

IN THE COURT OF THE ADDL. SESSIONS JUDGE, BARPETA

Sessions Case No. 242/2019
(Arising out of G.R. Case No.4063/2018)
U/S 313/376 IPC

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

Committed by:- Smti. T. Ari,
Chief Judicial Magistrate,
Barpeta.

Charge framed on:- 17.12.2019

State of Assam

- Vs -

Ritom Saha.....Accused person.

Date of Recording Evidence on – 06.02.2020

Date of Hearing Argument on – 06.02.2020

Date of Delivering the Judgment on – 06.02.2020

Appearance :

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

Advocate for the Accused-----Mr. Fajjur Rahman, Ld. Advocate.

JUDGMENT

1. The brief fact of the prosecution case, is that, on 03.08.2018 one Nayan Saha lodged an FIR before Superintendent of Police, Barpeta alleging inter-alia that she is a poor girl who lost her father and accused is belonged to rich family who about 3 /4 years back in the pretext of love affairs with her committed forceful sexual intercourse with her by visiting her residence when none of the family members were present in her house. But when she became pregnant and informed the accused, he brought medicine and tested her pregnancy and found that she became pregnant for two months.

Subsequently, at the ill advice of accused No.2 and 3 accused No.1 forced her to consume medicine. As a result, there was profuse bleeding and got her pregnancy aborted. Thereafter, at the ill advice of other accused persons, accused disappeared and keep no contact with her. Later on, the informant came to know that accused developed relationship with another girl. When she objected, accused persons threatened her to kill but finding no way out she filed the present case.

2. Receiving the information, the Barpeta Road police station registered a case being Barpeta Road P.S. case No.398/18 u/s 417/406/376/313/506/34 IPC and investigated the case.

3. On completion of investigation, police finally laid the charge sheet against accused Ritom Saha u/s 417/406/376 IPC with a view to stand trial.

4. During the course of time, when accused entered his appearance in court, the learned CJM, Barpeta vide order dated 16.09.2019 committed the case record to the court of Sessions for trial after due compliance of Section 207 Cr.P.C.

5. Having received the case record on committal, the Hon'ble Sessions Judge, Barpeta registered a case being Sessions Case No.242/19 and forwarded the case record to this court for disposal.

6. Receiving the case record on transfer, this court having heard the learned counsel appearing for both sides and on perusal of the materials available on record, having found prima facie case, vide order dated 17.12.2019 framed charges u/s 313/376 IPC against accused Ritom Saha. The substance of the offences on being read over and explained accused pleaded not guilty and claimed trial.

7. During the course of trial, prosecution however examined only 2 witnesses namely- the informant cum alleged victim and the mother of the victim as PW-1 and PW-2 respectively. However, considering the quality of evidence adduced by PW-1 and PW-2 giving an opportunity of hearing to learned Addl. P.P. further prosecution evidence stands closed.

8. Examination of accused u/s 313 Cr.P.C. is dispensed with in view of lack of implicating materials. The defence plea is of total denial of the prosecution case.

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

1. Whether in the year 2018 accused caused the pregnancy of the informant aborted without her consent and such miscarriage not being caused in good faith for the purpose of saving the life of the victim as alleged ?
2. Whether in the year 2018 accused committed rape on the victim girl against her will inside her house as alleged ?

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

I have heard the learned lawyers appearing for both sides and also perused the case record and evidence available on record.

11. The learned lawyers appearing for the state agreed that proceeding further with the case will not bring any positive result except waste of valuable time and energy of the court. Therefore, it is submitted that court may record judgment of acquittal.

12. On the other hand, having heard the learned counsel for both sides and on careful examination of the evidence of two prosecution witnesses namely the alleged victim and her mother it appears that contrary to the serious allegation made against the accused the victim girl in her evidence in court on oath failed to disclose any incriminating materials against the accused for sustaining conviction for the offences u/s 313/376 IPC.

13. In her evidence (PW-1) stated that she has love affairs with accused for 3 /4 years but subsequently, accused married another girl instead of her though he promised to marry her. Therefore, she filed the case.

14. In her cross examination she clearly stated that she filed the case against accused for not marrying her. She also stated that she even do not know the contents of the FIR. She put her signature after same was written in the police station. She also stated that her statement before Magistrate was also under the influence of others.

15. On the other hand, PW-2 Anna Saha who is the mother of the victim also failed to disclose any such evidence which will constitute the offence u/s 313/376 IPC. She simply stated about the existence of love affairs of accused with her daughter for about 1 & ½ years but subsequently, he married another girl.

16. Given the nature and quality of evidence of PW-1 and PW-2 none of the ingredients of the offence u/s 313/376 IPC are found established. Moreover, this court do not indulge in allowing prosecution to record evidence to other witnesses as no useful purpose will be served by recording evidence of remaining witnesses, when the star witnesses namely the alleged victim and

her mother failed to implicate the accused person for the offence u/s 313/376 IPC.

17. On careful appreciation of the poor quality of evidence of PW-1 the alleged victim and the other witness PW-2 this court has no option but to acquit the accused from the charges u/s 313/376 IPC on the ground of insufficient evidence. He is set at liberty forthwith.

18. The term of bail bond of accused person is however, extended for a period of 6

(six) months from to-day as provided u/s 437(A) of Cr.P.C.

19. Let a copy of the judgment be sent to the learned District Magistrate, Barpeta for his information as provided in section 365 Cr.P.C.

20 Let case record be consigned to record room after completing the formalities.

21. Given under my hand and seal of this Court on this 6th day of February, 2020 at Barpeta.

Dictated & corrected my me

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

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

APPENDIX

1. The prosecution has examined the following 2 nos. of witnesses:-

PW-1 = victim (X), the informant.

PW-2 = Anna Saha.

2. The prosecution has exhibited following documents :-

Ext.1= is the FIR.

Ext.1(1), 1(2) & 1(3)= are the signatures of victim (X).

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

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

Sd/-

(Sri C.B. Gogoi)

Addl. Sessions Judge, Barpeta.