

**IN THE COURT OF THE ADDL. SESSIONS JUDGE ::::::::::: DHUBRI**

**Present :- Shri Sutham Das,  
Addl. Sessions Judge  
Dhubri.**

**JUDGMENT IN SESSIONS CASE NO. 268 OF 2015**

**U/s. 376/511 I.P.C.**

**(Arising out of G.R. Case No. 3191 of 2015)**

**State of Assam**

**Versus**

**Md. Aftar Hussain**

**A P P E A R A N C E**

For the State :- Sri Uttam Kumar Sakar  
Addl. Public Prosecutor  
District- Dhubri.

For the Accused :- Mr. Jamsheer Talukdar, Ld. Advocate.

Dates of Evidence :- 4.05.2016, 30.06.2016, 23.08.2016, 15.12.2016.

Date of Argument :- 19.04.2017.

Date of Judgment :- 25.04.2017.

**J U D G M E N T**

**1. Brief facts of the Case:-**

Briefly stated prosecution case is that on 16.07.2015 complainant Musstt. Sahida Bibi (Real name concealed) lodged a written ejahar at Chotogoma Police Out-Post under Golakganj Police Station stating inter alia that on 15.07.2015 at about 5 p.m. while the complainant came to the pharmacy of accused Aftar Hussain for her treatment the accused took her inside his chamber for check-up. During check-up accused Aftar Hussain put his hands on the breast and other parts

of body of complainant and attempted to commit rape on her. Then, the complainant started to shout. Thereafter, her husband and other people rushed to the spot and rescued her from the accused.

The ejahar was forwarded to Golokganj P.S. On receipt of the complaint, the O/C of Golakganj P.S registered a case as Golakganj P.S. Case No. 479/2015. Police started investigation and on completion of investigation submitted charge sheet against the above named accused to stand trial U/s.376/511 IPC.

2. The corresponding G.R. Case No. 3191/2015 came up before Ld. S.D.J.M(S), Dhubri who furnished necessary copies to the accused person and committed the case to the court of Hon'ble Sessions Judge and then the case was transferred to this court for trial.

3. On receipt of the case record and on appearance of the accused, this court considered the materials on record and upon hearing both the sides framed charges U/s. 376/511 IPC and read over and explained to the accused to which he pleaded not guilty.

4. Prosecution in order to bring home the charges against the accused, examined 9 (nine) witnesses in all.

5. On conclusion of prosecution evidence, the accused was examined U/s. 313 Cr.P.C. The circumstances appearing in the evidence against the accused was put to him and necessary questions were also put to him. The accused totally denied prosecution allegation. However, the defence adduced no evidence whatsoever.

6. **POINTS FOR DETERMINATION**

(i) That you, on 15.07.2015 at about 5 p.m., at village Char-Chotoguma under Golakganj Police Station, attempted to commit rape on the complainant Musstt. Sahida Bibi and thereby committed an offence punishable u/s. 376/511 of the Indian Penal Code and within the cognizance of the court of Sessions.

7. I have gone through the evidences on record and heard argument of both sides.

**DECISION, DISCUSSION AND REASONS THEREOF**

8. Prosecution examined nine (9) witnesses. They are:-

- PW-1 :- Sahida Bibi (Complainant-victim)
- PW-2 :- Monjul Hussain Mondol
- PW-3 :- Hafijul Rahman
- PW-4 :- Abdul Mazid Mondol
- PW-5 :- Dr. (Mrs.) Rinku Ahmed
- PW-6 :- Amisa Bibi
- PW-7 :- Maziran Bibi
- PW-8 :- Reveel Alom
- PW-9 :- Subhash Ch. Das (I.O)

Prosecution produced the following exhibits in support of its case:-

- Ext-1 :- Medical Report.
- Ext-2 :- Ejahar.
- Ext-3 :- Extract copy of Chotogoma O.P. G.D Entry No. 165 dated 15.07.2015.
- Ext-4 :- Sketch-map..
- Ext-5 :- Statement of Sahida Bibi U/s. 164 Cr.P.C.
- Ext-6 :- Charge-sheet.

9. PW-1 Sahida Bibi has deposed that she is the complainant of the case. She put thumb impression in the ejahar and she knows the accused person. She stated that the alleged incident occurred about one year ago. At the time of occurrence, she was pregnant. The accused has a pharmacy in their village. She used to go to pharmacy for taking medicine. One day, she went to the pharmacy for a medical check-up by the accused. The accused after taking her inside the chamber, put his hands on her breast and other parts of body. She was feeling uncomfortable. She found that the intention of the accused was not good. He also made an attempt to commit rape on her. She shouted and cried. Thereafter, her husband and other people rescued her from the accused. Thereafter, she lodged this case. Police produced her before doctor for her medical examination. Her statement was also recorded by Magistrate.

