

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SESSIONS CASE NO. :- **59 OF 2012**
(Under Section 364, 307 and 316 of the Indian Penal Code arising out of G.R. Case No. 150 of 2009)
Committed by Sri R. Lal, Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur.

Present :- **Mridul Kumar Kalita, AJS**
Sessions Judge, Sonitpur
Tezpur

Prosecutor :- **State of Assam**

-vs-

Accused :- **Sri Kamal Rajowar,**
Son of Lengru Rajowar,
Village – Dhekidol Orang Basti,
Police Station – Tezpur,
Dist:- Sonitpur, Assam

Date of framing Charge :- 23/04/2012

Date of Recording Evidence :- 10/10/2012,18/04/2013,
11/06/2013,06/11/2013,09/12/2013
12/08/2014,15/09/2014 &
27-02-2015.

Date of examination of accused u/s 313 Cr.P.C :- 18/09/2014 and 27-03-15

Date of Argument :- 27/03/2015, 24/04/2015 &
07/05/2015

Date of Judgment :- 21/05/2015

Counsel for the State :- Mr. Hari Prasad Sedai
Public prosecutor
Sonitpur.

Counsel for Accused :- Mr. B.K. Basumatary, Advocate

JUDGMENT

1. On 27/01/2009, at about 8.30 a.m. the In-Charge of Salonibari Police Out Post, Md. Abdul Matlib Choudhury, received a telephonic information from one Sarat Baruah, the VDP Secretary of Ghoramara village, that a girl was assaulted by some unknown miscreants by "dao" causing injuries on her person and she was struggling for life. On receipt of the said telephonic information, the In-charge of Salonibari Police Out Post recorded the said information in the General Diary of the Salonibari Police Out Post as GD

Entry No. 464 dated 27-01-2009. Later on, on the same day, at about 9 a.m., the In-charge of Salonibari Police Out Post under Tezpur Police Station received an "ejahar" from one Dilip Orang, wherein it was alleged, *inter alia*, that on 26-01-2009, at night, the accused Sri Kamal Rajowar enticed his sister namely, Smti Jonaki Orang and took her to Dhekidol field and attacked her with sharp weapon, with an intention to kill her, causing grievous injuries on her person. It is also alleged that the accused left the body of Jonaki Orang in the field from where she was recovered, in the morning, by the villagers and police was informed. It was also stated in the "ejahar" that the accused had a love affair with Jonaki Orang since last one year.

2. On receipt of the aforementioned telephonic information and after making GD Entry No. 464 dated 27-01-2009, the In-charge of Salonibari Police Out Post proceeded to the crime scene. At the place of occurrence, the In-charge of Salonibari Police Out Post, found Smt. Jonaki Orang in injured condition, he interrogated the injured girl and immediately, sent her to Tezpur Civil Hospital for treatment. The In-charge of Salonibari Police Out Post, Md. Abdul Matleb Choudhury, also prepared the sketch map of the place of occurrence. Thereafter, on the same day at about 9 a.m. when a formal written ejahar was received by the Incharge of Salonibari Police Out Post from one Sri Dilip Orang who is the brother of the injured-victim, he entered a General Diary Entry vide Salonibari Police Out Post GD Entry No. 471 dated 27-01-2009 and the Tezpur Police Station Case No. 69 of 2009 u/s 366 A/326/307 of IPC was registered. In the meanwhile, the In-charge of Salonibari Police Out Post had already taken up the investigation of the case which was also authorised by the Officer-in-Charge of Tezpur Police Station. During the Course of investigation, accused Sri Kamal Rajowar was arrested, on 27-01-2009, from his house. Ultimately, on completion of investigation, formal charge sheet was laid u/s 366 A/326/307 of IPC against the accused Kamal Rajowar. The learned Chief Judicial Magistrate, Sonitpur, Tezpur transferred the case to the Court of Sri R. Lal, SDJM(S), Tezpur for disposal. On 16-02-2012, the GR Case No. 150/09 was duly committed to this Court after observing all formalities.

3. On 23-04-2012 charges u/s 364/307 of IPC was framed, in writing, by the then Sessions Judge, against the accused Sri Kamal Rajowar. The charge was read over and explained to the accused and on being asked he refused to plead guilty and claimed to be tried. During the course of trial, on 30-10-2014, an additional charge u/s 316 of IPC

was framed by my learned predecessor-in-office, against the accused Sri Kamal Rajowar. The charge was also read over and explained to him and on being asked he refused to plead guilty and claimed to be tried.

4. During Trial, the prosecution side examined eight Prosecution Witnesses and exhibited five documents, marked as Ext. 1 to Ext.5. The accused was examined u/s 313 Cr.P.C. where he took the stand of total denial of the prosecution case and pleaded his innocence.

