

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Sessions Case No. 11 of 2014

Crl Tr. No.2217 of 2013

State of MizoramComplainant

-Versus-

Constable 87 Lalthazova (24)
S/o Hrangkaplura,
4th IR Bn, Zamuang,
R/o, Kawrtethawveng,
Mamit District. Accused person.

APPEARANCE

For the State : Smt. Lalremthangi, Addl. P.P.
For the accused person : Shri Vanlalnghaka, Advocate.
Shri Lalrammuana, Advocate.

Hearing : 9.3.2016

Judgment delivered on : 21.3.2016

J U D G M E N T & O R D E R

The accused has been tried for alleged commission of offences punishable u/s 366/506 of IPC r/w 8(2) of MLTP Act.

2. The prosecution story in brief is that on 17.12.2013 ASI R. Lalawmpuia submitted Enquiry Report.

In the Enquiry Report, on 13.12.2013 at around 7:21pm, information over telephone was received from Lalhminganga, the President of Village Defence Party, Rengdil to the effect that one Lalthazova of 4th India Reserve Battalion who

was posted at Zamuang BOP entered into the house of Smt. Ramdinpuui of Rengdil with his service arms and forcefully led her daughter Lalengpuui from her residence towards Zamuang Village. Hence, he with his party rushed to the spot to enquire the matter. On reaching Rengdil Village, they directly approached the residence of Smt. Ramdinpuui.

During enquiry, Constable 87 Lalthazova was arrested and interrogated. The interrogation revealed that the Post Commander had detailed the constable to perform duty in their camp at Zamuang BOP at around 6:00 pm- 8:00 pm on that night. However, without getting ready for his duty, he went towards Rengdil Village at around 5:10 pm with his service arms. On reaching Rengdil village, Constable 87 Lalthazova entered into the house of Pi Ramdinpuui and threatened them with his service Arms under the influence of Alcohol. Hence, KRTTH PS Case No 18 of 2013 dated 17.12.2013 under Sections 366/506 of IPC read with Section 8(2) of MLTP Act was registered and duly investigated into.

In the course of investigation, it was revealed that the accused and the alleged victim had love affairs, but the latter ended their relationship. On the night of 13.12.13, the accused with his service arms entered into the house of Ramdinpuui under the influence of Alcohol. At the relevant time, the alleged victim was also present. The accused told the alleged victim that he still loved her and wanted her to follow him. But, the alleged victim refused. At this, the accused told the alleged victim to follow him failing which she should die with him pointing at her and her family with his arms. The accused also loaded his arms. According to the accused, he acted since he loved the alleged victim and took her away.

The Village Defence Party saw the accused and the alleged victim walking towards Zamuang village. The VDP with the help of one C/20 Siamthangliana of India Reserve personnel took the service arms of the accused and apprehended him. Finally, the alleged victim was taken back. The service arms and one magazine with 20 rounds of ammunition were recovered and were later handed over to Kawrthah police. The same was seized in presence of reliable witnesses and kept in the P.S. Malkhana vide No. 12 of 2013.

In the course of investigation, the accused admitted his guilt before police and stated that after consuming some quantity of liquor (Rakzu) with his campmate, he left the BOP with his service arms without taking any permission from the controlling officer and abducted the alleged victim by threatening her with his arms. The witnesses were examined and their statements were recorded. Seized articles i.e. AK- 47 Butt No. 60 Regn. No. 9788 and one magazine with 20 round of ammunition were given back to Hav. Proba Chakma, 4th IR Post Commander (attached to Kawrthah PS) on Zimanama vide No. 5/2013. The accused was forwarded to CJM Aizawl Court with a prayer for judicial remand under proper escort. A prima facie case under Sections 366/506 of IPC read with Section 8(2) of MLTP Act being found well established against the accused, the Case I.O. submitted charge sheet.

3. Upon committal, charges under Sections 366/506 of IPC read with Section 8(2) of MLTP Act against the accused person were framed, read over and explained in the language known to him, to which he pleaded not guilty and claimed to be tried.

