

IN THE COURT OF JUDICIAL MAGISTRATE, 1<sup>ST</sup> CLASS, SONITPUR

G.R. CASE NO: 1230/10 U/S 420/34 IPC

PRESENT : K. K. PATHAK, A.J.S

PARTIES : State

-V-



1. Nripon Hazarika
2. Dipu Hazarika
3. Bhantu Hazarika
4. Anan Hazarika
5. Manjit Hazarika
6. Phil Hazarika
7. Minu Hazarika

-----ACCUSED

EVIDENCE ON : 13.12.11, 17.01.12, 03.03.12, 02.06.12, 03.09.12,

S/D ON : 03.09.12, 05.11.12  
04.02.13

ARGUMENTS ON : 08.02.13

JUDGMENT ON : 08.02.13

LAWYERS : A.P.P. (for state).

J. Bana (for accid.).

  
Judicial Magistrate  
1st Class Tezpur

In this case, an FIR was lodged by one Papori Hazarika through court. It was alleged that she was married to accused Nripen Hazarika who along with other accused allegedly suppressed the fact that accused Nripen was impotent. Based on the FIR, Jamuguri p.s. case no 59/10 u/s 420/34 IPC was registered and after investigation, c/s was submitted against the accused u/s 420/34 IPC.

Copies were furnished. Charge u/s 420/34 IPC were framed, read over and explained to the accused. They denied the same and claimed to be tried.

Prosecution adduced evidence. S/D of accused Nripen Hazarika was recorded while exception was made in respect of other accused on account of absence of incriminating materials. Defence did not adduce evidence. Arguments were heard.

#### POINT FOR DETERMINATION:

1. Whether the accused in furtherance of common intention suppressed the fact that accused Nripen Hazarika was impotent and thereby cheated the victim/informant?

#### DECISION AND REASONS:

The prosecution examined 12 witnesses. Out of these, I find that, Jatin kalita/pw1 stated that he heard people saying that accused nripen was 'physically unfit'. Sadanand Kakati/pw2 stated that in meeting he heard that accused had no 'capacity'. Pankaj Nath/pw3 spoke of accused being physically handicapped. Dipankar Hazarika/pw4 heard accusations about accused having no sexual feeling. Nagen Hazarika/pw 5 spoke about Papori informing Manasi Hazarika that accused was impotent. Narayan Mandal/pw7 deposed about being informed that accused was impotent. Similarly, Niva Rani Hazarika/pw8, Beauty Hazarika/pw9, Bhadra Hazarika/pw10 and Pradip Bhuyan/pw11 have all spoken about the physical incapacity of the accused.



*[Signature]*  
**Judicial Magistrate**  
1st Class Tezpur

Impotency is a physical/ medical state. It cannot under any circumstance be known to outsiders. Only a person in close physical proximity will know about such incapacity of a person. Evidence shows that the mentioned pws are basing the allegations of impotency on the version of others. There is no medical evidence at all to suggest such a state. Evidence of the pws discussed is purely based on hearsay and cannot be acted upon.

Now, coming to the informant/victim(pw6), I find that she has stated about impotency of accused. Assuming that accused was impotent, only point to be decided is as to whether suppression of fact of impotency of accused would make out a case of cheating. The necessary ingredients have to be gone into. Evidence does not show that there was any inducement. Marriage was an arranged one. There was also no delivery. After going through the evidence, the ingredients required for a case of cheating are missing. Evidence (medical) is also lacking in support of case of impotency.

Considering the facts and circumstances, the charges u/s 420/34 IPC are not found to be proved beyond doubt. Consequently, all the accused are acquitted of the charges and set at liberty. Bail bonds are cancelled.

Given under my hand and seal on this the 8<sup>th</sup> day of February 2013.



JMFC, SONITPUR: TZP  
Judicial Magistrate  
T-1 Cl-5 Tezpur