

**IN THE COURT OF THE ASSISTANT SESSIONS JUDGE,
LAKHIMPUR, NORTH LAKHIMPUR.**

Present :- Shri J. Borah, AJS.,
Asstt. Sessions Judge,
Lakhimpur, North Lakhimpur.

Sessions Case No.191(NL)2014.
U/s- 366(A)/ 376 of I.P.C.

The State of Assam,
-vs-
Papu Boruah,
..... Accused.

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Date of framing Charge :- 12.12.2013, 12.01.2014.
Date of recording Evidence :- 21.01.2014, 01.02.2014, 13.02.2014,
15.03.2014, 16.04.2014, 16.10.2014.
Date of Argument :- 31.10.2014.
Date of Judgment :- 05.11.2014.

Advocate for the State :- Mr. B. Bora, Ld. Addl. P.P.
Advocate for the Accused :- Mr. G. Ahmed, Ld. Advt.

J U D G M E N T:

1. This case is u/s- 366(A)/376 of IPC so the name of the victim is not mentioned here and she is hereinafter referred to as the victim.

2. The prosecution Case, in brief, is that Smti Mousumi Bora, the informant lodged an ejahar before the officer-in-charge, Narayanpur Police Station on 24.08.2012 informing that the victim is her daughter. The accused Papu Borah who is her son-in-law, along with his family members caused physical and mental torture on the victim. Also they threatened the victim to her life. The victim could not bear such torture and under such situation she wanted to leave the house of the accused on 24.8.2012. The accused hatched conspiracy to send the

victim away.

So, the informant prayed for taking necessary action against the accused Papu Borah.

3. The Narayanpur Police Station received the ejahar and registered vide Narayanpur P.S. Case No.84/2012, u/s- 325/354/506/34 of I.P.C. The Narayanpur Police Station also investigated the case and having found prima facie u/s- 352/354/506/34 of IPC against the accused Papu Borah, laid the charge sheet before the Court for trial.

4. The accused Papu Borah, hereinafter called the accused, appeared before the court of Judicial Magistrate First Class, Lakhimpur, North Lakhimpur and he was furnished copy. The learned J.M.F.C., having found the case u/s- 366(A) of IPC, which is triable exclusively by the court of Sessions, committed the case to the Court of Sessions, Lakhimpur, North Lakhimpur.

5. The Hon'ble Sessions Judge, Lakhimpur, North Lakhimpur received the case and transferred the same to this court for trial.

6. The accused appeared before this Court. Charge was framed u/s- 366(A)/376 of IPC against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

7. The prosecution, in order to bring home the charge against the accused, examined seven witnesses, namely-

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|-------------------------|------|
| 1. Mousumi Borah, | PW1. |
| 2. The victim, | PW2. |
| 3. Jiban Baruah, | PW3. |
| 4. Khagen Baruah, | PW4. |
| 5. Dr. Atul Ch. Khound, | PW5. |
| 6. Bhim Kt. Pegu, | PW6. |
| 7. Pankaj Das, | PW7. |

8. The accused person was examined u/s- 313 of Cr.P.C. and his statement was recorded where he denied all allegations levelled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.

9. Heard argument for both sides.

10. **Points for determination:**

1. *Whether the accused one year ago (from the date of adducing evidence in the court of Judicial Magistrate, 1st class, Lakhimpur) induced the victim, a minor girl of below 18 years of age, to go from her way home from Narayanpur with intent that she will be forced to illicit intercourse with him and thereby committed offence u/s- 366(A) of I.P.C.*

2. *Whether the accused one year ago (from the date of adducing evidence on 21.01.2014) committed rape on the victim at his residence at Borpathar and thereby committed offence u/s- 376 of I.P.C.*

DECISION AND REASONS THEREOF:

11. In this prosecution case, PW1 Smti Mousumi Borah is the informant and PW2 is the alleged victim. PW3 Jibon Baruah and PW4 Khagen Boruah are the independent witnesses. PW5 Dr. Atul Ch. Khound is the medical and health officer. PW6 Bhim Kt. Pegu and PW7 Pankaj Das are the investigating officers.

12. Before going to the vital points, let us see, at first, the age of the victim girl.

PW1, Smti Mousumi Bora has stated in her evidence that at the time of occurrence the victim was 16 years old. In her cross PW1 has denied that the victim was 19 years at the time of occurrence. PW1 has also stated in her cross that she did not give the police any documents regarding the age of the victim.

PW2, the victim has also stated her age to be 15 years. PW2 has denied to state before the police that she was 18 years at the

time of occurrence.

The other witnesses are silent regarding the age of the victim.

13. Thus, bare reading of the evidence of PW1 and PW2, shows that according to PW1 the victim was only 16 years and according to PW2 she was only 15 years at the time of occurrence. Both PW1 and 2 have stated that they did not give the police any documents regarding the age of PW2.

Both the investigating officers PW6 and PW7 did not seize any document regarding the age of the victim.

So, it is mere oral evidence of PW1 and PW2 that PW2 was 15 to 16 years at the time of occurrence. But they have not submitted any documentary evidence such as birth certificate, school certificate and so forth to authenticate this oral evidence. In absence of documentary evidence, the oral evidence, particularly the age of the victim, cannot be accepted.

The medical and health officer has also not determined the age of the victim.

So, the prosecution evidence is not sufficient and reliable to establish that the age of the victim was 16 years at the time of occurrence.

The evidence of PW1 and PW2 reflects that at the time of occurrence the victim was a college student. If that is so, she might be more than 16 years.

In view of above all, it appears that the prosecution has failed to prove that the victim was 15-16 years at the time of occurrence.

14. Let us see the two vital points.

In this respect, PW2, the victim will be the best witness to consider her evidence.

