

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, UDALGURI, ASSAM

P. R. Case No. 169 of 2020 U/s 457/354-A (1) IPC

State of Assam

-Vs-

Md. Saidur Islam

S/o- Md. Ainuddin Seikh

Vill.- Ranipukhuri

P.S.- Udalguri

Dist.- Udalguri, Assam **..... Accused Person.**

Present:- *Sri D. K. Kalita, A. J. S.*

Addl. Chief Judicial Magistrate,

Udalguri, Assam

Appearance:

For the State : Mr. J. Daimari, Asst. P.P.

For the Defence : Mr. J. Ahmed, Adv.

Dates of Evidence : 03.11.21, 23.11.21

Date of Argument : 13.12.21

Date of Judgment : 13.12.21

J U D G M E N T

1. Prosecution case, in brief, is that on 17.04.20, one Md. Musaraf Ali lodged an ejahar with the In-Charge, Sapmari Out Post under Udalguri P.S. alleging inter-alia

that on 14.04.2020, at about 12.00-1.00 A.M., when his daughter Sanowara Khatoon was sleeping at his house, the accused entered into his house by pushing bamboo door and attempted to rape his daughter against her will. When his daughter shouted, the informant and his family members woke up and on their arrival, the accused forcefully pulled away his daughter and confined at the house of the accused. On the following day, the local people decided to arrange their social marriage and the accused was also agreed to that. But the accused absconded telling that he would not marry the daughter of the informant.

2. On receipt the said ejahar, the In-Charge, Sapmari Out Post made Sapmari Out Post G.D. Entry No. 280 dated 17.04.2020 and forwarded the ejahar to the Officer-in-Charge, Udalguri P.S. for registering a case under proper sections of law. Upon forwarding of such ejahar, the Officer-in-Charge, Udalguri P.S. registered Udalguri P.S. Case No. 88/2020 under Sections 447/376/511/342/366 I.P.C. and same was investigated into. On completion of the investigation, the Investigating Officer submitted charge-sheet under Sections 457/354-A(1) I.P.C. against the accused.

3. On appearance before the court, necessary copies were furnished to the accused and on hearing both the sides, charges under Sections 457/354-A(1) I.P.C. were

framed against the accused and on being read over and explained the said charges, the accused pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution side examined only the informant and the victim and thereafter, prosecution evidence was closed. On closure of prosecution evidence, accused was examined u/S 313 Cr.P.C. wherein he took the plea of denial. Defence has not adduced any evidence.

5. I have heard arguments of the learned counsels for both the sides at length, gone through the case record and perused the evidence carefully.

POINTS FOR DETERMINATION ARE:

6. (i) *Whether the accused, on 14.04.2020, at 12.00-1.00 A.M., at Ranipukhuri under Udalguri P.S., committed house breaking by night entering into the dwelling house of the informant Musaraf Ali in order to committing offence of sexual harassment upon the daughter of the informant which is punishable with imprisonment and thereby committed an offence under Section 457 IPC?*

(ii) *Whether the accused, on the same day, time and place above, committed sexual harassment upon the daughter of the informant Musaraf Ali and thereby committed an offence punishable under Section 354-A(1) IPC?*

DISCUSSION, DECISION AND REASONS THEREON:

7. Before I going to decide the points for determination, let me briefly describe the evidence of the prosecution witnesses. *PW-1, Md. Musaraf Ali*, is the informant who has stated in his evidence that the incident took place in the year 2020 during 1st lock-down period at night. On the day of occurrence, at night, accused entered into the house wherein his daughter Sanowara Khatoon and Manjuwara Khatoon were sleeping. He entered into the room by pushing bamboo door. At that time, he heard noise coming from the house of his daughters. Then he went there and saw the accused sitting on the bed whereon his daughters were sleeping. When he asked the accused why he went there, then told that he went there without any reason. He has also stated that his elder brothers and other family members also went there. They also called the parents of the accused. When accused was asked repeatedly why he went to their house, he told that he loved his daughter Sanowara and he would marry her. That night he stayed at his house. On the following day, village people came to their house and meeting was held and it was decided that marriage of his daughter and the accused would take place at about 4.00 P.M. on that day. Then police from Sapmari O.P. went to their house as lock-down was going on. Then village people and the accused left their house. But accused did not come to their house

and took no heed to marry his daughter. After three-four days, police from Sapmari Out Post went and told that accused filed case against them. Then he also filed case against the accused. Ejahar has been exhibited as Ext.1 and his signature thereon as Ext.1(1). *In his cross-examination*, he has stated that they have settled the matter amicably in public meeting held at their village.

8. *PW-2, Mustt. Sanowara Begum*, is the victim who has stated in her evidence that on the day of occurrence, at night, accused went to their house and called her. She called her parents. Parents of the accused were also called. Then a meeting was held and accused told that he would marry her. But accused married another girl and she also married another person. *In her cross-examination*, she has stated that she has no grievance against the accused.

9. As regards the point for determination no. (ii), it is found from the evidence of the victim (PW-2) that on the day of occurrence, at night, the accused went to their house and called her. She has not stated anything about sexually harassing her by the accused. In absence of specific evidence as regards the sexual harassment alleged to be committed upon the victim by the accused, it cannot be held that the accused committed sexual harassment. Hence, I am of the considered opinion that the prosecution

has failed to prove the offence under Section 354-A(1) IPC against the accused.

10. As regards point for determination (i), it is found from the evidence of the informant (PW-1) that on the day of occurrence, at night, the accused entered into the house wherein his daughters were sleeping by pushing the bamboo door. But, victim has not stated that the accused entered into their house. She only stated that the accused went to their house and called her. Moreover, it has already been established that the accused has not committed the offence of sexual harassment upon the victim. Since the evidence of PW-1 has not been supported by PW-2 regarding house-breaking and accused has not committed the offence of sexual harassment, I am of the considered opinion that the prosecution has failed to prove the offence under Sec. 457 of the Indian Penal Code against the accused.

11. In view of the discussion made in the foregoing paragraphs, I am of the considered opinion that the prosecution has failed to bring home the charges against the accused and as such, the accused deserves acquittal.

ORDER

12. In view of the conclusion made above, I hold the accused not guilty of the offences under Sections 457/354-A(1) of the Indian Penal Code and hence, he is

acquitted of the said offences. Accused person is set at liberty forthwith.

13. The bail-bond of the accused person shall remain in force for a period of six months from the date of this order.

14. The judgment is delivered in the open Court in presence of the accused and his learned Counsel.

Given under my hand and the seal of this court on this 13th day of December, 2021.

(D. K. Kalita)

Addl. C.J.M., Udalguri

Dictated and corrected by me,

(D. K. Kalita)

Addl. C.J.M., Udalguri

APPENDIX

1. Prosecution Witnesses:

P.W.1- Md. Musaraf Ali

P.W.2- Mustt. Sanowara Khatoon

2. Prosecution Exhibit:

Ext.1- Ejahar

3. Court Witness: Nil

4. Defence Witness: Nil

5. Defence Exhibit: Nil

(D. K. Kalita)

Addl. C.J.M., Udalguri