

IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

Sessions Case No. 128/2018
(Arising out of G.R. Case No. 698/16)
U/S 376/448 IPC

PRESENT : **Sri Chatra Bhukhan Gogoi, AJS,
Addl. Sessions Judge,
Barpeta.**

Committed by:- **Sri B. Acharjee,
J.M.F.C., Barpeta,**

Charge framed on:- 01.11.2018

State of Assam

- Vs -

Jalnur RahmanAccused

Date of Recording Evidence on – 26.03.2019 & 10.02.2020

Date of Hearing Argument on – 10.02.2020.

Date of Delivering the Judgment on – 10.02.2020.

Appearance :

Advocate for the State-----Mrs. P. Das, Learned Addl. P.P.

Advocate for the Accused-----Mr. Devid Ledger, Learned Advocates

JUDGMENT

1. The prosecution case, in brief, is that, on 09.02.2016 one maleka Khatun age 23 years D/O Moyez Uddin of vill – Balikuri lodge an FIR stating that she married with one Safiur Rahman, but before her marriage accused person named in the FIR gave her lewd comments whenever he met her on the road or else where. However, about 3 days back on 08.02.2016 when she came to her fathers house and sleeping alone accused came to her house at 8 pm and allegedly committed sexual intercourse with her, but accused was caught red handed by family members. Hence the case in for taking action in accordance with law.

2. Acting on the said information Kalgachia P.S. registered a case being Kalgachia P.S. case No 96/16 u/s 376 IPC and ASI Najrul Islam was entrusted to investigate the

case. Accordingly he visited the PO recorded the statement of the witnesses, sent the victim for medical examination also produced her before Magistrate for recording her statement u/s 164 Cr.P.C. and on completion of investigation police finally laid the charge sheet against accused u/s 376/448 IPC.

3. In due course, when accused person entered his appearance, the learned JMFC, Barpeta vide order dated 28.08.2018 committed the case record to the court of Sessions for trial after due compliance of section 207 Cr.P.C.

4. Accordingly, having received the case record on committal for disposal, the Hon'ble Sessions Judge, Barpeta registered a case being Sessions case No 128/18 and transferred the case to this court for disposal.

5. Having received the case record on transfer and on perusal of materials available on record, having found a prima facie case vide order dated 01.11.2018 charges u/s 376/448 IPC were framed. The particulars of the offences on being read over and explained the accused person pleaded not guilty and claimed trial.

6. During the course of trial, the prosecution examined only 2 witness namely one Safiur Rahman as PW-1 and informant cum alleged victim (X) as PW-2. However, having considered the quality of evidence adduce by PW-1 & PW-2 who are vital prosecution witnesses giving an opportunity of hearing to the learned Addl. P.P. further prosecution evidence stands closed.

7. Examination of accused u/s 313 Cr.P.C. is dispense with in view of lake of implicating materials. The plea of the accused person is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

8. **Now point for determination** :-

- .1. Whether on 08.02.2016 at 8 pm accused committed rape on the victim (X) as alleged ?
- .2. Whether on the same day and time accused committed house trespass which was use as a dwelling house with intent to commit an offence as alleged ?

9. **Discussion, Decision and reasons for such decision** :-

I have heard the learned lawyers appearing for both sides and also carefully scanned the prosecution evidence available on record.

10. The learned counsel appearing for the State Smti. P. Das submitted that prosecution examined 2 witnesses however given the quality of evidence proceeding further with the case became a meaningless exercise at the cost of valuable time and energy of the court as the main witness namely the alleged victim herself do not divulge anything in court. Moreover, the other prosecution witness who is her husband also failed to adduce any implicating evidence against the accused person.

11. On the other hand, the learned counsel appearing for the accused person also contended that there is absolutely no evidence forthcoming in the mouth of the prosecution witnesses which constitute the ingredients of the offences u/s 376/448 IPC. According to the learned defence counsel, the prosecution has miserably failed to bring home the guilt of accused for sustaining conviction for the offences u/s 376/448 IPC. As such, the learned counsel prays to acquit the accused person.

12. In the context of the offences charged and on appreciation of the evidence of two prosecution witnesses it appears that PW-1 who is the husband of the informant cum the alleged victim failed to implicate anything against accused as he simply depose in his evidence on oath that on 8th or 9th February 2016 his wife visited her elder brothers house where he found his wife and accused inside the room of the house. However, when he questioned about the presence of the accused in side the room, they tried to assault him, but he somehow escape. In his cross examination he stated that when he visited the house of the brother of his wife he found his wife and accused talking in low voice, but on being charged accused denied the same. He merely suspect illicit relation of his wife with accused without however disclosing the manner of such relation. On the other hand, the informant cum alleged victim PW-2 contrary to her allegations made in the FIR as well as statement given by her before Magistrate u/s 164 Cr.P.C. also failed to state anything implicating against accused persons attracting punishment for the offences u/s 376(1)/448 IPC. Given the evidence of PW-1 & PW-2 going for recording evidence of remaining prosecution witnesses will

not bring any positive result as the star witnesses namely the alleged victim and her husband themselves miserably fail to substantiate the ingredients of the offence u/s 376/448 IPC.

13. This being the evidence of star prosecution witnesses the ingredients of the alleged offences u/s 376/448 IPC have not been found established as there was no such evidence of physical relation of accused with the victim without her consent as the victim herself depose that she was 26 years old and a married woman. But evidence available on record do not constitute the ingredients of the offence u/s 376/448 IPC.

14. Situated thus, this court has no option but to acquit the accused Jalnur Rahman u/s 376/448 IPC on the ground of insufficient evidence and set him at liberty forthwith.

15. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided U/S 437(A) of Cr.P.C.

16. Let a copy of the judgment be forwarded to the learned District Magistrate, Barpeta as provided in section 365 Cr.P.C.

17. Let case record be consigned to record room in due course as per procedure.

18. Given under my hand and seal of this Court on 10th day of February, 2020, at Barpeta.

Dictated & Corrected my me

Sd/-
(Sri C.B. Gogoi)
Addl. Sessions Judge,
Barpeta.

Sd/-
(Sri C.B. Gogoi)
Addl. Sessions Judge,
Barpeta.

APPENDIX

1. The prosecution has examined the following 2 no. of witnesses:-

PW-1 = Safiur Rahman

PW-2 = Maleka Khatun, the informant cum alleged victim.

2. The prosecution has exhibited only one document :-

Ext. 1 = is the FIR.

Ext.1(1) = is the signatures of the victim.

Ext. 2 = is the statement of victim girl u/s 164 Cr.P.C.

Ext. 2(1) = are the signatures of the victim girl.

Sd/-

(Sri C.B. Gogoi)
Addl. Sessions Judge, Barpeta.