

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

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

SESSIONS CASE NO. 327 OF 2012

GR Case No. 1821/ 2010.

Under Section 366 / 376(g)/ 384/34 of Indian Penal Code

State of Assam

–Versus –

1. Sri Rakesh Sutradhar,
2. Sri Amrika Sah,
3. Sri Tapash Sah,
4. Sri Gobindra Chetri,
5. Sri Dipu Rai and
6. Sri Satya Boro **Accused Persons**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused persons: Sri S.E. Alam,
Advocate.

Date of evidence : **19- 04 – 2013, 16-05-13 and
28-06-2013.**

Date of Argument : **18- 07 – 2013.**

Date of Judgment : **25- 07 – 2013.**

J U D G M E N T.

1. The prosecution case, inter-alia, in brief is that the informant Smti Rinku Das, lodged an ejahar before Rangapara Police Station alleging that on 02-04-2010 at about 2 p.m., accused Rakesh Sutradhar (her boy friend) called her to No.2 Railway gate. She went there and met Rakesh Sutradhar and one Tapash. Both of them forcibly took away her to Naharani Tea Estate. There was already present 1. Gobindra, 2. Chanu, younger brother of Gobinda, 3. Satya Boro (Tutu Boro), 4. Laki and 5. Amrika Sah. They had removed her wearing clothes and at first Rakesh and thereafter Laki forcibly committed rape on her. Accused Satya Boro bite on her face and when she tried to raise hulla the accused persons gagged her mouth with clothes. It is also alleged that the accused persons assaulted her on her private parts and collected some photographs by their mobile phones and also demanded Rs. 10,000/- from her and also threatened to kill her elder brother if she could not pay the said amount and if she informed the matter to police.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Rangapara PS registered a case, conducted investigation and thereupon laid chargesheet u/s 366/376/354/384/323/294/506 of IPC against the above named accused persons.

3. After appearance of the accused person before the Court, the learned Sub Divisional Judicial Magistrate (S), Tezpur, committed the case to the Court of learned Sessions Judge, Sonitpur, Tezpur. Thereafter, the learned Sessions Judge, Sonitpur, Tezpur transferred the case to this court for trial. Considering the materials available on case record and relevant documents of case

diary, the charge was framed against the accused persons by my learned predecessor under Sections 366/376(g)/384/34 of IPC. Then the contents of charge was read over and explained to the accused persons, to which, they pleaded not guilty and claimed to be tried.

4. To bring home the charge, the prosecution has examined as many as 5 (five) PWs including the M.O and I.O. Statements of accused persons u/s 313 Cr.P.C are recorded. The pleas of the accuseds are of total denial and they declined to adduce any defence witness.

5. Points for determination:

(i) Whether the accused persons on 02-04-2010 at about 2 p.m. at No.2 Ward, Rangapara, under Rangapara PS, in furtherance of their common intention, kidnapped (abducted) the victim Smti Rinku Das, a woman, with intent that or knowing that it is likely that she might be forced (or seduced) to illicit intercourse with them and thereby committed an offence punishable u/s 366 / 34 of IPC?

(ii) Whether the accused persons on the same day, time and at Naharai Tea Estate, in furtherance of their common intention, committed gang rape on the victim and thereby committed an offence punishable u/s 376(g) / 34 of IPC ?

(iii) Whether the accused persons on the same day, time and at Naharai Tea Estate, in furtherance of their common intention, intentionally put the victim in fear of injury to her and thereby dishonestly induced the victim to deliver money to them and thereby committed an offence punishable u/s 384 / 34 of IPC ?

Discussions, Decision and reasons thereof:-

6. I have carefully perused the evidence and the materials available on the case record. Heard arguments of both sides. Now, let us examine the evidence of PWs to decide the case at hand.

7. PW 1 Dr. Ranjan Kr. Das deposed that on 21-09-2010 while he was working at Kanaklata Civil Hospital, Tezpur as Medical and Health officer-1, on that day in reference to Rangapara PS Case No. 188 / 10 on being escorted and identified by WHG Jamuna Borahg, he examined Smti Rinku Das, D/O Niranjan Das. Upon examination he found the following :-

GENERAL EXAMINATION.

Height – 144 cm , Weight – 37 ½ kg, Teeth – 14/14.

She was average built. Her secondary sexual characters were well developed. Breast, pubic and axillary hair well developed. Vulva, vagina healthy and intact. Hymen was absent. There were no marks of violence on the private as well as other parts of body. Vaginal smear for spermatozoa was absent.

X- ray was done.

X-ray Report:

Wrist Joint : Union of the epiphysis of the lower ends of left radius and ulna are nearly complete.

Elbow joint : All epiphysis of the bones around the left elbow joint are fused with their respective shafts.

Iliac Crest : Epiphysis of iliac crest has not appeared.

OPINION.

1. There are no sign that suggest rape.

2. There are no marks of violence on private as well as other parts of the body.

3. Age of the person under investigation was just above 18 years.

X-ray report was given by Dr. P.K. Barman, Radiologist of Assam X-ray Clinic & Laboratory.

Ext. 1 is the advice slip and Ext. 1(1) is his signature. Ext. 2 is the medical report submitted by him and Ext. 2(1) is his signature. Ext. 3 is the X-ray report.

