

J U D G M E N T

1. The relevant fact of the prosecution case, as unfolded from the ejahar, in brief, is that on 05-03-05 informants, Secretary and President of Mansiri Anchalic Library Managing Committee lodged an Ejahar before Salonibari Police Out Post under Tezpur Police Station stating inter-alia that on 03-03-05 at night, the accused Binod Chetri @ Bastola committed rape on the victim and left her at Kachubil in serious condition. So, the informant prayed before the police for taking necessary action.

2. After receiving the aforesaid ejahar, the I/C of Salonibari Police Out Post made the GD Entry and the ejahar was also forwarded to Tezpur Police Station for registering a case. And on being received the ejahar, the O/C of Tezpur PS registered the case bearing Tezpur Police Station Case No. 176/05. Police investigated the case. During the period of investigation, the Investigating Officer produced the victim before the Medical Officer for medical examination. He also produced the victim before the Magistrate for recording the statement u/s 164 Cr.P.C. And after completing the investigation, the Investigating Officer submitted the Charge sheet against the accused u/s 376 of IPC.

3. On appearance of the accused person in the Court of learned Magistrate, copies of police paper sent as per provision of

Section 173 Cr.P.C., were furnished to him and as the offence under Section 376 of Indian Penal Code was exclusively triable by the Court of Sessions, the case was committed to this Court for trial.

4. During the process of trial, on appearance of the accused person in this Court and also on going through the documents referred to in Section 173 of Cr.P.C. and after hearing the learned Public Prosecutor and the learned defence counsel, a charge under Section 376 of Indian Penal Code was framed against the accused by the then learned District & Sessions Judge. The accused pleaded not guilty when the particulars of charge was read over and explained to him and so, the case proceeded for further trial.

5. To bring home the charge framed against the accused person, the prosecution examined as many as 16 (sixteen) witnesses in this case including the Medical Officer and the Investigating Officer. Thereafter, the case was transferred to this Court for disposal. Due to death of the victim as per police report, her evidence could not be recorded. The statement of the accused person was also recorded U/S 313 of Cr.P.C. and the accused denied all the allegations, but refused to adduce any defence evidence. So, the case was fixed for argument.

6. Learned Additional Public Prosecutor as well as the learned counsel for the accused made their respective arguments. I have perused the entire materials on record including the exhibits, made by the prosecution side during examination of the witnesses.

7. The learned Additional Public Prosecutor has argued that the case has been fully proved against the accused person by the prosecution and the accused is liable to be punished.

Controverting his argument, the learned defence counsel has submitted that the prosecution has failed to prove the case against the accused person beyond all reasonable doubt and therefore, the accused is entitled to acquittal.

8. Now, the Point for determination is -

Whether on 03-03-05 at night hours at Kachubil under Tezpur Police Station, the accused committed rape on the victim, as alleged and is punishable u/s 376 of IPC ?

DISCUSSIONS, DECISION AND REASONS THEREOF

9. To come to a decision as to the extent to which the prosecution has proved the case u/s 376 of IPC against the accused Binod Chetry @ Bastola, the evidence on record is required to be analysed, along with the exhibits.

10. PW 1 is the then Judicial Magistrate, Ist class, Tezpur who recorded the statement of the victim u/s 164 Cr.P.C. and she has proved the said statement as Ext. 2. She has further stated that the victim was produced before her by constable No. 509 Sri Bhaskar Das. It is also stated by the learned Judicial Magistrate that after recording the statement of victim, she explained the contents to her and finding the same to be correct, the victim had put her thumb impression and Ext. 1 was GR Case No. 373/05 in which record the said statement was recorded. Also Ext. 1(1), the order of the learned Chief Judicial Magistrate, entrusting her to record the statement u/s 164 Cr.P.C. has been exhibited. Ext.1(3) is the order of PW 1 where Ext.1(4) is her signature. Furthermore, Ext. 2 was

the statement of the victim wherein Ext.2(1) is her signature. The signature of constable Bhaskar Das is also exhibited as Ext. 2(2) and Exhibit 2(3) to 2(6) are the signatures of Smti Jharna Dutta who had taken the thumb impression of victim.

