IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.

Present: Shri A. Hazarika, A.J.S., Sessions Judge, Dhemaji,

JUDGMENT IN SESSIONS CASE NO. 69(DH)2015

(G.R. Case No.02/2015 (SLP); Silapathar P.S. Case No.02/2015 Under Sections 448/ 376(1)/34 of the Indian Penal Code)

The State of Assam

- Versus -
- 1. Shri Santosh Sarkar
- 2. Shri Juren Sarkar and
- 3. Shri Bolaram Biswas @ Bolai

.....Accused Persons.

Committing Magistrate:-Shri U. Borah, Judicial Magistrate, 1st Class, Dhemaji.

Appearance:

Shri P.C. Boruah,

Public Prosecutor

.....For the State

Shri K.C. Sonowal and Shri N. Buragohain

.....For the Accused persons

Date of committal

: 22-06-2015.

Date of Charge

: 29-06-2015.

Date of prosecution evidence

: 07-06-2016, 04-01-2016,

Date of recording Statement of Accused

: 21-02-2017.

Date of defence evidence

: Nil.

Date of arguments

: 20-03-2017

Date of Judgment

: 03-04- 2017.



JUDGMENT

Case of the Prosecution:

- 1. The prosecution case in brief is that on 02-01-2015 Shri Sanatan Sarkar, S/O Late-Tarapad Sarkar, R/O Vill. Baligaon , P.S. Silapathar, District- Dhemaji filed an FIR to the effect that on 01-01-2015 at night at about 10.30P.M. while his daughter-the victim (hereinafter referred to as "X") was witnessing film on Mobile Phone in the house of her uncle-Shri Subhash Mandal , the accused persons- Shri Santosh Sarkar, Shri Bolai Mandal and Shri Juren Kudail in furtherance of common intention committed house trespass into the house of Subhas Mandal and took his daughter-X to a nearby field and then accused Santosh Sarkar committed rape on her gagging her mouth . It is also alleged in the FIR that accused-Santosh Sarkar armed with a bamboo lathi, threatened complainant's niece Smt. Sephali Mandal to kill her. Hence, the case.
- 2. Thereafter, Police registered a case being Silapathar P.S. Case No. 02/2015 u/s 448/376(1)/34. of the I.P.C. and investigated it, and on the basis of the materials available, charge sheet was submitted under Sections 448/376(1)/34 of the Indian Penal Code against the accused persons.
- 3. The case being exclusively triable by the Sessions Court the same was committed to the Court of Sessions, Dhemaji by the Judicial Magistrate,1st Class, Dhemaji on 22-06-2015.

Charge:

4. Charges Under Sections 450/376(D)/34 of the Indian Penal Code was framed against the accused persons by the court on 29-06-2015 to which the accused person pleaded not guilty and claimed to be tried.

Evidence:

- 5. To prove the guilt of the accused, Prosecution examined three witnesses.
- **5.(a)** PW-1 Shri Sanatan Sarkar has stated that he knew all the accused persons present in the dock. The victim X is his daughter. Smt. Sephali Mandal is his niece. Father of Sephali Mandal i.e. Shri Subhash Mandal is his brother-in-law. The incident was of January, 2015. His daughter X was in the house of Subhash Mandal. Accused Santosh Mandal committed rape on X at night. On the following day of occurrence when he went to the house of Subhash Mandal, X told him about the incident. He further told him that accused-Santosh pulled her to the field and committed rape on her. He has also evidenced that X had stated before him that other two accused-Bolaram and and Juren were standing nearby her. He had filed the case after knowing about the incident. He put thumb impression on the FIR. At that time age of X was 14/15 years.

During the cross examination of the witness, he has stated that he is an illiterate person. The FIR was written by another person as per his version. He has further stated that he cannot say when X was born. Sephali is older than his daughter-X. Presently, age of his daughter is 17/18 years. X stated before him that accused-Santosh committed rape on her pulling her to a field from the house. He does not know whether X shouted or not at the time of occurrence. There was a house near the house of Subhash Mandal but, he did not know the name of that person. He also did not ask Sephali about the incident. It is refuted that the accused did not commit rape on his daughter. It is also refuted that accused-Santosh assaulted X for witnessing bad cinema on mobile.



In cross-examination for Juren Sarkar and Bolaram Biswas, he has stated that he does not know whether accused-Juren Sarkar and Bolaram Biswas were along with accused-Santosh Sarkar.

5 (b). PW-2 Shri Ajoy Sarkar stated that he knew all the 3 accused persons present in the dock. Sanatan Sarkar is his brother-in-law and victim X is his niece. The accused are-Santosh Sarkar, Juren and Bolaram. It was about 2 years back His house is situated about a distance of 5 km. from the house of Sanatan. He knew about the incident from Sanatan when he went to file the case and he was told that the accused had tortured X and had beaten her. Police made him as witness. Police had seized some clothes from X and he had signed the same.

This witness exhibited Ext-1 as the Seizure List and Ext-1(1) as his signature. Material Exhibit-1 are the clothes which were seized by the police and it were seen by him in the Court.

During the cross examination for all the accused persons, he stated that he had put his signature in the Police Station.

