

IN THE COURT OF SPECIAL JUDGE AT BARPETA.

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

**JUDGMENT IN SESSIONS CASE NO. 122 OF 2019
(G.R.No.- 2138/2019)
Barpeta P.S. Case No. 888 of 2019**

State of Assam

-versus-

**Eliash Ali
S/O Khorshed Ali,
Resident of 1 No. Seshera,
P.S. Baghbar,
District – Barpeta, Assam**

..... Accused.

APPEARANCES :

**For the State : Mr. Lalit Ch. Nath, learned
Public Prosecutor, Barpeta.**

**For the Accused : Mr. Azaharuddin, learned
Counsel, Barpeta.**

CHARGE FRAMED UNDER SECTIONS 365/376/417 OF IPC

Date of Charge : 15.06.2019,
***Date of Prosecution evidence : 29.06.2019; 09.07.2019;
22.07.2019 & 13.09.2019,***
***Date of Statement of accused
under Section 313 CrPC : 22.10.2019,***
***Date of Argument : 08.01.2020; 05.02.2020
& 29.02.2020,***
Date of Judgment : 29.02.2020

J U D G M E N T

1). The prosecution case, in brief, is that Barpeta P.S. Case No 888 of 2019 under Sections 365/376 of IPC was registered on the basis of a F.I.R.

lodged by Abed Ali Ahmed, father of the victim.

In the aforesaid **F.I.R.** (Exhibit-1) dated 30.04.2019, the informant Abed Ali Ahmed (P.W.1), who is the father of the victim girl, alleged *interalia*, that on 30.04.2019 at about 12:00 Noon, the accused person namely Eliash Ali called his daughter over telephone (Phone No. 7002761147) by promising to marry her and accused met his victim daughter at Howli Chariali near Paresh Tea Stall. After that, people of the society caught both of them when they tried to flee away from the place of occurrence and handed over both of them to Howly P.S. It is alleged in the FIR that accused person had been committing sexual intercourse fraudulently with his victim daughter from the last two years of the alleged incident.

On receipt of the aforesaid F.I.R. by the Officer-In-charge, Barpeta Police Station, the same was registered as Barpeta **P.S. Case No.888/2019 under Sections 365/376 of IPC.**

During the course of investigation, the victim girl was medically examined by the doctor, 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 **Eliash Ali under Sections 365/376 of IPC** vide charge sheet **No.490/2019**, dated **09.06.2019**.

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 undersigned against the accused under **Sections 365/376/417 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, **08 [eight]** number of witnesses including the informant and victim were examined on behalf of the prosecution to prove the charge under Sections 365/376/417 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 **Md. Azaharuddin**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 365/376/417 IPC**.

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

(i) Whether the accused on 30.04.2019 at about 12:00 Noon at village Ata within the jurisdiction of Barpeta P.S., District Barpeta, kidnapped Arjima Khatun, aged about 21 years, daughter of the informant Abed Ali Ahmed, with intent to cause her to be secretly and wrongfully confined and thereby committed an offence punishable under Section 365 IPC ?

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

(iii) Whether on aforesaid date and place, accused intentionally induced the above named daughter of the informant namely Arjima Khatun to commit sexual intercourse by promising to marry her and so deceived the victim or cheated by not marrying her which caused or is likely to cause damage or harm in her body, mind, reputation or property and thereby committed an offence punishable under Section

417 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.

Abed Ali [P.W.1] who is the informant of this case has deposed that he knew the accused person and Victim is his daughter. The incident took place before 2 months. He stated that on 30.04.2019, accused telephoned his victim daughter and called her at Howly. At the time of incident, he was at his home. At about 1.30 PM, his relatives telephoned and informed him, from Howly that his daughter is kept at Howly PS alongwith him. Then, he went there.

He further stated that his victim daughter stated him that accused called her over telephone on the pretext of marrying her. Accused destroyed her mobile phone, sim card and assaulted her and he also declined to marry her. Then, nearby people caught both of them and handed over to police. Then, P.W.1 lodged the FIR. Ext.1 is FIR and Ext.1(1) is his signature. His daughter also told him that accused had raped her.

In his cross-examination, P.W.1 stated that his victim daughter was married earlier, before 2 ½ years, prior to the incident. She is still married and she has not been divorced. The victim came alone at the time of incident. P.W.1 stated that he can't say whether altercation took place in front of a hotel, between accused and victim. Accused resided at Satrakanara under Baghbar PS. He don't know when she was raped and entered into love affairs with the accused. He could not say whether the police has seized the destroyed SIM card alongwith mobile phone.

