

**IN THE COURT OF ADDL CHIEF JUDICIAL MAGISTRATE AT BONGAIGAON**  
G.R CASE NO 583/12

STATE

VS

NUR ZAMAL HAQUE

ACCUSED U/S 354IPC.

PRESENT : SRI DEBASHISH SAIKIA,AJS

SAMEER KUMAR NATH.....ADVOCATE FOR THE STATE

PULAK SARMA.....ADVOCATE FOR THE ACCUSED.

DATE OF HEARING.....24.9.13, 19.11.13,3.5.14,20.6.14,31.8.14.

DATE OF ARGUMENT.....10.10.14.

DATE OF JUDGMENT..... 21.10.14.

### **JUDGMENT**

1) Informant Umabati Barman lodged an ezaher on 9.10.12 before the O.C Bongaigaon P.S stating interalia that on 4.10.12 at about 4 pm while she was on her duty at Chilarai Hospital and Research Centre Nur Zamal Haque who works as a supervisor in the said hospital caught hold of her by her hand and thereafter dragged her into a room with an intention to do an indecent act. Realising the intention of the accused she somehow managed to come out of the clutches of the accused and she then immediately informed her colleagues as well her to the proprietor of the hospital Smti Chandra Devi.

2) Police on receipt of the above complaint registered a case vide Bongaigaon P.S case no 354/12 u/s 342/354IPC and started investigation of the case. On completion of investigation charge sheet was filed against the accused u/s 354IPC.

3) Cognisance of the case was taken and process was issued against the accused. On appearance of the accused copies of the case was furnished. Vide order dt 28.6.13 my learned predecessor in chair explained the particulars of offence u/s354IPC to which the accused pleaded not guilty and claimed to be tried. Prosecution in order to prove its case examined five witnesses including the I/O.

4) The plea of the accused persons is that of total denial. Statement of the accused u/s 313 CrPC was recorded in which the accused reiterated his defence plea. Accused however declined to adduce evidence. I have heard arguments forwarded by the learned counsel of both sides.

**The only point for determination is** : Whether the accused outraged the modesty of informant's on 4.10.12 at about 4 pm while she was doing her duty at Chilarai Hospital and Research centre under Bongaigaon P.S ?

**DISCUSSION,DECISIONS AND REASONS THEREFOR:**

5) Before discussing the points it would be worthwhile to scrutinize the evidence adduced by the prosecution.

6) The informant Umabati Barman was examined as PW1. In her evidence Pw1 deposed that on 4.10.12 at about 4 pm while she was on her duty as a nursing staff at Chilarai Hospital, accused who works as a supervisor in that hospital caught hold of her by her hand and dragged her to a room. Pw1 deposed that sensing the intention of the accused

she somehow managed to come out from the clutches of the accused and she then immediately informed the matter to staff nurse Kanan Boro and also to Smti Chandra Devi who is the proprietor of the said hospital. Pw1 deposed that the proprietor assured her that she will look into the matter, but as she failed to do so she has filed the ezaher which she identified as Ext1. PW1 also identified the statement recorded by the I/O under sec 164CrPC as Ext2.

7) In cross Pw1 stated that her sister Prabhathi Barman also works as a nurse in the said hospital. Pw1 also stated that at the time of incident her sister Prabhathi was not married and in a pregnancy test conducted in the said hospital Prabhathi was found pregnant. In cross Pw1 denied the defence suggestion that accused warned her and her sister to be careful in the future. Pw1 denied the defence suggestion that she in connivance with one Uttam has filed the false case against him so as to extract money from the hospital. That apart nothing material could be extracted from the victim Pw1. Further no contradiction could be brought out from the evidence of Pw1.

8) Lending support to the evidence of Pw1, Pw3 Smti Swastika Roy who also works as a staff nurse on the said hospital deposed that the incident in question took place in the month of October 2012. PW3 deposed that while she was doing her duty the informant came to her in the staff room and told her that accused has caught hold of her by her hand. Similarly Pw4 Smti Himani Roy who also works as a sister nurse on the said hospital deposed that on the day of occurrence while she was on her duty she saw the informant crying but she clarified that she do not know as to why she was crying. PW4 was declared hostile and when put to cross by prosecution she was confronted with her previous statement wherein she has stated the whole incident but she

denied having stated such facts before the police. PW4 however admitted that accused was working on the said hospital much before she joined the said hospital, and that the informant has joined in the said hospital only a few days ago before the alleged incident. Pw4 also admitted that she has shares a good relationship with the accused. Pw4 however denied the prosecution suggestion that she has deliberately not stated the actual facts because of her good relation with the accused.