5. The points to be determined in this case are as follows:-

(i) *"Whether on, 26th January, 2009, at night at 'Dekidol Pathar' under Tezpur police Station the accused kidnapped the sister of the informant Sri Dilip Orang, Miss Jonaki Orang, aged about 17 years, in order that she may be murdered or may be so disposed of as to be put in danger of being murdered and thereby committed an offence punishable under section 364 of the Indian Penal code?"*

(ii) *"Whether on, 26th January, 2009, at night, at 'Dekidol Pathar' under Tezpur police Station the accused inflicted multiple grievous cut injuries on the person of Miss Jonaki Orang by means of sharp cutting weapon with such intention or knowledge and under such circumstances that if the accused by that act caused death, the accused would be guilty of murder and thereby committed an offence punishable under section 307 of the Indian Penal code?"*

(iii) *"Whether on, 26th January, 2009, at night, at 'Dekidol Pathar' under Tezpur police Station the accused caused the death of quick unborn child of Miss Jonaki Orang, by causing multiple grievous cut injuries on her person, that if the accused had thereby caused death, the accused would have been guilty of culpable homicide and did by such act, cause the death to a quick unborn child of Miss Jonaki Orang and thereby committed an offence punishable under section 316 of the Indian Penal code?"*

6. I have gone through the entire materials on record, including the oral testimonies of the witnesses, exhibited documents and the statement of the accused recorded under section 313 Cr.P.C very carefully as well as heard the argument advanced by Ld. Public Prosecutor and Ld. Defence counsel, at length.

7. Let me, at the very beginning, discuss the evidence adduced by the prosecution side, for proving the charges framed against the accused person. P.W-1 – Smti Jonaki Orang, who is the victim of this case, has stated that the accused Kamal Rajowar was known to her and the incident occurred at about 8 p.m. in the night. She has stated that the accused persuaded her to accompany him to his aunt's house and accordingly, she accompanied the accused as requested. When they were going on foot, on the way, the accused asked her to sit under a bamboo grove, as they were tired. They sat together. PW 1 has stated that the accused asked her to wait for some time for their marriage and thereafter inflicted blows with dao, for about 5 times, causing cut injuries on her head, face, back and teeth. Thereafter, the accused put her in a nearby drain. PW 1 has stated that she was lying in injured condition in the drain until morning in unconscious state. On the following morning, some villagers noticed her, picked up and shifted her to Civil Hospital, Tezpur where she took treatment for about 5 days. She has stated that Gaonburha of village Lakheswar and her elder brother Dilip Orang informed the incident to police. She has also stated that before this incident, she gave birth to a baby from the side of the accused.

8. During the cross-examination, she has stated that accused Kamal Rajowar is the resident of Ghoramari village, situated at a distance of half a kilometre away from village Dhekidoal Orang basti. She has also stated that about 7 days before the occurrence of the incident, she had a quarrel with her elder brother Dilip Orang and thereafter she started living at her aunt's house namely, Sumi Orang. She has also stated that her aunt's house situated near the village of Kamal Rajowar and she stayed for about 7 days in the house of her aunt. She used to sleep with her aunty. Kamal went to her aunt's house to call her. When the inmates of the house went to bed, without informing that Kamal Rajowar was calling her, she left the house of her aunty. P.W-1 has stated that there was no electricity. She and the accused walked for about 1 km distance from her aunt's house through the village road. There was no resident near the place of occurrence. She has also denied the suggestion that Kamal Rajowar did not take her to the place of

occurrence and did not assault her by a dao. She also denied the suggestion that the altercation broke out with the accused Kamal Rajowar and therefore, she filed this false case against him. She has also stated that Police interrogated her at the place of occurrence and the Civil Hospital, Tezpur regarding the occurrence. She also denied the suggestion that she did not state before the police that Kamal Rajowar asked her to sit under the bamboo grove and he committed bad act on her and did not take her to the place of occurrence and did not assaulted her. She also denied the suggestion that her elder brother Dilip Orang assaulted her and not the accused Kamal Rajowar, due to differences over her love affair with the accused. It is also denied that the accused did not commit bad act on her. She also denied the suggestion that she sustained injuries due to the assault inflicted by her brother Dilip Orang and Kamal Rajowar has not committed any offence. She also stated that there was a love affair between her and the accused for about one year. Accused Kamal Rajowar used to meet her at night. When her brother came to know about the affairs, she came to her aunt's house and stayed there for four weeks at Dhekidol. She denied the suggestion put by learned defence counsel that she did not get pregnant from the side of the accused and falsely implicated the accused in this case and falsely deposed before this court.

9. PW -2 Smt., Rumi Orang, has deposed that accused Kamal Rajowar is known to her and he is her neighbour. She has stated that One day, about three years ago, in the month of January accused Kamal Rajowar told Jonaki Orang that he would take her away stating that he loved her and Jonaki agreed to the proposal. She has also stated that Jonaki told her that she had already been pregnant and that her parents will not look after her for ever and as such, she also requested Kamal to take her with him. She also deposed that she saw both the accused and the victim in developing physical intimacy. She further deposed that after assaulting Jonaki the accused put her in a nearby drain. On the following morning she found Jonaki near the place of occurrence and on enquiry, Jonaki told her that accused Kamal Rajowar assaulted her. Police shifted Jonaki to the Tezpur Civil Hospital. During treatment at Tezpur Civil Hospital, Jonaki delivered a still baby due to the injuries sustained in the stomach and she stayed with Jonaki at Tezpur Civil Hospital for about sixteen days. She also deposed that Jonaki sustained cut injuries on face, head, jaw and on back. She has also stated that Goanburha reported the occurrence to police.

