IN THE COURT OF THE ADDL. SESSIONS JUDGE, FTC, AT KARBI ANGLONG, DIPHU

Sessions Case No. 108 of 2016
Arising out of G.R. Case No. 429 of 2016

U/S- 376 (2)(i)/511/506 of I.P.C.

Present: - Mrs. M. Deb

Additional Sessions Judge, Karbi Anglong, Diphu.

The State of Assam

-Vs-

Sri Mahesh KarmakarAccused.

Advocates appeared:

For the State : - Mrs. Rumi Bora, Addl. P.P.

Karbi Anglong.

For the Accused : - Mr. Robinson Hanse,

Miss Supriya Hasnu, Advocates

Karbi Anglong.

Date of Argument : - 19.07.2018.

Date of Judgment : - 30.07.2018.

JUDGMENT

1. Keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which S.228 A of the IPC has been enacted, it would be appropriate on the part of the court not to indicate the name of the victim in the Judgment. This court has chosen to describe her as 'victim' in the judgment.

FACTS OF THE CASE:-

2. The prosecution case in a nutshell is that on 20.05.2016, at about 11 a.m., when the minor victim (daughter of the complainant and accused) was alone at her home, the accused/father namely Mahesh Karmakar tried to commit rape on his minor daughter (victim) and the victim raised hue and cry and fled away from the house.

The complainant lodged the F.I.R., on the above facts, with Borpathar Police Station on 21.05.2016.

- 3. On receipt of F.I.R., the police registered the case and investigated the same and found material against the accused person u/s-376(2)(i)/511/506, I.P.C and submitted charge-sheet against the accused person u/s-376(2)(i)/511/506, I.P.C.
- 4. After observance of all the formalities for furnishing copies of relevant documents, as mandated u/s-207, Cr.P.C, the case was

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committed to the Court of Sessions and thereafter the said case was made over to this Court for disposal.

5. On appearance of the accused person before this Court, after hearing the learned Counsel from both sides and basing upon the materials on record, charge u/s- 376(2)(i)/511/506, I.P.C. was framed and particulars of accusation was read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

POINTS FOR DETERMINATION:-

- 6. In the instant case, it is to be determined:-
 - (a) If on 20.05.2016, at about 11 a.m., the accused person tried to commit rape on his minor daughter (victim)?
 - (b) If on the same day, the accused person threatened his minor daughter (victim)?
- 7. The prosecution examined eleven witnesses. The statement of the accused person recorded u/s-313 Cr.P.C. the accused person denied to adduce any evidence.
- 8. I have heard the learned Counsel of both sides. Perused the evidence on record and came to the following decision.

DECISION AND REASONS THEREOF:-

9. The prosecution argued that prosecution has been able to bring

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home the charges beyond all reasonable doubt and as such the accused is liable to be convicted. The learned Counsel for the defence vehemently opposed the submission put forwarded by the other side.

- 10. The time honoured principle of criminal jurisprudence is that the criminal charge has to be brought home by the prosecution beyond all reasonable doubt and it is the duty of the prosecution to be fair. Bearing this principle in mind, I am to assess how far the prosecution case has been brought home.
- 11. Before proceeding further, I find it necessary to look through the evidence on record.
- 12. PW-1, Sapna Karmakar (complainant), during course of her evidence stated that about 2 years ago, her two daughters namely Dibya Karmakar and victim were at home along with their father and at that time, she was outside for work and when she returned home at about 12.00 o clock, her daughter (victim) told her that her father (her husband) touched her private parts and also threatened her not to tell about the occurrence to her and then on the next day she filed the F.I.R.

In her cross-examination, she stated that after marriage the accused/husband was living with her in her father's house and she has not seen the occurrence and at the time of occurrence her daughter did not raise hue and cry and she did not know the name of the F.I.R writer.

13. PW-2, Victim, during course of her evidence stated that about 2 years ago, when she and her 3 years sister were alone at home, her father came in drunken condition and asked her to sit in the bed and caught her hand and tried to commit rape on her and when she started crying, he left her and she fled away from the house and at about 12 midday, she returned back home and at that time she found her mother at home and she told her mother about the occurrence and then on the next day her mother filed this case.

In her cross-examination, she stated that at the time of occurrence her father was in drunken condition and that her father did not love her and her father asked her if her mother and her grandmother loves her, she told him that her mother and grandmother loves her and hearing the same he become angry and caught her hand and when her father tried to commit rape on her, she did not raise hue and cry.

- 14. PW-3, Smti. Maloti Tanti, during course of her evidence stated that about 2 years ago, at about 4 p.m., when she returned back from her working place, she saw the accused person and the informant were fighting with each other and she did not know anything more about the occurrence.
- 15. PW-4, Mrs. Renu Korua, during course of her evidence stated that about 2 & ½ years ago, at about 1.30 p.m., victim told her that her

father tried to commit rape on her and hearing the same, she returned back to her working place and the village people handed over the accused person to police.

In her cross-examination, she stated that she did not know the date of the occurrence and there is no altercation between the victim and her father on the day of the occurrence.

