

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

PRESENT : Sri M. Kalita,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 31 OF 2012

GR Case No. 2551/ 2011

Under Section 376(f) r/w 511 of Indian Penal Code

State of Assam **Complainant**

-Versus -

Sri Rohit Nath,
Late Tuliram Nath,
Village- Zakura Chuburi,
PS – Tezpur,
Dist – Sonitpur, Assam..... **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public
Prosecutor

For the accused person: Md. F. Haque,
Advocate

**Date of evidence : 24 - 04 - 12, 08-05-12,
26 - 06 - 12, 10-07-12,
24 - 07 - 12, 04-09-12
and 03 - 10- 2012.**

Date of Argument : 16 - 10 - 2012.

Date of Judgment : 16 - 10 - 2012.

J U D G M E N T

1. Briefly, the prosecution case was that the informant Smti Lilawati Mahanta, W/O Late Late Bhupen Chanda Mahanta, a resident of Tumuki under Tezpur Police Station lodged the written ejahar on 27-11-11 before Bihaguri Police Out Post under Tezpur Police Station against accused Rohit Nath stating inter-alia that on 26-11-2011 at about 9 p.m. while her minor grand daughter Krishna Das was sleeping at her residence then accused Rohit Nath came and tried to commit rape on her. Immediately, the victim raised alarm, so neighbouring people came and handed over the accused to police by apprehending him. So, the informant prayed before the police for taking necessary action against the accused.

2. After receiving the aforesaid written ejahar, the I/C of Bihaguri Police Out Post made GD Entry and directed ASI Surendra Baruah to complete the preliminary investigation. The I/C also forwarded the ejahar to Tezpur Police Station for registering a case. Accordingly, the O/C of Tezpur PS registered the case bearing Tezpur Police Station Case No. 1315/11. The Police investigated the case. During the period of investigation, the Investigating Officer referred the victim for medical examination and also produced the victim before the Court for recording her statement u/s. 164 Cr.P.C. The Investigating Officer also arrested the accused. And after completing the investigation, the Investigating Officer submitted the chargesheet against the accused u/s 376(f) read with section 511 of IPC. Hence, the prosecution case.

3. After appearance of the accused before the Court, the learned Judicial Magistrate committed the case to the learned Sessions Judge, Sonitpur, Tezpur. Then the

case was made over to this Court. After considering the materials available on case record and police report U/s 173 of Cr.P.C, the charge was framed against the accused under Section 376 (f) read with section 511 of IPC. Then the contents of charge was read over and explained to the accused to which the accused pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution has examined as many as 10 PWs including the victim, Medical Officer and the Investigating Officer to establish the charge against the accused. Then the accused has been examined u/s 313 CrPC, wherein he has denied the prosecution case totally. No witness has been examined by defence. After the close of trial, judgment is delivered.

5. Points for determination of the case:

1. Whether the accused made attempt to commit rape on the victim at the time of occurrence ?

2. If so, whether the accused did certain act towards the commission of such act ?

Discussion, Decision and reasons for Decision:-

6. For proper appreciation of evidence, I like to discuss the evidence of PWs first.

7. PW 1 is the Medical Officer. The Medical Officer has deposed that on 28-11-2011 she examined the victim in reference to GD Entry NO. 409/11 dt 26-11-11. On examination she submitted the medical report by citing the age of victim as below 12 years. She also did not find

any sign and symptom of rape at the time of examination. The Medical Officer has proved the medical report as Ext.1.

In the cross-examination, the Medical Officer has admitted that any active attempt of rape in case of minor girl the injury on private part will occur.

8. PW 2 is the informant. She has deposed that the victim is her grand daughter and the accused usually visited her residence of and on. On the date of occurrence when she was preparing tea then she heard the shouting raised by the victim and she also found the victim as running away by shouting. Later on she came to know that accused touched her private part by opening the pant. Then immediately some neighbouring women arrived at the place. They assaulted the accused and on the assistance of other village people she lodged the FIR and she has proved the FIR as Ext.3.

In the cross-examination PW 1 has stated that police arrived at the place of occurrence after getting information over phone from village people. She did not witness the occurrence. Accused did not commit any other act except touching the body of victim by removing the pant.

9. PW 3, the victim has stated that at the time of occurrence while she was sleeping at her residence then accused also came and slept on the same bed. Then accused touched on her private parts. Then by shouting she ran away to the residence of neighbouring people. Then she narrated the fact to one woman Lakhimai. Thereafter, the neighbouring people arrived at her residence and assaulted. The accused on the same night police arrived at their residence. Police produced her

before the Magistrate for recording her statement and she has proved the statement as Ext.4.

In the cross-examination, the victim has stated that she did not state before police as well as in her statement recorded by Magistrate that accused made attempt to commit illegal act. She also did not know what do mean by illegal act. Accused did nothing except touching on her private part.

10. PW 4 Sri Lakheswar Das has stated that after hearing alarm from the residence of informant she arrived at the residence of informant. Then she came to know that the accused misbehaved the victim. Then, the neighbouring people arrived at the place. Police also came and police arrested the accused.

In the cross-examination, PW 5 has admitted that she did not know the actual incident. One of the daughter of the informant borrowed money from the accused. Thereafter, the daughter of the informant disappeared. The said daughter of informant had stayed also in the residence of accused for some days before the occurrence. The PW 5 also heard that the accused came on the date of occurrence for seeking the return of the money. At that time accused also disclosed the said fact before the police.

11. PW 5 Smti Lakhimai Das has stated that she only heard that accused had come to the residence of informant for torturing the victim by threatening her. Accused used to visit the residence of victim off and on before the occurrence.