10. During cross-examination, PW 2 stated that Kamal Rajowar is a resident of her village Ghoramari, Dhekidol gaon. The house of Jonaki is situated about 100 meters from their house and Jonaki used to visit their house. On the relevant night of the occurrence she was at her home and on the following day morning, she learnt about the occurrence. She also deposed that the place of occurrence is situated far away from her house. She reached the place of occurrence and till her arrival, police had not arrived. She denied the suggestion put to her by learned defence counsel that she has no personal knowledge about the miscreants who caused cut injuries on the person of Jonaki Orang. When she reached the place of occurrence, she found Jonaki Orang in semi-conscious state. She also deposed that Police recorded her statement and she admitted the suggestion that she did not state before police that she came to know on the next morning that Jonaki was lying, in an injured condition, at dhekidol field and she saw her with injuries over her head, eye, ear etc. and when she was asked she told her that the accused assaulted her.

11. PW – 3 Sri Dilip Orang who is the elder brother of the victim, stated that he knew accused Kamal Rajowar. His sister Jonaki is aged about 20 years. About three years ago, in one day, Jonaki was missing from their house. On the following morning, at about 7 a.m. Jonaki was found lying in an open paddy field with multiple cut injuries. He has deposed that one villager informed him that Jonaki was seen lying with multiple injuries in the nearby paddy field. Thereafter, he along with Sarkari Gaonburha Anil Basumtary rushed to the place of occurrence and found Jonaki lying in injured condition. On enquiry, Jonaki told him that Kamal Rajowar caused the injuries on her person. He also deposed that Sarkari gaonburha informed the police about the occurrence. Police arrived and shifted her to Kanaklata Civil Hospital, Tezpur where she underwent treatment for about one week. He lodged 'ejahar' in the Police Station on the following day. Ext. 1 is the said written "ejahar" and Ext. 1(1) is his signature. He has deposed that he had seen cut injuries on the hands, back, shoulder etc of his sister.

12. During cross-examination, PW 3 has deposed that he do not know if Jonaki had love affairs with the accused. He also denied the suggestion that there was a love affair between the accused and his sister Jonaki, which was not accepted by their family. He also denied the suggestion that at the time of his arrival at the place of occurrence, Jonaki was not in a position to speak fluently. He has also stated that Police shifted Jonaki to Kanaklata Civil Hospital, Tezpur and he also accompanied. He has also stated

that he did not personally enquired from Jonaki about the cause of incident; it is the villagers who enquired Jonaki about the occurrence. He also stated that after recovery from the injuries, he did not enquire from Jonaki about the cause of incident and as to who inflicted the cut blows on her person. On the following day police interrogated him. He also deposed that Jonaki, in injured condition, told him about the assailant who inflicted the cut injuries on her person and he mentioned the name of Kamal Rajowar in the ejahar, out of suspicion. He also denied the suggestion that he did not state in his statement made before the police that the accused inflicted cut blows on his sister Jonaki. He has also deposed that he lodged the ejahar on the basis of suspicion only.

13. PW- 4 Sri Anil Basumatary, who is the Gaonburah of Dhekidol Goan, has deposed that he knew both the accused and the victim. About two years ago, on one day, at about 8/9 a.m. Dilip Orang reported him that his sister Jonaki was lying in injured condition in a paddy field. Thereafter he went to the place of occurrence and saw some injuries on her person. Thereafter Gautam Basumtary informed the police about the occurrence and police arrived. On reaching the place of occurrence, he found police there. He has deposed that Jonaki did not state anything to him and police took her away.

14. PW – 5 Dr. Gopendra Mohan Das, SDM & HO of Kanaklata Civil Hospital deposed that on 27-01-2009 at 10-10 a.m. on police requisition No. 73/2009 of Salonibari OP dated 27-01-09, he examined Jonaki Orang, D/O Madhu Orang of village Dhekidol Orang Basti, PS:- Tezpur, with history of assault on 26-01-2009, night and he found the following injuries :

1. Sharp cut injury 6" x 3" x 2" size, over the left side of scalp left ear with bone cutting. Cranial cavity was exposed.
2. Sharp cut injury 6" x 3" x 2" size transversely over the front side of the face below both the eyes, including the nasal bridge. Fracture nasal bone was present.
3. Four sharp cut injuries, dorsum of right hand, 3" x 1" x 1" size each.
4. Sharp cut injury right little finger, 1" x 1" size with partial amputation of the tip. Teeth are broken right upper jaw.

Patient was carrying 14 weeks of pregnancy, which developed incomplete abortion on 29-01-2009 with bleeding PV. The patient was at the stage of shock during admission for which blood transfusion was given.