10. PW-2 Monjul Hussain Mondol has deposed that the complainant is his wife and he knows the accused person. He stated that the accused person has a pharmacy in their village. The accused also gives treatment to the village people. The alleged incident occurred about one year ago. On the date of the occurrence of the incident at about 4.30 p.m., he along with his wife and one year old baby went to the pharmacy of the accused for treatment. His wife went inside the pharmacy of the accused for taking treatment. He was waiting outside with his baby. After sometime, he found that his wife was coming out from the chamber of the accused crying. She told him that the accused pressed on her breast and also attempted to commit rape on her. The village people also gathered at the pharmacy after knowing about the incident. Thereafter, he and his wife lodged the case against the accused person. His wife put thumb impression in the ejahar. Police produced his wife before doctor. His wife also made statement before Magistrate. His wife was taking treatment from the accused for her pregnancy matters. He does not know whether the accused is a registered doctor or not but, he prescribes medicines to the village people.

11. PW-3 Hafijul Rahman has deposed that he does not know the complainant but he knows the accused person. He stated that he has a tailoring shop at Beltoli Market and the accused is running a pharmacy nearer to his shop. The alleged incident occurred about 2 years ago one day in the evening. At the relevant time, the accused was sitting in his shop. After sometime, one lady along with her husband and their minor child came to the pharmacy and so the accused also went to his pharmacy. Thereafter, he heard some quarrel which took place inside the pharmacy of the accused. After the quarrel, the said lady and her husband went out of the pharmacy and again came back to the pharmacy along with many other persons and thereafter, all those persons started to vandalize the shop. At that time, the accused was present at his own shop. The wife of accused lodged case against those persons who vandalized the pharmacy. He also heard that a case was lodged against the accused person by the complainant.

12. PW-4 Abdul Mazid Mondol has deposed that he does not know the complainant but, he knows the accused person. The accused has a pharmacy shop which is situated 2 Km. away from his shop. The alleged incident

occurred about 2-3 years ago which took place in the evening. He came to the market at 5.30 p.m. where the pharmacy of the accused is situated. He saw huge gathering of people in front of the shop of the accused. He heard that a quarrel took place between some persons and the accused with regard to some transaction of money. Thereafter, he came back to his house.

13. PW-5 Dr. (Mrs.) Rinku Ahmed has deposed that on 16.07.2015 she was posted as Sr. M & H.O., Maternity and Health Centre, Dhubri. On that day one Sahida Bibi, wife of Manjul Hussain was produced before her with reference to Chotogoma Police Out-post GD Entry no. 167 dtd. 15.07.2015. The victim was escorted by one lady constable, however, the said victim-woman refused to conduct the medical examination. However, Dr. (Mrs.) Rinku Ahmed noted down her statement and she put her thumb impression. Ext.-1 is her report. Ext.-1(1) is her signature.

14. PW-6 Amisa Bibi has deposed that she knows the complainant and the accused. The alleged incident occurred more than one year ago which took place in the afternoon. She has a grocery shop at Chotogoma Chariali Market. The accused has a pharmacy just near her shop. There is a tailoring shop near her shop. On the date of the occurrence of the incident, the complainant came to the pharmacy of the accused and took some medicines. After about one hour, the complainant and her husband again came to the pharmacy of the accused and started to shout on the accused. Thereafter, a hue and cry took place at the pharmacy of the accused. Some of the persons nearby to their village came and started to assault the accused and also destroyed his pharmacy. After sometime, the scuffle and the assault came to an end. She does not know for which reason the incident took place.

15. PW-7 Maziran Bibi has deposed that she does not know the complainant but she knows the accused. The accused is their tenant who has a pharmacy at Chotogoma Chariali Market. The land of the pharmacy is belonged to them. The alleged incident occurred about 1 and 1/2 years ago which took place in the afternoon. On the date of the occurrence of the incident at about 4 p.m. one lady came to the pharmacy and took some medicines from the pharmacy of the accused. Thereafter, she went out. After 2 hours, the said lady again came by hiring some persons. Thereafter, the said lady and the persons

caused the incident. They damaged the pharmacy and also assaulted the accused. Later on, she heard from the people that the said lady alleged that the accused had misbehaved her. After sometime, the people left the place and incident came to end. She asked the lady who is the complainant and she told that the accused had misbehaved her.

16. PW-8 Reveel Alom has deposed that he is the writer of the ejahar of the case. Ext-2 is the said ejahar. Ext-2(1) is his signature. He wrote the ejahar as per statement of complainant and he read over the contents of the ejahar to the complainant and then obtained her thumb impression.

