

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
UDALGURI: : ASSAM.**

**G.R. CASE NO. 1245 of 2019
(PRC NO. 54/20)**

U/S- 354/506 I.P.C.

**Present: Smti. Ranjita Agarwalla,
Chief Judicial Magistrate,
Udalguri, Assam.**

STATE

-VS-

SRI TAPAN HAZARIKA.

----- Accused.

For the Prosecution : Mr. M. Khakhlari, Learned Addl. P.P.

For the Defence : Mr. M.C. Narzari, Learned Advocate.

**Date of Prosecution Evidence : 30-01-21, 18-03-21, 30-03-21,
20-04-21 and 22-09-2021.**

Date of Argument : 04-12-2021.

Date of Judgment : 15-12-2021.

J U D G M E N T

1. A factual narration of the prosecution case is that on 19-11-2019 a written ejahar was lodged by one Smti. Shanti Munda, D/o late Atowa Munda of Bhutiachang Tea Estate at Panery Police Station stating inter-alia that on 15-11-2019 Friday at about 6 A.M. she went to work in the factory of Panery Tea Estate. On that day, the Supervisor of the tea garden Sri Tapan Hazarika (Ratul) on pretext of cleaning the dressing room called her alone and taking the advantage of absence of any other person touched her body and by rolling down tried to commit sexual harassment. As she immediately raised hue and

cry the accused left her with a threatening to not to disclose the matter to others, otherwise she would be ousted her from job. Hence, she lodged the case praying for taking necessary action against the accused as per law.

2. After receiving the ejahar to the effect aforesaid, the Officer-in-Charge, Panery Police Station registered a PS case vide Panery PS case No. 116/19 U/S 354/506 I.P.C. and on completion of the investigation, the Investigating Officer submitted the charge sheet against the accused Sri Tapan Hazarika alleging commission of offences U/S 354/506 I.P.C.
3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.P.C. The processes were issued for causing appearance of the accused person before the Court. Accordingly, the accused appeared before the Court and on his appearance necessary copies of all relevant papers and documents were furnished to him. Finding a prima-facie case for commission of offence, the charges U/S 354/506 I.P.C. were framed, read over and explained to him to which the accused pleaded not guilty and claimed to stand trial.
4. In order to bring home the case, the prosecution examined as many as ten(10) PWs in the form of:

PW 1 Smti. Shanti Munda (informant)

PW 2 Sri Smti. Rajina Kertetta

PW 3 Smti. Phuleswari Munda

PW 4 Smti. Lakshmi Mahali

PW 5 Smti. Sonia Mahali

PW 6 Sri Bipin Chouhan

PW 7 Sri Ahim Munda

PW 8 Sri Amar Tanti

PW 9 Smti. Phulmati Mahali and

PW 10 Dr. Bimal Chandra Boro.(Medical Officer.)

Moreover, due to the demise of the Investigating Officer, he could not be examined.

The prosecution has exhibited the following documents in the form of :

Ext. 1 Ejahar.

Ext. 2 164 Cr.P.C. statement recorded in the court.

Ext. 2 Medical report.

5. After recording the prosecution witnesses, the accused was examined U/S 313 Cr.P.C. All the incriminating circumstances which appeared in evidence against the accused were put to him for his explanation. The accused denied all the circumstances and pleaded his innocence. Further the accused declined to adduce any evidence in defence.
6. I have heard the argument put forward by the learned Additional P.P. and the learned advocate appearing for the accused person. I have also carefully gone through the entire evidence available with the case record.
7. **POINTS FOR DETERMINATION:**

(I) Whether on 15-11-2019 at about 6 A.M. at Bhutiachang Tea Garden under Panery Police Station the accused, taking the chance of loneliness, used criminal force to the informant Smti. Shanti Munda with intent to outrage her modesty and thereby committed an offence punishable U/S 354 I.P.C.?

(II) Whether on the same day, same time and place the accused person threatened the informant Smti. Shanti Munda with dire consequences and thereby committed an offence punishable U/S 506 I.P.C.?