Date of admission in the Female Surgical Ward was on 27-01-09 at 10-10 a.m. and discharged on 12-02-09 at 10 a.m. The patient was referred to GMCH urgently after repairing of the wounds, but as the patient could not afford the same hence, she was treated for 16 (sixteen) days at party's risk at Kanaklata Civil Hospital.

Injuries were 12 to 16 hours old, highly grievous and caused by sharp weapon, as injuries were very severe and over vital areas of face, scalp and jaw. Patient had every possibility of permanent disability of affected areas of injuries. All the injuries were caused by sharp weapon, on the vital areas of the body of the injured. He has exhibited the Medical report as Ext. 2 and Ext. 2(1) is his signature.

15. During cross-examination, PW 5 has stated that the patient was admitted at Kanaklata Civil Hospital on 27-01-2009 at 10 a.m. at the instance of police personnel. He has also stated that in the preliminary requisition letter there was no mention about any case number or GD Entry. He has also stated that any person who sustains severe injuries like that of injuries sustained by the victim, on vital part can survive for 24 hours only. He has answered in negative to a question put by learned defence counsel that the patient was not examined by him in connection with the instant case. He has also answered in negative to a suggestion that the injuries sustained by the injured may be caused only in case of fatal accident like road traffic accident.

16. PW – 6, Sri Sarat Baruah, who is the VDP Secretary of Ghoramari Goan, has deposed that he knew the accused and the victim Jonaki. The occurrence took place about three years ago. On one day, morning, some boys of the village reported him that a woman was lying dead in the paddy field and he immediately rushed to the spot and he found that the woman was in critically injured in unconscious condition. He has deposed that thereafter, he telephoned to the Salonibari Police Out Post informing about the occurrence. After ten minutes of the receipt of information, police arrived at the place of occurrence and shifted the injured woman to the hospital. He also deposed that he could not identify the injured. Later on, he learnt that the injured was a resident of Dhekidol village. He also saw deep cut injuries on the frontal region. During cross-examination, PW 6 has stated that he does not know how and in what circumstances the victim sustained injuries.

17. PW – 7 Sri Kulendra Bharali, S.I. of police, stated that on 22-04-09 he received the case diary of Tezpur PS Case No. 69/09 for further investigation. After going through the case diary, he found that the investigation was almost completed. The only thing which remained was collecting the injury report of the victim and accordingly, he collected the injury report of the victim. He having found prima-facie materials submitted the charge sheet u/s 366 A /326/307 of IPC against the accused Kamal Rajowar. He exhibited the charge sheet as Ext 3, and his signature as Ext. 3(1).

During cross-examination, he has denied the suggestion that without having found prima-facie materials u/s 366 A/326/307 of IPC against the accused, he submitted the charge sheet.

18. PW – 8 Md. Abdul Matleb Choudhury, the Investigating Officer of this case, has deposed that on 27-01-2009 he was working as In-charge of Salonibari Police Out Post and on that day, at about 8-30 a.m., the VDP Secretary of Ghoramari Gaon, Sri Sarat Baruah informed him over phone at on the previous night, some unknown miscreants dealt dao blows on a girl and left in the field. Then he made GD Entry No. 464 dated 27-01-09 at 8.30 a.m. and proceeded to the place of occurrence. He also deposed that after arrival at the place of occurrence, he interrogated the injured girl and immediately sent her to Tezpur Civil Hospital for treatment. During the course of investigation, he drew up a sketch map of the place of occurrence and recorded the statements of the witnesses. He has exhibited the sketch map as Ext. 4 and his signature as Ext. 4(1). He arrested the accused Kamal Rajowar on the same day from his house. Thereafter, a formal written ejahar was received from Dilip Orang, brother of the injured. Accordingly, he made GD Entry No. 471, dated 27-01-09 and forwarded it to Tezpur PS for registering a case. He has also exhibited the ejahar as Ext. 1 and his signature with note as Ext. 1(2) and the signature of O/C of Tezpur PS, Inspector Pramod Ch. Sarma as Ext. 1(3). The O/C of Tezpur PS, formally endorsed him for investigation. However, earlier he had already taken up the investigation on receipt of telephonic message from the VDP Secretary. He has also exhibited the certified copy of Salonibari OP GD Entry No. 464, at 8.30 a.m. dated 27-01-09 as Ext. 5.

19. During cross-examination, PW 8 deposed that the original General Diary Entry is not seen in the court. The GD entry was made on the basis of the information given by the informant Sarat Baruah, VDP Secretary of Ghoramari Gaon. He found the victim girl

