

IN THE COURT OF ADDITIONAL SESSIONS JUDGE (FTC):: AT DHUBRI.

Present:- P. Buragohain, AJS.

Session Case No. 75/10.

State of Assam.

-Vs-

Romen RayAccused-persons.

Appearance :

Mr A.T.A. Bepari, Addl. P PFor the State.

Mr. Anamuddin Ahmed, AdvocateFor accused.

Evidence recorded on: 30-09-10; 19-01-11; 05-08-11; 11-11-11; 05-12-12; & 20-02-13.

Argument heard on : 03-04-13 & 22-04-13.

Judgement delivered on: 04-05-13.

-JUDGEMENT-

The case has been committed by Learned Additional Chief Judicial Magistrate, Dhubri.

The brief fact of the prosecution case, inter-alia, is that on 27-08-05, the complainant being the mother of the victim girl filed an First Information report marked Exbt.1 before the Officer-in-Charge, Golukganj Police-Station reporting that on 30-07-05 about 09-00pm while there was Hari-Sabha (Hindu religious prayer/Kirtan) in her parents' house, the accused through one Naren Ray calling her minor daughter aged 12 years (PW-7) gagged her mouth and taking her into his house he raped upon her and on search the victim was recovered from the house of the accused and her daughter reported the occurrence and the matter was reported to the villager and as they were awaiting for village Salish, the delay has been caused in filing the Ejahar. Therefore, the informant prayed for necessary action.

That on receipt of said FIR, the police registering a case vide Golukganj PS case No.213/2005 u/s 376/342/34 of IPC swung into action of investigation, thereafter, on completion of investigation, the police submitted a charge-sheet against the accused sending him up to stand trial for the offence punishable under section 342/376 of IPC. Hence, the instant case in hand.

That on appearance of the accused, the learned committal Court on furnishing the copies of the police-papers, committed the case for trial.

And on appearance of the accused and on hearing both sides & on the materials on record charges punishable u/s 342/376(f) of IPC was framed against the accused and same was read over & explained to him to which he pleaded not guilty.

During trial, the prosecution in support of its case has examined 10 (ten) witnesses including the Investigating Officer and in view of the evidence on record, the accused is examined and recorded his statements u/s 313Cr PC wherein he has taken the plea of total denial and declined to adduce his defence evidence.

I have heard arguments put forward by the Learned Counsel of both sides and carefully gone through the entire evidence on record.

Now, the points for determination in the instant case are:-

Whether the accused on 30-07-05 about 09-00pm at village Bichondoi Part-III under Golukganj Police-Station wrongfully confined PW-7, the minor daughter of the complainant and committed rape upon her-a minor girl below the age of 12 years as alleged?

:- DECEISION AND REASONS THEREFOR:-

The prosecution in support of its case has examined ten witnesses-the PW-1 is the complainant-cum-mother of victim girl; PW-2 is Dhaniram Ray-the brother of complainant; PW-3 is Gangacharan Ray-the father of the victim girl; PW-4 is Santosh Kumar Ray; PW-5 is Sanjit Kumar Ray; PW-6 is Dharendra Nath Ray; PW-7 is the victim girl; PW-8 is the Investigating Officer who submitted the charge-sheet; PW-9 is the medical officer who examined the victim girl; & PW-10 is the Investigating Officer who conducted the investigation.

The Learned Counsel for the accused during argument has contended that the occurrence took place on 30-07-05 but the Ejahar (FIR) was filed on 23-08-05, so according to him there was a long delay in filing the Ejahar.

The next contention of the accused side is that there is no iota of evidence that the victim girl was at that time of occurrence was below the age of 12 years. The doctor has failed to give accurate age saying that she was below 18 years and there is variation of two years on either side of the age determined by the doctor, he has added.

The another contention of the defence is that one Naren Ray alleged to have been called the victim girl out of the Kirtan Sabha but the prosecution has neither cited him as witness nor has examined him for which there remains a serious lacuna in the prosecution case.

