

**IN THE COURT OF DISTRICT AND SESSIONS JUDGE AT BARPETA.**

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,  
Sessions Judge,  
Barpeta.**

**JUDGMENT IN SESSION CASE NO. 102 OF 2016  
(G.R. Case 5109/2015)**

**Kalgachia P.S. Case No 1021 of 2015**

**Committing Magistrate :-**

**Smt. B. Mahanta,  
The then Chief Judicial Magistrate,  
Barpeta.**

State of Assam

-versus-

Habel Uddin @ Habil Uddin  
S/O Musa Seikh,  
Resident of Kayakuchi Gaon,  
P.S. Kayakuchi,  
District – Barpeta

..... Accused.

**APPEARANCES :**

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta.  
For the Accused : Mr. D. Talukdar, learned Senior Advocate,  
Barpeta.

**CHARGE FRAMED UNDER SECTION 376 OF THE INDIAN PENAL CODE**

Date of Charge : 13.05.2016,  
Date of Prosecution evidence : 10.06.2016, 14.07.2016, 23.09.2016,  
22.02.2017, 10.08.2017, 01.06.2018 &  
06.08.2019,  
Date of Argument : 04.12.2019, 10.01.2020 & 04.02.2020,  
Date of Judgment : 04.02.2020.

## J U D G M E N T

**1.** The prosecution case, in brief, is that on 08.08.2015 one Nousad Ali of village Kayakuchi Pathar under Baghbar Police Station lodged an FIR with the In-charge of Moinbori Police Out Post, by alleging interalia, that on 05.08.2015 at around 8:00 PM, his victim daughter, aged 13 years, (**hereinafter referred to as 'X'**), went outside for urinal, then accused Habel Uddin dragged her to a paddy field by gagging her mouth, and forcefully committed rape on her. It is further alleged that when victim raised hue and cry, public caught the accused. But the other accused persons namely Kabel Uddin, Altab Hussain & Musa Mia, having weapons in their hand, threatened them and took away the accused.

On receipt of the aforesaid FIR by the In-charge, Moinbori Police O.P. he entered the same in General Diary vide GDE No. 135, dtd. 08.08.2015 and forwarded the same to O/C, Kalgachia Police Station for registering a case. O/C, Kalgachia Police Station registered the case as Kalgachia P.S. Case No. 1021/2015 under section 376(2)(i)/506 of the Indian Penal Code Read With Section 4 of POCSO Act and investigation of same was initiated.

During the course of investigation, X was produced before Medical Officer for her medical examination and statement of X under section 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against accused Habel Uddin under Section 376 IPC and against accused Kabel Uddin, Altaf Ali & Musa Seikh under section 420 IPC, vide charge sheet No.368/2015 dated 31.10.2015.

**2.** In due course, learned Chief Judicial Magistrate, Barpeta summoned the accused persons. Copy was furnished to them by learned Chief Judicial Magistrate, Barpeta, who, thereafter, committed the case to this court, the same being exclusively triable by the court of Sessions.

**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 persons and the prosecution in this behalf, charge was framed against the accused Habel Uddin u/s 376 IPC by my learned Predecessor-in-office. The charge was read over and explained to the accused person, to which, the accused person pleaded not guilty and claimed to be tried. However, my learned Predecessor-in-office found no materials available against the other three accused persons either u/s 376 or 420 of IPC, as the case diary has not disclosed any prima facie case against accused Kabel Uddin, Altaf Ali & Musa Seikh for any offences, so they were discharged and set at their liberty vide order dtd. 13.05.2016 passed by my learned Predecessor-in-office.

**4.** During the course of trial, as many as **09(nine)** nos. of witness including the informant, victim, M.O. & I.O. were examined, on behalf of the prosecution, to prove the charge u/s 376 IPC against the accused. Then prosecution evidence was closed, as prayed, by learned Public Prosecutor, Barpeta.

Statement of the accused person u/s 313 CrPC was recorded, wherein he has taken the plea of total denial and declined to adduce any evidence in his defence.

**5.** I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor, Barpeta as well as Mr. D. Talukdar, learned Defence Counsel for the accused, who is facing trial for commission of offence u/s 376 IPC.

