

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

JJB CASE No. 03/2013.

U/Ss.376/417 IPC.

State of Assam

-Vs-

Sri Nipen Barman.

Present: **Smt. N. Talukdar, AJS**
Principal Magistrate,
Juvenile Justice Board,
Bongaigaon.

Advocates appeared:

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

For the Defence: **Smt. J. R. Barman.**

Argument heard on: **01.07.2014.**

Judgment Pronounced & Delivered on: **10.07.2014.**

J U D G M E N T

1. The prosecution case in brief is that on 19.09.2012 the informant Niten Ch. Nath lodged an FIR before the police informing that, his daughter-victim "A", who is studying in Class-IX did not go to her school for one month due to her illness. While she was taken to the hospital for her treatment it was learnt that she was about 6/7 months pregnant. On being asked, the victim informed that she had love-affairs with the juvenile in conflict with law Sri Nipen Barman and as a result she had sexual intercourse with him and therefore she became pregnant. The

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juvenile also promised to marry her. Then, on 16.09.2012 an FIR was lodged. That, on 17.09.2012 there was an amicable settlement arrived at between the parties at the intervention of the Officer-in-Charge of Boitamari police outpost and the victim was taken to the house of the juvenile by the father, brother and maternal uncle of the juvenile. But in their house the victim was not allowed to enter into the house and the elder brother of the juvenile was also tortured her. Hence, the informant lodged the FIR on 19.09.2012. On the basis of the FIR, Abhayapuri PS Case No. 239/12 U/S.376/34 IPC was registered and investigation was set into motion. On completion of investigation police submitted charge-sheet U/Ss.376/417 IPC against the juvenile in conflict with law. Hence, the prosecution case has come up.

2. The juvenile in conflict with law namely Nipen Barman was produced before the JJB after his arrest. After filing of charge-sheet trial against the juvenile in conflict with law has been started. Copy was furnished to him. The particulars of the offence U/Ss.376/417 IPC were explained to the aforesaid juvenile in conflict with law to which he pleaded not guilty and claimed to be tried.

3. During trial, the prosecution has examined as many as 5 (five) 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 victim "A" and thereby committed the offence U/S.376 IPC?

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(b) Whether the juvenile in conflict with law cheated the victim "A" by inducing her to consent sexual intercourse with him which caused her damage of her body, mind and reputation and thereby committed the offence U/S.417 IPC ?

: DECISION AND REASONS THEREOF :

5. The Board has heard the Ld. Counsel for both parties. Ld. Counsel for the prosecution has submitted that the prosecution has proved the case against the juvenile beyond all reasonable doubts. On the other hand, Ld. Defence Counsel has submitted that there is no cogent, consistent and reliable evidence adduced by the prosecution to prove the charges levelled against the juvenile. The evidence of victim is not corroborated by other prosecution witnesses. The victim is a consenting party to the sexual act with the juvenile. The medical report which is available with the record clearly reveals that the victim is aged about more than 18 years. Further, the prosecution has not examined the Doctor and the Investigating Officer to support the incident of rape. Ld. Defence Counsel has relied on the following two decisions **(a) 2009(3) G.L.J 460 in Gadapani Saikia Vs. State of Assam and (b) 2012(2) G.L.J 648 in Smti. Sewali Rajbangshi Vs. State of Assam & Another.**

6. At this stage, it is expedient to cast a glance at the evidence of prosecution side. The prosecution to prove the case examined five witnesses. PW1 is the informant Sri Niten Ch. Nath. In his evidence, PW1 has deposed that about 9 months back the incident

happened. PW1 has deposed that his daughter-victim "A" who is studying in Class-IX

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had love affairs with the juvenile in conflict with law. During the time of incident, PW1 has noticed that the victim stopped going to the school and remained sleeping in her room. Then, the victim was taken to the hospital for her treatment wherein they learnt that the victim was about 6/7 months pregnant. On being asked, PW1 has learnt from the victim that as a result of sexual intercourse with the juvenile in conflict with law, the victim became pregnant. Then PW1 immediately informed the family members of the juvenile. Thereafter, he lodged FIR before the Boitamari Police Outpost. On 17.09.2012 the matter was amicably settled between the parties in the Boitamari Police Outpost in presence of the in-charge of the O.P and the victim was taken to the house of the juvenile by the father, elder brother and maternal uncle of the juvenile. Next day in the evening, PW1 learnt that the victim was not allowed to enter into the house of the juvenile and the elder brother of the juvenile with the help of some miscreants tortured the victim. Therefore, the victim was taking shelter in the house of another person. Then, PW1 lodged FIR before the police. Ext-1 was the FIR and Ext-1(1) was the signature of the PW1. PW1 has deposed that the victim was staying at State Home at Jalukbari and she gave birth of a son.

In cross-examination, PW1 has deposed that he lodged two FIRs before the police. One on 16.09.2012 and another on 19.09.2012. PW1 had revealed that during day time he and his wife

went outside for work and in the evening they returned to home. He did not know who used to visit his house during day time. PW1 denied the suggestion that he lodged the case as a result of personal grudge against

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the juvenile. He has also denied the suggestion that he has adduced false evidence.