lying in a field of Dhekidol Gaon in injured, serious condition, though she could speak 1 / 2 words and he immediately shifted her to Kanaklata Civil Hospital, Tezpur for urgent medical treatment. He denied the suggestion put by learned defence counsel that the text of the GD entry was not based on truth. He also deposed that on 27-01-09 he recorded the statement of Victim Jonaki Orang. He also denied that PW 1 Jonaki Orang did not state in her statement, given to him, that Kamal Rajowar asked her to sit under the bamboo grove and then he committed bad act on her. He has also stated that PW 2 Smti Rumi Orang has given her statement before him to the effect that she came to know on the morning that Jonaki Orang was lying in the Dhekidol field in an injured condition and on hearing the news she along with other people went there and saw that she had suffered injuries on her eyes, fore-head, ear, hand and head. When she was asked, Jonaki Orang told them that the accused called her to the field for eloping, but when she refused, she was assaulted with a dao by the accused and he left her there in an injured condition and that according to Rumi Orang, it can be guessed looking at the injuries that the accused intended to kill Jonaki Orang. PW 8 has further deposed during cross-examination that PW 3 Dilip Orang has stated before him that he lodged the FIR against the accused on the basis of suspicion only. He has also stated that he rushed to the place of occurrence after getting telephonic message from the VDP Secretary Sarat Baruah along with his subordinate staff. He has also denied the suggestion that he has not recorded the statement of PW 4 Sri Anil Basumtary and PW 6 Sri Sarat Baruah.

20. During examination of the accused u/s 313 Cr.P.C. the accused, while answering the question No. 15 stated that he went to see Jonaki in injured condition at the place of occurrence. To all other questions during 313 Cr.P.C wherein incriminating materials were brought to his notice, the accused answered in negative and pleaded his innocence. The accused has denied that he has inflicted injuries on Jonaki Orang. He has also denied that there was love affair between him and the PW 1 for about one year and that both of them used to meet occasionally at night.

21. Now, let me, first discussed as to whether the accused has committed the offence under Section 307 of Indian penal Code.

In a case under Section 307 of Indian penal Code, the prosecution side is supposed to prove the following ingredients:

- (i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of, the act of the accused ;

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death ; or (b) was sufficient in the ordinary cause of nature to cause death.

22. Let me, first of all look into the question, as to, whether there was an attempt to cause death of a human being, in the instant case, i.e. death of victim Smti Jonaki Orang. It appears that Ext. 1 which is the written *ejahar* filed by the brother of the victim Sri Dilip Orang is not the first information report (FIR) in this case. The first information which the police received about the alleged offence is a telephonic message received by the In-charge of Salonibari Police Out Post Md. Abdul Matleb Choudhury (PW 8) from one Sri Sarat Baruah who is the secretary of Village Defence Party (VDP) of Ghoramari Gaon. As discussed above, the PW 8 Md. Abdul Matleb Choudhury has exhibited the GD Entry No. 464 dated 27-01-2009 as Exhibit 5. On perusal of Ext. 5 it appears that, on 27-01-2009, it was informed, over telephone, by one Sarat Baruah, to the In-charge of Salonibari Police Out Post, that last night some miscreant had injured one girl by stabbing her with "dao" and the girl is struggling for her life. This fact has been proved by PW 6 Sri Sarat Baruah who has deposed that he telephoned to Salonibari Police Out Post about the incident. PW 8 Md. Abdul Matleb Choudhury has also stated that he received the telephonic message from Sarat Baruah. As the Ext. 5 clearly reflect commission of an offence, it is the said telephonic information which can be treated as first information as regards the offence involved in this case. It also appears that almost all the witnesses have seen PW 1 Jonaki Orang, lying with multiple cut injuries at the scene of crime. As discussed above, the Ext. 2 which is the medical report as well as the oral testimony of PW 5 i.e. Dr. Gopendra Mohan Das who examined the injured Jonaki Orang on 27-01-2009, at Kanaklata Civil Hospital clearly shows that Jonaki Orang suffered multiple (approximately 7 in number) sharp cut injuries over her face, head, scalp, etc. The injuries apparently seem to be life threatening. Learned Public Prosecution has submitted that any ordinary person who have died of such injuries if after getting those injuries that person has to remain laying in that condition for whole night, anybody would have bled to

death. Let me looked at the Ext. 2 once again. The Doctor (PW 5) found following injuries on the person of Jonaki Orang:-

1. Sharp cut injury 6" x 3" x 2" size, over the left side of scalp left ear with bone cutting. Cranial cavity was exposed.

2. Sharp cut injury 6" x 3" x 2" size transversely over the front side of the face below both the eyes, including the nasal bridge. Fracture nasal bone was present.

3. Four sharp cut injuries, dorsum of right hand, 3" x 1" x 1" size each.

4. Sharp cut injury right little finger, 1" x 1" size with partial amputation of the tip. Teeth are broken right upper jaw.

A mere cursory look at the injuries could reveal that all the injuries are life threatening. Even if we do not look at other injuries, the injury No.1 i.e. "*Sharp cut injury 6" x 3" x 2" size, over the left side of scalp left ear with bone cutting*" where the cranial cavity was also exposed, in my considered opinion is sufficient to cause death of the injured person. I fully agreed with the submission of learned Public Prosecutor that had these injuries were sustained by any other person, he would have bled to death under the circumstances in which the victim Jonaki Orang was haplessly laid in the open field for whole night. The multiple injuries on the person of Jonaki Orang as well as the act of leaving her alone, in an open field, in critically injured situation, when she was struggling for her life is certainly an attempt on her life.

