

IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI

Sessions Case No. 185/2015

U/s. 376 IPC

G.R. No.1880/2014

State of Assam

- Vs -

Moynal Hoque

Committing Magistrate : Sri S. Datta, Chief Judicial Magistrate, Dhubri.

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor, Dhubri for the State.
Sri Aminur Rahman Ahmed, Advocates for the defence.

Date of Evidence : 12-11-2015, 31-03-2016, 27-04-2016 & 13-05-2016

Argument Heard : 18-05-2016

Date of Judgment : 20-05-2016

J U D G M E N T

The prosecution case in brief is that one Amiron Bibi had lodged a complaint before the CJM, Dhubri alleging therein that on 03-04-2014 at around 2:00 p.m. the complainant was alone in her house. Her husband having gone outside, accused persons taking advantage of the situation had forcibly entered into the house and kidnapped her. Since the matter was intended to be settled through village "salish" there was delay in lodging the complaint.

2. The complaint was forwarded to O.C, Agomani P.S. to register a case after due investigation u/s.156 (3) of Cr.PC. Upon the above complaint a case was registered at Agomani P.S. u/s.447/376 IPC on 14-05-2014. After investigation charge sheet was filed u/s.448/376 of IPC.

3. Accused appeared before the Court. Charge u/s. 376 of IPC had been framed against the above accused. Charge had been read over, explained and interpreted to accused to which, he pleaded not guilty and claimed to be tried.

4. Prosecution had examined as many as 6 (six) P.Ws including I.O. and M.O. and accused person was examined on the circumstances coming up against him in the evidence of P.Ws u/s.313 of Cr.PC. The accused pleaded total denial and declined to adduce any evidence in his defence.

Heard learned advocates.

5. **Point for determination:**

Whether on 03-04-2014 at about 2 p.m. accused Moynal Hoque had committed rape upon the complainant, who is also the victim of the case?

DECISIONS AND REASONS THEREOF

6. Now coming to the evidence of P.W-1, Musstt. Shaharan Bibi, the mother-in-law of the victim had stated that on the day of the alleged occurrence she was sleeping inside her room since she was sick. Moynal had come to her daughter-in-law's room. Having learnt about Moynal's visit to their house, she immediately came to the room where her daughter-in-law was sleeping and had found accused Moynal having physical relation with her daughter-in-law. On seeing her Moynal had fled away. She raised alarm.

In her cross-examination PW-1 had stated that the accused lives in her immediate neighbourhood. Nirranjan, Gopal and Asan are other neighbours who live close by her. She lives with her three sons and two daughters. Both sons are married and daughter-in-laws live with her. They have been having differences with the accused persons with regard to matters involving her daughter-in-law. A year back the matter was brought to the notice of village elders but had not reported about what she had stated in her evidence to the police. She denied the suggestion that after the alleged occurrence, the victim had been driven out from their house and for a year after the alleged occurrence, her daughter-in-law had been living with her father and got married again. She admitted to have apart from herself, her two daughters had also seen the alleged occurrence.

7. PW-2, Pashan Ali Akand had stated about accused Moynal Hoque's amorous affair with the victim and the accused is known to him.

In his cross-examination he denied having heard about accused attempting to commit rape on victim.

8. PW-3, Jahirul Hoque had stated that being a member of the Agomani Club, he was aware of the victim having been brought to the Club for a "bichar". The request for "bichar" was turned down and parties were asked to approach the Court.

9. PW-4, the victim had stated that the accused Moynal had difference with her father-in-law and mother-in-law for which the accused had been framed in a false case.

In her cross-examination she had stated that her mother-in-law had insisted that she speaks against the accused. Since she did not want to implicate the accused on false allegation she had been driven out from house.

10. PW-5, DR (Mrs) Anjumanara Ahmed had stated that on 15-05-2014 she was posted at, Dhubri Health & Maternity Centre. On that day she examined one Amiron Bibi, W/o. Safiqul Ali of village Kaldoba under Agomani P.S, Dist. Dhubri and had recorded following observations:

1. During examination the PW-5 had found the victim well oriented. Her BP was 110/70, Temperature and respiratory rate was found normal.
2. The victim was found with her clothes changed and washed after the incident.
3. There was no injury on her body.
4. Her hymen was torn.
5. No spermatozoa seen on vaginal swabs.

There was no sign of recent sexual intercourse/assault. Ext-3 is her report bearing her signature ext-3 (1).

11. P.W-6, ASI Ajit Kirtania, I.O. had stated that the case was entrusted to him for investigation. He had investigated into the case. During investigation he had visited the place of occurrence and prepared the sketch map. Ext-4 and ext-5 are sketch maps bearing his signatures ext-4 (1) and ext-5 (1). He had also recorded statement of witnesses. Thereafter, failing to arrest the accused, he had filed the charge sheet against the accused declaring the accused an absconder. Ext-6 is the charge sheet bearing his signature ext-6(1).

In his cross-examination the PW-6 had stated that the date of occurrence was 02-05-2014 and the FIR was lodged on 14-05-2014. The P.O. is around 1k.m. away from the Agomani P.S. He had not come across any evidence with regard to complainant holding a Panchayat meeting against the accused during investigation. No reason had been assigned for the delay in lodging the FIR. After he had received the FIR, he got the victim examined by Doctor, the following morning. He had not examined people living in the neighbourhood of place of occurrence namely Haran Biswas, Niranjn Das, Shankar Biswas etc. The day the victim had given her statement u/s.164 of Cr.PC, her mother-in-law had accompanied her. He had not seized the wearing apparel of the victim.

Above is the threadbare discussion of the evidence on record.

12. Now as per evidence of PW-1 she was the only eye witness apart from her two daughters who had seen her daughter-in-law, the victim having sexual intercourse with the accused, Moynal Hoque. Two daughters of Pw-1 had not been examined as witnesses. The victim in her evidence as PW-4 had stated that accused had been framed by her mother-in-law and her father-in-law in a false case due to their long standing differences with the accused.

13. Thus considering that the victim has not implicated the accused in any manner whatsoever of having committed rape on her, the evidence of PW-1 with regard to having seen the victim with the accused, having sexual intercourse cannot be believed. Further, there is evidence on record that the victim had a amorous affair with the accused which indicates that instead of offence 376 of IPC the offence should be that of adultery. Thus considering that the medical evidence is completely silent with regard to any sign of injury on the body of the victim and the victim having attained the age of majority, the prosecution has failed to establish the charge u/s.376 of IPC beyond all reasonable doubt. The accused is acquitted and set at liberty forthwith.

Given under my hand and seal of this Court on this 20th day of May, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.

APPENDIX

A. Prosecution Witnesses.

P.W-1 - Musstt. Shaharvan Bibi
P.W-2 - Md. Pashan Ali Akand
P.W-3 - Md. Johirul Hoque
P.W-4 - Musstt. Amiron Bibi
P.W-5 - Dr. (Mrs) Anjumanara Ahmed
P.W-6 - ASI Ajit Kirtania

B. Court Witness

Nil

C. Defence Witness

Nil

D. Prosecution Exhibits.

Ext-1 - FIR
Ext-2 - Statement of the victim
Ext-3 - Medical report

D. Defence Exhibit

Nil

Sessions Judge, Dhubri