

J U D G M E N T.

1. The prosecution case, inter-alia, in brief is that the informant-victim, lodged an ejahar in the Itakhola Police Out Post under Sootea Police Station alleging that on 04-11-2012 at about 5 a.m. (early morning) while she was removing the bamboo fencing, inside their boundary mark, erected by accused Padmalal Sarmah, then the accused Padmalal Sarmah attacked the informant, grabbed her and attempted to commit rape on her. When the informant attempted to run away from the place of occurrence, the accused torn out the blouse of the informant and then she left her wearing saree there.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Sootea PS registered a case, conducted investigation and thereupon laid chargesheet u/s 376/511 of IPC against the accused Padmalal Sarmah.

3. After appearance of the accused person before the Court, the learned 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 person under Section 376/511 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 8 (eight) PWs including the Medical Officer and the Investigating Officer. The accused is examined u/s 313

CrPC. The pleas of the accused are of total denial and he has declined to adduce any defence witness.

5. Point for determination:

(i) Whether the accused on 04-11-2012 at about 5 a.m. at village Balijuri under Sootea PS, attempted to commit rape on the victim and in such attempt did certain act (torn out her blouse) and thereby committed an offence punishable u/s 376 read with section 511 of IPC?

Discussions, Decision and reasons thereof:-

6. 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.

7. PW 1, the victim/prosecutrix, the informant, stated that she knows the accused. On the previous day of the occurrence, the accused erected a bamboo fencing in the boundary mark between them. Next day morning, she came out and saw the bamboo fencing within their land. Then she broke out the "Jeora", (bamboo fencing), accused came out from behind, held her and started gagging and abused her. Accused torn out her wearing blouse and touched on her chest. She attempted to flee away but the accused held her. Then she made hulla and then the family members of Barman came out and she ran away towards them. When she ran away, the accused removed her wearing saree and made her naked. The wife and the son of the accused attacked her with spear in their hands. The accused shouted saying as "he will commit rape". Her husband resides outside from her residence in connection with their livelihood. Police seized a torn blouse. Ext. 1 is the ejahar and Ext. 1(1) is her signature. Ext. 2 is the seizure list and Ext. 2(1) is her signature. Ext. 3 is her 164 Cr.P.C. statement and Ext.3(1) and 3(2) are her signatures thereon.

PW 2, Smti Monomaya Newar, a co-villager, stated that one day at about 5 a.m., about 1 year back, she heard hulla and coming out, saw that there was pulling and pushing between the informant and the accused. She did not go the place of occurrence. She saw the victim running away towards the house of one barman and also saw the wife and son of the accused coming out with stick who attacked the victim. When the informant had fled away, she was wearing a petticoat and torn out blouse, without saree.

PW 3, Smti Bogimarya Limbu, stated that she knows both the parties of this case. The incident took place on 05-11-12 at about 5/5.30 a.m. She heard hulla and saw the victim running towards their house, wearing petticoat. On being made enquiry, the victim did not tell her how the incident occurred.

PW 4, Smti Leela Devi, stated that the incident took place about 6/7 years back. On the day of occurrence the victim made her a phone call informing that there was a pulling and pushing in between her and the accused when she removed the bamboo fencing erected by the accused. When the victim attempted to flee away, the accused held her and then her wearing saree and blouse torn out. She saw the said saree at the place of occurrence. Ext. 2 is the seizurelist and Ext. 2(2) is her signature thereon.

PW 5, Smti Sanu Tamang, stated that she knows both the parties of this case. The incident took place in 2012 at about 5 a.m. Smti Leela Devi, President of Mahila Samity informed her about the occurrence. She reached at the place of occurrence at 8 a.m. and found the victim/prosecutrix weeping and her wearing blouse in torn out condition. On enquiry, the victim told her that the accused tried to rape on her and then the blouse torn out. Ext. 2(3) is her signature on Ext. 2, seizurelist.

PW 6, Smti Sabita Devi, a neighbour, deposed in the same line as deposed by PW 5

PW 7 Dr. Thaneswar Dutta, stated that on 06-11-12 he was working at Itakhola P.H.C under NRHM, as Medical and Health officer and on that day at about 4.10 p.m. he examined one Smti Deepa Upadhaya, female, 30 years, W/O Sri Muruli Upadhaya, vide Itakhola PPGDE No. nil dt. 06-11-12. Upon examination he found the following :-

1. One mark of abrasion at the base of right little finger.
2. Pain in both the forearms.

Opinion:

The nature of injury is simple and caused by blunt weapon.