Corresponding to this, on going through the statement recorded u/s 164 Cr.P.C., I find that the victim had stated before the Judicial Magistrate that on the day of incident i.e. on 03-03-05 the victim was coming from Guwahati to Itakhola and when the vehicle stopped at nagon and she had gone there to take tea one person i.e. the accused came and told her that there was no further vehicle to go home and so, as he was the friend of her elder brother she could stay with him for that night. In the statement she also stated that though she had declined to go with him but when the vehicle reached Ghoramara Station it was already dark and so she went with him. At the time of going to the house of the accused she was forcibly raped in the paddy field by the accused. Thereafter she was taken to his house where the wife of the accused kept her and in the next morning she informed the matter to a neighbour of the accused. The village headman was also informed who handed over to Mahila Samity and from there she had come to her house.

11. The next witness is PW 2, the informant who is the Secretary of the Mansiri Anchalik Library Managing Committee and he in his deposition stated that he had seen the girl at Kochubil who informed him that she was raped and on that information he went with the other members of the committee to the house of the person who was reported to have committed the offence. But he deposed that he has forgotten the name of the person in whose house the victim was kept. It was the victim who had told him that the accused had committed the offence and so on her version he had filed the ejahar before the Salonibari Police Out Post and he has

exhibited his signature as Ext.3(1) in the FIR which is Ext. 3. So, the informant had filed the ejarah on the version of the victim.

This witness has admitted in his cross-examination that the victim was sexually assaulted but he did not mention the same in the F.I.R. What had prevented him from mentioning the name of the accused in FIR has not been explained by the prosecution. He also in his cross-examination stated that he did not ask the age of the victim and also did not ask the details of the incident by asking her. This portion of evidence also creates the doubt. As a heinous offence of 376 of IPC it is not believable that before filing the FIR he did not ask the victim in details about the incident. He also deposes that the victim did not tell about the place where she sexually assaulted. He also deposed that the victim's father had come to their village Committee after a week of the incident but the members of the committee did not ask him whether the victim had returned home or not. This evidence is also not believable and creates a doubt as to the incident.

12. PW 4 Sri Keshab Sarma who is the Secretary of the State Youth Congress and PW 5 Smti Subhadra Chetry, the wife of the accused, both have deposed that they do not know anything of the incident and PW 5 also deposes that on the night of the incident her husband had come at night with the victim and on the next day she left the house.

13. PW 6 is Smti Jeenamoni Chetry and she in her deposition stated that she knows the fact that the accused Binod Chetry was a School teacher and one day police had come and asked her about the incident. This evidence also has not helped to the prosecution case.

14. PW 3 Sri Sudhan Bhengra in his deposition before the Court stated that he is one of the complainant and President of the Mansiri Anchalik Library Committee. On 04-03-05 some persons came and told him to accompany them to Kochubil as some incident had taken place. So, he went there and saw a girl lying in a bed in a house and when he asked her about her name and she stated that her name was Anita Bouri, daughter of Lakhi Bouri of Itakhola Dikorai.. She has also told him that on the previous night she had sexually assaulted by Binod Chetri in the Kochubil. She also deposed that the victim did not know the exact place where the incident taken place, so he went to Salonibari Police Out Post.

In his cross -examination he says that the ejahar was lodged on 05-03-05 and the house of the victim was at about a distance of 2 km from their Committee. He got the information at about 4 p.m. Immediately he went to the house where the victim was kept. Thereafter, police came and took her to the hospital. He has also deposed that it was not false that the accused Binod Chetri was not invoved in the incident.

15. Among all the witnesses deposed so far none of them seen the incident and so the implication of the accused has not been properly substantiated by any of the witnesses.

16. PW 7 is Smti Silwanti Kangari. In her evidence she states that 3 years back the victim came to her house in the early morning and stated that she was suffering from stomach pain. She (victim) also told that the accused Binod Chetry had sexually assaulted her. Thereafter, the villagers took her to the Tezpur Civil Hospital and from there she was taken to home by her father. This witness also deposes in cross-examination that she did not know the victim or where from she had come and for how many days she had

stayed in the house of the accused. She also deposes that she did no see any injury on the body of the victim.

17. The next witness is PW 8 Smti Gita Orang. She has also deposed similarly as PW 7 stating that about $\frac{3}{4}$ years back one early morning PW 7 Smti Silwanti Kangari came to her house and told her that the girl named Anita Bouri came to her house and complained to her about sexual assault. She also deposes that at that time many people had gathered there and subsequently, the villagers took the victim to the hospital.

18. PW 9 is Sri Lokus Kangari and he is also a reported witness stating that the villagers told him about the incident.

19. PW 10, PW 11 and PW 12 namely, Smti Tulsi Devi, Sri Narayan Chetri and Sri Bircha Bhengra also gave a similar evidence stating that they had heard about the incident and the victim has stated about the incident. But they do not give any evidence which lead to the inference that the accused Binod Chetry had committed the offence. Their evidence is not of very much important towards the commission of offence of 376 of IPC by the accused.

20. PW 13 is the Dr Achinta Kr. Baruah who had examined the victim and he in his evidence stated that on examination he found the age of the victim was 15 -16 years and there was sign of sexual assault on her vaginal canal. In his evidence he also states that there was also bleeding injury found on her vaginal canal but he also gave the opinion that other than sexual assault such injury can be caused. He also deposes that though he had written the age to be 15-16 years it may vary upto 19 years.

21. PW 14 Sri Ratna Man Lama has stated that he does not know anything about the incident. PW 15 Sri Narbusing Lama also in

his evidence stated that the victim girl had reported about the incident but again he deposed that he does not know what had happened.

22. PW 16 is Sri Loknath Deka who was the Incharge of Salonibari Police Out Post and he had submitted the chargesheet on the investigation done by ASI Habibur Rahman. His evidence is a formal evidence and he has deposed as to how he had submitted the chargesheet on the evidence recorded by ASI Habibur Rahman.

23. In the statement recorded by me u/s 313 Cr.P.C, the accused Binod Chetry denied all allegations against him and he refused to give any defence evidence.

24. On a close analysis of the evidence discussed above, it is very clear that none of the witnesses are eye witnesses and none have implicated in any manner the commission of offence of sexual assault on the victim by the accused Binod Chetry. The victim in this case could not be examined as she died just before the evidence commenced. And in cases of sexual assault, the evidence of victim is the most vital one to prove the case. Though the evidence of the Doctor reveals that there was injury and signs of sexual assault on the victim, he also stated that such injury may be caused due to some other reasons also. Under the circumstances, it is concluded that the commission of offence by the accused Binod Chetry of 376 of IPC is not at all attracted. Offence u/s 376 of IPC must be proved beyond all reasonable doubt by the prosecution and in this case, the prosecution has failed to do so. So, I do not find any reason to convict the accused Binod Chetry for committing an offence u/s 376 of IPC. Accordingly, he is given the benefit of doubt. Hence, he is acquitted on benefit of doubt and set at liberty forthwith unless he is wanted any other case.

25. Given under my hand and seal of this Court on this 29 th January, 2013.

(M.R. Sharma)
Addl. Sessions Judge ,
Sonitpur, Tezpur.

Dictated and corrected.

(M. R. Sharma)
Addl. Sessions Judge ,
Sonitpur, Tezpur.

Typed by me.

(R. Hazarika)
Steno.

A P P E N D I X

Prosecution witnesses:

- P.W.1 - Ms Sabina Mazumdar, Judicial
Magistrate.
P.W.2 - Nazarul Islam,
P.W. 3 - Sri Sudhan Bhengra,
P.W. 4 - Sri Keshab Sarma,
P.W. 5- Smti Subhadra Chetri,
P.W. 6- Smti Jeenamoni Chetri,
P.W. 7- Smti Silwanti Kangari,
P.W. 8- Smti Gita Orang,
P.W. 9- Sri Lokus Kangari,
P.W.10- Smti Tulsi Devi,
P.W.11- Sri Narayan Chetri,
P.W.12- Sri Bircha Bengra,
P.W.13- Dr. A.K. Baruah, M.O.,
P.W.14- Sri Ratna Man Lama,
P.W.15- Sri Narbusing Lama and
P.W.16- Sri Loknath Deka,I.O.

Defence witnesses -
NIL

Prosecution Exhibit

- Ext.1 - GR Case No. 373/05.
Ext. 2 - Statement u/s 164 Cr.P.C of victim
Ext.3 - Ejahar,
Ext.4- Medical report
Ext. 5 - GD Entry,
Ext. 6 - Written ejahar
Ext. 7 - Chargesheet

Defence Exhibits -
NIL

(M.R. Sharma)
Addl. Sessions Judge ,
Sonitpur, Tezpur.