

**IN THE COURT OF ADDL. SESSIONS JUDGE (FTC), SONITPUR AT TEZPUR**

<b><u>SESSIONS CASE NO.</u></b>	<b>:-</b>	<b><u>219 of 2018</u></b> (Under Section 376/506 of IPC, arising out of GR 4336 of 2017)
<b>Present</b>	<b>:-</b>	<b>R. Baruah</b> <b>Addl. Sessions Judge (FTC),</b> <b>Sonitpur, Tezpur.</b>
<b>Prosecutor</b>	<b>:-</b>	<b>State of Assam</b>
		<b>-Vs-</b>
<b>Accused</b>	<b>:-</b>	<b>1.Sri Sunil Rai,</b> <b>S/o Late Rajen Rai,</b> Resident of Nanke Bakula, Chariduar, PS – Chariduar, Dist- Sonitpur, Assam
Date of framing charge	<b>:-</b>	03-12-2018.
Date of Recording Evidence	<b>:-</b>	03-01-2019, 30-01-2019, & 26-02-2019.
Date of examination of accused u/s 313 of Cr.P.C.	<b>:-</b>	08-03-2019
Date of Argument	<b>:-</b>	06-04-2019.
Date of Judgment	<b>:-</b>	<b>07-05-2019.</b>
Counsel of the Prosecution	<b>:-</b>	A Baruah & J Baruah, Ld. Addl. Public Prosecutors, Tezpur.
Counsel for Accused	<b>:-</b>	A K Mahanta & J M Bora, Ld. Advocates.

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

1. In this case accused Sunil Rai is put for trial for the allegation of charge under Section 376/506 of Indian Penal Code.
2. The prosecution case in brief is that informant Ritu Roy lodged an

FIR before Chariduar PS alleging inter alia that on 11-11-2017 at night while her sister "X" was returning from Morisuti gaon after enjoying Raas Festival, on the way accused forcibly took her in his bike and at Hudubari under Lokra Panchayat Area, he committed rape on her. It is also mentioned in the FIR that the accused threatened the victim with dire consequence if she disclose the matter to her family.

3. On receipt of the FIR, the OC, Chariduar PS registered the same as Chariduar P.S case no. 255/2017 u/s 366/376(I)/506 of IPC and endorsed the same for investigation. Police after completion of investigation, submitted charge sheet against the accused Sunil Rai under 366/376/506 of IPC and laid the same before the learned CJM, Sonitpur, Tezpur for trial. Since the offence is triable by the court of Sessions, the same was committed to the Court of Sessions after furnishing the relevant copies under the provisions of Cr.P.C.

4. On appearance of the accused and after hearing the learned advocate for both the sides, charge under Section 376/506 of IPC framed against the accused Sunil Rai. The above charges are read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. To substantiate the case, prosecution has examined 8(eight) nos. of witnesses including the informant/victim namely, 1. Sri Maradona Basumatary (PW1), 2.Smti Maidangshri Basumatary (PW2), 3.Smti Ritu Roy (PW3), 4.Smti Dalimi Roy(PW4), 5.Sri Dina Roy(PW5), 6.The victim "X" (name not mentioned in this judgment for the sake of maintaining confidentiality) (PW6), 7.Dr Jharna Kakoti (PW7) and 8. SI Abdul Kadir Faruki (PW8) (IO).

6. Statement of accused is recorded under Section 313 of CrPC. The defence plea is of total denial and the accused declined to adduce defence evidence.

7. I have carefully gone through the record of the case and heard the learned counsels for both the sides. The Learned Additional Public Prosecutor submits that the case against the accused proved beyond all reasonable doubts and hence he should be convicted and sentenced accordingly.