DISCUSSION, DECISION AND REASONS THEREOF:

8. Now, let us first have a glimpse to the evidence on record. **PW 1 Smti. Shanti Munda**, who is the informant of this case, being the star witness, deposed that she knows the accused person. On 15-11-2019 at about 5 A.M. as per direction of the accused while she was brooming the dressing room at Bhutiachang tea estate the accused tried to molest her. As she raised hue and cry he allowed her to go with a threatening to not to disclose the matter to the others. Subsequently she lodged the ejahar against him at police station. The police recorded her statement through the court. Ext. 1 is her ejahar and Ext. 1(1) is her signature and Ext. 2 is her statement recorded U/S 164 Cr.P.C. and Ext. 2(1) & 2(2) are her signatures thereon.
9. **PW 2 Smti. Rejina Kerketta** deposed that she knows both the accused as well as the informant. On 15-11-2019 at about 6 P.M. while they were in the garden doing NGO work the informant told them that the accused tried to molest her. Then they went to police station and apprised the matter to police.

- 10. PW 3 Smti. Phuleswari Munda** the mother of the informant stated in her deposition that she knows the accused. In the year 2019 one Friday at about 6 AM the accused Tapan Hazarika called her daughter (PW1) Shanti Munda for cleaning the kitchen as some guests were expected to visit. At that time she was busy in gardening works, informant apprised the matter that the accused caught hold of her. Subsequently her daughter lodged the case.
- 11. PW 4 Smti. Lakshmi Mahali** deposed that she knows both the parties. In the year 2019 she heard that the accused caught hold the informant in the factory of the tea garden and as she was one of the members of the community of the garden, she visited the police station along with the informant and her mother.
- 12. PW 5 Smti. Sonia Mohali** stated that she knows both the parties. In the year 2019 one day the informant apprised that the accused touched her body in the factory of the garden in the early morning at about 6 A.M. She accompanied the informant along with others to the police station.
- 13. PW 6 Sri Bipin Chouhan** stated that she knows both the parties. In the year 2021 VDP Secretary Naren Teli informed him that the accused caught hold the informant in the factory of the garden. Then he advised that the matter should be apprised before the garden community. He accompanied the informant along with others to lodge the case.
- 14. PW 7 Sri Ashim Munda** stated that he knows both the parties of the case. On 15-11-2019 at about 6 AM his wife informed him that the accused tried to outrage her modesty in the dressing room of the factory. Then he decided to apprise the matter before Mahila Samity as well as other committees of the garden. But before conducting the meeting he came to know that the accused was arrested by police. An ejahar was lodged.
- 15. PW 8 Amar Tanti** stated that he knows both the parties. After a week of the occurrence of the incident he came to know from the informant's mother that the accused had engaged her daughter for cleaning the dressing room of the factory and taking the advantage of absence of others the accused grabbed the informant from back. The matter was apprised to the other committees but yielded no results. The accused sent two ladies to the informant's house coaxing not to lodge the case and later on police came and took the accused to the police station and as per direction of the Secretary Santiaz Kujur the informant lodged the case.

- 16. PW 9 Smti. Phulmati Mahali** deposed that she knows both the parties. In the year 2019 one day at about 5 A.M. she along with the informant Shanti Munda went to Bhutiachang tea estate factory thereby the accused, being the Supervisor of the factory, ordered her to sweep the ground floor of CTC building and Shanti Munda to clean the dressing room of the factory. But she is ignorant subsequently what happened.
- 17. PW 10 Dr. Bimal Chandra Boro**, the Medical Officer has deposed that on 20-11-2019 at about 2-30 P.M. he examined one victim namely Shanti Munda, aged about 20 years and found no history of physical assault. In his opinion,

No spermatozoa seen in the slide;

Pregnancy test was negative;

USG reverb normal echo feature of organ imaged; and

No injury was seen in the private part of the victim.

He submitted Medical Report **Ext. 2** and **Ext. 2(1)** is his signature.

- 18.** It is found that charges were framed U/S 354/506 I.P.C. against the accused. For better appreciation of evidences, I would like to reproduce Section 354 I.P.C.

Section 354 of Indian Penal Code:

"354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine."

Thus, to prove the ingredients of offence of outrage of modesty of a woman the prosecution have to prove the ingredients of offences U/S 349/350 or 351 of Indian Penal Code.