4. In the course of trial, the prosecution produced and examined as many as nine out of ten witnesses to prove that the accused had committed the offences punishable under Sections 366/506 of IPC read with Section 8(2) of MLTP Act. They were examined and cross-examined. After closure of the prosecution evidence, the accused person was examined under Section 313 of Cr PC in which he denied the suggestions put before him.

5. Point of determination:

a) Whether the accused abducted the alleged victim from her house at Rengdil village with intention to compel her marriage or to have illicit intercourse on 13.12.2013 at around 5 Pm?

b) Whether the accused criminally intimidated the alleged victim in her house at Rengdil village on 13.12.2013 at around 5 Pm?

- c) Whether the accused consumed liquor without prescription of registered practitioner or on permit granted under the MLTP Act and Rules?

6. DECISION AND REASONS THEREOF

P.W.1 A.S.I. R. Lalawmpuia identified accused Lalthazova. At the relevant time, he was posted as Sherista at Kawrthah P.S. The President of Village Defense Party Rengdil informed over telephone about the incident to Kawrthah PS to the effect that the accused had gone to the house of Smt. Ramdinpuii with a Rifle in a drunken state and forcibly taken out her daughter from their house. As the informant apprehended that the victim could be assaulted, he sought help from them. Thereafter, they proceeded to Rengdil village. On reaching the village, the victim and the accused were already detained by the VDP and they were found in one house at Rengdil. Therein, they recorded statements of witnesses whom they thought would be material. The statement of the accused was also recorded therein, but they recorded the statement of the victim when she came to the PS with her family. The victim and her family had difficulty to lodge the FIR against the accused since the accused was their colleague and her family had trust in them to file the FIR. Accordingly, he submitted Enquiry Report which was treated as FIR, but he did not take part in investigation. Ext. P-1 is the Enquiry Report submitted by him and Ext.P-1(a) is his signature. On cross examination, he stated that both the accused and the victim had love affair in the past. He further stated that the accused had acted since he was made to ditch the victim, but he had no knowledge whether the accused had taken out the victim to marry her or subject her to illicit intercourse. He also stated that he is not an expert to give opinion whether the accused was drunk or not or whether the accused consumed liquor or not.

P.W. 2 Smt. K.Ramdinpuii identified the accused. She came to know the accused since he had love affairs with her daughter. Both the accused and her daughter used to elope. It was sometime in the month of December, 2013, after dinner, the accused being an Indian Reserve Police came to her house in his uniform dress with service arms. The accused asked them whether they wanted to know how his service arms could hit and forced her daughter to follow him intimidating her if she would not follow him he would shoot her. At this time, Zonunsanga and his wife, her brother Rozampui and the alleged victim's children were also present. The accused also told the

victim's younger son Lalkhawngaiha to follow him. The victim followed the accused out of fear, but her son did not follow him out of fear. They kept silent and did not tell the alleged victim not to follow them since they were scared of the accused.

According to the witness, the accused used to perform duty at Zamuang. The distance between Rengdil and Zamuang is about 3 kilometres. After the victim and the accused left them, the victim called them over mobile phone from a place between Rengdil and Zamuang asking them to bring her back. They informed the VDP and the latter informed the police. The VDP then went and brought back the accused and the victim to their house. Thereafter, Kawrthah police also reached. The police took the accused from their residence. The victim told her that the accused had not done anything upon her. The police asked her question about the incident. On examination, she stated that the incident happened in the month of December, but not knowing the exact date. She further admitted that her daughter and the accused had love affair, but when the incident happened, their love affair subsided. She did not expect the act of accused. She further stated that the accused had stated to them whether they wanted to know how his service arms could him. She also stated that the accused had also stated to her daughter if she would not follow him, he would shoot her. It was denied by her that he had not threatened to shoot them. However, it was admitted by her that the accused had not forced her grandson Lalkhawngaiha to follow him.