The Learned Advocate for the defense submits that there is no allegations by the mother and father of the victim. The facts reveals that there was no need for the victim to board the motor cycle of the accused and these proves the willingness of the victim. The age of the victim is more than 18 years. There is no sign of rape as per the medical report. The alleged injury on the breast of the victim is old one, because doctor said that the same occurred more than 24 hours ago. The victim was examined within 11 hours of alleged occurrence. The blood and sperm not compared with that of the accused. Whether it can be believed that a boy in presence of sister will take away a girl for committing rape? The evidences of the informant are full of discrepancies. The procedure for recovery has followed. The victim admitted that the statement u/s 164 of Cr.P.C not read over and explained to her after record. The informant claims that the accused is a HIV positive patient, but no such sign found during examination of the victim.

8. The points for decision in this case are –

- (1) Whether the accused, on 11-11-2017 night at Hudubari under Chariduar PS committed rape on the victim "X" against her will?**
- (2) Whether the accused on the same date time and place mentioned above committed criminal intimidation by threatening the victim with dire consequences ?**

**Discussion, Decisions and reasons for decision:**

9. Before appreciating the evidence, I am of the opinion that the evidence so adduced by the prosecution witnesses needs to be reflected.

10. PW1 said that accused is his adjacent neighbor. The incident took place on 11-11-2017 at night during Raas Festival. He knows the victim. At night while victim along with sister of Sunil Roy (accused) and another girl were returning from Raas Festival by a scooty, on the way the tyre of the scooty got puncture. Then accused Sunil Rai forcibly took "X" on his bike (pulsar) with a plea that he will drop her in her house, but, instead of having to the house, he went towards Hudubari, Lokhra in a secluded place and raped her. At around 1.30 AM, Ritu Rai (sister of victim) and "X" informed him about the incident. Immediately they went to Chariduar PS and police accompanied them to the place of occurrence led by victim. On the spot a "maphlar" worn by accused recovered. Police seized the same by preparing a seizure list and he signed upon it. Ext.1 is the seizure list. Police also seized the motorcycle of accused. Ext.2 is the seizure list. M.Ext.1 is the seized blue and white coloured "maphlar".

In cross PW1 stated that at the time of recovery of "Maphlar" he, police, the victim, sister of victim and Jayanta Borah were present. He put his signature in the seizure list at police station. He does not know who brought the motorcycle to the police station. He knows that the victim and accused are not lovers.

He denied the fact that he has deposed in the Court as taught by mother and sister of victim, that he did not state before police the facts which he mentioned in the Court, that he stated to police that he came to know about the fact being informed by Dina Rai(father of victim) , that he has no knowledge regarding the facts of the case, that victim along with her sister never came to him after the incident, that he was not present when the "maphlar" recovered and seized, that he does not know anything about the incident.

11. PW2 stated that she know the accused, victim and the informant as they are her co-villagers. The incident took place on 11-11-2017 at around 11.00/12.00 PM. On that night while victim along with the sister of Sunil Roy and another girl were returning from Raas Festival by a scooty, on the way the tyre of scooty got puncture. Then accused Sunil Rai forcibly took "X" on his bike (pulsar) with a plea that he will drop her in her house, but, instead of having to the house, he went towards Hudubari, Lokhra in a secluded place and raped her. In the

morning, a commotion took place in the house of victim. She went to the spot and came to know about the incident. She came to know that after committing rape, the accused brought back the victim to her house.

During cross PW2 said that she heard about the incident on the next day from the sister of victim. Victim is her neighbor. There is no relation between the victim and accused. Police found her with sister of victim and hence, made her witness in this case.

12. PW3 the informant of this case stated that victim is her sister. The incident took place on 11-11-2017. On that day at around 8.30 PM she reached home from Guwahati. The sister of accused namely Swapna Rai had been calling her over phone. At around 9.00 PM she over phone called the sister of accused who asked her whether she will go to see Raas Festival at Marikhuti. PW3 told that she will not go. Then sister of accused asked her (PW3) whether sister (victim) will go or not to which she replied that victim will also not go to see Raas, but, sister of accused insisted that she will come and take victim to enjoy Raas Festival. Thereafter, Swapna came to their house and took victim to Raas Festival. At around 10 PM Swapna over phone informed her (PW3) that victim is not available near her. Again at around 11.30 PM, Swapna over phone informed that victim was sent with the accused and both the accused and victim are unavailable. After ½ an hour accused dropped victim in front of the house. Then, victim cried and told that accused raped her. PW3 called her friends over phone and on not getting anyone she went to the house of accused. She charged the accused that why he being a HIV patient committed such thing to victim and then accused pushed her. Then, PW3 came to Chariduar PS with victim and mother in a vehicle along with one Jayanta. In the morning she lodged the FIR. Ext. 3 is the ejahar. She narrated the incident to police. At night itself, they took the police to the place where accused committed rape on victim. Police recovered a surni (Piece of clothe) from the spot. Police sent her sister for medical examination and recording statement under Section 164 of CrPC through the Magistrate.

