

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE: KAMRUP:
GUWAHATI.

G.R. No. 7161/12

Under Sections 143/341/294/323/354 IPC

S T A T E

-Vs-

1. Shri Amar Jyoti Kalita
2. Shri Gaurav Jyoti Neog
3. Shri Nabajyoti Baruah
4. Shri Nabajyoti Deka
5. Shri Dhanraj Basfor
6. Shri Sikandar Basfor
7. Hafijuddin
8. Shri Ghanashyam Mallik
9. Shri Jitumoni Deka
10. Shri Dipak Deb
11. Shri Puspendra Das
12. Shri Deva Das
13. Shri Diganta Basumatary
14. Md. Rubul Ali
15. Shri Rup Kanta Kalita

..... Accused

Present:

Shri Siddharth Pratim Moitra, A.J.S.
Chief Judicial Magistrate,
Kamrup, Guwahati.

Appeared:

For the State: Smti Minati Saikia, learned Addl. P.P.

For accused:

Amar Jyoti Kalita::

Mr. Bhaskardev Konwar,

Mr. Rajib Kalita, Ld. Advocates

Shri Gaurav Jyoti Neog

Shri Dhanraj Basfor

Shri Sikandar Basfor &

Shri Puspendra Das::

Mr. Bijon Mohajan

Mr. Nayan Jyoti Das

Mr. Pranab Das

Mr. Najib Baksh &

Mr. Nazme Muhtarin, Advocates.

Shri Deba Das::

Shri Hitesh Kalita, advocate

Shri Dipak Deb: :

Mr. Sabil Ahmed

Mr. Makbul Hussain

Mr. Matiur Rahman,

Shri Jitumoni Deka ::

Mr. Altaf Hussain Mullah, Advocate

Shri Nabajyoti Baruah::

Shri Dipankar Goswami,

Shri Surajit Malla Baruah, Advocates

Shri Rup Kanta Kalita::

Shri Kushadhaj Gogoi

Shri Chandra Kanta Talukdar, Advocates

Shri Ghanashyam Mallik::

Shri H. Ahmed

Shri Ritumoni Deka, Advocates

Shri Rubul Ali::

Shri Ishwar Chandra Gogoi

Shri Brojendra Narayan Konwar, Advocates

Shri Diganta Basumatary

Shri Nabajyoti Deka::

Shri Nba Kanta Das

Shri Bonoy Deka

Mr. Giasuddin Ahmed,

Mr. A. Saikia, Ld. Advocates

Hafijuddin:

Mr. G. Sarowar, Ld. Advocate

Date of Evidence: 19.09.12, 21.09.12 , 24.09.12,
26.09.12, 28.09.12, 01.10.12,
03.10.12, 05.10.12, 09.10.12,
12.10.12, 16.10.12,16.11.12,
and 17.11.12.

Date of argument: 29.11.12, 30.11.12 and 01.12.12

Date of judgment: 07.12.2012

J U D G M E N T

1. It was the hot summer night of July 9th 2012. While the night was still young in some parts of the city of Guwahati, suddenly, the wave of shock spread through the viewers, watching television when the various news channels started to air video footage of molestation of a girl on busy G.S. Road, near Hotel Gate Way under the heading "Breaking News". The shame and sense of insecurity anguished the people, in and around the

city and even the people of the entire country. On the next morning, i.e., on 10.07.2012 the mother of the victim Miss X (name withheld) lodged an FIR at Bhangagarh P.S. and the wheel of investigation formally moved after lodging of the said FIR.

2. Brief facts of the case of the prosecution, as canvassed in the FIR and as unfolded during trial, are that on 09.07.12, victim Miss X went to Club Mint Bar at G.S. Road, Guwahati to enjoy birth day party of her friend. While she was about to come back to her house, near Srinagar Market at G.S. Road, she was restrained by some unknown miscreants and they started to utter vulgar words towards her. As she raised objection, the said unknown miscreants voluntarily assaulted her, dragged her by pulling her hair and also molested her in the open public road. Her gold chain was also stolen. There was a large gathering of people and ultimately she was rescued by the police personnel of Bhangagarh P.S.

3. On the basis of the said information, Bhangagarh P.S. Case No. 191/12 was registered U/S 143/341/323/294/354/379 IPC and was taken up for investigation. Subsequently, section 366/511 IPC was also added. In course of investigation, the I/O collected evidence and also arrested 16 numbers of persons in connection with the present case. Out of the said arrested persons, one was detected as juvenile in conflict with law and accordingly his case was split up and was forwarded to Juvenile Justice Board. The Test Identification Parade was conducted for all arrested accused persons. After conclusion of the investigation, the accused persons named above were charge-sheeted U/S 143/341/294/323/354 IPC.

4. The accused persons, who were in jail, were released on bail. Copies of the relevant documents, as referred to in section 173 of the Cr.P.C., were furnished to the accused persons. Substance of offence, punishable U/S 143/341/294/323/354 IPC were explained to the accused persons to which they pleaded not guilty and stood to face the trial.

5. To bring home the charge, the prosecution examined 24 witnesses on its behalf and also exhibited a large numbers of documents. The prosecution also proved and marked some material exhibits. One more witness was examined as court witness. Defence plea was of complete denial of any guilt, as appears from the trend of cross-examination. The statement of the accused persons were recorded U/S 313 Cr.P.C. and accused Amar Jyoti Kalita submitted his written statement on the basis of questionnaire supplied by this court U/S 313(5) of the Cr.P.C. Defence adduced no evidence on its behalf. I heard argument advanced by the learned Addl. Public Prosecutor and the respective counsel of all the accused persons. I have also gone carefully through the written arguments, submitted on behalf of some of the accused.

6. The points for determination are:

- (I) Whether on 09.07.12 at about 09.30 P.M. at G.S. Road, Guwahati (near Srinagar Market) all or any of the accused persons formed an unlawful assembly with the common object to outrage the modesty of the victim Miss X?
- (II) If so, whether any or all of them, being the members of the said unlawful assembly, wrongfully restrained the victim woman so as to prevent her from proceeding in the direction in which she had the right to proceed ?
- (III) If so, whether any or all the accused person(s) of the said unlawful assembly uttered obscene or vulgar words in a public place towards the victim woman?
- (IV) Whether the accused persons being the members of said unlawful assembly voluntarily caused hurt to the victim woman?
- (V) Whether any or all the accused person(s), being the member(s) of such unlawful assembly, in prosecution of common object of such assembly,

assaulted the victim woman or used criminal force to her intending to outrage or knowing to be likely that they would thereby outrage the modesty of the said woman by such assault or criminal force ?

Decision and reasons thereof:

7. I have gone carefully through the entire evidence, both oral and documentary on the record. I have also gone carefully through the video footages, as aired in different private T.V. channels, immediately after the occurrence and subsequent to the occurrence too. I have also gone carefully through all the material exhibits in this case.

8. Now, while arguing the case, Smti M. Saikia, the learned Addl. Public Prosecutor submitted that in this particular case, though the FIR was registered against unknown persons, by proper investigation, the Investigating team could unearth the actual identities of all the accused persons. She contended that the Test Identification Parade of all the accused persons was also conducted inside the Central Jail premises and during the Test Identification Parade, all the witnesses, including the victim, identified most of the accused persons. Further, according to her, the eye witnesses also identified most of the accused persons in the dock. She continued to argue that the victim girl has been examined in this case as prime witness and her unshaken testimony clearly indicates the guilt of the accused persons. Her further argument is that besides, the P.W.1, the prosecution also examined other eye witnesses including P.W.2 Jadu Ram Malakar, P.W.3 Mukul Kalita, P.W.4 Mussa Sheikh, P.W.6 Nikhil Rajkhowa, P.W.7 Lal Mohammad, P.W.8 Dibash Ranjan Das, P.W.9 Jitu Das, P.W.10 Meghraj @ Meshraj Rai, P.W.11 Ayesha Begum and P.W.20 Dibya Kumal Bordoloi and the prosecution case has been well established by all the eye witnesses of the occurrence. She also argued that the evidence of the eye witnesses, recorded in this case received full

corroboration from the video footages, aired by the different news channels, which also clearly establish the guilt of the accused persons. The learned Addl. Public Prosecutor concluded her argument by submitting that the prosecution has successfully established the guilt of the accused persons removing all shadow of doubt.