The essential ingredients of section 354 are:-

- (i) There must have been assault and/or criminal force to a woman;*
- (ii) Such assault or criminal force must have been made by the accused;*
- (iii) With intent to outrage her modesty; or*
- (iv) With knowledge that her modesty was likely to be outraged."*

- 19. The word "Modesty" has nowhere been defined in the Indian Penal Code. The Hon'ble Apex Court in AIR 1967 SC 63 State of Panjab Vs**

Major Singh has observed that *the essence of a woman's modesty is her sex young or old, intelligible or imbecile, awoken or sleeping. The woman possess modesty capable of being outraged whoever used criminal force to her with intend to outrage her modesty committed offence punishable U/S 354 I.P.C. Culpable intention of the accused is the crux of the matter.*

20. Moreover, the Apex Court in **Rupan Deo Bajaj Vs K.P.S. Gill** reported in 1996 CrLJ 381 (SC) case observed "**Modesty**" as :

"Modesty" is a quality of being modest and in relation to woman means womanly, propriety of behavior scrupulous chastity of thought, speech and conduct. The word "modest" in relation to woman is defined as decorous in manner and conduct, not forward or lewd, shame fast."

21. On the close perusal of the record it reveals that the PW 1 the victim clearly and precisely stated about the incident that on 15-11-2019 at about 5 A.M. as per direction of the accused while she was brooming the dressing room of the factory the accused tried to molest her. As she raised hue and cry he let go her with a threatening not to disclose the matter to the others. Subsequently she lodged the ejahar against him at police station. The police recorded his statement through the court. During cross-examination she affirmed that the accused person hugged and rolled her down, but she did not sustain any injury. The defence during cross-examination of PW 1 failed to shake her testimony. Further, if we look into the **Ext. 1 i.e. the ejahar** it is in complete harmony with the testimony of the victim i.e. **PW 1** in the ejahar it is clearly mentioned that the accused in the pretext of cleaning the dressing room of the factory called her alone and taking advantage of her loneliness the accused touched her body and by rolling her down tried to molest her sexually. Again if we peruse the **Ext. 2 i.e. the 164 Cr.P.C.** statement of the victim recorded in the court immediately after lodging the ejahar, she has reiterated the facts mentioned in the ejahar (**Ext.1**). Thus, **Ext. 1 & Ext. 2** are completely corroborating evidences. **The Hon'ble Apex Court** has clearly observed and held that Section 164 Cr.P.C. can never be used as substantive evidence of truth of facts but it may be used for contradiction and corroboration of the witnesses on merit. Herein this case, the statement of the victim is convincingly corroborating to her testimony as well as her ejahar. Ext. 1.

- 22.** The defence in the wake of his argument stated that although the victim was examined by **PW 10 (Medical Officer)** at Udalguri Civil Hospital but the concerned doctor found no sign of physical assault and PW 1 also affirmed in her cross-examination that the accused hugged and rolled her down but she did not sustain any physical injury which appears to be unbelievable.
- 23.** In my considered view, although PW 1 the informant was hugged and rolled down by the accused in the factory she may not sustain any injury. Because they are hard working people and the physical structure of their body is such strong that due to rolling down on the ground she may not sustain any injury. Moreover, the incident took place on 15-11-2019 in the morning and she was examined on 20-11-2019 therefore, non-availability of any injury mark in the medical report is not fatal one. The learned defence counsel again raised voice that PW 1 lodged this false case against the accused as per direction of the **President of Mazdoor Union** to remove the accused from his work. In this context, I have found that during cross-examination of PW 1, PW 2 and PW 3 the defence put some suggestions regarding the lodging of this case against the accused to remove him from his job. But PW 1 (informant) denied the suggestion put to her that she lodged this false case against the accused.
- 24.** Here, **PW 9 Smti Phulmoti Boro** also supported the prosecution case stating that in the year 2019 one day at about 5 A.M. she along with the informant Shanti Munda went to Bhutiachang tea estate factory where the accused, being the Supervisor of the factory, ordered her to sweep the ground floor of CTC building and Shanti Munda to clean the dressing room of the factory and the defence has not disputed the fact. Thereby, it is clear that the informant Smti. Shanti Munda was available, as per direction of the accused, at the dressing room of the tea garden factory on the relevant day at the time of occurrence. Learned defence counsel again raised the voice that since **PW 9 Smti Phulmoti Boro** in her cross-examination admitted the fact that the informant (PW1) did not apprise her regarding the incident, thereby, it implies that no incident took place as alleged by PW 1 at the relevant time of occurrence at the Bhutiachang tea garden factory.
- 25.** In my considered view, PW 1 i.e. the informant may not apprise the matter to PW 9 which is shameful to her but it does not mean that no incident took place at that relevant point of time. Here, **PW 7 Sri Ashim Munda** who is the husband of **PW 1** clearly stated that on 15-11-2019 at about 6 AM his wife **PW 1** informed him that the accused tried to outrage her modesty in the dressing room of the factory of Bhutiachang tea garden. Then he decided to

apprise the matter before Mahila Samity as well as other committees of the garden. Although PW 1 has not stated in her testimony that immediately after the incident she has not apprised the matter to her husband but it is quite natural that after such an incident she would apprise the matter to her husband or her near and dear ones.

