

In the aforesaid **F.I.R.** (Exhibit-2) dated 27.08.2018, the informant (P.W.1), who is the victim of this case, alleged *interalia*, that she is a married woman and her husband was absent at the time of alleged incident. On 25.08.2018 at about 11:00 PM, accused namely Azahar Ali entered into the house of informant/victim by breaking the bamboo door of the house and committed rape upon the victim by gagging her mouth. He also took photograph with her and posted them into Facebook. Then, victim raised hulla and she was recovered by her brother-in-law namely Sukumuddin. It is alleged in the FIR that accused induced her to do sexual intercourse before the alleged incident.

On receipt of F.I.R., the Officer-in-charge, Barpeta Police Station, registered a case being **Barpeta P.S. Case No. 1781/2018 under Sections 1457/376 of the Indian Penal Code.**

During the course of investigation, the victim was sent for her medically examination, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the accused **Azahar Ali under Sections 457/376** vide charge sheet **No.978/18**, dated **28.12.2018**.

2). Accused was summoned. On appearance of accused, copy was furnished to him by the then learned Chief Judicial Magistrate Barpeta, who committed the case to this court as the case is Sessions triable.

3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed by the undersigned against the accused under **Sections 457/376 of IPC**, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **7 [seven]** number of witnesses including the victim/informant and M.O. were examined on behalf of the prosecution to prove the charge under Sections 457/376 of IPC.

On closing of prosecution evidence, statement of the above named

accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He denied to adduce evidence in his defence.

5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Rafiz Uddin Dewan**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 457/376 of IPC.**

6). Now the point for determination before this court are as follows ---

(i) Whether the accused on 25.08.2018 at about 11:00 P.M. committed lurking house trespass by night, by entering into the dwelling house of the informant Rehela Begum, by breaking the bamboo door of the house and committed rape upon her and thereby committed an offence punishable under Section 457 of IPC ?

(ii) Whether the accused on the same day, time and place committed rape on the aforesaid informant and thereby committed an offence punishable under Section 376 of IPC ?

DISCUSSION, DECISIONS AND REASONS THEREOF :

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

The Victim [P.W.1] who is the informant of this case has deposed that incident took place about one year ago. She knows the accused person. On the day of incident, she was staying in her husband's house. Accused went to her house to take payment of his dues. Then the elder brother of her husband Sukumuddin assaulted him. Then Sukumuddin and other family members of her husband assaulted her for not lodging case against the accused. Then, she had to lodge the case falsely at the instance of her husband's family members. Accused did not rape her. The contents of the FIR is not correct. She

gave her statement before the learned Magistrate as told by the family members of her husband. They forced her to tell a lie else that she would have been assaulted. She (P.W.1) was also sent for her medical examination.

P.W.1 further stated that she was assaulted by her elder brother-in-law and father-in-law, for which she sustained injury. Accused did not cause any injury to her.

In her cross-examination, P.W.1 stated that the wife of the accused lodged case against her as well as her husband and his family members for assaulting him.

8). Sukumuddin [P.W.2] has deposed that he knows the victim Rehela Begum, who is his sister-in-law. He also knows the accused person. Incident took place around 8 months ago. He was at his home. He heard hue and cry raised by the victim at about 8:00/9:00 PM. Then, he went there and found the accused person sitting under a "Chang" in the house of the victim. He tried to catch him, but he could not.

During cross-examination, P.W.2 denied that he did not state before the police that hearing hue and cry of the victim, he went there and found the accused sitting in the house of victim under a "Chang"; that accused did not go to the house of the victim; that he had deposed falsely before the court.

9). Dr. Mamata Devi [P.W.3] has deposed in her evidence that on 27.08.2018, she was working as M.O. on duty, Fakhruddin Ali Ahmed Medical College and Hospital, Barpeta. On that day, she examined one **Rehela Bagum**, aged 20 years, W/O Rukman Ali of village Keotkuchi (Puthimari) under Barpeta PS, in connection with GDE No.1003/18 on being identified by WHG Jamela Khatun and found as follows:

History:-

According to the alleged victim, she is married for 8 years having 3 children. On 25.08.2018 at around 11 PM one boy named Ajahar Ali entered her house forcefully and had forceful physical relationship with her. when she refused for physical relation, he had beaten her and tie her mouth with a gamosa. After the

act he left. Now she registered a case against him and so police brought her today for medical examination.

Physical Examination:-

Identification marks:- 1. A black mole over left side of neck.

2. A pin head size black mole 6 cm below identification number (1).

Height:- 151 cm.

Weight:- 45 Kg.

Chest girth at nipple level:- 78 Cm. Abdominal girth at navel level:- 67 Cm.

General built & appearance:- Average.

Teeth: Total:32:

Temporary: Nil.

Permanent: 32.

Hairs: Axillary/Body: 1-2 cm in length, black in colour.

Breasts:- Pendulous, soft in consistency. Nipple and areola brown in colour. On gentle squeezing discharge absent.

