

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

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

JUDGMENT IN SESSIONS CASE NO. 51 OF 2012

U/s. 342/376 I.P.C.

(Arising out of G.R. Case No. 118 of 2009)

State of Assam

Versus

Sirajul Hoque

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. M.A. Sobhan, Ld. Advocate.

Dates of Evidence :- 24.01.14, 05.06.14, 12.12.14, 9.04.15 & 29.11.16.

Date of Argument :- 16.05.2017.

Date of Judgment :- 31.05.2017.

J U D G M E N T

1. Brief facts of the Case:-

The prosecution case in brief is that on 15.04.2009 the complainant lodged an F.I.R. with Gauripur P.S. alleging inter alia that on 28.02.2009 at about 11 am accused Sirajul @ Sahajul Hoque forcefully committed rape on complainant's married daughter Mustt. Jerifa (Real name concealed) who is also deaf and dumb. Complainant saw the accused committing rape on her daughter and she raised hue and cry which attracted neighbouring people. The accused was caught. There was salish in the village to discuss the illegal act of the accused but no decision could be arrived at.

2. On receipt of the complaint, The O/c of Gauripur P.S registered the case as Gauripur P.S. Case No. 118/2009 U/s. 342/376 I.P.C. Police started investigation and on completion of investigation submitted charge-sheet against accused Sirajul Hoque to stand trial U/s. 342/376 IPC.

3. The corresponding G.R. Case No. 118/2009 came up before Ld. S.D.J.M(S), Dhubri who furnished necessary copies to the accused and committed the case to the court of Hon'ble Sessions Judge and then the case was transferred to this court for trial.

4. 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. 342/376 IPC against the accused and read over and explained to the accused to which he pleaded not guilty.

5. Prosecution in order to bring home the charges against the accused, examined seven (7) witnesses in all.

6. 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.

7. **POINTS FOR DETERMINATION**

(i) That you, on 28.02.2009 at about 11.00 am at Village Dhorarghat under Gauripur P.S. wrongfully confined Ms. Jerifa Khatun-the daughter of informant Mustt. Kohinur Bibi, and thereby committed an offence punishable under section 342 of the Indian Penal Code and within the cognizance of the Court of Sessions.

(ii) That you, on or about the same time and place committed rape on said Mustt. Jerifa Khatun, and thereby committed an offence punishable under section 376 of the Indian Penal Code and within the cognizance of the Court of Sessions.

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

DECISION, DISCUSSION AND REASONS THEREOF

9. Prosecution examined seven (7) witnesses. They are:-

- PW-1 :- Kohinoor Bibi (Complainant)
- PW-2 :- Amina Bibi
- PW-3 :- Dr. T.K. Bhowmik (M.O)
- PW-4 :- Gulzar Ali
- PW-5 :- Golap Ali
- PW-6 :- Ajit Bhattacharjee (I.O)
- PW-7 :- Hara Prasad Choudhury (Interpreter)

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

- Ext-1 :- Medical Report
- Ext-2 :- Medical Report
- Ext-3 :- Pathology Report
- Ext-4 :- F.I.R
- Ext-5 :- 164 Cr.P.C. statement of Kohinoor Bibi
- Ext-6 :- 164 Cr.P.C. statement of Gulzar Ali
- Ext-7 :- Sketch-map
- Ext-8 :- Charge sheet

10. **PW-1**, Kohinoor Bibi is the complainant of this case and she knows the accused. Her evidence is that victim Jerifa Bibi is her daughter who is deaf and dumb. On the date of occurrence, she remained absent at her house for some time but on returning home she found that the accused was committing rape on her daughter. She closed the door from inside and raised hue and cry. The neighbouring people came and apprehended the accused and tied him up. In the evening a bichar was held in the village. But, the accused escaped from her house. Next day, she filed ejahar in the police station. She made statement before Magistrate and police. The victim was also medically examined.

11. **PW-2**, Ms. Amina Bibi in her evidence stated that the complainant is relative. She also knows the accused. Jerifa is the daughter of the complainant and she is deaf and dumb. She stated that at the time of occurrence she was working in her house. On hearing hullah of complainant, she rushed to the place of occurrence and saw that accused and Jerifa were inside a room and

complainant raised hue and cry. Accused committed rape on the daughter of the complainant. Neighbouring people came and detained him for bichar but he fled away. So, no bichar could be held.

12. **PW-3**, Dr. T.K. Bhowmik is the M.O. He stated that on 4.05.09 while he was working at Dhubri Civil Hospital as SDM & HO, on that date at about 11.30 am he examined Jerifa Bibi, C/o Hamid Khan, D/o. Faizal Ali on police requisition vide Gauripur PS case no. 118/09 and I found the following:-

Height-140 cm; Weight-36 kg; Teeth-28 nos. 14 in upper 14 and in lower 14; Secondary sex character:- breast-well developed; Any injury mark- Nil; Axillary and Pubic hair-well developed. Examination of the vulva and vagina-nil; mark of violence found nil Vaginal smear for microscopic examination-No spermatozoa is seen in the smear supplied. The radiological age of the victim girl was above 18 years.

Final opinion:-

- (i) The radiological age of the victim girl above 18 years;
- (ii) On opinion could be made whether she was raped or not;
- (iii) Mark of violence-nil

Ext.1 is the medical report and Ext-1(1) is my signature; Ext.2 is the x-ray report with plate; Ext.3 is the pathological report.

