

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

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

**SESSIONS CASE NO. 68 OF 2014**  
**GR Case No. 1290/ 2014**

Under Section 376(f)/511 of Indian Penal Code

**State of Assam** ..... Complainant

**–Versus –**

**Sri Bijan Das**  
Son of Late Nagendra Das  
Resident of Katonigaon  
PS – Thelamara  
Dist – Sonitpur, Assam ..... Accused Person

**ADVOCATES APPEARED**

For the State : Sri Mahendra Bora,  
Additional Public Prosecutor

For the accused person : Sri P. Biswas  
Advocate

Date of evidence : 28- 04- 2015 & 26- 05- 2015

Date of Argument : 26- 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 informant Dipti Bhowmik lodged an ejahar in the Thelamara PS alleging that on 06-06-2014, at about 10-30 p.m., (night), accused Bijan Das by inducing her minor victim daughter with money, made attempt to commit rape on her.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Thelamara PS registered a case, being Thelamara PS Case No.44/14, u/s 376(f)/511 IPC, conducted investigation. 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(f)/511 of IPC.

3. After appearance of the accused, the learned Sub-Divisional Judicial Magistrate, (Sadar), 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(f)/511 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 6 (six) PWs, including the informant and the 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, on 06-06-2014, at about 10 p.m. (in the night) at Katonigaon, under Thelamara PS, attempting to commit the offence of rape on the victim, under the age of 11 years, and in such attempt the accused did certain act by inducing her to give money and thereby committed an offence u/s 376(f)/511 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 Smt. Dipti Bhowmik, the informant –cum- mother of the victim, stated that she knows the accused Bijan Das. In the last month of June, there was a religious function in the house of the accused. She, with her husband and victim daughter also attended there. Her victim daughter was playing there with her friends. She having not found the victim daughter, reported her husband. Then, her husband searching the victim daughter found in a dark room and saw the accused persons coming out from that room. On being asked, the victim daughter told her that the accused person made her to enter the room and thereafter, switched off the light of that room. Then, they on suspicion to have sexually assaulted her minor daughter, lodged the ejarah against the accused. Police recorded the statement of the victim daughter, sent her for medical examination and also recorded her statement through the Court. She did not see any injury on the victim daughter.

8. PW-2, the victim girl, stated that she knows the accused whom she addressed as 'Kokai' (elder brother). They used to stay in the house of the accused as tenant. On the date of occurrence (date not remembered), there was a religious function in the house of the accused. She along with her parents was present there. Her parents were assisting the accused person in the religious function. Then, the accused out of love and affection took her into a room and put off the light of that room and also closed the door of the room. She remaining in the dark room, out of fear, made hue and cry. On hearing her cries, her father went and recovered her from the room. When she told her parents about taking her by the accused into the room, then, her parents lodged the ejarah. Police recorded her statement, sent her for medical examination and also recorded her statement through the Court. Ext.2 is her 164 CrPC statement and Ext.2(1) and 2(2) are her signatures.

9. PW-3 Nirmal Bhowmik, father of the victim girl, stated that he knows the accused. They were in the house of the accused as tenant. On the day of occurrence, i.e. in the last month of June, there was a Sardha ceremony in the house of the accused. He along with his wife and victim daughter was present in the Sardha ceremony. While he and his wife were busy in Sardha activities, they having not found the victim daughter, made search for her. They hearing her cries in a dark closed door room, went there and she was recovered

from that room. The victim daughter informed him that the accused person kept her in a dark room. Therefore, she cried. They suspected the accused to have committed sexual assault on the victim daughter and for this reason, lodged the ejarah.

10. PW-4 Chandan Das, a neighbour, stated that he knows both the parties of this case. One day, one year back, the incident took place. He was not present at that time, so, he has no personal knowledge about the incident. Next day, he heard that the accused person kept the victim girl in a dark room closing its door.

11. PW-5 Shanti Ranjan Das, a co-villager, stated that he knows both the parties of this case. On the date of occurrence, in the last month of June, he was present in the religious ceremony in the house of the accused person. Next day, he heard that the accused person kept the victim girl in a room closing its door.

12. PW-6 Noor Hussain also stated likewise as stated by PW-5.

**Legal position :**

**Attempt to rape ( u/s 376 (f) r/w Section 511 IPC )**

13. **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.

14. Here, PW-2, the victim girl, is prime witness in this case. This PW-2 in her deposition nowhere stated that the accused person made an attempt to commit rape on her. Her simple deposition is that at the relevant time the accused person keeping her in a room switched off the light and also closed the door. During cross-examination, this PW-2 categorically stated that she made hue and cry, as because the accused person pushed her into a room and switched off the light of the room.

PW-1, the mother of the victim girl and PW-2, the father of the victim girl, are hearsay witnesses. They simply stated that they suspected the accused person to have made attempt to commit rape on the victim girl. Both these witness, during cross-examination, stated that they have no objection if the accused person is acquitted and they do not like to proceed further with the case.

PW-4 is a hearsay witness and does not support at all the prosecution case.

PW-5 and PW-6 are the witnesses of the place of occurrence, but during their stay at the place of occurrence, no incident took place. Next day of the occurrence, both the witnesses heard that the accused person pushed the victim girl in a room and closed its door, for which the victim girl made hue and cry.

It is, thus, seen that the ingredients of offence u/s 376(f)/511 IPC are lacking in the present case.

15. In view of the above discussion and considering all aspects, I hold that the prosecution has failed to prove the case u/s 376(f)/511 IPC against the accused, beyond all reasonable doubt. Hence, I acquit him from the said offences, on benefit of doubt.

16. The accused person be set a liberty forthwith and his bail bond stands cancelled.

17. 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 X**Prosecution witnesses :

PW-1 : Smt. Dipti Bhowmik  
PW-2 : the victim girl  
PW-3 : Sri Nirmal Bhowmik  
PW-4 : Sri Chandan Das  
PW-5 : Sri Santi Ranjan Das  
PW-6 : Md. Noor Amin

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits :

Ext.1 : ejahar

Ext.2 : 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.