

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No.111/2015

U/s.376/344/506 of IPC

G.R. 2027/2014

State of Assam

-Vs-

- 1. Jasimuddin Sk.**
- 2. Sukur Ali Sk.**
- 3. Ruhul Amin**
- 4. Seraz Ali &**
- 5. Khadeza Bibi**

Committing Magistrate : Smti T. Hussain, Addl. Chief Judicial Magistrate,
Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

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

Date of Evidence : 02-09-2015, 01-12-2015, 19-01-2016, 18-02-2016 &
26-05-2016

Date of Judgment : 04-07-2016

J U D G M E N T

The prosecution case in brief is that one Nowsad Ali Sk. had lodged a FIR at Gauripur P.S. on 23-05-2014 to the effect that on 07-05-2014 at 8 p.m. the accused Jasim Khan had committed rape on his minor daughter.

2. The FIR had been registered by O.C., Gauripur Police Station u/s.147/149/417/323/376/344/506 of IPC against accused persons namely Jasim Khan @ Nur Jamal, Seraj Ali, Khodeja Bibi, Sukur Ali Sk & Rohul Amin. The I.O. after due investigation had filed charge sheet against the above accused persons u/s.143/417/376/344/506 of IPC.

3. Accused persons appeared before the Court, charges under Section 344/506 of IPC had been framed against all above named accused persons and charge u/s 376 of IPC had been framed only against accused Jasimuddin Khan @ Noor Jamal and all accused persons pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 10 (ten) witnesses including M.O and I.O. There being no incriminating materials against the accused persons, the necessity to examine accused persons u/s.313 of Cr.P.C. was done away with.

5. **Points for determination:**

1. Whether the accused Jasimuddin Khan @ Noor Jamal on 07-05-2014 at around 8 p.m. at village Gheger Alga under Gauripur P.S. Committed rape on the victim?

2. Whether on the same day, time and place accused persons namely Jasim Khan @ Nur Jamal, Siraj Ali, Khodeja Bibi, Sukur Ali, Rohul Amin wrongfully confined the victim more than 10 days?

3. Whether on the same day time and place accused persons namely Jasim Khan @ Nur Jamal, Seraj Ali, Khodeja bibi, Sukur Ali, Rohul Amin you had criminally intimidated the victim with intent to cause alarm to her?

DECISIONS AND REASONS THEREON

6. PW-1, Nowsad Ali is the informant of the case admitted to victim being his daughter. According to PW-1 accused Jasimuddin had taken away his daughter and married her. The age of his daughter at the time of alleged occurrence was 19 years. At present they are living together. He had filed the FIR in the case and he had put his thumb impression on the FIR.

8. PW-2 Azad Ali had stated about being aware of the accused person taking away Sofura Khatun, the victim and having married her. Now, they are living together.

9. PW-3 Shajahan Mollah, PW-5 Md. Sapial Ali, PW-6 Md. Malek Ali & PW-8 Md. Golap Ali feigned ignorance about the alleged occurrence.

10. PW-4 Musstt. Aleka Bibi had stated about knowing accused persons. Sofura, her daughter, following an affair with the accused Jasimuddin got married to him and now living as husband and wife.

11. PW-7, Dr. (Mrs) Rinku Ahmed, Health & Maternity Centre, Dhubri had examined one Safura Khatun, D/o. Nawsad Ali of village Ghegeralga under Gauripur P.S, Dist. Dhubri on 25-06-2014. According to PW-7 on general examination the victim was found normal. PW-7 did not find trace of injury on her body and PW-7 had also not noticed spermatozoa on vaginal swabs. In her opinion there was no sign of recent sexual intercourse/ assault. Ext-1 is her report bearing her signature ext-1 (1).

In her cross-examination the M.O. had stated that she had not recorded any findings in her report with regard to the age of the victim.

12. PW-9 Mustt. Sabura Khatun had stated that accused persons are known to her. Following an affair with the accused Jasimuddin, she got married to him. Her father had filed the case. After filing of the case she had been brought to the Court and the I.O. got her statement recorded u/s.164 of Cr.PC before the Magistrate. Ext-2 is the said statement bearing her signatures ext-2 (1) and ext-2 (2).

In her cross-examination PW-9 had stated about having failed to remember what she had stated before the I.O.

13. PW-10, SI Mubarak Ali had stated that on 23-05-2014 he was posted at Gauripur P.S. as attached Officer. The OC. of the Gauripur Police Station had entrusted him the case for investigation. Following which, he had visited the place of occurrence. He had drawn the sketch Maps of place of occurrence. Ext-4 and Ext-5 are those sketch maps. He had recorded statement of witnesses at the place of occurrence. According to PW-10 having recovered the victim from the house of the accused, the victim had been sent for medical examination and thereafter, PW 10 had filed the charge sheet against accused

persons namely Jasimuddin Khan, Khoteza Bibi, Ruhul Amin, Sirajuddin and Sukur Ali u/s. 143/417/376/344/506 of IPC. Ext-6 is the charge sheet bearing his signature ext-6 (1).

In his cross-examination PW-10 had stated that the person who had obtained the thumb impression of the informant had not been examined as witness neither he had been cited as witness.

14. Thus considering the evidence in its entirety, it is evident that a clear picture has come to light that the accused has not kidnapped the victim for the purpose of Sec. 361 of IPC since the victim who was 19 years old on the day of the alleged occurrence as per the evidence of her father, PW-1 and victim herself as PW-9 stated to having accompanied the victim willingly and getting married thereafter, I find there are no circumstances surfacing in the evidence of Pws consistent with the allegation of rape or kidnapping for that matter against the accused persons. Thus the prosecution has failed to prove the charges u/s.376/344/506 of IPC against accused persons beyond all reasonable doubt. Accordingly the accused persons are acquitted and set at liberty forthwith. I am not inclined to recommend the victim for receipt of compensation u/s. 357 (A) of Cr.PC. considering she is not required to be rehabilitated.

Given under my hand and seal of this court on this the 4th day of July, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witness.

PW-1	-	Md. Nowsad Ali
PW-2	-	Md. Azad Ali
PW-3	-	Md. Shajahan Mollah
PW-4	-	Mustt. Aleka Bibi
PW-5	-	Md. Sapial Ali
PW-6	-	Md. Malek Ali
PW-7	-	Dr. (Mrs) Rinku Ahmed
PW-8	-	Md. Gopal Ali
PW-9	-	Musstt. Sabura Khatun
PW-10	-	S.I. Mubarak Ali

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1	-	Medical Report
Ext-2	-	Statement of victim u/s.164 of Cr.PC.
Ext-3	-	FIR
Ext-4 & 5	-	Sketch Maps
Ext-6	-	Charge sheet.

D. Defence Exhibit

Nil

Sessions Judge, Dhubri