

IN THE COURT OF SESSIONS JUDGE AT BARPETA.

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

**JUDGMENT IN SSESSION CASE NO. 213 OF 2019
(G.R. Case 1257/2019)
Sarthebari P.S. Case No 98 of 2019**

State of Assam

-versus-

**1. Samirul Khan
S/O Sadar Ali Khan**

**2. Sadar Ali Khan
S/O Lt. Hashan Ali,**

**Both are resident of Rangia Nadir Pam
P.S. Sarthebari,
District – Barpeta**

..... Accused.

APPEARANCES :

For the State

**: Mr. Lalit Ch. Nath, learned
P.P., Barpeta.**

For the Accused

**: Mr. Dharani Dhar Talukdar,
learned Senior Counsel,
Barpeta.**

**CHARGE FRAMED UNDER SECTIONS 366/376/323 OF THE INDIAN
PENAL CODE**

**Date of Charge : 23.10.2019,
Date of Prosecution evidence : 11.02.2020,
Date of Argument : 11.02.2020,
Date of Judgment : 12.02.2020.**

J U D G M E N T

1. The prosecution case, in brief, is that Sarthebari P.S. Case No. 98 of 2019 under Sections 366/376/323 of IPC was registered on the basis of a F.I.R. lodged by the victim (P.W.2)

In the aforesaid **F.I.R.**(Exhibit-2), the informant (P.W.2), who is the victim girl alleged, *interalia*, that she got introduced with accused Samirul Khan due to wrong connection over telephone and she had fallen love affairs with accused. On 06.03.2019 at about 10:00 PM, accused namely Samirul Khan kidnapped her with intent to marry her and kept her at his relative house. It is alleged in the FIR that accused committed rape on her forcibly against her will and she became unconscious. On the next day, i.e. on 07.03.2019, at about 6:00 PM accused denied to marry her and fled away from the place of occurrence. After that, accused Sabed Khan alongwith other assaulted her badly and handed over her to Police.

On receipt of the aforesaid F.I.R. by the In-charge Mazdia Police Outpost, the same was entered vide Mazdia O.P. GDE No. 113 dated 08.03.2019 and forwarded it to O.C. Sarthebari PS for registration of a case. The Officer-In-charge, Sarthebari Police Station registered the same as **Sarthebari P.S. Case No. 98/2019 under Sections 366/376/323 of IPC.**

During the course of investigation, the victim girl was sent for medical examination by the doctor, her statement under section 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused **Samirul Khan under Section 366/376 of IPC and Sadar Ali Khan under Sections 294/342/354 of IPC vide charge sheet No.97/2019 dated 28.05.2019.**

2. Accused was summoned. On appearance of accused, copy was furnished to him by learned court below. The case was committed to this court being exclusively Sessions triable case.

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 366/376/323 of 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, **03(three)** number of witnesses including the victim were examined, on behalf of the prosecution, to prove the charge **under Section 366/376/323 IPC.**

The Prosecution Witnesses was closed, as per prayer made 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 them.

5. I have heard **Mr. Lalit Ch. Nath, learned Public Prosecutor, Barpeta** as well as **Mr. Dharani Dhar Talukdar**, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 366/376/323 IPC.

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

(1) Whether the accused namely Samirul Khan on 06.03.2019 at about 10:00 PM, within the jurisdiction of Sarthebari PS, District Barpeta, kidnapped informant Hajera Khatun, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and thereby committed an offence punishable under Section 366 of the Indian Penal Code ?

(2) Whether the accused namely Samirul Khan on 06.03.2019 and 07.03.2019, at Pamgaon, committed rape on the aforesaid victim informant and thereby committed an offence punishable under Section 376 of the Indian Penal Code ?

(3) Whether the accused namely Sadar Ali Khan on 07.03.2019 or thereafter within the jurisdiction of Sarthebari PS, District- Barpeta, at the house of his brother voluntarily caused hurt to informant Hajera Khatun and thereby committed an offence punishable under Section 323 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.

Dr. Anima Boro (P.W.-1), stated that on 12.03.2019, she was working as Lady Medical Officer at Fakharuddin Ali Ahmed Medical College & Hospital, Barpeta. On that day, in connection with Sarthebari P.S. case No.98/2019, she examined victim Hajera Khatun, aged about 21 years, D/O Jalil Ali of Gadesali Pam under Sarthebari P.S., District Barpeta on being identified by WPC- Nitumoni Das, on police requisition and found as follows:

History:- History of alleged assaulted sexually by Samirul Islam Khan 22/M S/O Safdar Khan, Rangia Nadir Pam on 6/03/18 sand took her to his house and recovered by police on next day.