The complainant-PW1 being the mother of the victim girl has deposed to the facts that on that night of the occurrence there was Kirtan in her father's house; at that time the victim daughter was 12 years of age reading in class-vii and one Naren Ray called out her said daughter from the Kirtan, thereafter, the accused forcibly took her said daughter to the house of accused and finding her absent in the Kirtan she searched for her daughter and on hearing screams in the house of accused, she accompanied with her father & other villagers rescued her daughter from the house of accused and on being asked her daughter reported that accused forcibly and threatening caused "Beya Kam" [illicit acts] and she was given bath awaiting for Bichar in the morning but the accused fled away and for absence of accused Bichar could not be held, and she filed the case, however, accused side took considerable time for compromise but went in vain and for that delay has been caused in lodging the case and she has proved the Ejahar marked as Ext.1 and her signature as Ext.1(1).

In cross-examination, she has asserted that the Ejahar was written by her husband as per direction and has denied the defence suggestion that she did not state before the police that on being asked her daughter reported that the accused Ramen had done illicit act upon her daughter and they waited for about 3-4 days for Salish. She has further asserted that neighbours of her father namely Raju Kumar Ray, Bimal Ray, Dudh Kumar Ray, Biren Ray, Ganesh Ray and others were present in the Kirtan but has denied that the accused did not commit rape on her.

PW-2 is Dhaniram Ray and has deposed that the victim girl used to stay in the house of Santosh Ray for her schooling and on that night in the year 2005, there was Kirtan in the house of said Santosh Ray and while the Kirtan was going on, suddenly, the victim girl was found absent. Thereafter, search was made for the girl and she was found in the house of the accused and the house of the accused is near to the house of said Santosh Ray. He has further deposed that at the time of search, they at first found the door of the house of the accused closed and while asking the accused to open but he did not open for which they cut the door and he alongwith Santosh, Ganga Charan entering into the house of the accused brought out the victim girl and they also found the accused inside his house and no any person was there in the house; and on being asked, the victim girl reported that while Kirtan was going on, at that time, she was reported by Naren about calling her by the accused and while she came out from the house, the accused dragging took her to his house.

In cross-examination, he has denied suggestions that he did not state before the police that they on going to the house of the accused, called him but he did not open the door. Thereafter, they entered by cutting the door. The PW-2 also denied that he did not state before the police about asking the occurrence to the victim girl and she reported that the accused had dragged her into his house and also that he saw the accused in the house of the accused.

PW-3 identifying the victim being his daughter, has deposed that on that night in the year 2005, there was Kirtan in the house of his father-in-law and he along with his wife, daughter & other villagers were present in the Kirtan and while Kirtan was going on, suddenly, his daughter found missing and they searched for her and after the Kirtan, they found her in the house of accused. He has further deposed that they found the door of the house of the accused was closed and on being asked to open the door, the accused did not open, they cut the tied rope of the door and entering into the house of the accused, they found the victim daughter with the accused and they brought the victim and on being asked, the victim girl reported that the accused through one boy named Naren called her and on her arrival in the front-yard, the accused catching took her to his house and committed rape on her and in the morning, they thought for holding a Salish but the accused fled away for that the brother of the accused Ajit Ray lodged a case alleging kidnapping of the accused.

In cross-examination, he has admitted that the victim was wearing churidar and the case was filed after 10-12 days of the occurrence and for the Salish a written complaint was given before the village Headman Baroda Kanta Ray & Secretary of the Club Sukumar Prodhani but that written complaint was not given to police. He has further asserted that at the time of Kirtan, the neighbours of his father-in-law namely Raj Kumar, Bimal Ray, Dudh Kumar Ray, Biren Ray were present in the Kirtan and in their presence, the tied up rope of the door was cut and entered into the house of the accused, however, he has denied the suggestion put to him by the defence.

