

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 SESSIONS CASE NO. 73 OF 2018
(G.R.No.- 5017/2017)
Kalgachia P.S. Case No. 717 of 2017**

State of Assam

-versus-

**Rafikul Islam
S/O Lt. Based Ali,
Resident of Chatla Pahartali,
P.S. Kalgachia,
District – Barpeta, Assam**

..... Accused.

APPEARANCES :

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

**For the Accused : Mr. Altaf Hussain, learned
Counsel, Barpeta.**

CHARGE FRAMED UNDER SECTIONS 376/511 OF IPC

Date of Charge : 25.05.2018
***Date of Prosecution evidence : 04.02.2019; 16.03.2019
& 16.09.2019.***
Date of Statement u/s 313 CrPC : 05.12.2019,
Date of Argument : 06.02.2020 & 24.02.2020,
Date of Judgment : 24.02.2020.

J U D G M E N T

1). The prosecution case, in brief, is that Kalgachia P.S. Case No 717 of 2017 under Sections 457/376/511/506 of IPC was registered on the basis of a F.I.R. (Ext.1) lodged by the victim.

In the aforesaid **F.I.R.** dated 21.10.2017, the informant Samiran Nessa (P.W.1), who is the victim of this case, alleged interalia, that on 14.10.2017 at about 11:00 PM, accused namely Rafikul Islam entered into the house of informant/victim and tried to commit sexual intercourse with her without her consent. It is alleged in the FIR that victim is a married woman and her husband was working at Shilong, at the time of incident. She deposed in the FIR that before three (3) months of the alleged incident, accused induced her to do illicit works with him.

On receipt of the aforesaid F.I.R. by the In-charge Moinbori Police Outpost, the same was entered vide Moinbori O.P. GDE No. 346 dated 21.10.2017 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. 717/2017 under Sections 457/376/511/506 of IPC.**

During the course of investigation, the victim was sent for her medically examination, 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 accused **Rafikul Islam under Sections 457/376/511** vide charge sheet **No.24/18**, dated **31.01.2018**.

2). Accused was summoned. On appearance of accused, copy was furnished to him by the then learned Additional 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 by my learned predecessor-in-office 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, **6 [six]** number of witnesses including the victim/informant and M.O. were examined on behalf of the prosecution to prove the charge under Sections 376/511 of IPC.

On closing of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He denied to adduce evidence in his defence.

5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Altaf Hussain**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 376/511 of IPC.**

6). Now the point for determination before this court are as follows ---
(i) Whether the accused on 14.10.2017 at about 11:00 P.M. at village Chotola Pahartoli, within the jurisdiction of Kalgachia P.S., District Barpeta, attempted to commit rape on the informant Samiran Nessa and thereby committed an offence punishable under Section 376/511 of IPC ?

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] deposed that she lodged the FIR of this case in the month of October,2017. The incident took place at about 11:00 PM. She stated that at relevant day, she was sleeping in her house with her two kids who were aged 7 years and 5 years respectively. The accused entered into her sleeping room by pushing the door. The accused caught her hand and then, she made hue and cry. On hearing hue and cry, her sister-in-law Hasina Khatun and Ambia Khatun came. Then, the accused fled away through the window of her sleeping room. She exhibited the ejahar as Ext.1 and Ext.1(1) is her signature.

P.W.1 stated that Police sent her for medical examination and made statement recorded under Section 164 CrPC before the learned magistrate of Barpeta.

She (P.W.1) exhibited her statement as Ext.2 and Ext.2(1) & Ext.2(2) are her signatures recorded u/s 164 CrPC. She made her statement before the learned magistrate voluntarily.

In her cross-examination, she stated that her house is adjacent to the house of the accused person and she has no boundary dispute with the accused. She has stated that Moinbori Police O.P. is located at a distance of 4/5 kms from her house and there is well connectivity to there from her house. It takes about 30 minutes to reach there from her house. The incident took place on 14.10.2017 and she lodged the FIR on 21.10.2017 and she has not explained the cause of delay in filing the FIR. The FIR was written as per her dictation. She further deposed that she told her husband about the proposal given by the accused person before three months from the date of filing of this case, but she did not lodge any case regarding that matter. Her husband also did not lodge any case in that matter. Police came to the place of occurrence about 2/3 days of filing of the FIR. The FIR was written at the police station. Taher Ali, Bahar Ali and Jahur Ali resided near her house. They came to know about the incident afterwards.