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

**(1) Whether the accused person, on 05.08.2015, at around 8:00 PM, at village Kayakuchi within the jurisdiction of Baghbar P.S., District Barpeta, committed rape on the victim X and thereby committed an offence punishable u/s 376 of the Indian Penal Code?**

**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 witness alongwith the relevant documents.

Witness **Dr. Anima Boro [PW1]**, who is the M.O. of this case, deposed in her evidence before the court that on 11.08.2015 she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day in connection with Kalgachia P.S. case No.1021/2015, she examined victim **X**, aged about 13 years, D/O Md. Nousad Ali, resident of Kayakuchi Pathar under Kalagachia P.S., District Barpeta on being identified and escorted by WHG Hanufa Khatun and found as follows:

**History:-** History of love affairs since last 7 months and alleged assault sexually on 5.8.15 at 8:00 PM by Abuluddin 25years male son of Musa village Kayakuchi gaon, P.S. Kalgachia.

**Physical Examination:-**

Identification Mark : One black mole left cheek.

Height :- 148 Cm.

Weight:- 40 Kg.

Chest girth at nipple level:- 75 Cm.

Abdominal girth at navel level:- 63 Cm

General Built : Average,

Voice : Feminine.

Teeth: Total 28, Permanent.

Hairs: Axillary- Present.

Breasts: Developed.

Puberty(as told by the individual):- at 12 years before

L.M.P.(as told by the individual):- 3 days before.

Mental condition:- Stable.

Gait:- Normal

Intelligence:-Average.

Bodily injuries:- No bodily injury detected.

**Genital Examination:-**

Pubic hairs:- Present.

Vulva(Labia majora & minora):- Normal

Hymen:- Tear present.

Vagina:- Admits 1 finger only.

Cervix and Uterus:- Uterus not palpable per abdominally.

Fourchette and Perineum:-Normal

Vaginal swab collected:-

Result of vaginal swab smear examination:-No Spermatozoa is seen on microscopic examination of vaginal swab slide.

X-ray investigation advised. Plate No. RM LL 01 dated : 11/08/15

**Result of X-investigation :**

Wrist Joint : Epiphyseal union is not completed.

Elbow Joint and Shoulder Joint : Epiphyseal union is completed.

Pelvis : Epiphyseal union is not completed.

**Opinion:-**

(1) According to X-ray report her actual age is above sixteen[16] years and below eighteen[18] years at present.

(2) There is no recent sign of sexual intercourse.

(3) There is no violence mark on her private parts.

PW1 exhibited the medical report vide Ext.1 and Ext.1(1) is her signature.

**During cross-examination, PW1** stated that the victim reported to her that she had love affairs with the accused person. If a minor girl is forcefully raped, then she must definitely found some injury on her private parts. According to PW1, her age was above 16 years.

Witness **Newsad Ali [PW2]**, who is the informant as well as the father of X, deposed that before one year, at about 8 PM, when the victim went outside to attend natural call, then accused dragged her to a jute field by gagging her mouth with 'gamocha' and committed rape on her. But as the victim raised hulla, public came and caught the accused on the spot. Then Musa Mia, Kabiluddin, Altab Hussain came with sharp weapon in their hands and took away the accused after threatening them. Thereafter, a public bichar was held, but as the accused did not obey the bichar, the case was lodged. PW1 further stated that delay occurred in

lodging the case because of the bichar given before the society. He also stated that the victim was aged 13 years at that time.

**During cross-examination PW1** stated that earlier he stayed at Kismat Moinbori and at the time of incident he was at Kayakuchi Pathar. Accused is not related to him. He never went to the house of accused, but father of accused used to visit his house. He and accused reside in different village. One would have to cross the river Beki and Brahmaputra to reach Langla college from the house of accused. His daughter studied in Moinbori school. He knows the owner of Moinbori 'ghat' namely Kalam. The distance between Langla college and Moinbori school is around 20 km. Victim studied in Moinbori school. The then MLA of Baghbar namely Serman Ali made a rule of not taking fair from student for 'ghat', but Kalam forcefully took money from the students and then altercation took place. Accused also objected to this act of Kalam. Kalam used to tell him about this fact. He denied that he threatened the accused as asked by Kalam as to "Why payment will not be made, I will see it."