PW 2 Smti Rinku Das, the victim stated that the incident took place about 1 ½ / 2 years back. She had love affairs with accused Rakesh. They went to Naharbari Tea Estate for visiting purpose. Some boys drove away them from there as they were talking each other by taking photographs and then they returned home. After one month some unknown boys coming to their house asked her to lodge ejahar against the accused persons present today in the dock. Said unknown boys threatened her to kill if she did not lodge any ejahar against the accused persons. Due to pressure by the said unknown boys she lodged the ejahar. Police recorded her statement and got medically examined. Ext. 4 is the ejahar and Ext. 4(1) is her signature. Police recorded her statement through the court. Ext. 5 is the statement u/s 164 Cr.P.C and Ext. 5(1) to 5(3) are her signatures thereon.

PW 3 Smti Chinu Das, mother of the victim, deposed that she knows the accused persons. The incident took place about 2 ½ years back. The incident was about rape. Some unknown boys forced them to lodge the ejahar for which the ejahar was lodged. She did not know as to what her daughter did. She only went

along with her daughter. Police recorded the statement of her daughter and got medically examined.

PW 4 Sri Jintu Das stated that he knows the accused. Victim is his sister. The incident took place about 2 years back. His sister lodged the ejahar with regard to committing rape on her. Subsequently, he came to know that some unknown boys forced his sister to lodge the ejahar.

PW 5 Abdul Kalam Azad, S.I of police (I.O.) stated that on 20-09-2010 he was serving at Rangapara P.S and on that day after receiving an ejahar from one Rinku Das, prior to that he made a GD Entry being No. 483 dated 19-09-2010, he took up the investigation of the case as he was then O/C of the Police Station. He started investigation on the basis of GDEntry dated 19-09-10 and arrested accused Ambika Sahani, being suspicion on him and seized a mobile hand set, one memory card, one reliance SIM card. Ext. 6 is the seizurelist and Ext. 6(1) is his signature. On the same day he arrested accused Rakesh Sutradhar and Somnath. He seized a mobile hand set and one SIM card from accused Som Nath Bahadur. Ext. 7 is the seizurelist and Ext. 7(1) is his signature. From accused Rakesh Sutradhar he seized a document relating to motor cycle. Ext. 8 the seizurelist and Ext. 8(1) is his signature. He gave it zimma to the registered owner. He visited the place of occurrence, prepared a sketch map and recorded the statement of the witnesses. Ext. 9 is the sketch map and Ext. 9(1) is his signature. Ext. 10 is the extract copy of GD Entry. On his transferred , he handed over the case diary at the Police station. Thereafter Lambit Gogoi, SI of Police laid chargesheet u/s 366/376(g)/354/384.323/294/506 of IPC. Ext. 11 is the

chargesheet. Material Ext. 1 and 2 are two mobile Sim Cards along with memory cards.

8. Now, from the evidence on record, it is seen that Rinku Das (PW 2) is the victim-cum prime witness in the present case. In her examination-in-chief, she (PW 2) has admitted that she had love affairs with accused Rakesh. It is also in her evidence that she went to Naharani Tea Estate to visit along with accused Rakesh. In her deposition, this witness nowhere stated that the accused persons in furtherance of their common intention kidnapped/abducted her and forced her to illicit intercourse with the accused persons. There is also no material in her evidence to show that he accused persons forcibly committed gang rape on her. In cross-examination, she has stated that she sometimes used to go out along with accused Rakesh. In the Tea Estate the accused persons threatened them and then they left the said place. She further stated that the statements made in Ext. 4 and 5 respectively by her was as per instruction of some other people who forced her to lodge the ejarah. She also stated that the accused persons present today in the dock did not commit any immoral act against her. PW 3 is the mother of the victim and PW 4 is the elder brother of the victim respectively. Both the witnesses do not support at all the prosecution story. PW 3 in her cross stated that she does not know, in fact, what had happened. She further stated that she had already given her daughter in marriage. PW 4 in cross stated that he has no allegation against the accused persons. PW 1 is the Medical Officer. PW 1 in his deposition stated that the victim was just above 18 years. He also found no sign that suggest rape, marks of violence on the private parts of the victim. PW 5 is the Investigating Officer. It is, thus seen that the

prosecution witnesses do not support the case u/s 366 / 376(g)/ 384/34 of IPC against the all accused persons.

9. In view of the above discussions and considering all aspects, I hold that the prosecution has failed to prove the case u/s 366 / 376(g)/ 384/34 of IPC against the accused persons beyond all reasonable doubts. Hence, I acquit the accused persons from the said offences.

10. The accused persons be set at liberty forthwith. Their bail bonds stand cancelled.

The seized articles, be given to the original owner in due course of time.

The case is disposed of accordingly.

11. Given under my hand and seal of this Court on this day, the 25th day of July, 2013.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Transcribed by me.

(R. Hazarika)
Steno.

A P P E N D I X**Prosecution witnesses :**

PW 1 : Dr. R.K. Das, (MO)
PW 2 : victim
PW 3 : Smti Chinu Das,
PW 4 : Sri Jintu Das,
PW 5 : Investigating Officer.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : Advised slip
Exhibit 2 : Medical report
Exhibit 3 : X-ray report.
Exhibit 4 : ejahar
Exhibit 5 : statement u/s 164 Cr.P.C.
Exhibit 6,7 & 8 : seizurelists.
Exhibit 9 : Sketch map
Exhibit 10 : Extract copy of GD Entry.

Material Exhibits: :

Material Ext. 1 & 2 : Mobile SIM cards.

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.