

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

PRESENT : Sri P.C. Kalita, AJS,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 129 OF 2013

GR Case No. 873 of 2013.

Under Section 376 of Indian Penal Code

State of Assam

–Versus –

Sri Jayanta Deka,
Son of Sri Luhit Deka,
Vill – Kusumtola, PS- Jamuguri,
Dist – Sonitpur, Assam. **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Sri M.R. Tirky,
Advocate

Date of evidence : **20-07– 2013, 25-09-13,
04-11-13, 04-12-13,
21-12-13 and 19-03-14.**

Date of Argument : **26- 05 - 2014.**

Date of Judgment : **31- 05 - 2014.**

J U D G M E N T.

1. The prosecution case, inter-alia, in brief, is that the informant Puja Devi, lodged an ejahar in the Jamuguri Police Station alleging that on 21-04-2013 at about 5.30 p.m., the accused Jayanta Deka unlawfully entered into her house and thereafter forcibly committed rape on her by gagging her mouth, in absence of her husband.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Jamuguri PS registered a case, conducted investigation and thereupon laid chargesheet u/s 376 of IPC against the accused Jayanta Deka.

3. After appearance of the accused person before the Court, the Additional Chief Judicial Magistrate, Sonitpur, Tezpur, committed the case to the Court of learned Sessions Judge, Sonitpur, Tezpur. Thereafter, the learned Sessions Judge, Sonitpur, Tezpur transferred the case to this court for trial. Considering the materials available on case record and relevant documents of case diary, the charge was framed against the accused under Section 376 of IPC. Then the contents of charge was read over and explained to the accused to which, he has pleaded not guilty and claimed to be tried.

4. To bring home the charges, the prosecution has examined as many as 6 (Six) PWs and one Court witness. The accused is examined u/s 313 CrPC . The pleas of the accused are of total denial and he has declined to adduce defence witness.

5. Point for determination:

(i) Whether the accused 21-04-13 at about 5.30 p.m. in the evening at village Udaypur under Jamuguri Police Station committed rape on the victim and

thereby committed an offence punishable u/s 376 of IPC ?

Discussions, Decision and reasons thereof:-

6. Learned Additional Public Prosecutor argued that the prosecution witnesses, more particularly, the prosecutrix (PW 2) and her step daughter (CW 1) have fully supported the prosecution case against the accused u/s 376 of IPC.

Learned Counsel for the accused submitted that the prosecution has failed to examine any independent witness, there was previous enmity between the husband of the prosecutrix and the accused, the Investigating Officer has not prepared the sketch map.

7. I have carefully perused the evidence and the materials available on the case record. Heard arguments of both sides. Now, let us examine the evidence of PWs to decide the case at hand.

8. PW 1, Sri Paban Nath, husband of the victim woman, stated that he knows the accused person. On 21-04-13 at about 9 a.m. he arrived at home and saw that his wife (victim woman) and her daughter were weeping. On being asked, his wife told him that at about 5.30/6 p.m. the accused came to her residence and dragged her to the bed by gagging her mouth and committed rape on her. Her daughter Rimpiti Devi on seeing the incident, made utterance and assaulted the accused with a stick. Next day, his wife lodged an ejarah. Now, his wife has been residing at her parent's house at Lanka.

PW 2, the victim woman, stated that she knows the accused person. The incident took place after Bohag Bihu of last year at about 5.30 p.m. when her husband was in the shop and

she was alone at home. At that time, the accused person came to her residence and calling out for 'girl, girl', the minor girl staying at their residence. At that time the said girl was not at home. As soon as the accused entered into their residence, she then immediately entered into the house. The accused person also entered into the house. The accused, at first, made conversation with her and thereafter dragged her to the bed. The accused fell her down on the bed, touched her body and committed bad acts with her for 3 / 4 minutes. At that moment, Rimpi Devi, step daughter of her, arrived at the place of occurrence and made hullah and then the accused person had fled away. While her husband arrived at home at about 8/9 p.m., she told him about the incident and next day, she lodged the ejahar. Police recorded her statement, medically examined her and got recorded her statement through the court. Ext. 1 is the ejahar and Ext.1 (11) is her signature. Ext. 2 is her statement u/s 164 Cr.P.C and Ext.2(1) and 2(2) are her signatures thereon.

PW 3, Sri Kamal Bora, a co-villager, stated that he knows both the parties of this case. One day, about 6 months back, in the evening time, the incident occurred. At that time, he was at home and heard hulla of the girl of the informant. Next day, on enquiry, he came to know that there was a rape incident in the house of the informant. He came to know that a boy from Kusumtola Centre committed rape on the victim woman. After arrest of the accused by police, he came to know that the accused person committed rape on the victim woman.

