

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)

**ITANAGAR PERMANENT BENCH (NAHARLAGUN)**

**Crl.A.(J)03(AP)/2017**

Shri Jehwang Wangjen,  
S/o Late Thakngam Wanngjen,  
Village: Wame, P.O/P.S Kanubari  
District: Tirap, Arunachal Pradesh

..... *Appellant/convict.*

**– VERSUS –**

The State of Arunachal Pradesh represented by Public Prosecutor,  
Government of Arunachal Pradesh, Naharlagun.

..... *Respondent.*

Advocates for the Appellant : Mr. M. Boje, Amicus Curiae

Advocates for the Respondent : Mr. S. Tapin, Sr. Govt. Advocate

**B E F O R E**  
**HON'BLE MR. JUSTICE AJIT BORTHAKUR**  
**HON'BLE MR. JUSTICE NANI TAGIA**

Date of hearing : **03.04.2019.**

& Judgment : **03.04.2019.**

**JUDGMENT AND ORDER (ORAL)**

**(By Ajit Borthakur, J)**

Heard Mr. M. Boje, learned Amicus Curiae for the appellant and Mr. S. Tapin, learned Senior Govt. Advocate for the State respondent.

**2.** This jail appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is preferred by the convicted accused against the judgment and order, dated 21.12.2016, passed by the learned Sessions Judge, East Session Division, Lohit District at Tezu, Arunachal Pradesh in Sessions Case No.17(T)/2012, under Section 376(2)(f) of the Indian Penal Code.

**3.** The appellant's case, at a nutshell, is that an FIR was lodged before the Officer-in-Charge of Kanubari P.S on 26.04.2011, alleging that on the previous day i.e. on 25.04.2011 at about 6.30 PM while the informant's daughter, aged about 6 years, was playing with her friends, the appellant came with his motorbike and picked up the victim by giving two packets of chips to make her agree to accompanied with him. At around 7.30 PM, the appellant dropped her back at the same place, after committing rape on her. On 26.04.2011 morning, the victim started crying for pain on her vagina. On enquiry, the victim disclosed about the incident that took place on the previous evening. The victim sustained injury on the vagina and the panty was found stuck with semen and blood stains.

**4.** Based on the above FIR, Kanubari P.S. Case No. 03/2011 was registered and the Officer-in-Charge, S.I. K. Boruah took up the investigation of the case. After completion of investigation, the Investigating Officer laid a charge-sheet under Section 376(f) of the IPC against the appellant.

**5.** The Charge-sheeted offence being exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Kanubari, Tirap District, committed the case to the Court of learned Sessions Judge, East Session Division, Tezu for trial. The learned Sessions Judge, after considering the materials on the case diary and hearing the learned counsels of both the sides, having found *prima facie* ground to proceed, framed charge under Section 376(2)(f) of the IPC against the appellant. The charge was read over and explained to the appellant to which, he pleaded not guilty and claimed to be tried.

**6.** In order to prove the charge, the prosecution examined as many as 13 witnesses and exhibited 14 documents. After closing the evidence of the prosecution side, the statement under Section 313 of the Cr.P.C was recorded. The

appellant pleaded not guilty and inclined to examine witnesses in defence. However, later on, no defence witness was examined.

**7.** Mr. M. Boje, learned Amicus Curiae, submits that the victim (P.W.-1) in her evidence, having not stated any material fact in support of the prosecution case, the entire evidence led by the prosecution carries no significance and relevancy. According to Mr. Boje, there is no credible evidence to show that the victim was of tender age and evidence shows material contradictions shaking the very foundation of the prosecution case.

**8.** Per contra, Mr. S. Tapin, learned Government Advocate, submits that the evidence, oral and documentary, being apparently consistent, cogent and convincing in support of the prosecution case, and further, in view of the Memo. of T.I.P. and the confessional statement of the appellant, there cannot be any other hypothesis except the guilt of the appellant beyond any shadow of doubt.