- 26. PW 2 Smti. Rejina Kerketta and PW 5 Smti. Sonia Mohali** also stated in their respective testimonies that they came to know about the alleged incident that the accused tried to outrage the modesty of PW 1. During cross-examination of PW 2 defence has not disputed the fact, rather affirmed that she came to know about the incident as alleged from the informant. It is noted that PW 3, the mother of informant PW 1 in her testimony stated that in the year 2019 one Friday at about 6 AM the accused Tapan Hazarika called her daughter **(PW1) Shanti Munda** for cleaning the kitchen of Bhutiachang tea garden as some guests were expected to visit. As at that time she was busy at garden works and later on the informant apprised the matter that the accused caught hold of her. Subsequently her daughter **(PW1)** lodged the case. In cross examination she affirmed that her daughter apprised the incident in the evening at 5 O'clock. In my considered view, as the informant was a married lady and immediately after the incident she apprised the matter to her husband and also apprised the same to her mother, being a working lady in the evening on the same day. Moreover, although PW 3 claimed that the accused was asked to clean the kitchen but the informant said that she was asked to clean the dressing room. It appears, as the incident happened with PW 1, PW 3 may not clearly remember about the place of occurrence i.e. kitchen that is why she has stated as kitchen and such mistakes are minor and no criminal case exists from some minor discrepancies.
- 27. PW 2 Smti. Rajina Kertetta, PW 3 Smti. Phuleswari Munda, PW 5 Smti. Sonia Mahali and PW 7 Sri Ashim Munda** stated in their respective testimonies that they heard that the accused caught hold the informant and/or touched her body with intent to outrage her modesty from the informant herself. Other PWs i.e. **PW 4 Smti. Laxmi Mahali, PW 6 Sri Bipin Chouhan and PW 8 Sri Amar Tanti** also heard about the incident from various sources.
- 28.** Last but not the least the learned defence counsel raised the voice that the incident took place on 15-11-2019 and the ejahar was lodged on 20-11-2019 and such delay in lodging the ejahar is fatal to the prosecution case. In this

context learned defence counsel cited one judgment **DILWAR SINGH VERSUS STATE OF DELHI (2008)3 Supreme Court Cases (Cri.) 330.**

- 29. The Apex Court** held that in Criminal Trial one of the cardinal principle for the court is to look for possible explanation for the delay in lodging the report. If no satisfactory explanation provided for the delay in lodging the same is fatal to the prosecution case.
- 30.** I have gone through the aforesaid case but found it not befitting to this present case as considering the nature of the offence as well as the victim is a rustic lady of tea garden community for which although the incident occurred on 15-11-2019 but the ejahar was lodged on 19-11-2019. Generally, in Indian villages, it is a rule that when there is any incident take place, firstly, the villagers or community persons try to negotiate the matter with the elderly persons. Herein this case, the victim immediately, after the incident, apprised the matter to her husband i.e. PW 7 and according to PW 7 he decided to apprise the matter to their Mahila Samity as well as other community of tea garden. Further, PW 2, PW 4, PW 5, PW 6 all accompanied the victim at the time of lodging the ejahar to the police station. These implies that lodging of the ejahar by Smti Shanti Munda (PW1) is a serious matter. Although PW 1 has not cited the explanation of delay in lodging the ejahar , but it is for the court to look into the fact of the case which shows the reason for the delay in lodging the same and to consider the same.

The Hon'ble Apex Court has held in **AIR 1983 SC 753 Bhogin Bhai Hirji Bhai Vs State of Gujrat** that :

"A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being look down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure and alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors, the victim and their relatives are not too keen to bring the

culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.”

