

IN THE COURT OF THE SESSIONS JUDGE :::::::::: BONGAIGAON

Sessions case no. 111 (J)/2011.

U/S 448/376/ IPC

State

Vs

Tota Miah Accused.

PRESENT : Smt M. Nandi,
Sessions Judge,
Bongaigaon.

ADVOCATES APPEARED : Sri A. K. Nath, Public Prosecutor
for the State.
Sri P. Baidya, advocate
for the accused.

Date of Argument : 04.08.2012.

Date of Judgment : 04.08..2012

JUDGMENT AND ORDER

1. The prosecution case in brief is that the informant Mustt Jamiran Khatun lodged the ejahar before the O/C Jogighopa Police Station stating inter-alia that on 30.5.11 at about 2.50 P.M at night taking advantage of absence of her husband in his house accused trespassed into their house and to have sexual intercourse with her by applying force. When she raised alarm some neighbouring people came to the spot and accused escaped from the scene.

2. On receipt of the ejahar, police registered a case and after completion of investigation, submitted charge sheet against the accused – Tota Miah U/S 448/376/ IPC. As the case is exclusively triable by the court of sessions the case has been committed to the court of sessions for trial. During trial the accused put his appearance before the court and he was enlarged on bail. Charge was framed U/S 448/376/ IPC which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

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3. In this case, prosecution examined 3 witnesses and the defence examined none. The plea of the defence is of total denial.

4. Points for determination

1) Whether the accused person on 30.5.11 at Dolnibil under Jopgighopa Police Station committed house trespass by entering into the house of Monowara Khatun and thereby committed an offence U/S 448 IPC ?

2) Whether the accused person on the same date, time and place committed rape on Mustt Jamiran Khatun and thereby committed an offence U/s 376 IPC ?

DECISION AND REASONS THEREOF

5. To arrive at just decision of the case, let me consider the evidence of the witnesses.

6. PW 1 is the informant as well as victim Jamiran Khatun. She deposed in her evidence that about 1 year 3 months back an altercation took place between her husband and the accused due to fishing net as both her husband and the accused were dealing with the business of fish. On the date of occurrence at about 2 P.M at night the accused entered into their house in absence of her husband. As the accused entered into his house at night, as such, she thought that the accused would have committed mis-deeds with her. On the basis of said fact, she disclosed the ejahar writer to write the same. She does not know read and write. She could not say what was written in the ejahar. She put her thumb impression in the ejahar. Her statement was recorded by the Magistrate and before the Magistrate she stated that in absence of her husband the accused entered into their house, applied forced towards her and committed mis-deeds. PW 1 further stated that she had stated before the Magistrate implicating accused person as because the accused would not harass her in future. She has one daughter and one son and she is leading conjugal life with her husband.

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