16. PW-5, Mr. Akash Tanti, during course of his evidence stated that about 2 & ½ years ago, at about 5 p.m., the wife of the accused person told her that the accused person tried to commit rape on her minor daughter (victim).

In his cross-examination, he stated that he has not seen the occurrence and that he did not remember the date of the occurrence and his house is about 100 meters away from the house of the accused person and accused person is staying in the house of his mother-in-law.

17. PW-6, Mr. Sunu Knowar, during course of his evidence stated that about 2 years ago, at about 3 p.m., victim told her that her father caught her and then tried to assault her and thereafter, on the next day, he heard from the villagers that the accused person tried to commit rape on his minor daughter (victim)

In his cross-examination, he stated that he has not seen the occurrence and his house is about 50 meter away from the house of the accused person and that he did not remember the day on which he heard about the occurrence and there was no altercation between the accused person and the victim on the day of the occurrence.

18. PW-7, Smti. Sabita Urang, during course of her evidence stated that about 2 years ago, at about 9 a.m., aunty of the victim called her and others to the house of the victim and when they reached there victim told them that her father (accused) tried to commit rape on her and hearing the same, she along with other ladies and mother of the victim went to the police station and mother of the victim filed this case.

In her cross-examination, she stated that she has not seen the occurrence and that she did not remember the date of occurrence.

- 19. PW-8, Sri Tekela Konwar, during course of his evidence stated that he did not know anything about the occurrence.
- 20. PW-9, Dr. Manjula Hazarika (M.O No.1), during course of her evidence stated that on 21-05-2016, she was posted at Kushal Konwar Civil Hospital, Golaghat as Senior Medical & health officer and on that day, she examined minor daughter of the complainant (victim), D/O- Sri Mahesh Karmakar, No.3 Halaukhuwa Korua basti P.S Barpathar and found the following:-
- 1. Abdominal examination- Nothing abnormalities was detected.
- 2. External Genitalia Nothing abnormalities was detected.

- 3. The Age of the girl was above 12 years but below 14 years.
- 4. No. recent sexual intercourse was seen.
- 5. No injury was seen in her private part and on her other parts of the body.

She proved her medical report as Ext. 1 and her signature as Ext.-1(1).

In her cross-examination, she stated that the victim was escorted by lady police namely Bimola Konwar.

21. PW-10, Dr. Vikash Sharma (M.O No.2), during course of his evidence stated that on 22 -05-2016, he was posted at Kushal Konwar Civil Hospital, Golaghat as Medical & health officer-1 in Radiology department and on that day, he has prepared the X-ray report of victim (SK NO.-4576) and after seeing the X-ray report, the age of the victim is found above 12 years and below 14 years. He proved his medical report as Ext.-2 and his signature as Ext.-2(1).

In her cross-examination, he stated that he received the X-ray from Radiographer Hiren Saikia and Diganta Saikia.

reaching the place of occurrence, he saw that many people were gathered there and they have tied the accused person with rope and then he took the accused person in his custody and brought the accused person and his wife and daughter (victim) and other independent witnesses to police station and on that day, he also drew the sketch map of the place of occurrence and after reaching the police station, he recorded the statements of the witnesses including the complainant and the victim. Thereafter, he sent the accused person and the victim for medical examination and then after medical examination, he produced the victim before the court for recording her statement under section 164 Cr.P.C and on 22-05-16, he produced the accused person before the court and on 18-06-16, he collected the medical report of the victim and then after completion of his investigation he submitted the charge sheet on 30-06-16. He proved the sketch map as Ext.- 3 and his signature as Ext.-3(1) and he proved the charge sheet as Ext.- 4 and his signature as Ext. 4(1). In his cross-examination, he stated that the Police station is about 32/33

In his cross-examination, he stated that the Police station is about 32/33 km. away from Kushal Konwar Civil Hospital, Golaghat and he has not seized any material from the place of occurrence and in the north side of the place of occurrence, there is a tea garden of one Dulal Boruah and in the south, there is a garden of betel nut.

23. Above being the evidence on record, let me see how far such evidence makes out the allegation against the accused person.

24. In this case, on appreciation of the evidence of PWs, it is found from the deposition of PW-1 (the complainant) the mother of the victim, that accused person is her husband and when she returned home, her daughter (victim) told her that her father touched her private parts and also threatened her. According to PW-2 (victim), when she and her three sisters were alone at home, her father came in drunken condition and asked her to sit in the bed and caught her hand and tried to commit rape on her and when she started crying, he left her and she fled away from her house and that at about 12 midday, she returned back and found her mother at home and told her everything about the occurrence and according to PW-4, the victim told her that her father tried to commit rape on her. According to PW-5, the wife of the accused person told her that the accused person tried to commit rape on victim. PW-6 stated that the victim told him that her father caught her and then tried to assault her and from the villagers he heard that the accused person tried to commit rape on the victim. According to PW-7, about two years ago, aunty of the victim called her and others to her house and victim told them that her accused/father tried to commit rape on her.