9) PW2 is Arup Bose and in course of the trial he testified that he also works on the said hospital and that a day after the incident when he reported for duty he was told by sister nurse Swastika Roy that accused had misbehaved with the informant. Pw2 further stated that he later heard that accused had asked the informant to be careful in future and that the informant became sentimental and has filed the false case against the accused. In cross Pw2 stated that the proprietor of the hospital works as a magistrate in D.C office Bongaigaon. PW2 also stated that the informant's sister also worked in the said hospital as a nurse and that both the informant and her sister were unmarried at that time. PW2 further stated that the informant no longer works in their hospital. Pw2 also states that the accused was working in the said hospital much before he has joined in the said hospital.

10) Pw5 is the I.O Babul Ch Das who has investigated the case and has submitted charge sheet against the accused.

11) Learned counsel for the accused submitted that the accused of the case deserves to get the benefit of doubt as according to the learned counsel the evidence of the victim is not reliable and that the defence plea that accused was falsely implicated appears to be probable.

Learned counsel further submits that non examination of Smti Chandra Devi proprietor of the hospital and staff nurse Smti Kanan Boro whom the informant alleged to have narrated the incident just after the incident is fatal to the prosecution case. Learned counsel also submits that there was delay on the part of the informant in lodging the ezaher which further weakens the prosecution case.

12) Countering the above submissions the learned counsel of the state submitted that the prosecution case has been proved to the hilt and that accused deserves to be punished.

13) In the instant case the evidence of the victim Pw1 has remained unimpeached and she has been consistent even in her cross examination. Her evidence in court is consistent with the version she has made in her ezaher Ext1. Her evidence is also corroborated by her statement Ext2 recorded by the I/O under sec 164 CrPC in course of the investigation. In her said statement Ext2, the informant has clearly stated that accused who was working as a supervisor in the said hospital has pulled her by her hand into a room with an intention to do an illicit act and that she somehow managed to come out of the clutches from the accused. She has also stated in her said statement that she has immediately narrated the above incident to her colleagues. Her evidence in course of the trial to the effect that she has immediately informed her colleagues about the incident has been supported by PW3 who in her evidence has clearly stated that the informant Pw1 on the day of incident came to the staff room and has narrated the incident. There is nothing to disbelieve Pw3, particularly when the defence has not even challenged the above assertion of Pw3 that informant Pw1 has not told her about the said incident in the staff room.

14)The other colleague of the informant viz PW4 was declared hostile for not supporting the entire prosecution case, but then that much of evidence which supports either the prosecution side or the accused can be relied upon if the evidence of such a witness finds corroboration from other believable evidence on record. A perusal of the evidence of Pw4 discloses that in her evidence she has merely stated that on the day of incident she has seen the informant weeping, but there is nothing more in her evidence as to, at what time she has seen the victim Pw1 weeping. None of the witnesses including the informant has stated about the same in their evidence, and as such in the above circumstances her above piece of evidence having not been corroborated by any other evidence, her evidence carries no value and the same is therefore kept out of consideration. Coming to the evidence of Pw2, it appears that the evidence of Pw2 is also not of much help to the prosecution case, as Pw2 has neither supported the prosecution case nor has supported the defence plea. Pw2 in his evidence only states that he has heard about the incident from staff nurse Swastika Roy on the next day of incident that accused has misbehaved with the informant, but subsequently he took an opposite stand and stated that later he heard that informant has filed a false case against the accused as the accused has cautioned the informant. The evidence of Pw2 is silent as to from whom he has heard that accused was falsely implicated by the informant hence in such circumstances the evidence of Pw2 cannot be readily believed to negate the positive evidence of the informant PW1 which has been corroborated by the evidence of Pw3. In the instant case the defence plea as is noticed in the examination of accused under 313 CrPC is that the accused has once cautioned the informant's sister Prabhabati who