In her cross PW3 said that Police recorded her statement. Later on said – police has not recorded her statement. She has not stated the facts which she

narrated before the Court.

She denied that she did not state before police that after her sister disclosed that she was raped by accused, she approached the accused and questioned him that why he raped her sister, he being a HIV patient.

The FIR was written as per her version. Later on said – the FIR not written as per her version, but, by the scribe. She has not read the contents of FIR prior to putting her signature. Dilip Tamuli is the scribe. She went to Dilip Tamuli after her father and aunt. House of Dilip Tamuli is situated near the PS. Dilip Tamuli wrote the ejahar in his house. At the time of lodging the FIR, Dilip Tamuli did not accompany them to the police station. She put her signature in FIR in the house of Dilip Tamuli. At around 11.30 AM, on 12-11-2017 she lodged the FIR.

She denied the fact when suggested by the defence that there was love affair between her sister and the accused, that as the facts which she narrated in the Court are not mention before the police or in the FIR hence, facts narrated by her are fabricated, that her sister willingly went with the accused against their wish and hence, on her return they questioned her why she went to the Raas Festival without their permission, that her sister never stated before her that she was raped by the accused, that she never accompanied the police during recovery of surni, that she deposed falsely about her presence at the time of recovery of surni, that she stated falsely that she came to Chariduar PS with her sister and mother in a vehicle along with one Jayanta, that her father and her sister were not willing to lodge any case of rape against the accused, but, she insisted and lodged FIR in the morning, that the accused never committed sexual intercourse with her sister forcibly, that she forced her sister to state against the accused before the Magistrate.

She also said in her cross that she accompanied her sister when police brought for recording her statement. She knows that accused is a patient of HIV positive. She knows that HIV virus is communicated due to sexual intercourse. Till today, no symptoms of HIV positive noticed in the person of her sister.

13. PW4 the mother of victim stated that the incident took place during Raas Festival. In the night of incident, accused took her younger daughter to Raas Festival and thereafter they went missing. Accused committed bad thing to her

daughter. Police was informed and police recovered a piece of cloth (surni) from the jungle. After recovery of her daughter told her that accused took her to jungle and committed bad thing on her.

In her cross PW4 said that she did not go to see Raas Festival. She did not allow her younger daughter (victim) to go out, but, she went with the sister of accused. When her younger daughter (victim) left house, her elder daughter namely Ritu Roy was not in the house. Her husband also did not go to the Raas Festival. They were in the house and sleeping. She does not know when victim came back to the house. In the late night police came. After her younger daughter (victim) returned they talked with each other. At night, her daughter did not stated about the incident. She stated about the incident in the morning.

She denied the fact that her daughter (victim) never stated before her that accused committed bad thing on her.

14. PW5 the father of victim stated that the incident took place more than one year ago. In the evening he left for attending the Raas Festival and on the next morning he return to home and came to know that at night accused had taken away his younger daughter. Police was informed. Police came and visited the place of occurrence and recovered a piece of cloth.

During cross PW5 said that at the time of leaving his house, his elder daughter was not in the house. She was in Dimapur. He was not aware when her younger daughter left from the house and with whom. He remained in the Raas Festival till morning. The location of Raas Festival was about 1½ km away from his house. He did not accompany the police during visit to the place of occurrence and recovery of cloth. He did not met police personally. Police has not recorded his statement.

