

**IN THE COURT OF THE SESSIONS JUDGE :: :: :: TINSUKIA**

District: Tinsukia  
Present: **Sri P.J. Saikia,**  
Sessions Judge,  
Tinsukia

**Sessions Case No. 11 (T) of 2012**

**U/s 376 (D) IPC.**

The State of Assam ..... Complainant.

**-Versus -**

**1. Sri Gautam Kand,**

S/o- Sri Sitmal Kand

R/o- Rupai Bijay Nagar

P.S- Doomdooma

District- Tinsukia, Assam

**2. Sri Kalia Tanti**

S/o- Lt. Hiriman Tanti

R/o- Rupai Bijay Nagar

P.S- Doomdooma

District- Tinsukia, Assam ..... Accuseds.

Appearance:

Sri A.K. Choubey,

Public Prosecutor ..... For the State

M. Ghosh Biswas,  
Advocate ..... For the accused.  
Date of Argument: 03/04/2019 & 30/04/2019  
Date of Judgment: 07/05/2019

### **J U D G M E N T**

1. The case against the accused Gautam Kand and Kalia Tanti was committed for trial by the Ld. Sub-Divisional Judicial Magistrate, Tinsukia on 20/01/2012. The accused Kalita Tanti jumped bail and his presence could not be procured. Therefore, he was declared absconder and the case against him was filed.

### **PROSECUTION CASE**

2. On the day of occurrence, at about 8 am, the 22 years old prosecutrix was sleeping in her house along with her little baby. At that time, the accused Gautam Kand (hereinafter referred to as the accused only) and the other accused Kalita Tanti entered into the house by breaking open the door. Both the accuseds jumped upon the lady and committed rape upon her. On seeing the incident, the little daughter of the prosecutrix ran out of the house and informed Suraj Bhumij, who is the brother of the prosecutrix. Suraj Bhumij came to the house of the prosecutrix and then the accuseds fled away. Next day, the prosecutrix had lodged an ejahar before police.

3. The victim lady was subjected to medical examination. She was also sent to a court for recording her statement u/s 164 Cr.PC.

### **POINT FOR DETERMINATION**

4. The only point for determination in this trial, is as to whether the accused had committed gang rape upon the prosecutrix?

### **DECISION AND REASONS THEREOF**

5. In order to prove the case against the accused Gautam Kand, the prosecution side has examined as many as six witnesses. The defence plea is total denial and no evidence has been adduced by the accused. Therefore, I have carefully gone through the prosecution evidences.

6. Considering the nature of the case, I shall first take up the evidence of the prosecutrix. She has stated in her evidence that both the accuseds actually broke open the bamboo wall of the house and through that they entered into her house. The prosecutrix has stated that the accuseds showed her a dao and pressed her mouth before they commit rape upon her. According to the prosecutrix, initially, the accused Gautam Kand pressed her mouth and the other accused Kalia Tanti committed rape upon her and thereafter, while Kalia Tanti was pressing her mouth, the accused Gautam Kand had committed rape upon her. According to the prosecutrix, her younger daughter ran out of the house and brought Suraj Bhumij, who is the elder brother of the prosecutrix. The prosecutrix has stated that when her elder brother Suraj Bhumij came to her house, the accuseds fled away.

7. Now, I shall take up the evidence of Suraj Bhumij. He has stated in his evidence that the occurrence took place on 27th October, 2011. According to him, he was present in his house at the relevant time of occurrence and at that point of time, Anjali Bhumij, the 8 years old daughter of the prosecutrix had come to his house and told him that the accuseds Gautam Kand and Kalia Tanti had entered into her house and committed rape upon the prosecutrix. Suraj Bhumij has further disclosed that after the occurrence, the prosecutrix had gone to the Police Station. He has stated that he also accompanied his sister to the Police Station. He has stated in his evidence that his sister had verbally informed police about the occurrence. Suraj Bhumij has stated that next morning, he accompanied the prosecutrix and her daughter to the P.S again and at that point of time, the prosecutrix had lodged an ejahar before police.

8. Now, I shall take up the evidence of Smti Dulu Bhumij. She is the sister in law of the prosecutrix. She has stated in her evidence that on the day of Kali Puja, the previous year, there was a quarrel between the prosecutrix and the accused Gautam Kand. The other accused Kalia Tanti interfered into that quarrel and separated them.

9. Regarding the occurrence of rape upon the prosecutrix, the witness Dulu Bhumij has stated that she had heard about the occurrence.

10. The witness Smti Tokoya Kand is an acquaintance of the prosecutrix. Like Dulu Bhumij, the witness Tokoya Kand has stated that on the day of Kali Puja, previous year, the prosecutrix had a quarrel with both the accuseds. The witness

Tokoya Kand has claimed that she had seen the quarrel between the accuseds and the prosecutrix.

11. Regarding the rape upon the prosecutrix, the witness Tokoya Kand has stated that she had heard about the occurrence.

12. The witness Kamal Chutia is the police investigating officer. He has stated in his evidence that on 28/10/2011, while he was working at Doomdoo P.S., the prosecutrix had lodged an ejarah before police. Kamal Chutia has stated that he was giving the task of investigation of the case and accordingly he recorded the statement of the prosecutrix and also sent her for medical examination and after that he had sent the prosecutrix to the court for recording her statement u/s 164 Cr.PC. The later part of the evidence of Kamal Chutia pertains to investigation of the case only and is nothing relevant for an elaborate discussion.