PW-4 Santosh Kumar Ray identifying the accused and the victim girl, has deposed that about 5/6 years ago on a night, Kirtan was going on in his house; at that time the victim was about 10-11 years of age and she used to stay in his house and when Kirtan was over, they noticed absence of the victim girl from his house and on search, they found her in the house of the accused and the victim girl told that the accused had committed rape on her and the victim was brought to his house; on the next day there was Bichar but the accused absconded, thereafter, his daughter filed this case.

In cross-examination, he has admitted that he cannot say the date of occurrence and near to his house, there are houses of Raj Kumar Ray, Bimal Ray, Dudh Kumar Ray, Biren Ray, Ganesh Ray etc. and they also went in search of the victim girl and the door of the house of the accused was broken; and the victim girl stated before them that the accused had committed rape on her. He has also admitted that the accused side filed a cross-case against them and he cannot say the date of birth of the victim girl and he has not seen her School Certificate.

PW-5 also identifying the victim & the accused has deposed to the facts that in 2005 on a night, he went to the Kirtan in the house of Santosh Ray, thereafter, he came back and on arriving his house, he hearing hulla, went to the house of Santosh Ray and saw all were looking for the victim girl and the victim girl was found in the house of accused and he saw Santosh Ray along with others breaking the door of the house of accused and the victim reported that the accused forcibly taking her had committed rape on her and on the next day, there was a Bichar but the accused fled away and filed a false case against them.

In cross-examination, he has denied to the suggestions that he did not state before the police that the victim stated that the accused taking her had committed rape on her; and about the Salish in the next morning.

PW-6 also identifying the victim has deposed that there was Kirtan in the house of Santosh and while the Kirtan was over, the people started going back and while he was there, they noticed absence of the victim girl and after search, they found her in the house of the accused. He has also deposed that they went to the house of the accused and the door was broken and the victim girl was rescued. His further version is that the victim girl told that one Naren had called her, thereafter, the accused took her to his house committed

rape on her and on the next day a Bichar was convened but the accused fled away and the accused filed a case against them alleging kidnapping.

In cross-examination, he has asserted that the father of the victim girl is his nephew, however, denied the suggestions that he did not state before the police that the victim girl told about calling her by Naren and the accused taking her in his house had committed rape.

PW-7-victim girl is examined in camera and has deposed that on the date of occurrence, there was Kirtan in the house of her maternal grandfather (PW-4) and she used to stay there for her study and was reading in Class-VI. She has further deposed that many people assembled in the Kirtan and while she was sitting in the Kirtan, her cousin Naren calling her asked to meet the accused and she thinking to be some urgent work, so she came out to the gate and at that moment, the accused gagging her mouth lifted her in his shoulder and took her to his house situated nearby and inside his house, he locked his room and while she was about to shout, the accused gagged her mouth and showing a dagger threatened to kill her if she raise alarms, thereafter, he raped on her and on release she slowly got up and opened the door; her grandparents & parents took her from the house of the accused and she told the occurrence to the people and her mother filed the case. She has also deposed that her statements u/s 164 CrPC was recorded wherein she put her signatures and has proved the same marked as Ext-2 and her signatures as Ext-2(1) & 2(2).

In cross-examination, she denied all suggestions put to her by the defence. However, she has asserted that she raised hue and cry when the accused took her to his room and also has admitted that there are houses of Deben, Ganesh, Ramesh, Biren & others and these people assembled at the place of occurrence; and while the door was opened she saw her mother, grandparents and she was wearing a top with skirt at the time of occurrence but the police did not take her wearing clothes and she also has asserted that the birth certificate was shown to police.

PW-8 is the Investigating Officer, who after going through submitted the charge-sheet only.

PW-9 is the doctor who examined the victim girl on 22-09-05 at Dhubri Civil Hospital and his findings were as follows:

Her height was 153cm; weight-44.5kg; teeth-28 in numbers;

Her secondary sex character:—

Breast developed; nipple areola-dark; secondary areola-absent; secretion on squeezing and injury mark on the breast absent. Auxiliary hair-absent; Pubic hair-present. Her menstrual history was regular and on the day of examination, she had her mense 7-10 days back.