P.W.1 denied that he lodged this false case against the accused person; no alleged incident took place; that accused did not telephone victim at the time of incident to meet her; that she voluntarily went with the accused person. Victim is aged about 22-23 years old.

8). **Arjima Khatun [P.W.2]** has deposed that he knows the accused person and his father lodged this case. The incident took place before 2/3 years. He was having love affairs with the accused person since 2016. She got married with a different boy in the year 2017. Accused brought her from the house of her husband after one day of marriage. She stated that he (accused) kept her in her maternal uncle (mama) house. Accused did not stay there. Then, she returned her home after some days. She kept relationship with the accused over mobile phone and otherwise. After 1 ½ years, accused brought her from her house to marry her. Accused took her to a unknown place and raped her during day time. He took her to Howly and they had taken tea together there. Accused then took her mobile and took out its SIM card. After taking SIM, he forcibly tried to take her to Simlaguri. He forcibly caught her hand and then, she cried, out of pain. Then, people gathered there and informed to police. She further stated that accused also indulged in sexual intercourse with her forcibly before taking her from the house of her father.

P.W.2 narrated the incident to her parent. Then, her father lodged the case. Police sent her to doctor for her medical examination and also sent her to learned Magistrate for recording her statement under Section 164 CrPC. She exhibited her statement as Ext.2 and Ext.2(1) is her signature recorded under Section 164 CrPC

In her cross-examination, P.W.2 deposed that she do not remember her husband name. She got married before 2 years ago. She do not know the address of her husband. The accused told his house at 1No. Sasara village. The distance between her house and house of accused may be around 50/60 KM.

P.W.2 stated that her love affairs with accused developed at Kayakuchi when they went to give their examination. She did not state before the Magistrate that she indulged in sexual intercourse with accused person voluntarily. The name of her maternal uncle is Abdul Rahman, who reside at Barvitha under Tarabari PS. Her husband had divorced her.

P.W.2 denied that her husband had yet not divorced her. She can't say whether her father deposed that her marriage still subsists. She did not state before the police that she has been divorced as police did not ask her. Accused

told her to go to Howly over telephone. She had given his telephone number to police.

P.W.2 denied that she never had any love affairs with the accused person; that accused did not rape her; that he did not call her from her house; that she did not state before the police that accused brought her from her house; that she still go to the house of her earlier husband; that she like one boy Sahidul from Howly; that Sahidul brought the accused there and she lodged false case against him; that she did not state before the police that accused did bad work with her while taking her to Howly; that she had lodged this false case after meeting Sahidul; that accused did not meet her in examination held at Kayakuchi. Accused may have 4/5 SIM cards.

P.W.2 denied that she was misled by other people. She recognized the voice of accused person and told the history of the case to lady doctor who examined her.

P.W.2 also denied that she deposed falsely; that accused person is innocent.

9). **Dr. Anima Boro [P.W.3]** deposed in her evidence that on 02.05.2019, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day in connection with Barpeta P.S. case No.888/2019, she examined victim Arjina Khatun, aged about 21 years, D/O Abed Ali Ahmed of Ata under Barpeta P.S., District Barpeta on being identified by WPC Bandana Medhi, on police requisition and found as follows:

History:- History of alleged love affairs with Ileeas Hussain, 21 years/Male S/O Forsed Ali of village Mandia since last 3 years and history of alleged sexual act before 2½ years.

Physical Examination:-

Identification marks:- One black mole on chest.

Height :- 157 Cm. Weight:- 38 Kg.

Chest girth at nipple level:- 73 Cm. Abdominal girth at navel level:- 64 Cm

General Built : Average,

Voice : Faminine.
Teeth: 30.
Hairs:Axillary-Present.
Breasts: Developed.
Puberty(as told by the individual):- at 12
Menstruation(as told by the individual):- Regular.
L.M.P.(as told by the individual):- 15 days before.
Mental condition:- Not Stable, nervousness there.
Gait:- Normal
Intelligence:-Average.
Wearing garments and any suspected stains present:- No stain detected.
Bodily injuries:- No injury on body.
Genital Examination:-
Pubic hairs:- Present.
Vulva(Labia majora & minora):- Normal
Hymen:- Tear
Vagina:- admits 2 fingers.
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.