**9.** It may be mentioned that under Section 375 of the IPC two requirements of an offence of rape are (i) sexual intercourse by a man with a woman and the sexual intercourse must be under circumstances falling under any of the six clauses of the said Section. The basic ingredients which are essential for providing a charge of rape are the accomplishment of the act with force and resistance. After amendment of the IPC, there is no offence punishable under Section 376, as such, it is now punishable u/s 376(1) or section 376(2). The two offences differ not only in the gravity of punishment, but also because of the special Rule of Evidence, namely, Presumption under Section 114A of the Evidence Act, which is attracted only to the cases of rape u/s 376(2), except when a case under clause (f) thereof. It is well settled proposition of law that the conviction of offence u/s 376 of the IPC can be based on the sole testimony of a rape victim, because a woman or a girl subjected to sexual assault is not an accomplice to the crime, but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice.

**10.** In the instant case, the medical evidence of P.W.12, Dr. W. Ahand Singh, the Medical Officer, who examined the victim girl, aged about 6 years, on 27.04.2011 and the appellant on 05.05.2011, found as follows:

***"1. The blood stain and semen were seen on the underwear of the victim. Vaginal swelling. Bleeding was seen in the vagina. Perineum tear(torn or crack) on the lower part of the vagina. Hymen was not found on the vagina. I have collected samples of blood, semen and vagina swab and handed over to the police for further examination. The under wear of the victim was also handed over to the police.***

***2. As per my opinion, sexual intercourse was done on the victim girl on 25.04.2011.***

***The P.Exh-6 is my medical report on the victim girl and P.Exh-6(a) is my signature on it.***

***I have also examined the accused person of the case on 05.05.2011 at about 12.30 PM of that day. The name of the patient was Jehwang Wangjen, male, aged about 25 years. Accused was brought by the police of Kanubari PS. My findings are as follows:***

***I have not found any injury on the body of the accused. But accused disclose me that he have sexually intercourse the victim girl. P.Exh-7 is my report and P.Exh-7(a) is my signature on it."***

**11.** The victim (P.W-1) narrated the incident in her evidence as extracted herein below:

***"I am 9 years old as on today. Presently I am reading in class-III at St. Saviour School, Kanubari. My father's name is Sri Hiakai Wangsu. I know the person standing on the dock, his name is Jewang. The accused used to visit house of one Aabusa Wangje, who happened to be neighbors of our house. I don't remember the exact date, month and the year, it was evening time, when I was sitting in the road nearby our house, accused had took me to give some sweets at Pachali in a shop, accused had purchased two packets of chips (lays) and was given to me, thereafter the accused had taken me to jungle near a tea garden by his motorcycle. (reluctant to***

***narrate the incident in the court room). I was take back to Panchali and accused left from that area. On returning home I narrated the whole incident to my mother. Then my mother had told the same to my father. I also went to the police station along with my parents and thereafter to the medical where I was examined by the doctors. At the time of incident I was wearing a frock of yellow colour. I was also wearing a white colour of underpant, which is available before this court today and I can identify the same. The cover of chips which accused has purchased and given to me is also available before this court, I can identify the same. M.Exh-1 is my underpant and the M.Exh-2(a) and (b) is the two pieces of chips empty packet which was purchased and given to me during the time of incident."***

**12.** From the evidence of P.W.2, the father of the victim girl, it appears that his victim daughter (P.W. 1) was born in the year 2004 and he came to know about the incident, on 26.04.2011 from his wife (P.W. 3) and the victim daughter, at the Police Station. According to him, there were persons including one, namely, Babu, a shopkeeper and his assistant in the shop, who have seen the appellant taking away his daughter with him on a motorcycle. He recognized P.Ext. 1, the FIR, which he lodged. His evidence further reveals that thereafter, the victim sent for medical examination at Kanubari. The appellant would not be arrested immediately, but later on police arrested him from Nagaland. His further evidence is that he has personally seen the private part of his victim daughter being torn in two areas. The evidence of P.W.-2 is corroborated by the mother of the victim (P.W-3), who stated that at the time of occurrence, her daughter was aged about 6 years and was having severe fever on the following day morning of the incident, when she poured water on her body for bath and she started crying and was shouting, because of pain at her private part, who was torn in four places wherefrom blood was oozing out. On her enquiry, her victim daughter narrated the whole incident that took place on the previous day as the victim narrated to some extent in evidence and in the FIR. P.W -4, Nabajit Borah told her about taking away of her victim daughter by the appellant, when she (P.W-3) was searching for her. P.W-4, Nabajit Borah corroborating the evidence of P.Ws-1,2 and 3 stated that at about 5.30 PM, the appellant came to his shop and purchased two packets of chips and gave the chips

packets to the victim girl, who was usually addressed as Jinka and who was playing nearby his shop at that time and thereafter, took her away on his motorcycle saying that she was taken to the market area at Panchali for roaming. He further stated that after sometime, the appellant brought back the girl on the same motorcycle and left her at the place where from, he left i.e. near the house of the victim girl. He came to know about the incident on the following day.