Physical Examination:-

Identification marks:- One black mole left side nose.

Height :- 145 Cm. Weight:- 38 Kg.

Chest girth at nipple level:- 75 Cm. Abdominal girth at navel level:- 60 Cm

General Built : Average,

Voice : Feminine.

Teeth: 32.

Hairs: Axillary-Present.

Breasts: Developed.

Puberty(as told by the individual):- at 12 yrs.

Menstruation(as told by the individual):- Irregular.

L.M.P.(as told by the individual):- 7.2.19

Mental condition:- Stable

Gait:- Normal

Intelligence:-Average.

Wearing garments and any suspected stains present:- No stain detected.

Bodily injuries:- No injury detected.

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.

Victim refused to X-ray examination.

Opinion:-

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

(2) Victim is not suffering any physical/mental illness.

(2) There is no foreign particle on her body/cloth.

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

Her cross-examination was declined by the defence side.

8). The Victim (P.W.2) who is informant of this case has deposed that accused Samirul Islam Khan is her husband. She knows the other co-accused of this case.

P.W.2 stated that she got introduced with accused Samirul after talking to him on wrong number and love affairs developed between them. After that, accused took her with him to the house of his elder sister before 9/10 months on the assurance of marrying her. He kept her there for 2 days. She stayed with him. But he did not marry her for which she lodged this case as told by people. After lodging this case, accused Samirul Islam Khan married her. At present, she is staying with him happily.

P.W.2 exhibited the FIR vide Ext.2 and Ext.2(1) is her signature. Police sent her for medical examination and got her statement recorded by the learned Magistrate. Ext.3 is her statement recorded u/s 164 CrPC and Ext.3(1), 3(2) & 3(3) are her signatures.

P.W.2 further stated that Safdar Ali Khan did not do any wrong to her.

In her cross examination, P.W.2 stated that she went with accused Samirul Islam Khan voluntarily. She lodged this case to get married with him. She signed the FIR as told by others. She gave her statement before learned Magistrate as told by others. Now, she do not want to proceed with the case.

9). **Jalil Ali [P.W.3]** has deposed that victim is his daughter. Accused Samirul Islam Khan is his son-in-law and other accused is his father.

P.W.3 stated that his daughter got introduced with accused through miscall. Then love affairs developed and his daughter went with him. As accused did not marry his daughter, so he gave 'bichar' before the people of society. His daughter lodged this case. Later, accused Samirul Islam Khan married his daughter. At present, his victim daughter is staying in the house of accused Samirul Islam Khan happily as his wife.

His cross-examination was declined by defence side.

10). From a close perusal of the statement of the victim (P.W.2), who is star witness of this instant case, has deposed in her evidence that she had love affairs with the accused namely Samirul Khan prior to the incident and accused took her with him to the house of his elder sister with intent to marry her. After two days, accused denied to marry her and then she filed this case. After lodging this case, accused Samirul Khan married her and she is staying with the accused happily as husband and wife.

It is admitted fact by the victim (P.W.2) that she lodged this case to get married with accused Samirul Khan and she clearly stated in her cross-examination that she went with the accused voluntarily.

Moreover, her father (P.W.3) stated in his evidence that his victim daughter is spending her conjugal life happily with accused Samirul Khan.

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

11). Thus, the conduct of victim shows that accused did not kidnap her forcefully and victim consented to go with accused. Later on, accused married the victim and both of them stayed happily. Moreover, victim has not uttered a single word against accused that she was assaulted by them.

12). 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.

13). On scrutiny of the evidence on record, it is seen that no case has been made out against the accused Samirul Khan and Sadar Ali Khan to warrant his conviction under Section 366/376/323 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.

14). In the result, accused **Samirul Khan and Sadar Ali Khan are acquitted** of the charge under **Sections 366/376/323 IPC** levelled against him, on benefit of doubt.

Their bail bond stands discharged.

15). Given under my hand and seal of this Court on this **12nd 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 = Dr. Anima Boro, the M.O.,
P.W.2 = Hajera Khatun, the victim/informant,
P.W.3 = Jalil Ali,

(B) **Prosecution Exhibits:**

Ext.1 = Medical Report,
Ext.1(1) = Signature of the M.O.,
Ext.2 = FIR,
Ext.2(1) = Signature of Hajera Khatun,
Ext.3 = Statement of the victim
recorded under Section 164 CrPC
Ext.3(1), 3(2)
& 3(3) = Signatures of Hajera Khatun

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

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

(E) **Court witnesses:** Nil

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

Sd/-
Sessions Judge, Barpeta.