW-4 Tofil Ali,
PW-5 Hadish Ali,
PW-6 Eusuf Ali Ahmed,
PW-7 SI Jamir Ali.

PROSECUTION EXHIBIT:-

Ext-1 complaint petition,
Ext-2 Sketch map,
Ext-3 Charge sheet

DEFENCE WITNESS :-

DW-1 Anowar Hussain,
DW-2 Musst. Jahanur Alom,
DW-3 Rosida Khatun,
DW-4 Jeleka Bibi,
DW-5 Binota Devi,
DW-6 Morjina Begum,
DW-7 Sofiqul Islam

DEFENCE EXHIBITS :-

Ext-A copy of resolution of appointment of three cooks,
Ext-B complaint of public made against prosecutrix,
Ext-B(1) relevant portion of forwarding of Deputy Inspector of
Schools,
Ext-C resolution dated 05-07-11,
Ext-D complaint of prosecutrix before SMC,
Ext-E resolution dated 22-01-12,
Ext-F Certified copy of ejahar Bilasipara PS case No. 155/12.

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara