

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

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

**SESSIONS CASE NO. 147 OF 2010**

**GR Case No. 665/ 2010**

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

State of Assam ..... **Complainant**

**–Versus –**

1. Sri Biru Bhumij,  
S/O Sri Bansha Bhumij  
Vill-Dibru Darrang Tea Estate,  
Line No.3,  
PS Dhekiajuli  
Dist.Sonitpur,Assam..... **Accused Person**

**ADVOCATES APPEARED:**

For the State : Sri Mahendra Bora,  
Additional Public Prosecutor

For the accused person : Sri J. Sundi.  
Advocate

**Date of evidence** : **04– 10– 2010, 20– 04– 2011  
13– 05– 2011, 15– 05– 2011,  
02– 06– 2011, 27- 06- 2011,  
16- 07- 2011 & 13- 12- 2011.**

**Date of Argument** : **28- 05 – 2012**

**Date of Judgment** : **11– 06 – 2012**

## J U D G M E N T

**1.** Briefly, the prosecution case as reflected in the case record may be narrated thus:

The informant Sri Pitrush Saren, a resident of Dibru Darrang Tea garden, line No.3 within Dhekiajuli Police Station lodged the ejahar before Dhekiajuli P.S on 17-04-10 stating interalia that on 15-04-10 at about 7 p.m. the accused Biru Bhumij induced the minor daughter of informant Smti Martha Saren, aged about 7 years and thereafter committed rape on her inside the Dibru-Darrang Tea garden. So, the informant prayed before the police for taking necessary action.

**2.** After receiving the aforesaid ejahar, the Officer-in-Charge of Dhekiajuli PS registered a case bearing Dhekiajuli Police Station Case No. 126/10 u/s 376 of IPC. Police investigated the case. During the period of investigation, the Investigating Officer produced the victim for recording her statement by the Magistrate u/s 164 CrPC. She was also produced for medical examination. During the period of investigation the Investigating Officer also arrested the accused and forwarded him to judicial custody and after conclusion of investigation, the Investigating Officer submitted the Charge sheet against the accused u/s 376 of IPC. Hence, the prosecution case.

**3.** After appearance of the accused the learned Judicial Magistrate committed the case to the learned Sessions Judge, Sonitpur, Tezpur. Then the case was made over to this Court. Accordingly, trial was taken up by this Court. Considering the materials available on case

record and on relevant documents of case diary, the charge was framed against the accused under Sections 376 (2) (f) of IPC. Then the contents of charge was read over and explained to the accused person, to which, the accused person pleaded not guilty and claimed to be tried.

**4.** During the trial, the prosecution has examined as many as 10 (ten) PWs including the victim and the Medical Officer to bring home the case. 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. And after the close of trial, judgment is delivered.

**5. Point for determination of the case:**

1. Whether the accused committed sexual intercourse with the victim who is a minor under 12 years of age at the time of occurrence?

**Discussion, Decision and reasons for Decision:-**

**6.** The prosecution has examined amongst other the Medical Officer and the victim to establish the charge against the accused. So, I like to deem it necessary to discuss the evidence of victim and the Medical Officer for convenient discussion.

**7.** PW 1, the victim has deposed that at the time of occurrence while she was dancing during the Bihu festival then she was taken away by accused. Then the accused removed her pant and gagged her mouth. Then accused committed rape on her by lying her on earth and

also by removing his own pant. Then she was brought by accused near a well and allowed her to come from there. Then she narrated the incident before her parents and before her elder sister. Her mother kept her pant. She was brought by police to Tezpur Hospital and before the Magistrate and she narrated about the incident before the Magistrate.

In her cross-examination, the victim has stated that there are some other children at the place where she was dancing. Accused took her away by inducing her and at that time other children saw her. At that time her elder sister obstructed her to go with the accused.

**8.** So, from the above discussion of evidence of victim, it is found that the victim has narrated clearly that the accused had taken away her from the place where she was dancing during the Bihu festival. She was brought towards inside the tea garden and committed rape on her by accused by lying her on the earth and also by removing her clothes.

**9.** In this context, I like to discuss the evidence of Medical Officer, because the evidence of Medical Officer is very much important as charge was brought against the accused for committing rape on a minor girl.

**10.** The Medical Officer has stated in his evidence that on 17-04-10 while he was working as Medical & Health Officer -1 at Kanaklata Civil Hospital and on that day he examined the victim on the basis of police requisition in reference to Dhekiajuli PS Case No. 126/10. At that time the victim was escorted and identified by

female Home Guard Rubi Bora. On examination he found as follows :

Height – 3 feet, Weight – 15 kgs, Teeth : Upper -12 Lower - 12 . Secondary sexual character were absent. Vulva and vagina were healthy. No injury found in the vagina, but it was tender on touch. Vaginal swab was taken and report falls to show human spermatozoa.

X-ray of the wrist, elbow and iliac crest advised.

Report patient's ID No : L -20 dt. 20-04-2010.

(i) Epiphysis of lower end of left radius is open.

(ii) Epiphysis of lower end of left ulna is not appeared.

(iii) All Epiphysis of the bones around the left elbow joint are open.

Age of the person was below 10 years. No sign of violence found on her private part.

Then he submitted the medical report and he has proved the medical report as Ext.1.

In the cross-examination, the Medical Officer has stated that he is a Gynecologist working at Kanaklata Civil Hospital. He has agreed with the opinion that in case of rape of minor girl if full penetration beyond vulva is done, the tearing and damages of the tissues became extreme and it is frequently danger to life. In case of rape of minor girl, hymen rupture including rupture of vaginal fault taken place. He did not find any sing of penetration but only found tender on touch.

**11.** So, on discussion of evidence of Medical Officer and also on perusal of medical report (Ext.1) it is found

that the Medical Officer did not find the sign of penetration during the examination. He has further stated that if rape was committed on a minor girl and if there was penetration beyond vulva then the tearing and damages of tissues became extreme and it is frequently danger to life. In case of rape of minor girl, hymen rupture including rupture of vaginal fault takes place. He has further stated in the report that he found no sign of sexual violation on the private part of the victim. He only found the vagina as tender on touch. So, on meticulous examination of medical report, it is found that the penetration to the private part was not caused at the time of occurrence. Though the penetration is necessary to cause the sexual intercourse as provided in the definition of rape mentioned in Section 375 of IPC. The Medical Officer only found tender on touch on the vagina at the time of examination so, I am of the considered opinion that though the rape was not completed but it is the definite case that the accused made attempt to commit rape on the victim at the time of occurrence. And he did his acts towards the commission of rape. Considering the above material in it's entirety, I do not find any material to hold the opinion otherwise.

**12.** Now, I like to discuss the evidence of other witnesses to find out – whether the evidence of victim has been corroborated by the evidence of other PWs.

**13.** PW 1, the informant Pitrush Suren. He has stated that at the time of occurrence his daughter's age was 7 years. At that time he was in duty and his daughter had gone for dancing during Bihu festival and his daughter was found not return to residence. Thereafter he came to know that accused had brought his daughter to the Tea

Garden and committed rape on her. In that connection one Panchayat was held on the next day. The accused denied about the occurrence. So he lodged the ejahar before Dhekiajuli PS after 3 / 4 days. He put thumb impression on the ejahar. After lodging of ejahar his daughter was brought to Civil Hospital by Police for examination. His daughter was also produced before the Magistrate for recording her statement.

In the cross-examination, PW 1 has stated that the ejahar was written by police. PW 1 has further stated during cross-examination that before the occurrence quarrel brought out between the accused and his wife. The victim was also assaulted by the brother-in-law of the accused. There is no cordial relation between his family and the family members of accused at the time of occurrence.

**14.** PW 2, the mother of the victim has stated that at the time of occurrence his daughter (victim) had gone to the residence of accused for dancing. Then accused took her away to the Tea garden and committed rape on her by removing her pant. At that time, the mouth of victim was also gagged by the accused. Then, the accused brought the victim and left her. Then she was informed by her daughter about the incident. Thereafter she washed the pant used by the victim at the time of occurrence. The victim also stated regarding pain occurred in her private part. After 2 days the FIR was lodged by her husband. Then police brought her daughter to hospital and before Magistrate for recording her statement.

In the cross-examination, the PW 2 has stated that the residence of accused situated in front of her residence. Some quarrel occurred between the family members of both the families at the time of occurrence. About 50 children gathered for dancing at the place of occurrence. She washed the pant because she did not think that the pant would be required in connection with the case. At first her daughter was taken to hospital of Tea Garden for medical treatment.

**15.** PW 4 Sri Luis Soren has stated that at the time of occurrence he was not at his residence so he came to know about the incident only on the next day.

In the cross-examination PW 4 has stated that the behaviour of the accused was not good before the occurrence. The police visited the place of occurrence after 2 days. Police did not interrogate him.

**16.** PW 5 Bijay Sasoni has stated that at the time of occurrence he was not present. Thereafter he came to know about the incident that the accused had committed rape on the daughter of Pitrush Suren.

**17.** PW 6 Mantu Tanti has stated that on the next day he came to know that the accused had committed rape on the minor daughter of Pitrush who was aged about 5/6 years. The occurrence took place inside the line of Tea garden.

In the cross-examination, the PW 6 has stated that he came to know about the occurrence from the informant and he discharged his duty of chowkidar inside the tea garden at the relevant point of time.

**18.** PW 7 Paulosh Tapna who has been declared hostile by the prosecution, has stated during cross-examination by prosecution that he did not state before police that he had come to know about the occurrence from the victim. During cross-examination by defence PW-7 has stated that before the occurrence he had gone to Rangapara and he came back after 2 days from Rangapara and after his return from Rangapara all the persons of tea garden came to know about the occurrence.

**19.** PW 9, the Investigating Officer has stated that on 17-04-2010 the O/C of Dhekiajuli PS had received the written ejahar. Thereafter he was directed for investigation of the case. On the same day, he inspected the place of occurrence and prepared the sketch map of the place of occurrence. He also examined the witnesses. He referred the victim for medical examination. Then, he collected the medical report. The victim was also sent to the Court for recording her statement by Magistrate U/s. 164 Cr.P.C. 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 IO has stated that he did not mention the distance between the place of occurrence and nearby roads in the sketch map. He did not mention about the residential quarters situated near the line No.3 and the road who was marked as "B" in the sketch pay. He did not know if the victim was examined by any other Medical Officer prior to lodging of the FIR.

**20.** PW 10, the learned Sub-Divisional Judicial Magistrate has stated that on 20-04-2010 she recorded the

statement of victim as per order of learned Chief Judicial Magistrate, Sonitpur, Tezpur in connection with GR Case No. 665/10. She has proved the statement of victim as Ext.8. The victim put her thumb impression on the statement .

In the cross-examination, the learned Sub-Judicial Magistrate has stated that she put questions to the victim in Assamese as the victim could understand Assamese. She denied the fact that the victim was not conversant with the Assamese language, so she could not answer the questions properly.

**21.** On the back drop of aforesaid material on record, I deem it necessary to discuss the material on record in the light of point for determination of the case for coming to final conclusion.

**22.** From the above discussion of evidence of above PWs, it is found that PW 1 and 2 are the parents and from the appreciation of their evidence, it is found that the PW-2, the mother of the victim noticed the condition of the victim immediately after the occurrence. She also kept the pant used by the victim at the time of occurrence and washed it as she did not imagine that the cloth would be required for the investigation of the case. On the other hand, the PW 1 and 2 have admitted that some quarrel occurred between the family of the accused and them. But such minor infirmity can not discard the reliability of the evidence of PW 1 and 2. And except this minor infirmities, the defence has failed to bring out the major contradiction in their evidence. So, I find no ground to disbelieve the evidence of PW 1 and 2. Rather it is found that their evidence has categorically corroborated the evidence of

victim. On appreciation of evidence of other PWs it is also found that they only heard about the occurrence from the informant as they are the neighbours of the informant. Though they are not the eye witnesses but considering the material on the evidence of witnesses I do not find any ground to disbelieve their evidence as they heard about the occurrence immediately after the occurrence. On appreciation of evidence of Investigating Officer, it is found that the FIR was lodged on 17-4-10 after 2 days from the date of occurrence and as per ejahar the occurrence took place on 15-04-10 at about 7 a.m. On the other hand, the PW 1 has admitted that one Panchayat was held in Tea Garden in connection with the incident and thereafter, the FIR was lodged against the accused. So, considering such facts and circumstances, I find that the delay of 2 days in lodging the FIR can not be ground to disbelieve the prosecution case. Such delay can not be fatal to the prosecution case.

**23.** During the course of argument, the learned defence counsel has cited the following paragraph from the **Medical Jurisprudence and Toxicology** in support of the defence :

*“ In the case of small children, the genital injuries found are either absolutely minimal or of such magnitude that one is unable to perform the examination without general anaesthetic. It must be remembered that it requires a great amount of force, exerted via the penis, to effect full penetration into the small under-developed child. Because of this, many rapists of small children are satisfied to commit what is described as rape without full penetration. If, however, insertion of the penis goes beyond the ulva, the tearing and damage of the tissues are so extreme that frequently a real danger to life exists and in fact a proportion of these cases have a fatal outcome.”*

The learned counsel has also cited the decisions reported in (1) Air 2011 SC 2552 and (2) (200)2 Gauhati Law Reports 241. In support of the contention the accused can not be convicted if the evidence of victim has not been adequately corroborated by the medical Officer. But after going through the above decisions of Hon'ble Supreme Court and Hon'ble Gauhati High Court, it is found that the above decisions are not applicable in the instant case because the facts and circumstances of the case are found different.

**24.** In this context, I like to cite the decision in the case of **Dwarika Bhuyan Vs State of Assam** reported in (2007) 1 GLR 281 regarding the importance of Medical evidence to prove the offence of rape. In para 18 the Hon'ble Gauhati High Court has observed that -

“ .....a victim of sexual assault is not an accomplice and her evidence needs no corroboration from any kind of evidence, medical or otherwise, the facts remains that in order to enable a court to base, in a case of sexual assault, conviction of an accused on the sole testimony of the victim of assault, the court must be satisfied that the victim's testimony has withstood the test of cross-examination and inspires confidence of the court ....”

**25.** So, in view of above decision of Hon'ble Gauhati High Court, I find that the evidence of victim is cogent, reliable and sufficient enough to inspire confidence to hold the opinion that the accused made attempt to commit the rape on the victim on the relevant point of time. The learned counsel has submitted that as per

provision of Medical Jurisprudence and Toxicology, it can not be regarded that the rape was actually committed by the accused at the time of occurrence. But considering the material in record in its entirety and considering the material in the para mentioned from Medical Jurisprudence and Toxicology, I find that the accused only made attempt to commit sexual intercourse with the victim for which the victim sustained tenderness on her private parts. On the other hand, considering the provision of section 222 of Cr.P.C., I find that there is no bar to convict the accused for making attempt to commit the offence U/s. 376 of IPC although the charge for attempt to commit such offence is not separately framed in the case.

**26.** So, considering the above discussions, it is found that the prosecution has proved with reliable and cogent evidence that the accused only made attempt to commit rape on the victim at the time of occurrence and he did such acts to show his intention as well as motive to commit such offence at that time. So, accused is found guilty for committing offence U/s 376 (2) (f) of IPC read with section 511 of IPC only. So, the accused is liable for conviction under the said section of law. So, it is found that the evidence brought forward by prosecution is not enough to establish the charge U/s. 376 of IPC but the evidence is sufficient to establish the charge U/s. 376 read with section 511 of IPC.

**27.** 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.

**28.** Heard from accused on point of sentence u/s 235 (2) CrPC. The accused has submitted that he is no way connected with the case. The FIR was lodged only on grudge so he has appealed for acquittal. But considering the reasons stated above, I find that the accused is deserved to be convicted with sentence of imprisonment as well as fine.

### O R D E R

**29.** As the prosecution has proved beyond reasonable doubt against the accused for committing offence u/s 376 (2) (f) read with section 511 of IPC only, so he is convicted with sentence of Rigorous imprisonment for 2(two) years and a fine of Rs. 10,000/- (rupees ten thousand) in default Simple Imprisonment for another 2 (two) months for the offence committed u/s 376 (2) (f) read with section 511 of IPC.

**30.** It is also ordered that the period of detention, if any, shall be set off from the period of imprisonment.

**31.** The fine mount, if realised, shall be given to the guardian of victim as compensation.

**32.** The seized articles shall be returned in due course of time to the person from whom it was seized by the Investigating Officer.

**33.** Let a copy of judgment be furnished to the accused with free of cost as per section 363 of Cr.P.C.

**34.** Let a copy of judgment also be furnished to the District Magistrate, Sonitpur, Tezpur.

**35.** Given under my hand and seal of this Court on this day, the 11<sup>th</sup> day of June, 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 : Sri Pitrush Soren,(informant)  
 PW 2 : Smti Rebika Soren,  
 PW 3 : Miss Martha Saren (victim)  
 PW 4 : Sri Luis Suren,  
 PW 5 : Sri Bijay Sasani,  
 PW 6 : Sri Mantu Tanti,  
 PW 7 : Sri Poulosh Tapna  
 PW 8 : Dr. Achinta Kr. Baruah,  
 PW 9 : Sri Subhash Ch. Baishya,  
 PW 10 : Smti Mousumi De, SDJM(M), Bijni.

**Defence Witness** : Nil

**Court Witness** : Nil

**Prosecution Exhibits:** :

Exhibit 1 : Medical report.  
 Exhibit 2 : FIR,  
 Exhibit 3 : Sketch map,  
 Exhibit 4 : X-ray report.  
 Exhibit 5 : Forwarding letter.  
 Exhibit 6 : Chargesheet.  
 Exhibit 7 : GR case record.  
 Exhibit 8 : statement of victim.  
 Exhibit 9 : X-ray report.

**Material Exhibits:** : Nil

**Defence Exhibit** : Nil

**Court Exhibit** : Nil

**Exhibit produced by witness** : Nil

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