Examination of vulva & vagina-developed; hymn-tear present, tenderness present.

Mark of violence present in the forchatti-hymn.

Vaginal smear for microscopical examination for spermatozoa does not show presence of spermatozoa.

On Radiological examination-the radiological age of the victim girl was below 18 years on the date of examination.

Opinion:- From the above finding, it is found that she has been raped. Violence marks found with forchatti area of vagina. The age of the victim girl is below 18 years and has proved the medical report mark as Ext-4 and the smear report marked as Ext-5.

In cross-examination, he has categorically asserted that there was injury in the vagina of the person and that is why, the tenderness was occurred and on physical and local examination of the patient, I came to the conclusion that she was raped and denied to the suggestions that he prepared a false report.

PW-10 is the Investigating Officer, who conducted the investigation of the case on being endorsed to him by the O/C, Golakganj P.S and during investigation, he visited the place of occurrence, drew up the sketch map of the place of occurrence, examined the witnesses, sent the victim girl for medical examination by the doctor of Dhubri Civil Hospital and also sent the girl for recording her statement u/s 164 Cr PC and has proved the Ejahar marked as Ext-1, the statement of the victim girl marked as Ext-2 and the medical report and smear report marked as Ext-4 & Ext-5 and the sketch map marked as Ext-6.

In cross-examination, he has admitted that he did not seize any wearing apparel of the victim girl, however, has admitted that the complainant did not state before him that her daughter reported about illicit acts done by Ramen; and the witness Dhaniram also did not state before him that arriving in the house of accused they called the accused but the accused did not open the door and they entered into the house but cutting the door and that the victim reported about dragging her by the accused. He has further asserted that the witness Santosh Kumar Ray did not state before him that the victim told about commission of rape by the accused on her. He has further deposed that witness Sanjit Kumar Ray did not state before him that the victim girl reported about forcibly taking caused rape on her; and the witness Dharendra Nath Ray did not also state before him about calling the victim girl by Naren, thereafter, the victim was taken by accused to his house and committed rape on her. He has also asserted that the victim girl did not state to him that she went out to the gate, met the accused, thereafter, the accused gagging her mouth lifted her over his shoulder and while she raised hue and cry, the accused showed a dagger; and also about disclosing the occurrence to her mother and other people.

The victim girl in her statement u/s 164 CrPC [Ext.2] disclosed her age as 12 years and in deposition before court on 11-11-11 she at the very outset has disclosed her age as 18 years; the occurrence took place in the year 2005 and the mother has claimed that at that time of occurrence her daughter was 12 years; and the grandfather of the victim girl has deposed that the victim was about 10-11 yrs in age, although he cannot say the date of

birth of the victim that clearly has confirmed that the victim girl was at that time of occurrence was 12 years of age. Although the mother could not produce the birth certificate in trial of the case but there is no challenge from the defence as to the age of the victim as stated by the victim, her mother & grandfather, even no suggestion has been put to them challenging the age as stated by the prosecutrix. Thus, the clinching evidence is that the victim was at that time of occurrence a minor aged of 12 years.

It deserves a mention that the sexual assault like rape upon helpless minor girl aged 12 years is very pathetic. And sexual assault like rape on girl/woman is so evil designed and secret that such crime seldom witnesses by any other person; therefore, we generally find no direct eye-witness to the crime except the victim.

In the instant case, the prosecutrix has deposed that **on the date of occurrence, there was Kirtan in the house of her maternal grandfather (PW-4) and she used to stay there for her study and was reading in Class-VI. She has further deposed that many people assembled in the Kirtan and while she was sitting in the Kirtan, her cousin Naren calling her asked to meet the accused and she thinking to be some urgent work, so she came out to the gate and at that moment, the accused gagging her mouth lifted her in his shoulder and took her to his house situated nearby and inside his house, he locked his room and while she was about to shout, the accused gagged her mouth and showing a dagger threatened to kill her if she raise alarms, thereafter, he raped on her and on release she slowly got up and opened the door; her grandparents & parents took her from the house of the accused and she told the occurrence to the people.**