PW 4, Sri Daneswar Deka, SI of police (I.O.) stated that on 29-04-13 he was serving as SI of police at Jamuguri Police Station. The preliminary investigation of the case was conducted by ASI Kudrat Ali and thereafter, OC R.K. Nath, endorsed him the further investigation of the case. He found that the investigation of

the case has already been completed and then on the basis of materials on the case diary, he laid chargesheet against the accused Jayanta Deka u/s 376 of IPC. Ext. 3 is the chargesheet and Ext. 3(1) is his signature thereon.

PW 5, Kudrat Ali, ASI of Police (IO), stated that on 22-04-13, he was serving as ASI at Jamuguri Police Station. On that day informant (victim woman) lodged an ejahar in the Police Station, registering a case, the O/C endorsed him for investigation of the matter. Accordingly, he visited the place of occurrence, recorded the statement of the witnesses including the victim woman, prepared a sketch map of the place of occurrence, collected the medical report of the victim woman and also recorded the statement of the victim woman through the Court. After completion of preliminary investigation, he handed over the case diary to the O/C. Exhibit 4 is the sketch map of the place of occurrence and Ext. 4(1) is his signature thereon. He also arrested the accused Jayanta Deka.

PW 6, Dr. Sangeeta Sarma, stated that on 23-04-13 she was at Kanaklata Civil Hospital, Tezpur as Medical and Health officer-1 and on that day at 2 p.m. she examined the victim woman Smti Puja Devi, 22 years, female, W/O Sri Paban Nath, of Udaipur, Police Station Jamuguri, in reference to Januguri PS Case No. 46/13 u/s 376 of IPC being escorted and identified by WPC 396 Sumitra Dutta, in labour room of Kanaklata Civil Hospital in presence of GNM Mrs Kalpana Devi, after taking consent from the victim and her husband. Upon examination she found the following :-

GENERAL EXAMINATION.

Height – 146 cm, Weight – 40 Kg, Teeth 14 / 14. Identification mark – a small mole on right cheek brownish in colour. Last menstrual period – 21-04-13.

She is average built, well dressed, neat and tidy. Her gait is normal. Her secondary sexual characters are not well developed. Pubic and axillary hairs are present. Breast well developed. Vulva and vagina are healthy. Hymen is absent. There is no mark of injury or marks of violence on her private partes as well as other body parts.

Investigation advised :

Vaginal smear for spermatozoa.

Urine for pregnancy test.

USG Pelvis.

X-ray of wrist joint, elbow joint and left iliac crest for age determination.

Reports.:

Vaginal smear for spermatozoa is taken – spermatozoa not seen (done at KCH Laboratory on 23-04-13 Lab No. 28/13)

Urine for pregnancy test – Negative. done at Assam X-ray Clinic and Laboratory Patient ID -7283 on 23-04-13. Reported by Pathologist Dr. Dwipen Mahanta.)

USG of pelvis : The uterus is antemerted and nis normal in size, shape and enthines. Measrures – 7.5 x 3.9 x 2.5 cms in length, breadth and thickness. The myometrium is of normal echo-textures without any focal lesions. The endometrium is of normal thickness (11.0). No gestational sac or product of conception is seen in the uterine cavity.

Overies: Both overies are normal in size and echoanatomy.

Right overy measures 24 x 23x 19 mms, left overy 30 x 25 x 23 mms. No evidence of any cystic or solid lesion is seen in the overies. No mass lesion is seen in the pelvis. No abnormal fluid collection seen in the peritoneal cavity. Impression – normal pelvic organs.

X-ray report :

Union of epiphysis of the lower ends of left radius and ulna are complete.

All epiphysis of the bones around the left elbow joint have fused with their respective shafts.

Epiphysis of the iliac crest has appeared but remains open.

Impression - Age of the person under investigation is above 18 years. (done at Assam X-ray & Clinical Laboratory, Tezpur on 07-06-13 by Dr. P.K. Barman, MD, Radiologist, Patient ID No.721).

Conclusion (OPINION) :

1. Age of the person under investigation is above 18 years.
2. There is no signs and sexual intercourse at the time of examination.
3. There is no marks of sexual violence or injury on her private parts as well as other body parts.
4. The victim woman is not pregnant at the time of examination.

Ext. 4 (A) is the medical report and Ext. 4 A(1) is her signature. Ext. 5 is the advice slip and Ext. 5(1) is her signature. Exhibits 6 and 7 are the Laboratory reports with plates. Exhibit 8 is the x-ray and USG reports with plates.