Puberty (as told by the individual) : 12 years.

Menstruation(as told by the individual): Regular, 30 days cycle.

LMP (as told by the individual): 07.08.2018.

Mental Condition: No abnormality detected.

Gait: Normal

Intelligence: Average.

Wearing garments & any suspected stains present: Intact, stain absent.

Bodily Injuries: Injury is detected on her person.

1. Abraded contusion of size 2cm X 1cm over back of right forearm. Reddish blue in colour.

2. Abrasion of size 3cm X 2cm over back of right forearm 6cm below right elbow, Reddish brown scab-colour.

3. Scratch abrasion of size 4.5cm over right arm 4 cm below shoulder. Reddish brown in colour with scab formation.

4. Contusion of size 4cm X 3cm over right eye blue in colour (BLACK EYE).

Genital Examination:-

Pubic hairs: 1-2 cm in length, black in colour.

Vulva(Labia majora & minora):- Labia minora exposed in lithotomy position.

Hymen: Carunculae Hymenalis.

Vagina:- Healthy.

Cervix & Uterus: Cx- Healthy. Uterus not palpable per abdominally.

Fourchette & Perineum : Healthy.

Result of vaginal swab smear examination: Microscopic examination of vaginal smear reveal no spermatozoa.

Final Opinion:-

(1) Evidence of recent sexual intercourse is not detected on her person.

(2) Injury is detected on her person as described under bodily injuries.

(3) Foreign particle like hair, blood, semen etc. are not detected on her person.

She (P.W.3) exhibited her medical report vide Ext.1 and Ext.1(1) & 1(2) are her signatures.

Her cross-examination was declined by defence side.

10). Asiran Nessa [P.W.4] has stated that she knows the accused person and victim cum informant of this case. Incident took place before 9 months ago. She was at her house. Incident took place in the night at about 8.00 PM.

P.W.4 stated that she heard hue and cry in the house of victim. She went there alongwith her husband. She saw Sukumuddin assaulting the informant. Then, she restrained him. Accused was also there. Sukumuddin and Dulu also assaulted accused.

In her cross-examination, P.W.4 has stated that accused is having a grocery shop in the Balatari Market. Rahela and Sukumuddin purchased goods on credit from that shop.

She stated that on the relevant day, accused went to the house of informant to get his outstanding payment then Sukumuddin and Dulu assaulted the accused.

11). **Nurmahammad [P.W.5]** has stated that he knows the accused person and victim cum informant of this case. Incident took place before 1 year ago. He was at his house. Incident took place in the night at about 8.00 PM.

P.W.5 heard hue and cry in the house of Dulu. Then, he went there and saw that Sukumuddin was assaulting the accused. After that, he separated them.

His cross-examination was declined by the defence side.

12). **Tarabhanu (P.W.6)** has stated that she knows the accused person and victim cum informant of this case. She was at his house. Incident took place in the night at about 8-9 PM. She was sleeping at that time.

She heard hue and cry in the house of victim. Then, she went there and found some people standing there. After that, she returned.

At this stage witness is declared hostile by the learned Public Prosecutor.

P.W.6 denied that she stated before police that on the relevant night she heard 'hulla' at about 11.00 PM in the house of Rukman. She went there and found that public caught accused Azahar Ali in improper condition. The victim Rehena Begum was in improper condition. Her hairs were untidy. Accused fled away after pushing the people who caught him.

The husband of victim Rehena remains outside in connection in his duty. She denied that she had deposed falsely today to save the accused person.

In her cross-examination, P.W.7 stated that she did not state before police as she has been stated by the learned public prosecutor before the Court.

13). **Hazarat Ali Ahmed (P.W.7)** has stated that on 27.08.2018, he was working at Barpeta PS as attached officer. On that day, Inspector Binor Kalita who happened to be O.C. of Barpeta PS directed him to investigate the case in hand. Ext.2 is the FIR lodged by Rehela Begum. Ext.2(1) is the signature of then O.C., Sri Binoy Kalita.

After taking charge of investigation, he visited place of occurrence

and examined witnesses. He also examined victim and sent her to doctor for her medical examination. He also got her statement recorded before learned Magistrate under Section 164 CrPC.

He also drew sketch map of the place of incident. Ext.3 is the sketch map and Ext.3(1) is his signature. He arrested accused person on 25.11.2018 and also collected medical report of the victim. He submitted charge-sheet against the accused Azahar Ali under Section 457/376 IPC. Ext.4 is the charge-sheet and Ext.4(1) is his signature.

Witness Tara Bhanu (P.W.6) stated before him that **on the relevant night he heard 'hulla' at about 11.00 PM in the house of Rukman. He went there and found that public caught accused Azahar Ali in improper condition. The victim Rehena Begum improper condition. Her hairs were untidy. Accused fled away after pushing the people who caught him.**

In his cross-examination, P.W.7 stated that he did not examine Nur Ali, Tamser Ali, Hasen Ali and Jabbar Ali who were residing near the place of incident.

