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

<u>Present</u>:- Shri J. Borah, A.J.S., Asstt. Sessions Judge,

Lakhimpur, North Lakhimpur.

Sessions Case No.211(NL)2013. U/S-376(2)(f) of I.P.C.

The State of Assam,
-vsKrishna Nayak,

.... Accused.

Date of framing Charge :- 23.12.2013.

Date of recording Evidence :- 10.01.2014, 13.02.2014,

26.02.2014, 04.03.2014.

Date of Argument :- 15.03.2014. Date of Judgment :- 18.03.2014.

Advocate for the State :- Mr. B. Borah, Ld. Addl. P.P. Advocate for the Accused :- Mr. D. Hazarika, Ld. Advt.

JUDGMENT:

- 1. This case is u/s-376(2)(f) of IPC so the name of the victims is not mentioned here and she is hereinafter called the victim.
- 2. The prosecution case in brief is that Padma Borah, the informant lodged an ejahar before the In-charge, Bandardewa Police Out Post on 09.10.2013 informing that the victim is his minor daughter, aged about eight years. On 09.10.2013 at about 10:00 A.M. the accused Krishna Nayak took his daughter to the jungle by inducing her and he committed rape on her in the jungle. One Chandra Bahadur Ray witnessed the said occurrence. The said Chandra Bahadur Ray told the villagers about the occurrence and the villagers caught the accused Krishna Nayak and handed over him to the police.

The Bandardewa Police Out Post received the ejahar vide GDE No.163, dated 9.10.2013 and forwarded the same to the Officer-in-charge, Bihpuria Police Station.

- 3. The Bihpuria Police Station received the ejahar and registered the same vide Bihpuria P. S. Case No.2522013, u/s- 376 of IPC read with Section 3 of Protection of Children from Sexual Office Act,2012. The Bihpuria Police Station also investigated the case and having found prima facie u/s- 376 of IPC read with Section 3 of Protection of Children from Sexual Offence Act, 2012 against the accused Krishna Nayak, laid the charge sheet before the court for trial.
- 4. The accused Krishna Nayak, hereinafter called the accused, appeared before the court of the Sub-Divisional Judicial Magistrate(S), Lakhimpur, North Lakhimpur and he was furnished copy. The learned Sub-Divisional Judicial Magistrate(S) having found the case u/s- 376 of IPC read with Section 3 of Protection of Children from Sexual Offence Act, which is triable exclusively by the court of Sessions, committed the case to the court of Hon'ble Sessions Judge, 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 person appeared before this court. Charge was framed u/s- 376(2)(f) of IPC against the accused. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 7. The prosecution, in order to bring home the charge against the accused persons, examined seven witnesses, namely-
 - 1. Dip Kalita, PW1.
 - 2. Padma Borah, PW2.

| 3. | Dhan Bahadur Ray, | PW3. |
|----|--------------------------|------|
| 4. | Chandra Bahadur Ray, | PW4. |
| 5. | The victim, | PW5. |
| 6. | Dr.(Smti) Banani Sharma, | PW6. |
| 7. | Badrul Islam Mazumdar, | 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 declined to adduce evidence in defence.
- 9. Heard argument for both sides.

10. **Points for determination:**

1. Whether the accused person on 9.10.2013 at about 10:00 A.M. Committed rape on the victim, a minor girl below 12 years in the jungle at Balijuri near Pathali Pahar Adorsha gaon and thereby committed offence u/s- 376(2)(f) of I.P.C.

DECISION AND REASONS THEREOF:

In this prosecution case, PW2 Padma Borah is the informant and PW5 is the alleged victims. PW1 Sri Dip Kalita, PW3 Sri Dhan Bahadur Ray and PW4 Sri Chandra Bahadur Ray are the independent witnesses. PW6 Dr.(Smti) Banani Sharma is the medical and health officer and PW7 Badrul Islam Mazumdar is the investigating officer.

PW2 Padma Borah, being the informant and PW5, being the alleged victim and PW5 Chandra Bahadur Ray, being the only eye witness are the prime and vital witnesses in this prosecution case. So, let us go through the evidence of this three witnesses at first.

12. PW2, Padma Borah has stated in his evidence that the victim is his daughter, aged about seven years. PW2 has also stated in his evidence that the occurrence took place three months ago (from the date of adducing his evidence before the court on 10.1.2014). PW2 has also stated that on the day of occurrence the accused took his

daughter, the victim to the hill side and in the jungle of the hill the accused committed rape on his daughter, the victim. PW2 has also stated that one Chandra Bahadur Ray saw the act of the accused on the alleged victim and accordingly, he informed about the occurrence. PW2 has also stated that at the time of occurrence he went for daily wage work. PW2 has also stated that when he came to know about the occurrence he called one Dip Kalita to his house. PW2 has also stated that the villagers caught the accused and handed over him to the police.