9. Court Witness Miss Rimpti Devi, stated that she knows the accused but does not know his name. The house of the accused was at Kusumtola Centre. Informant is her own mother who is now residing separately from her. Her mother now residing at Nagon. There was an incident at their residence in evidencing before her mother going to Nagon. At the time of incident, she went to grand father's house. After a while, returning home she saw her mother and the accused inside the home. The accused was dragging her mother and was doing bad acts on her forcibly on the bed. While she went to assault, the accused with a stick then the accused had fled away through the back door. Her mother was found weeping and told her that after she went out, the accused came and did bad acts with her forcibly. Her father is a shop keeper and while her father came home at night, then she

and her mother informed him about the incident. Thereafter, her mother lodged the ejahar.

Legal position.

Rape.

10. Section 375 of IPC defines rape, as follows:

"375. Rape – A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First – Against her will.

Secondly, - without her consent.

Thirdly, - with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly, - with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly,- with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly, - with or without her consent, when she is under sixteen years of age.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. "

In view of the above, in order to constitute the offence of rape there must be – sexual intercourse by a man with a woman, such sexual intercourse must be under circumstances falling any of six clauses of the Section.

Section 376 of IPC reads as follows:

“(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.”

In view of the above, to constitute an offence under this section, the prosecution must prove : -

"(i) accused had sexual intercourse with a woman;

(a) if the woman is below sixteen consent or willingness on her part would be irrelevant, except when the victim is his wife ;

(b) if the victim not united by wedlock with accused be sixteen or above, the Court is to find on evidence that there was no willing participation or active consent on the part of the victim woman."

Analysis of evidence.

11. Now, from the evidence on record, it appears that PW 2, the prosecutrix-informant, is the star witness in this case. Her deposition is that on the day of occurrence at about 5-30 p.m., the accused taking the advantage of absence of her husband, unlawfully entered into their residence calling out for girl, girl. Immediately, the prosecutrix entered into the house. The accused

also entered into the house. At first, accused made conversation with her and thereafter shifted her to the bed and laying down on the bed, the accused touched on her body and committed bad acts with her for about 3 / 4 . She also stated that one Rimpi Devi, step daughter, arrived at the time of occurrence.

In cross-examination, this PW 2 stated that there was dispute between her husband and the accused in the shop. For lodging the ejahar, her husband took her to the police station by cutting her hair. Her husband assaulted her prior to the incident. Due to pressure by her husband, she had lodged the ejahar.

This PW 2 in her deposition, stated that she was at home prior to the occurrence whereas in her statement recorded u/s 164 Cr.P.C. she stated that just prior to the incident she entered into home coming from latrine. There is no evidence on records that she made no hue and cry nor made resistance at the time of occurrence. Had there been some resistance and hue and cry on her part, some neighbours would have come forward to help her. Moreover this PW 2, Prosecutrix, in her deposition nowhere stated that accused forcibly committed rape on her. The prosecutrix is a major, above 20 years, at the time of occurrence.

PW 1, the husband of the prosecutrix and PW4, a neighbour, are not the eye witnesses of the occurrence.

The Medical Officer (PW 6) also did not find any sign of sexual intercourse at the time of occurrence, found no marks of sexual violence or injury on her private parts as well as other parts of her body. Thus, the medical evidence also does not support at all the prosecution version.

Smti Rimpi Devi (CW 1), a child witness, claims to be a daughter of the prosecutrix, whereas the prosecutrix (PW 2) stated that Rimpi Devi is her step-daughter. This CW 1 in cross stated that she saw injury on the neck and leg of her mother (PW2) whereas MO (PW 6) found no injury on the body of the prosecutrix (PW 2). Thus, it appears that there was contradictory statements between the CW 1, prosecutrix and the Medical Officer. So, the evidence of CW 1 can not be relied upon.

12. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s 376 of IPC against the accused beyond all reasonable doubts. Hence, I acquit the accused from the charges leveled against him.

13. The accused be set at liberty forthwith.

The case is disposed of accordingly.

14. Given under my hand and seal of this Court on this day, the 31st day of May, 2014.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Assistant Sessions
Judge,
Sonitpur, Tezpur.

Dictation taken and
transcribed by me :

(R. Hazarika),
steno.

A P P E N D I X

Prosecution witnesses :

PW 1	:	Sri Paban Nath,
PW 2	:	Victim/informant
PW 3	:	Sri Kamal Bora,
PW 4	:	Sri Daneswar Deka,
PW 5	:	Kudrat Ali,
PW 6	:	Dr. Sangeeta Sarmah (MO),

Defence Witness : Nil

Court Witness :

CW 1	:	Smti Rimpi Devi.
------	---	------------------

Prosecution Exhibits: :

Exhibit 1	:	Ejhar.
Exhibit 2	:	Statement u/s 164 Cr.P.C.
Exhibit 3	:	Chargesheet,
Exhibit 4	:	Sketch map,
Exhibit 4 A	:	Medical report,
Exhibit 5	:	Advice slip,
Exhibit 6 & 7	:	Lab report,
Exhibit 8	:	X-ray & USG report.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.