9. Refuting the aforesaid arguments, advanced by the learned Addl. Public Prosecutor, the learned counsel appearing for different accused persons argued at length and their arguments primarily rested on various law points. It is argued at the bar that the electronic evidence collected by the investigating team is inadmissible in evidence in absence of non compliance of the statutory provisions of section 65B of the Indian Evidence Act. It is also submitted that the aforesaid electronic evidences are edited version and are not the raw footages and as such not admissible in evidence. Further argument of the learned counsel appearing for different accused persons are that the Test Identification Parade of the accused persons were conducted without following the elementary knowledge regarding the Test Identification Parade. It is further submitted that prior to the aforesaid Test Identification Parade, the accused persons had sufficient exposure and as such the Test Identification Parade became farcical and meaningless. The learned defence counsel also submitted that dock identification of the accused persons is also not admissible in view of the fact that prior to such identification in the court; the prosecution witnesses had sufficient scope to view the faces of all the accused persons in different news channels and also in news papers. Further, the learned defence counsel also submitted that the dock identification by P.W.2 Jadu Ram Malakar, P.W.4 Mussa Sheikh, P.W.6 Nikhil Rajkhowa, and P.W.7 Lal Mohammad are not admissible, as because no Test Identification Parade was conducted by the aforesaid witnesses prior to dock identification. The learned defence counsel for different accused persons also pointed out the contradictions and omissions in the testimonies of the witnesses in comparison to their earlier statements

recorded U/S 161 Cr.P.C. and submitted that due to discrepancies and variances in the evidence of the witnesses, which can go to the root of the prosecution case, their evidence can not be relied upon as the basis of conviction.

10. On the other hand Mr. B. Mohajan, the learned counsel appearing for accused Gaurav Jyoti Neog, concentrated his argument on various ingredients of section 143 IPC and submitted that his client had no common object with the other accused persons which can be easily understood on a careful reading of the entire evidence on the record. Mr. Mohajan also submitted that he was there to satisfy his professional zeal as a journalist and in no stretch of imagination, it can be attributed to his client that he had common object with other accused persons. While Mr. A.H. Mollah, the learned counsel for accused Jitumoni Deka took the plea of absence of the accused person at the place of occurrence. Some of the advocates also pointed specifically that their clients were not identified by any of the witnesses either at the Test Identification Parade or in the court.

11. However, before entering into the law points, raised by the learned counsel for the parties, I like to scan the evidence on the record.

Evidence on the actual incident:

12. P.W.1 is the victim of the occurrence and her testimony reveals that on 9.7.12 at about 7.30 P.M. she went to Club Mint Bar at G.S. Road, Guwahati along with two of her friends Zia and Aishya. She testified that she went there to attend a birth day party. Her further testimony is that at the time of making payment of the bill, she had given her ATM Card to the waiter, but the waiter did not give it back which resulted in an altercation inside the bar. She further testified that once the waiter told that he had given it back to Zia and again told that he had given it to Aishya. Her further testimony is that thereafter she herself and her friend Aishya came down from the bar and she went to fetch an auto rickshaw. She reveals that at that time Aishya noticed one person to record her picture in his

mobile. She also revealed that thereafter some of the boys forcefully dragged her down from the auto rickshaw by pulling her hair. It is also the testimony of the witness that some other boys present there at the time of the occurrence also took part in her molestation and they dragged her by clutching her hands and also touched various parts of her body. She also testified that they dragged her down on the road and put marks of burnt cigarette in her leg. She added that they tore her cloths in such a way that her inner garments including her bra became visible in public eyes. She continued to state that she was also given a blow with clenched fist and blood started ooze out from her nose. It is stated by the witness that at that moment two persons came to rescue her, but the miscreants did not allow them to rescue her. She added that she received injuries at different parts of her body and also stated that she shouted for help from others, but none was allowed to help her. The witness further testified that then one person, namely Mukul Kalita, informed the police, but the accused persons did not allow the police even to help her. She added further that the accused persons even snatched the key of the vehicle of the police officer and told them that they would not allow the police to take her. She added further that even inside the police vehicle, the accused persons attempted to touch the various parts of her body and even tried to remove her skirt and to put their hands at her legs. However, she added that police somehow managed to take her to the P.S. and from there to Guwahati Medical College and Hospital for her examinations.

13. The defence tried to damage or destroys her evidence, by way of character assassination, but I like to discard the same not being relevant to the facts of the present case. However, the defence by way of suggestion brought some facts, which she had not stated before the police earlier. But it is to be remembered that her statement was recorded by the Investigation Officer, on the very next day of the occurrence. Immediately after such a magnitude of the offence, even with the highest stretch of imagination, it can not be expected from a

woman that she would be in a sound state of mind to express every minute details of the offence. It is most natural that in such a situation, a victim of sexual offence will try to hide her shame and during cross examination, she also admitted the same. Besides, Mrs. Durga Sarma Gurung (informant), who adopted the victim as her daughter, as PW 12 depicted her mental status as – she was nervous and was saying that she would not live; she would commit suicide. PW 15 Miss Purabi Mazumder, D.S.P. (Probationer) was a member of the Special Investigation Team and she had the opportunity to meet the victim on various occasions after the occurrence. On a question by the Court under Section 165 of the Evidence Act, this witness narrated that she had met the girl on 14.7.12 and at that time she was in a kind of shock. She also narrated that she did not like to talk to people and she was scared of the media. She further stated that she had some trouble to get her open up her mind. She added that the victim used to cry now and then and she was not interested to interact. I am therefore, confident that in such a state of mind it was not possible on the part of the victim of the occurrence to give vivid description of the occurrence and thus in my considered opinion the evidence before the Court can not be treated as exaggeration and I find nothing to disbelieve the same.

14. The first part of her evidence, regarding the incidence of Club Mint Bar remains fully corroborated by P.W.11 Aishya Begum. The said witness further stated that after getting down from the bar, she herself and the victim had some talks and the victim was accusing her for the loss of the ATM Card. She added that then one boy was taking their photographs in his mobile and she asked him to delete the photographs, but the boy did not put any head. She admitted that thereafter she caused hurt to the said boy. Her testimony also reveals that thereafter she arranged for an auto rickshaw for the victim and she herself left the place in another auto rickshaw. She also testified that after going back to her house, she opened the TV channels and saw that the victim was being molested by public.

Save and expect, one or two minor contradictions or omissions, her evidence remained unshaken during cross examination and she fully corroborated the testimony of the victim.

15. Lending further corroboration to the testimony of the victim (P.W.1), P.W.3 Mukul Kalita, an Executive Editor of the vernacular daily "Ajir Axom", published by the Sentinel Group, testified that on 09.07.12 at about 09.30 P.M. he came out from his office and was going to his residence situated at Namghar Path, Wireless, Dispur, by his Maruti 800 Car, bearing registration No. As-01/AA-3130. He testified that while he was proceeding towards Dispur through G.S. Road, near Srinagar Traffic Signal, he saw one girl to run for shelter and she was crying for help. He added that she was looking ravished and further added that a group of 20/25 persons were chasing her. His testimony reveals that he parked his car by the side of the road and got down from the car. The evidence of P.W.1 received corroboration when said P.W.3 Mukul Kalita reveals that he noticed at that moment that the group of people who were chasing the girl jumped over her and dragged her down to the road and they were molesting her. He testified that he managed to reach the girl, by pushing aside the people gathered there and on seeing him the girl clutched his feet and cried- "uncle save me". He further corroborated that blood was oozing out from her nose and his clothes received blood stains. He added that some of the boys even tried to take her away from him. He further deposed that on seeing him, two other persons came forward and one of them was a police personal of the rank A.S.P. He asserted that he reported him that those people were molesting the girl and he was trying to inform the police, but could not contact. He added that within 5/10 minutes, the O/C Bhangagarh P.S. - Malakar arrived there and he handed over the girl to Mr. Malakar. He added that O/C Bhangagarh P.S. rescued the girl and took her to the other side of the road where his car was parked and put the girl inside the car. The witness further corroborated that when the O/C along with his security guard tried to leave the place, the mob obstructed him from

proceeding further and told him that first of all, women police must come. He added that he prayed before them to allow the O/C to go to the P.S. but they did not allow. He also added that they also forced the driver of the vehicle to stop the car. He corroborated that even some of the miscreants tried to molest her inside the vehicle by entering their hands inside the car. He stated that they also tried to drag her clothes and also dragged her hair.

16. Broadly in the same tune, P.W.8 Dibash Ranjan Das, Addl. S.P. (Security) Capital Complex, testified that on 9.7.12 he was going back to his quarter at Games Village like other day after meeting his parents. He stated that he started from Guwahati Club at about 9.45 P.M. and reached the opposite side of Hotel Gate Way at about 9.54 P.M. He corroborated that on the focus of the head light of his car, he saw a girl was being chased by 15/20 persons and the girl was running towards his vehicle. He also testified that just in front of the girl, there was a motorcycle and the girl tried to take lift in the said motorcycle, but those 15/20 persons dragged her down. He further corroborated that the girl was crying for help from the passing vehicles, but none stopped. He also added that he then parked his vehicle and got down from the vehicle and saw that those persons were molesting her. The witness also stated that he asked the people who were involved in the occurrence not to do that, but none put any heed to his words. He added further that he then disclosed his identity to those persons and thereafter he got the girl to his own side and informed O/C Dispur P.S. over phone.