In his cross PW2 has stated that the accused lives nearby their house. PW2 has denied in his cross that the accused did not do any evil act on his daughter. PW2 has also denied in his cross that he has adduced false evidence.

PW5, the alleged victim has stated in her evidence that the informant is her father and she knows the accused. PW5 has also stated that on the day of occurrence towards afternoon she was in the shop of uncle Arjun. PW5 has also stated that the accused took her from the said shop and he took her to the hill stands nearby. PW5 has also stated that the accused put of her pent and he fell on the ground and took her on him and thereby he committed evil deed on her. PW5 has also stated that Chandra Bahadur Ray saw when the accused did evil deed on her. PW5 has also stated that after doing evil deed on her the accused took her to their house.

In her cross PW5 has stated that the accused used to come to their house. PW5 has also stated that the accused took her in his arms. PW5 has denied in her cross that the accused did not do any evil deed on her. PW5 has also stated that she has adduced her evidence as her father taught her to say.

PW4, Chandra Bahadur Ray has stated in his evidence that he knows both the accused and the informant as well as the alleged victim. PW4 has also stated that the victim is the daughter of Padma Borah. PW4 has also stated that on the day of occurrence he went to the side of the hill stands nearby to cut grass for his cattle and on his way to the jungle he saw the alleged victim. PW4 has also stated that he saw that the accused was sleeping on the ground taking

the alleged victim on him. PW4 has also stated that the accused was doing sexual act on the victim. PW4 has also stated that after cutting grass he came back home and informed about the occurrence to the mother of the alleged victim. PW4 has also stated that the villagers gathered in the courtyard of the accused in the evening of the same day. PW4 has also stated that he informed the villagers and thereafter the villagers handed over the accused to the police.

In his cross PW4 has stated that the accused is a physically handicap person and he suffered infirmity both in legs and hands. PW4 has also stated that he had good relation with the informant Padma Borah. PW4 has denied in his cross that he did not see to do evil act on the victim by the accused.

13. Thus, minute scrutiny of evidence of PW2, 4 and PW5, it transpires that PW2 Padma Borah is the informant. He did not see the occurrence rather he came to know about the occurrence from one Chandra Bahadur Ray. So, PW4 Chandra Bahadur Ray is the pivotal witness in this prosecution case. According to PW4 Chandra Bahadur Ray on the day of occurrence towards 7 to 8 A.M., he went to the jungle by the side of the hill to cut grass for the cattle and on his way he saw the accused Krishna Nayak was lying on the ground taking the alleged victim on him doing sexual act on her. According to PW4 he bullied the accused for such act and then he left the place.

The important things in the evidence of PW4 is that he did not do anything to the accused while he saw the accused doing evil act on the victim, rather he left the place mere bulling the accused. So, behaviour of this witness PW4 is strange enough. PW4 is an adult person and he is 45 years old. So, he could have done anything to rescue the alleged victim from the custody of the accused, but he left the said place mere saying something to the accused. So, the evidence of PW4 is very strange enough.

It has already been mentioned that PW4 is an adult person, aged about 45 years and the accused is also an adult person, aged about 30 years, but he is physically handicap. PW4 himself has

stated in his evidence that the accused has got infirmity both in his legs and hands. So, question of fearing by PW4 to the accused does not arise. PW4 could have done anything to rescue the alleged victim from the accused person, but he did nothing rather he left the place doing anything to the accused.

So, the evidence of PW4 is very confusing. There is no evidence adduced by PW4 that the accused threatened him or did anything to him for which he had to left the place of occurrence. Rather PW4 left the place doing anything to the accused person. In the evidence of PW4 it appears that he informed the parents of the alleged victim and the villagers about the occurrence. If PW4 could have informed the villagers and the parents of the alleged victim, he could have done at level best to save the girl from the evil deed of the accused person, but according to PW4 he did nothing. So, the evidence of PW4 is not beyond doubt. So, let us go for consideration of the evidence of PW5, the alleged victim.

