

**IN THE COURT OF ADDL. SESSIONS JUDGE
SONITPUR :: TEZPUR**

PRESENT: M.R. SHARMA
ADDL SESSIONS JUDGE
SONITPUR :: TEZPUR

SESSIONS CASE NO. 159 OF 2006
U/S 376/302/201/34 IPC

STATE OF ASSAM

- VERSUS -

Rajesh Kangari and Lalit Kandulana

.. .. accused persons

Appearance

Sri S. Sedai Learned Addl. PP	:	For the State.
S.E .Alam & A. Bhuyan Learned Counsel	:	For the accused persons.
Date of evidence	:	18-09-07, 22-07-08 15-09-08, 22-12-08, 26-05-09, 23-2-12
Date of argument	:	11-10-2012, 05-11-2012
Date of judgment	:	19-11-2012

J U D G M E N T

1. By this Judgment is disposed of the trial of two accused persons namely Sri Rajesh Kangari and Sri Lalit Kandulana. Both of them have been charge sheeted u/s 376/302/34 IPC. An ejahar was filed on 19.10.04 by the complainant Smti. Nirmala Induwar of Natun Sirajuli under Dhekiajuli Police Station before the I/C of Singri Out-Post stating that on 04.10.04, one Lina Bhengra came to her house to stay and on 06.10.04, while sleeping at night, she became missing. On 12.10.04, her dead body was found in the nearby paddy field. On enquiry it came to be known that the accused persons namely Sri Rajesh Kangari and Sri Lalit Kandulana had committed rape on her and thereafter killed her. So, she had prayed for taking necessary action. On receipt of the said Ejahar, a GDE No 262 dated 19.10.04, at 9 am was made by the I/C Singri Out-Post and the original Ejahar was sent to Dhekiajuli Police Station for registering a case. The I/C Singri Out-Post in the mean time started investigation and the O/C Dhekiajuli Police Station registered a case No 334/04 u/s 376/302/34 IPC, entrusting I/C Singri Outpost as I/O of the case .

2. The I/C Singri Out-Post went to the place of occurrence, conducted the inquest on the dead body of deceased Lina Bhengra by Magistrate in presence of witnesses, and sent the dead body for post mortem examination. A sketch map of the place of occurrence, was made, and statement of witnesses were also taken u/s 161 CrPC. Subsequently, after collecting of all reports and completion of other formalities of the investigation, the I.O submitted the charge against the accused Rajesh Kangari and Lalit Kandulana u/s 376/302/34/201 IPC on 26.11.04. During the investigation, the accused persons were arrested and forwarded to the Court. During the investigation statement of 3 witnesses were also recorded u/s 164 CrPC before the Judicial Magistrate.

3. The accused persons appeared before the Court but as the offence was exclusively triable by the court of Sessions, the learned trial Magistrate

committed the case to the court of Hon'ble District & Sessions Judge. The Hon'ble District & Sessions, transferred the case to this Court for trial. My predecessor of this Court recorded the evidence of as many as 9 witnesses including the I.O. The accused persons were also examined under section 313 CrPC, to which the accused persons denied allegations. However, the accused persons did not adduce any defence witness. After my joining this Court, I heard argument made on behalf of the accused as well as the state. I have also gone through the entire materials on record. The learned counsel for the defence gave the following citations in support of the defence case-

- 1) GLR 1994 Vol-1 Page 197
- 2) GLT 2012 Vol -1 Page 262
- 3)GLR 2010 Vol-1 Page 599
- 4) GLj 2001 Page 1712 Vol-2 (S-C)
- 5) GLJ 2011 (May) Page 1844 (S-C)

Point for determination is :

Whether the accused persons Sri Rajesh Kangari and Sri Lalit Kandulana are guilty had committed an offence punishable u/s 376/302/201/34 of IPC ?

DECISION & REASONS THEREOF

4. To come up a decision as to whether the accused persons are guilty

and had committed rape on deceased Lina Bhangra, and thereafter killed her, and also destroyed the evidence leading to their offence, in furtherance of their common intention, the evidence of witnesses and other materials are to be scrutinized carefully.

5. PW 1 is Sri Nirmala Induwar, and she in her evidence stated that she knows both the accused persons and also the deceased and the incident took place in the month of October/ November 2004. The deceased Lina Bhangra was living with her maternal uncle, and at the time of her death, she was reading in class VII. She was suffering from mental depression, before the incident took place. She came to her house to stay for few days. On the night of occurrence, after taking meal both of them were sleeping in a common bed. But the following morning, when she woke up she did not find Lina Bhangra in the bed. She started searching for her, but was not found. She searched her for six days, and after six days she found her at about 2 Kms away from their house in the paddy field. They did not inform the police when she was missing. She also deposes that a few days after the incident, she came to know from shop-keepers and other persons of the area that one Rajesh Kangari came to the village Chariali and wanted cigarette and torch light from the shop-keepers. At that time, he had also told the shop-keepers that he had committed rape on a girl and killed her in the nearby field. After knowing this information, they invited village 'MEL' and thereafter informed police. Police came, to take the dead body and then she filed the Ejahar which is Ext 2.