P.W.3 Lalengpuii knew the accused. The accused was posted at Bungthuam under 4th I.R. Battalion. She and the accused eloped for two times without marriage. She returned home on her own will. On the day of incident, the accused went to their shop during day time. At evening, the accused called and informed her over phone that he would visit her, but she told him not to come due to anger of her family. The accused came to their residence while she was in their bedroom. She met the accused with arms wherein her family was also present, but she did not know what the accused had stated to her family. The accused was sitting in a bench loading his rifle. When she asked the reason of his act, the accused replied her that her mother had not behaved properly, shouting at him in anger. Her family appeared to be worried. She told the accused she would follow him. She followed the accused outside since she was afraid that the accused would fire his rifle and her family was worried. At that time her children were also present. The accused invited her son to come, but she did not allow. When they left the village she made a call to her family over phone to take her back,

though the accused wanted her to reach their camp. Thereafter, she met her family at cemetery. Her family and VDP members assaulted the accused and took her back to home. The accused was also brought back to her village. Since, the police had been informed, they apprehended him while he was in the custody of the VDP. The police asked her questions relating to the incident. According to her, she followed the accused out of fear. On cross-examination, she stated that she could not marry the accused since her family had not allowed her and she had eloped with the accused for two times. Her children were not born from the accused. She did not see the accused pointing them with rifle on that day. The accused did not threaten her, but she knew, the accused had stated that whether they wanted to know how his service arms could hit. They went out together since she told the accused. While calling her family, the accused snatched her phone and switched off, but she snatched back her phone from the accused. When the VDP and her family reached, the rifle of the accused had been taken from him by his friend. She denied that her family forced her to make a case against the accused. She admitted that on the day of incident the accused called her and she also called back him. She further admitted that on that day she had a quarrel with her family and with her children they left their house, and she informed the accused of not having accommodation. She also admitted that at the time of incident the accused had no intention to force her to marry or seduced her to illicit intercourse. On re-examination, she stated that she had called back the accused since did not want him to come to their residence. She was not in her residence when she informed that they had left the house. She did not go out from their house out of anger. She invited the accused to come out from their residence since she had fear as the accused loaded his rifle. The reason why she told the accused that she and her son had no accommodation was due to her expectation that the accused would come to their house.

P.W. 4 Lalhminganga knew the accused. On 13-12-2013 at about 5:00 Pm, one Sanga called him over mobile phone to the effect that one IR personnel had intimidated and abducted one Lalengpuui daughter of P.W. 2 Ramdinpuui. Accordingly, he accompanied Pu Zasangliana VDP Secretary and went to the residence of P.W. 2 Ramdinpuui. He informed about the incident to Kawrthah Police Station. Thereafter, he saw a colleague of the accused carrying one AK Rifle which was snatched from the accused. He sent Pu Zasangliana to apprehend the accused Lalthazova. In the result, the accused was brought to the residence of Pi Ramdinpuui. Thereafter, the police came,

arrested the accused and seized the AK Rifle. He stood as witness to the seizure. Exhibit P-2 is the seizure memo and Exhibit P-2 (a) is his signature. On cross-examination, he admitted that he had not seen recovery of the seized article.

P.W. 5 Inspector P.C. Vanlalsawma identified the accused. As soon as he came to know about the incident, he rushed to the spot. ASI R. Lalawmpuia seized one AK 47 Rifle bearing Regn. No. 9788 and Batch No. 60 with 20 rounds of ammunition and one magazine. He stood as Seizure Witness. Ext. P-2 is the Seizure Memo and P-2(b) is his signature. Ext. M-1 is the AK 47 with 20 rounds of ammunition. On cross examination, he stated that the magazine of the AK 47 could not be produced since he was not informed to bring it in the Court. He admitted that he had not seen ASI R. Lalawmpuia seizing AK 47 with 20 rounds of ammunition and one of magazine from the physical possession of the accused.

P.W. 6 Khudiram identified the accused. On 13.12.2013, he performed duty at Zamuang Border Out Post. After completion of his duty, he handed over the AK 47 with 20 rounds of ammunition and one magazine to the accused.

