

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

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

SESSIONS CASE NO. 21 OF 2014

GR Case No. 2540/ 2013

Under Section 376 of Indian Penal Code

State of Assam Complainant

–Versus –

Sri Mukul Kalita @ Mikul

Son of Late Kan Kalita

Resident of Shantipur

PS – Sootea

Dist – Sonitpur, Assam

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Accused Person

ADVOCATES APPEARED

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Sri B. Katakya
Advocate

Date of evidence : 18– 07– 2014, 12– 08– 2014
01– 09– 2014, 20– 09– 2014 &
18– 02– 2015

Date of Argument : 21– 05 – 2015

Date of Judgment : 26– 05 – 2015

J U D G M E N T

The prosecution case, inter-alia, in brief, is that the victim girl lodged an ejarah in the Itakhola OP, under Sootea PS alleging that the accused person Mukul Kalita, came to her residence and taking advantage of absence of her family members, forcibly committed rape on her. As a result of which, she became seven months' pregnant.

2. After receiving the aforesaid ejahar, the I/C of Itakhola Out Post, made a GD Entry and on the basis of said GD Entry by forwarding the ejahar to O/C, Sootea Police Station for registering a case. Accordingly, the O/C of Sootea PS registered a case, bearing Sootea Police Station Case No. 135/13 u/s 376 of IPC. During the period of investigation, the Investigating Officer produced the victim for medical examination. She was also produced before the Court for recording her statement u/s 164 CrPC by the Magistrate. After conclusion of investigation, the Investigating Officer submitted the Charge sheet against the accused u/s 376 of IPC.

3. After appearance of the accused, the learned Judicial Magistrate, 1st Class, Tezpur, Sonitpur, committed the case to the learned Sessions Judge, Sonitpur, Tezpur and thereafter, the case was made over to this Court for disposal. Accordingly, this Court took up the trial of the case. Considering the materials available on case record and case diary, the charge was framed against the accused under Sections 376 of IPC. Then the contents of charge was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4. In order to bring home the charges, the prosecution has examined as many as 9 (nine) PWs, including the informant –cum-victim. Then the accused has been examined u/s 313 CrPC. The pleas of the accused are of total denial and he has declined to adduce any defence evidence.

5. **Point for determination :**

Whether the accused person, before 7 months from 02-10-2013, at Shantipur, under Sootea PS committed rape on the victim girl and thereby committed an offence u/s 376 of IPC ?

Discussion, Decision and reasons thereof :-

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

7. PW-1 Dr. Jahanara Begum (MO), stated that 03-10-2013, she was posted at Kanaklata Civil Hospital, Tezpur as Sr. Medical and Health Officer and on that day, at 1.25 p.m., she examined the victim girl in reference to Sootea PS Case No.135/13 u/s 376 IPC, being escorted and identified by ABC 396 Sumitra Dutta, in labour room of Kanaklata Civil Hospital in presence of GNM Minati Barman, after taking consent from the victim girl. Upon examination, she found the following :

General examination :

Identification mark – one mole on the left cheek.

Height – 154 cm, Weight – 45 Kg, Teeth – 14/14

Menstrual history – LMP – 7 months before. History of sexual exposure 7 months back.

The victim girl is average built, neat and tidy, well dressed. Her gait is limping type due to left sided hemiparesis since her early childhood. Her secondary sexual characters are developed. Nipples and areolas are pigmented. Vagina is healthy. Height of uterus 30 weeks size. Hymen is absent. There is no injury marks on her body as well as on her private parts.

Investigation advised :

Vaginal smear for spermatozoa, Urine for HCG, US Pelvis and X-ray of wrist joint, elbow joint and iliac crest for age determination.

Reports :

1. Vaginal smear for spermatozoa is taken – spermatozoa not seen (done at KCH Laboratory on 03-10-2013, Lab No. 104/13).
2. Urine for HCG – Positive (done at Assam X-ray & Clinical Laboratory, Tezpur on 03-10-2013 by Dr. D. Mahanta, Pathologist, Patient ID No. 10747.
3. USG Pelvis :

Single live fetus is seen in the uterus with cephalic presentation and ROS position. Fetal heart beats are normal and regular. Fetal heart rate is 144 Bpm. US – composite gestational age is 30 weeks 5

days. Estimated fetal weight is around 1593 gms. The placenta is normal, echotextures and situated in the anterior uterine wall. Liquor amount is normal with the largest liquor pocket measuring 32 mms in depth. Active fetal movements were observed during examination. The cervical segment is normal and measures 30 mms – Gravid uterus with a live 30.5 weeks fetus. (done at Assam X-ray & Clinical Laboratory, Tezpur on 03-10-2013 by Dr. P. K. Barman, Sonologist, Patient ID No. R-43 (AX 7387).