In her cross-examination, she says that the deceased Lina Bhangra was suffering from mental illness and on the night of the incident there was a heavy rain there. She admits that neither she nor parents of the deceased have informed police about her missing. She also deposes that finding the dead body they performed the last rites by burying her. After six days of such cremation she came to know about the incidence from the shop-keepers and after 12 days they informed the police.

6. The next witness is PW2 Sri Agstin Jajwar. He in his deposition stated that

he knew the accused persons who are from the same village. But he does not know anything about the incidence. He deposes that about 3/ 4 years ago, a dead body was found in the paddy field in their village.

7. PW3 is Sri Dhanuar Sarma and he has been declared hostile witness by the prosecution and he was cross examined by the prosecution. He stated that on 06.10.04 at about 11/12 pm, Lalit Kandulana came to his shop and knocked the door calling him, He also says that he did not come out as he knows Lait Kandulana did not have a good character. He came to recognize Lait Kandulana voice that night.

8. PW 4 is Sri Prafulla Bage. In his evidence, he stated that he has a small pan -shop and on 06.10.04 at about 11 pm Lait Kandulana had come to his shop in search of cigarette and torch light . At that time he was sleeping inside the shop and he did not give him the cigarette and torch. The next morning at about 9 am, school children of St Paul L.P. School, saw salwar suit hanging on a post of the school building. Later on, on 12.10.04 he came to know that a small girl was killed and kept in the village paddy field. He was also a hostile witness. He deposes that accused Rajesh Kangari had asked him to throw away the said salwar suit, otherwise he would kill him. Thereafter he threw away the cloth. He denied that he had told before the police that both accused persons had committed rape on a girl and also denied that he had told before the Magistrate u/s 164 CrPC that the accused had committed rape and murder on the deceased. He has exhibited Ext 3 as statement u/s 164 CrPC. In his cross-examination by the defence he similarly stated that on the night Rajesh Kangari had come to his shop and asked for cigarette and torch light, he had recognized by his voice only. He also deposes that he does not know why Rajesh Kangari had told him to throw the said suit. He also deposed that he did not remember that he had told to the police, that he had come to the police station and also denied that he was tutored by the police to give the statement before the Magistrate u/s 164 CrPC.

09. The evidence of PW 5 Milon Bage and PW 6 Edman Bage are the

same. All of them were declared hostile witness, as PW4. PW 5 denied all allegations made by the prosecution, exhibiting the statement u/s 164 CrPC given before the Magistrate a Ext 4.

In his cross by defence he stated that police had threatened him for which he had deposed before the Magistrate. PW 6 Edman Bage exhibited his statement u/s 164 CrPC, as Ext 5, and he also deposes that he does not remember what he had told before the police and that police had threatened him to given the statement.

10. From the evidences so far discussed above, it is seen that none of the witnesses have implicated that the accused persons had committed the offence u/s 376/302/201/34 IPC. The fact that Rajesh Kangari have come to his shop asked for cigarette and torch light and he recognized him by his voice, he has not implicated the fact that Rajesh Kangari had committed offence and the above witnesses have been not implicated Lalit Kandulana also in any manner to have committed the offence. So far there is no direct evidence, from the evidence of the witnesses leading to the commission of the offence, nor there is any circumstantial evidence. To come to a conclusion that the accused persons were involved in commission of the offence, no inference can be drawn that the accused persons were related to the charge, from the evidence.

11. In this context, I have gone through the citation in GLR 1994 Vol-1 Page 197 . The Hon'ble Gauhati High Court has stated that, recognition from voice is a very weak type of evidence and also misleading. It is unsafe to convict the accused persons to the solely on the basis of voice. This citation is applicable to the instant case. Also in this context, the citation forwarded by the defence in GLJ 2011 (May) Page 1844 (S-C) is applicable where the Hon'ble Supreme Court has stated that hearsay evidence is no evidence. The evidence of witnesses who have been declared hostile shows that the shopkeeper had told the complainant PW1 that Rajesh Kangari had told them that he had committed rape on a girl and had killed her

and left her in the paddy field. This hearsay evidence cannot be taken into consideration in convicting the accused persons. Section 60 of the Evidence Act defines what is hear say evidence. Therefore, evidence of those witnesses can not be taken into consideration, as they are not eye witnesses and only hearsay witnesses that also not confirmed by person from whom they allegedly heard of the incident which is necessary as per law. So it is not proper to give conviction based on improved versions of witnesses. Hearsay evidence is improved version of evidence of witnesses, and is not confirmed by persons who had given the said statement, cannot be relied upon.