17. PW-9 Subhash Ch. Das has deposed that on 15.07.2015 he was posted Chotogoma Police Out-Post as I/c. On that day, one Md. Mazid Mondol informed before Chotogoma O.P over telephone that rape has been committed by a person namely Aftar Hussain. Accordingly, he made GD Entry 165 dtd. 15.07.2015 and visited the P.O. Then he drew sketch map of the P.O and also recorded statement of informant Abdul Mazid Mondol who informed about the incident over telephone. When he visited the P.O the accused had already fled away from the P.O. There was commotion among the people gathered at the P.O and hence police was deployed to control the situation. Then, he came back to police station. Thereafter, on the same day, the victim came to the P.S and filed an ejahar and was received vide GD Entry No. 165 dtd. 15.07.2015 and forwarded to O/C Golakganj P.S for registering the case. Accordingly, O/C Golakganj P.S registered the case as Golakganj P.S Case No. 479/15 U/s. 376/511 of IPC. Thereafter, he recorded the statement of the victim Sahida Bibi at the P.S. He produced the victim for recording her statement U/s. 164 Cr.P.C before Magistrate. Again on 17.07.2015, he visited the P.O and he recorded the statements of people near the P.O. He produced the victim before doctor for examination, but she refused to get herself examined by doctor. Accordingly, he obtained the medical report to that effect. Thereafter, on 30.10.2015, the accused Aftar Hussain surrendered in the police station. PW-9 stated that he recorded his statement and arrested him and sent to custody. On completion of investigation he submitted charge sheet against accused U/s. 376/511 IPC. Ext.-1 is the medical report collected by him. Ext.-2 is the said F.I.R. Ext.-2(2) is his signature. Ext.-3 is the extract copy of GD Entry vide GD Entry No. 165 dtd. 15.07.2015 and it was certified

to be true copy of Chotogoma O.P GDE No. 165 dtd. 15.07.2015. Ext.-3(1) is his signature as I/c Chotogoma. Ext.-4 is the sketch map. Ext.-4(1) is his signature. Ext.-5 is the statement U/s. 164 Cr.P.C. collected by him. Ext.-6 is the charge-sheet. Ext-6(1) is his signature.

### **APPRECIATION OF EVIDENCE**

18. From the discussion of evidence on record it appears that prosecution in support of its case examined the complainant-victim as PW-1 and PW-1 in her complaint, statement U/s. 164 Cr.P.C. and in her evidence on oath during trial stated that on the relevant date she went to the pharmacy of the accused for medical check-up and during medical check-up inside the chamber of the accused the alleged incident occurred. According to PW-1 during the check-up inside the chamber accused touched her breast and other parts of body and she felt uncomfortable/uneasy. PW-1 also in her evidence stated that the accused tried to commit rape on her. It is also in the evidence of PW-1 that her husband and her child also came along with her to the pharmacy of the accused and when she raised hue and cry they came to her rescue. PW-2 Monjul Hussain Mondol, husband of the complainant in his evidence made statement in support of PW-1. However, it appears from the evidence of PW-2 that he was not eye-witness to the occurrence and his wife told him about the incident. PW-3 spoke that on the relevant date some quarrel took place between the accused on the one hand and complainant and her husband on the other hand. PW-4 has given similar evidence as PW-3. PW-6 has given similar evidence as PW-3 and PW-4. According to PW-7, he heard that complainant came to the pharmacy of the accused to buy medicine and the accused misbehaved her.

19. From the evidence of PW-5 M.O, it reveals that on 16.07.2015 police produced complainant Sahida Bibi before her with reference to Chotogoma Police O.P GD Entry No. 167 dtd. 15.07.2015. But, the victim refused to get herself examined.

20. PW-1 in her cross-examination stated that the accused is not a doctor but he owned a pharmacy. She also stated that there was a tailoring shop adjacent to the pharmacy of the accused. She denied defence suggestion

that she has filed this case falsely to get rid of the case filed by the accused's wife against her and her husband. PW-3 in his cross stated that there was no chamber in the pharmacy of the accused. He also stated that the accused only sales medicines in his pharmacy. Further he stated that the complainant entered into quarrel with the accused in respect of some monetary transaction between them. He also stated that the complainant and her husband hired some persons who came to the shop of the accused and started to vandalize the shop, they restrained those persons but they did not listen to them. PW-4 has also stated that the accused has small pharmacy and there was no chamber in the pharmacy. PW-6 in his cross stated that the accused sales medicines in his pharmacy. He also stated that since the accused was not a doctor, there was not chamber in his pharmacy. He also stated that altercation took place between the accused and the complainant on the issue of monetary transaction. PW-7 also in his cross stated that the accused only sales medicine and he has no chamber in his pharmacy.