13. In this case, all the prosecution witnesses have been extensively cross examined by the Ld. defence counsel.

14. During cross-examination, the prosecutrix has stated that since prior to the occurrence, she did not have a good relationship with the accuseds. The prosecutrix has stated that there is a road by the side of her house and that road is frequented by different people at any point of time. She denied that she had a quarrel with the other accused Kalia Tanti, on the issue of boundary of land.

15. There is nothing relevant in the cross examination portions of the evidence of Suraj Bhumij and Dulu Bhumij.

16. The witness Tokoya Kand has stated before the defence counsel that on the day of occurrence, Kali Puja was being celebrated in the house of the mother of the prosecutrix. According to him, the prosecutrix was present in the house of her mother on the day of occurrence, since morning. Tokoya Kand has stated that on the day of occurrence, the prosecutrix had spent the night in the house of her mother. Tokoya Kand has further stated before the defence counsel that the husband of the prosecutrix was till alive. She has further disclosed that during the subsistence of her first marriage, the prosecutrix married two other persons. But, both of them ditched the prosecutrix, as because, she was not having a good character.

17. There is nothing relevant in the cross examination portion of the evidence of the Investigating Officer.

18. Here in this case, the medical evidence failed to support the allegation of rape. It is proved that in case of a married woman, there may not have any medical evidence of rape. Therefore, I have decided to ignore the medical evidence, adduced by Dr. Ashma Jekia Hussain Ghaznabi.

19. On scrupulous perusal of the prosecution evidences, I find that in the instant case, Anjali Bhumij, the daughter of the prosecutrix was an eye witness to the occurrence, but she was not examined by the prosecution. The occurrence took place on 27/10/2011 and the case was received by this court on 30/01/2012. In this way, 7 years have elapsed and therefore, I found it reasonable not to insist on examination of Anjali Bhumij, after so many years.

20. The witness Smti Dulu Bhumij has stated that on the day of occurrence, the prosecutrix had a quarrel with the accused Gautam Kand and the other accused Kalia Tanti had interfered into that quarrel and separated both of them.

21. The witness Tokoya Kand has supported the evidence of Dulu Bhumij, by stating that she herself had seen the quarrel between the prosecutrix and the accuseds on the day of occurrence.

22. There are no discrepancies and contradictions in the evidences of Dulu Bhumij and Tokoya Kand. I find that the evidence of these two witnesses have inspired confidence. I do not find any reason as to why these two witnesses would depose false evidence. Therefore, it is proved beyond all reasonable doubts that on the day of occurrence, there was a quarrel between the prosecutrix and the accuseds.

23. In the light of the aforesaid facts, I have decided to weigh the evidence of the prosecutrix.

24. During cross examination, the prosecutrix has admitted that Kali Puja was being solemnized in the house of her mother on the day of occurrence. She has stated before the defence counsel that her own house and that of her mother are intervened by two other houses only. On this point, the witness Tokoya Kand has stated that at the relevant time of occurrence, the prosecutrix was in the house of her mother. She has stated that since the morning that day, the prosecutrix was present in the house of her mother and she spent there the night also.

25. At this stage, I have two views before me. If I decide to believe the evidence of the prosecutrix, then I will have to

brush aside the evidence of Dulu Bhumij and Tokoya Kand and if I decide to believe the evidences of these two witnesses, then I shall have to brush aside the evidence of the prosecutrix. It is a settled position of law that when there are two views, the court has to accept the view, which is favourable to the accused.

26. Under the aforesaid premised reasons, I have decided to brush aside the evidence of the prosecutrix, because in view of the evidence of Tokoya Kand, the evidence of the prosecutrix failed to inspire confidence. Thus, I hereby hold that the prosecution evidence failed to prove the offence against the accused Gautam Kand beyond all reasonable doubts.

### **ORDER**

27. In the result, the accused Gautam Kand is found not guilty and accordingly the accused is acquitted from this case. Presently, the accused is in judicial custody, so he be set at liberty forthwith.

Given under my hand and seal of this Court on this 7th day of May, 2019.

**(P.J. Saikia)**

Sessions Judge

Tinsukia

Dictated & corrected by me.

Sessions Judge

Tinsukia

## A P P E N D I X

### PROSECUTION WITNESSES

1. PW1 - Smti Rukmini Bhumij
2. PW2 - Dr. Ashma Jekia Hussain Ghaznabi
3. PW3 - Sri Suraj Bhumij
4. PW4 - Smti Dulu Bhumij
5. PW5 - Smti Tokoya Kanda
6. PW6 - Sri Kamal Chutia

### PROSECUTION EXHIBITS

1. Ext.1- Medical report
2. Ext. 2- Ejahar
3. Ext. 3- Sketch map
4. Ext. 4 - Statement
5. Ext. 5 - Charge sheet

### DEFENCE WITNESS

None.

Sessions Judge  
Tinsukia