12. The evidence of PW 7 is the Dr who conducted the post mortem examination. In his evidence he has stated that police on 21.10.04 had brought the dead body which was in a highly decomposed condition and it was not possible to recognize any injury. Ext 6 is the post mortem examination report. Ext 6(1) is his signature. On going through the evidence, I find that the cause of death is stated that it can not be ascertained. This evidence has also not supported the prosecution case in any manner.

13. PW 8 Sri Fakaruddin Ahmed ADC Nalbari District, who was Circle Officer of Dhekiajuli and had done the inquest report. Ext 1 is the said inquest report. In his evidence, he stated that the dead body was decomposed and it was taken out from the grave, and the dead body was inside a wooden coffin. The evidence of this witness also not helped the prosecution case.

14. The defence counsel had referred of GLR 2010 Vol-1 Page 599 and GLJ 2001 Page 1712 Vol-2 (S-C). I have gone through the two citations, and Hon'ble Supreme Court and our Hon'ble Gauhati High Court in the two citations stated that suspicion however grave, cannot be a substitute for proof. These two citations are also applicable in the instant case as both the accused persons were

arrested and charge sheeted and faced trial only out of suspicion. The evidence so far discussed have established, that on suspicion, both the accused persons were said to be involved in commission of the offence. So on suspicion prosecution can claim that there are incriminating materials against the accused Rajesh Kangari and Sri Lalit Kandulana. This Court cannot convict the accused u/s 376/302/201/34 IPC where there are no sufficient evidence conclusively proving the commission of the offence. The cardinal principle of law is that guilt must be proved beyond of shades all reasonable doubt. The circumstantial evidence also is poor in this case from which the conclusion of guilt can be drawn, to fully proved the evidence against this two persons. The chain of evidence has not conclusively proved the evidence against the accused persons.

15. PW 9 is the I.O Sri Jay Kumar Nath and in his evidence he has stated that he conducted the investigation, Ext 2 the Ejahar and Ext 2(2) his signature . He has also exhibited Ext 7 and 8 sketch map, Ext 9 is the dead body Challan with Ext 9(1) his signature. Ext 10 the charge sheet and 10(1) his signature.

16. The evidence recorded u/s 313 CrPC of both the witnesses show denial of their for the offence simply, and no defence evidence in there.

17. The evidence so far discussed has not proved the case against the accused persons. Furthermore, there is no mention as to why there was delay in filing the Ejahar. It is well established that delay in filing the Ejahar must be properly explained. The record also reveals that if the deceased was found after six days, no information was given to the police regarding to the missing of the girl. Why the entry was not given to the police have not been explained. Rather on finding the dead body the same was buried in a wooden coffin, and why this was done and also not explained. It is also come on evidence that the deceased had mental disturbances. These are not explained by the persecution side.

Hence due weight should also be given to these facts. Prosecution has committed serious lapses in not explaining these facts.

18. The learned counsel has referred to GLT 2012 Vol -1 Page 262, I find the same had direction to the entries to be made in case diary by the police while making GD Entry/GDE register has also been produced by the prosecution side, that the case was registered and GDE was made.

19. The Hon'ble Gauhati High Court in the said judgment also stated that u/s 172 of CrPC it is mandatory that case diary and GDE should be properly maintained. Loose sheets cannot form case diary. So, this is not squarely applicable in this case and the case diary has been maintained properly. In Criminal Jurisprudence an accused can not be convicted only on proof beyond reasonable doubt. Any doubt created, the benefit has to be given to the accused. In the instant case, the prosecution has totally failed to bring home the evidence fully against the accused persons Rajesh Kangari and Lalit Kandulana. It is a fit case where benefit of doubt should be given to the accused persons. As discussed above the accused persons of this case can not be convicted, under weak evidence. Accordingly, I give to the conclusion that the accused persons can not be convicted u/s 376/302/201/34 IPC and are to be acquitted. Accordingly, The accused persons Rajesh Kangari and Lalit Kandulana are acquitted.

ORDER

20. The prosecution evidence being not sufficient to convict the accused persons, they are acquitted from the charges of this case, and are set at liberty forthwith.

21. Seized articles, if any, be destroyed in due course of law.

22. Send a copy of this judgment to this District Magistrate, Sonitpur, Tezpur under Section 365 of CrPC.

Given under my hand and Seal of this Court on this 19th day of November, 2012.

M.R.Sharma
Addl Sessions Judge
Tezpur Sonitpur

Dictated & corrected by me :-

M.R.Sharma
Addl Sessions Judge
Tezpur Sonitpur

Dictation taken and typed by me :

Chandrama Deka
Steno