Witness Sukumuddin (P.W.2) did not state before him that hearing hue and cry of the victim, he went there and found the accused sitting in the house of victim under a "Chang"

P.W.7 denied that he did not take any statement of witness Tarabhanu; that he had not investigated the case properly and he submitted charge-sheet against the accused for harassment in this case.

14). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.1), who is star witness of this instant case has deposed in her evidence that she lodged this case on being forced by her family members. Victim clearly stated in her evidence that accused did not rape her and the contents of the FIR is not correct. She gave her statement before the learned Magistrate as tutored by her family members. On the day of incident, accused went to her house to take payment of his dues. Then the elder brother of her husband Sukumuddin assaulted him and her family members instigated her to lodged this case.

The medical officer (P.W.3) of this case got bodily injuries marks of the victim. But, the victim stated in her evidence that she was assaulted by her elder brother-in-law and father-in-law, for which she sustained injury. Victim also stated that accused did not cause any injury to her.

Independent witnesses of this case did not support the alleged incident. P.W.4 namely Asiran Nessa went to the place of occurrence on the day of alleged incident and saw Sukumuddin assaulting the victim and accused. P.W.4 clearly stated in her cross-examination that victim and Sukumuddin purchased goods on credit from the shop of accused. On the relevant day, accused went to the house of victim to get his credit payment. Then, Sukumuddin and Dulu assaulted the accused.

P.W.5 deposed the same as deposed by P.W.4 that Sukumuddin assaulted the accused.

Thus, from the above evidence, it is crystal clear that the victim/informant did not support the alleged incident, as per prosecution story.

Further, the eye witnesses of the case Asiran Nessa (P.W.4) and Nurmahmmad (P.W.5) who is none but neighbourer of the victim did not support the prosecution story.

15). Thus, it is crystal clear that accused did not rape her. This case was lodged with a false story by the victim/informant (P.W.1) against the accused.

16). In the case of *Utpal Mishra -versus- State of Assam, 2015 [2] GLR 542*, it has been held by the Hon'ble Gauhati High Court in **Para No.- 22** of its judgment as follows:

PARA NO-22

The principals of criminal jurisprudence are that :

a) There should be legal, reliable and unimpeachable evidence to prove that the prosecution story "must be true" rather than "may be true";

b) It is settled principle of criminal jurisprudence that more serious the offence, stricter is the degree of proof;

c) Standard of proof in a criminal case: burden is always on the prosecution and the same never shifts. Prosecution can never derive any benefit from the weakness of the defence version;

d) Holding a witness "implicitly reliable" leads to denial of judicial consideration of the infirmities in evidence;

e) Defence witnesses can not be disbelieved by relying on conjectures and surmises: they are entitled to equal treatment with those of the prosecution;

f) If two views are possible in a criminal case, the view favourable to the accused should be accepted;

g) The averment/allegation with respect to the commission of rape has got to be clear and specific for basing a finding of guilt rather than being just inferential. The evidence/averments/allegations must fulfill the ingredients of offence of RAPE as defined under Section 375 of IPC;

h) The prosecution must prove the case in the manner in which they are alleged to have caused. It is elementary where the prosecution has a definite and positive case, it must prove the whole of that case;

i) In a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such situation.

17). Hence, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently, the charge under Sections 457/376 of IPC is held to be not proved against the accused Azahar Ali beyond all reasonable doubt. Accordingly, accused Azahar Ali is acquitted from the charge under Sections 457/376 of IPC.

18). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Azahar Ali to warrant his conviction under **Sections 457/376 IPC** beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal, which I accordingly do.

19). In the result, accused **Azahar Ali** is **acquitted** of the charge under **Sections 457/376 IPC**, levelled against him.

His bail bond stand discharged.

20). Given under my hand and seal of this Court on this **19th day of February, 2020.**

Dictated & corrected by me.

**Sd/-
Sessions Judge, Barpeta.**

A P P E N D I X

(A) Prosecution witnesses:

P.W.1	= Rehela Begum, the informant/victim,
P.W.2	= Sukumuddin,
P.W.3	= Dr. Mamata Devi, the M.O.,
P.W.4	= Asiran Nessa,
P.W.5	= Nurmahammad,
P.W.6	= Tara Bhanu,
P.W.7	= Hazarat Ali Ahmed, the I.O.

(B) Prosecution Exhibits:

Ext.1	= Medical Report,
Ext.1(1)	= Signature of M.O.,
Ext.2	= FIR,
Ext.2(1)	= Signature of O/C Binay Kalita,
Ext.3	= Sketch Map,
Ext.3(1)	= Signature of S.I. Hazarat Ali Ahmed,
Ext.4	= Charge sheet,
Ext.4(1)	= Signature of S.I. Hazarat Ali Ahmed.

(C) Defence witnesses: Nil.

(D) Defence Exhibits: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-
Sessions Judge, Barpeta.