

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No.68/2013

U/s.420/376 I.P.C

G.R. Case No. (GPR) 424/2010

State of Assam

- Vs -

Md. Joychar Ali

Committing Magistrate : Sri A. Ala, Judicial Magistrate 1st Class,
Dhubri

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State.

Sri R.K. Jain, Advocate for defence.

Date of Evidence : 09-05-2013, 28-06-2013, 30-08-2013, 08-10-2013
& 04-11-2013

Date of Argument : 05-11-2013

Date of Judgment : 06-11-2013

J U D G M E N T

Musstt. Ayna Bibi vide an ejahar dated 17-07-2010 states before the O/c, Gauripur Police Station that the accused named above promised her to marry and under the said pretext, he was having sexual intercourse with her last one year. It is alleged that on 16-07-2010 at about 9 p.m. while she was sleeping at her house, accused named above forced his entry into her house by breaking opened the wall and had caused sexual intercourse three times and hearing sound, her brother Motiur Rahman came out of the house and caught red handed the accused and kept him tied at the house. But, on 17-07-2010 during morning the family members of the accused persons forced their entry into her house and got released the accused. Thus the occasion of filing of the ejahar.

2. The Gauripur Police Station on registration of a case took up investigation and at the conclusion of the investigation laid the charge-sheet U/s.376/420 I.P.C.

3. After commitment and on the appearance of the accused person before this Court, the charges U/s.420/376 I.P.C are framed against the accused. The charges so framed are read over, explained and interpreted to the accused to which, he pleaded not guilty.

4. During trial prosecution side after examining altogether 6 (six) P.Ws closed their side. Statements of the accused was recorded. I heard arguments of the case from both the parties.

5. Now, the point for determination in this case will be as to whether the materials surfaced in the testimonies of the P.Ws would warrant conviction of the accused person under Section 420/376 I.P.C. or not?

DECISIONS AND REASONS THEREON

6. To address the aforesaid point for determination, let us have a look at the evidences on record.

7. The P.W-1 Musstt. Rejia Bibi during trial and in her examination-in-chief states that she knows the accused. On the date of incident at about 9 p.m. she was sleeping at her house. At that time accused Joychar Ali was at the house of her sister-in-law, Ayna Bibi and then she found that the accused Joychar Ali ran from the house of Ayna Bibi. Thereafter, Ayna Bibi ran towards the accused and was able to catch Joychar Ali.

As regards her statement, the I.O. (P.W-6) states during trial that P.W-1 Musstt. Rejia Bibi did not tell before him that on the date of incident at about 9 p.m. she was sleeping at her house and at that time accused Joychar Ali was at the house of her sister-in-law Ayna Bibi and then she found accused Joychar Ali ran from the house of Ayna Bibi. Thereafter, Ayna Bibi ran towards the accused and was able to catch Joychar Ali.

From the testimonies of I.O., it appears that P.W-1 disclosed the story during trial for the 1st time and it was not unfolded during investigation.

8. P.W-2 Musstt. Ayna Bibi states during trial and in her examination-in-chief that she knows the accused. The incident had taken place in the year 2010. At the relevant point of time she was married but she did not stay at the house of her husband and at that time she was staying at her parental home and also pulling her life by selling labour. The accused promised to marry and one day at about 9 p.m. while she was at her house and while she was sleeping, the accused entered into her house by breaking opened the wall and committed rape upon her by covering her mouth. By this time her elder brother Motiur awaked up from the sleep, gave torched light and seeing it the accused fled away. Thereafter, she laid ejahar. Police brought her to Court for recording her statement and accordingly her statement was recorded in the Court wherein she put her thumb impression.

During cross-examination she admitted that during investigation she told before the police that prior to one year of the incident, accused proposed to have love affairs. At the very outset, she refused but accused continued to visit her at her house and thereafter, she also started to love him. Further, she admitted during cross-examination that she did not tell about the incident to her husband. On the date of incident they had sexual intercourse three times at the interval of half an hour and during the aforesaid half an hour, she slept together with the accused. If her elder brother did not notice the accused by giving torch light, then the case would not have been taken place. Her present age is about 30 years. The incident took place in the year 2010.

Further, from the testimonies of the I.O. (P.W-6), it appears that the victim during investigation told before him that during the continuance of the aforesaid love affairs with the accused, sexual intercourse had taken place between them on a numbers of occasions. The victim did not tell before him during investigation and during her statement recorded U/s.164 Cr.P.C. that on the date of incident and at the relevant point of time the accused entered into her room by breaking wall of the room.

9. P.W-3 Mozibur Rahman states during trial and in his examination-in-chief that he knows the accused. The victim Musstt. Ayna Bibi is his sister. 2/2 ½ years ago one night his elder brother Motiur Ali noticed that the accused was talking with her sister Ayna Bibi and also found that seeing him accused attempted to flee away and then Ayna Bibi caught him and raised alarm. Hearing cries, he woke up from sleep and found that the accused was caught by Ayna Bibi. Thereafter, accused was kept tied. Later on people of the village came. Subsequently, the people of the accused came and got released the accused.

