# IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE : : : : TINSUKIA

Present: Smt. A. Bhattacharyya, A.J.S.
Chief Judicial Magistrate,
Tinsukia.

# PRC Case No. 440/19

Under Section 448/354(D)/506 of the Indian Penal Code

The State of Assam......Complainant
-VersusSri Bijender Gowala.....Accused person

#### **Appearance:**

Smti Jamila Khatun,

Ld. Addl. Public Prosecutor......For the State

Sri Brijesh Mishra

Ld. Advocate.....For the accused

Evidence recorded on : 27-08-19 & 14-11-19,

Date of Argument : 04-12-19

Date of Judgment : 30-12-19

#### J U D G M E N T

- at 10:00 A.M INFORMANT Shri Pashupati Tiwari has came to know from his niece Miss Khushi Tiwari that one Bijender Gowala resident of Chota hapjan No. 23 line always had sexual greed upon her as well as upon her elder sister and in most of time he pressurize her to establish sexual relationship with him. On her refusal the said person also went to the extent of assaulting her physically. Further, the complainant alleged that on 09-07-18 the alleged accused namely Shri Bijendra Gowala again pressurize complaint's niece to share bed with her and when she refused, he physically assaulted her complainant. Hence the Ejahar of the case was lodged.
- **2**. On receiving the *Ejahar*, the Officer-In-Charge of Makum P.S. registered a case vide. Makum P.S case No. 139/18 u/s 448/325/354/506 of IPC R/W Sec. 12 POCSO Act. The police investigated the case and filed charge sheet against the accused Bijender Gowala u/s 448/354 D/506 IPC R/W Sec. 12 of POCSO Act, 12. Summons was served to the accused person. On appearance of the accused person, the particulars of charge u/s 448/354 (D)/506 of IPC was framed and the same were read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.
- **3.** The prosecution examined 3 (Three) PWs. The defence plea was of total denial. Heard the argument and perused the evidences, documents and record carefully.

#### **Point for determination**

- **4.** The following points are considered for determination of this case:
  - i) Whether the accused person Shri Bijendra Gowala on 09-07-18 and also on earlier occasions committed house trespass by

- entering into the house of the victim Miss Khushi Tiwari Sri Jagannath Das and thereby liable to be punished for offence under section 448 of IPC?
- ii) Whether the accused person Shri Bijendra Gowala on 09-07-18 and also on earlier occasions tried to outrage the modesty of the victim Miss Khushi Tiwari and also threatened her with dire consequences on her refusal and thereby liable to be punished u/s 354(A)/506 I.P.C. ?

#### **Discussions, Decisions And Reasons Thereof**

- **5**. The prosecution adduced the following evidence for establishing their case:
- deposed in his evidence that the accused person used to live with the elder sister of the victim Smti Gayatri Tiwari at his house during the year 2018. The victim Smti Khushi Tiwari also used to reside in the same house with her elder sister Smti Gayatri Tiwari. About one year ago Khushi Tiwari told him that the accused person used to utter obscene word and involved in obscene act. She informed him that the accused used to sit and sleep with her and behaved with her in a bad manner. Thereafter, she informed him that she wanted to intimate the matter to the police persons and accordingly, he along with her went to the PS and he lodged the ejahar. Ext.1 is the ejahar and Ext.1(1) is his signature. Police recorded his statement.
- **7.** PW2 SMTI KHUSI TIWARI, the victim of the case deposed in her evidence that the occurrence took place in the year 2018. At that time she was residing along with her sister and brother in law (the accused) in their house along with her three other siblings.

Both her father and mother expired prior to the occurrence. At that time, the wife of Sri Pasupati Tiwari namely Smti Munni Tiwari came to their house and told her that she intended to take her to Haryana with her. During that period there was some land dispute in between Pasupati Tiwari and her sister and her brother in law (the accused). In the mean time, some dispute arose in between her and her elder sister Gayatri Tiwari. Moreover, her aunty (Munni Tiwari) also told her to lodge the FIR against the accused person and hence the case was instituted. But her aunty did not take him to Haryana but put her inside one orphanage. Later on, the relationship in between her, her elder sister and her brother in law( the accused) turned into a cordial one and at present she had been residing with her sister and brother in law. She was brought back by her another sister Smti Riya Tiwari from orphanage. As her parents are already expired, she has been peacefully residing in the house of the accused and her sister.

- that the occurrence took place in the year 2018. At the time of occurrence, Khusi Tiwari was residing with her along with her husband at their house. Both her father and mother expired prior to the occurrence. At that time, the wife of Sri Pasupati Tiwari namely Smti Munni Tiwari came to their house and told her sister Khusi Tiwari that she intended to take her to Haryana with her. At that time there was some land dispute in between Pasupati Tiwari and herself and husband (the accused ). In the mean time, some dispute arose in between her and her sister Khusi Tiwari which resulted in lodging of the FIR against the accused person. Police recorded her statement. But, later on, her aunty did not take Khusi Tiwari to Haryana but put her inside one orphanage. Later on, the relationship in between her, Khusi Tiwari and her husband improved and Khusi Tiwari started residing.
- **9**. Heard the Ld. Counsel for the accused and the Ld. Addl. P.P.It is reflected from the evidence on record that the victim of

the case i.e. PW2 Smti Khushi Tiwari did not support the story of prosecution as alleged in the Ejahar. Her evidence is silent with regard to any attempt made by the accused person to outrage her modesty or giving of any threat to the victim. In a criminal proceeding, the offence against the accused must be porved beyond reasonable doubt so as to convict the accused p-erson. But in the present case, the prposecution witnesses did not depose anything so as to prove the guit olf the accused beyond reasonable doubt.

**10.** Considering the above reasons, I find that the prosecution failed to prove the ingredients of Sections 448/354 (D)/506 of IPC against the accused person beyond reasonable doubt. Accordingly, the accused SRI BIJENDRA GOWALA is acquitted from the offences punishable u/s 448/354 (D)/506 of IPC and I exonerate the accused person from the above offences, setting him at liberty forthwith. The bail bond shall stand cancelled after six months.

**11.** This case is accordingly disposed of.

**Given** under my hand and seal of this Court on the **30**<sup>th</sup> day of December, 2019.

Dictated and corrected by me.

(Audri Bhattacharyya) Chief judicial Magistrate, Tinsukia. (Audri Bhattacharyya) Chief Judicial Magistrate, Tinsukia.

## **APPENDIX**

# **PROSECUTION WITNESSES**

P.W1- SRI PASUPATI TIWARI

P.W2-SMTI KHUSI TIWARI

P.W3-SMTI GAYATRI TIWARI

## **PROSECUTION EXHIBITS:**

Ext.1- ejahar

(Audri Bhattacharyya) Chief Judicial Magistrate, <u>Tinsukia</u>.