15. PW6, the victim ("X") of this case said that informant is her elder sister. Incident occurred more than one year ago. The sister of the accused called to go with her to the Raas Festival. She went to the Raas Festival with the sister of the accused in her scooty (scooter). While returning to home, on the way, the scooty of the sister of the accused developed some defects. Then accused arrived on the spot

in a motorcycle. The sister of the accused asked her to board the motorcycle of the accused. She boarded the motorcycle of the accused. The accused left fast her home. She requested him to stop the motorcycle but he did not stop. The accused took her towards Kudubari, towards Lokhra and raped her twice. While committing rape she told the accused that she will inform her mother and sister then he held her neck tight and bite her breast. Then she noticed another boy crossing then. She requested the boy to take her home. The boy asked her to go to home with the person she came. Then she told the accused that she will not inform her family members about the incident. Then the accused agreed to bring her back. He brought her back and dropped her near her house. She told the facts to her sister and mother. Then the three went to the house of the accused. When questioned by her sister the accused denied committing rape. They returned to the house and thereafter they went to the police station. Police seized her clothes. Police brought her to the court to record her statement. Police took her to the doctor for medical examination. Exhibit-4 is her statement given before the Magistrate.

During cross by defence, the victim said that she accompanied with the sister of the accused, namely Sanu, to the Rass Festival. Another girl named Bunu also accompanied them. She denied the fact that in the midst of Rass Festival she left her friends and went with the accused. They returned from Rass, namely, herself, Sanu and Bunu in the scooty. Bunu reside in the house of Sanu. When the scooty became defective, the three were there. After crossing 7 (seven) house, while returning from Rass the Scooty developed defects. They three were coming by pushing the scooty. The sister of the accused and the accused proposed her to go in the bike of the accused. On the road she boarded the motorcycle of the accused. Her mother did not stop her to go to Rass Festival. Her mother was not aware about her leaving to the Rass Festival.

She denied that in spite of resistance by her mother, she came out of the house. She never attended school. They are originally from Goalpara. Accused is a Nepali by caste. The accused asked her to board the motor cycle and she boarded the same. From the place where she boarded the motor cycle of the accused and to her house, there are four houses in between.

She also denied that there was no need for her to board the bike of the accused as her house was nearer, that she willingly boarded the motor cycle of the accused, that even after reaching her house she did not asked accused to stop the motorcycle and willingly went ahead.

PW6 also said that at the place of commission of rape a known person of accused came to the spot. The person told her to go with whom she came. The place of commission of rape not visited by her earlier. She went with the accused for about an hour. During that time she did not talked with the accused. But she shouted when she crossed her house.

She denied the fact the accused has not committed rape on her. Presently her age is about 19 years. She denied that accused never committed sexual intercourse with her against her will. When her statement was recorded by Magistrate, she told her age as 19 years.

She also denied the fact that she maintained physical relation (intercourse) with the person boy whom she met at night, that in the night of incident without listening to her mother she went out of the house and when her mother and sister questioned her, she falsely implicated the accused to save herself, that she if any sexual intercourse is committed in the night with any person, the same was on her consent, that she willingly came out of the home and to hide those thing she developed a concocted story against the accused. Doctor examined her on the next day. She forgot at what time the doctor examined her. Doctor perhaps examined her during noon.

She further denied that as nobody raped her hence the doctor on the next day on examination never found evidence of rape committed on her. She denied that if intercourse committed twice the same cannot be called commission of rape, that she has deposed falsely that she did not knew the boy whom she met after commission of rape on the place of occurrence. The boy whom she met after the rape, did not raped her.

She also denied that as she went without the consent of the family members she went in the night and only to conceal her conduct, she falsely implicated the accused. She denied that her sister asked her to implicate the accused, that she gave statement as tutored by her sister.

During recording her statement the Magistrate did not told her in what language she is going to write her statement. The Magistrate did not read over the statement to her in Assamese language. She cannot read English language. She never attended school. She does not know what is written by the Magistrate in English. She put her thumb impression in her statement. A boy of the court took her signature in the statement, and not by the Magistrate. The thumb impressions in the Exhibit- 4 are her thumb impression.