P.W. 7 Shri J.Zonunsanga identified the accused. On the evening of 13.12.2013 at about 5 PM before dinner, the accused came to the residence of Smt. Ramdinpuii with AK-47 Rifle. As soon as the accused reached the residence of P.W.2 Ramdinpuii, he got angry and said, "Ka silai hi a kah nat leh nat loh in hre duh em? In duh duh ko rawh u ka hlau lo" (In English translation, Do you want to know how my arms could hit? If you want, call whoever you like, I am not scared of them. Then, he sat down on a long bench. But, he did not know whether the accused had loaded or withdrew his bullet of his Rifle. The accused forced his lover P.W. 3 Lalengpuii and her son to follow him. But, P.W. 3 Lalengpuii stated that she would follow the accused without her son. Later, the accused was followed by P.W. 3 Lalengpuii. Then, they informed the local leaders of Rengdil. They gathered immediately. P.W. 3 Lalengpuii called one of them over mobile phone stating that she had already snatched the Rifle of the accused. Thereafter, they saw a friend of the accused who got intoxicated with liquor, carried the Rifle of the accused. When the Police counted bullets of the Rifle Magazine, they recovered 20 bullets. On cross examination, he stated that the accused did not point towards any person with his Rifle. He further stated that he did not know

whether the accused had pulled the hands of P.W. 3 Lalengpuii while asking her to follow him. P.W. 3 Lalengpuii was followed by the accused. The person who carried Rifle of the accused was slapped by Shri S. Lalropuia since the former was very drunk.

P.W. 8 Rozampuia identified the accused. On the evening of 13.12.2013 at about 5 Pm before dinner, the accused came to the residence of Smt. Ramdinpuii with AK-47 Rifle. As soon as the accused reached the residence of P.W.2 Ramdinpuii, he got angry and said, "Ka silai hi a kah nat leh nat loh in hre duh em? In duh duh ko rawh u ka hlau lo" (In English translation, Do you want to know how my arms could hit? If you want, call whoever you like, I am not scared of them). Then, he sat down on a long bench. But, he did not know whether the accused had loaded or withdrew his bullet of his Rifle, but he heard sound of the rifle. The accused forced his lover P.W. 3 Lalengpuii and her son to follow him. But, P.W. 3 Lalengpuii stated that she would follow the accused without her son. Later, the accused was followed by P.W. 3 Lalengpuii. On cross examination, he stated that the accused did not point towards any person with his Rifle. He further stated that he did not know whether the accused had pulled the hands of P.W. 3 Lalengpuii while asking her to follow him. He saw the friend of the accused getting drunk.

P.W. 9 ASI H.Lalenglina identified the accused. On 13.12.2013 at around 7:21 Pm while on duty at Kawrthah PS, they received information over telephone from Lalhminganga, President, VDP Rengdil to the effect that the accused had entered into the house of Ramdinpuii of Rengdil with his service arms and forced her daughter Lalengpuii from her house towards Zamuang village. He along with ASI R. Lalawmpuia proceeded to the PO to enquire the matter. When they reached the residence of P.W. 2 Ramdinpuii, the VDP members had already detained the accused with his service arms. ASI R. Lalawmpuia submitted his enquiry report to the Officer-in-Charge, Kawrthah P.S. Hence, Kawrthah PS Case No. 18 of 2013 dated 17.12.2013 u/s 366/506 IPC r/w 8(2) MLTP Act was registered and the case was endorsed to him for investigation. In the course of investigation, ASI R. Lalawmpuia seized the materials i.e. AK 47 B/R No. 60 Regn. No. 9788 with 20 rounds ammunition and 1 magazine in the presence of reliable witnesses. He visited the PO and examined the witnesses and recorded their statements. He also arrested the accused. The accused admitted his guilt before him stating that after consuming some quantity of liquor (Rakzu) with his camp mate, he left the BOP

