

**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. 181 OF 2019  
(G.R. Case 3876/2018)  
Kalgachia P.S. Case No 665 of 2018**

**State of Assam**

**-versus-**

**Hanif Ali Beg,  
S/O Hashmot Ali Beg,  
Resident of Balikuri N.C.,  
P.S. Kalgachia,  
District – Barpeta (Assam)**

**..... Accused.**

**APPEARANCES :**

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

**For the Accused : Mr. Anish Khan, learned  
Counsel, Barpeta.**

**CHARGE FRAMED UNDER SECTIONS 376/354(C) of IPC**

**Date of Charge : 31.10.2019,  
Date of Prosecution evidence : 13.02.2020,  
Date of Argument : 13.02.2020,  
Date of Judgment : 19.02.2020.**

**J U D G M E N T**

**1).** The prosecution case, in brief, is that Kalgachia P.S. Case No. 665 of 2018 under Sections 376/354(C) of IPC was registered on the basis of a F.I.R. lodged by the father of the victim.

In the aforesaid **F.I.R.** (Exhibit-2), the informant Ali Hussain

(P.W.2), who is the father of the victim, alleged *inter alia*, that accused namely Hanif Ali had started relationship with the informant before 4/5 years of the alleged incident. It is alleged in the FIR that before 3 months from filing of this case i.e. on 26.07.2018, his victim daughter went to Janata bazar. On the relevant day, accused called the victim to his shop and committed sexual assault upon her and captured adulterous images in his mobile.

On receipt of the aforesaid F.I.R. by the In-charge Balikuri Police Outpost, the same was entered vide Balikuri O.P. GDE No. 395 dated 26.07.2018 and forwarded it to O.C. Kalgachia PS for registration of a case. The Officer-In-charge, Kalgachia Police Station registered the same as **Kalgachia P.S. Case No. 665/2018 under Sections 376/354(C) of IPC.**

During the course of investigation, the victim was sent for her medical examination by the doctor, her statement under station 164 of CrPC was also recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused **Hanif Ali Beg** under **Sections 376/354(C) of IPC** vide charge sheet **No.446/18**, dated **26.12.2018.**

**2).** On production 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 against the accused under **Section 376/354(C) IPC by the undersigned.** The charges 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, **02[two]** number of witnesses consisting of the victim and informant were examined, on behalf of the prosecution, to prove the charge under Section 376/354(C) IPC. Then

prosecution evidence was closed, as prayed, by learned Public Prosecutor, Barpeta.

The statement of the accused under Section 313 of CrPC was dispensed with as no incriminating evidence were found against him.

**5).** I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor, Barpeta as well as **Mr. Rafiqul Islam**, learned Defence Counsel for the accused, who is facing trial for commission of offence **under Sections 376/354(C) of IPC.**

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

**(1) Whether the accused before about 3 months from 26.07.2018 (i.e. the date of filing of the ejahar) at Janata Bazar under Kalgachia P.S. of Barpeta District, committed rape on Ambiya Khatun, who is daughter of the informant Ali Hussain and thereby committed an offence punishable under Section 376 of the Indian Penal Code ?**

**(2) Whether the accused on the aforesaid date and place, captured naked image of Ambiya Khatun, who is daughter of the informant Ali Hussain and thereby committed an offence punishable under Section 354 (C) 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 witnesses alongwith the relevant documents.

**Victim [P.W.1]**, has stated that informant Ali Hussain is her father and she knows the accused person. Incident took place before 2 years.

P.W.1 stated that she had love affairs with the accused person and accused used to visit her house. Accused promised to marry her, but he did not marry her. The, she lodged this case for not marrying her. Accused did not do any bad work with her.

Police examined her and sent her for medical examination. Police also got her statement recorded by the learned Magistrate. Ext.1 is her statement recorded u/s 164 CrPC and Ext.1(1) & 1(2) are her signatures.

**In her cross-examination,** P.W.1 deposed that she gave her statement before the learned Magistrate as tutored by others. Her father lodged this case as accused did not marry her. Now, she had got married with some other person. So, she don't want to proceed with the case.

**8).** **Ali Hussain (PW-2)** who is the informant of this case has stated that victim is his daughter. He knows the accused person. Incident took place before 3/4 years.

P.W.2 stated that victim had love affairs with the accused person. Accused used to visit his house. There was talk of marriage between the accused and the victim, but the accused did not marry his daughter. Then, the people of his village asked him to lodge case against the accused. So, he lodged this case.

He (P.W.2) exhibited the FIR vide Ext.2 and Ext.2(1) is his signature. Ext.2 was written by one Abdul Khaleque of village Sonapur. He don't know the content of the FIR.

**In his cross-examination,** P.W.2 deposed that his victim daughter got married with some other person. So, he don't want to proceed with the case.

**9).** From the perusal of evidence of the victim (P.W.1) and informant (P.W.2), it is seen that victim had love affairs with the accused person and accused promised to marry her, but he did not marry her. Then, her father (P.W.2) lodged this case for not marrying her. Now, victim had got married with some other person and she clearly stated in her cross-examination that she do not want to proceed with the case. Victim stated in her evidence that accused did

not do any bad work with her.

The informant (P.W.2) who is the father of the victim deposed the same story as deposed by P.W.1. and he clearly deposed in his cross-examination that he don't want to proceed with the case as his daughter got married with some other person.

Thus, it is crystal clear that accused did not kidnap her. This case was lodged with a false story by the informant (P.W.2) against the accused.

**10).** Thus, the conduct of victim shows that accused did not kidnap her. Victim had love affairs with accused. Moreover, victim has not uttered a single word against accused that she was kidnapped by the accused.

**11).** 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.**

**12).** On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Hanif Ali Beg to warrant his conviction under Section 376/354(C) of IPC beyond all reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal on benefit of doubt, which I accordingly do.

**13).** 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.

**14).** In the result, accused **Hanif Ali Beg** is **acquitted** of the charge **under section 376/354(C)** of IPC, levelled against him, on benefit of doubt.

His bail bond stands discharged.

**15).** Given under my hand and seal of this Court on this **19<sup>th</sup> day of February, 2020.**

Sd/-

**Sessions Judge, Barpeta**

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

(A) **Prosecution witnesses:**

**P.W.1** = Ambiya Khatun, the victim,  
**P.W.2** = Ali Hussain, the informant,

(B) **Prosecution Exhibits:**

**Ext.1** = Statement of the victim recorded  
under Section 164 CrPC.  
**Ext.1(1) & 1(2)** = Signatures of the victim,  
**Ext.2** = FIR  
**Ext.2(1)** = Signature of Ali Hussain.

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

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

(E) **Court witnesses:** Nil

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

Sd/-  
Sessions Judge, Barpeta.