It deserves a mention that during cross-examination, the defence has not been able to shake the veracity of the prosecutrix except putting some suggestions to which she has denied in total. The prosecutrix has been able to narrate the entire minute details of the ill-fated occurrence corroborating the medical evidence of the doctor PW-9 who has categorically asserted that **there was injury in the vagina of the person and that is why, the tenderness was occurred and on physical and local examination of the patient, I came to the conclusion that she was raped.**

The evidence of the parents & the grandfather of the victim girl and the other witnesses [PW-2, PW-5 & PW-6] is crystal clear that they were in the Kirtan and the victim was found missing and immediately after the occurrence they rescued the victim girl from the house of the accused and at the time of recovery they also found the accused in his house and the victim immediately reported the occurrence to them-the rescuer. The prosecutrix & the witnesses have been able to depose the minute details of the ill-fated occurrence from the begging to the point of her rescue by corroborating the FIR-Ext.1 as well as the statement of the victim u/s 164 CrPC coupled with the medical evidence, therefore, they are found trustworthy and reliable.

The utmost clinching scenario as have been deposed by all witnesses is that the place of occurrence is the place of recovery, that is the house of the accused and the witnesses found the accused at that place of occurrence immediately after the occurrence and that has been remained unchallenged & unrebutted for lack of cross-examination on that relevant point by the defence.

In such case, the court must hear the loud cry for justice in cases of heinous crime of rape on innocent helpless girl of tender years, as in this case, and also to respond by imposition of proper sentence.

The complainant-mother [PW-1] has deposed in clear terms that the accused side took considerable time for compromise but went in vain and for that delay has been caused in lodging the case. Thus, the delay has been found well explained. That apart, if the prosecutrix as well as the prosecution witnesses are found trustworthy and reliable, in that case mere delay in lodging the case is not fatal to the prosecution.

In view of the above, I am of the opinion that the prosecution has been able to establish its case u/s 342/376 of IPC against the accused and accordingly I convict & condemned him thereunder.

Considering the manner of the commission of the offences by the accused and heinousness of the crimes against a minor girl aged 12 years, I have expressly declined to extend the benefit of section 360/361 of CrPC or under the Probation of offenders Act since public abhorrence of the crime needs reflection through imposition of appropriate sentence by court.

The measurement of punishment in a rape case cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the offender, the state and the age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim is irrelevant consideration in sentencing policy. Protection of female society and deterring the criminals are the avowed objects of law as well as one of the obligations of the greatest gift-the human of God and that is required to be achieved by imposing an appropriate sentence.

On hearing the convict on the point of sentence, he is sentence to suffer rigorous imprisonment for six months for the offence u/s 342 of IPC and further to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5000/-(Rupees Five thousands) only in default to suffer simple imprisonment for another six months for the offence u/s 376 of IPC. The sentence of imprisonments shall run concurrently. The period of detention already under gone in this case by the convict be set off.

Furnish free copy of the judgement to the convict forthwith and also to District Legal Services Authority for enabling appeal/revision for and on behalf of the convict as he is entitled to free legal aid as provided u/s 12 of the Legal Services Authority Act.

None can deny that the prosecutrix suffers a lot and we cannot leave her to be the victim of the ill fate or the destiny and she being the tender aged victim is entitled to the benefits under the scheme of the government as the government is extending its helping hand with human touch to some extent to such destitute victim girl/woman. The pathetic facts & circumstances led the prosecutrix to a pathetic condition. Therefore, she being most ill-fated victim deserves adequate compensation under section 357A of CrPC.

Accordingly, let a copy of the judgement be forwarded to the District Legal Services Authority, Dhubri for awarding adequate compensation in accordance with law.

Also send a copy of this judgment to Learned District Magistrate, Dhubri

Given under my hand & the seal of the Court on 4th May, 2013

Additional Sessions Judge (FTC),

DHUBRI.

Ends here.