**13.** P.W -5, Jaba Wangjen and P.W. -6, Tingsan Wangham have testified to seizure of the motorcycle used by the appellant at the time of the occurrence by P.Ext.-3, the seizure memo. P.W.-8, Sanngo Pumao, P.W.-9, Takhai Atraham have recognized their signatures on the Ext. -2, the seizure memo, whereby the police seized one underwear. P.W.-10, Dipankar Hazarika was declared hostile by the prosecution.

**14.** Turning to the evidence of P.W.-7, Tingnai Boham, it is noticed that the victim identified the appellant in the test identification parade held by the Additional Deputy Commissioner in the compound of Kanubari P.S. and accordingly, he put his signature vide P.Ext.-4(a) on the memo of TIP. He had never seen the appellant before the TIP was held. The defence appears to have not disputed his evidence by way of declining to cross-examine him. P.W-11, N. Wangjen is the Magistrate, who conducted the TIP at Kanubari P.S and recorded the confessional statement of the appellant on 25.04.2011. He recognized P.Ext.-4, the Memo. of TIP proceeding reported and P.Ext.-5, the confessional statement of the appellant respectively. According to him, the appellant confessed before him that he took the victim girl from a nearby pan shop located near the Kanbari P.S. and near to a tea estate of Assam side and committed rape upon her and after that, he dropped back the girl near the said pan shop located near to the residence to her father.

**15.** The appellant in his confessional statement vide P.Ext.-5 stated as follows:

**" It was on 25.11.11 at about 6.30 PM, I came to a pan Gumti shop located near Police Station. I met Miss Jinkha Wangsu in the shop and she requested me to buy a mithai (sweet). Accordingly, I bought an uncle chip and gave to her. Thereafter, she asked me to go for a walk. I took her in my Motor cycle and**

***went to Assam Tea garden. In the tea garden, I masturbated myself and entered my penis into the vagina of Miss Jinkha Wangsu. After the work is done, I dropped her back near the Gumti shop which is located near the residence of her father.***

***"Q:-1 How long have you been knowing Miss Jinkha Wangsu?***

***Ans:-Since last year.***

***Q:-2 Are you related to the father of the victim?***

***Ans:-No, I was a friend of Mr. Akhoi Wangsu, a Police personnel whose residence is adjacent to the house of the victim girl.***

***Q:-3 Do you plead guilty to the whole affairs?***

***Ans:- I plead guilty I don't know what God asked me to do."***

**16.** The appellant in his statement recorded u/s 313 CrPC on 29.12.2016, retracted belatedly his aforesaid confessional statement stating that he did not give any such confessional statement before the learned Magistrate. He did not take the earliest opportunity to retract the confessional statement even at a time of recording of the evidence of P.Ws-7 and 11, on 30.07.2014 and 16.03.2015 respectively and as such, the retracted plea stands rejected.

**17.** P.W-13, K. Boruah, the Investigating Officer has testified to the formal aspects of the investigation of the case and the defence appears to have not elicited any material contradiction to the evidence tendered in his examination-in-chief.

**18.** In view of above, it appears right from the contents of the FIR to the relevant oral testimony of the prosecution witnesses and the medical evidence of P.W.-12 and further, the confessional statement of the appellant recorded u/s 164 CrPC vide P.Ext.-5 as well as the Memo. of TIP vide Ext.-4 that it is consistently and cogently convincing that there is nothing to disbelieve the prosecution allegation against the appellant to the effect that it was only he who committed rape on the victim, who was of tender age, beyond all reasonable doubt.

**19.** Accordingly, the appeal stands **dismissed**.

**20.** We appreciate the service rendered by Mr. Boje, the learned Amicus Curiae appearing in defence of the appellant and accordingly, his legal remuneration as per rule be paid by the Legal Services Authority.

**21.** Send back the LCR alongwith a copy of this judgment and order. Let a copy of this judgment and order be furnished to the learned Amicus curiae free of cost.

**JUDGE**

**JUDGE**

*Pura*