



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

**Criminal Appeal No.02(AP) of 2018**

Shri Giogi Rock

...Appellant

-Versus-

State of Arunachal Pradesh & Others

... Respondents

**B E F O R E**  
**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**  
**HON'BLE MR. JUSTICE NANI TAGIA**

Advocates for the Appellant : Mr. T. Taba  
Advocate

Advocates for the Respondents : Mr. S. Tapin  
Additional Public Prosecutor  
State of Assam.

Date of hearing : **28.03.2019**  
Date of Judgment : **30.05.2019**

**JUDGMENT & ORDER (CAV)**

***(AM Bujor Barua, J)***

Heard Mr. T. Taba, learned counsel for the appellant and Mr. S. Tapin, learned Senior Government Advocate who appears for the State of Arunachal Pradesh as Public Prosecutor.

2. An FIR dated 16.12.2013 was lodged before the Officer-in-Charge of Women Police Station, Itanagar inter-alia stating that on 15.12.2013, the informant received a call at around 8.00 p.m. from her friend Techii Tater from his mobile phone Number 9402254057 asking her to come over and meet him at Noykum Lapang market. When she went there, one of his friend Nabam came in a motorcycle and forcefully took her towards the zoo area. Upon arriving at the zoo area around 11 p.m. he took her to a small two room OBT

house, where three other youths were present. She stated that initially Techii raped her and thereafter all the other three youths had raped her one after the other. When the informant raised the objection, Techii held her by her neck and strangulated her, but one of the youths, who appeared to be a non-tribal saved her from further assault. She also stated that thereafter the others had beaten the youth who tried to save her and kept her confined in the room and thereafter discussed amongst themselves to kill her and to dispose of her body by telling her that someone had paid them Rs.30,000/- to rape her. They also threatened her with dire consequences if she disclosed the matter to the police or anybody else. She also explained that she could not lodge the FIR on the earlier day out of fear of her life as they had threatened her to kill her. Result thereof, Itanagar Women Police Station Case No.82/2013 was registered under Sections 376(D)/376(2)(I)/307/506 IPC read with Section 4 and 10 of Protection of Children from Sexual Offences Act.

3. The informant who deposed as PW-1 stated that on the given day one boy from Yazali had met her elder sister and took her phone number and then in the night he had called her to come over to Itanagar. As she declined, she rang up the concerned person in the morning of the next day. Upon such call being made, another person picked up the phone and the said person was identified by PW-1 to be accused Techii Tater who was standing on the dock. She deposed that thereafter Techii Tater repeatedly kept on calling her. During the Christmas of the given year when the PW-1 went along with her elder sister, the accused Techii Tater again called her and asked her to make tea at his home as his elder sister was unavailable. PW-1 deposed that in the circumstance, she obtained a promise from the accused Techii Tater that he will not do any harm to her. Thereafter having accepted the promise, PW-1 went to his house at around 8 p.m. in the night. When she agreed to go to his house, she was told that the brother of the person concerned will drop her at the appropriate place. Accordingly another person came and took her to an unknown colony near the Itanagar Zoo and dropped her in the house where the four accused persons namely Techii Tater, Giogi Rock, Vijay Borah and Bamang Taro @ Bharat were present. The accused Bamang Taro @ Bharat was subsequently found to be a juvenile.

4. PW-1 deposed that the accused persons were consuming beer and had asked the witness to prepare some tea while they were playing a dice game called Zanda Munda. At that time although the PW-1 expressed her desire to leave the place, but the accused Techhi Tater had assured her that they will not do any harm to her. When she tried to use her mobile phone to give message to some person, the accused Techhi Tater had snatched away her mobile phone and concealed it somewhere and around that time it was already about 3.00 a.m. in the morning. The witness deposed that thereafter the behaviour of the accused persons became abnormal and they dragged her inside the room and raped her one after the other. In her deposition she stated that there were two rooms in that house and while the others were looking on, one or the another was committing rape on her. She stated that accused Techhi Tater had first committed rape on her followed by accused Bamang Taro @ Bharat who was found to be a juvenile later on. Thereafter, the accused Giogi Rock had raped her. After the incident, PW-1 fled away from the spot, but the accused Vijay Borah had caught hold of her. The accused Vijay Borah had told her that he will save her, but instead he dragged her to his room and committed rape upon her.

