

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
SONITPUR :: TEZPUR

Sessions Case No. 160 / 2011.

GR Case No. 1840/2010

(under section 448/376 IPC)

State of Assam

- **Versus** -

Sri Gopal Sachani.

Present : Mrs. M. Nandi,AJS,
Addl. Sessions Judge,
Sonitpur, Tezpur.

Appearance :

For the State : Mr. H.P .Sedai,
Addl .Public Prosecutor.

For the accused : Mr D. Saikia, Advocate.

Date of evidence : 02-04-2012.

Date of argument: 02-04-2012.

Date of judgment : 02-04-2012.

J U D G M E N T

1. The prosecution case in brief is that the informant Sri Prahlad Sachani lodged an Ejahar before the O/C of Dhekiajuli Police Station stating inter-alia that on 21-09-2010 at about 11 a.m. while his daughter Namita Sachani was in his house accused Gopal Sachani came there and committed rape on her by using force. On receipt of the ejahar, Police registered the case and after completion

of investigation submitted charge-sheet against accused Gopal Sachani U/s. 448/376 of IPC showing him as absconder.

2. During trial, the accused put his appearance before the Court. He was enlarged on bail. Charge was framed U/S 448/376 of IPC and explained to the accused Gopal Sachani to which he pleaded not guilty and claimed to be tried.

3. To bring home the charge, the prosecution has examined 3 witnesses and the defence examined none and plea of defence is of total denial.

4. Point for determination is-

1. Whether the accused Gopal Sachani on 21-09-2010 at about 11 a.m. at Panbari Tea Estate Post office line, under Dhekiajuli Police Station committed criminal trespass by entering into the house of the informant Prahlad Sachani with intent to commit rape on Miss Namita Sachani and thereby committed an offence punishable U/s. 448 of IPC.

2. Whether on the same date, time and place you committed rape on Miss Namita Sachani and thereby committed an offence punishable U/s. 366 of IPC.

DECISIONS AND REASONS THEREOF

5. To arrive at the just decision of the case, let me consider the evidence of the witnesses.

6. The victim was examined in this case as PW 1. She deposed in her evidence that about 1½ years ago at about 11 a.m.

the accused came to their house and asked for some powder and accordingly she gave powder and he left his house. At that time she was alone in the house. Her brother Bijoy was outside the house. The accused did not commit any misdeeds towards her. Earlier she came to the Court and her statement was recorded by Magistrate but she could not recollect what she stated before the Magistrate. She put her thumb impression on her statement.

In her cross-examination PW 1 replied that what she stated before the Magistrate as per direction given by the villagers and she stated that the accused committed misdeeds towards her. In fact the accused came to her house in search of powder. As she refused to give powder to the accused an altercation took place between them.

7. PW 2 is the informant as well as the father of the victim. He deposed in his evidence that about 1 ½ years ago in the morning hour, he and his wife went out for work and his daughter Namita and son Bijoy were in their house. At that time the age of the his daughter Namita was about 18 years and Bijoy was about 20/22 years old. When they came home at about 12 noon he came to know that accused Gopal came to their house in search of powder and an altercation took place between Gopal and his daughter and son. His daughter Namita did not tell anything. His son Bijoy stated that accused Gopal sat in their bed and altercated with Namita for powder. Thereafter he lodged the ejahar. He could not say what was written in the ejahar as he did not read over the same.

In cross-examination PW 2 replied that the ejahar was written by one Muhuri. After writing the ejahar the mohuri did not read over the same before him. As an altercation took place between his son and daughter and the accused for powder, he lodged the ejahar.

8. PW 3 is Bijoy Sachani, who is the brother of the victim. He deposed in his evidence that on the date of occurrence at about 10-30 a.m. his parents went out for work. He and his sister Namita were in home. At that time accused Gopal came to their house and talked with his sister Namita and asked for some powder. Gopal used said powder to his cheek and they asked Goplal to leave the place. At that time his uncle Dina Sachani came to their house and found Gopal and his Sister Namita sat in their bed and enraged. Thereafter, his father filed the case.

9. On perusal of the evidence of the aforesaid witnesses, it is seen that though the informant alleged in his ejahar that the accused trespassed into the house and committed rape on her daughter but he deposed before the court, he has resiled from his earlier statement. He has stated that he was not present in his house at the time of incident. His daughter Namita did not tell anything about the incident. His son Bijoy stated that the accused came to their house and accused sat in their bed and an altercation took place between accused and his sister Namita for powder. The victim also stated that on the date of occurrence accused Gopal came to their house and asked some powder and she gave some powder to Gopal and he has left the place. The victim further stated that she gave statement before the Magistrate but she could not recollect what she stated before the Magistrate. She replied in her cross-examination that as per direction of some members of their village she stated before the Magistrate that the accused committed misdeeds towards her.

10. One medical report of the victim is available in the record from which it reveals that the victim Namita Sachani was examined by doctor on 23-09-10 and doctor opined that no sign of injury found on her body and private parts. One Radiological report

is also available in record wherein doctor stated that the age of the victim Namita Sachani is about 18 years . So, considering the fact above, I am of the opinion that the victim was a consenting party at the time of incident as there was a proposal to marry the victim by the accused and subsequently, when the accused refused to marry her the complainant lodged the FIR. There is no implication against the accused in committing rape towards the victim Namita Sachani in the statement of the witnesses deposed before the Court.

11. Hence, I acquit the accused Gopal Sachani and set him at liberty forthwith.

12. Given under my hand and seal of this Court on this 2nd day of April, 2012.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur, Tezpur.

Dictated and corrected.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur, Tezpur.

Typed by me.

(R.Hazarika) steno.

A P P E N D I X

Prosecution witnesses:

- P.W.1 - Smti Namita Sachani(victim),
- P.W.2 - Sri Prahlad Sachani(informant)
- P.W.3 - Sri Bijoy Sachani.

Defence witnesses -

NIL

Prosecution Exhibit

- Ext.1 - Eajahar.

Defence Exhibits -

NIL

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur, Tezpur.