

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

PRESENT : Sri B. Debnath
Sessions Judge
Sonitpur, Tezpur

SESSIONS CASE NO. 41 OF 2011

**Under Section 376 (1) of the Indian Penal Code
(Arising out of G.R. Case No. 2032 of 2010)**

State of Assam

-Versus-

1. Md. Nasiruddin
2. Sri lakhi NathAccused persons

[Committed by Sri M. Kalita, Additional Chief Judicial
Magistrate, Sonitpur, Tezpur]

A P P E A R A N C E

For the State : Sri D. C. Borah
Public Prosecutor
Sonitpur District, Tezpur

For the Accused : Sri S.E. Alam,
Senior Advocate

Date of evidence : 16-08-2011, 25-10-2011

Date of Judgment : **25-10-2011**

J U D G M E N T

On 20-10-2010 a written ejahar was lodged by Smt. Dhaneswari Basumatary, the mother of the victim girl, alleging inter-alia the following fact that on 18-10-2010 at evening the accused Md. Nasiruddn called her daughter (victim) by telephone and accordingly she went to the Thelamara Centre and from there the said accused Md. Nasiruddin brought her to the house of accused Lakhi Nath and committed rape on her.

2. On receiving the written ejahar from the mother of the victim girl, the Officer-In-Charge, Thlamara Police Station, registered Thelamara P.S. Case No. 125 of 2010 under Section 376 / 34 of Indian Penal Code. After investigation charge sheet was submitted against both the aforesaid accused persons under Section 376 / 34 of Indian Penal Code.

3. The case was committed to this Court in due course of process. A formal charge has been framed under Section 376 (1) of the Indian Penal Code against the accused persons. The said charge was read over and explained to the accused persons but each of the accused persons did not plead guilty rather claimed to be tried.

4. During trial the prosecution side examined the Medical Officer who attended the victim for medical examination as PW-1. The name of the Doctor is Dr. (Mrs) Jahanara Begum. The mother of the victim is

examined as PW-2 and the victim is also examined as PW-3.

5. In this judgment, intentionally I am omitting to disclose the name of the victim because of the restrictive provision under Section 228 A of IPC. She is referred in this judgment as "*Victim*" because it is a rape case.

6. I have heard both sides' learned counsel and perused the evidence on record.

7. In this case the Medical Officer (PW-1) deposed that he examined the victim on 20-10-2010 and found no positive sign of sexual assault rather he opined that the victim was above 18 years of age. He determined the age on the basis of ossification test. The defence side did not challenge the aforesaid evidence regarding the opinion of the Doctor. That opinion is taken into consideration. It is concluded that she is a major.

8. Now, I have to conclude whether she has been raped or not. Her mother (PW-2) deposed nothing against the accused person rather she stated that she was pressurized by somebody to lodge the ejahar against the accused persons. Except the aforesaid she could not adduce any material evidence regarding rape or sexual assault against the accused person. The victim also makes it clear before the Court that she has not been raped by the accused person rather she elaborately clarified the matter before this Court while she was returning to her house sat about 10 O'Clock along with the accused police brought her along with the accused to the police station and then at the pressure of some other person her mother

lodged the FIR. If this is the real fact it can be concluded without hesitation that the prosecution has not been able to prove any incriminating evidence against the accused persons to prove the case as alleged. So, the accused persons are found not guilty.

9. The accused person are acquitted of the charge under Section 376 (1) of the Indian Penal Code and set them at liberty forthwith.

The bailor is discharged from the liability of the bail bond.

Given under my hand and seal of this Court on this 25th day of October, 2011.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Dictated and corrected by me
and every page bears my signature.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Transcribed and typed on dictation by me

(I. Goswami)
Stenographer

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