From the testimonies of the I.O., it appears that the P.W-3 during investigation did not disclose the story what he unfolded before this Court and in his examination-in-chief.

10. P.W-4 Musstt. Meherbhan Bibi states during trial and in her examination-in-chief that she knows the accused and the victim Ayna is not her relative. On the date of incident and at the relevant point of time her husband Motiur Ali came outside of the house having torchlight at his hand and then her husband noticed that accused attempted to flee away from the house of Ayna Bibi. Accused was kept tied and later on the people from the house of the accused came and got him released.

During cross-examination she states that prior to 3 (three) years of the incident Ayna Bibi had not been maintaining relation with her husband. Since then Ayna Bibi used to pull on her life by selling labour at Guwahati and elsewhere. Then she came contact with the accused and accused used to visit the house of Ayna Bibi and affairs started to develop between them. They did not like to support the affairs between them.

11. P.W- Dr. Khokan Kr. Choudhury states during trial and in his examination-in-chief that on 19-07-2013 he was posted at Dhubri Civil Hospital in the capacity of Deputy Superintendent. On that day he examined Musstt. Ayna Bibi, D/o. Lt. Akbor Ali of village Chapar Balajan on being requisition by police. After examination he prepared a report wherein he recorded his opinion. Ext-1 is his report wherein Ext-1(1) is his signature. He recorded following opinions:

1. The radiological age of the woman examined is above 18 (eighteen) years.
2. The opinion could not be recorded during examination as to whether the woman was raped or not.
3. No marks of injuries were found on her private parts.

12. P.W-6 S.I. Utpal Kr. Nath states during trial and in his examination-in-chief that on 17-07-2010 he was posted at Gauripur Police Station in the capacity of S.I. of Police. At that time, Sailen Deori was the Officer-in-charge of the Police Station and on that day the then O/c, of the Police Station after registration of a case on the ejahar under Ext-2, entrusted him with the investigation of this case wherein Ext-2 (1) is the signature of the then O/c, Sailen Deori. Thereafter, he paid visit to the place of occurrence and prepared sketch map. Ext-3 is the sketch map wherein Ext-3 (1) is his signature. Thereafter, he recorded statement of the witnesses. He got the victim examined by Doctor and also her statement U/s. 164 Cr.P.C. Thereafter, he collected relevant papers and at the conclusion of the investigation of this case, he submitted the charge-sheet under Ext-4 wherein Ext-4 (1) is his signature.

So these are all about the evidences on record.

13. Here in this case it is alleged that the accused promised to marry the victim and under the pretext of said promise of marriage, the accused induced the victim and caused forceful sexual intercourse with her. But from her own statement, it appears that both the victim and the accused were major one and they had maintained love affairs. From the own admission of the victim, it appears that the victim was a married lady still then she had developed love affairs with the accused and she did not at all tell about the incident to her husband also the victim

admitted that on the date of incident they had sexual intercourse three times at an interval of half an hour and during the said half an hour, she slept together with the accused. She specifically stated that if her elder brother did not notice the accused by giving torch light, then the case would not have been taken place.

14. Referring to the aforesaid admissions of the victim, learned defence counsel submitted during arguments that the victim was a major lady and married one and still then she had maintained the love affairs with the accused and on the date of incident while they were busy in the sexual intercourse, the victim did not raise any alarm as such according to learned defence counsel, the victim was out and out a consenting party in the sexual intercourse. Since the victim was a major one and consented in the sexual intercourse, therefore, it cannot be held that the accused had committed rape upon the victim.

In support of the said submission, learned defence counsel placed his reliance on 2011 CRI. L.J. 1921 - Amar Bahadur Singh V. State of U.P. of Hon'ble Apex Court of the Country

15. I have carefully gone through the circumstances revealed during the discussions of testimonies of P.Ws and as narrated herein before in the light of the observation of the decided case law of the Hon'ble Apex Court of the Country. Here in this case the accused had faced trial U/s.420 I.P.C. From the testimonies of the victim, it appears that the victim could not become successful to bring home necessary materials attracting the ingredients of Sec. 420 I.P.C. Further, it appears that the victim being major one was involved in the sexual intercourse with the accused at her sweet will and as such she was consenting party in the sexual intercourse with the accused. Therefore, it cannot be held that the accused had committed the crime of rape upon the victim.

16. For the aforesaid reasons, it is found that the offences alleged of have not at all been established against the accused beyond all reasonable doubts. As such, due to the insufficient evidences, the accused is entitled to get the benefit of doubt. Thus, the accused is acquitted on benefit of doubt and set at liberty forthwith. His bail bond stands discharged. Judgment is delivered in the open Court.

Given under my hand and seal of this Court on this 6th day of November, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.