

IN THE COURT OF THE SESSIONS JUDGE, UDALGURI**Sessions (II) Case No. 63/2021****U/S 354A/376/511 IPC****PRESENT : Sri M. Kalita,
Sessions Judge, Udalguri.****Charge framed on:-6.3.2021**

State of Assam

-Vs -

Debajit Baruah

.....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. T.Basumatary, Ld. Advocate.

JUDGMENT

1. Brief fact of the prosecution case is that informant Gagan barman lodged the FIR alleging, inter-alia, that on 3.10.2020 at about 12 O'clock midnight taking the advantage of absence of the informant accused entered into his house and tried to commit rape on his wife by gagging her mouth. When the wife of informant raised hue and cry the accused

fled away. So, the informant prayed for taking necessary action.

2. After receiving the FIR, O/C, Harisinga PS registered the case being Harisinga P.S. case No.65/2020 U/S 354A/376/511 IPC and started 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 354A/376/511 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 354A/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 and the victim to bring home the case. Recording of statement of accused U/S 313 Cr.P.C. has dispensed with. Defence case is total denial. No witness is examined by the defence.

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

Whether the accused tried to commit rape on the victim by outraging her modesty?

Discussion, Decision and reasons thereof:-

8. The record reveals that the prosecution has brought the allegation against the accused that the accused had tried to commit rape on the victim by outraging her modesty?

9. On the other hand, the defence version is that no such occurrence took place as alleged. The FIR was lodged by the informant only on suspicion.

10. So, in view of the above position of the fact, I like to discuss the evidence of the PW to decide whether the evidence of PW is able to prove the charge leveled against the accused.

11. PW1, Gogan Barman is the informant of the case. He has stated that he knew the accused as co-villagers. Victim is his wife. In the month of November, 2020, on one day while he was working at the paddy field his wife was staying at the residence alone. At that time accused came and made altercations with his wife and caught hold the hand of his wife. Except that nothing was happened. As reported by his wife he lodged the FIR. Now the matter has been resolved amicably. He has no grievance against the accused. He has proved the FIR as Ext.1.

12. In the cross-examination, PW1 has revealed that he did not witness the occurrence. On the basis of suspicion he lodged the FIR. He has no objection if accused is acquitted.

13. PW2 is the victim who has stated in her evidence that informant is her husband. She knew the accused, who is friend of her husband, as co-villagers. At the time of occurrence the accused came to her residence along with one other person. At the time of occurrence her husband was absent at the residence. As the accused made altercations with her so, her husband lodged the FIR. Her statement was recorded by Magistrate, but the fact stated in the statement is not true. At present she has no grievance against the accused.

14. During the cross-examination, the victim stated that though at the time of occurrence it was dark she could not identify the accused distinctly. FIR was lodged only on suspicion.

15. From the above discussion of evidence of informant and the victim, it is found that there is no any substantive evidence to show that the accused committed such crime. On the other hand, the informant himself stated that he lodged the FIR at the instigation of her wife and only on suspicion. That apart, the victim revealed that what she stated in her statement U/S 164 Cr.P.C. was also not true.

16. 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 354A/376/511 IPC. There is no iota of evidence to show that the accused tried to commit rape on the victim. Rather the husband of the victim lodged the FIR falsely at the instigation of his wife. That apart, the informant does not want to proceed with the case further.

17. 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 offences U/S 354A/376/511 IPC with the materials beyond reasonable doubt.

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

ORDER

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

20. 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.

21. 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.

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

23. 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 Gagon Barman.

PW2 Mukuta Barman

2. PROSECUTION EXHIBITS :-

Ext.1 FIR.

3. DEFENCE WITNESS:- NIL

(M.Kalita)

Sessions Judge, Udalguri.