- 14. According to PW5, the alleged victim when she was in the shop of one Arjun uncle the accused had taken away her to the jungle. There is no evidence adduced by the prosecution side whether anybody including Arjun uncle saw the accused to take the victim with him to the jungle. But there is no evidence adduced by the prosecution side in this regard. The prosecution has not examined the witness Arjun. There is no evidence whether the shop of Arjun was opened at the time of occurrence. There is no evidence adduced by prosecution whether anybody was present at the time when the accused had taken away PW5, the alleged victim to the jungle. All this things remained in dark.
- Another aspect is that the accused Krishna Nayak is physically handicap. His legs and hands are not usual, rather they have got some infirmities. PW5 the alleged victim has stated in her evidence that the accused took her in his arms while taking her to the jungle.

From the evidence of PW4, Chandra Bahadur Ray it is clear that the distance between the place of occurrence and the house of the informant is approximately 200 metres. So, taking away a girl of aged seven to eight years by a physically handicap man is some what impossible.

16. Another vital aspect is that time of occurrence.

According to PW4 Chandra Bahadur Ray it was the morning when he went to cut grass, he saw the occurrence. According to PW5 when she was in the shop of one Arjun in the afternoon, she was taken away by the accused. So, there is no corroboration between the evidence of PW4 and PW5 regarding the time of occurrence. This gulf of evidence between PW4 and PW5 creates doubt in the prosecution case.

- The most important evidence adduced by PW5 is that she has clearly stated in her evidence that she has been taught to adduce evidence by her father. So, the evidence of PW5 is not free, rather she has been tutored by her father to adduce evidence. So, such tutored evidence is not free from malign and it is difficult to accept such malign evidence. PW5 the alleged victim is a minor girl, so there is every possibility to tutor her evidence by her elders. In her cross PW5 has clearly stated that she has adduced evidenced as her father taught her to say. So, her evidence is not free rather her evidence is tutored one.
- 18. For sake of argument, if it is accepted that the accused had sexual act on PW5, the alleged victim, let us see the evidence of PW6, Dr. (Smti) Banani Sharma, the medical and health officer, who examined PW5, the alleged victim.
- 19. It has already been mentioned that the accused is an adult person, aged about 30 years and the alleged victim is a minor, aged about eight to nine years. In such a situation, if there had been

any sexual act on PW5 by the accused, there might have been some injuries on PW5, either on her private parts or any part of her body.

20. PW6,Dr.(smti)Banani Sharma has stated as follows" Identification mark- small black mole over left
side of neck. Height- 3 ft., 6 inches, weight- 11 kg. General
configuration is good. Teeth- 24 Nos., breast- small, axillary hair
absent and pubic hair absent. Vulva- normal, vagina admits tip of one
finger, hymen present, uterus not palpable per abdomen.

Laboratory examination for spermatozoa detectionno spermatozoa seen. Ossification test for age determination- no X ray report submitted. External injury nil.

Opinion- there is no sign of recent forceful sexual intercourse. Her age could not be ascertained as X ray report not submitted. No injury detected."

PW6 has exhibited the medical report as Ext.2 and Ext.2(1) is her signature.

Thus, the evidence of PW6, the medical and health officer Dr.(Smti) Banani Sharma shows that she examined the victim, PW5 on 10.10.2013. According to the ejahar, Ext.1 the occurrence took place on 9.10.2013 i.e. the victim was examined immediately by the medical and health officer, PW6, but she found no external injury on PW5. The hymen of the victim was present. Even PW6 has of opinion that she found no evidence of recent forceful sexual intercourse onPW5. So, according to PW6, the medical and health officer, there was no external injury on PW5. If there had been any sexual intercourse on a minor girl, aged about seven years by an adult person, there must be some injuries either on her private parts or any part of her body. But according to PW6, she found no external injury on PW5. So, the evidence of PW6 makes clear that there was no sexual intercourse on PW5.

21. The earlier discussion shows that the evidence of PW5 is not natural and spontaneous but it is tutored one. The evidence

of the eye witness PW4 Chandra Bahadur Ray is also found not convincing and reliable.

- 22. Considering all aspects, it leads to conclusion that the prosecution evidence cannot be taken into confident to clutch the accused u/s- 376(2)(f) of IPC. The prosecution evidence is not trust worthy and reliable, rather such evidence is imbibed with doubt.
- 23. The prosecution, thereby, has failed to prove it's case u/s- 376(2)(f) of IPC against the accused person beyond all reasonable doubt.
- 24. Held that the accused is not guilty u/s- 376(2)(f) of L.P.C.

Accordingly, the accused is acquitted and set at liberty.

25. 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 18th day of March, 2014.

(J. BORAH, AJS.) ASSISTANT SESSIONS JUDGE, LAKHIMPUR, N. LAKHIMPUR.