PW1 further stated that accused lodged case before Kalgachia PS against him alongwith Joynal Abedin, Abu Sama, Josmat Ali, Jakir Ali, Soukat Ali, Sagaruddin & Mahar Ali. He does not know if that case was filed on 08.08.2015. He also does not know if No. of that case was 1018/15. They got bail from thana in that case.

On 08.08.2015 when the accused was going in front of his house to the house of Sorhab, he called the accused as 'cow thief'. When the accused protested, PW2 alongwith Abu Sama, Josmat, Jakir, Soukat, Manaruddin caught him and assaulted him and also snatched away his mobile phone and money and also demanded Rs.60,000/-. He knows Moti gaonburah and Nur Islam. He denied that those people knew about this incident. He also denied that he lodged the case after lodging of case by accused.

On the next day of incident i.e. 09.08.2015 he lodged the ejahar. Doctor medically examined the victim on the next day of incident. There was bite mark on the cheek of the victim, but he does not know whether doctor detected that mark or not.

He denied that accused did not commit rape on the victim. The wearing apparels of victim have not been seized by police.

He could not remember as to what was written in the ejahar.

He denied that he did not state before police that on the relevant night of incident victim did not go outside for urinal purpose. Victim was not taken to doctor on the night of incident. He did not state before police that Altaf Hussain, armed weapon in his hand, took away the accused.

He also stated that it is true that the accused was confined, but not tied.

Place of occurrence is jute cultivation which belongs to one Bengali person namely Bimal. He denied that no incident took place on the land of Bimal.

Accused has no visiting terms with them and he does not know whether the accused knows the victim or not.

He denied that as accused lodged case against them, so he lodged case against the accused through his daughter.

Witness **Jakir Hussain [PW3]** deposed that he knows both the informant and victim. Incident took place before one year at night. At the relevant time he was strolling along the road. Then he heard cry near the jute cultivation and then he went there and saw the victim crying there and the accused was running. He then caught the accused after chasing him. On being asked, victim told him that the accused raped her and the accused too admitted the same. On the very night of incident bichar was held by accused's father Musa member and villagers. Musa member took away the accused by saying that accused would marry the victim. But later, the accused did not come.

**During cross-examination PW3** stated that to go Langla college and Moinbori school, one will have to cross the Brahmaputra river. There is 'par-ghat' in Moinbori which was rum by Kalam during that time. Nousad is Dewani. He does not know if altercation took place between Kalam and accused regarding 'par-ghat' and if Nousad did 'Dewani'. He also does not know whether accused lodged case against him alongwith Nousad, Joynal Abedin, Abu Sama, Josmat Ali & Soukat Ali. He did not go on bail in any case.

He denied that Habel lodged case against them and the No. of that case was 1018/15 u/s 341/325/342/392/34 IPC.

He further denied that on the date of incident, during evening,

accused was going to the house of Sorhab and then Nousad called him as cow-thief and when the accused objected, all of them assaulted him and snatched away his money. He also denied that on getting information, parents of accused came and took away him and provided him treatment.

The jute cultivation belonged to Bimal Boiragi. Police did not record the statement of Bimal Boiragi. The jute plants were about 4 feet, 5 feet and 6 feet. The jute plants were damaged at the place of occurrence and the same was shown to police. Victim was wearing frock. He did not see injury on the person of victim. He does not know whether police took the wearing apparels of the victim. He heard the cry of the victim, but not the scream.

He denied that he did not state before police that accused was running away; that he caught him; that he admitted commission of rape on the victim; that bichar was held at night; that accused was taken away by his parents; that he heard the cry of the victim.

Police did not take his signature on any paper.

He denied that the fact of accused committed rape on X by taking her to jute cultivation, is false.

He further denied that to get rid of the case filed by accused, this case has been lodged through Nousad Ali.

Witness **X [PW4]** deposed that on 05.08.2015 at 8 PM at night she went outside. Then the accused dragged her to the field by gagging her mouth and committed rape on her. Then the accused fled away and public caught him, but the father of accused and other relatives took the accused. Father of accused assured before the society that the accused would marry the victim, but the accused did not do so. Hence her father lodged case. Police got her medically examined and also got her statement recorded u/s 164 CrPC. PW4 exhibited her statement u/s 164 CrPC as Ext.2 wherein Ext.2(1) is her signature.