23. Now, let me find out as to whether the above mentioned attempt on the life of Jonaki Orang was by the accused Kamal Rajowar.

24. On careful examination of the evidence adduced by the prosecution witnesses as discussed above, it appears that the victim girl herself is the sole eye witness of the incident of attempt on her life by the accused. She has clearly stated that she had a love affair with the accused since last one year before the incident. It also appears on perusal of the evidence of PW 1 that she had a quarrel with her elder brother namely, Sri Dilip Orang and she left her house and started living in her aunt's house, which is situated near the village of the accused. She has also stated that Kamal (accused) went to her aunt's house to call her and when the inmates of house went to bed, she left with Kamal

Rajowar without informing anybody. She has also stated that when she went with the accused, all the villagers went to bed and there was no electricity in the village. She has categorically stated that accused Kamal Rajowar has inflicted dao blows, about five times, causing cut injuries on her head, face, back and teeth and she was put into the nearby drain. This testimony of PW 1 Smti Jonaki Orang has remained unshaken.

25. Learned defence counsel has argued that as it was a dark night, it is highly improbable that the victim Jonaki Orang could have identified the assailant who inflicted dao blows on her and she has made accusation against the accused only on suspicion. Learned defence counsel has relied upon a ruling of Hon'ble Gauhati Court in "**Rajib Kakati Ali Vs. State of Assam**" reported in **2014 (2) GLT 228**. I have gone through the Judgment cited by learned defence counsel. In that case the victim identified the assailant in a dark night in the light of a cell phone and Hon'ble Gauhati High Court gave benefit of doubt to the accused. In that case the victim did not know the assailant before the incident but in the instant case, it is not for the first time the victim had seen the assailant. Here, she had a love affair with the assailant for more than one year, therefore, the ruling cited by learned defence counsel is clearly distinguishable from facts of the present case and is not applicable in the instant case. Even, learned Public Prosecutor has argued that as there was love affair between Jonaki and accused Kamal Rajowar, it is very unlikely that she could not have identify Kamal Rajowar by his voice and other features even if it is dark. Moreover, she has also categorically stated that it was the accused who called her from her aunt's house and she accompanied the accused for about 1 km from her aunt's house before she was assaulted. Therefore, the submission of learned defence counsel that Jonaki Orang made accusation merely on suspicion, do not appear to be convincing and I do not see any reason to disbelieve the testimony of PW 1.

26. Learned defence counsel has also argued that police has not seized the weapon of assault or dress which Jonaki Orang was wearing on the day of incident. It appears from the case diary that the Investigating Officer made no attempt to recover the weapon of assault from the accused even after arresting the accused. Neither had he attempted to seize the clothes worn by the victim Jonaki on the date of incident. The I.O. has not recorded the statement of accused during the investigation. On perusal of the case diary, it also appears that even though the statement of victim was recorded once, on 27-01-2009, when she was critically injured in presence of Dr. Gopendra Mohan Das and

Runuma Devi. On perusal of evidence on record, it is apparent that on 27-01-2009 the victim was in critically injured situation. The I.O. could have again recorded her statement after the victim got cured and was in better state of health to give statement. There are apparent lapses on the part of the Investigating Officer in conduct of investigation. However, the failure on the part of the Investigating Officer to make any attempt to find out the weapon of offence, to seized the clothes worn by the victim on the day of incident, etc. do not make much dent into the prosecution story as PW 1 Jonaki Orang has specifically stated that she was assaulted by a dao and looking at the injuries suffered by her even if we may not come to a definite conclusion that the weapon of assault was a dao, however, there is no escaping from the inference that the weapon of assault was a sharp cutting instrument as all the injuries suffered by victim were cut injuries. The evidence of PW 5 Dr. Gopendra Mohan Das also clearly shows that the victim Jonaki has suffered from sharp cut injuries which can be caused by sharp weapon. Therefore, even if the weapon of offence is not recovered, the fact that Jonaki Orang suffered from sharp cut injuries, cannot be denied and the evidence of PW 1 implicating the accused Kamal Rajowar could not be demolished during cross-examination. Learned Public Prosecutor has also submitted that it is unlikely that a girl would falsely implicate her beloved in a case u/s 307 of IPC. I do not see any reason for disbelieving the testimony of PW 1 i.e. Smti Jonak Orang to the effect that she was assaulted with a sharp weapon by the accused.

27. Now, the question is whether the assault was with an intention to cause her death or sufficient in ordinary course of nature to cause death. The learned public prosecutor has submitted that considering the nature and location of injuries inflicted on the victim, it is apparent that the accused had the intention of causing those injuries.

28. Hon'ble Supreme Court of India, in one of its Classic Verdict rendered in "**Virsa Singh –vs- The State of Punjab**" reported in "**AIR 1958 SC 465**" has very lucidly explained as to when intention can be inferred from the injuries sustained by the victim. It has observed as follows:-

"In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and

whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquiry into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad based and simple and based on commonsense: the kind of enquiry that "twelve good men and true" could readily appreciate and understand.".....