17. P.W.9 Jitu Das, another eye witness of the occurrence, testified that he works at Kamrup Sanitary and Hardware, Ganeshguri and also works in Green Wood City Point Restaurant at night. He testified that on that night at about 9.30 P.M., he was going towards Green Wood Restaurant from Srinagar in his motorcycle and after coming out from Srinagar, he saw a girl to seek help from two persons in a motorcycle. Corroborating the evidence of other witnesses of the prosecution

side, P.W.9 Jitu Das added that the girl was followed by 10/15 boys. He also added that those two boys could not help the girl and left the place and then he saw the girl to run towards Bhangagarh and the boys were chasing her and they were also beating her and also pulling her hair. The witness further added that he advanced a little to help the girl and by going to the side of the girl, he asked her to take the back seat of his motorcycle. He added further that as the girl tried to jump over his motorcycle, those people started to shout at him and for the moment he thought that they would beat him too. He corroborated further that thereafter those people dragged her down from his motorcycle and took her away. He added that he could not do anything more. During cross-examination, the witness stated that on the spot, he saw 10/12 persons to molest the girl and specifically stated that there was no such darkness that the faces of the persons could not be seen.

18. P.W.10 Meghraj @ Meshraj Rai, a resident of G.S. Road is another eye witness of the occurrence and he lent corroboration to the evidence of other prosecution witnesses, by stating that on 9.7.12 at about 8.00/8.30 P.M. (the witness added that he could not say the exact time), he was watching T.V. and then he heard hulla at G.S. Road and saw from the first floor that about 100/150 people gathered there. He corroborated that he also saw at the focus of the light of T.V. Camera that a girl was being molested by 4/5 persons. He added further that while he was watching the entire incident from his first floor, he saw S.I. Nikhil Rajkhowa to come to the place and as he knew said Rajkhowa, he came out of his house. He testified that on going to the vehicle of the O/C, Bhangagarh P.S, he noticed that some of the accused persons were molesting the girl. He also testified that at that time he saw their faces, but the names were not known to him. He also stated that he saw some of the accused to obstruct the vehicle of the O/C, Bhangagarh P.S.

19. The witnesses were cross-examined at length by the defence. But there is virtually no denial of the facts, stated by

the witnesses regarding the entire incident of molestation of the victim girl. Of course, they denied the individual presence at the time of the occurrence and also denied their involvement in the said occurrence. But the factual aspect of the incident of molestation and the evidence of the witnesses including the evidence of the victim as regards the incident of forming an unlawful assembly and the incident of molestation of the victim remains fully unshaken and not impeached. They are all respectable independent witnesses, coming from different stratum of the society and apparently on the face of the record, they had no reason to support the victim who was completely unknown to them prior to the occurrence, by disclosing a false description of the incidence. I, therefore, find nothing to disbelieve their testimonies.

20. The evidence of the prosecution witnesses, regarding the rescue of the victim, also received full corroboration from the testimonies of P.W.2 Jodu Ram Malakar, the then O/C Bhangagarh P.S., Musha Sheikh, the driver of the vehicle of O/C Bhangagrh P.S., P.W.5 Head Constable Akan Bora, P.W.6 Nikhil Rajkhowa, and P.W.7 Lal Mohammad. It transpires from the testimony of P.W.2 Jodu Ram Malakar that on 09.07.12 while he was on patrolling duty, he received a message from S.I.Nikhil Rajkhowa at about 10.10 P.M., informing him that an incident had taken place near Hotel Gate Way, G.S. Road. His testimony also reveals that he rushed to the place of occurrence taking a shortcut route and on going there he witnessed that a girl was being molested, by touching every part of her body. His testimony also reveals that he rescued the girl and took her to his official Maruti Van, but could not remove her from the place of occurrence, because some of the young boys obstructed him to take the girl away. He added that at about 10.25 P.M. he was successful to rescue the girl from the place of occurrence. P.W.4 Musha Sheikh also corroborated the testimony of P.W.2 entirely. He also testified that after the girl was put inside the vehicle, he tried to start the vehicle, but 10/15 persons obstructed him. He also testified that they demanded the keys of the vehicle. He

added further that he saw one accused to put his hand inside the vehicle. P.W.5 Head Constable Akan Bora was on PAPA duty on that night from 10 P.M. and he also rushed to the place of occurrence after receiving the information from S.I. Nikhil Rajkhowa. This witness also corroborated the fact that on going there he saw that a large numbers of people were obstructing the vehicle of the O/C and also testified that he saw the girl inside the vehicle of the O/C and she was covering her face with her hair. He also testified that her wearing apparels were in disorderly state. P.W.6 Nikhil Rajkhowa is another vital witness in this case. On that fateful night he was on duty at Bhangagarh P.S. from 5 P.M. and he testified that at 10.10 P.M. he received a phone call in the land line of the P.S. that a disturbance had been created in front of Hotel Gate Way at G.S. Road. He added that he then entered the said information in the G.D Entry Book and moved to the place of occurrence in his motorcycle, after directing the others to follow him. He also testified that he informed the O/C, who was on patrolling duty at that time and also the police personnel on PAPA duty. He testified that after reaching the place of occurrence, he saw that about 100 persons were obstructing the vehicle of the O/C, Bhangagarh P.S. and in the focus of the light of the T.V. Camera he noticed one girl inside the vehicle. The witness further testified that her hairs, as well as, her dresses were in disorder and there were signs that she had been molested. He added that he directed them to allow them to take the girl, but they did not. His evidence also reveals that he found the witness Meghraj Roy there and he also assisted the police to remove the girl from the place of occurrence. He testified that the accused persons even made attempts to touch the body of the girl by putting their hands inside the vehicle through the windows. P.W.7 Lal Mohammad also corroborated the testimonies of other prosecution witnesses in this regard. I have already noted that the other vital eye witnesses including the victim herself testified the same. I find nothing to disbelieve the aforesaid testimonies of the police

officials regarding the recovery of the victim and about her condition inside the police vehicle.

Identification of the accused persons:

21. Now, regarding the identification of the accused persons involved in the case, the witnesses testified as follows:

22. P.W.1 (victim) specifically testified that she was dragged down from the auto rickshaw by a person wearing red shirt and red cap. She stated that she was dragged by pulling her hairs. The witness identified accused Amar Jyoti Kalita in the dock, as the said person. The witness further identified the other accused persons in the dock and stated that they were also involved in her molestation. She further identified accused Amar Jyoti Kalita, by stating that he had tried to snatch the key of the vehicle and also had asserted that they would not allow the police to remove her. Further testimony of the witness is that accused Amarjyoti Kalita also tried to put his hands in various parts of her body while she was inside the police vehicle and even tried to remove her skirt.

23. The witness also identified accused Gaurav Jyoti Neog and stated that he was recording video footage of the entire incident and did not try to help her in spite of her request. During cross-examination, she specifically stated that when they attacked her in the auto rickshaw, she had the opportunity to see their faces. She further added that at that time, she had no knowledge about their names and could not recognize the faces with their names. She further admitted that at that time, she had no knowledge about the name of accused Amar Jyoti Kalita, who had dragged her. She also added that the person who put their hands inside the vehicle and was outraging her modesty, she had no knowledge about their individual identity at the time of occurrence. I find nothing to disbelieve the aforesaid testimony of the vital witnesses. Had she the knowledge of the names of the individual accused, she would have named them immediately after the occurrence. As the names were not known, the case was filed against the unknown persons. She

fairly admitted that she could gather the names of the persons and their detail addresses after watching the news reportings. She also admitted that she had seen the face of accused Amar Jyoti Kalita again after his arrest. She never denied that the accused persons were exposed before the T.V. channels, before the Test Identification Parade was held. However, she specifically asserted with certainty that the persons whom she had seen at the time of the incident and also confirmed the faces from the T.V., she identified only those persons. During cross-examination, she further stated that she had seen the faces of her assailants at the time of occurrence.

