IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No.34/2015

U/s.376 (2) I.P.C.

G.R. No. 836/2014

State of Assam

-Vs-

Golap Hussain

Committing Magistrate : Smti T. Hussain, Addl. Chief Judicial Magistrate,

Dhubri

Present : Sri Rajib Goswami, AJS

Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State. Sri Nuruddin Ahmed, Advocate for the defence.

Date of Evidence : 18-04-2015, 01-06-2015, 24-06-2015, 12-08-2015,

25-08-2015, 11-12-2015 & 18-01-2016

Date of Judgment : 27-01-2016

JUDGMENT

The prosecution case in brief is that on 02-03-2014 accused Golam Hussain Sk. in the absence of informant Marjina Bewa came to her house and committed rape upon the minor daughter of the informant and the accused had threatened the daughter of the informant following the act that if she dared to divulge about the alleged occurrence to anyone, the accused would kill her and burry her for which, the daughter of the informant did not divulge about the alleged occurrence to her mother. The daughter of the informant had confided in her mother about the alleged occurrence when her mother seeing her deteriorating physical condition had enquired about the cause of such illness and thereafter FIR was lodged on 05-03-2014.

- 2. A case was registered by the O.C, Tamarhat Police Station on 05-03-2014 u/s.376 (2) of I.P.C. R/W Sec. 4 of POCSO Act, 2012. The I.O. had filed charge sheet against accused Golap Hussain u/s.376 (2) of I.P.C. and 8 of POCSO Act. However, charge was framed only u/s.376 (2) of I.P.C. against the accused Golap Hussain. Charge had been read over, explained and interpreted to accused to which the accused pleaded not guilty and claimed to be tried.
- 4. Prosecution had examined as many as 11 (eleven) witnesses. Considering there being no incriminating evidence against the accused, the necessity to examine the accused u/s.313 of Cr.PC is done away with.

Point for determination

Whether on 02-03-2014 accused had committed rape upon the victim?

- 5. PW-1, Musstt. Morjina Bewa, the mother of the victim and the informant in the case admitted to have lodged the FIR. However, in her cross-examination she admitted to accused being her immediate neighbour and to existence of a long standing land dispute with the accused.
- 6. PW-2, the victim Mafuja Khatun admitted to the accused being the elder brother of her father and has not implicated the accused of having committed rape on her in any manner and whatsoever.
- 7. PW-3, Md. Osman Goni Sk., PW-4 Musstt. Lalbhanu Bewa, PW-5 Zakir Hussain, PW-6 Joynal Sk all being immediate neighbours of the informant denied having knowledge about the alleged occurrence. PW-7, Abu Taher and PW-8, Abdus Sattar Sk. who live around 1 ½ k.m. away from the house of the informant had been declared hostile and no portion of their evidence before the Court is in support of the prosecution version and the portion of the evidence in respect of which these two witnesses had been declared hostile had not been proved by the I.O. and in cross-examination both of them having been interrogated by the police during investigation.

- 7. PW-10, Dr. Anjumanara Ahmed, had ruled out any trace of recent sexual intercourse in her opinion in ext-1, report bearing her signature ext-1 (1).
- 8. PW-11, SI (UB) Shahab Uddin Ahmed, the I.O. had admitted to have not seized wearing apparel of the victim she had worn at the time of the alleged occurrence.
- 9. Now considering the evidence of the informant, the victim and the Medical Officer, I find not an iota of evidence against the accused Golap Hussain. Considering the mother admitting land dispute with her brother-in-law and accused being the elder brother of her husband, the present case having been brought against the accused out of previous enmity cannot be ruled out in absence of any incriminating evidence against the accused person. The medical evidence though found the hymen of victim torn in her examination but ruled out any sign of recent sexual intercourse and in her opinion hymen is torn by any other means apart from the sexual intercourse.
- 10. Thus summing up the entire discussion of the prosecution evidence on record, it is evident that the prosecution has failed to establish the prosecution case against accused Golap Hussain beyond all reasonable doubt. The accused is accordingly acquitted and set at liberty forthwith.

Given under my hand and seal of this court on this the 27^{th} day of January, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

<u>APPENDIX</u>

A. Prosecution Witness.

P.W-1 - Musstt. Morjina Bewa P.W-2 - Musstt. Mafuza Khatun P.W-3 - Md. Osman Goni Sk. P.W-4 - Musstt. Lal Bhanu Bewa P.W-5 - Md. Zakir Hussain P.W-6 - Md. Joynal Sk. P.W-7 - Md. Abu Taher

P.W-8 - Md. Abdul Sattar Sk.

PW- 9 - Md. Abzul Hoque

PW-10 - Dr. Anjumanara Ahmed PW-11 - S.I. Shahab Uddin Ahmed

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1 - Medical Report

Ext-2 - FIR

Ext-3 - Sketch Map Ext-4 - Charge sheet.

D. Defence Exhibit

Nil

Sessions Judge, Dhubri