

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. 228 OF 2019

**(G.R. Case 6550/2018)
Barpeta P.S. Case No. 2630 of 2018**

State of Assam

-versus-

**Mahuruddin,
S/O Ali Hussain,
Resident of Paka Betbari Pathar,
P.S. Barpeta,
District – Barpeta**

..... Accused.

APPEARANCES :

**For the State : Mr. Lalit Ch. Nath, learned
Public Prosecutor, Barpeta.
For the Accused : Mr. Motiur Rahman,
learned Counsel, Barpeta.**

**CHARGE FRAMED UNDER SECTIONS 376/511 OF THE INDIAN PENAL
CODE**

**Date of Charge : 04.10.2019,
Date of Prosecution evidence : 30.01.2020,
Date of Argument : 30.01.2020,
Date of Judgment : 01.02.2020.**

J U D G M E N T

1. The prosecution case, in brief, is that Barpeta P.S. Case No. 2630 of 2018 under Sections 376/511 of IPC was registered on the basis of a F.I.R. lodged by the victim.

In the aforesaid **F.I.R.**, dated 10.12.2018, the informant (P.W.1),

who is the victim of this case alleged, *interalia*, that on 07.12.2018 at about 10:00 PM, the accused person entered into his house and committed sexual-intercourse forcefully by pressing her neck. After that, accused person fled away from the place of occurrence when victim raised hulla.

During the course of investigation, the victim girl was sent for medical examination 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 above named accused **Mahuruddin under Section 376/511 of IPC vide charge sheet No.785/2019 dated 31.08.2019.**

2. The then learned C.J.M summoned the accused. 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 by undersigned against the accused under **Sections 376/511 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, **02(two)** number of witnesses including the victim and informant were examined, on behalf of the prosecution, to prove the charge **under Section 376/511 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. Motiur Rahman**, learned Defence Counsel for the accused, who is facing trial for commission of offence under Section 376/511 of IPC.

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

(1) Whether the accused on 07.12.2018 at about 10:00 P.M., at village Pakabetbari, within the jurisdiction of Barpeta P.S., District Barpeta, attempted to commit rape on the informant Sukurjan Nessa and thereby committed an offence punishable under Section 376/511 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.

The victim (P.W.-1) who is the informant of this case has deposed that she knows the accused person. Incident took place more than one year ago.

P.W.1 stated that the sister of accused namely Firoza Khatun entered into altercation with her. Then, she went mad and her mind stopped working so she lodged this case. Police examined her. She also stated before learned Magistrate and put her LTI in FIR as well as her statement before learned Magistrate.

In her cross examination, P.W.1 deposed that accused is her related brother-in-law. She did not state before learned Magistrate that accused raped her. Accused simply pressed her neck. At present, they are staying happily. She stated that accused did not attempt to commit rape on her.

8). Md. Sultan Ali (P.W.2) has stated that informant is his wife and he knows the accused person. Incident took place more than one year ago. He was not at his house.

P.W.2 stated that he returned to his house after 2 days of incident. He heard that there was altercation between accused and his wife. For that reason, his wife lodged this case.

In his cross-examination, P.W.2 has stated that accused is his

related brother. Nothing happened except altercation between accused and his wife.

9). From a close perusal of the statement of the victim (P.W.1) as well as the informant [P.W.2] (who is the husband of the victim), it is seen that they did not support the alleged incident, in their evidence.

The Victim (P.W.1), who is star witness of the instant case deposed in her evidence that accused did not do any bad work with her. P.W.1 stated in her evidence that she entered into altercation with the sister of accused namely Firoza Khatun. Then, she lodged this case out of altercation. Victim clearly deposed in her cross-examination that they are staying happily.

Moreover, the informant (P.W.2) stated in his evidence that there was altercation between her wife and the accused and then his wife lodged this case. He (P.W.2) clearly stated in his evidence that accused did not do any bad work with her victim wife.

Thus, it is clearly indicated that accused did not commit rape or attempt rape of his victim wife as alleged in the FIR. There is no material on record to hold that the accused attempted to commit rape or committed rape on the victim, to constitute offence under Sections 376/511 of IPC.

10). From discussion made herein above, it is crystal clear that accused did not do any bad works with the victim. **Victim as well as informant does not support the case of prosecution side to prove the alleged charges against 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). 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.

13). In the result, accused **Mahuruddin is acquitted** of the charge **under sections** 376/511 of IPC, levelled against him, on benefit of doubt.
His bail bond stands discharged.

14). Given under my hand and seal of this Court on this **01st 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 = Sukurjan Nessa, the victim,

P.W.2 = Md. Sultan Ali,

(B) **Prosecution Exhibits:** Nil

(C) **Defence witnesses:** Nil

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

(E) **Court witnesses:** Nil

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

Sd/-

Sessions Judge, Barpeta.