

GAHC010022682015



2024:GAU-AS:12788

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

**Case No. : Crl.Pet./808/2015**

SUJIT DHAR  
S/O LT. KHITISH DHAR, R/O NAOJAN TOWN, P.S. SARUPATHAR, DIST-  
GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS

2:VICTOR TOPPO  
S/O SRI BIRSAI TOPPO  
VICE-PRINCIPAL  
HOLLY CROSS SCHOOL  
NAOJAN  
P.S. SARUPATHAR  
DIST- GOLAGHAT  
ASSAM

3:JOSPIN TIRKEY  
D/O SRI ABERT TIRKEY  
HOLLY CROSS SCHOOL  
NAOJAN  
P.S. SARUPATHAR  
DIST- GOLAGHAT  
ASSA

**Advocate for the Petitioner** : MR.S A B KHABIR, MS.S KANUNGOE,MR.I H SAIKIA,MR.K  
KALITA

**Advocate for the Respondent** : ,,,PP, ASSAM

**BEFORE**  
**HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY**

**13-12-2024**

1. Heard Mr. I. H. Saikia, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam for the respondent No. 1.
2. The present criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 assailing the impugned judgment and order dated 09.04.2014, passed by the learned Assistant Sessions Judge, Golaghat in Sessions Case No. 107/2012, corresponding to G.R.Case No. 94/2008, convicting the petitioner for the commission of offence under Section 354 IPC and sentencing him to undergo Rigorous Imprisonment (RI) for 1 (one) year and to pay a fine of Rs. 2,000/-(two thousand only) and in default of payment of fine, to undergo Simple Imprisonment for 3 (three) months.
3. The further challenge is the judgment and order dated 07.09.2015, passed by the learned Additional Sessions Judge, Golaghat in Criminal Appeal No. 19/2014, whereby the judgment of conviction and sentence dated 09.04.2014 was affirmed.
4. The prosecution story in a nutshell is that on 10.06.2008 at about 09:30 am, while the victim who was a non-teaching staff of Holy Cross High School, visited M/s Roy Medical Store, the accused/petitioner who was an owner of said Medical store, for getting injection pushed, the accused/petitioner took her inside the store and asked her to remove her clothes. Thereafter, the accused/petitioner touched her private parts. After receipt of a written ejahar from one Fr. Victor Toppo, Vice Principal of Holy Cross High School, Naojan through Naojan Police Out-post, Sarupathar Police Station registered a Criminal Case being Sarupathar P.S. Case No. 52/2008 under Sections 342/376/511 IPC. After completion of the investigation, Naojan Police Out-Post submitted Charge Sheet under Sections 342/376/511 IPC against the accused/petitioner. As the offences were triable, the learned committal Court committed the case to the learned Court of Assistant Sessions Judge, Golaghat.

5. During trial, the prosecution had examined as many as 6 (six) witnesses including the victim. The accused/petitioner was examined under Section 313CrPC. However, no one was examined by the defence.

6. After examination of the evidence on record, the learned Assistant Sessions Judge, Golaghat found prima facie material under Section 376 IPC read with Section 511 IPC against the accused/petitioner. Accordingly, charge under Section 376 IPC read with Section 511 IPC was framed. The charge was duly read over and was explained to the accused/petitioner to which he pleaded not guilty and claimed to be tried. By the judgment and order dated 09.04.2014, the learned Assistant Sessions Judge, Golaghat convicted the accused/petitioner.

7. Being aggrieved and dissatisfied with the impugned judgment and order dated 09.04.2014 as noted herein above, an appeal being Criminal Appeal No. 19/2014 was preferred by the accused/petitioner as an appellant. However, the learned Appellate Court , i.e., the Court of learned Additional Sessions Judge, Golaghat by its judgment and order dated 07.09.2015 finding no material to discard the evidence on record, concluded that the impugned judgment and order dated 09.04.2014 had rightly been passed by the learned trial Court and the same did not require any interference in appeal. Accordingly, the aforesaid Criminal Appeal No. 19/2014 was dismissed and the conviction and sentence was affirmed.

8. Being aggrieved, the present criminal petition is filed by the petitioner.

9. Mr. Saikia, learned counsel for the petitioner, at the outset, submits that he would not advanced any argument on the merit of the case inasmuch as the victim's evidence has remained firmed and the case under Section 354 IPC is made out. However, he contends that the accused/petitioner was arrested immediately after the alleged incident and he was in custody for 90 days. Therefore, taking note of the protected litigation, he prays for reducing the sentence to the extent that the petitioner had already undergone i.e., 90 days.

10. Mr. Borthakur, learned Additional Public Prosecution, Assam submits that the he

has no instructions to object to such prayer.

11. In view of the aforesaid, this Court is of the opinion that the offence under Section 354 IPC had been made out.

12. Now coming to the modification of sentence, at the relevant point of time, Section 354 IPC prescribed imprisonment of either description for a term of which may extend to two years, or fine or with both. Therefore, no minimum offence was prescribed. This Court is also of the opinion that the petitioner had in the meantime suffered facing trial since the year 2012 till the year 2014. Thereafter, he faced the appeal and at this stage, the matter is pending since 2015 that is almost for 10 years.

13. The petitioner was arrested immediately after the alleged incident and he was behind the bar for 90 (ninety) days. Therefore, taking into consideration, the totality of the circumstances, coupled with the fact that the underlying incident occurred in the year, 2008 and that during the investigation of the case, the petitioner was inside the custody for 90 (ninety) days, this Court is of the view that in the end of justice would meet, if the sentence is reduced to the period that had already undergone i.e., 90 (ninety) days by the petitioner. Accordingly, the present criminal petition stands allowed in the manner as indicated herein above. However, the imposition of fine of Rs. 2,000/- (two thousand only) and in default to pay fine, Simple Imprisonment of 3 (three) months shall remain unaltered.

14. The fine be deposited before the learned trial court by the petitioner within a period of two months from the date of receipt of a certified copy of this order and the same be furnished to the victim through the learned Assistant Sessions Judge, Golaghat.

15. LCR be returned back.

**JUDGE**

**Comparing Assistant**