**During cross-examination PW4** stated that the house of accused is located at a different village which is 4 km away from her her house. At the time of incident, accused was studying B.A. course in Langla college and she was reading in Moinbori school which is situated at far distance from the college of accused and roads are different. Her father is Dewani. There is a Par-ghat in Moinbori bazar and



no fair is taken from students. Quarrel took place between her father and accused regarding fair of students.

She further stated that no relative of accused resides near her house. Kismat Moinbori is at a distance of 1 /2 mile from her house. She does not know accused's uncle Sorhab Ali. There is no electric light in their village road. There are houses of Rahis, uncle Mokbul Hussain, Khalekuddin, Soukat, Joynal Abedin, Josmat Ali, Jakir Ali near her house and they are their own relatives. She also stated that the jute cultivation belongs to them which was near their house. The jute plants were about 6 feet high and she got injury by jute leaves and she showed those injury to doctor. Police took her torn wearing apparels and she gave those wearing apparels to police. She denied that she did not show any cloth to police and police did not seize any cloth. She knows Kabeluddin who is accused own brother. At the time of dragging her by the accused, Kabeluddin was not present. She denied that she stated before learned Magistrate that at the relevant time Kabeluddin was with Habeluddin; that accused and Kabeluddin fled away.

Accused was caught in the field.

She further denied that she did not state before learned Magistrate that Habeluddin was caught in the field. She does not know the meaning of the word 'forceful'.

She does not know if doctor found injury on her face. She showed her face to doctor.

She also does not know about her age determined by doctor.

She denied that doctor find no sign of sexual intercourse; that no sexual intercourse can be taken place as per the findings of doctor. She does not know what the doctor has reported.

She denied that she did not state before learned Magistrate that accused took her to jute cultivation by gagging her mouth; that accused took her to jute cultivation by holding her hand.

She also denied that she did not state before the police that her father cite the name of Kabeluddin in the ejahar, but she stated the same before learned Magistrate.

She stated before learned Magistrate that accused was caught by public.

She also stated that nobody can do such type of act in front of his own brother.

She denied that nobody tutored her to tell the name of Kabeluddin before learned Magistrate. She did not cite the name of Kabeluddin before learned Magistrate. She denied that she wanted to trap Kabeluddin by citing his name before learned Magistrate. She knows that her father did not write in the ejahar about jute cultivation. Jute cultivation is different from paddy field.

She denied that actually she does not know where the incident took place.

She does not know from where Habeluddin and Kabeluddin came there.

She denied that no incident took place with her and she has deposed before the court as tutored by her father and other family members.

She further denied that her father assaulted the accused by tying him after quarreling with him regarding fair of Par-ghat for which accused lodged case against her father and 6 others and for that reason her father has lodged this case.

Witness **Azahar Ali [PW5]** deposed that he knows both the informant and accused. He also knows X. Incident took place before more than two years. At 8 PM, he heard public hulla in the jute cultivation near the house of Nowsad Ali. He went there and found the accused being caught red handed by Jahangir and Jakir. On being asked, they told that the accused was caught while committing rape on X after hearing her cry. The villagers called the father of accused. He took the accused assuring before the society that the accused would marry the victim, but the accused did not do so. Father of accused offered Rs.60,000/- in stead of marriage. Then Nowsad lodged case.

**During cross-examination PW5** stated that he does not know where the house of accused is. No relative of Habil resides in their village. The distance between accused's college and victim's school is about 4/5 km. He saw the accused visiting the house of informant for 3 /4 times prior to the incident. He also saw the victim coming in the bike of accused for 2/3 days. Accused used to go by dropping the victim at her house. He does not know if there was love affairs in between them. He does not know on whose land the incident took place. It was at a

distance of 3 'rochi' from his house. He saw Jahangir and Jakir taking Habel after tying him to the house of Nousad. He did not see the incident. Nousad is Dewani. He heard what Jahangir and Jakir said. He did not meet the victim. He even did not see if the incident really took place or not. He does not know the grudge between the accused and the informant.

He does not know accused's uncle Sorhab Ali. He has no house at Kismat Moinbori. He did not go to the place of occurrence.

He does not know if accused lodged any case for keeping him tied. Dewani did not ask Rs.60,000/- from the father of accused as fine in the bichar.