Opinion:-

- (1) There is no recent sign of sexual intercourse, but the victim exposed to sexual intercourse previously.**
- (2) There is no injury on victim.**
- (3) There is no foreign particle on victim's cloth/body.**

P.W.2 exhibited her medical report vide Ext.3 and Ext.3(1) is her signature.

During her cross-examination, P.W.3 stated that she had written in the history of the victim in Ext.3 that victim had sexual intercourse

with the accused before 2½ years. She did not find any recent sign of sexual intercourse on her examination.

10). Rahima Khatun [P.W.4] has deposed in her evidence that she knows the accused person but he is from different village. Her husband has lodged this case. Victim Arjina is her daughter. Incident took place before 3 years. She stated that accused used to visit their house to drink water. Before about 3 months, police of Howly thana called them. On reaching there, she found both of her victim daughter and the accused inside the thana. Accused had broken the SIM of her daughter and caught her hands. Seeing this, public caught both of them and brought them to Howly police station.

In her cross-examination, P.W.4 has stated that the age of her victim daughter is 18/19 years. She was married at Burikhamar village before 2/3 years. After going to police station, she came to know that the victim has gone to Howly.

11). Sahida Begum [P.W.5] deposed that she knew the accused person, informant as well as the victim of the case. Incident took place before one year. She was at her house. On the relevant date, accused went to her house and asked her about the house of the father of the victim. Then, she showed him the house and also informed him that he is also the Hindi Master. She do not know what happened thereafter.

In her cross-examination, P.W.5 stated that victim got married before 3 years of the alleged incident. But she returned from the house of her husband.

12). Anjuwara Begum [P.W.6] deposed that she knew the accused person, informant as well as the victim of the case. Incident took place before one year.

She stated that before one year, one day accused came near their house and asked the house of informant Abed Ali. Then, she showed him the house of the informant. She do not know anything as to what happened with Arzina.

In her cross-examination, P.W.6 has stated that she do not know the accused person prior to the incident. She do not remember the date on which accused asked her the house of informant.

13). Sorhab Ali [P.W.7] deposed that she knew the accused person, informant as well as the victim of the case.

P.W.7 stated that one day, accused came near their house and asked her about the house of the informant Abed Ali. Then, he showed him the house of informant. After some days, accused was caught with the daughter of Abed Ali at Howly.

In his cross-examination, P.W.7 has stated that he do not know the accused person prior to the incident. He do not know what happened between both the parties. Victim had got married with other person. P.W.7 did not state before Police that after some days accused was caught with the daughter of Abed Ali at Howly.

14). Utpal Borah [P.W.8] deposed that on 30.04.2019, he was working as In-charge Kayakuchi OP. On that day, OC Barpeta PS informed him that one boy and girl has been handed over to Barpeta PS by the Police of Howly PS.

Then, he went there. OC Barpeta PS entrusted him to investigate the case. Accordingly, he recorded the statement of accused and also examined complainant. He drew sketch map of place of occurrence. He exhibited the sketch map as Ext.4 and Ext.4(1) is his signature.

After that, P.W.8 arrested the accused. Victim in the mean time reportedly went to her house. On the next day, he went to place of occurrence but victim was not found. She went to the house of her uncle.

Next day, he went to the house of victim and recorded her statement. He sent her to hospital for her medical examination and after that he sent her for recording her statement under Section 164 CrPC.

He collected the medical report of the victim and submitted charge-sheet against the accused person. He exhibited charge-sheet as Ext.5

and Ext.5(1) is his signature.

In his cross-examination, P.W.8 stated that before getting this case for investigation, he was working as in-Charge at Kayakuchi OP. As per FIR incident took place at Ata at the residence of the victim. He did not go to Howly to the tea stall of Paresh Where victim and accused were found.

Witness Arjima Khatun (P.W.2) stated before him that accused called her over telephone. She also stated that accused took her to a tea stall and there he took out the SIM of her mobile. Then, there was altercation between them and public handed over them to Police.

P.W.8 did not seize the mobile and SIM card. He did not collect the call record of the mobile of victim and accused person.

Victim told him in her statement under Section 161 CrPC that accused is having physical relation with her for last three years. She discloses her age to be 21 years.

P.W.8 denied that he had investigated the case beyond his jurisdiction.