29. In the instant case also, while considering whether there was intention to inflict the injuries which are found to have been inflicted on the body of the victim Jonaki Orang, we have to see whether there was an intention to strike at the vital or dangerous spot. As seen earlier there are several sharp cut injuries on the face of the victim her left side of scalp, left ear bone large sharp cut injury with bone cutting, the cranial cavity was also exposed. There are other six sharp cut injuries on her person. As already discussed herein before, PW 1 Jonaki Orang has also deposed that the accused gave her dao blows for five times. Had it been a single dao blow, the plea of accidental hit could have been taken by defence, however, when there are repeated dao blows that too, five times, on a hapless girl, there is no escape from the conclusion that the accused intended to cause those injuries and the assault was with an intention to cause her death. The act of the accused in leaving the victim on the spot, in a critically injured condition, under the open sky for whole night itself shows that the accused intended to cause death of the victim Jonaki Orang.

30. In view of the discussions and the conclusion arrived at in the foregoing paragraphs Nos. 21 to 29, I hereby hold that the prosecution has proved the charge U/s 307 of Indian Penal Code against accused Sri Kamal Rajowar beyond all reasonable doubt and accordingly, the accused Sri Kamal Rajowar is convicted of offence punishable u/s 307 of Indian Penal Code.

31. Now, let me discuss as to whether the accused committed offence punishable u/s 364 of Indian Penal Code by kidnapping or abducting Jonaki Orang so that she may be murdered and thereby he committed an offence punishable u/s 364 of IPC. For proving the charge, the prosecution has to prove that the victim was kidnapped or abducted by the accused and that he or she was kidnapped in order that such person might be murdered or that such person might be so disposed of as to be put in danger of being murdered.

32. We have already discussed in the foregoing paragraphs that the victim i.e. Jonaki Orang (PW 1) is the only eye witness of the offence. As discussed hereinbefore, the evidence of PW 1 clearly shows that on the day of incident, accused Kamal Rajowar persuaded her to accompany him to his aunt's house and accordingly, she accompanied the accused as requested. She has also stated that she left the house of her aunt when the inmates of the house went to bed, without informing anybody. This piece of evidence adduced by PW 1 could not be demolished during cross-examination of PW 1 and it remained uncontroverted. It clearly shows that the accused enticed Jonaki Orang to accompany him in a dark night when everyone else in the village were sleeping. It also appears on perusal of Ext. 2 i.e. the Medical Report of Jonaki Orang that on the day of incident Smti Jonaki Orang was of 17 years of age. Her brother Dilip Orang while deposing as PW 3, on 18-04-2013, has also stated that her sister Jonaki Orang is of 20 years of age. If she was 20 years of age in the year, 2013, it is clear that at the time when the incident happened in the month of January, 2009, Smti Jonaki Orang would be of 16/17 years of age. This evidence also could not be demolished during cross-examination by defence side. So, it is apparent that Jonaki Orang who was 17 years of age on 27-01-2009 was enticed by the accused on the night of the fateful day i.e. 27-01-2009.

33. From the sequence of event which happened on that day, namely, (i) that the accused persuading Jonaki Orang to accompany her in the night when everyone else was sleeping; (ii) that Smt. Jonaki Orang leaving the house of her aunt when everyone else was sleeping, (iii) that both of them walked for about 1 km away from the house to a place where there was no inhabitant and nobody was to watch them; (4) that accused Kamal Rajowar giving multiple dao blows on the person of Jonaki Orang; (5) that the accused putting Jonaki Orang thereafter in a drain and leaving her there for whole night

clearly show that accused Kamal Rajowar kidnapped Smti Jonaki Orang on the fateful day with an intention so that Jonaki Orang might be murdered. Therefore, I do not have any hesitation to hold that the accused committed any offence punishable u/s 364 of IPC and accordingly, I convict accused Kamal Rajowar u/s 364 of Indian Penal Code.

34. Now, let me discussed whether on, 26th January, 2009, at night at 'Dekidol Pathar' under Tezpur police Station the accused caused the death of quick unborn child of Miss Jonaki Orang, by causing multiple grievous cut injuries on her person, that if the accused had thereby caused death, the accused would have been guilty of culpable homicide and did by such act, cause the death to a quick unborn child of Miss Jonaki Orang and thereby committed an offence punishable under section 316 of the Indian Penal code.

35. In a charge u/s 316 of I.P.C. the prosecution must prove the following :-

- (i) that the woman was quick with child;
- (ii) that the accused did an act to cause the death of such child;
- (iii) that the circumstances, under which such act was done, were such as to make the accused guilty of culpable homicide, if death had been caused;
- (iv) that such act did cause the death of the quick unborn child.

