

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

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

SESSIONS CASE NO. 49 OF 2010

GR Case No. 2156/ 2009

Under Section 376 (2) (f) of Indian Penal Code

State of Assam **Complainant**

–Versus –

Sri Hemanta Gowala,
Son of Sri Durga Gowala,
Village-Hugrajuli, Bhagalpur,
PS – Dhekiajuli,
Dist – Sonitpur, Assam **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Sri N.K. Mishra,
Legal Aid Counsel appointed by
DLSA.

Date of evidence : **02-08-2010, 22-09-2011,
05-11-2011, 04-01-2012,
09-02-2012, 03-03-2012 &
09-05-2012.**

Date of Argument : **26-06-12.**

Date of Judgment : **10 –07 – 2012.**

J U D G M E N T

1. The prosecution case as reflected in case record may be narrated as :

The informant Smti Felichita Kerketa, W/O Sri Prem Kerketa, a resident of Bhogalpur Basti under Dhekiajuli Police station lodged the written ejahar on 18-11-2009 before Rakashmari Police Out Post under Dhekiajuli Police Station against the accused Hemanta Gowala stating inter-alia that on 17-11-09 at about 3:30 p.m. accused Hemanta Gowala had taken away the minor daughter of the informant from the residence under inducement. She was taken to the paddy field by the accused. Then accused committed rape on her forcibly. Thereafter, the accused fled away. Though the village people made attempt to apprehend the accused after the occurrence but he disappeared from his residence. Hence, the informant prayed before the police for taking necessary action.

2. After receiving the aforesaid written ejahar, the Incharge of Rakhashmari Police Out Post made GD Entry regarding the occurrence and forwarded the ejahar to Dhekiajuli Police Station for registering a case. The Incharge of Rakhashmari Police Out Post himself started to investigate the case. And after receiving the FIR, the Officer-in-Charge of Dhekiajuli PS registered a case bearing Dhekiajuli Police Station Case No. 365/09 u/s 376 of IPC and assigned the Incharge of Rakhashmari Police Out Post as Investigating Officer. During the course of investigation, the Investigating Officer inspected the place of occurrence. He referred the victim for medical examination on the same day. He also produced the victim before the Magistrate for recording her statement u/s 164 Cr.P.C. Investigating Officer also arrested the accused

during the period of investigation on 25-0-09 and forwarded him to Judicial custody and after completing the investigation, he submitted the Charge sheet against the accused u/s 375 of IPC. Hence the prosecution case.

3. After appearance of the accused person 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 for trial. Accordingly, this Court took up the trial of the case. Considering the materials on case record, the charge was framed against the accused under Section 376(2)(f) 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 11(eleven) PWs including the Medical Officer, Investigating Officer and the learned Judicial Magistrate who had recorded the statement of victim u/s 164 Cr.P.C, to bring home case. Then the accused has been examined u/s 313 Cr.P.C, wherein he has denied the prosecution case totally. No witness has been examined by defence. After close of trial, the Judgment is delivered.

5. Points for determination of the case:

(1) Whether the accused committed rape on the victim at the time of occurrence ?

(2) If so, whether the victim was under the age of 12 years at the time of occurrence ?

Discussion, Decision and reasons for Decision:-

6. At first, I deem it necessary to briefly discuss the evidence adduced by PWs for just and proper appreciation of evidence in context with the points for determination.

7. PW 1 is the Medical Officer. The Medical Officer has stated in the evidence that she examined the victim on 18-11-09 at 5 p.m. in reference to Rakshhari Police Out Post GD Entry No. 290 dt. 18-11-09. The victim was identified by her mother and escorted by Home guard Rubi Bania and Women Police Constable No. 552 Anju Hazarika. During examination she found as follows :

“The patient was in a serious condition of mental shock and pain with high rise temperature. Clinically she was about 6-7 years old. Both thighs, supra pubic areas, vulvas are tender, swollen and there was bruise mark over the vulva (labium majus). Tear present on posterior wall of the vagina with bleeding and bleeds to touch. Vaginal smear (while mucoid discharge over the vagina) collected on two slides and sent it immediately to the Laboratory. Report of the same has not been received till date, even report of X-ray examined has not been received till date.

There was a linear abrasion mark on the lower third of neck.