with his service arms without prior permission from the Controlling Officer and abducted P.W. 3 Lalengpuii by threatening with his arms. Hence, a prima facie case u/s 366/506 IPC r/w 8(2) MLTP Act was found well established against the accused. Accordingly, he submitted the Charge Sheet. Ext. P-1 is the Enquiry Report. Ext. P-2 is the Seizure Memo. Ext. P-3 is the Charge Sheet and Ext. P-3(a) is his signature. Ext. P-4 is the Arrest Memo and Ext. P-4(a) his my signature. Ext. P-5 is the medical examination report. Ext. P-6 is the Form of FIR. On cross examination, he admitted that if the accused would have wanted to have sexual intercourse with the victim, he had sufficient chance. He further admitted that in his knowledge the accused had no previous criminal records. He also admitted that both the accused and the alleged victim had used to live together and had relationship before the instant criminal case occurred. He admitted that the victim had not made complaint to the police inspite of having mobile phone so as to contact police Station. But, the complaint was made by President, VDP of Rengdil. However, he stated that he thought the act of the accused was preplan with malafide intention.

7. Point No. a)

The first point for determination in this case is that whether the accused abducted the alleged victim from her house at Rengdil village with intention to compel her marriage with him or to have illicit intercourse on 13.12.2013 at around 5 Pm. In evidence of the prosecution, the accused no doubt visited the residence of P.W.2 K. Ramdinpuii on the evening of 13.12.2013, which was also admitted by the accused in his examination under Section 313 of Cr PC. However, there is material contradiction in the evidences of the prosecution witnesses. In the evidence of P.W.2 K.Ramdinpuii, it is stated by her that the accused forced her daughter P.W.3 Lalengpuii to follow him by threatening her if she would not follow him he would shoot her. But, in the evidence of P.W.3 Lalengpuii, she and the accused went out from the house together on their free will. There is also no corroborative statement from the other prosecution witnesses to support the statement of P.W.2 K.Ramdinpuii that the accused would shoot the alleged victim if she would not follow her. There is also no evidence that the accused abducted the alleged victim from her house at Rengdil village with intention to compel her marriage with him or to have illicit intercourse on 13.12.2013 at around 5 Pm. The alleged victim admitted in her cross examination that the accused had no intention to

force her to marry or seduced her to illicit intercourse. Hence, the charge framed u/s 366 of IPC against the accused is liable to be acquitted.

8. Point No. b)

The second charge made against the accused is whether he criminally intimidated the victim in her house at Rengdil village on 13.12.2013 at around 5 pm. Section 503 of IPC defines 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.'**

Explanation-A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration-A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.'

While Section 506 of IPC is a penal section which states punishment for the offence of 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;

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 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.'

The ingredients of the offence of criminal intimidation what appears are as follows (i) Whether the accused threatened the victim? (ii) Whether such threat consisted of some injury to the victim, reputation or property of the victim? (iii) Whether accused did so with intent to cause alarm to the victim, or to cause that person to do any act which he was not legally bound to do, or omit to do any act

which he was legally entitled to do as means of avoiding the execution of such threat.

In the instant case, the evidences of P.W. 2 Smt. K.Ramdinpuui, P.W. 3 Lalengpuui, P.W. 7 Shri J.Zonunsanga and P.W.8 Rozampui are vital since they were all present when the accused came to the residence of P.W.2 K.Ramdinpuui. There is material contradiction in the statements of the said witnesses. In the statement of P.W. 2 K.Ramdinpuui, the accused forced her daughter to follow him intimidating her if she would not follow him he would shoot her, but the statements of the other witnesses particularly in cross examination did not corroborate the statement of PW No. 2. The allegation made against the accused by the prosecution witnesses that the accused had stated before them whether they would want to know how his arms could hit does not attract the offence of criminal intimidation. In the evidence of the alleged victim, particularly in cross examination, the alleged victim stated that she had not seen the accused pointing at them with his service arms. It is also confirmed by P.W. 7 J. Zonunsanga and P.W. 8 Rozampaia that the accused had not pointed towards the said witnesses with his service arms. Hence, the charge framed against the accused u/s 506 of IPC is liable to be acquitted.