He denied that no incident took place between the victim and the accused; no bichar was held. He does not know if Nousad lodged this out of grudge.

Witness **Nurul Islam [PW6]** deposed that he knows the informant, victim and accused person. Incident took place before two years at around 8 PM. When he was at home, he heard hulla outside and 3 boys came and called him to the house of Nowsad Ali. He went there and saw the accused surrounded by 100/150 persons. On being asked, the accused told that while he was going through the road, he was caught, but public told that the accused raped the victim. Then father of accused was called, who asked for the accused for five minutes and after three minutes, he told that accused has admitted his guilt. PW6 also stated that father of accused assured that after one day marriage will be performed between the accused and the victim, but later he did not do so and father of accused offered them Rs.60,000/-. Then Nowsad Ali lodged the case.

**During cross-examination PW6** deposed that he did not see the incident himself. Police came after 3 /4 days. He went to the place of occurrence with police. He knows very well that the place of occurrence is the own land of Nousad. The incident has not taken place on the land of Bimal. He does not know if police drew sketch map of the place of occurrence; if police seized anything from the victim or from the place of occurrence. Accused belongs to a different village. He did not see accused visiting the house of informant. Later, PW6 stated that he saw the accused visiting the house of informant. Nousad never objected to it. He did not state before that he saw the said visit of accused. He heard about the incident from other. He did not state before police that on asking, Habel told him that while going

on the road people caught him. He denied that he did not state before police that accused did bad work(rape) on the daughter of Nousad. He did not state before police that he asked to call the father of accused. He denied that he did not state before police that he told the father of accused that accused did bad work; that father of accused asked for the accused for five minutes; that after three minutes, he told that accused has admitted his guilt. He did not state before police that father of accused told that marriage will be performed after one day, later he refuse to marry and offered them Rs.60,000/-.

PW6 further stated that he does not know if relatives of accused reside in their village. He even does not know that grandfather of accused resides in their village.

He heard that case was lodged as accused was tied and took away from the road, but he does not know against whom the case was lodged.

Police came after 4/5 days of the incident. Nousad is Dewani. He does not know what was the grudge between Nousad and accused.

He denied that he did not state before the police what he has deposed today.

Witness **Sakat Ali [PW7]** deposed that he knows the informant, his daughter X and the accused. Incident occurred before 2 years. At 8 PM he heard cry near the jute cultivation in the southern side of his house. Many people ran there and then he went there hearing the cry of X. On being asked, the victim told that the accused raped her. Public caught the accused and took him to the housed of Nowsad. Guardian of accused were called and the accused admitted his guilt. Father of accused assured that accused would marry the victim after one day. But later, they did not come. Then Nowsad Ali lodged the case.

**During cross-examination PW7** stated that the house of the informant is situated at a distance of 2-2 ½ 'sikon'. The incident took place on the land of Nirmal Boiragi and not on the land of either Nousad or Bimal. He came to the place of occurrence alone. He did not see the incident himself. He denied that he did not state before police that hearing cry of Mafida he ran there; that on asking she told that accused raped her by taking her to the paddy field; that the gathered people caught the accused and took to the house of Nousad; that it was decided in

the 'samaj' boy's side would give jewelery and the girl's side would give car.

Police prepared sketch map of the place of occurrence and took his thumb impression. Police did not take photograph. He does not know whether police seized articles from the place of occurrence or not. He even does not know if police seized something from the victim. Nousad is related to accused. He saw accused visiting the house of Nousad and took water, betel-nut on two occasions. He does not know that the accused admitted his guilt. Victim went to the place of occurrence alongwith police. The place of occurrence is a jute cultivation. He does not know the actual reason of incident. He does not know if there was quarrel between accused and Nousad. He does not know if accused lodged case as he was taken away tied.

He denied that he has deposed falsely today and no incident took place between the accused and the victim.

Witness **Sri Munindra Narayan Das [PW8]**, who is one of the I.O.s of this case, deposed that on 28.09.2015 he was In-charge of Moinbori Police OP. On that day he received the case diary of the instant case from the O/C of Kalgachia PS. On perusal of the case diary he found that investigation of the case was almost completed. He arrested Habiluddin and Kabiluddin. He submitted the charge-sheet against Habiluddin, Kabiluddin, Altaf and Musa Seikh u/s 376/420 IPC. PW8 exhibited the Charge-sheet as **Ext.3** wherein **Ext.3(1)** is his signature.