5. PW-1 further explained that by rape she understand it to be a sexual intercourse and all the accused had committed forceful sexual intercourse with her. She further deposed that during the period, she begged the accused persons by touching their feet requesting them not to do such thing upon her. But instead they had planned to kill her by saying that she would be a problem for them. At that stage, she requested accused Vijay Borah to save her and not to kill her. Later on, the accused persons fought amongst themselves and subsequently, the accused Techhi Tater had dropped her at a place called Ganga. She further deposed that on the way back while being dropped, the accused Techhi Tater had told her that they had committed the rape upon her as he had taken about Rs.20 to 30 thousands from somebody for committing the offence on her. But he did not clearly state as to who had paid him. He also told her that he will hand her over to the CRPF/Army personnel for performing sexual intercourse with her and he will make money in return. He also told her that in the event of his arrest for committing rape, his family.

members would bail him out and the police had already taken money for the purpose. After being dropped at the place Ganga at about 5 to 6 a.m., she went back to her room, but did not tell anything about the incident to any of the members of her family as the others may feel bad about it. When she reached home, her elder sister had enquired as to from where she was coming and she told her that she came home after celebrating Christmas. The elder sister was also concerned as to why her clothes were dirty and allowed her to take bath and she herself had washed her clothes. Later on, she revealed the incident to the person, whom she called her sister, who again was stated by her to be her maternal aunt. Thereupon, on being suggested by others, she went to the Women Police Station at Itanagar and narrated about the incident and also gave the phone number of the accused Techii Tater.

6. In her deposition the PW-1 also stated that after the arrest of the accused persons, many calls were received in her phone from some unknown persons, who had threatened her with her life. She also deposed that a relative of the accused Techii Tater also tried to convince her by offering a job which she did not agree. Later on, she again went to the accused Techii Tater, who was a member of an organization called ANYA and surrendered herself to him and told them to kill her as she did not want to live any more. She also deposed that she even thought of committing suicide.

7. PW-1 was cross examined by the learned counsel appearing for the different accused persons. In the cross examination by the learned counsel appearing for the accused Giogi Rock, she stated that on the night of the given day at about 7 to 8 p.m one boy in a motorcycle came to her sister's place to take her and that to a suggestion she stated that it is not a fact that the accused Giogi Rock is the person who came to pick her up. She also stated that she was not forcefully taken in the bike to the forest corporation at Chimpu and that she had voluntarily gone. She further deposed that in the forest corporation, Chimpu she did not see the accused Giogi Rock. She also reiterated that it is a fact that the accused Giogi Rock had not raped her and had neither assaulted her. She also stated that it is a fact that a person cannot take a girl forcefully on a motorcycle. On a question by the Court that during her examination she had stated that the accused Giogi Rock had also

committed rape on her and then why at the time of cross examination she was stating that the accused had not committed rape, the PW-1 answered that she had not named Giogi Rock to have committed rape on her.

8. PW-2 Hina Yania stated that the prosecutrix PW-1 is a friend of her's and they are from the same village. She deposed that on 25.12.2013 the prosecutrix PW-1 came to her house, but later on left and she does not know what happened to her subsequently.

9. PW-3 Biri Kechak in his deposition stated that he was the owner of the OBT house at Chimpu where the alleged occurrence had taken place, but he did not know anything about the occurrence on the given night. He had deposed that later on, he was told that an incident of rape had taken place in his OBT house at Chimpu and the persons who were brought by the police as accused to his house were recognized by him and that all of them stayed in his OBT house as tenants.