24. P.W.2 Jadu Malakar identified accused Rubul Ali, Puspendra Das, Dipak Deb, Amar Jyoti Kalita, Rup Kanta Kalita, Nabajyoti Deka and Dhanraj Basfore in the dock. The witness also recognized accused Gaurav Jyoti Neog. Further, the witness specifically stated that one boy, who was in red T-shirt and red cap, took the lead and obstructed him from removing the victim girl from the place of occurrence. He also stated that the said person with red T-shirt tried to snatch the key of the vehicle. During cross-examination, the witness specifically stated that on his arrival at the place of occurrence he could identify the faces of the accused persons, but their names were not known to him. P.W.3 Mukul Kalita also identified accused Amar Jyoti Kalita in the dock and stated that earlier he had no knowledge about the names of the said accused person, but subsequently he could come to know about his name. He also stated that the person who was leading the mob was wearing red T-shirt and cap and he identified accused Amar Jyoti Kalita in the dock. During cross-examination, this witness specifically denied that he had not stated before police about the descriptions of the person with red T-shirt and cap. He also fairly admitted that at that time, he had no knowledge about any name of the accused persons. During cross-examination, the witness further specifically stated that he identified about 5 numbers of accused at the time of TIP and specifically stated that according to him, they were involved at the time of occurrence. He also stated with certainty that the

magistrate who conducted the Test Identification Parade did not put any question to him and asked him only to identify those whom he had seen at the time of occurrence.

25. P.W.4 Mussa Sheikh could identify accused Amar Jyoti Kalita only in the dock and during cross-examination, specifically stated that at that time he could recognize only the face of accused Amar jyoti Kalita and had no knowledge about him. He also stated that he was not summoned to attend Test Identification Parade.

26. P.W.5 Head Constable Akan Bora also identified only accused Amar Jyoti Kalita in the dock and stated that he had talked to him at the time of occurrence. The witness during cross-examination, specifically stated that he did not name accused Amar Jyoti Kalita before police, because his name was not known to him.

27. P.W.6 Nikhil Rajkhowa, another witness who came to the place of occurrence after receiving the information of disturbance, specifically identified accused Gaurav Jyoti Neog in the dock and stated that he was with T.V. camera. He also specifically identified accused Dipak Deb and stated that he knew the said accused person from before. The witness further stated that one person with red sporting was making repeated attempt to drag the girl out of the vehicle and was also trying to open the window shield of the vehicle. He further stated that the said person also made attempt to snatch the key of the vehicle and identified accused Amar Jyoti Kalita as the said person. He also testified that even after removal of the girl from the place of occurrence, he remained there for some time and tried to remember the faces of the accused persons. He added that those accused persons were making attempts to touch the body parts of the victim girl by opening the window shield. He further added that later on when he saw the videography of the accused persons in the T.V. and in news papers, he identified them as those persons present at the place of occurrence. He further identified accused Nabajyoti Baruah, Dipak Deb, Dhanraj Basfor and Puspendra Das in the court.

28. P.W.8 Dibash Ranjan Das, in his examination-in-chief, stated that he saw one person with red T-shirt to embrace the victim girl and identified accused Amar Jyoti Kalita in the court as the said person. The witness also identified accused Sikandar Basfor in the court. During cross-examination, the witness also stated that he could identify accused Amar Jyoti Kalita and Sikandar Basfor at the time of Test Identification Parade. During cross-examination, he also stated that on the first day he could not recognize anyone during Test Identification Parade and asserted that on that very first day, he told the Magistrate that he saw the faces of two persons on the spot and if he would be asked to identify those two persons, he would be able to identify them at any time. He further stated during cross-examination that during the Test Identification Parade, he identified only those two persons whom he had seen at the place of occurrence.

29. P.W.9 Jitu Das specifically stated that he could recognize the faces of three persons and identified accused Amar Jyoti Kaita, Nabajyoti Baruah and Dipak Deb in the dock. He also stated that at the time of Test Identification Parade, he identified accused Dipak Deb and Nabajyoti Baruah at the Test Identification Parade. He further added that the third person, i.e. the accused Amar Jyoti Kalita was not present at the Test Identification Parade on the first day. Thus, his evidence appears to be true.

30. P.W.10 Meghraj @ Meshraj Rai also testified that he saw accused Gaurav Jyoti Neog, a reporter of News Live there at the place of occurrence and stated that said Gaurav Jyoti Neog was trying to remove the hair from the face of the victim girl to show the face in the T.V. He also identified accused Rup Kanta Kaltia in the court and stated that he saw him to drag the victim girl. He added further that he also recognized the face of other accused persons who were busy in molesting the victim girl, but at that time their names were not known to him. He added that one person with red T-shirt was obstructing the police and instigating the persons and stated that later on he could come to

know his name as Amar Jyoti Kalita. The witness identified Rup Kanta Kalita, Dipak Deb, Amar Jyoti Kalia, Puspendra Das and Gaurav Jyoti Neog in the court. He stated that during Test Identification Parade, he could recognize 6/7 persons and on the second day he could recognize two persons. During cross-examination, the witness stated that he could come to know about the name of accused Amar Jyoti Kalita from T.V. news and from newspapers. He added that he identified the person also in the Test Identification Parade. During cross-examination the witness also stated that on the very first day, he could identify 5/6 persons in the Test Identification Parade. He also stated that the magistrate informed him only to identify those whom he had seen at the place of occurrence and specifically asked him not to identify on the basis of the T.V. news. He added further that after the occurrence, he had also seen the faces in the T.V. During cross-examination, the witness further added that he knew accused Dipak Deb from before.

31. P.W.11 Ayesha Begum could recognize accused Nabajyoti Baruah in the court and stated that the said accused person was taking her video footage in his mobile. The aforesaid mobile handset of accused Nabajyoti Baruah was seized and was sent to Forensic Science Laboratory, Kahilipara. Ext-34 is the result of examination by the Forensic Science Laboratory and the said unchallenged result/ opinion of the Scientific Officer corroborates her testimony. She also added that accused Gaurav Jyoti Neog also started to take her video footage in his mobile phone. She specifically added that in the Test Identification Parade, she identified accused Gaurav Jyoti Neog and Nabajuyoti Baruah and further stated that she identified two other accused persons on watching T.V.

32. Now, P.W.13 Yusuf Azaz is the learned Sub-divisional Judicial Magistrate, No-2, Kamrup, Guwahati and he conducted the Test Identification Parade on two different dates. His testimony reveals that on the first day, i.e. on 27.7.12 he conducted the Test Identification Parade at Central Jail, Guwahati of 12 numbers of accused persons. He also testified

that 8 numbers of witnesses were present to identify the accused persons. His testimony reveals that there were 60 other accused persons who stood with 12 numbers of suspects so that the ratio would be 7:1. His testimony also reveals that he took all precautions so that the entire arrangement prior to the identification of the accused could not be seen by the witnesses. He added that they were asked to wait outside. His testimony further reveals that he tried to make it sure that for each accused person, there should be 6 others of the same age group, same height and similar appearance. His testimony further reveals that he called each witness twice to identify the suspects and also interchanged the position of the accused persons and also their clothes at the time of each attempts. He specifically stated that he changed the arrangements of the accused persons for each of the witnesses and also in each attempts. He further stated that the dresses were also changed.

33. P.W.13 specifically stated that the victim girl (P.W.1) identified accused Dipak Deb, Gaurav Jyoti Neog, Rup Kanta Kalita, Puspendra Das, Hafijuddin and Nabajyoti Baruah in both the attempts. He also stated that the said witness also pointed out 4 other accused, who were not suspects in the present case. P.W.13 also stated that witness Dibash Ranjan Das could not identify any suspect on that day. However, the witness subsequently stated in the court that he had identified on the visuals of T.V. footage. P.W.13 further states that the witness Dibya Kamal Bordoloi identified accused Dipak Deb only. He further revealed that witness Ayesha Begum identified accused Gaurav Jyoti Neog, Nabajyoti Baruah, Hafijuddin and Dipak Deb. But the said witness specifically stated that he could recognize accused Gaurav Jyoti Neog and Nabajyoti Baruah at the place of occurrence and identified the other two accused persons on the basis of T.V. reportings. P.W.13 also stated that witness Mukul Kalita identified suspect Dhanraj Basfor, Dipak Deb, Nabajyoti Baruah, Gaurav Jyoti Neog and Rup Kanta Kalita. His testimony further reveals that witness Sagar Roy could only identify accused Gaurav Jyoti Neog. The witness stated that Meghraj

could identify suspect Dhanraj Basfor, Dipak Deb, Gaurav Jyoti Neog and Puspendra Das. He also stated that witness Jitu Das could identify accused Dipak Deb and Nabajyoti Baruah on both the attempts. P.W.13 further proved Ext-11 to Ext-18 as the reports of the Test Identification Parade. I have gone carefully through these reports and find that the witness has rightly testified the facts.