Defence declined to cross- examine PW7.

Witness **Sri Hitendra Nath Ray [ PW9]**, who is another I.O., deposed that on 08.08.2015 he was working at Moinbari Out post as In-charge. On that day one Nausad Ali lodged the FIR before him. He entered the same as GDE No. 135 dated 08.08.2015 and forwarded to same to O/C Kalgachia PS, who registered a case being Kalgachia PS case no 1021/15 U/S 376(2)(I)/506 IPC. He was entrusted with the investigation of the case.

PW9 exhibited the FIR as Ext. 4 wherein Ext. 4 (1) is his signature with endorsement. Ext.4(2) is the signature of the then O/C Kalgachia S.K. Laskar.

He also proceeded at the place of incident, drew the sketch Map. He exhibited the sketch map as Ext 5 wherein Ext. 5(1) is his signature. He examined the victim and the relevant witnesses and sent victim for her medical examination

and got her statement recorded U/S 164 Cr.Pc before the learned Magistrate.

He collected medical examination report of the victim. After 12.09.2015, he handed over the case diary to O/C Kalgachia PS, on his transfer to Barpeta PS.

He further stated that he examined all the witnesses of the case.

**During cross-examination PW9** stated that the L.T.I of informant in the FIR is not endorsed by the person. As per Ext.5 the place of incident shown at corner of jute field of Saukat Ali. There is no mentioned that jute cultivation was destroyed in the sketch map.

He denied that nobody identified the place of occurrence. He did not seize cloth of the victim. She did not show him her cloths.

He further stated that witness **Jakir Hussain (PW3)** did not state before him that discussion was held in the night; that accused was taken by his parents; that he heard sound of weeping of victim.

Witness **Mafida Khatun(PW4)** did not state before him that she handed over her cloth to police and police seized the same.

Witness **Nurul Islam(PW6)** did not state before him that accused raped the daughter of Naushad; that father of the accused confessed the guilt of his son.

**8.** The main offence alleged against accused is under Section 376 IPC. The crux of the offence under Section 376 IPC is rape and it postulates a sexual intercourse.

To bring home the charge of offence u/s 376 of IPC, the prosecution must prove, amongst other ingredients that accused (1) had sexual intercourse with a woman (a) if the woman is below 16 years her consent or willingness on her part would be irrelevant (2) obtained the consent by putting the victim in fear of her dead or hurt or of one in which the victim is interested, (3) that there was at least a penetration (partial or full).

In the light of the above said ingredients, let us now see whether prosecution has been able to prove, those ingredients, by discussing the evidence, available on the record.

**9.** However, it is needless to reiterate here that as per present established law, conviction can be awarded solely on the basis of evidence of the victim if her evidence is found to be consistent, reliable, trustworthy, and of sterling quality gaining confidence of the court. In this regard, suffice it to refer to **(i) Ramdas v. State of Maharashtra, (2007) 2 SCC170; (ii) Kamalanath v. State T.N., (2005) 5 SCC 194; & (iii) S. Ramakrishna v. Stated represented by the Public Prosecutor, High Court of Andhra Pradesh, Hyderabad, (2009) 1 SCC 133.**

**10.** It was submitted by learned defence court that there are various contradictions in the evidence of victim and other witnesses.

The victim in her evidence deposed that on 05.08.2015 at about 8:00 PM she went outside her house and then accused took her to a field after gagging her mouth and raped her there. He was caught by people, who followed him after he fled away from the scene. PW3 Jakir Hussain in his evidence deposed that he caught the accused after chasing him. PW5, PW6 & PW7 deposed that they reached the place of incident after hearing hue and cry. Informant [PW2] did not depose that he caught the accused after the alleged incident of rape on the victim. No witness have supported that PW3 caught the accused after chasing him. Even victim did not deposed specifically that PW3 caught the accused after the alleged incident.

Learned counsel for defence side, at the time of his argument, argued that on 08.08.2015 i.e. on the previous day of lodging the FIR of this case, it was accused, who lodged FIR against informant[PW2] and others when he was assaulted by them, in front of the house of PW2.