7. PW2 is the victim "A". In her evidence, PW2 has deposed that about 1½ years back the incident happened. She had love-affairs with the juvenile in conflict with law and on 21.02.2012 and 23.02.2012 at about 6 O'clock in the evening the juvenile went to the house of the PW2. At that time there was no other person present in the house. The juvenile promised to marry PW2 and had sexual intercourse with her forcibly. At that time PW2 was studying in Class-IX. PW2 has deposed that her present age is 17 years. The juvenile asked her not to reveal about the incident to any person. As a result of sexual intercourse by the juvenile she became pregnant. Later on, her family members learnt about her pregnancy. Though PW2 had informed the juvenile about her pregnancy but he did not give no importance. PW2 has deposed that when her father learnt about the her pregnancy he went to the house of the juvenile and had a discussion with his parents. But they scolded her father and drove him away. When the juvenile in conflict with law did not marry her, then about 2/3 days later PW2 went to the house of the juvenile but his father and brother did not allow her to

enter into the house. Then, she kept waiting in front of the house of the juvenile till 11:00 PM in the night. Thereafter, some village boys and brother of the juvenile took her back to her parental home with the assurance that her marriage would be solemnized with the juvenile. Meanwhile, her father informed the police about the incident. Police called them to the police station for settlement

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of the dispute. Next day the juvenile and his guardian took her from the police station with the assurance of her marriage with the juvenile and kept her in the house of maternal uncle of the juvenile. Next day in the morning while the maternal uncle of the juvenile took her to the house of the juvenile they refused to accept her in their house. Yet PW2 remained in the house of the juvenile at about 9:00 PM the family members of the juvenile along with some village boys forcibly drove her out from their house. Then, she spent the night in the house of the girl namely Bibha. Next day in the morning she went to the police station. She was taken to the Court by the police and her statement was recorded by the Magistrate. Ext-2 was her statement and Exts-2(1) & 2(2) were her signatures. As her parents refused to take her to the house, therefore she was sent to State Home for Women at Jalukbari by the Court. She gave birth of a son in the State Home.

In cross-examination, PW2 has revealed that she and the juvenile did not study in the same school. She did not write any letter to the juvenile. She has denied the suggestion that on 21.02.2012 and 23.02.2012 the juvenile did not visit her home. She has denied the

suggestion that she did not state before the police that the juvenile had sexual intercourse with her with the assurance to marry her. She has denied the suggestion that she was above 18 years old on the date of occurrence. She has denied the suggestion that she did not had love-affairs with the juvenile. She has also denied the suggestion that she had illicit relationship with one Anupam Nath and she was conceived by him. She has denied the suggestion that she has adduced false evidence.

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8. PW3 is Smt. Rina nath. In her evidence, PW3 has deposed that about 8/9 months back while the victim visited her house, on suspect she questioned the victim and the victim informed her that she was pregnant as a result of sexual intercourse with the juvenile.

In cross-examination, PW3 has revealed that she could not recollect the date of incident. She has denied the suggestion that the juvenile did not have sexual intercourse with the victim.

9. PW4 is Smt. Chinabala Nath, the mother of the victim. In her evidence, PW4 has deposed that about one year back Rina Nath informed her that the victim was pregnant. On being asked by PW4, the victim informed her that she was conceived by the juvenile.

In cross-examination PW4 has revealed that she and her husband used to work in the house of other persons. The juvenile used to visit her home. PW4 has denied the suggestion that the victim conceived by one Anu Nath.

10. PW5 is IO SI Sikhar Bordoloi. In his evidence PW5 has deposed that on 31.12.2012 the previous investigating officer of the instant case handed over the CD to him. Upon perusal of the CD, he has found that investigation of the case has already been completed. Accordingly, he submitted charge-sheet U/Ss.376/417 IPC against the juvenile in conflict with law. Ext-2 is the charge-sheet and Ext-2(1) is the signature of the PW5.

In cross-examination PW5 has denied the suggestion

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that though there was no material against the juvenile he has submitted the charge-sheet against him.

11. On appraisal of the evidence on record, it appears that PW2, the victim girl of the instant case has deposed that on the date of occurrence the juvenile promised to marry her and had sexual intercourse with her forcibly, as a result she became pregnant. PW1 the informant and father of the victim has also deposed that when they learnt about the pregnancy of the victim, on being asked, the victim told that as a result of sexual intercourse with the juvenile she became pregnant. PW4 the mother of the victim has also deposed that she was informed by the victim that she was conceived by the juvenile. None of PW1 & PW4 has deposed in their evidence that the victim was subjected to sexual intercourse by the juvenile forcibly or through any

inducement. In her evidence victim has also revealed that she had love-affairs with the juvenile. It is also found that the victim revealed about the sexual intercourse by the juvenile when her family members learnt about her pregnancy. Prior to that she did not reveal about the incident to none of her family members. In her evidence the victim stated that the juvenile promised to marry her and had sexual intercourse with her forcibly. There is a clear inconsistency in the statement of the victim that there is a promise of marriage by the juvenile and at the same time he used force to have sexual intercourse with her. Moreover, the evidence of the victim, that the juvenile used force upon her is also not corroborated by her near relatives. Though in a case of rape the evidence of victim is not required