34. It is also revealed from the testimony of P.W.13 Yusuf Azaz that he conducted Test Identification Parade on 07.08.12 for two accused persons, namely, Amar Jyoti Kalita and Rubul Ali. He stated that on that day also, he reached the jail in between 2.30 to 3.00 P.M. He stated further that on that day too, he made similar arrangements for Test Identification Parade of the suspected accused in the manner he had conducted the Test Identification Parade on the previous day. He stated that only the difference is that this time he arranged 20 other persons to stand with the suspects. He further stated that as the accused persons were of the age group of 20 to 30 years, all the persons who stood in the line with the suspects were of the same age group. He also stated that those suspects were mingled with those 20 other persons in the same line inside the jail premises. He further testified that 3 witnesses were present to identify the suspects. He went on describing that the victim girl identified both the accused Amar Jyoti Kalita and Rubul Ali without wasting any time. He also testified that the witness Meghraj could also identify both the suspects Amar Jyoti Kalita and Rubul Ali in both the attempts. Further testimony of the witness is that witness Dibash Ranjan Das could identify accused Amar Jyoti Kalita in his both attempts. P.W.13 Yusuf Azaz proved Ext-19 to Ext-21 as his reports. He also stated that this time too he made similar arrangements for 20 numbers of other accused by mingling them with the two suspects in case of all the witnesses and in all the attempts. He added further that the positions were also changed and their clothes were also changed. His testimony also reveals that the jail officials were only allowed to remain present inside the campus at the time of

Test Identification Parades and no other witnesses, including the I/O was allowed to remain present there. During a lengthy cross-examination, the witness remained firm regarding the genuineness of the Test Identification Parade conducted by him. He also remained firm to the fact that he did not allow any police personnel to remain present inside the jail at the time of Test Identification Parade. The defence could not disprove his testimony.

35. P.W.17 Vijoy Kumar Singh is the Judicial Magistrate, 1st Class, Kamrup, Guwahati, and he conducted Test Identification Parade of one suspect – Sikandar Basfor at the Central Jail at Guwahati on 29.08.12. He testified that he reached the Central Jail premises at about 3.20 P.M. and thereafter instructed the jail officials to make necessary arrangement for Test Identification Parade and to arrange 40 numbers of Under Trial Prisoners/ persons of same age, height and appearance. He added further that there were 3 witnesses to identify suspects Sikandar Basfor. His testimony also reveals that said suspect was asked to stand in a line with other 40 numbers of Under Trial Prisoners/ persons inside he jail premises. He added that the witnesses were waiting in the office of the Jailor, situated at the left side of the entrance of the jail. He testified that witness Dibosh Ranjan Das identified the suspect Sikandar Basfore in both the attempts. He also stated that the victim girl also succeeded to identify the suspect Sikandar Basfor in both the attempts. He further added that the witness Meghraj Roy also identified suspect Sikandar Basfor in his both attempts. He proved Ext-26 to Ext-28 as his reports. He further stated that the Asstt. Jailor was present at the time of Test Identification Parade and necessary instruction was given so that one witness could not meet the other witnesses. He further added that after the first attempt by each of the witnesses, said witness was asked to stay in a separate room and after identification by one witness, the other witnesses were not allowed to meet the said witness. The defence also failed to disprove the testimony of the said witness.

36. Now, let me consider how far the Test Identification Parade conducted by two Magistrates are useful in identifying the accused persons. The evidence on Test Identification Parade is admissible U/S 9 of the Indian Evidence Act, 1972. Section 9 of the Indian Evidence Act speaks as follows:

"Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

Rule 195 of the Assam Police Manual also describes the procedure for conducting such identification of suspects. Besides section 54(A) has been newly added in the Code of Criminal Procedure to give power to the court to compel the accused persons to appear before the Test Identification Parade.

37. Mr. B.D. Konwar pointed out to Rule 195 of the Assam Police Manual which speaks that

"..... before the commencement of the proceedings the identifying witnesses are kept in charge of a court peon or other reliable person (not being a police officer) at such distance from the place where the proceedings are held that they can have no chance of seeing the suspects. The suspected person, if one only, will be paraded along with 8 or 10 or, if there are more than one suspect, with as many as 20 or 30 persons, similarly dressed and of the same age, religion and social status care being taken that the mixing up of the suspect or suspects with the other persons does not take place in view of the police officer or the witnesses."

38. Mr. Konwar pointed out that in this case, the learned Magistrates did not take care so that the witnesses were to be kept in charge of court peon. However, I have gone carefully through the entire evidence of P.W.13 Yusuf Azaz and P.W 17 Vijoy Kumar Singh and I find that no police personnel was allowed to enter in the jail premises to over view the arrangements made by the Magistrate for conducting the Test Identification Parade. It is also evident that the learned Magistrate took cautions and arranged sufficient numbers of persons/ Under Trial Prisoners to stand along with the suspects and also made it sure that there may be 6/7 persons of the same age group, religion and stature to stand with each suspects. Although court peon was not carried by the Magistrate along with him to the Central Jail premises, Jail Wardens were remained in charge of the witnesses and they were asked to sit in the office chamber of the Jailor, which is situated by the side of the outer gate of the jail and nothing could be seen from that position regarding arrangements, made inside the jail complex which is in the inner side of the jail, regarding interchanging the position, dress etc. I find that even some of the accused persons in their statements recorded U/S 313 Cr.P.C. admitted that the Magistrate had taken sufficient care to intermingle the positions of the suspects with other accused persons and also made sufficient effort to change their dresses in case of each witnesses and in case of every attempts made by the said witness. Thus, in my considered opinion, the learned Magistrate, who conducted the Test Identification Parade did not do any wrong and tried to remain firm as regards the procedure of law while performing or conducting the Test Identification Parade. The decision of the Hon'ble Bombay High Court in State of Maharashtra -vs- Rajesh @ Kaka Madanlal Soni, reported in 1998 Bombay CR Cri., as cited by the learned defence counsel is not applicable in the facts and circumstances of the present case.

39. Merely because some of the News Channels aired the video clips of the incident with photographs of some of the

accused, the truthfulness of the identification of the witnesses can not be disbelieved. It is to be remembered that they were the most probable eye witnesses of the occurrence. One of them is the victim herself who had the occasion to see the faces of her assailants for a long period of time. It is wholly unreliable that she would forget the faces of the accused who had molested her in the open road for such a long time. Similarly, the evidence of other eye witnesses, who were in no way connected with the parties to the case, came from the different walks of life and truly independent witnesses can not be disbelieved regarding the identification of the accused persons. Had they identified the accused on the basis of the information gathered through the video footages of the occurrence, aired in different News Channels, they would have been successful in identifying all the accused during the TIP and also in the Court. But they remained truthful, by identifying only those whom they had seen at the time of the occurrence. They also specifically asserted that they were instructed by the learned Magistrate at the time of the TIP that they should identify only those whom they had seen at the time of the occurrence and not on the basis of any News clippings. In our country, we have a strong media (both electronics and printing) and they are treated as the fourth pillar of democracy. It is not possible in today's world to keep the media at bay during the investigation process and if the evidence of the most truthful witnesses regarding identification of the accused persons is required to be disbelieved, merely because the News Channels had aired news items on the matter, then in cases of most of the heinous crimes, the accused persons will go scot free. In a similarly situated case (Criminal Appeal Nos. 1899-1900 of 2011, in between Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid Vs. State of Maharashtra), in connection with Mumbai attack on 26/11, in which the live telecast of the entire incident was done in almost all the Channels through out the globe, the Hon'ble Supreme Court of India, accepted the evidence of Test Identification, as well as, identification in the Court by the witnesses.

Material contradictions and omissions, vis-à-vis, the Role of the Investigating Officer:

40. In his argument, the learned defence counsel Mr. Konwor stressed on the point of the contradictions and omissions, appeared in the testimonies of the witnesses and forcefully submitted that where the omissions amount to a contradiction creating a serious doubt about the truthfulness of a witness and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it is not safe to rely upon such evidence. He further argued that the discrepancies in the evidence of the eye witnesses, if found to be not minor in nature, maybe a ground for disbelieving and discrediting their evidence. In support of his argument, Mr Konwor relied upon the decisions of the Honorable Apex Court of India, reported in (2010) 13 SCC 657, (2008) 15 SCC 590, (2010)3 SCC 678, (2009) 12 SCC 275, (2010)8 SCC 191. Mr N. Das, the learned Counsel appearing for three other accused also raised his finger regarding the omissions and contradictions, appeared in the testimonies of the witnesses of the prosecution side. In view of the forceful submissions at the bar, I find the need to peep into the testimonies of the witnesses once again.

41. I have already noted in the previous paragraphs that the victim did not state some of the facts in detail in her statement, recorded by the IO under section 161 CrPC. I have also noted why I did not consider the same as material to disbelieve the testimony of the vital witness in this regard. Save and except, the description of the person with red T-shirt and red cap, the other descriptions were given by her in her statement, recorded by the court under section 164 of the CrPC.