25. The Hon'ble Supreme Court, in the case of Koppula Venkat Rao -Vs- State of AP reported in (2004) 3 SCC 602 held as under:-

"The plea relating to applicability of Section 376 read with Section 511 IPC needs careful consideration. In every crime, there is first, intention to commit, secondly, preparation to

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commit it, and thirdly, attempt to commit it. If the third stage, that is attempt is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law punishes the person attempting the act. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempts to commit offences punishable with imprisonment and not only those punishable with death. An attempt is made punishable, because every attempt, although it falls short of success, must create alarm, which by itself is an injury and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment. As the injury is not as great as if the act had been committed, only half the punishment is awarded.

A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in

the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences U/S 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.

In order to find an accused guilt of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, material must exist. Surrounding circumstances many times throw beacon light on that aspect."

26. It is well settled principle of law that in case of rape or attempt to commit rape, the evidence of victim is alone sufficient to convict the accused, if her evidence inspires confidence in the mind of the court.

- 27. In the instant case, from the evidence of PWs. 1 to 7, it is found that the accused person tried to commit rape on his daughter (victim). The story of F.I.R also corroborated with the version of the prosecution witnesses. Most interesting part of this case is that the wife of the accused (mother of the victim) filed this case stating that the accused person touched the private parts of the victim and also threatened the victim not to tell about this occurrence to her, the victim as PW-2 supported the version of complainant (PW-1) and stated that the accused/father tried to commit rape on her. The averments of the statement u/s 164 Cr.P.C of victim also corroborates the version of PW-2 (victim). Moreover, according to PWs 9 & 10 (MOs), the age of the victim was above 12 years but below 14 years. When the evidence is closely scrutinized, it is manifest that the accused/father not only tried to use criminal force but also touched private parts of his minor daughter and tried to disrobe her. Had the victim not fled away from the house crying, the accused succeeded in committing rape. Thus in this case, the intention and preparation to commit an attempt to rape exists.

convincing that it is very difficult to disbelieve her evidence. The evidence of the victim is without any malice, hence, her evidence is enough for conviction of the accused for attempt to commit rape upon her person. There cannot be a bigger sin than the sin of raping or molesting one's own daughter. No doubt that the offence of rape is grave by its very nature but it is more horrendous and despicable when the perpetrator of the crime is none else but her father ranishing the chastity of his daughter.

- 29. It is well settled principle that in the deposition of witnesses there may always be normal discrepancies, however honest and truthful that may be. In appreciating the evidence in criminal case, grain is to be shifted from the chaff in the light of the evidence and surrounding circumstances.
- 30. In the light of the above discussion, I hold that the accused person is not guilty u/s-506, IPC and accordingly he is acquitted of the offence u/s-506, I.P.C, but the accused person is guilty of the charge u/s-376 (2)(i)/511, I.P.C and I convict the accused person u/s-376(2)(i)/511, IPC.
- 31. Considering the nature of the offence committed by the accused, I am not inclined to apply probation of offenders Act, as offence like one punishable u/s-376(2)(i)/511, IPC would not only encourage

further crime but also would became difficult to check or arrest the perpetrator.

- 32. Heard the accused regarding his conviction and sentence to be imposed upon him, he pleaded innocence.
- 33. The social impact of the crime committed by the accused cannot loose sight of the court. Murder destroyed the physical frame of the victim, but a rapist degrades the soul of a helpless female whereby the victim suffers and dies every day.
- 34. Considering the above facts, I convict the accused u/s-376(2)(i)/511, IPC with a sentence to undergo Rigorous imprisonment for 7 (seven) years and a fine of Rs. 500/- (five hundred), in default, simple imprisonment for 30 days.
- 35. If the accused was in Jail-hazot during the period of investigation, trial etc. That periods are to be set off from the total period of imprisonment awarded.
- 36. Furnish free copy of Judgment to convict Sri Mahesh Karmakar immediately and another copy to be sent to the District Magistrate, Diphu, as per the provision of section 365 of Cr.P.C.

Given under my signature and seal of this court on this the 30^{th} day of July 2018.

(Mrs. M. Deb) Additional Sessions Judge, Karbi Anglong, Diphu

Dictated & Corrected by me

(Mrs. M. Deb) Additional Sessions Judge, Karbi Anglong, Diphu

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APPENDIX

Prosecution witnesses:-

PW-1 – Mrs. Sapna Karmakar (complainant)

PW-2 – (victim)

PW-3 -Mrs. Maloti Tanti

PW-4 - Mrs. Renu Korua

PW-5 -Mr. Akash Tanti

PW-6 -Mr. Sunu Knowar

PW-7 - Mrs. Sabita Urang

PW-8 -Mr. Tekela Konwar

PW-9 –Dr. Manjula Hazarika (M.O No.1)

PW-10 -Dr. Vikash Sharma (M.O No.2)

PW-11 –ASI Eunishar Rahman

Prosecution Exhibits:-

Ext.-1 – Medical report.

Ext.-2 – Medical report.

Ext.-3 – Sketch map.

Ext.-4 –Charge sheet.

Defence witness:-

NIL

(Mrs. M. Deb) Additional Sessions Judge, Karbi Anglong, Diphu

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