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to be corroborated and sole testimony of the victim is sufficient to convict the wrongdoer for an offence of rape, but in this case the evidence of the victim is not consistent and cogent. Further, the victim herself stated that she had love-affairs with the juvenile in conflict with law. As such, possibility of the victim being a consenting party to the sexual act with the juvenile in conflict with law can not be ruled out in the instant case. It is also to be noted that after the incident of alleged rape, the victim remained silent for several months and only when her family members learnt about her pregnancy she revealed about the incident. The victim has deposed that the juvenile asked her not to reveal about the incident to any person. There is no evidence that the juvenile intimidated the victim not to express about the incident. But still the victim did not

disclose about the incident of alleged rape to any person. Hence, the evidence of the victim that the juvenile used force upon her to have sexual intercourse with her does not inspire confidence of the Board.

12. Further, though the victim stated that at the time of adducing evidence before the Court she was 17 years old but with regard to her age there is no evidence adduced by the prosecution. The father and mother of the victim has also not stated about her age in their evidence. Thus, during enquiry the Board do not find any evidence that the victim was minor girl at the time of incident and therefore she was incompetent to give consent at that time.

13. With regard to the second point for determination,

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whether the juvenile in conflict with law cheated the victim "A" by inducing her to consent sexual intercourse with him which caused her damage of her body, mind and reputation, the Board has carefully scrutinized the evidences on record. The Board has also gone through the decision reported in **2012(2) G.L.J 648 in Smti. Sewali Rajbangshi Vs. State of Assam & Another** relied on by the defence side. In the said decision, the Hon'ble Gauhati High Court has stated in Para 11 that, *"It may, however, be borne in mind that even if a prosecutrix had consented believing in the words of the accused that the promise for marriage made to her by the accused is honest and genuine, this will not be sufficient to hold that no*

consent existed for the purpose of section 90 IPC unless it is further established that the accused, at the time, when he had made the promise, did not have the intention of keeping to his promise. In a given case, thus, even a strong probability, if revealed from the materials on record, that the accused intended to marry the prosecutrix at the time, when he had made the promise for marriage, may absolve the accused, for, in such a case, it can not be said that the consent was given under a misconception of fact and that the accused knew, or had reason to believe, that the consent given was under such misconception of fact".

In the present case, the victim has deposed that the juvenile promised to marry her and had sexual intercourse with her forcibly. Apparently, the victim had love affairs with the juvenile. There is

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no clear evidence by the victim that she subjected herself to the sexual act with the juvenile as a result of promise of marriage made by the juvenile. Hence, it can not be said that there is any inducement made by the juvenile for which the victim consented to have sexual intercourse with him.

- 14.** Under the above facts and circumstances, the prosecution has failed to prove the case that the juvenile in conflict with law committed rape on the victim or that the juvenile cheated her by inducing her to give consent for sexual intercourse with her which caused her damage of her body, mind and reputation. Hence, both the points for determination are decided in negative.

15. In the result, we find that the prosecution has failed to prove its case against the juvenile miserably. Hence, the juvenile Nipen Barman is found not guilty U/Ss.376/417 IPC and hereby acquitted from the charge under said sections and set him at liberty forthwith. The bail bond of the juvenile stands cancelled and the bailor is discharged from the bail bond liabilities.

16. In the present case, the victim girl has given birth to a child and she has been taking shelter in the State Home for Women at Jalukbari with her minor child. The family members of the victim refused to accept her in their house. Hence, considering the facts and circumstances of the case, the Board is of the considered view that the

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victim girl requires rehabilitation under section 357(A) of CrPC. Hence, it appears that this is a fit case for recommendation for compensation under Section 357(A) of CrPC. Accordingly, the case is recommended to the District Legal Services Authority, Bongaigaon to decide the quantum of compensation to be awarded to the victim girl under the victim compensation scheme. Send a copy of the Judgment to the District Legal Services Authority, Bongaigaon along with a photocopy of charge-sheet.

17. The Judgment is pronounced and delivered in the open Court on this **10th day of July, 2014** under my hand and seal of this Court.

Sd/-
(Smt. N. Talukdar)
Principal Magistrate
J.J.B, Bongaigaon.

Sd/-
(Sri Dulal Chandra Basak)
Member
J.J.B, Bongaigaon.

Sd/-
(Smt. Ranu Choudhury)
Member
J.J.B, Bongaigaon.

Dictated and Corrected by me.....

Sd/-
(Smt. Nirmali Talukdar)
Principal Magistrate
J.J.B, BONGAIGAON.

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