4. X-ray report :

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

Opinion – Age of the person, under investigation, appears to be just below 18 years.

(done at Assam X-ray & Clinical Laboratory, Tezpur on 17-04-2014 by Dr. P. K. Barman, MD, Radiologist, Patient ID No. R-43 (AX – 7387)

Opinion :

1. Age of the victim appears to be just below 18 years.
2. There is no injury marks on her body as well as on her private parts.
3. There is no sign and symptom of recent sexual intercourse at the time of examination.
4. The victim girl is pregnant with a live 30.5 weeks fetus.

Ext.1 is the medical report and Ext.1(1) is her signature. Ext.2 is the advice slip and Ext.2(1) is her signature. Exts. 3 and 4 are laboratory reports. Ext. 5 is the X-ray report with plates.

8. PW-1 (A) Smt. Sumi Orang, stated that she knows the accused person. The victim girl is her daughter. The incident took place about 8 months ago. At the time of occurrence, her victim daughter was 20 years old and she was a paralysis patient. In the night hours, she and her husband went out for casual works in the garden. Her other children also went to school. In their absence at home, the accused person committed rape on the victim girl. On seeing the physical change of the victim daughter, took her to the doctor. The doctor, after examining her, found the victim girl carrying seven months' pregnancy. The doctor asked the victim girl as to from whom she was pregnant. She replied that the accused Mukul Kalita was responsible for her pregnancy. She then, came to the residence of the accused person and on being asked, as to why he had done so, the accused told her to determine the pregnancy of the victim by way of blood test and assaulted her and also threatened to kill her. She then, convened a village mel, but no decision arrived at the mel. Her victim daughter then lodged the ejahar. The victim daughter did not disclose about the incident as because the accused person threatened her to kill. Subsequently, the victim daughter gave birth to a male child, who is now seven months old. Police got medically examined the victim and also recorded her statement through the Court.

9. PW-2 Fadru Orang, the father of the victim girl, stated that she knows the accused person. Her victim daughter lodged the ejahar about eight months ago against the accused person as because the accused person outraged the modesty of her daughter. His victim daughter was suffering from paralysis at the relevant time. Her mother took her to the doctor on seeing her physical change. The doctor after examining, told him that the victim daughter was seven months pregnant. The victim daughter told him that she was pregnant from the side of the accused person. They tried to hand over the victim to the accused person, but accused refused to accept her. Then, this case was lodged. The victim daughter gave birth a child later on.

10. PW-3, the victim girl, stated that she knows the accused Mukul Kalita, who used to come to her residence often. One day, at about 9/10 months ago, the accused persons came to her residence and fell her down, did bad acts on her. As a result of which, she became pregnant. She protested but the

accused person threatened her to kill. She was suffering from paralysis and for this she used to stay at home to look after the livestock. She did not disclose this fact to her parents as because the accused person threatened her to kill. She came to know about her pregnancy as and when she was taken to the doctor. She gave birth to a male child subsequently. Thereafter, she lodged the ejahar against the accused person. Police got her medically examined and produced her before the Court for recording her statement u/s 164 CrPC.

11. PW-4, Smt. Golapi Orang, a co-villager, stated that she knows the accused person as well as the victim girl. One day, about one year ago, the accused person and the victim girl used to come to their house. On seeing physical change of the victim girl, she was taken to a doctor and the concerned doctor, after examining her, found her 7 months pregnant. The victim girl told her that accused person committed sexual intercourse on her for which, she was pregnant. The victim girl stated that same facts before the doctor also. The victim girl did not tell about the incident out of fear. There was a village mel for this incident, but the accused person did not attend the village mel, for which, the victim girl lodged the ejahar.

12. PW-5, Sri Bihuwa Orang, stated that she knows both the parties of this case. He heard that the accused person committed rape on the victim girl about one year back. The mother of the victim girl told him that the victim girl told him that the victim girl gave birth to a child.

13. PW-6, Sri Saona Orang, stated that she knows both the parties of this case. He saw the accused person coming to the house of the victim girl sometimes. Later on, she came to know that the victim girl was pregnant from the side of the accused person.