13. **PW-4**, Gulzar Ali in his evidence stated that he knows the complainant and she is the wife of his younger brother and victim girl is the daughter of the complainant. He also stated that he knows the accused. The occurrence took place about 2/2½ years ago. Jerifa is dumb and deaf. On the date of occurrence, he was working in his house and suddenly he heard alarms raised by the complainant and he rushed to the house of the complainant and the complainant was raising hue and cry holding the door of the house and in the inside of the house there were accused with Jerifa and the complainant reported to him that the accused was found having sexual-intercourse with her daughter-Jerifa. Thereafter, he entering into the room caught the accused and he tied him as he tried to flee away but he managed to catch and tie him up. Thereafter, mother-in-law of the accused along with her sister and the wife of the accused came and asked him to release the accused. But, he denied and they called a village Bichar in the evening. In the evening a Bichar was held and as per the decision the

accused was released. In the Bichar the accused was penalized imposing fine and he didn't pay the fine. Thereafter, the case was filed. After filing of the case his statement was recorded in the court and he put his thumb impression in the statement.

14. **PW-5**, Golap Ali in his evidence stated that he knows the complainant and her daughter Ms. Jerifa. He also knows the accused. The daughter of the complainant-Jerifa is a dumb and deaf. One day the complainant was out of her house and on arriving in her house, she raised hue and cry and on hearing hue and cry he alongwith others rushed to her. Ongoing to the house of the complainant he found that she holding with Jerifa. Thereafter, Guljar also went there with us and he catching the accused tied him up. Thereafter, in the evening a Bichar was held in the house of the complainant and in the Bichar the accused was penalized by imposing fine and in the Bichar Bonik Pathak was the president and the accused side took a date for payment of the fine. But, subsequently the accused didn't make the payment of the fine. Thereafter, the case was filed by the complainant.

15. **PW-6**, Ajit Bhattacharjee in his evidence stated that on 15.04.09, he was posted at Gauripur P.S. as S.I of Assam Police. On that date one Kohinoor Bibi lodged an FIR and it was registered as Gauripur P.S case no. 118/09 U/s. 342/376 IPC and FIR was received vide GD entry no. 709 dated 15.04.09 and the case was endorsed to him for investigation. During investigation, he visited the place of occurrence, examined the witnesses. Victim was medically examined. As the victim is deaf and dumb, so her statement could not be recorded. However, the mother of victim and one Guljar Ali were sent for recording their statements U/s. 164 Cr.P.C. in addition to their statements U/s. 161 Cr.P.C. and recorded their statement U/s. 164 Cr.P.C. in court. He arrested the accused. He did not submit any prayer nor took any steps for recording the statement of the victim girl by any expert from the Deaf and Dumb School, Kahilipara, Guwahati. He submitted the charge sheet of the case. Ext.-1, Ext.-2 and Ext.-3 are medical reports, Ext.-4 is the FIR, Ext.-5 and Ext.-6 are the 164 Cr.P.C. statements of the witnesses. Ext.-7 is the sketch map and Ext.-7(1) is his signature. Ext.-8 is the charge sheet and Ext.-8(1) is his signature.

16. **PW-7**, Hara Prasad Choudhury is the interpreter who was examined for

interpretation of the sign and gesture of victim Jerifa who is deaf and dumb. PW-7, Hara Prasad Choudhury the expert questioned the victim and according to the expert victim could understand his sign and gesture. Accordingly the expert questioned the victim with sign and gesture and victim also replied to his questions and as interpreted by PW-7 her statements were recorded. The statement is as follows:-

"I know the accused. Complainant is my mother. My house at a little distance from the house of the accused. The accused did not visit my house; nor the accused physically abused or has physically harassed with me. The interpreter also administered oath."

APPRECIATION OF EVIDENCE

17. In this case the complainant who is examined as PW-1, in the complaint and evidence alleged that on the date of occurrence at the relevant time, the accused entered into her house and committed rape on her daughter. PW-2, neighbour of PW-1 also stated that on hearing hullah she came to the house of PW-1 and found the accused person inside the room of PW-1. Both the witnesses also stated that the neighbouring people also came to the house of PW-1 and the accused was apprehended and detained in the house of PW-1.

18. PW-1 and PW-2 also stated that a bichar was to be held in the evening but the accused fled away. PW-4 and PW-5 stated that on hearing hullah they came to the P.O and found the accused inside the house of PW-1. They also stated that accused was detained and tied up. PW-4 stated that in the evening bichar was held and the accused was imposed fine but he did not pay the fine. PW-5 also spoke of bichar and imposition of fine.

19. On consideration of evidence of these four PWs, we find that PW-3 and PW-4 have made improvement in their version as regards holding of bichar.

20. Now, coming to evidence of the victim it is found that she has clearly stated that the accused neither visited her house nor abused her physically in any manner.

21. Moreover, the M.O, PW-3 on examination did not find any sign of rape on victim.

22. On close scrutiny of the fact-materials as well as the evidence on record we find that there are conflicting versions in the evidence of PWs which not only weakens the prosecution case but also, creates doubt over the prosecution case. The victim has not implicated the accused as to his involvement in the alleged offence. She being the prosecutrix and the star witness in this case, herself has given goodbye to prosecution allegation.

23. In view of what has been discussed above, I find that prosecution has failed to prove the charges U/s. 342/376 I.P.C against accused Sirajul Hoque beyond all reasonable doubt.

24. In view of the above, I find the accused not guilty. Accordingly, he is acquitted from the charges U/s. 342/376 I.P.C. Set him at liberty forthwith. Judgment is pronounced in open Court, the 31st day of May, 2017.

25. Given under my hand and seal of this court on this 31st day of May, 2017.

Dictated & Corrected by me

Addl. Sessions Judge,
Dhubri

(S. Das)
Addl. Sessions Judge
Dhubri

A P P E N D I X

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