PW2, the victim has stated in her evidence that on the day of occurrence she was going from her uncle's house at Laluk. PW2

has also stated that she went by bus. PW2 has also stated that she changed her bus at Bihpuria and she went by another bus from Bihpuria. PW2 has also stated that she got down from the bus at a place and then she walked towards home. PW2 has also stated that at that time it was growing dark. PW2 has also stated that at that moment one vehicle came and the accused Papu Baruah took her into the bus. PW2 has also stated that the accused took her to Majuli. PW2 has also stated that the accused kept her in a house at Majuli for 2/3 days. PW2 has also stated that she was then taken to Borpather from Majuli. PW2 has also stated that the accused kept her at Borpather for 12 days. PW2 has also stated that when she was at Borpather the accused committed rape on her. PW2 has also stated that she tried to flee away from the house of the accused but the accused did not allow her. PW2 has also stated that she finding no other way attempted to commit suicide.

In her cross PW2 has denied that she stated before the police that she had love affair with the accused and in consonance with the said affair she had gone with the accused.

15. Thus, scrutiny of evidence of PW2, it appears that according to PW2, the accused had taken away her forcibly when she was going home from Laluk. According to PW2 she was taken to Majuli and kept there for 2/3 days and she was kept in a house for 12 days at Borpather. In her evidence of PW2, there is nothing that the accused threatened her to go with him or he showed any deadly weapon for which she had to submit before him. PW2 has stated nowhere in her evidence that she shouted or did anything for her help. PW2 has also stated that she was taken to Majuli. If that is so, she had to cross river Brahmaputra. To cross the river Brahmaputra one has to take boat. PW2 is silent in her evidence whether she sought help of other for her rescue. PW2 has also stated that she was kept in a house at Borpather, but she is silent in her evidence whether she sought help of other to make her free from the clutch of the accused.

So, the evidence of PW2 shows that she did nothing to make herself free from the accused while she was taken to Majuli and

from Majuli to Borpathar.

16. Now, let us see the evidence of PW1, the informant, who is the mother of the victim.

PW1, Smti Mousumi Bora has stated in her evidence that the victim is her daughter. PW1 has also stated that in the month of August, 2012 her daughter was in the house of her uncle at Laluk and the said uncle of the victim informed her that the victim was not there and accordingly she lodged the ejahar, Ext.1. PW1 has also stated that on 24.8.2012 the police recovered the victim from the house of the accused.

PW1 has denied in her evidence that her daughter had gone with the accused voluntarily.

17. Thus, the scrutiny of evidence of PW1 shows that when PW1 came to know that the victim was not in the house of her uncle, she lodged the ejahar, Ext.1 and after that the police recovered the victim from the house of the accused.

18. Now, let us have a cursory on the Ext.1, the ejahar.

PW1 is the author of the ejahar, Ext.1 who scribed in the said Ext.1 that her son-in-law, the accused and his family caused physical and mental torture on the victim and also they attempted to kill her. On 24.8.2012 when the victim want to come to her parent's house, the accused and her family members rebuked her in filthy language.

So, bare perusal of Ext.1, shows that the informant has stated nothing in Ext.1 that the accused had taken away the victim forcibly. In this respect, there found contradiction between the contents of the ejahar, Ext.1 and the evidence of PW1, the informant. In Ext.1, the ejahar PW1, the informant called the accused as son-in-law. But in her evidence PW1 has stated that she knew from one Jon Baruah that her daughter was in the house of the accused. This contradiction is a major one and such contradiction creates doubt in the prosecution case.

19. Now, let us see the evidence of other witnesses.

PW3, Jibon Baruah is the father of the accused. So, the evidence of this witness cannot be expected that he would adduce against his son, the accused.

PW4, Khagen Baruah is a neighbour to the accused who has stated in his evidence that the victim was in the house of the accused as his wife for fifteen days.

The evidence of PW4 shows that the victim was in the house of the accused as his wife and she was there for fifteen days.

This witness is neighbour to the accused and he is no way related the accused. So, question of disbelieving the evidence of PW4 does not arise.

20. Thus, from the evidence of PW2 and PW4, it is clear that the victim was in the house of the accused for 12 to 15 days and according to PW4 it is clear that PW2 was there as wife of the accused.

There is no reliability in the evidence of PW1 and PW2 that the accused induced the victim to go with him or he compelled the victim to go with him under any threat or fear. Rather, it is clear that the victim was in the house of the accused for fifteen days as his wife. The evidence of PW2 is also not sufficient that the accused kept her confined in his house. It is also clear that the prosecution has failed to prove that the prosecutrix was minor at the time of occurrence. There is no sufficient evidence in the record that the victim was a minor at the time of occurrence. If the victim was not minor, if she had been with the accused for fifteen days with no objection, then it is clear that if there has been voluptuous relation with her by the accused, then it was prior to her consent.

PW2 has stated that there was cut injury on her by the accused. But PW5 Dr. Atul Ch. Khound has made clear that he found no external injury on her body. Thus, the evidence of PW2 has lost its credibility.

21. I find no reason to emphasis upon the evidence of PW6 and PW7, the investigating officers.

22. In view of above conspectus, the prosecution case is devoid of merit.

The prosecution has failed to prove its case u/s- 366(A)/376 of I.P.C. against the accused beyond all reasonable doubt.

23. Held that the accused is not guilty u/s- 366(A)/376 of I.P.C.

Accordingly, the accused is acquitted and set at liberty.

The bail bond stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and Seal of this court on this 5th day of November, 2014.

(J. BORAH, A.J.S.)
ASSISTANT SESSIONS JUDGE,
LAKHIMPUR, N. LAKHIMPUR.