She denied that she lodged this case falsely against the accused person as she got land dispute with him.

8). **Hasina Khatun [P.W.2]** has deposed that victim is the wife of the younger brother of her husband. P.W.2 knew the accused person and incident of this case took place about 1/1½ years ago at night, at about 11:00 PM, it was Saturday. She stated that she went to the house of the victim after hearing some sound. She also brought Ambia Khatun alongwith her who is also her sister-in-law. When, they entered into the house of the victim, they saw accused present there, but they could not catch him as he fled away through the window of the house of the victim. She do not know for what purpose the accused person entered into the house of the victim. The accused caught hold the victim and she had seen the incident.

During cross-examination, she stated that when they entered into the house of the victim, the door of the house was closed and they opened by pushing the same. Our neighbors Tahar and Jahur did not come to the place

of occurrence, but one Azibar came to the place of occurrence.

She denied that she did not state before the police that she saw the accused holding the victim. She did not know if there is any boundary dispute between the victim and the accused.

She denied that she has deposed falsely before the Court.

9). **Ambia Khatun [P.W.3]** has deposed in her evidence that victim is her cousin sister-in-law and she knows the accused person. The incident of this case took place about 1/1½ years ago at about 11:00 PM. At the time of incident, Hasina came to her and told that one person is there in the house of Samiran and asked her to go with her. Then, she opened the door of the house of Samiran by pushing it and found both the accused and the victim in the bed of the victim. After that, the accused fled away through the window of the house of the victim.

During her cross-examination, she has stated that the houses of the victim and the accused are adjacent. The houses of Taher, Bahar and Jahur are also there. They also heard about the incident. She do not remember whether she stated before the police that she saw the accused person in the bed of the victim. There is no boundary dispute between the victim and the accused as the victim has got no land.

She denied that she had deposed falsely before the Court.

10). **Azibar Rahman [P.W.4]** has stated that he knows the informant and accused of this case. Incident took place about 2-3 years ago at about 11.00 PM and he was at his house. He heard hue and cry in the residence of informant Samiran Nessa. Then, he rushed there and saw Hasina and Samiran Nessa in that place of occurrence. He saw accused Rafiqul fleeing from the hands of Samiran Nessa through window. Samiran Nessa told him that accused entered into her bedroom for doing bad work with her. After that, he returned from the place of occurrence. He stated that Police examined him.

In his cross-examination, he denied that he did not state before police that Samiran Nessa told him that accused entered into her bedroom for doing bad work with her. The house of accused is very close to the

house of informant. Many people gathered after the incident. He further stated that Taher Ali, Baher Ali, Jahuruddin etc. resided near the house of informant and they came to the house of informant after the incident. They also heard about the incident.

He denied that he do not know anything about the incident. He had not deposed falsely before the Court.

11). Dr. Anima Boro [P.W.5] stated that on 24/10/2017, she was working in the same capacity and same place. On that day, victim Samiran Nessa was produced before her by the police for her medical examination. However, victim refused to do her medical examination. She exhibited her medical examination report as Ext. 3 and Ext. 3 (1) is her signature.

Her cross-examination was declined by the defence side.

12). Hazarat Ali Ahmed (P.W.6) stated that on 21-10-2017, he was working at Moinbori police O.P. under Kalgachia PS. On that day, he received one ejahar from Samiran Nessa and entered the same vide. Moibori O.P. GDE No. 346 dated 21-10-2017 and forwarded the same to O.C. Kalgachia PS for registering the case. He himself took charge of the investigation of the case. Ext. 4 is the extract copy of the said G.D.E. P.W.6 stated that S.I. Subhash Baishya who happened to be O.C. Kalgachia PS received and registered the same as Kalgachia PS Case No. 717/2017 u/s 457/376/511/506 IPC and directed him to investigate the case.

P.W.6 exhibited the FIR as Ext. 1 and Ext. 1(2) is his signature with endorsement. Ext. 1(3) is the signature of the then O.C. Kalgachia PS.