She denied that the thumb impressions in the Exhibit-4 are not her, that the accused never raped her.

16. PW7 the medical officer said that on 12-11-2017 she was posted as S D M & H O at Kanaklata Civil Hopsital, Tezpur. On that day she examined Miss "X" at 12.45 PM at the labour room complex of KCH in presence of GNM Smti Moni Das vide hospital Registration No 9056/17.

History of sexual exposure on 11-11-2017. Consent for examination was taken.

Menstrual History: LMP- not remembered.

O/E:

Height – 149cm,

weight – 45 kgs,

Teeth – 7/7-7/7.

Identification mark: Mole on nose.

At the time of examination she was well dressed, neat and tidy. Gait was normal, average built. Secondary sexual characters are developed. Hymen absent. There was 3mm abrasion below the nipple of left side. Vaginal smear was taken for spermatozoa.

**Investigation and reports:**

1. Vaginal smear for spermatozoa – no sperm seen. Done at KCH Laboratory.
2. Urine for HCG – Negative(done at AXCL on 13-11-2017, report given by Dr Dwipen Mahanga, Pathologist).
3. HIV test – Specimen is negative for HIV antibodies (Done at KCH Laboratory on 13-11-2017).

4. USG of Pelvis – Uterus is anteverted and normal in size and outline. Measures: 7.5 x 3.1 x 3.1 cms in length, breadth and thickness. Both ovaries are normal in size and echo anatomy. Size of Rt Ovary – 24 x 20 x 18 mm & size of Left Ovary – 25 x 22 x 18 mm. No gestational sac or product of conception in the uterus. Normal pelvic organ with non-gravid uterus. Done at AXCAL. Report given by radiologist Dr PK Barman, MD, Ultrasonologist.
5. X-ray of left hand, wrist joint, iliac crest and elbow joint for determination of age – Union of the epiphysis of the lower ends of radius and ulna are complete. All epiphysis of the bones around the elbow joint have fused. Epiphysis of the iliac crest has appeared but not fused. Age of the person under investigation appears to be over 18 years. Report given by radiologist Dr PK Barman, MD, Radiologist. Patients ID No.AXC-4854.

**Opinion:**

1. There was no sign and symptoms of recent sexual intercourse at the time of examination.
2. There was an abrasion of 3mm length below the left nipple. Injury was simple and caused by blunt object, old more than 24 hrs.
3. She was not pregnant at the time of examination.
4. Specimen of victim girl is negative for HIV antibodies at the time of examination.
5. Age of the person under investigation appears to be over 18 years.

**Enclosure:**

1. Advise slip,
2. Vaginal smear report,
3. Urine for HCG report,
4. USG & X-ray report with film & plates,
5. Lab. Report of HIV test,
6. Police requisition.

PW7 exhibited the Medical Report as Ext.5 (containing three pages).

During cross, the MO said that her report is written in loose sheets. The report is not in prescribed format. After completion of investigations, she prepared the report i.e. Ext.5. Whenever a patient brought for examination, the details are entered in a register of their hospital. She has not submitted the extract report of the register where the name of patients are entered. Their Superintendent can send the register if requisitioned by the Court. During examination of the girl, she did not found evidence of recent sexual intercourse. The injury below the nipple was more than 24 hrs old. The HIV test is found to be negative.