In the cross-examination PW 4 has admitted that she was not directly informed by the victim. She also knew nothing why police arrested the accused.

12. PW 6 Smti Jan @ Sunita Saikia has stated that at the time of occurrence after hearing alarm from the residence of informant she arrived at the residence of informant. Then she came to know that the accused had touched on the body of the victim by removing her pant. Then the police was informed over phone.

In the cross-examination, she has admitted that she did not witness the occurrence and the accused has also disclosed that he had come to the residence of Lilawati only to receive the money from the informant which was earlier borrowed by the informant from him. Earlier, the daughter of the informant namely, Moromi borrowed some money from the accused. As Moromi disappeared from the residence, so the accused sought money from the informant.

13. PW 7 Sri Barun Saiki has deposed that he only heard about the fact that the accused had made attempt to commit rape on the victim. Then police came and arrested the accused.

In the cross-examination PW 7 has admitted that he heard about the occurrence from other people of the village. At that time, the accused also disclosed before the village people that he had come to the residence of informant as the informant had to return some money to him and for that reason, the informant raised hue and cry.

14. PW 8 Smti Putumoni Devi has stated that she only heard about the occurrence. She heard that the accused touched the body of the victim at the time of occurrence. Then the people handed over the accused to police.

In the cross-examination PW 8 has stated that the accused visit the house of informant frequently.

Accused also revealed before the village people that the informant had to return some money to him.

15. PW 10, the Investigating Officer, has stated that on 26-11-11 he started the investigation of the case after making GD Entry on the basis of information received regarding the occurrence. He inspected the place of occurrence immediately. On 27-11-11 one written ejahar was lodged by Lilawati Mahanta. Then he was directed to complete the preliminary investigation of the case. During the inspection of the place of occurrence, he found the accused detained by the village people at the place of occurrence. Then he arrested the accused and sent him to Jail. He also referred the victim for medical examination. He also produced the victim before the Magistrate for recording her statement and after completing the preliminary investigation he submitted the case diary to I/C.

In the cross-examination PW 10 has stated that the village people informed the matter in writing to the I/C.

16. PW 9 is the Investigating Officer has stated that he only submitted the chargesheet against the accused on the basis of material collected by ASI Surendra Baruah. He has proved the chargesheet as Ext.5.

17. From the above discussion of evidence of PWs, it is found that except victim none of the PWs witness the occurrence. Even the informant admitted in the evidence that she did not witness the occurrence. She only heard the shouting raised by her grand daughter. The victim has also admitted in her evidence that except touching on her private part the accused committed no other act. The other PWs have admitted that they only heard about the

occurrence. The most important fact which had been revealed by other PWs except PW 3 that before the people and police the accused disclosed that the informant had to return some money to the accused which was earlier borrowed by the informant from the accused.

18. So, on appreciation of evidence of PWs, it is found that the PWs have only stated that the accused touched the body of the victim except that fact nothing has been stated specifically by the PWs. Moreover, the fact admitted by the PWs regarding the existence of monetary transaction has raised the question regarding the truthfulness of the prosecution story, because, the accused disclosed such fact even before the Police. On the other hand, the accused stated in his statement recorded u/s. 313 Cr.P.C that he approached the victim on the date of occurrence and sought the money from the informant which was earlier borrowed by the informant. But instead of returning the money he falsely implicated by lodging the false ejarah against him in the instigation of other people. He committed no wrong and he usually visited the residence of informant as before. So, on meticulous examination of material on record, it is found that the fact stated by the accused has been supported by the evidence of PWs regarding the monetary transaction took place between the informant and the accused.

19. On scrutiny of the fact stated by the victim in her statement recorded u/s 164 Cr.P.C. it is found that the victim also stated that accused touched on her private part by opening her pant. Then she raised alarm and ran away from her residence. So, after going through the entire materials on the case record, it is found that the material appears in the case record is not sufficient enough to prove the fact that the accused did certain act towards the

commission of rape on the victim at the time of occurrence. The evidence of PWs is also found no cogent and trustworthy to establish the charge against the accused, because some infirmities appears in the evidence of PWs. So, on the basis of such un-corroborative evidence, the accused can not be held for committing such heinous offence u/s. 376 (f) read with section 511 of IPC.

20. From the above discussion, it is found that the prosecution has failed to prove the ingredients of offence U/s. 376(f) read with Section 511 of IPC with the material of beyond reasonable doubt for which, the accused is entitled to acquittal on benefit of doubt.

O R D E R

21. As the prosecution has failed to prove the case beyond all reasonable doubt against the accused person, so the accused person is acquitted on benefit of doubt and set at liberty forthwith.

22. The Judgment is given under my hand and seal of this Court on this day, the 16 day of October, 2012.

(M. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M. Kalita)
Assistant Sessions
Judge,
Sonitpur, Tezpur.

Dictation taken and
transcribed by me :

(R. Hazarika)
Steno.

A P P E N D I X

Prosecution witnesses :

PW 1 : Dr. Jharma Kakoti, M.O.
 PW 2 : Smti Lilawati Mahanta, informant,
 PW 3 : Victim,
 PW 4 : Smti Lakheswari Das,
 PW 5 : Smti Lakhimai Das,
 PW 6 : Smti Jan Saikia,
 PW 7 : Sri Barun Saikia,
 PW 8 : Smti Putumoni Devi
 PW 9 : Sri Tilok Ch. Rai,
 PW 10 : Sri Surendra Kr. Baruah.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: : Nil

Exhibit 1 : Medical report.
 Exhibit 2 : Laboratory report.
 Exhibit 3 : Ejahar,
 Exhibit 4 : Statement of the
 victim.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(M. Kalita)
 Assistant Sessions Judge,
 Sonitpur : Tezpur.