After taking charge of investigation, he visited the place of occurrence and examined witnesses. He (P.W.6) also drew sketch map of the place of incident. He exhibited the sketch map vide Ext. 4 and Ext. 4(1) is his signature.

He also sent the victim for her medical examination and got her statement recorded before the learned Magistrate under Section 164 Cr.PC. He also collected medical report of the victim.

He did not find accused in spite of repeated attempt and

submitted charge-sheet against the accused Rafiqueel Islam under Sections 457/376/511 of IPC. He exhibited the charge-sheet vide Ext. 5 and Ext. 5(1) is his signature.

In his cross-examination, he stated that the distance of place of occurrence might be 20-25 kilometers and he did not ask the informant regarding the delay in filing FIR. He did not examine Bahar Ali, Abdul Matin, Nasiruddin and Taher Ali.

P.W.6 stated witness Hasina Khatun (PW-2) did not state before him that she saw the accused holding the victim. Witness Ambia Khatun (PW-3) did not state before him that she saw the accused person in the bed of the victim. Witness Azibar Rahman (PW-4) did not state before him that Samiran Nessa told him that accused entered into her bedroom for doing bad work with her.

13). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.1), who is star witness of this instant case has deposed in her evidence that her house is adjacent to the house of accused. On the day of alleged incident, she was sleeping with her two kids who are aged 7 years and 5 years respectively. At about 11:00 PM, accused entered into her room and tried to commit bad works with her. Then, victim started hulla and accused fled away. Victim clearly stated in her evidence that after hearing hulla, her sister-in-law Hasian Khatun and Ambia Khatun came to the place of occurrence.

It is interesting to mentioned here that Hasina Khatun (P.W.2) and Ambia Khatun (P.W.3) deposed in their evidence that they saw the accused into her room whereas P.W.3 found the accused into her (victim) bed. But, she (P.W.3) did not depose the same before the I.O. as alleged. The I.O.(P.W.6) of this case clearly stated in his cross-examination that P.W.3 did not state before him that she saw the accused in the bed of the victim.

Moreover, it is admitted fact by the P.W.2 that she do not know for what purpose the accused entered into the house of the victim.

Thus, it is not clear that accused entered into her room with intent to rape her.

Moreover, alleged incident took place on 14.10.2017 but FIR (Ext.-

1) was lodged on 21.10.2017. There is no explanation for delay in lodging FIR. P.W.1 admitted in her cross-examination that she has not stated the cause of delay in lodging FIR.

Further, P.W.2 deposed that she entered into the house of victim on hearing some sound. P.W.3 deposed that she went with P.W.2 when she (P.W.2) told her that there is a person in the room of P.W.1. But, P.W.1 stated that P.W.2 and P.W.3 entered after she raised hue and cry, when accused entered into her room.

P.W.4 allegedly saw the accused fleeing from the hands of P.W.1. But, it is heard to believe that a person who allegedly attempted to commit rape on victim will keep waiting till arrival of people like P.W.4, who is a neighborer. The story of Prosecution side is not found true coupled with delay in lodging FIR creates doubt in the story of prosecution.

14). 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.

15). 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.

16). Hence, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently, the charge under Sections 376/511 of IPC is held to be not proved against the accused Rafikul Islam beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Rafikul Islam **is acquitted on benefit of doubt under Sections**

376/511 of IPC.

17). In the result, accused **Rafikul Islam** is **acquitted** of the charge under **Sections 376/511 IPC**, levelled against him, on benefit of doubt.

His bail bond stand discharged.

18). Given under my hand and seal of this Court on this **24th 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	= Samiran Nessa, the victim,
P.W.2	= Hasina Khatun,
P.W.3	= Ambia Khatun,
P.W.4	= Azibar Rahman,
P.W.5	= Dr. Anima Boro,
P.W.6	= Hazarat Ali Ahmed, the I.O.

(B) Prosecution Exhibits:

Ext.1	= Ejahar,
Ext.1(1)	= Signature of Samiran Nessa,
Ext.2	= Statement of the victim recorded under Section 164 CrPC,
Ext.2(1) & 2(2)	= Signature of the victim,
Ext.3	= Medical Report,
Ext.3(1)	= Signature of the I.O.

(C) Defence witnesses: Nil.

(D) Defence Exhibits: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

**Sd/-
Sessions Judge, Barpeta.**