15). 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 under Section 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.

16). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.2), who is star witness of this instant case, deposed in her evidence that she had loved affairs with accused since 2016 but she got married

with a different boy in the year 2017. After one day of her marriage, accused brought her from her matrimonial house and kept her in her maternal uncle (mama) house. She returned her home after some days and maintained her relationship with accused over mobile phone and otherwise. Victim stated in her evidence that accused committed rape on her and brought her from her house to marry her. On the other hand, victim contradicted in her evidence by deposing in her statement recorded under Section 164 CrPC before the learned Magistrate that she entered into physical relation alongwith accused with her consent. Then, accused took her to Howly and forcibly caught her hand and then, she cried, out of pain. Then, people gathered there and informed to police.

Thus, it is clearly indicated that victim girl went with the accused person voluntarily as she had love affairs with the accused. She (P.W.2) maintained her relationship with the accused for more than 2 years. Her conduct clearly shows that she accompanied with accused voluntarily, at the time of incident. She did not raise 'hullah' or told any person while being in company of the accused, at the relevant time. There is no evidence on record to show that victim made any attempt to escape from the company of accused, who was known to her.

It is interesting to mention here that victim also did not raise any objection when accused brought her from her matrimonial house after one day of her marriage. She willingly went with the accused at that time.

The conduct of victim clearly shows that she was a willing party and she voluntarily went with the accused at the time of incident. The conduct of the victim is not found natural had she been abducted or kidnapped or raped by the accused person by force.

Dr. Anima Boro [P.W.3] deposed in her evidence that recent sexual intercourse is not detected on her person but the victim exposed to sexual intercourse previously. She also wrote in Ext.3 that there is history of alleged sexual act before 2 ½ years.

It is admitted fact by the informant (P.W.1) who is the father of the victim that victim had not been divorced. But, victim contradicted her father statement by deposing that her husband divorced her.

Independent witnesses of this case did not know anything as to what happened with the victim. Independent witnesses (P.W.5, P.W.6 & P.W.7) of this case did not state a single word against the accused in their evidence. Moreover, the I.O. (P.W.8) of this case did not seize the mobile and SIM card of victim which accused allegedly broke at Howly. I.O. even did not visit the tea stall of Paresh where accused and victim found at Howli Charali.

17). To bring home the guilt of the accused under Section 365/376/417 of IPC, it is necessary for the prosecution to prove that the accused induced the prosecutrix or compelled her by force to go from any place; that such inducement was by deceitful means; that such kidnapping or abduction took place with the intent that the prosecutrix may seduced to illicit intercourse and/or that the accused knew it to be likely that the prosecutrix may seduced to illicit intercourse, as a result of her abduction or kidnapping.

18). However, from to discussion made herein above, it is crystal clear that victim went with the accused voluntarily. There is no evidence on record that accused committed rape on her. On the otherhand, victim clearly stated in her statement recorded under Section 164 CrPC that she entered into physical relation with the accused voluntarily.

19). It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has to be proved against the accused beyond reasonable doubt.

20). On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim and committed rape on her. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.

21). In the result, accused **Eliash Ali** is **acquitted** of the charge **under section** 365/376/417 of IPC, levelled against him, on benefit of doubt.

His bail bond stands discharged.

22). Given under my hand and seal of this Court on this **29th 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	= Abed Ali, the informant,
P.W.2	= Arjima Khatun, the victim,
P.W.3	= Dr. Anima Boro, the M.O.,
P.W.4	= Rahima Khatun,
P.W.5	= Sahida Begum,
P.W.6	= Anjuwara Begum,
P.W.7	= Sorhab Ali,
P.W.8	= Utpal Borah, the I.O.

(B) Prosecution Exhibits:

Ext.1	= FIR, Medical Report,
Ext.1(1)	= Signature of the informant,
Ext.2	= Statement of the victim recorded u/s 164 CrPC,
Ext.2(1)& 2(2)	= Signatures of the victim.
Ext.3	= Medical Report,
Ext.3(1)	= Signature of the M.O.,
Ext.4	= Sketch Map,
Ext.4(1)	= Signature of Utpal Borah, the I.O.,
Ext.5	= Charge sheet,
Ext.5(1)	= Signature of Utpal Borah, the I.O.

(C) Defence witnesses: Nil.

(D) Defence Exhibits: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-
Sessions Judge, Barpeta.