

IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

Sessions Case No. 204/2019
(Arising out of G.R. Case No. 2779/19)
U/S 457/376 IPC

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

Committed by:- **Smti. Suranita Trivedy,**
S.D.J.M.(S) Barpeta,
Barpeta.

Charge framed on:- 27.09.2019

State of Assam

- Vs -

Rahim Ali.....Accused

Date of Recording Evidence on – 21.12.2019 & 07.02.2020

Date of Hearing Argument on – 07.02.2020.

Date of Delivering the Judgment on – 07.02.2020.

Appearance :

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

Advocate for the Accused----- Md Shariful Islam, Advocate.

JUDGMENT

1. The prosecution case, in brief, is that, on 11.04.2013 one Rup Bhanu lodge a complaint in the court of CJM, Barpeta alleging that while she was alone in the house accused Rahim Ali and Karim Ali entered inside the room in her house by cutting the rope of the door and by putting clothes on her mouth by accused No 1 and showing a dagger by accused No 2 they committed rape on her. However, they left with a threat that if she disclose the incident to any one they will not spare her life. Hence the case.

2. The said complaint was registered as CR case No 413 and then transferred the same to the court of Magistrate for disposal who in tern forwarded the complaint to police for investigation and report.

3. Following the information as above Barpeta P.S. got a case registered being Barpeta P.S. case No 953/13 u/s 457/376(2)(g) IPC and investigated the case. Accordingly, the IO visited the place of occurrence, recorded the statement of the witnesses, drew sketch map and on completion of investigation laid the charge sheet against accused Rahim Ali u/s 457/376 IPC with a view to stand trial. However, accused Karim Ali was not sent up for trial.

4. In due course, when accused entered his appearance in court to face trial. On his appearance, the learned SDJM(S), Barpeta vide order dated 13.09.2019 committed the case record to the court of Sessions for trial after due compliance of section 207 Cr.P.C.

5. In the course of time the case record has been transferred to this court for trial by the Hon'ble Sessions Judge, Barpeta.

6. Accordingly, this court having heard the counsels appearing for both sides and on perusal of materials available on record vide order dated 27.09.2019, having found a prima facie case framed charges u/s 457/376 IPC. The particulars of the offence on being read over and explained the accused person pleaded not guilty and claimed trial.

7. During the course of trial, the prosecution examined as many as 4 witnesses namely the victim (X) as PW-1, Sahjahan Ali as PW-2, Rabiya Ali as PW-3 and Nalini Kumar Talukdar as PW-4 who is the IO.

8. Concluding prosecution evidence accused was examined u/s 313 Cr.P.C.. However, accused denied the prosecution evidence as false. The plea of the accused is total denial of the prosecution case. As such, on being asked accused declined to adduce defence evidence.

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

- .1. Whether on 09.04.2013 at about 12 at night accused committed lurking house trespass by night by entering in to the house belong to the victim and there by committed the offences u/s 376/457/511 IPC as allege ?
- .2. Whether on on 09.04.2013 at about 12 at night you committed rape on the victim as allege ?

10. **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.

11. The learned counsel appearing for the State Smti. P. Das submitted that prosecution examined only 4 witnesses but they including the victim could not adduce credible evidence regarding the identity of the accused who allegedly committed the offence. Therefore, the learned counsel for the state submitted that court may passed judgment after assessing the evidence and record as the victim could not implicated the accused with the offences charged.

12. On the other hand, the learned counsel appearing for the accused person arduously contended that there is absolutely no credible evidence emerged in the mouth of the 4 (four) prosecution witnesses which attracts the ingredients of the offences u/s 376/457 IPC for sustaining conviction. It is vehemently argued that PW-1 being the victim and PW-2 being the neighbor are not in a position to adduce any cleansing evidence on the basis of which accused person can be held guilty for the commission of offence u/s 457/376 IPC. The evidence of PW-3 is of no consequence for the prosecution as at the time of alleged incident he was sleeping in his house. He heard the incident of committing rape from the victim herself, but surprisingly the alleged victim in her cross-examination stated that she could not identify the accused due to darkness. Therefore, the very truthfulness of the allegations made by the victim is under deep cloud of doubt. The evidence of PW-4 Nalini Kumar Talukdar who is the IO is of no help to the prosecution case as his evidence is stereotype in nature.

13. Therefore, on consideration of the evidence of all the prosecution witnesses on record it transpires that false implication of accused with the alleged offences due to enmity cannot be ruled out. As stated earlier, committing rape on the victim at odd hours and PW-1 having identified the accused appears to be very unusual and difficult to accept as she in her cross-examination stated that she could not identify the accused. Even though the offence u/s 376/457 IPC are serious offences and accused cannot be allowed to go unpunished, but in the instant case, the evidence against him is found lacking for sustaining conviction for the aforesaid offences in the absence of any legal evidence on record merely on the basis of suspicion and conjecture alone.

14. In the result, this court after appreciation of all the aspect of the case has come to conclusion that this court has no option but to acquit the accused Rahim Ali from the charges u/s 376/457 IPC on the ground of benefit of doubt and set him at liberty forthwith.

15. The terms of bail bond of accused 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 as per procedure.

18. Given under my hand and seal of this Court on 7th 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 4 nos. of witnesses:-

PW-1 = is Rup Bhanu, the alleged victim.
PW-2 = is Sahajahan Ali.
PW-3 = is Rabial Ali
PW-4 = is Nalini Kumar Talukdar

2. The prosecution has exhibited the following document :-

Ext. 1 = is the complaint .
Ext 2 = is the statement of the victim u/s 164 Cr.P.C.
Ext 3 = is the sketch map.
Ext 3(1) = is the signature of Alibar Rahman.
Ext 4 = is the charge sheet.
Ext 4(1) = is the signature of I.O.

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