10. PW-4 Dr. Leena Ligu, who was the doctor in the RK Mission Hospital, Itanagar, in her deposition stated that on 16.12.2013 she had examined the prosecutrix PW-1 upon being requisitioned by the police. The prosecutrix PW-1 according to PW-4 was complaining of pain in abdomen, pain in the genital region, pain in neck following the assault. Upon examination, her general condition was found to be fair and blood pressure and pulse, respiratory, Cardio vascular system were found to be normal. Upon examination, she found the following external injuries:-

*"(i) Bruise of 5 x 2 cm approx. over the right breast above the nipple.*

*(ii) Bruise of 1 x 1 cm approx. over the left breast above the nipple.*

*(iii) Bruise over right knee measuring 4 x 4 cm.*

*(iv) Bruise of around 5 x 6 cm at right thigh.*

*On genital system examination:-*

*Her Hymen was absent.*

*Small superficial laceration of around 1 x 1 cm was found in the posterior vaginal wall.*

*White discharge was present.*

*Vaginal swab was taken and sent for histopathology examination. Thereafter, I advised for emergency contraceptive pill and urine for pregnancy test. Then, ultrasound for abdomen was advised."*

11. PW-4 doctor in her opinion stated that there was a suggestion of forceful sexual assault on the prosecutrix PW-1. In response to the cross examination by the accused Giogi Rock and Vijay Borah, PW-4 stated that the injuries found on the victim were fresh injuries and not old and that suggestive of sexual assault on the victim means that the injuries stated had confirmed, but the act of sexual intercourse could be more confirmed after the results of the tests that were advised for.
12. DW-2 Gora Take deposed that the prosecutrix PW-1 was his former wife with whom he was married in the year 2008 and at the time of marriage, she was about 18 to 19 years old. He deposed that out of the wedlock, a female child was born on 09.10.2011 and at that time the age of the girl was about 21 years. In the year 2011, the prosecutrix PW-1 had left her former husband and went away.
13. In his statement under Section 313 Cr.P.C, the accused Giogi Rock had denied that he was involved in the act of sexual assault on the prosecutrix PW-1. Mr. T. Taba, learned counsel for the appellant by referring to the statement of the prosecutrix PW-1 in her cross examination by the accused Giogi Rock contends that the prosecutrix PW-1 had clearly stated that the accused Giogi Rock was not the person, who had picked her up in the motorcycle at about 7 to 8 p.m. and that the prosecutrix PW-1 had not seen the accused Giogi Rock in the forest corporation Chimpu where the alleged rape had taken place and that it is a fact that the accused Giogi Rock had neither raped nor assaulted the prosecutrix PW-1. By relying upon the deposition of the prosecutrix PW-1 in the cross examination by the accused Giogi Rock, the learned counsel raises a contention that the stand taken by the prosecutrix PW-1 in her cross examination as regards the involvement of accused Giogi Rock in committing the offence had fully been confronted and it had neutralized the deposition of

the prosecutrix PW-1 in the examination-in-chief that the accused Giogi Rock was also involved in committing the offence of rape on the prosecutrix PW-1.

14. We have perused the statement made by the prosecutrix PW-1 in the cross examination by the accused Giogi Rock and from the cross examination it is revealed that it is the stand of the prosecutrix PW-1 that the accused Giogi rock was not involved in committing the offence of rape on her. In view of such categorical statement in the cross examination, we are inclined to accept the contention of the learned counsel for the appellant that the statement of the prosecutrix PW-1 in her examination-in-chief that the accused Giogi rock was the third person in order to commit the rape upon her is unacceptable.

15. Accordingly, the conviction of the accused Giogi Rock in the judgment and order dated 20.04.2018 in Sessions Case No. 05/2014 (YPA) under Sections 376(D)/376(2)(i)/307/506 IPC read with Sections 4 and 10 of POCSO Act by the learned Sessions Cum special Judge, Yupia, West Sessions Division, Papum Pare District and sentencing him to undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5000/-, in default of payment of fine, to undergo further rigorous imprisonment for 06(six) months for the offence punishable under Section 376(D) IPC is accordingly set aside.

16. The accused appellant Giogi Rock be set at liberty forthwith provided he is not required for any other offence.

17. The appeal in respect of the appellant Giogi Rock stands allowed as indicated above.

**JUDGE**

**JUDGE**