

IN THE COURT OF THE SESSIONS JUDGE, UDALGURI**Sessions (II) Case No. 29/2021****U/S 344/506/376 IPC****PRESENT : Sri M. Kalita,
Sessions Judge, Udalguri.****Charge framed on:-13.11.2021**

State of Assam

-Vs -

Sibo Barik

.....Accused person.

Date of Recording Evidence on -17.11.2021.

Date of Hearing Argument on -23.12.2021

Date of Delivering the Judgment on -23.12.2021

Appearance:

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

For the Accused-----Mr. T.C. Boro, Ld. Advocate.

JUDGMENT

1. Brief fact of the prosecution case is that informant Siba Kandh lodged the FIR alleging, inter-alia, that on 15.7.2018 at about 6 PM accused forcefully taken away the sister of informant and confined her at his residence for 15 days with intent to take her to Delhi. On being searched with the help of local people and on being asked about the victim the accused decline about her. On 29.7.2018 the victim was rescued from the house of accused. The victim stated that the accused forcefully committed sexual intercourse with her

all those days of her confinement. So, the informant prayed for taking necessary action.

2. After receiving the FIR, O/C, Panery PS registered the case being Panery P.S. case No.61/2018 U/S 323/506/344/370(4)/511 IPC R/W Section 6 of POCSO Act and started investigation.

3. During the course of investigation, the Investigating Officer produced the victim before the Magistrate for recording her statement U/S 313 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 344/506/376 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 344/376/506 IPC. Then the contents of charge were read over to the accused to which accused pleaded not guilty and claimed trial.

6. During the trial, the prosecution has examined only the victim to bring home the case.

The learned P.P. has verbally submitted that in view of the evidence 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 victim.

Though the informant was summoned but he is found absent even after service of notice from the court.

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

Whether the accused committed rape on the victim after confinement her?

Discussion, Decision and reasons thereof:-

8. The record reveals that the prosecution has brought the allegation against the accused that the accused forcefully

restrained the victim and committed rape on the victim against her will?

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 PW to decide whether the evidence of PW is able to prove the charge leveled against the accused.

11. PW1 is the victim of the case. She has stated that the informant is her elder brother. She knew the accused as she had developed love affairs with the accused for which the village people could not tolerate such fact. Hence in the instigation of village people her brother lodged the FIR. The accused never induced her nor forcibly took her to his residence or made attempt to bring her to Delhi. She at her own will went to the residence of the accused. Accused never committed sexual intercourse with her. She was 18 years at that time. What she stated before the Magistrate U/S 164 Cr.P.C. was as per dictation of the village people. The fact stated in the statement is false.

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

13. From the above discussion of evidence of PW1, 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 her brother 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. The medical report of the victim also does not support the prosecution case. The medical report shows that the victim was 18-19 years at the time of occurrence.

14. 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 344/506/376 IPC. There is no iota of evidence to show that the accused committed rape on the victim. Rather the brother of the victim lodged the FIR falsely at the instigation of village people.

15. 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 344/506/376 IPC with the materials beyond reasonable doubt.

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

ORDER

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

18. 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.

19. 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.

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

21. Given under my hand and seal of this Court on this 23rd day of December, 2021, at Udalguri.

Dictated & Corrected by me

(M.Kalita)
Special Judge, Udalguri.

(M.Kalita)
Special Judge, Udalgui.

APPENDIX

1. PROSECUTION WITNESSES :-

PW1 Sarita Kohoro.

2. PROSECUTION EXHIBITS :-

NILL

3. DEFENCE WITNESS:- NIL

(M.Kalita)

Special Judge, Udalguri.