

IN THE COURT OF THE PRINCIPAL MAGISTRATE,
::::::: JUVENILE JUSTICE BOARD:
BONGAIGAON :::::

GR CASE No. 232/2010.
U/S. 376 IPC.

State of Assam
-Vs-
Md. Nur Jamal

Present: **Sri A. U. Ahmed, AJS**
Principal Magistrate,
Juvenile Justice Board,
Bongaigaon.

Name of the informant:

Musstt. Omela Khattun,
Daughter of Lt Jamir Ali,
Vill- Kushbari Pt-III,
PS- Abhayapuri, Dist-Bongaigaon.

Advocates appeared:

For the Prosecution: **Mr. T. K. Bhowmick, Assistant PP.**
For the Defence: **Mr. Mohammad Ali.**

Argument heard on: **19.11.2013.**

Judgment Pronounced & Delivered on: **28.11.2013.**

J U D G M E N T

1. The prosecution case in brief is that on 27-05-2010 the informant lodged a written ejahar with Abhayapuri PS stating inter-alia that the juvenile developed a love affair with her and had sexual intercourse with her by giving assurance that he would marry her. On 26-05-2010 at 11:00 AM on direction of the juvenile she came to their house. The juvenile and his family members assaulted her and made her nude and tied her with a tree standing in the back side of the house. Getting information, her maternal uncle along with local people rescued her. On receipt of the written ejahar Abhayapuri PS register a criminal case U/ss.376/325//294/342/506 IPC and started investigation. On completion of investigation the charge-sheet was submitted U/S.376 IPC against the juvenile showing him absconder. Hence the prosecution has come up.

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2. On completion of investigation, copy was supplied to the juvenile in conflict with law. The particulars of offence under section 376 IPC was duly explained to the juvenile in conflict with law to which he pleaded not guilty and claim to be tried.

3. During trial, the prosecution has examined as many as 7(seven) prosecution witnesses. The juvenile has been examined U/S.313 CrPC. Defence has examined none. Plea of defence is of total denial.

4. : **POINTS FOR DETERMINATION** :

(a) Whether the juvenile in conflict with law committed rape on the informant?

5. : **DECISION AND REASONS THEREOF** :

We have very carefully gone through threadbare marathon argument duly advanced by the Ld. Lawyers of the both sides. In the very outset, Ld. Defence counsel has strongly contended that the prosecution has miserably failed to prove its case U/S. 376 IPC against the juvenile. On the other hand, the Ld. Assistant PP refuting the aforesaid submission has submitted that prosecution has succeeded comfortably in establishing its case against the juvenile in conflict with law. Prior to rebutting the rival contention of both sides, it would be appropriate to scrutinize the evidence on record. Hence, we would like to move on the evidence on record.

6. PW1 is Musstt Halima Khattun who is the grandmother of the informant-cum-victim. She has stated in her testimony that

the juvenile is her immediate neighbourer. At the time of occurrence, she

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hearing shouting of the informant called her son Hakim and thereafter Hakim along 2/3 persons went to the house of the juvenile. The informant informed her that the juvenile did foul work with her and that the juvenile took her to his house on call for marrying her. The informant also informed her that she spent with the juvenile in his house prior to the occurrence.

7. PW2 is Abdul Hakim who is the maternal uncle of the informant. He has stated in his testimony that hearing shouting he went the house of the juvenile and found the informant lying the back side of the house with torn dresses. Then one Latif advised him to take the informant to the house and told him that in the evening a Mel would be convened. The informant informed him that the juvenile made intercourse with her.

8. PW3 is Abdul Rashid who has stated in his testimony that hearing shouting in the house of the juvenile he came towards the house and found the grandmother and maternal uncle trying to enter into the house of the juvenile and the family members resisting them. There after he came to know that the informant was sought to be got married to the juvenile. As guardian of the juvenile was not available in the house he asked the guardian of the informant to take her back home and to convene a Mel in the village. According the informant was taken home back. After the occurrence the informant was got married to another person.

9. PW4 is Kalim Uddin and PW5 is Mafidul Islam. They have not supported the prosecution case.

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10. PW6 is Nabajyoti Sarma who examined urine test of the informant to ascertain pregnancy. Ext1 is report of urine test. The report was negative. PW7 is the Investigating Officer.

11. In this case the informant-cum-victim Musstt. Omela is most vital and material witness but the prosecution has failed to examine her. There is no evidence on record showing that anybody saw the juvenile making physical sexual relation with the informant. It is found that coercive measures were taken for ensuring presence of the informant before the court for deposition. It is evident that the informant was already got married to another person.

12. **In the result, we find that the prosecution has failed to prove its case against the juvenile beyond all reasonable doubts. Hence on benefit of doubt, the juvenile in conflict with law is hereby acquitted from the charge brought against him and let him be set at liberty forthwith. The bail bond stands cancelled. Accordingly this case is disposed of on contest.**

13. The Judgment is pronounced and delivered in the open Court on this **28th November, 2013** under my hand and seal of this Court.

(Sri A.U. Ahmed)
Principal Magistrate
J.J.B, Bongaigaon

(Sri Dulal Chadra Basak)
Member
J.J.B, Bongaigaon

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(Smt. Ranu Choudhury)
Member
J.J.B, Bongaigaon

Dictated and Corrected by me.....

(Sri A. U. Ahmed)
Principal Magistrate
J.J.B, BONGAIGAON.