too is a nurse in the said hospital for getting pregnant without being married so that she remains careful in future, and that the false case was filed against him for the said cautioning he has given to the informants sister out of grudge. The defence in the instant case though could elicit from the informant Pw1 that her sister Prabhabati has become pregnant without being married, the defence has failed to probabalise its plea that accused has cautioned her sister to be careful so as not to malign the reputation of the hospital in future and that for the above reason the informant has filed a false case against the accused. Such an inference of lodging false case against the accused out of vendetta cannot also be drawn for the mere fact that informant's sister Prabhabati got pregnant without being married.

15) In order to bring home a charge u/s 354 IPC prosecution has to establish (a) the victim concerned belonged to fair sex , (b) the accused male or female subjected her to assault as defined in section 351IPC or to criminal force as defined in section 350 IPC, (c) the accused while committing assault or using criminal force intended to outrage the modesty of the woman or knowing it to be likely that thereby her modesty would be outraged.

16) In the instant case all the ingredients necessary to constitute the offence u/s 354IPC is present. The victim is a woman and the accused has used criminal force against the victim by pulling her by her hand to a room. So far as intention and knowledge are concerned these are things of the mind and cannot be demonstrated like other physical objects. The existence of intention or knowledge has to be gathered from the attending facts and circumstances of the case. In the present case the act of the accused in pulling the informant to a room where none was present is indicative of the fact that accused did have the

knowledge that he by the manner in which he had acted with a woman would cause her modesty to be outraged. The above acts of the accused are clearly suggestive of sex. Accused as such is clearly proved to have been committed the offence punishable u/s 354IPC and he is accordingly held guilty of committing the offence u/s 354 IPC.

17) So far as delay in lodging the ezaher is concerned the informant in her evidence has categorically stated in her ezaher that she has immediately informed the matter to the proprietor of the hospital Smti Chandra Devi and also to her colleague nurses and that Smti Chandra Devi has assured to take action against the accused, but as no action was taken the ezaher was filed. Such reason was also mentioned in the ezaher Ext1. The defence has not challenged the above assertion of the informant while she was cross examined. The above unchallenged reason given by Pw1 about the delay in lodging the ezaher appears to be probable cause for delay and in the above facts and circumstances I am of the measured view that the delay has been properly explained. In the instant case the I/O Pw5 has admitted that he has not examined Smti Chandra Devi in the instant case, but the defence has failed to elicit from the I/O as to why has he not examined Smti Chandra Devi in the instant case. On the other hand Smti Kanan Boro was examined by the I/O and her name appeared in the list of prosecution witnesses, but prosecution has omitted to examine her in course of the trial, and no reasons has been given for such omission. Be that what it may, the lapse on the part of the I/O in not examining Chandra Devi in course of investigation, and the failure on the part of the prosecution to examine Smti Kanan Boro would not wash out the positive evidence of the informant whose evidence as is discussed above is free from any blemishes and upon which implicit reliance can be placed upon. The

above submissions so made by learned defence counsel therefore does not appear to have any force and the same stands rejected.

18) I have considered extending the beneficial provisions of the Offenders act to the accused but refrained from doing so as the same would send a wrong signal to the society when incidents against women is on the rise.

19) Accused Nur Zamal Haque is heard on the question of sentence. Accused person submits that he is having a family to look after and that sentencing him to imprisonment would cause immense hardship to his family. I have considered the above pleas vis a vis the facts and circumstances of the case. No previous conviction has been proved against the accused. Considering all the above facts and circumstances as well as considering the manner in which the crime was committed I am of the measured view that the accused do not deserve undue leniency.

### **ORDER**

Accused Nur Zamal Haque is convicted u/s 354 IPC and is sentenced to R.I for one year and also to pay a fine of Rs5000( five thousand) i/d to R.I for another three months.

Fine if realized shall be paid to the victim informant as compensation.

Furnish free copy of judgment to the convict/accused.

Given under my hand and seal of this court on the 21<sup>th</sup> day of October 2014 at Bongaigaon.