5.(c) PW3 is the victim X who has deposed that she knew all the 3 accused person present in the dock. They are- Santosh Sarkar, Juren and Bali Mandal. Sanatan Sarkar is her father. About 2 years ago, at night at about 10 PM, she was in the house of Subhash Mandal (her uncle) and her aunt Bakuli Mandal and her sister Sephali Mandal were there. She was watching film in the mobile. Then Santosh came and asked her why she was watching film and so she ran away from there to her home. They did not rape her. Her father had filed the case. Police recorded her statement. Police also did her medical.

The defence declined to cross examine the witnesses.

Statement of Accused under Section 313 Cr.PC and Defence Evidence:

6. The statement of the accused-Shri Santosh Sarkar, Bolaram Biswas and Juren Sarkar were recorded under Section 313 of the Code of Criminal Procedure on 21-02-2017 where the accused person denied the charges and stated that they were falsely implicated in this case.

Point For Determination

7. The moot point for determination is as to whether the accused persons-Shri Santosh Sarkar, Bolaram Biswas and Juren Sarkar, in furtherance of common intention, had committed house trespass by entering into the dwelling house of Subhash Mandal and committed rape on the victim X and thus committing an offence punishable under Section 450/376(D)/34 of the Indian Penal Code?

Discussion and Conclusions

8. I have heard Shri K.C. Sonowal and Shri N. Buragohain, the learned counsels for the defence as well as the Shri P.C. Boruah, the learned Public Prosecutor. I have also perused the evidence and other materials on record.



9. The case of the prosecution is that the accused-Santosh Sarkar along with other accused had forcefully taken the victim 'X' from the house of Subhash Mandal and thereafter raped her in the field.

PW1, the informant in his evidence has stated that the victim X', who was his daughter had gone to the house Subhash Mandal where she was raped by the accused. On the day after the incident, when he had gone to the house of Subhash Mandal, the victim had told him about the incident of the accused Santosh Sarkar having pulled her to the field and raping her, while the other accused Bolaram and Juren was standing nearby. However, the victim 'X' , PW-3, has categorically evidenced before this Court that while she was in the house of Subhash Mandal, she was watching a movie in her mobile and during that time accused Santosh Sarkar had come and scolded her for watching movie to which, she ran away from there. The victim 'X' has gone to evidence that the accused had not raped her. Therefore it is seen that the evidence of PW-1 is stark contrast to what has been evidenced by the victim. Even the evidence of PW2 which is more of hear-say in nature as he got to know about the incident only from PW1. But upon perusal thereof, it is seen that even PW2 in his evidence has stated that PW1 had only told him that the accused had tortured the victim $\ensuremath{^{\backprime}} X'$ and had beaten her. The material contradictions of evidence tendered by the victim (PW3) and PW2 with that of PW1 the informant reveals that they are in antipodes and the said lacunas creates a doubt in the mind of this Court about the entire prosecution case.

It may also be noted that the victim has entirely silent about the part taken by accused–Juren Sarkar and Bolaram Biswas in the commission of the said offence, which is another lacuna found in the evidence tendered by the victim herself. The prosecution has not tendered the evidence of any other cogent witness which may support the case of the Prosecution. There is no evidence on record as to how the accused Santosh Sarkar and even the other accused had entered into the house of Subhash Mandal and if at all the same was a criminal trespass.

The fact that the victim herself has not collaborated the story of the prosecution along with the evidence of other witnesses, who are also not found believable and the fact that the prosecution has not laid any other cogent and reliable evidence to prove the case of the prosecution by adducing the evidence of those members in whose house the victim is alleged to have stayed during occurrence of the incident i.e. Subhash Mandal, Sabita Mandal etc. leads the Court to disbelieve the case of the prosecution, and as such, the accused persons cannot be said to have committed such offences of having criminally trespassed into the house of Subhash Mandal and of having committed rape upon the victim X by taking her to the fields.

10. In view of the evidence on record and the discussion as aforesaid, this Court is of the considered opinion that there is no cogent and reliable evidence which implicate the accused persons of having committed criminal house trespass and thereafter committing rape upon the victim 'X' in furtherance of their common intention. Accordingly, the accused persons — Santosh Sarkar, Juren Sarkar and Bolaram Biswas cannot be said to have committed any offence u/s 450/376(D)/34 of the I.P.C.

Sessions Jud

Order:

- 11. The accused person Shri Santosh Sarkar, Bolaram Biswas and Juren Sarkar are acquitted of the charge u/s 450 / 376(D) / 34 of the Indian Penal Code.
- 12. Bail bond executed by the accused person and surety are extended for next six months as per the provision of Section 437 A of Cr.P.C.
- 13. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357 A Code of Criminal Procedure.
- 14. Judgment is pronounced in open court. Case is disposed on contest.

Given under my hand and seal on this the 3RD day of April/2017.

(A. Hazarika)

Dhemaj

Dictated & corrected by me:

Dhemaji.

Typed by me :-

(B.K. Buragohain)

Steno. Grade-I.

Appendix:

Prosecution Witnesses

P.W. 1 - Shri Sanatan Sarkar,

P.W. 2 - Shri Ajoy Sarkar,

P.W. 3 - Smt. Sabita Sartkar,

Defence Witnesses:-

None.

Prosecution Exhibits

Exhibit-1 - Seizure List

Exhibit 1(1) - Signatures of Ajoy Sarkar,

Defence Exhibits: None

(Shri A. Hazarika)
Sessions Judge
Dhemaji.