17. PW8 the investigating officer said that on 12-11-2017 he was posted at Chariduar PS as attached Officer. In the night of 11-11-2017 at 12.20 AM Smti Ritu Roy informed the Chariduar PS that her sister "X" has been forcefully taken away by Sunil Roy in a motorcycle with some ill intention. Accordingly a GD Entry is made being No 299 dated 11-11-2017. Ext. 6 is the GD Entry. Then he proceeded to the place of occurrence at around 1.40 AM and reached the place of occurrence at 2.10 AM. They went to the house of accused Sunil Roy and seized the motorcycle used for carrying the victim from a distant place. He recorded the statement of seizure witnesses. Thereafter, the accused Sunil Roy led them to the place of occurrence situated at Nanke-Bakula, Chariduar. He prepared the sketch map of the place of occurrence. Ext. 7 is the sketch map. They noticed a piece of cloth (like Maphlar) at the place of occurrence, colour of which was dark blue and white colour. The said cloth seized vide Ext.1. They came to the police station thereafter. In the morning the victim came to the police station and he sent her to the hospital for medical examination. Sister of victim filed a FIR which was registered as Chariduar PS case No 255/17 under Section 366/376(1)/506 of IPC. He forwarded the accused to the Court after arrest. He also forwarded the victim to the court for recording her statement under Section 164 CrPC. He recorded the statement of witnesses. He also collected the panty of the victim having some suspected blood stain and sent the same for FSL examination. Ext.8 is the seizure list of panty. Thereafter, he collected the FSL report, medical report of the victim. Ext.9 is the FSL report. After completion of investigation, submitted the charge sheet against the accused. Ext.10 is the charge sheet.

In cross the IO stated that on 11-11-2017 at 12.20 AM he opened the case diary of this case on the basis of verbal intimation by the informant (sister of victim). He has not submitted the extract copy of the GD entry No.299 dated 11-11-2017 of this case. After GD Entry the case diary was opened. In the PS itself he opened the case diary and thereafter proceeded to the place of occurrence at 1.40 AM. After making GD Entry and prior to registration of case on the basis of FIR, he visited the residence of accused, seized the motorcycle used in the crime and shown by the accused, visited the place of occurrence and prepared the sketch map and also recorded the statement of two witnesses. He has not stopped the informant from filing the FIR for which I already started investigation on the basis of GD Entry. He has not made any note in the case diary of GD Entry No.299 dated 11-11-2017 that the FIR being No 255/17 will be also applicable in connection with the said GD Entry No.299 dated 11-11-2017. Ext.10 is submitted in connection with Chariduar PS Case No 255/17. The MR No.128,129 & 130 mentioned in the charge sheet were collected while investigating on the basis of GD Entry No.299 dated 11-11-2017. The GD Entry was done on the basis of information given by Ritu Roy and case was registered on the basis of FIR submitted by said Ritu Roy.

The PW1 did not state before him that "*The incident took place on 11-11-2017 at night during Ras Festival. I know the victim. At night while Nijora Rai(victim) @ Paile along with sister of Sunil Roy and another girl were returning from Ras Festival by a scooty. On the way, the tyre of scooty got puncture. Then accused Sunil Rai forcibly took Nijora Rai on his bike (pulsar) with a plea that he will drop her in her house, but, instead of having to the house, he went towards Hudubari, Lokhra in a secluded place and raped her. At around 1.30 AM, Ritu Rai (sister of Nijora) and Nijora informed me about the incident. Immediately we went to Chariduar PS and police accompanied us to the place of occurrence led by victim. On the spot a "maphlar" worn by accused recovered. Police seized the same by preparing a seizure list and I signed upon it*".

PW1 stated before him that he came to know about the incident from the father of the victim Dina Rai.

He has recorded the statement of informant Ritu Roy (PW3). The PW3 did not state before him that *"after my sister disclosed that she was raped by accused, I approached the accused and questioned him that why he raped my sister and he being a HIV patient"*.

The informant (PW3) herself lodged the FIR in the police station. The parents of victim did not accompany her at the time of lodging the FIR. He seized the panty of the victim in the police station at the time of registering the FIR as per his entry of case diary. Victim herself gave me her panty vide Ext.8. He packed the panty of victim in a plastic container. He has not mentioned in his case diary that he packed the panty of the victim inside a plastic container.

He denied the fact that he has not properly packed the seized panty of the victim after seizure.

He has requested the doctor for determining the age of victim and according to the report, the age of victim at the time of occurrence is above 18 years. In the FIR the OC, has mentioned that he has been investigating the matter already. During investigation, he came to know that accused is a patient of HIV positive and accordingly, requested the doctor to examine whether the HIV virus transmitted to the victim to which the doctor reported in the negative. After receiving the FIR(Ext.3) he recorded the statement of victim.