36. If we look at the evidence of the Doctor i.e. PW 5, it appears he categorically deposed that the patient (Smt. Jonaki Orang) was carrying fourteen weeks of pregnancy which developed an incomplete abortion on 29-01-2009 with bleeding PV. Learned Public Prosecutor has submitted phrase "bleeding PV" means bleeding from vagina during pregnancy. Though in the instant case on perusal of Ext. 2, Medical report, it appears that the patient was carrying fourteen weeks of pregnancy which developed incomplete abortion on 29-01-2009 with bleeding PV, however, PW 1 has deposed that she gave birth to a baby from the side of the accused. It is not clear from the evidence on record as to whether the baby was still born or a live baby. The evidence regarding death of quick unborn child is not convincing in this case. I, therefore, give benefit of doubt on this count to the accused. Hence, the charge u/s 316 of the Indian Penal code, fails and the accused is acquitted of said charge.

37. As the victim Jonaki Orang has suffered severe injuries on her face causing disfiguration of her facial features, she needs adequate support for her rehabilitation.

This Court, therefore, recommends that under the facts and circumstances of this case, Smt. Jonaki Orang may be compensated with an amount of Rs. 50,000/- (Rupees fifty thousand only) u/s 357 (A) of Cr.P.C from the Victim Compensation Scheme of the State of Assam. The District Legal Services Authority, Sonitpur, is requested to do the needful for paying the said amount to the victim Smt. Jonaki Orang from the Victim Compensation Scheme, within two months from the date of this Judgment.

38. As the accused has been convicted u/s 307 and Section 364 of IPC where one offence (i.e. offence u/s 307 of IPC) is life imprisonment and the accused is aged about 25 years this court has to do a balancing act while imposing the sentence. I have heard the accused, in person on the point of sentence. He has pleaded that he has aged father of 60 years of age and an elder brother. He has pleaded for leniency. I have also heard learned counsel for the accused who has submitted that considering the young age of the accused, a lenient view may be taken. The learned Public Prosecutor when submitting has pointed out that though the accused is of young age however, the offence was committed in brutal manner. Therefore, too much leniency should not be shown in this case. It is true that offence has been committed in a most brutal manner shattering the trust which was there on the accused by the victim. However, the accused is of young age and there appears to be scope of reformation of the accused, I am therefore, not imposing the maximum penalty of Life Imprisonment. Considering entire aspect of the matter, I am of the considered opinion that u/s 307 IPC the accused is sentenced to undergo Rigorous Imprisonment for 10 (ten) years with a fine of Rs. 1000/- (one thousand) in default Simple Imprisonment for one month would be justified under the facts and circumstances of this case. Accordingly, I hereby sentence accused Kamal Rajowar to undergo Rigorous Imprisonment for 10 (ten) years with a fine of Rs. 1000/- (one thousand) in default Simple Imprisonment for one month for the offence committed u/s 307 of IPC. I also sentence the accused Kamal Rajowar to undergo Rigorous Imprisonment for 5 (five) years with fine of Rs. 1000/- (one thousand) in default Simple Imprisonment for one month for the offence committed u/s 364 of IPC. Both the sentences shall run concurrently. The period of detention already under gone, by the accused shall be set off from the sentence imposed.

39. The accused /convict has been informed about his right to appeal against this judgment before the Hon'ble Gauhati High Court. Let a copy of this Judgment be given free of cost to convicted accused immediately.

40. Let a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my Hand and Seal of this Court on this day the 21st day of May,
2015

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me

(M. K. Kalita)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me :

R. Hazarika, Steno

APPENDIX

Prosecution Witness

- | | | |
|-----------------------------|----|--------------------------------|
| 1. Prosecution Witness No.1 | :- | Victim Jonaki Orang |
| 2. Prosecution Witness No.2 | :- | Smti Rumi Orang |
| 3. Prosecution Witness No.3 | :- | Sri Dilip Orang |
| 4. Prosecution Witness No.4 | :- | Sri Anil Basumatary |
| 5. Prosecution Witness No.5 | :- | Dr. G.M. Das, (M.O) |
| 6. Prosecution Witness No.6 | :- | Sri Sarat Baruah |
| 7. Prosecution Witness No.7 | :- | Sri Kulendra Bharali (I.O) |
| 8. Prosecution Witness No.8 | :- | Md.Abdul Matleb Choudhury(I.O) |

EXHIBITS

- | | | |
|---------------------|----|--|
| 1. Exhibit No.1 | :- | Ejaha dated 27-01-2009. |
| 2. Exhibit No.1(1) | :- | Signature of Dilip Orang |
| 3. Exhibit 1(2) | :- | Signature of SI Md. Abdul Matleb Choudhury(I.O) |
| 4. Exhibit 1(3) | :- | Signature with note of O/C, Tezpur PS. |
| 5. Exhibit No.2 | :- | Medical report |
| 6. Exhibit No.2(1) | :- | Signature of Dr G.M. Das |
| 7. Exhibit No.3 | :- | Chargesheet |
| 8. Exhibit No.3(1) | :- | Signature of SI Kulendra Bharali |
| 9. Exhibit No.4 | :- | Sketch map |
| 10. Exhibit No.4(1) | :- | Signature of SI Md. Abdul Matleb Choudhury(I.O) |
| 11. Exhibit No.5 | :- | Certified copy of GD Entry No. 464 dt. 27-01-09 of Salonibari Police Out Post. |

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR : TEZPUR