21. I have considered the evidence of PWs both in chief and cross-examination. Looking at the evidence of PW-1, it is found that she has implicated the accused alleging that the accused touched her body and tried to commit rape. In this case prosecution has examined some independent witnesses who at the relevant time were resident adjacent to the place of occurrence and came to the P.O immediately after the incident. It is found from the evidence of independent witness PW-3, PW-4, PW-6 and PW-7 that on the date of occurrence a quarrel took place between the accused and the complainant and her husband but, they also stated in their cross that the accused has a small pharmacy wherein medicines are sold but no separate chamber was attached with his pharmacy.

22. Now coming to the claim of the PW-1 that the accused touched her breast and also tried to commit rape, we find that her evidence does not find support from the independent witnesses in as much as there is evidence of independent PWs, that there was quarrel between the accused and the complainant and her husband on the issue of monetary transaction and the other PWs came to the P.O. None of the independent witnesses spoke that they heard that the accused misbehaved PW-1 or outraged her modesty. Rather, the PWs have categorically stated that there was quarrel between



accused and the complainant and her husband on the issue of monetary transaction and there was no chamber in the pharmacy of the accused.

23. I have given my anxious thought to the facts and circumstances of the case and I have also carefully scrutinized the evidence of PWs on record. In the instant case though the PW-1 is victim has in her evidence implicated the accused stating that he touched her body and tried to commit rape, the evidence of independent witnesses militates against her statement/claim and in my considered opinion, it weakens the prosecution case. Moreover, the victim refused to get her examined by the doctor. Even, there was no evidence on record that the victim narrated the story of physical and sexual assault upon her by the accused.

24. It is true that the evidence of a victim in a sexual assault case requires no corroboration from any quarter if her evidence inspires confidence. But, as discussed above, in the facts and circumstances of the case, I find it difficult to act on the evidence of PW-1 as the evidence considered in totality creates a doubt over prosecution case. It is not in dispute that the victim on the date of occurrence had gone to the pharmacy of the accused but, the allegation of attempted rape or outraging of modesty against the accused is far from convincing.

25. The Ld. Counsel for the defence has contended that prosecution evidence is not believable so as to hold the accused guilty in this case. The Ld. Counsel submitted that the evidence of victim cannot be accepted in the facts and circumstances of the case. The Ld. counsel has referred to the observation made in the case of **Lukba Rime vs State of Arunachal Pradesh (2010 3 Gauhati Law Reports 321)** Wherein it is held that:-

*" Indian Penal Code, 1860, S.376 – Conviction in a case of rape – Conviction can be based solely on the testimony of the prosecutrix when the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which would cast a shadow of doubt over her veracity – Evidence of the prosecutrix must be of such quality, that it may be sufficient in sustain an order of the conviction solely on the basis of her testimony – Evidence of the prosecutrix must be shown to be of sterling quality –*

*Prosecutrix must show that she is not trying to conceal the fact from the court deviating from the case narrated in the FIR and her explanation about any inordinate delay in lodging the FIR is satisfactory – Evidence of the victim girl found to be uncorroborated, unnatural, artificial and untrustworthy not to speak of being of sterling quality capable of inspiring the confidence of the court – Probability factors also found to be unworthy of any credence.....”*

26. Having regard to the laws and facts, I find that there is sufficient force in the submission of Ld. Defence Counsel.

27. In view of what has been discussed above, I am constrained to hold that prosecution has failed to prove the charges U/s. 376/511 of IPC against the accused Md. Aftar Hussain beyond all reasonable doubt.

28. In view of the above, I find the accused not guilty. Accordingly, he is acquitted from the charges U/s. 376/511 I.P.C. Set him at liberty forthwith. Judgment is pronounced in open Court, the 25<sup>th</sup> day of April, 2017.

29. Given under my hand and seal of this court on this 25<sup>th</sup> day of April, 2017.

Dictated & Corrected by me

Addl. Sessions Judge,  
Dhubri

(S. Das)  
Addl. Sessions Judge  
Dhubri

**A P P E N D I X**

**Prosecution Witnesses:**

- PW-1 :- Sahida Bibi (Victim-cum-complainant)
- PW-2 :- Manjul Hussain Mondol
- PW-3 :- Hafijul Rahman
- PW-4 :- Abdul Mazid Mondol
- PW-5 :- Dr. (Mrs.) Rinku Ahmed
- PW-6 :- Amisa Bibi
- PW-7 :- Maziran Bibi
- PW-8 :- Reveel Alom
- PW-9 :- Subhash Ch. Das (I.O)

**Prosecution Exhibits.**

- Ext-1 :- Medical Examination Report.
- Ext-2 :- Ejahar.
- Ext-3 :- Extract copy of Chotolgoma O.P. G.D.E. No. 165 dtd  
15.07.2015
- Ext-4 :- Sketch map.
- Ext-5 :- 164 Cr.P.C. statement of the victim-cum-complainant.
- Ext-6 :- Charge-sheet.

Addl. Sessions Judge  
Dhubri