18. During examination in chief the PW6 said that she went to the Rass Festival with the sister of the accused in her scooty (scooter). While returning to home, on the way, the scooty of the sister of the accused developed some defects. Then accused arrived on the spot in a motorcycle. The sister of the accused asked her to board the motorcycle of the accused. She boarded the motorcycle of the accused.

The victim in cross examination said that she accompanied with the sister of the accused, namely Sanu, to the Rass Festival. Another girl named Bunu also accompanied them. She denied the fact that in the midst of Rass Festival she left her friends and went with the accused. The sister of the accused and the accused proposed her to go in the bike of the accused. On the road she boarded the motorcycle of the accused. The accused asked her to board the motor cycle and

she boarded the same. PW6 denied that she willingly boarded the motor cycle of the accused.

The PW3 said that again at around 11.30 PM, Swapna over phone informed that victim was sent with the accused and both the accused and victim are unavailable.

All these prove that the accused took the victim in presence of his sister, to the place of committing rape.

19. From the evidences of prosecution witnesses, it is proved that in the night of incident, victim was away taken by the accused. The victim was in the company of the accused alone in the night. The victim said that she boarded the motor cycle of the accused in presence of the sister of the accused, which is not denied by the accused. The PW1 said that around 1.30 AM the sister of victim and "X" informed him about the incident. The PW3 said that at around 11.30 PM, Swapna over phone informed that victim was sent with the accused and both the accused and victim are unavailable. After ½ an hour accused dropped victim in front of the house. In cross the PW3 denied that her sister willingly went with the accused against their wish and hence, on her return they questioned her why she went to the Raas Festival without their permission. The PW4 said that at late night police came. The PW6 said that she went to the Raas Festival with the sister of the accused in her scooty (scooter). While returning to home, on the way, the scooty of the sister of the accused developed some defects. Then accused arrived on the spot in a motorcycle. The sister of the accused asked her to board the motorcycle of the accused. She boarded the motorcycle of the accused. In cross the PW6 (victim) the victim said that she accompanied with the sister of the accused, namely Sanu, to the Raas Festival. The sister of the accused and the accused proposed her to go in the bike of the accused. The PW6 denied in cross examination that she willingly boarded the motor cycle of the accused.

20. The victim "X" is the material witness in the present case. She has clearly mentioned that the accused committed rape on her twice after taking her to a secluded place. The place is visited at the night by the police after the occurrence

and a piece of cloth recovered. The victim said that she noticed another boy crossing them, i.e at the place accused took her to. She requested the boy to take her home and the said boy asked her to go to home with the person she came. The victim said that only when she said to the accused that she will not inform her parents and sister the accused brought her back. Nothing brought out by the defense to show that accused did not brought the victim back after to her house. The defense failed to show/ explain why he took the victim to a secluded place, if not for committing unlawful act. The PW6 (victim) said that while committing rape she told the accused that she will inform her mother and sister then he held her neck tight and bite her breast. The PW7 (doctor) said that there was an abrasion of 3mm length below the left nipple of the victim and the injury was simple and caused by blunt object, old more than 24 hrs. Thus the version of the victim cannot be disbelieved.

In **Abdul Matin (Md) vs State of Assam (reported in 2013 (4) GLT 561)** the Hon'ble Gauhati High Court observed as follows;

*"( 11 ) The established law is that the prosecutrix in a rape case is not an accomplice and there is no law that her testimony cannot be acted upon and made the basis of conviction unless corroborated in material particulars. In this regard, suffice it to refer to Dilip Vs. State of M. P, reported in (2001) 9 SCC 452. The Court is not supposed to throw away or discard the evidence of the victim of sexual assault only because the medical report says that there is no sign of recent sexual intercourse or injuries on her person. Here is a case where the evidence of the prosecutrix is categorical, cogent and trustworthy besides being corroborated by at least some eye-witnesses. This being the position, I hold that the prosecution was successful in establishing the charge against the convict appellant and the impugned order of conviction and sentence call for no interference. The conviction and sentence thus stand upheld."*

21. The suggestion of the defense that committing sexual intercourse twice cannot be termed as rape cannot be accepted. The victim was taken to a secluded place at night by the accused. The victim has specifically said that when she initially disclosed that she will inform that matter to her parents and sister, the accused threatened her. Thus, victim in order to return to her home only told the accused

that she will not inform the matter to others. To save herself, victim lied to the accused.