9. **Point No. c)**

Thirdly, the accused has also been charged under Section 8 (2) of MLTP Act.

Section 7 of MLTP Act states, 'No person shall-

(a)

(b) Consume liquor except on a prescription of a registered medical practitioner, or on a permit granted under the provisions of this Act or the rules made there under, as the case may be.'

'Section 8 (5) of MLTP Act further states, 'Any registered medical practitioner shall be competent to examine and prove that a person has consumed liquor or has been in a state of intoxication.'

'Section 40(2) of MLTP Act also states, 'For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance or probability'

On minute scrutiny of the law mentioned above, it is clear that when a person consumes liquor except on a prescription of a registered medical practitioner, or on a permit granted under the provisions of this Act or the rules made there under, he has to be examined by a registered medical practitioner as required by the Act, and the registered medical practitioner has to prove that the person has consumed liquor. In the instant case, there is no evidence of the Medical Officer who issued the medical examination report that he has proved the accused consuming liquor. On this ground alone, the charge made against the accused under Section 8 (2) of the Act is liable to quashed. It is pertinent to mention here that that the consumption of liquor by the accused if it existed has to be believed by the court beyond a reasonable doubt and not merely when its existence is established by a preponderance or probability. As there is no such evidence of any prosecution witness beyond reasonable doubt that the accused consumed liquor, I do not find any reason to hold that the accused is liable to be convicted under Section 8 (2) of the Act.

10. In the light of the above discussion and reasons thereof, the accused is acquitted under Sections 366/506 of IPC r/w 8(2) of MLTP Act. Hence, the accused shall be set at liberty.

11. Seized material, if any, shall be returned to the Government.

Judgment prepared and delivered in open court on this 21st day of March, 2016 under my hand and seal.

Sd/- VANLALENMAWIA
Addl. Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram

Memo No. _____/AD & SJ (A) /2016 : Dated Aizawl, the 21st March, 2016

Copy to :-

1. Shri Lalthazova through Counsel Shri Vanlalnghaka, Advocate.
2. Sessions Judge, Aizawl Judicial District, Aizawl.
3. District Magistrate, Mamit District.
4. Superintendent of Police, Mamit District.
5. Addl. PP, Aizawl District, Aizawl.
6. DSP (Prosecution), District Court, Aizawl.
7. Officer-in-Charge, Kawrthah Police Station.
8. i/c G.R. Branch, District Court, Aizawl.
9. Registration Section.
10. Guard File.
11. Case Record.
12. Calendar Judgment.

P E S H K A R

- a)** Point No. 2: 6) PW-1 Smti. Hiramai Bora deposed that the accused Sri Ankur Raj Gogoi forced Kabita to marry him and so she was given in marriage to Sri Ankur Raj Gogoi in one day decision on 20-12-11. She further stated that after one month of her marriage, Kabita used to come to her house and told her and her husband that the accused Sri Ankur Raj Gogoi and his mother Smti. Anima Gogoi used to torture her both physically and mentally for not bringing dowry at the time of marriage. During cross-examination, she deposed that Page 4 of 7 after the marriage and during her lifetime, her deceased daughter came to their house along with her husband for about 6/7 times and till her death, the relation between her and the accused was good. She further stated that the ejahar was written by Smti. Mamoni Bora. Regarding the dowry demanded by the accused, PW-1 as well as her deceased daughter did not inform police prior to the incident. PW-1 did not state before police that the accused as well as his mother used to demand dowry from them and caused harassment. She further stated that as her daughter died, suspecting some foul play, she lodged the ejahar against the