Inference:

The girl was about 6-7 years of age, positive findings of sexual assault or rape and mark of strangulation over neck.

On 26th November, 2009 she received the X-ray and vaginal smear report on 26-11-09 (spermatozoa not seen). (Lab Report No. 59).

Age of the person is below 6 years.”

Then the Medical Officer submitted the medical report and she has proved the medical report as Ext.1. The Medical Officer has further stated that the victim was admitted as indoor patient on the same day and she was discharged on 30-11-09. She has also proved the discharge certificate as Ext. 2 and the report of vaginal smear as Ext.3.

In the cross-examination, the Medical Officer has stated she submitted the report after receiving the X-ray report. In the report she has not mentioned regarding the fact of admission and discharge of the patient. The injury found over the neck can also be caused due to different causes. She received the X-ray report and vaginal smear report on 26-11-09 but she submitted the medical report on 24-11-09. The Medical Officer has also further denied the fact that she did not submit the report in proper form.

8. So, after going through the medical report (Ext.1) and after discussing the evidence of Medical Officer it is found that the Medical Officer found positive finding of sexual assault or rape and mark of strangulation over the neck of the victim at the time of examination. The Medical Officer has also cited the age of the victim as below 6 years. At that time the victim was found in serious condition as she had got mental shock and pain with high rise of temperature.

9. PW-2, the informant Felichita Kerketa, who is the mother of the victim has stated that at the time of occurrence the age of her daughter was about 8 years old. The occurrence took place inside the paddy field at about 3 p.m. The accused took away her daughter and committed

rape on her. The blood was found coming out from her private parts (vagina). The victim became senseless. Though after getting sense she arrived at her residence somehow by walking slowly. Then she stated about the incident before her father. Then her father asked her to sleep. At that time the injury on different parts of the body was also seen. Then the victim brought to the Police Station and thereafter to the Hospital with the help of a hired car. She lodged the written ejahar by putting her thumb impression.

In the cross-examination, PW 1 has stated that at the time of occurrence she was carrying paddy at the field. She was carrying paddy upto 4 p.m. on that day. Before the occurrence, the victim was staying with her grand mother. The informant also found her daughter weeping inside the paddy field and at that time she stated before her regarding the occurrence. She noticed blood stained on her pant. Some persons namely, Silbina, Karki, Beja etc. came to her residence and noticed such blood stained cloths. Immediately the information was lodged to the police. Accused also strangulated on the neck of her daughter and beatened her with stick. Police also noticed the blood stained cloths when police visited her residence. PW 2 has denied some suggestions put to her by defence in reference to the fact recorded by police U/s. 161 Cr.P.C.

10. PW 3 Smti Anita Tappo has deposed that at the time of occurrence the age of the victim was 7 years 6 months old. The occurrence took place on 17-11-09 inside the paddy field. Village people arrived at the residence of victim after hearing the hue and cry. The PW 3 also arrived at the residence of victim and noticed blood which was coming out from the private parts of the victim. Then, she came to know about the occurrence from the mother of

the victim. She also informed the matter to police of Rakashmari Police Out Post. Then police referred the victim to Tezpur Civil Hospital. The PW 3 also noticed injury on the neck of the victim.

In the cross-examination, PW 3 has stated that she did not witness at the time when the victim was taken to the paddy field. Police did not interrogate her. PW 3 also denied some suggestions put to her by defence.

11 PW 4 is the victim. Before recording her deposition she was asked some questions to ascertain whether she was capable to give the answers properly or not. As she was found fit for giving proper answers so she was examined. In the deposition she has stated that accused took her to the paddy field. Thereafter she was raped. Accused took her to the paddy field by inducing her that she would be given money. She was also beaten by the accused. The blood came out from her private parts. Accused strangulated on her neck. Accused also threatened to kill her at that time. The accused who has been found present before the Court, committed such act (by pointing to the accused). Thereafter accused fled away. Then she stated about the occurrence before her father and her mother observed her pant. Then she was brought to hospital. Police also brought her before the Court and she stated before the Magistrate also.

In the cross-examination, PW 4 has stated that the boys of her village were wicket. She used to play with other girls. Before the occurrence she was playing with other girl namely, Santi and Paulous. When she went to the field some other persons were seen collecting paddy but such persons did not see her. The name of such persons were not known to her. Accused pinched her.