22. Another argument of the defense is that the doctor has not found the victim to be infected by HIV virus.

It is not proved by evidences that every sexual intercourse with HIV infected person transmits the virus.

23. The parents of the victim did not specifically mentioned that the accused raped their daughter. They mentioned that the accused did bad thing to their daughter. In is natural that parents would not like to mention the word "rape" in relation to their daughter.

24. In view of the above discussions and reasons, it is held that the Prosecution has proved beyond all reasonable doubts that accused Sunil Rai has committed the offence under Section 376/506 of Indian Penal Code(IPC). Accordingly, accused Sunil Rai is convicted under section 376/506 of IPC.

25. Since the offence is committed against woman, the accused not considered under the Probation of Offender's Act.

26. Heard the accused on the point of Sentence under the provision of Section 235(2) of CrPC.

The accused submits during sentence hearing that he is innocent. He further stated that he is a patient of HIV positive and he needs regular medical check-up and medicine.

27. The accused is sentenced to undergo rigorous imprisonment for 7(seven) years for the offence under Section 376 of IPC and to pay a fine of Rs.5000/-, i/d to undergo RI for 1(one month). The accused is further sentence to undergo RI for 1(one) month for the offence under Section 506 of IPC. Both the sentences will run consecutively.

28. The bail bond for the accused Sunil Rai stands cancelled.
29. The seized motor cycle be returned to the owner without any conditions. The other seized articles be destroyed.
30. It is seen that no recommendation is made in the record for giving compensation to the victim. Hence, it is hereby recommended to give appropriate compensation to the victim by the District Legal Service Authority, Sonitpur, Tezpur.
31. Free copy of judgment be furnished to the convict.
32. Copies of judgment be furnished to the Learned District Magistrate, Sonitpur, Tezpur as per provision of Section 365 of Cr.P.C and to the Learned Secretary, District Legal Service Authority, Sonitpur, Tezpur.

Given under my Hand and Seal of this Court on this the **7<sup>th</sup> day** of **May, 2019**.

(R Baruah)  
Addl. Sessions Judge (FTC),  
Sonitpur, Tezpur.

Dictated and corrected by me.

(R Baruah)  
Addl. Sessions Judge (FTC),  
Sonitpur, Tezpur.

Dictation taken and transcribed by me:

Smt. Pori Das, Steno.

## **ANNEXURE**

### Witnesses examined by the prosecution:

- 1.PW1 – Sri Maradona Basumatary,
- 2.PW2 – Smti Maidangshri Basumatary,
- 3.PW3 – Smti Ritu Roy,
- 4.PW4 – Smti Dalimi Roy,
- 5.PW5 – Sri Dina Roy,
- 6.PW6 – victim "X",
- 7.PW7 – Dr Jharna Kakoti &
- 8.PW8 – SI Abdul Kadir Faruki(IO)

### Witnesses examined by the Defence:

Nil.

### Documents exhibited by the prosecution:

1. Ext. 1 : Seizure list of Maphlar,
2. Ext. 2 : Seizure list of motorcycle
3. Ext. 3 : Ejahar,
4. Ext. 4 : Statement of victim recorded under Section 164 of CrPC,
5. Ext.5 : Medical report,
6. Ext.6 : GD Entry No.299 dated 11-11-2017,
7. Ext.7 : Sketch map,
8. Ext.8 : Seizure list of Panty,
9. Ext.9 : FSL Report,
- 10.Ext.10 : Charge sheet,
- 11.M.Ext.1 : seized Maphlar.

(R Baruah)  
Addl. Sessions Judge (FTC),  
Sonitpur,Tezpur.