Informant [PW2] in his cross-examination also admitted that accused lodged a case against him and Jakir Ali [PW3], Saukat Ali [PW7] and others. However, he could not say the date of lodging the said case on 08.08.2015. Defence

side also suggest the No. of said case as 1018/2015. Thus, it appears that there was previous enmity between both sides before lodging the present case by PW2 against him.

**11.** Now, coming to the evidence of informant[PW2], it is seen that he deposed in his evidence that as he placed the matter of rape before people of society, so there was delay in lodging the present. The FIR [Ext.4] also contains the said fact.

However, PW3 deposed that 'Bichar' was held on the night of alleged incident of rape. PW5, PW6 & PW7 also corroborated PW3 that 'Bichar' was held on the night of alleged incident. But FIR was lodged by PW2 on 08.08.2015 though victim stated that incident took place on 05.08.2015. So, there is delay of about 3 days in lodging the FIR after the alleged incident of this case. This delay has not been satisfactorily explained.

Moreover, victim in her evidence clearly deposed that her cloths were torn during the incident of rape by the accused and police saw her cloths which was given to police by her.

However, I.O.[PW9] clearly deposed that victim did not hand over her cloths or police seized those cloths of victim.

Moreover, the place of actual incident is also confusing as informant[PW2] deposed in his evidence that alleged rape on victim took place on the jute cultivation of Bimal of Bengali community. PW3 also stated that jute cultivation belonged to Bimal Bairagi. However, victim[PW4] in her cross-examination deposed that alleged incident of rape took place on the land or jute cultivation belonging to them, which was near their house.

Thus there is no certainty as to on whose land the alleged incident of rape took place.

Moreover, the victim deposed that she sustained injury on her body from the leaves of jute cultivation and she showed it to doctor[PW1]. But the M.O. [PW1] did not find any injury on the body of victim. Medical Report of M.O.[Ext.1] does not suggest any such alleged injury on the body of victim.

The M.O. also stated in Ext.1, while writing history that victim told her



that she had love affairs with the accused for the last seven months. She also opined that if a minor girl like victim is raped forcefully, then some injury is bound to be found on the person of the victim, specifically on private parts. But she did not find such injury on the private parts of victim.

**12.** From the evidence on record it is seen that the informant, who is a village Dewani, has lodged this case against accused for opposing of taking of fare for boat by one Kalam from the from the students community against the standing instructions of local M.L.A.

Moreover, as said above, there is delay in lodging FIR for 3 days from the date of incident and Medical Report of victim[Ext.1] has also not supported the rape on victim. Further, there are many contradictions in the evidence of the PWs as has been confirmed by the I.O.[PW9] in his evidence.

**13.** 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.**

**14.** In the result, accused **Habel Uddin @ Habil Uddin** is **acquitted** of the charge under section 376 IPC, levelled against him, on benefit of doubt.

**15.** Given under my hand and seal of this Court on this the **4<sup>th</sup> day of February, 2020.**

Sd-  
Sessions Judge, Barpeta.

Typed by me  
(Kavery Das, Stenographer)

## **A P P E N D I X**

(A) **Prosecution witnesses:**

P.W.1	= Dr. Anima Boro, the M.O.,
P.W.2	= Nowsad Ali, the informant,
P.W.3	= Jakir Hussain,
P.W.4	= Mafida Khatun, the victim,
P.W.5	= Azahar Ali,
P.W.6	= Nurul Islam,
P.W.7	= Sakat Ali,
P.W.8	= Sri Munindra Narayan Das, I.O.,
P.W.9	= Sri Hitendra Nath Ray, I.O.,

(B) **Prosecution Exhibits:**

Ext.1	= Medical report,
Ext.1(1)	= Signature of M.O./PW1,
Ext.2	= Statement of PW4 u/s 164 CrPC,
Ext.2(1) & 2(2)	= Signatures of PW4,
Ext.3	= Charge Sheet,
Ext.3(1)	= Signature of I.O./PW8,
Ext.4	= FIR,
Ext.4(1)	= Signature of I.O./PW9,
Ext.4(2)	= Signature of SI S.K. Laskar, the then O/C of Kalgachia P.S.,
Ext.5	= Sketch map,
Ext.5(1)	= Signature of I.O./PW9,

(C) **Defence witnesses:** Nil.

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-

Sessions Judge, Barpeta.