42. PW3 denied a suggestion that he did not state before police that one boy with red T-shirt and cap was giving interview before Camera. However, the IO confirmed the same. The IO was also confronted with some other portion of the evidence of PW3, but neither those statements were correctly put before the

IO, nor the said witness had been confronted with the actual portion of his evidence, which according to the defence was not in his previous statement under section 161 of the CrPC. The IO was further confronted with the evidence of some other witnesses in the court. But those omissions in the earlier statements, recorded under section 161 of the CrPC are mostly of minor nature, not going to the root of the prosecution case. It is evident that most of the witnesses did not give any description or did not disclose the name of any of the accused before the IO. But it is evident from the testimonies of the IOs that those witnesses specifically stated that they would be able to identify the culprits. I have gone through the statements of the witnesses, recorded by the IO under section 161 of the CrPC and found that they specifically expressed that they would be able to identify the accused persons, if confronted with them. It is most natural, in a case, where the accused persons were unknown to the witnesses, the witnesses could not disclose their names or identities before the police, but their conviction to identify the accused persons, if confronted, is sufficient. PW2 Sri Joduram Malakar admitted some of the omissions in his statement recorded under section 161 of the CrPC, but categorically stated that he could not remember when his statement was recorded by the IO.

43. I like to mention here that the ratio of all the decisions of the Hon'ble Apex Court of India, as referred to by the learned defence counsel is same. The Hon'ble Apex Court observed that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. It is also the settled position of law that minor contradictions, inconsistencies, embellishments or improvements on trivial matters without affecting the core of the prosecution case should not be made a ground to reject the evidence in its entirety. The Hon'ble Apex Court of India also observed that the trial courts, after going through the entire evidence, must form an opinion

about the credibility of the witnesses. The Hon'ble Apex Court of India, in *State of Uttar Pradesh v. Naresh*, (2011) 4 SCC observed that in all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

44. In State of U.P. v. M.K. Anthony, reported in (1985) 1 SCC 505, the Hon'ble Supreme Court of India has laid down the approach which should be followed by the Court:

"While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as

a whole.Even otherwise, it has been said time and again by this Court that while appreciating the evidence of a witness, minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the court to reject evidence in its entirety."

45. Thus, exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

46. Here in the present case in hand, the defence was successful in raising some questions regarding the efficiency and ability of the investigating officer to handle a case of such a magnitude. Without going to question his ability, hard work and sincerity, I like to bring it on record that in such a sensational case, the IO needed to be more professional in his approach and ought to have been more sensible. The evidence on record and the statements of the witnesses recorded by the IO, clearly indicates that he recorded the statements casually and in a cryptic manner. There was lack of promptness and also lack of sensibility. When the defence themselves raised the question, regarding the ability of the investigating officer, the question is whether on the basis of the statements recorded by the said officer, the evidence recorded by the court which was found otherwise credible and trustworthy, maybe rejected.

47. The principle laid down by the Hon'ble Supreme Court of India in this regard in **State of Karnataka Vs. K.**

Yarappa Reddy, reported in 1999 (4) Crimes 171 SC, are as follows:

"19. If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case can not be allowed to depend solely on the probity of investigation. It is well nigh settled that even if the investigation is illegal or even suspicious the rest of evidence must be scrutinized independently of the impact of it. Otherwise criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and preeminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made the casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true, the court is free to act on it albeit investigating officer's suspicious role in the case".

In *Nisar Ali Vs. State of Uttar Pradesh*, reported in AIR 1957 SC 366, the Honorable Apex Court of India observed:

".....Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, his conviction can be maintained. It is the duty of the court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient ought to be not wholly credible....."

48. In view of the discussions made above, I like to discard the submissions made by the learned counsel for the
49. accused persons that in view of the omissions, as appears in the statements recorded by the investigating officer under section 161 of the CrPC, the entire evidence of those witnesses are required to be disbelieved and rejected. The evidence on record is sufficient to form the opinion by this Court about its truthfulness and there is no material contradiction or omission or exaggeration or embellishment which can affect the credibility of such witnesses and can affect the core of the prosecution case.

Electronic Evidence:

49. The definition of the term "evidence" in section 3 of the Indian Evidence Act has been amended to include in the definition of the 'documentary evidence' the electronic records produced for the inspection of the court. Section 65 A of the Evidence Act provides that the contents of electronic records may be proved in accordance with the provisions of section 65 B of the said Act. Section 65 B of the Evidence Act prescribes the mode for proof of contents of electronic records. Here in the present case in hand, the investigating agency collected the CDs, DVDs, mini DV cassette et cetera from various authorities, but failed to collect the certificate about its genuineness, as required under section 65 B (4) of the Indian Evidence Act. Learned defence counsel Mr B.D. Konwar forcefully submitted that in the absence of any such certificate, the aforesaid material exhibits will not be of any use. In support of his contention, the learned defence counsel relied on the decisions of the Hon'ble Apex Court of India, reported in (2010) 4 SCC 329, in (2009) 6 SCC 681, in (2006) 7 SCC 607 and in (2009) 8 SCC 106. Before entering into this submission regarding the law point, made by

the learned defence counsel, let me scan the evidence in this regard.

50. It is evident from the corroborated testimonies of all eyewitnesses that at the time of the occurrence, video recording of the entire incident was done by at least two TV channels. The said fact was never denied by the defence. PW6 Nikhil Rajkhowa, a sub inspector of police, testified that on 12/07/2012, he seized one CD containing the video footage of GS Road incident of 09/07/2012 night from Mr Caushiq Bezbaruah, the Chief Executive Officer of News Live. Exhibit 7 is the seizure list. Exhibit 7 discloses that the said CD contents the news footage that was aired on 10/07/ 2012 at 7 PM news of News Live channel. The witness proved Material Exhibit 5 as the said CD. The witness also testified that on the same day, he seized one DVD containing the molestation incident of 09/07/2012 night from the Executive Editor of DY 365, Mr. Pranoy Bordoloi. He proved Exhibit 8 as the seizure list and also proved Material Exhibit 6 as the seized DVD. The defence never challenged the seizure of the aforesaid items.

51. PW 18 Mr Caushiq Kashyap Bezbaruah, the CEO of Pride East Entertainments Private Limited corroborated the fact of the aforesaid seizure, vide Exhibit 7. The witness also proved M. Exhibit 5 as the said seized CD. He also proved his short signature on the said CD for authentication. The witness specifically stated that he can ensure the genuineness of the raw footages in the said CD. During cross examination, the witness specifically stated that M. Exhibit 5 is the edited news footage which was aired on 10/07/ 2012 at 7 PM. The witness further admitted that the said news was edited from primary source of raw footages. PW 19 Mr. Pranoy Bordoloi, the Executive Editor DY 365 also proved the seizure of one DVD containing video footages of GS Road incident of 09/07/ 2012 and proved Exhibit 8 as the said seizure list. The witness further proved M. Exhibit 6 as the said DVD which was signed by him. The witness specifically stated that he can ensure the genuineness of the DVD and further stated that the DVD contains the molestation

incident of 09/07/ 2012 that was aired on that night, as well as, on the next day. The witness also added that they aired the news footages only after editing. Thus, I find that the two top officials of the respective TV channels, on oath, testified about the genuineness of the contents of the footages in the aforesaid two material exhibits. Of course, the seizing officer did not obtain the certificate of genuineness from the authorities concerned at the time of seizure, as required under section 65B of the Evidence Act, probably for the ignorance about the requirement of the new provision. But, in my considered opinion the same cannot be the sole ground for rejection of the aforesaid electronic evidence, particularly when the top officials of the respective news channels came to the court and by adducing evidence on oath proved the genuineness of the records. The aforesaid evidence is more important, because of the fact that the defence got the opportunity to cross examine the witnesses. Further more, section 65 A of the Evidence Act uses the word- "May" and not "Shall". Thus, in my considered opinion, the requirement of law is not mandatory. Since the two material exhibits have been proved by way of adducing evidence regarding its genuineness, I do not like to throw away the entire evidence in this regard, merely for not obtaining the certificate.