Accused also removed her pant and caught hold her vagina.

12. PW 5 Sri Marius Kujur has stated in his evidence that on the date of occurrence he came to know about the occurrence. He also came to know about the disappearance of the accused from his residence. So, he advised for lodging ejahar before police.

In the cross-examination, PW 5 has stated that being a teacher, general people used to ask some advise from him. He heard about the occurrence on the same day at afternoon.

13. PW 6 Smti Santi Tirkey, an "Asha worker", has deposed in her evidence that on the time of occurrence she was at Dhekiajuli town and after returning to her residence she came to know from the people regarding the occurrence. Then she immediately went to the residence of victim for helping her. When she noticed the victim was found injury on her private parts. Blood was coming from the injury. Then she along with 7/8 persons brought the victim to Kanaklata Civil Hospital and the victim was admitted in the hospital. Thereafter, she heard that such act was committed by accused

In the cross-examination, PW 6 has stated that she reached her residence on the date of occurrence in the evening. On the next day one Panchayat was held. On being asked, the victim informed her (PW 6) that Hemanta Gowala had committed the acts. The victim was brought to the hospital after holding the Panchyaat.

14. PW 7 Sri Bijay Tappo has deposed in his evidence that he only heard that the accused had committed rape on the victim inside a paddy field by

deceit. Though he along with other persons searched for accused but accused was found disappeared. Thereafter he advised for loding the ejahar.

In the cross-examination, PW 7 has stated that on the date of occurrence he went to the residence of victim. He was informed about the occurrence by Silbina Tirky and Anita Tappo. He noticed injury on the victim. He was present in the village Panchayat which was attended by the village people. He has also denied some suggestions put him by defence.

15. PW 8 Sri Bihanu Kissan has stated that he only heard about the occurrence when the people started to search for the accused.

In the cross-examination, he has admitted that he neither witnessed the occurrence nor he asked the victim about the occurrence.

16. PW 9 Sri Tital lal Gowala has stated that he only heard about the occurrence. He also heard that the victim was brought to hospital. Then 3 persons apprehended the accused and handed over to police.

In the cross-examination, he has admitted that he did not enquire about the actual fact.

17. PW 10 is the Investigating Officer. He has stated that on 18-11-2009 while he was working as Incharge of Rakashmari Police Out Post under Dhekiajuli Police Station, on that day he received the ejahar from the informant Felicita Kerketa. Then he made a GD Entry and started to investigate the case by forwarding the ejahar to Dhekiajuli Police Station for registering a case. He has

proved the said ejahar received from the informant as Ext.4. After taking the task of investigation he forwarded the victim for medical examination. He also interrogated the witnesses. He visited the place of occurrence and prepared the sketch map. He has proved the sketch map as Ext.5. On 04-12-09 he forwarded the victim to the Court for recording her statement U/s. 164 Cr.P.C as the victim had to remain for few days at hospital for sustaining injuries. Thereafter, he collected the medical report. During investigation on 25-11-09 he arrested the accused and forwarded him to Judicial custody. And after completing the investigation he submitted the chargesheet against the accused U/s. 376 of IPC. He has proved the chargesheet as Ext. 6.

In the cross-examination, the PW 10 (the Investigating Officer) has stated that he received the information on 18-11-09. About 5 persons came at the time when the ejahar was lodged before him. He has no knowledge about the writer of the ejahar. On the same day he referred the victim for medical examination and thereafter he forwarded the ejahar to Dhekiajuli Police Station. He also inspected the place of occurrence as led by local people on the same day. He did not seize any articles from the place of occurrence in connection with the case. The blood stained was not shown to him nor the 16cloth was produced before him. He did not submit the prayer before the court for recording the confessional statement of accused. PW 10 has admitted that some facts stated by the witnesses before the Court was not stated before him earlier.

18. PW 11 is the learned Judicial Magistrate who had recorded the statement of victim U/s. 164 Cr.P.C. She has deposed that on 04-12-09 while she was working as

Sub-Divisional Judicial Magistrate(S), Tezpur the case record was forwarded to her by Chief Judicial Magistrate, Sonitpur, Tezpur for recording the statement of victim u/s. 164 Cr.P.C in connection with GR Case No. 2156/09. Then she recorded the statement of the victim. She has proved the said statement as Ext.8 and the case record of GR case as Ext. 7.