Ext. 4 is the medical report submitted by him and Ext. 4(1) is his signature.

PW 8, Sri Uttam Tamang, SI of Police (I.O.), stated that on 05-11-12 he was serving at Itakhola Police Out Post as Incharge and on that day on receiving the ejahar lodged by the informant/victim, making a GD Entry, forwarded the ejahar to Sootea PS for registration. He himself took up the matter for investigation. Being found available, the informant and other ladies at the Police Station, he recorded their statement there. He seized the torn out blouse as being produced by the informant vide MR NO. 49/12. Thereafter, he visited the place of occurrence, prepared a sketch map and recorded the statements of other witnesses. He collected the medical report of the injured/victim after sending her for medical examination. Also recorded the statement of the informant by the Court u/s 164 Cr.P.C. On 08-11-12, he arrested the accused. Thereafter, he laid chargesheet u/s 376/511 of IPC against the accused. Ext, 2 is the seizurelist and Ext.2(2) is his

signature. Ext. 5 is the sketch map and Ext. 5(1) is his signature thereon. Ext. 6 is the chargesheet and Ext. 6(1) is his signature thereon.

8. Now, from the evidence on record, it is seen that PW 1 is the prosecutrix-cum-informant is a star witness in this case. Her deposition is that in the morning of occurrence, while she was cutting the bamboo fencing, erected by the accused inside their boundary, the accused held her, made pulling and pushing, abused her. She further stated that accused torn out her wearing blouse and touched her chest. When she ran away, the accused removed her wearing saree. In her cross-examination this PW 1 stated that there was boundary dispute between her and the accused. 3 / 4 days prior to the incident, the village headman and the neighbours settled their boundary dispute. She also stated that she does not know as to who had written the ejahar where she did not disclose the date of lodging of ejahar. She also stated that police saw her wearing saree but did not seize it.

It can be presumed that due to previous enmity between the parties, the lodging of the ejahar by the informant, can not be ruled out.

In view of the above evidence on record, the testimony of the prosecutrix (PW 1) does not inspire confidence and does not found trust-worthy.

Perusal of the ejahar Ext. 1, it transpires that there is no mention about the date of lodging of the ejahar though the incident was shown to be occurred on 04-11-2012. From the reverse side of the ejahar, it appears that the concerned Police Out Post received the same on 05-11-2012. Thus, it appears that there was one day delay in lodging the ejahar but the same has not been explained properly by the prosecution which is fatal for prosecution.

PW 2, Smti Monomaya Newar, though claims to be the eye witness of the occurrence, but she simply stated that she saw only pulling and pushing between the prosecutrix and the accused but she did not go to the place of occurrence. PW 3, PW 4, PW 5 and PW 6 are not the eye witnesses of the occurrence. PW 7 is the Medical Officer. PW 8, the I.O. in cross-examination stated that witness Sabita Pokhrel did not state before him that a saree was lying in the basti. PW 8 seized the said blouse at the Police Station on being produced by the prosecutrix.

9. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s 376 read with section 511 of IPC against the accused beyond all reasonable doubts. Hence, I acquit the accused from the charges leveled against him.

10. The accused be set at liberty forthwith. His bail bond stands cancelled.

The seized articles, if any, be destroyed in due course of time.

The case is disposed of accordingly.

11. Given under my hand and seal of this Court on this day, the 30th 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 : victim/informant.
PW 2 : Smti Monomaya Newar,
PW 3 : Smti Bogimaya Limby,
PW 4 : Smti Leela Devi,
PW 5 : Smti Sanu Tamang,
PW 6 : Smti Sabita Devi,
PW 7 : Medical Officer.
PW 8 : Sri Uttam Tamang (IO)

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : Ejahar.
Exhibit 2 : Seizurelist.
Exhibit 3 : statement u/s 164 Cr.P.C.
Exhibit 4 : Medical report.
Exhibit 5 : Sketch map.
Exhibit 6 : Chargesheet.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil.

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