52. Besides, PW 20 Mr Dibya Kamal Bordoloi is the senior Reporter of News Live TV channel and his testimony is that on 09/07/ 2012, he was in News Live office for night duty from 8 PM to 6 AM on the next day. He testified that on that night, at about 9:30 PM, their reporter Gaurav Jyoti Neog informed over the input number that a disturbance had been created at GS Road, near Income Tax office. He testified that a little after, he himself along with the camera person Jugal Talukdar went to the spot and found a chaotic situation. He testified that accused Gaurab was there and witnessed that a girl was being molested by a few persons. He also testified that initially he tried to save the girl, but could not. He further testified that Jugal was taking the video shoots. He also corroborated the presence of the senior journalist Mukul Kalita

and the Additional SP. He also corroborated that police rescued the girl. The witness was shown the video recording in M. Exhibit 5 in the open Court with the aid of my official Laptop and thereafter to a question by the Court; the witness specifically asserted that the video clips in the said material exhibit are the true pictures of the entire incident. He specifically stated that the camera could not show the entire incident, due to the limitations of the broad spectrum. He reiterated that the camera shoots one angle at a time and there might be incidents, outside the angle of the said Camera. During cross examination the defence could not disprove his evidence and he reiterated that what he stated about the genuineness of the video clips in M. Exhibit 5 is based on his own observation of the entire incident as an eyewitness. He also stated that the video footage was edited, but not morphed. He also asserted that in their office, they never morphed any video clips. In view of the evidence of this vital witness, I find that there remains nothing to doubt the genuineness of M. Exhibit 5. I personally watched the video clips of M. Exhibit 5 and find that the said video clip is the true reflection of the narration of the entire incident, as given by all the eyewitnesses of the occurrence, including the victim. The said video clips also proved with precision the presence of the eyewitnesses of the occurrence, who testified on oath before this court. Thus, in view of the unshaken, corroborated testimonies of all the eyewitnesses, including the victim with the further corroboration from the video clips of Material Exhibit 5, I have no hesitation in my mind regarding the truthfulness of the incident of molestation of the victim girl in a ghastly manner, in a busy public road in the city of Guwahati. The video footage is also sufficient to disclose the identities of the actual culprits.

53. The seized mini DV, the Camera, the DVD, seized from one of Akhil Gogoi was sent to Central Forensic Science Laboratory, Chandigarh. Along with those, the voice sample of accused Gourav Jyoti Neog was sent for examination. The report has been proved as Exhibit 36 and the same has not been challenged by the defence. Analyzing the observations of Central

Forensic Science Laboratory the following conclusions may be derived:

54. The laboratory has come to the conclusion that video footage present in mini DV cassette (D/1) is not an original recording. It is a post-production edited version of recording. This deduction is a logical deduction, but nowhere in the report they observed that the video footage in question is morphed, doctored or tampered with. It may be the case that the cassette and DVD contain Raw footage in original and some of the portions have been eliminated or re-assembled for telecast in TV channel. The question of morphing or doctoring does not arise here. It is next to impossible to morph such incident footage in this country, which could have evaded the observations of CFSL. The state of the art morphing software like Nuke or Combustion require tremendous specialized skill, precession, time and planned shooting. Highly skilled mathematical calculations are required to match the angle, light and position of the two morphed characters. When these things are done, then frame-by-frame matching is needed which means the corrections on $25 \times 60 \times 7 = 10,500$ frames per character. At least two or three days are required to morph a single character with such precession, if at all possible. But the news was telecast on the same day and day after with the same footage as revealed by the witnesses- PW11, PW12 and PW 19. Hence the morphing theory can easily be discarded. Moreover, the defence did not prepare any ground of enmity or other reasons for such alleged morphing.

55. It has been observed in the laboratory that there were changes in video shots in the footage present in mini DV cassette marked (D/1). But these changes do not mean morphing or doctoring or superimposing shots as they have concluded saying that "On the basis of above observations, I came to the conclusion that video footage present in mini DV cassette marked (D/1) is not a original recording. It is a post-production edited version of recording". It is evident that by change they are meaning is assembling, insertion and

elimination from genuine raw footage. Cassette and the DVD were collected from two different sources but show a considerable amount of portions to be identical. At least the identical portions seem to be genuine and original. Moreover, I have watched the mini DV and it appears to me that the footages in the said mini DV and the M. Exhibit 5 contain the same video footages. Hence, the truthfulness and genuineness of the video clippings, maybe the edited version, have been proved beyond all reasonable doubt. The aforesaid video clippings, both in the CD (M. Exhibit 5) and in the mini DV assists the Court in identifying the individual role of the accused persons and also clearly identifies those who were only witnessing the occurrence.

Abscondance:

56. PW 21 Pranjal Barua was a member of the special investigation team and he testified that he apprehended accused Dipak Deb from Shillong in Meghalaya, where he took shelter after absconding from Guwahati. PW 22 Ziaur Rahman Khan, also a member of the special investigation team testified that accused Naba Jyoti Baruah fled away to Tamulpur and he was apprehended there. He also testified that accused Dev Das was arrested from Bihidia. He further testified that accused Amar Jyoti Kalita was apprehended at Varanasi Lanka police station on 24/07/2012 and the said witness brought him to Guwahati on the strength of a production warrant, issued from this Court. PW 23 Upen Kalita, another member of the special investigation team, also testified that that on 18/07/2012, CDR analysis reflected that accused Amar Jyoti Kalita was in Mumbai and accordingly he himself along with additional SP (City) went to Mumbai on the day and in the evening they contacted crime Branch, Mumbai. He also testified that as per CDR analysis report, he was at Manpara, Mumbai. He added that with the help of Inspector Gopale, a crime Branch officer, they located the house of one Ganesh Jagadish Sarma, a relative of the said accused and could come to know that after absconding from

Guwahati, accused Amar Jyoti Kalita took shelter in the said house and also could come to know that the said accused person had already left Mumbai for Bhubaneswar. The witness further testified that he collected the CCTV footage of Chhatrapati Shivaji railway terminal station from crime Branch Mumbai and seized the same vide Exhibit 31. It is also evident from the testimonies of other police officers that the said accused person could not be found in his house and his passport was seized. The said witness also apprehended accused Rubul Ali from Baruahjani under kamalpur P.S. The investigating officer Pradeep Kakoti also testified that accused Sikander Basfor fled away from Guwahati. Accused Ghanashyam Mallik was arrested at Bijni. Similarly, accused Rupkanta Kalita was arrested at Mukalmua. All these facts of absconding are relevant for consideration under section 8 of the Indian Evidence Act. The defence could not disprove the aforesaid evidence on record, nor could give any satisfactory explanation for their absconding. Mere absconding may not be the conclusive proof of the guilt, but when the said evidence is considered in the light of the other evidences on record, it proves a guilty mind attempting to evade justice.

57. Thus, on a proper and thorough appreciation of the evidence, I find that accused Amar Jyoti Kalita, Rubul Ali, Dhanraj Basfor, Dipak Deb, Sikandar Basfor, Nabajyoti Baruah, Puspendra Das and Gaurav Jyoti Neog were identified by the witnesses in the Test Identification Parade, as well as, they were identified by the witnesses in the court. The direct involvement of accused Amar Jyoti Kalita, Dipak Deb, Rubul Ali, Sikandar Basfor, Nabajyoti Baruah, Debo Das, Rup Kanta Kalita, Ghanashyam Mallik, Puspendra Das, Nabajyoti Deka and Dhanraj Basfor have been clearly reflected in the video footages, aired by different news channels. I like to stress on the point that the video footages of Material Ext-5, whose genuineness has been proved even by Sr. correspondence of News Live, who was present at the spot with the Camera and had the opportunity to witness the occurrence, clearly reflects the involvement of all

those accused persons in the incident of molestation of the victim girl in the open public road on that fateful night. Of course, Debo Das, Ghanashyam Mallik and Nabajyoti Deka were not identified during the Test Identification Parade, but their presence and involvement is very much apparent in the video footages. They were also identified in the court by the informant. All these accused persons were also absconded from Guwahati immediately after the occurrence. Thus, I have no hesitation in mind about the guilt of these accused persons in the commission of the crime. However, I find that although accused Hafijuddin was identified during Test Identification Parade, his presence was not shown or reflected in the video footages and as such he is entitled to get the benefit of doubt. Besides, accused Jitumoni Deka and Diganta Basumatary were not identified during Test Identification Parade and their presence also could not be ascertained in the video footages, exhibited in this case, beyond all reasonable doubt. Thus, these two accused persons also entitled to get the benefit of doubt.

58. Accused Gaurav Jyoti Neog was shown in the video footages. He was also identified during Test Identification Parade and was identified in the court. Mr. B.Mohajan while arguing on this point relied on a decision of the Hon'ble Supreme Court of India Ramachandran and Ors. -Vs- State of Kerala, reported in (2011) 9 SCC 257. He argued that where omnibus or general allegations which may be against a large number of persons, the court must categorically scrutinize the evidence and hesitate to convict the large number of persons, if the evidence available on record is vague. Mr. Mohajan further argued that in no stretch of imagination it can be stated that accused Gaurav Jyoti Neog was a member of unlawful assembly, the common object of which was to outrage the modesty of a woman. He argued that the primary intention of the accused person was to take photographs of the incident and for that purpose he also called the crews of his news channel so that the entire videography of the incident could be taken. He argued that there is not a single iota of evidence that the said accused

person shared the common object of outraging the modesty of the victim girl.