14. PW-7, Sri Pranab Ch. Bora, SI of Police (IO), stated pm 02-10-2013, he was serving as ASI at Itakhola OP, under Sootea PS. On that day, the ejahar lodged by the victim girl, the in-charge of the OP Uttam Kamal, made a GD Entry No. 27, dated 02-10-2013 and endorsed him for preliminary investigation of the case. The original ejahar was sent to Sootea PS for registering a case. The victim girl being available at the OP, recorded her

statement. Thereafter, he visited the place of occurrence, prepared a sketch map of the place of occurrence and recorded the statements of the witnesses. During investigation, he found that the victim girl was pregnant, on account of illicit relation established by the accused person on her. He sent the victim girl for medical test and recorded her statement u/s 164 CrPC through the Court. Thereafter, he handed over the case diary to the Officer-in-charge. Thereafter, Uttam Tamang, SI of Police, laid charge-sheet u/s 376 IPC against the accused person. Ext.6 is the ejahar and Ext.6(1) is the signature of Uttam Tamang with endorsement. Ext.7 is the charge-sheet and Ext.7(1) is the signature of SI Uttam Tamang, which he knew in connection with service.

15. PW-8, Sri Tankeswar Dutta, Bench Assistant to the Court of Smt. J. Sarma, learned JMFC, Tezpur, stated that on 04-10-2013, the statement of the victim girl was recorded by the Magistrate u/s 164 CrPC and after completion of recording the statement, the victim girl was asked to put her signature upon the statement, but the victim girl being illiterate, she put her thumb impression on the statement and he has endorsed her RTI upon the statement of the victim girl. Ext.8 is the statement u/s 164 CrPC and Exts. 8(1) and 8(2) are his signatures thereon.

Legal position :

(Offence u/s 376 IPC)

16. **Section 375 IPC** defines 'rape' as under :

S. 375. A man is said to commit "rape" who, except in the under circumstances falling under any of the six following descriptions : -

First – Against her consent

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 – Without or without her consent, when she is under sixteen years of age.

To constitute an offence u/s 376 IPC, prosecution must prove the following essentials :

(1) he 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 ; 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.

17. Here, PW-3, prosecutrix, is the prime witness in this case. Her deposition is that one day, about 9/10 months ago, accused entered into her residence and thereafter by pressing her, committed bad acts on her. She resisted the accused person, but he threatened her to kill. She also stated that as a result of such bad acts, she became pregnant and subsequently, gave birth a male child.

During cross-examination, this PW-3 stated that accused committed bad acts on her only one day.

The learned advocate for the defence subjected her (prosecutrix) to lengthy cross-examination but the material portion of her evidence remained intact. Rather, during cross-examination, this PW-3 stated that accused committed rape on her only one day. Committing of rape one day or more, it is not matter, but the commission of rape as defined u/s 375 IPC has fulfilled or not, it is matter. Here, in the present case, the act of commission of rape as

defined u/s 375 IPC, has been fulfilled. The prosecutrix (PW-3) in her statement recorded u/s 164 of CrPC, also stated the similar facts as deposed before the Court.

The MO (PW-1) also corroborated the testimony of PW-3 to the effect that the MO after examining the PW-3, found her carrying pregnancy with alive 30.5 weeks foetus.

PW-1(A), mother of the prosecutrix, though not eye witness of the occurrence, but this witness heard telling by the prosecutrix before the attending doctor that she was pregnant from the side of the accused person.

PW- 2, the father of the prosecutrix, was told by his daughter (prosecutrix) that she was pregnant from the side of accused Mukul Kalita.

PW-4, (a co-villager) heard about the incident from the prosecutrix (PW-3), who told him, out of fear, she (prosecutrix) did not tell the fact of rape to anybody else.

PW-7 (IO) has proved the ejahar as Ext.6 and the charge-sheet as Ext.7.

PW-8, Bench Assistant of learned Judicial Magistrate, 1st Class, Tezpur, Sonitpur, has proved the 164 CrPC statement as Ext.8.

Learned advocate for the accused pointing out to the FIR submits that there was considerable delay of seven months in lodging the FIR, which was fatal to the case of the prosecution. It is fact that the FIR (Ext.6) was lodged on 02-10-2013, wherein the incident was shown to be occurred prior to seven months, i.e. from 02-10-2013. PW-1 (A), mother of the prosecutrix and PW-2, father of the prosecutrix, came to know about the pregnancy of the prosecutrix only when they brought the prosecutrix to the doctor on seeing her physical change.

The prosecutrix (PW-3) herself in her deposition clearly stated that she did not disclose the fact of commission of bad acts on her as the accused person threatened her to kill, in case of disclosure of the fact to anybody else. PW-1 (A), father and PW-2, mother of the prosecutrix on seeing the physical change of the prosecutrix took her to the doctor, who after examining her, found her seven months' pregnant, then only the parents of the prosecutrix came to know about the incident. It is, thus, seen that the prosecution has been able to properly explain the delay of seven months in lodging the ejahar. In this respect, a decision reported in ***AIR 2006 SC 3084*** may be referred, wherein at para No.5, the Hon'ble Supreme Court observed, as follows --

".....Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the Court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory."

Learned defence counsel further argued that the prosecution has failed to furnish any medical documents regarding the paralysis disease of the prosecutrix.

