IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)

(ITANAGAR PERMANENT BENCH AT NAHARLAGUN)

CRL. REF(H) No. 07 (AP) of 2007

STATE OF ARUNACHAL PRADESH

- Versus –

LAKHAN DAS. .... Accused.

BEFORE
THE HON'BLE MR JUSTICE I.A. ANSARI
THE HON'BLE MR JUSTICE P. K. MUSAHARY

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JUDGE

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For the State : Mr. I. Basar,
Public Prosecutor, Arunachal Pradesh.

For the accused : Mr. T. Siram, Amicus Curiae.

BEFORE

THE HON'BLE MR. JUSTICE I. A. ANSARI

THE HON'BLE MR. JUSTICE P. K. MUSAHARY

Date of hearing : 05.01.2011.

Date of delivery of Judgment : 05.01.2011.

JUDGMENT & ORDER
(Oral)

(Ansari, J.)

1. This Criminal Reference in terms of Section 30 of the Assam Frontier (Administration of Justice) Regulation, 1945, has arisen out of the judgment and order, dated 28.6.2007, passed, in G.R Case No.41 of 2004, by the learned Sessions Judge, District : Upper Siang, at Yingkiong, convicting the accused under Section 376 IPC and sentencing him to suffer rigorous imprisonment for a period of seven years and six months.

2. The case of the prosecution, as unfolded at the trial, is, in brief, thus:

On 11.7.2004, at about 1200 hours, a written information was received, at Geku Police Outpost, from PW 1 alleging to the effect that on 11.7.2004 at about 5.30 hours, she (PW 1) was robbed of her money and subjected to rape by an unknown person by threatening her with a knife, while she was returning to her native village, Riga. Based on this written information and treating the same as the first information report (in short, F.I.R.), a case was registered under Sections 376/392 IPC. During the course of investigation, accused Lakhan Das was apprehended, the alleged victim (PW 1) was medically examined

and, on completion of investigation, a charge-sheet was laid accordingly against the accused.

3. To the charge framed, under Section 376 IPC, at the trial, the accused pleaded not guilty. In support of the case, the prosecution examined altogether four witnesses. The trial ended in conviction of the accused, as indicated above.

4. While considering the present reference, it needs to be noted that PW 1, who is the alleged victim, has deposed that she did not know the accused before the incident took place. However, while describing the incident, she has deposed that on the day of occurrence, while she was returning from Geku to her native village, Riga, in the morning, the accused caught hold of her from behind and though she tried to escape and run away, the accused chased her, caught hold of her and threatened her with knife that he would kill her if she would not let him have sex with her. According to the evidence of PW 1, under fear of injury, which could be caused on her by the accused, she surrendered to the accused and the accused, then, committed rape on her. After the incident, the accused, according to what PW 1 has deposed, left her and, then, she went to a nearby place, where elderly people took her to the Police Station and she lodged the F.I.R. there.

5. Though the medical examination, as conducted by PW 2, shows that there was an injury on the little finger of PW 1 and that semen was also found on her vagina, what needs to be noted is that even if PW 1 was subjected to rape as she had deposed, the question is as to whether it is the accused, who had subjected her to rape. In this regard, there is absolutely nothing on record as to how PW 1 could identify the accused at the trial.

6. As far as PWs 3 and 4 are concerned, both of them are police officers and their evidence does not give any indication as to how the accused happened to be apprehended.

7. Situated thus, it becomes clear that there is no clear, cogent, convincing, clinching and credible evidence on record pointing to the accused as the person, who had subjected PW 1 to rape.

8. We have also perused the examination of the accused by the learned trial Court under Section 313, Cr.P.C. and we find that the said examination was wholly contrary to law inasmuch as no incriminating evidence was ever put to the accused seeking his response thereto. When the evidence is not put to the accused, the same cannot be relied upon.

9. In the case at hand, as we have already indicated above, though PW 1 might have been subjected to rape, there is no convincing and reliable evidence to hold the accused guilty of the offence of commission of rape on PW 1.

10. Because of what has been discussed and pointed out above, we decline to confirm the conviction of the accused under Section 376 IPC. Resultantly, therefore, the accused shall be held, and we hereby do hold him, as not guilty of the offence charged with and he is accordingly acquitted. The sentence passed against the accused shall also stand set aside.

11. With the above observations and directions, this reference shall stand disposed of.

12. Let the accused be set at liberty forthwith unless he is required to be detained in any other case.

13. Send back the L.C.R.

JUDGE **JUDGE**

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