

**IN THE COURT OF THE ADDL. SESSIONS JUDGE, FTC, AT  
BISWANATH CHARIALI, SONITPUR.**

Sessions Case No.5/14

Arising out of G.R. Case No.736/13

U/S-450/376/511, IPC.

Present :-

Mrs. M. Deb  
Additional Sessions Judge,  
Biswanath Chariali.

The State of Assam

- Vs -

Sri Badal Bhumij ..... Accused.

Advocates appeared :-

For the State

: Mr. H. Hazarika, Addl. P.P.  
Biswanath Chariali.

For the accused

:- Mr. S. K. Sarmah,  
Advocate, B/Chariali.

Date of argument

:- 05-05-15.

Date of Judgment

:- 19-05-15.

**J U D G M E N T**

Facts of the case :-

1. Prosecution case in a nutshell is that on 19-10-13, at about 10 p.m. the accused person namely ; Badal Bhumij trespassed into the house of the complainant by breaking the bamboo wall of the house and attempted to commit rape on her and when she raised hue and cry, the accused fled away. The informant lodged the FIR on the above facts with the Biswanath-Chariali police station on 20-10-13.

2. On receipt of FIR, the police registered the case and investigated the same and found material against the accused person U/S-450/376/511 IPC and submitted charge-sheet against the accused person U/S-450/376/511, IPC.

Contd.....P/2

(2)

3 After observance of all the formalities for furnishing copies of relevant documents, as mandated U/S-207, Cr. P.C., the case was committed to the Court of Sessions and thereafter the said case was transferred to this Court for disposal.

4. On appearance of the accused person before this Court, after hearing the learned Counsel from both sides and basing upon the materials on record, a charge U/S-450/376/511, IPC was framed and particulars of accusation were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

**POINTS FOR DETERMINATION :-**

5. In the instant case, it is to be determined :-

(a) If the accused person on 19-10-13 at 10 p.m., trespassed into the house of the informant in order to commit rape on her ?

(b) If the accused person on 19-10.13 at 10 p.m., attempted to commit rape on the informant ?

6. The prosecution examined five witnesses and the statement of the accused person was recorded U/s-313, Cr. P.C. The accused person denied to adduce any evidence in his defence.

7. I have heard the learned Counsel of both sides. Perused the evidence on record and came to the following decision.

**DECISION AND REASONS THEREOF :-**

8. As could be gathered from the record, only five witnesses have been examined by the prosecution to establish the offence U/S-450/376/511, IPC. PW-1 is the victim herself, PWs-2, 3, 4 & 5 are co-villagers.

Contd.....P/3

(3)

9. The time honoured principle of criminal jurisprudence is that the criminal charge has to be brought home by the prosecution beyond all reasonable doubt and it is the duty of the prosecution to be fair. Bearing this principle in mind , I am to assess how far the prosecution case has been brought home.

10. Before proceed further, I find it necessary to look through the evidence on record.

11. PW-1, Lila Tanti (Victim) stated that she knows the accused person and about three years ago, when her husband was not at home and she was sleeping with her children, the accused trespassed into her house by breaking the bamboo wall and entered into her mosquito net. Seeing him she raised hue and cry and the accused person fled away and thereafter, she filed the FIR. In her cross-examination, she stated that her house is near the road and she did not sustain any injury.

12. PW-2, John Tanti, stated that he knows both the parties and about six months ago hearing 'hulla' from the house of Lila Tanti he went there and saw that the accused person was lying on the ground in naked condition outside the house of Lila Tanti and Lila Tanti was shouting 'Chur', Chur'. In his cross-examination, he stated that he was not informed about any theft committed in the house of the informant.

13. PW-3, Lakheswar Gowala stated that he knows both the parties. About six months ago at night hearing 'hulla' from the house of the complainant, he went to her house and saw that the accused was lying on the ground in naked condition outside the house of the complainant. In his cross-examination, he stated that he did not know why the accused was lying on the ground.

14. PW-4, Amal Gowala stated that he knows the accused and the complainant and he did not know anything about the occurrence. He was declared hostile.

Contd.....P/4

(4)

15. PW-5, Lata Tanti, stated that she knows both the parties. One night at about 11 p.m. hearing hue and cry of the complainant she along with others went to the house of the complainant and heard that the accused entered into the house of the complainant Lila Tanti and the villagers caught the accused and handed over him to V.D.P. Secretary. In her cross-examination, he stated that she did not know why Lila Tanti raised hue and cry and she also did not know why V.D.P. Secretary caught the accused in naked condition.

16. Above being the evidence on record, let me see how far such evidence makes out the allegation against the accused person.

17. In the instant case, from the deposition of PW-1, the victim, it is found that the accused person trespassed into her house and tried to commit rape on her and she did not sustain any injury. But the version of PW-2 is different. According to him, he saw that the accused person was lying on the ground in naked condition outside the house of the victim and the victim was shouting 'Chur', 'Chur'. From the deposition of PW-3 it is found that he also saw the accused lying on the ground in naked condition outside the house of the complainant ( victim) but he did not know why the accused was lying on the ground. According to PW-5, she did not know why victim raised hue and cry and why V.D.P. Secretary caught accused in naked condition. In this case, Pws-2, 3 & 5 are silent regarding the trespass of accused into the house of victim and attempt of rape on PW-1, the victim. Moreover, evidence of PWs also not corroborating each other.

18. According to 2008(1) GLT( NOC) 112, "If there is slightest doubt in the mind of court after going through the evidence regarding involvement of accused in the offence, for which he has been tried, then it should be the duty of the court to acquit the accused of the charge levelled against him."

Contd.....P/5

(5)

19. Hence, after careful consideration of the evidence on record, I am of the opinion that the evidence tendered by the witnesses on different aspects of this case in its totality cannot be considered as consistent with the guilt of the accused person and therefore, the prosecution totally failed to prove the charge brought against the accused person.

Conclusion :-

20 In the light of the above discussion, I hold that the accused person is not guilty and thereby he is acquitted from the charge U/S-450/376/511, IPC and set at liberty forthwith. Bail bond, if any, stands cancelled.

21. Given under my signature and seal of this court on this 19<sup>rd</sup> day of May,2015.

( Mrs. M. Deb )  
Additional Sessions Judge,  
Biswanath Chariali.

Dictated & Corrected by me

( Mrs. M. Deb )  
Additional Sessions Judge  
Biswanath Chariali.

\* \* \* \* \*

Contd.....P/5

(6)

Sessions Case No.5/14

Arising out of G.R. Case No. 736/13

APPENDIX

Prosecution witnesses :-

PW-1 – Smti Lila Tanti

PW-2 - Smti Johin Tanti

PW-3 - Sri Lakheswar Gowala

PW-4 - Sri Amal Gowala

PW-5 - Smti Lata Tanti

Prosecution Exhibits :-

Nil.

Defence Witnesses

Nil.