- 31.** From the evidence on record it becomes clear that except PW 1 the victim, none is the ocular witness to the incident. Moreover, in offences like rape or outraging the modesty of a woman, when the offender finds the victim alone or secluded. It is difficult or rather an impossible task to place any ocular witness in such type of offences. In such a scenario the court has to look for circumstances which has to be gathered from the facts and circumstances of the case or evidence on record. Evidence of the victim in sexual offence is entitled with great weight and corroboration in the form of eye witnesses may be available in physical assault cases. But such evidence cannot be expected in sexual offences. It would be insult to the modesty of the woman seeking corroboration.

After considering the entire gamut of the facts and circumstances of the case and the evidence on record it clearly transpires that the prosecution has successfully bring home the accused within the ambit of Section 354 I.P.C. to justify his conviction.

- 32.** Moving to the offence of Section 506 I.P.C. firstly I would like to mention Section 503 and Section 506 of I.P.C.

Section 503 in The Indian Penal Code:

503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Section 506 in The Indian Penal Code:

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for

life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

- 33.** Here, PW 1 in her ejahar mentioned that the accused asked her not to disclose the matter to others otherwise she would have to lose her job. But the informant in her evidence as well as in her statement recorded U/S 164 Cr.P.C. is silent about the same aspect. Moreover, the other PWs are also mum about the threatening made by the accused that they had heard from the informant or from other sources. In absence of any substantive evidence regarding the offence U/S 506 I hold that the prosecution has failed to prove in toto against the accused.
- 34.** Thus, from the evidence on record, I find that the prosecution has been able to prove the charge U/S 354 I.P.C. against the accused person beyond all reasonable doubt. In the result, the accused is found guilty for commission of offences U/S 354 I.P.C. Accordingly, accused Sri Tapan Hazarika is convicted U/S 354 I.P.C.
- 35.** Heard the accused on the proposed sentence. The accused prayed for leniency before the court stating that he is the only bread earner of his family and prayed to take lenient view. The accused being the Supervisor of the aforesaid tea garden, on pretext of cleaning the dressing room send the victim alone to the dressing room and taking advantage of her loneliness, touched her body and tried for committing sexual harassment by rolling her down. Thus, the act of the accused appears to be intentional one and as such type of crime against women has been increasing one in the whole world including the rustic tea garden areas. If the accused is released scot free it would convey a wrong message to the society, moreover it would be an insult to the modesty of woman i.e. the victim. Hence, I am not inclined to extend any benefit of **probation** to the accused person.

O R D E R

- 36.** Accordingly, accused Sri Tapann Hazarika is acquitted from the offence U/S 506 I.P.C. However, he is convicted U/S 354 I.P.C. and he is sentenced to undergo for **Simple Imprisonment** for a term of one (1) year and also to pay a **fine of Rs. 10,000/-(Rupees ten thousand)** only for the offence

committed U/S 354 I.P.C. and in default of payment of the fine amount, shall further undergo **Simple Imprisonment for a period of one (1) month**. On realization of the fine amount, the same shall be given to the victim immediately.

- 37.** The period of detention already undergone by the accused, if any, in the jail hajot as UTP shall be set off from the substantive period of sentence so imposed.
- 38.** Supply a free copy of the judgment to the accused person.
- 39.** Send a copy of this judgment to the District Magistrate, Udalguri for kind information as per provision of Section 365 Cr.P.C.
- 40.** The Judgment is delivered in the open Court and tagged with the case record.

Given under my hand and seal of this court on this 15th day of December, 2021 at Udalguri, Assam.

Dictated and corrected by me:

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.

(Ranjita Agarwalla)
Chief Judicial Magistrate.
Udalguri, Assam.

APPENDIX

- A. Prosecution witnesses : **PW 1 Smti. Shanti Munda (informant)**
PW 2 Sri Smti. Rajina Kertetta
PW 3 Smti. Phuleswari Munda
PW 4 Smti. Laxmi Mahali
PW 5 Smti. Sonia Mahali
PW 6 Sri Bipin Chouhan
PW 7 Sri Ahim Munda
PW 8 Sri Amar Tanti
PW 9 Smti. Phulmati Mahali and
PW 10 Dr. Bimal Chandra Boro(Medical Officer.)
- B. Defence witness : Nil.
- C. Documents exhibited : **Ext. 1 Ejahar.**
Ext. 2 164 Cr.P.C. statement of PW 1.
Ext. 2 Medical report.

(Ranjita Agarwalla)
Chief Judicial Magistrate
Udalguri, Assam.