accused. It appears that the allegation regarding demand of dowry has been raised for the first time during trial. PW-1 therefore cannot be regarded as a wholly reliable witness. 7) PW-2 Smti. Pushpa Dutta deposed that about one and half years prior to her death, she had told PW-2 that her mother-in-law used to torture her and if she buys new cloths or visits neighbours, her mother-in-law objected and also refused to take anything from her hand and in that way her mother-in-law used to mentally torture her. She further stated that on 20-03-13, at around 8:30 pm, the elder sister of the accused telephoned her and informed that Kabita had taken poison and also said that Kabita had some altercation with her mother-in-law. She further stated that she met the accused Ankur in front of the hospital who said that on the day of occurrence, when he came back home, the mood of Kabita and his mother was not good and on being asked, Kabita told him that she was three months pregnant and there was some altercation between her and her mother-in-law. During cross-examination, she stated that after 5/6 months of the marriage of her sister with the accused, she along with her husband went to the house of the accused and met the mother-in-law of her deceased sister. When she along with her husband visited the house of the accused, she did not see the mother-in-law and her sister suffering from any ailment. PW-2 came to know from one Smti. Ivay Gogoi over phone that her sister consumed poison. PW-2 came to know from the accused person that there was some altercation between his wife and his mother. PW-2 further stated that prior to the incident, they had not lodged any ejahar against the accused persons regarding the demand of dowry as well as the mental and physical torture committed upon her sister. After two days of the alleged incident, her mother lodged the ejahar. PW-2 further stated that she had stated before police that Page 5 of 7 out of suspicion, they lodged the ejahar against the accused persons regarding the incident. After the marriage and during the lifetime of her deceased sister, the relation between the accused and her sister was good. Therefore, from the deposition of PW-2 also, it appears that the allegation regarding demand of dowry was a later development and that the informant had lodged the case against the accused on suspicion. 8) PW-3 Smti. Mamoni Baruah deposed that Sri Makhan Dutta told her that the accused Ankur told him that his mother

Smti. Anima Gogoi administered something to the deceased. Said Sri Makhn Dutta was examined as PW-4, but he did not corroborate the version given by PW-3. He was declared hostile on the prayer of the prosecution and during his further examination, the following statement made allegedly before the police by him was put to him: "On the next day of occurrence, I along with my wife came to Sanjibani Hospital, Dibrugarh and met Ankur Raj, husband of the deceased Kabita. He stated weeping that Kabita asked him to smell her mouth. While he asked her if she took something, she told that she did not take anything herself. Ankur Raj also told me that Kabita and her mother-in-law used to quarrel between them. I came to know from my wife that Kabita was tortured by her mother-in-law". PW-4 denied having made the above statement, but even from the above statement, it appears that PW-4 did not state before the police that the mother of the accused administered poison to the deceased. 9) PW-5 Sri Tapan Gogoi deposed that he met the accused Ankur at the hospital and the accused told him that his mother spoiled his life and thereafter, the accused Ankur burst into tears. During cross-examination, he stated that prior to the alleged incident, the relation between the accused and the deceased was good and no quarrel took place between them. The version of PW-5 appears to be contradictory in nature. 10) From the above discussion, it is well discernible that no material has emerged to suggest that the accused persons used to mentally and physically torture the deceased in connection with the demands for dowry or otherwise. Rather, since it is a case of poisoning, it appears that the informant side has lodged the case out of suspicion as admitted by the PW-1 & 2. Considering the evidence in its entirety, the probability that the deceased herself consumed Page 6 of 7 the insecticide cannot be ruled out. But at any rate, there is also no evidence to establish that the accused persons abetted the consumption of poison by the deceased. The point is answered accordingly. 11) In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused person is acquitted of the offence under Sections 304-B/302/34 IPC and they be set at liberty forthwith. 12) Previous bail bond shall remain in force for a further period of 6 (six) months under Section 437-A CrPC. Given under my hand and seal of this Court on this the 1 st day

of February, 2016. Sessions Judge, Dibrugarh Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature. Sessions Judge, Dibrugarh Page

- (i) Whether the accused is liable to be convicted u/s 376(2)(i) of IPC?

12. **Discussion, Decision and Reason of Decisions:**