In the cross-examination, the learned Judicial Magistrate has stated that Homeguard Kiran Saikia brought the victim before her. She did not engage any translator at the time of recording the statement. She did not enquire that whether the victim could sign or not. PW 11 has also denied the fact that the statement was not given by the victim in true sense.

19. So, from the above discussions of evidence of other PWs, it is found that PW 2, the mother of the victim has stated clearly regarding the condition of victim after the occurrence. She has also stated that she noticed blood coming from the private parts of the victim and the victim could somehow walk slowly for arriving at their residence. PW 3 has also stated that after her arrival at the residence of the victim she noticed the injury sustained by the victim on her private parts and blood was found coming out from the injury. She also came to know about the occurrence from the victim herself. PW 4, the victim has specifically stated about the occurrence. She has revealed how she was brought to the paddy field and how the act of rape was committed by the accused. The victim gave a full and vivid description of commission of alleged act by the accused in her evidence. The victim also narrated such fact immediately before her parent after the occurrence. PW 6, a "Asha worker" has specifically stated about the injury noticed by her on the person of victim and the

mental condition of the victim after the occurrence. So, on appreciation of evidence of these PWs, it is found that the evidence of other PWs has adequately corroborated the evidence of victim regarding the act of sexual assault committed by the accused and also regarding the place of occurrence. On the other hand, the evidence of Medical Officer has corroborated the evidence of victim in regards to the occurrence because, the Medical Officer has categorically stated that she found positive finding of sexual assault and mark of strangulation on her neck. It is also found that the victim was medically examined immediately on the next day.

20. The learned defence counsel has submitted that the victim is a minor. She could not know about the act of rape and how it is committed, as revealed by the victim herself. So the rape actually not completed as it is evident from the evidence of victim. The learned defence counsel has further submitted that the injury sustained by victim was actually caused due to negligent act of accused as accused removed the pant of victim negligently. But considering the evidence of PWs in it's entirety, the above submission of learned defence counsel can not be relied upon. On the other hand, the other PWs stated some facts in their evidence which were not stated by them before the Investigating Officer at the time of investigation. But considering the evidence of PWs in it's entirety such minor infirmities can not discard the reliability of PWs because the evidence of PWs is found very much cogent and trustworthy. Moreover, though the learned defence counsel has submitted that such act committed by the accused does not fall under the category of offence of rape as define U/s. 375 of IPC. But considering the evidence of victim which is supported by the medical report, I am of the considered opinion that the act committed by the accused clearly falls within the category of act of rape as

define U/s. 375 of IPC. There is no contradiction regarding the date of occurrence, regarding the time of occurrence and the nature of occurrence in the evidence of PWs. So, the evidence of PWs has remained unshakened. Moreover, on perusal of medical report (Ext.1) it appears that the victim had to be admitted in the hospital due to sustaining injury for causing sexual assault by the accused and she had stayed at hospital for 13 days for getting medical treatment. She was found in a condition of mental shock and pain with high rise of temperature when she was brought to the hospital by the police. So, considering such fact stated by the Medical Officer in the report, I find that the medical report has adequately corroborated the evidence of victim. The evidence of victim inspires the confidence to hold such opinion that there was none but the accused who had committed the sexual assault on victim at relevant point of time. Because after meticulous examination of evidence of victim and the evidence of Medical Officer including medical report (Ext.1) it is found crystal clear that the accused had thrust his penis into the vulva of victim causing pain and mental shock. The Medical Officer has clearly indicated that there was a bruise mark over the vulva, tear present on posterior wall of the vagina with bleeding.

