

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Session Case No.15/2012

U/s. 417/376 I.P.C.

G.R. Case No. (FKJ) 29/2009

State of Assam

- Vs -

Md. Abdul Rashid

Committing Magistrate : Mrs. Mili Hussain, Judicial Magistrate
1st Class, Dhubri.

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

Sri M. Zaman, Public Prosecutor for the State.
Sri Anowar Hussain, Advocate for defence.

Date of Evidence : 01-06-2012, 07-07-2012 & 04-08-2012

Date of Argument : 29-01-2013

Date of Judgment : 30-01-2013

J U D G M E N T

The complainant Sukur Ali vide complaint petition laid before the Addl. S.P, Dhubri states as follows:

That the complainant and the accused are residing in the same village. Since last one year the accused Abdul Rashid has been inducing the daughter of the complainant with a promise to marry and on the date of incident at about 7 p.m. when the daughter of the complainant namely Miss. Sukiran Nessa was returning from the shop to the house, the accused named above by taking the advantage of darkness dragged her and committed rape upon her against her will. The accused further asked the daughter of the complainant not to disclose about the sexual intercourse to anybody else and in the event of failure he would finish her life and accordingly the accused

used to commit sexual intercourse with the daughter of the complainant under the pretext of promise to marry. As a result of which, the daughter of complainant became pregnant and when she brought the matter to the notice of accused then the accused asked her for the abortion of the pregnancy and also declined to marry her. Then the matter was brought to the village salish. But the accused did not agree with the decision of the village salish and on being asked by the people of the village, the instant complaint was laid. The then Addl. S.P, Dhubri asked the South Salmara Police Station to take necessary action on the aforesaid complaint.

2. The South Salmara Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge sheet U/s.376/417/506 I.P.C.

3. After commitment and on the appearance of the accused person before this Court, the charges under Sec. 417/376 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 the prosecution side after examining as many as 6 (six) P.Ws closed their side. Statement of the accused person is 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 during trial would justify the conviction of the accused person under Sec. 417/376 I.P.C?

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

7. P.W-1, Md. Sukur Ali being the informant states during trial that 5 (five) years ago during one evening his daughter Sukiran Nessa went to the shop. On her way back to house an unidentified person committed rape upon her. On the date itself his daughter did not tell anything. However, after about 4/5 months when she was carrying pregnancy then she disclosed the matter before him. At that time he had some land dispute with the accused. Therefore, he lodged the ejahar against the accused out of suspicion. However, his daughter did implicate the accused before him.

During cross examination, the P.W-1 states that due to misunderstanding and suspicion, he lodged the ejahar against the accused.

8. P.W- 2 Mosstt. Sukiran Khatun being the victim of the incident states during trial that while she was returning to her house from the shop some unidentified persons carried her and committed rape upon her. Due to the darkness, she could not identify the aforesaid persons nor she could identify the accused as the person who committed the crime. However, her family had land dispute with the accused therefore, her father due to misunderstanding, suspicion and on being influenced by people lodged the ejahar against the accused. After lodging of the ejahar she was brought to the Dhubri for medical examination so also for recording her statement by the Magistrate. Ext-1 is the said statement wherein Ext-1 (1) and 1 (2) are her signatures.

During cross examination the P.W-2 deposed before the Court that she had deposed before the Magistrate on being tutored by her father and people.

9. P.W-3 Md. Bellal Sk. and P.W-4, Md. Amjad Ali were declared hostile by the prosecution.

10. P.W-5 Dr. Sayed Md. Emdadulla is the Medical Officer, who examined the victim and prepared report about the findings of the examination vide Ext-2 wherein Ext -2(1) is his signature.

11. P.W-6, Inspector Fazlur Rahman Khan being the founder O/c. of the Fakirganj P.S registered the instant case as Fakirganj P.S. Case No.29/2009.

So these are all about the evidences on record.

12. The testimonies of the P.Ws show that the offence alleged of was committed against the P.W-2, who also stated that offence was committed upon her on the date of incident but during trial she had specifically deposed that she could not identify the person as to who committed the offence upon her due to the darkness nor she was able to identify the accused as the person who committed the offence. On the other hand, her father being the informant had also clearly stated during trial that out of misunderstanding and suspicion he had lodged the ejahar implicating the accused with the offence due to the existence of the land dispute.

13. For the reasons as stated above, it can be finally concluded that the offence alleged of has not been established beyond all reasonable doubt against the accused named above and as such he is entitled to get the acquittal.

14. Accordingly the accused is acquitted on benefit of doubt and set at liberty forthwith. His bail bond stands discharged. Judgment is delivered in open Court.

Given under my hand and seal of the Court on this 30th day of January, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.