In this respect, PW-1 (A) and PW-2, the parents of the prosecutrix stated that the prosecutrix has been suffering from paralysis.

The prosecutrix (PW-3) herself also stated that she has been suffering from paralysis.

The evidence of doctor (MO) has fully supported the aforesaid testimony of the prosecutrix (PW-3), who deposed that the gait of the prosecutrix is limping type due to left sided hemiparesis since her early childhood. So, the plea of defence cannot be accepted.

Learned defence counsel referring to the deposition of PW-1(A), mother of the prosecutrix, submits that the victim is a major, above 20 years of age and as such, she is a consenting party.

In this regard, PW-1(A), mother of the victim girl, stated that the prosecutrix was 20 years old. The victim herself stated her age to be 20 years before the Court as well as in her statement recorded u/s 164 CrPC. The MO (PW-1), after examination, found the victim girl just below 18 years. There is no medical documents regarding the age proof of the prosecutrix available in the case records. In absence of any medical document to prove the actual age of the prosecutrix, medical evidence, opinion given by the doctor, can safely be held to be actual age. So, the prosecutrix (PW-3) is a minor below 18 (eighteen) years of age. Even for the sake of argument, if it is assumed that the prosecutrix is a consenting party to the commission of rape, then also her consent is immaterial as because the prosecutrix is a minor, below 18 (eighteen) years of age.

Learned defence counsel further more submits that the medical evidence does not support the allegation of rape.

In this respect, from the FIR (Ext.6), dated 02-10-2013, it is seen that the incident of rape took place prior to seven months on 02-10-2013 and the prosecutrix (PW-3) was examined by the doctor (PW-1) on 03-10-2013, after about seven months of the incident. The gap between the occurrence and the medico-legal examination shows possibility of any abrasion being healed and disappeared. In this connection, a decided case reported in **AIR 2000 SC 1812 (State of Rajasthan –Vs- Noor Khan)** may be referred, wherein the Hon'ble Supreme Court observed as follows :

“..... Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.”...

In the totality of the circumstances appearing in the record of the case, disclosed that the prosecutrix (PW-3) does not have strong motive to

falsely implicate the accused person, therefore, this Court does not have hesitation in accepting the testimony of the prosecutrix.

18. In view of the above discussions and considering all aspects, I hold that the prosecution has proved the case u/s 376 IPC against the accused person, beyond all reasonable doubt. Hence, I convict the accused person under said section of law.

Considering the gravity of the offence, it is held that the accused is not entitled to get the benefit of the provisions of law.

I have heard the accused /convict on the point of sentence in view of the provision of Section 235(2) of CrPC. The accused/convict submits that he is a poor person having his wife and minor children. So, he prays to treat him leniently.

However, considering the facts and circumstances of the case and also considering the circumstances of the accused/convict, I am of the considered view is that the imposition of minimum sentence would meet the ends of justice. Accordingly, I sentence the accused / convict to suffer SI for 7 (seven) years and to pay a fine of Rs.5,000/- (rupees five thousand) only in default, to suffer SI for another (six) months, u/s 376 IPC.

Furnish a free copy of the judgment to the accused/convict u/s 363 (1) of CrPC.

The bail bond stands cancelled.

19. Considering the loss and suffering of the prosecutrix (PW-3) and also considering the minor male child of the prosecutrix born out of this incident, this Court deem it fit and proper to award compensation to the prosecutrix as per provision of Section 357 A of CrPC, which will be fixed by the District Legal Services Authority, Sonitpur, Tezpur.

Send a copy of the judgment to District Legal Services Authority, Sonitpur, Tezpur for information and necessary action.

20. Send a copy of the judgment to the learned District Magistrate, Sonitpur, Tezpur, as per Section 365 of CrPC.

21. The case is disposed of accordingly.

Given under my hand and seal of this Court on this day, the 26th day of May, 2015.

(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 :

(J. K. Muru)
Steno.

A P P E N D I XProsecution witnesses :

PW-1	:	Dr. Jharna Kakoti, MO
PW-1(A)	:	Smt. Sumi Orang
PW-2	:	Sri Fadru Orang
PW-3	:	the victim girl
PW-4	:	Smt. Golapi Orang
PW-5	:	Sri Bihuwa Orang
PW-6	:	Sri Saona Orang
PW-7	:	Sri Pranab Ch. Bora
PW-8	:	Sri Tankeswar Dutta

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits :

Ext.1	:	Medical Report
Ext.2	:	Advice Slip
Exts.3 & 4	:	Laboratory Reports
Ext.5	:	X-ray report
Ext.6	:	ejahar
Ext.7	:	Charge sheet
Ext.8	:	Statement u/s 164 CrPC

Material Exhibits : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

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