21. After going through the evidence of Investigating Officer, it is found that he had received the ejahar on the next day of occurrence as the occurrence took place at afternoon on previous day and he inspected the place of occurrence and referred the injured person on the same day. So, such evidence of Medical Officer has corroborated the evidence of victim and the evidence of PW2 (mother of the victim). Though in the cross-examination the Investigating Officer has admitted that nothing was seized in connection with the occurrence but such minor infirmities can not discard the reliability of

evidence of Investigating Officer. PW 11, the Judicial Magistrate has also clearly stated that she recorded the statement of victim U/s. 164 Cr.P.C as stated by her. The victim was also identified and escorted by home guard before recording the statement. After examination of fact stated in the statement recorded U/s 164 Cr.P.C., it is found that the victim had stated same fact which is very clear and unambiguous. So, evidence of Judicial Magistrate is also found corroborative. In regards to the age of the victim it is also found from the evidence of victim herself and mother of the victim that the age of the victim was 7-8 years at the time of occurrence. The Medical Officer has also confirmed the age of the victim as below 7 years. So, considering the evidence of Medical Officer, the victim and the PW 2, I am of the considered opinion that the age of the victim was within 8 years old at the time of occurrence. So, she was found minor. Moreover, the defence has not disputed the matter regarding the age of the victim.

22. After appreciating the evidence in reference to the first point of determination of the case, it is found that the prosecution has established with the cogent and reliable evidence that the accused committed rape on the victim at the time of occurrence for which the victim had to undergo medical treatment at hospital for 13 days. She had to suffer mental shock and paid due to such occurrence. And after appreciating the evidence in regards to the second point of determination, it is also found that the victim is a minor under 12 years of age. So, for the reasons stated above, I am of the considered opinion that the prosecution has proved with the evidence beyond reasonable doubt that the accused committed the offence U/s 376 (2)(f) of IPC. I find no other material on record to hold the opinion otherwise. Hence, the accused is found guilty for committing offence U/s 376 (2) (f) of IPC.

23. Considering the facts and circumstances of the case and also considering the gravity of offence committed by accused, I am of the considered opinion that it is not a fit case to invoke the provision of section 360 of Cr. P. C as the accused is found committing sexual assault on a minor girl.

24. Heard from accused on point of sentence u/s 235 (2) CrPC . Though the accused has stated that when he was examined U/s. 313 Cr.P.C that he was noway connected with the occurrence and the case was completely false but such plea taken by the accused is found not reliable in view of the material found in the evidence of PWs. So, the accused is liable for conviction under the said section of law. Considering the reasons stated above, I find that the accused is deserved to be convicted with sentence of imprisonment as well as fine. But as the accused is found committing such crime for first time so such fact can be considered at the time of passing the sentence. The age factor is also taken note of as special reason while passing the sentence of imprisonment.

O R D E R

25. As the prosecution has proved the case beyond reasonable doubt against the accused for committing offence u/s 376 (2) (f) of IPC, so he is convicted with sentence of Rigorous imprisonment for 5 (five) years and to pay the fine of Rs. 2,000/- (rupees two thousand) in default Simple Imprisonment for another 2 (two) months for the offence committed u/s 376 (2) (f) of IPC by considering the special reason that the accused is found committing the crime for first time and he has no criminal record as stated by him when he is heard u/s 235 (2) of Cr.P.C and the accused is found aged about 20 years only.

26. It is also ordered that the period of detention, if any, shall be set off from the period of imprisonment.
27. The fine mount, if realised, shall be given to the guardian of victim as compensation.
28. Let a copy of judgment be furnished to the accused with free of cost as per section 363 of Cr.P.C.
29. Let a copy of judgment also be furnished to the District Magistrate, Sonitpur, Tezpur.
30. Given under my hand and seal of this Court on this day, the 10th day of July, 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. J. Begum(M.O),
PW 2	:	Smti Felicita Kerketa,(informant)
PW 3	:	Smti Anita Tappo,
PW 4	:	Miss Julita Kerketa (victim)
PW 5	:	Sri Marius Kujur
PW 6	:	Smti Shanti Tirky
PW 7	:	Sri Bijay Tappo
PW 8	:	Sri Bihanu Kissan
PW 9	:	Sri Titanlal Gowala
PW 10	:	Sri Bholaram Bora,Investigating Officer.
PW 11	:	Smti Mousumi De, SDJM(M), Bijni, Bongaigaon.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1	:	Medical report.
Exhibit 2	:	Discharge certificate
Exhibit 3	:	Report of vaginal smear
Exhibit 4	:	ejahar.
Exhibit 5	:	Sketch map.
Exhibit 6	:	Chargesheet.
Exhibit 7	:	GR record
Exhibit 8	:	Statement of the victim recorded u/s. 164 Cr.P.C.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

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