59. On a careful consideration of the argument put forward by Mr. B. Mohajan, I find that in this particular case there is no material at least to establish the fact that the said accused person was a member of unlawful assembly. The allegation that he uttered some obscene words towards the victim, could not be established. Rather, P.W.3 Mukul Kalita, who is a senior Journalist with repute in his evidence stated that the said accused person was doing his duty as a reporter. His voice samples were sent to Central Forensic Science Laboratory, Chandigarh for the purpose of voice test of the accused person. The Central Forensic Science Laboratory could not give a specific finding regarding the voice of the accused person. The evidence on record reflects that due to ignorance about the process, the controlled voice sample of S/I had been taken in a haste and amateurishly. It is not understood, why the investigating team got the Controlled Voice Sample of accused Gaurav Jyoti Neog recorded by a studio photographer, when the CID has got their own experts in this line. The investigating team could easily collect the voice sample of the said accused with the help of the experts of the CID or with the assistance of the Forensic experts. In the present era, voice matching is a very common practice and done easily, if the sample is collected with precision. Thus, by such act of nonprofessional approach and lack of precision, the investigating team has allowed to waste a vital evidence. Since there is no other evidence, I am constrained to hold that the said accused person did not share any common object with the actual culprits, who committed the offence of outraging the modesty of the victim girl or uttered obscene words. His actions may not be in accordance with the normal code of a good citizen, but it can not be said that he committed any criminal wrong through his presence at the time of occurrence.

60. *Now, let me concentrate on the ingredients of each particular offence point wise, for which the accused persons have been charged.*

Point No.I:

61. *The ingredient of section 143 IPC is as follows:*

- (I) *There was an unlawful assembly as defined in section 141 of the IPC, consisting of 5 or more members;*
- (II) *The accused was a member of such assembly.*

The present case falls under the definition of Clause -3 of Section 141 of the IPC, i.e. to commit offence. To commit any unlawful assembly, the common object of the assembly must be an important one to be carried into effect forthwith. Here in the present case in hand, a gathering of 20/25 people assembled with the common object to outrage the modesty of the victim girl. It may be that some of those persons joined the assembly subsequently, but in case of unlawful assembly, there is no need for pre-meeting of mind. If a person joins an assembly with the object common of all of the said assembly, even during the continuance of the assembly, he will be guilty of forming an unlawful assembly. Hence in my considered opinion, the accused Amar Jyoti Kalita, Dipak Deb, Rubul Ali, Sikandar Basfor, Nabajyoti Baruah, Debo Das, Rup Kanta Kalita, Ghanashyam Mallik, Puspendra Das, Nabajyoti Deka and Dhanraj Basfor *are guilty of the forming of the unlawful assembly.*

Point No. II:

62. *The essential ingredients of wrongful restrain are :*

- (I) *That the accused person obstructed the a person;*
- (II) *that such obstruction prevented the person from proceeding in a direction in which he had the right to proceed;*
- (III) *that the accused caused such obstruction voluntarily.*

63. Here in the present case in hand, the evidence on record establishes that accused Amar Jyoti Kalita and other

accused persons wrongfully restrained the victim girl from proceeding in a direction in which she had the right to proceed. Evidently, she was dragged down from the auto rickshaw and even after that when she tried to flee from the clutches of those accused persons, the same group of accused restrained her. Even it is evident from the testimony of P.W.9 Jitu Das that he tried to rescue the victim girl and asked her to jump on his motorcycle. He also testified that the victim girl also jumped over his motorcycle, but the accused persons dragged her down. It is also established that accused Amar Jyoti Kalita and other accused persons (held guilty by this court for the involvement of in the offence), also obstructed her from proceeding while police tried to rescue her. These are sufficient to hold that accused Amar Jyoti Kalita, Dipak Deb, Rubul Ali, Sikandar Basfor, Nabajyoti Baruah, Debo Das, Rup Kanta Kalita, Ghanashyam Mallik, Puspendra Das, Nabajyoti Deka and Dhanraj Basfor are guilty of offence punishable U/S 341 IPC and the point No.II is accordingly decided.

Point No. III:

64. The victim girl, by adducing evidence before the court, specifically mentioned the vulgar words which were uttered against her. From the very nature of the words, those are obscene and vulgar and those were uttered in a public place. The main allegation was against accused Gaurav Jyoti Neog in this regard. However, I find that the prosecution has failed to prove who uttered those words towards the victim girl. The video footage exhibited in this case is also not sufficient to ascertain the words which were used against her. The report of Central Forensic Science Laboratory, Chandigarh also could not ascertain the same. The other witnesses remained silent about uttering of any obscene or vulgar words towards her. In view of the above facts, I find it just to give the accused persons the benefit of doubt in this regard and hold them not guilty for the offence U/S 294 IPC.

Point No. IV & V:

65. These two points are taken up together.

The necessary ingredient of offence U/S 323 IPC are:

- (I) that the accused by their act caused bodily pain, disease, or infirmity to the victim;
- (II) that they did such acts intentionally or with knowledge that it would cause hurt.

The necessary ingredient of offence U/S 354 IPC are :

- (I) that the person assaulted must be a woman;
- (II) that the accused must have used criminal force on her and
- (III) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

66. Here in the present case in hand, from the testimony of the witnesses including the testimony of the victim, it transpires that the said victim girl was voluntarily caused hurt by the accused persons. She specifically stated that she was given a blow with clenched fist. She was also dragged by pulling her hair. She was also dragged down on the public road. From the testimony of the victim girl, it transpires that due to causing of such hurt, she received multiple bodily injury and blood started to ooze out from her nose. P.W.3 Mukul Kalita also corroborated the said victim. Of course, the doctor while adducing evidence stated that he did not find any bodily injury except the injury at her knee. However, the testimony of the independent eye witnesses, as well as, the exhibited video footages clearly reflect that she was voluntarily caused hurt, she was assaulted, she was dragged down to the public road, she was also pulled by holding her hair and it is very much evident that the accused persons jumped over her and molested her in the open public road. her dresses were torn, leading to the exposure of her feminine parts before the public eyes.

65. In result accused Amar Jyoti Kalita, Dipak Deb, Rubul Ali, Sikandar Basfor, Nabajyoti Baruah, Debo Das, Rup Kanta Kalita, Ghanashyam Mallik, Puspendra Das, Nabajyoti Deka and Dhanraj Basfor are held guilty of offence punishable

U/S 143/341/323/354 IPC and accordingly they are convicted under the said sections of law.

66. The other accused persons namely Hafijuddin, Jitumoni Deka, Diganta Basumatary and Gaurav Jyoti Neog are held not guilty of offence punishable U/S 143/341/294/323/354 IPC and they are accordingly acquitted of the offences on benefit of doubt.

67. Considering the nature and gravity of the offence, the convicts are not extended the benefit of the Probation of the Offenders Act.

68. I heard the convicts on the point of sentence and their statements have been recorded in separate sheets, attached to the C/R. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. Here in the present case in hand, the manner in which the modesty of a girl was outraged by a group of people on a public road in the city of Guwahati, the brutality of the offence does not demand any leniency in imposing sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. There are no mitigating circumstances, justifying lesser punishment. Considering all these facts, the convicts are sentenced to Rigorous Imprisonment *for* 6 (six) months each with fine of Rs.500/- (five hundred) each, i/d, to Rigorous Imprisonment for 15 (fifteen) days each U/S 143 of the IPC, to fine of Rs 500/- (five hundred) each, i/d, to S.I. for 7 (seven) days each U/S 341 IPC, to Rigorous Imprisonment for 1 (one) year each U/S 323 IPC and to Rigorous Imprisonment for 2 (two) years each with fine of Rs. 2000/- (two thousand) each, i/d, to R.I for 2 (two) months each, U/S 354 IPC. All the sentences of imprisonment will run concurrently and the period of imprisonment already undergone by the convicts during investigation and trial will be set off. The amount of fine, if realized, will be used in payment of compensation to the victim. Furnish free copy of judgment to the convicts immediately.

69. Before parting with, I like to bring it on record that I will be failing in my duty if I fail to recognize the cooperation, received from the learned counsel appearing for the parties, in absence of whose cooperation, such a sensational case could not be disposed of within such a short span of time.

70. Given under my hand and seal of this court on this 7th day of December, 2012.

Dictated & corrected by me:

Chief Judicial Magistrate,
Kamrup, Guwahati.

Chief Judicial Magistrate,
Kamrup, Guwahati.

Typed by:
U. Talukdar, Stenographer.