

IN THE COURT OF THE SESSIONS JUDGE, UDALGURI**Sessions (II) Case No. 43/2021****U/447/354A/506/376/511 IPC****PRESENT : Sri M. Kalita,
Sessions Judge, Udalguri.****Charge framed on:-17.11.2021**

State of Assam

-Vs -

Suraj Toppo

.....Accused person.

Date of Recording Evidence on -20.12.2021

Date of Hearing Argument on -20.12.2021

Date of Delivering the Judgment on -20.12.2021

Appearance:

For the State-----Mr. A. Basumatary, Ld. P.P.

For the Accused-----Mr. B.Sarma, Ld. Advocate.

JUDGMENT

1. Brief fact of the prosecution case is that informant cum victim lodged the FIR alleging, inter-alia, that on 28.3.2020 at about 3 PM accused entered into her house and forcefully pulled her into the room by holding her hair from the Varanda. Then accused tried to commit rape on her. On being seen when her mother raised alarm Khristina Minj, who is her aunt, arrived there and then the accused fled away. So, the informant prayed for taking necessary action.

2. After receiving the FIR, O/C, Dimakuchi PS registered

the case being Dimakuchi P.S. case No.31/2020 U/S 447/376/511/506 and entrusted the case to SI Ritupal Saikia for investigation.

3. During the course of investigation, the Investigating Officer produced the victim before the Magistrate for recording her statement U/S 164 Cr.P.C. and recorded the statement of witnesses. The accused was arrested and he was remanded to the jail and on completion of investigation submitted the charge-sheet against the accused U/S 447/376/511/354A/506 IPC.

4. After appearance of accused, the learned court below committed the case by supplying the copies of all relevant documents to the accused. Thereafter, the case was taken up for trial by this court.

5. Considering the materials on record and the statement of witnesses and upon the hearing of learned counsels of both sides the charge was framed U/S 447/354A/506/376/511 IPC. Then the contents of charges were read over to the accused to which accused pleaded not guilty and claimed trial.

6. During the trial, the prosecution has examined the informant cum victim and the mother of the victim to bring home the case.

The learned P.P. has verbally submitted that in view of the evidence of the victim and the mother of the victim whose evidence is very much important for deciding the case

there is no chance for improving the prosecution case by examining the remaining PWs.

I have gone through the case record including the evidence of informant/victim and the mother of the victim.

So, considering the material on record, specifically the evidence of victim, I also find that there will be no fruitful result if remaining PWs are examined in view of evidence of victim. Hence the evidence is closed.

The examination of accused U/S 313 Cr.P.C. is dispensed with.

7. **Points for determination of the case:-**

Whether the accused attempted to commit rape on the victim after entering into her dwelling house and thereby outrage her modesty?

Discussion, Decision and reasons thereof:-

8. The record reveals that the prosecution has brought the allegation against the accused that the accused forcefully tried to commit rape on the victim.

9. On the other hand, the defence version is that no such occurrence took place as alleged. The FIR was lodged by the informant at the instigation of the villagers.

10. So, in view of the above position of the fact, I like to discuss the evidence of the PWs to decide whether the evidence of PWs are able to prove the charges leveled against the accused.

11. PW1 is the victim cum informant of the case. She has stated that she knew the accused who is her related maternal uncle. During the month of March in the last year accused came and make quarrel with her. The quarrel broke out on question of family matter. Being aggrieved on the conduct of accused she lodged the FIR at the instance of village people. Accused never tried to commit rape on her. Her statement was recorded by the Magistrate. What she had stated before the Magistrate was as dictated by the village people. Accused only gave one slap to her. Except that incident nothing was happened. The matter was subsequently settled between the parties amicably. No force was used by the accused nor was any attempt made by the accused for committing rape.

12. In the cross-examination, PW1 has reiterated the same fact as narrated in her examination in-chief.

13. PW2, Sunita Minj is the mother of the victim. She has deposed that accused is her brother. Nothing was happened as alleged in the FIR and the matter was subsequently amicably settled between them.

14. From the above discussion of evidence of PW1 and PW2, it is found that there is no any substantive evidence to show that the accused committed such crime. On the other hand, the victim has herself stated that she lodged the FIR at the instigation of village people. That apart, what she stated in her statement U/S 164 Cr.P.C. was also as per dictation of the village people. The fact stated by the victim

in her statement U/S 164 Cr.P.C. does not tally with her deposition.

15. So, in view of the above position of the fact, my view is that there is no material in the record to prove the ingredients of U/S 447/354A/506/376/511 IPC. There is no iota of evidence to show that the accused attempted to commit rape on the victim. Rather the victim lodged the FIR falsely at the instigation of village people.

16. For the reason stated above, my view is that accused is entitled to acquittal on benefit of doubt. The prosecution has failed to prove the ingredients of offence U/S 447/354A/506/376/511 IPC with the materials beyond reasonable doubt.

17. In the result, the case is decided on acquittal of accused.

ORDER

18. As the prosecution has failed to prove the case beyond reasonable doubt, so accused is acquitted and set at liberty.

19. The terms of bail bond of accused person is extended for a period of 6 (six) months from to-day as provided u/s 437(A) Cr.P.C.

20. Let a copy of the judgment be sent to the learned District Magistrate, Udalguri for his information as provided in section 365 Cr.P.C.

21. Let the case record be consigned to record room after completing the formalities.

22. Given under my hand and seal of this Court on this 20th day of December, 2021, at Udalguri.

Dictated & Corrected by me

(M.Kalita)

Special Judge, Udalguri.

(M.Kalita)

Special Judge, Udalguri.

APPENDIX

1. PROSECUTION WITNESSES :-

PW1 Divya Minj.

PW2 Sunita Minj.

2. PROSECUTION EXHIBITS :-

Ext.1 FIR

Ext.2

3. DEFENCE WITNESS:- NIL

(M.Kalita)

Sessions Judge, Udalguri.