

CAUSE TITLE**Sessions Case No.38(NL)2018.**

Informant : 'X'

Accused : Md. Joynal Ali.

ADVOCATES :

For the State : Mr. Jagneswar Saikia, learned Public Prosecutor.

For the Defence : Mrs. M.D.G. Baruah, learned Advocate.

**IN THE COURT OF SESSIONS JUDGE : LAKHIMPUR :
AT NORTH LAKHIMPUR.**

P R E S E N T - S.P. Khaund, (MA Economics, LLB),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Sessions Case No.38(NL)2018.

GR Case No.204/ 2018.

State of Assam.

-versus-

Md. Joynal Ali.

Charges : Under Sections 376/ 506 IPC.

Dates of evidence. : 10.07.2018, 30.01.2019, 30.03.2019,
17.09.2019, 23.10.2019 and 24.02.2020.
Date of argument. : 05.02.2021 and 04.03.2021.
Date of Judgment. : 09.03.2021.

J U D G M E N T

1) The prosecution case unfolded from the F.I.R. is that on 23.01.2018, Joynal Ali @ Kalabug (hereinafter the accused person) had been forcefully committing penetrative sexual assault on the victim for five months. The accused had also been exercising threats in order to commit rape on her ceaselessly. Finally, the accused induced the victim into physical relationship with the promise to marry her. He also threatened the victim not

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to disclose about their relationship to her family members. When the victim realised that she was pregnant, she informed her mother about the incident. The accused brought tablets for her abortion on 19.01.2018. Finally, the victim lodged the ejahar, which was registered as Bihpuria P.S. Case No.41/2018 u/s 376/ 493/ 506 IPC.

2) The Investigating Officer (I.O. in short) embarked upon the investigation. He forwarded the victim for medical examination. He also forwarded her to the Magistrate, who recorded her statement u/s 164 of the Code of Criminal Procedure (CrPC in short). On finding a prima facie case, the I.O. submitted charge-sheet against the accused u/s 376/ 493/ 506 IPC.

3) On appearance of the accused person, copies were furnished and as this case is triable by the Sessions Judge, this case was committed to this court vide order dtd. 08.03.2018 passed by the learned Chief Judicial Magistrate, Lakhimpur, North Lakhimpur, in GR Case No.204/2018. Subsequently, the case was transferred to the court of the Asstt. Sessions Judge, Lakhimpur, for trial.

4) After hearing both the sides, a formal charge u/s 376/ 506 IPC was framed, read over and explained to the accused person, to which he pleaded not guilty and claimed to be tried.

5) To substantiate its stance, the prosecution adduced the evidence of 8 (eight) witnesses including the Medical Officer (M.O. in short) and the I.O. and exhibited various documents, while the defence cross-examined the witnesses to refute the charges. Statement of the accused was recorded u/s 313(1)(b) CrPC. The accused denied his complicity in an evasive manner. At

the final stage, this case was transferred from the court of Asstt. Sessions Judge, as Notification No.JDJ/93/2018-ESTT-JUDI-/5-A dtd. 24.05.2018 was circulated by the Hon'ble High Court.

6) I have heard arguments forwarded by the learned counsel of both the parties.

POINTS FOR DETERMINATION :

1. Whether five months prior to 23.01.2018 at Kachikata Bagain Grant, the accused committed rape on the victim 'X'?
2. Whether the accused at the same time and place, threatened the victim 'X' with dire consequences ?

DECISION THEREON AND THE REASONS FOR THE DECISION

7) The victim testified as PW.1 that the accused is from her village. About six months ago, in the month of January, 2018, during the absence of their family members, the accused came to her house and forcefully committed penetrative sexual assault and warned her not to disclose the matter to anyone. Thereafter, on two different occasions, the accused forcefully committed sexual assault on her when she was alone at home. The accused impregnated her and then, she informed the accused about her pregnancy, but he warned her not to disclose the matter to anyone. He even threatened to kill her. When she was carrying five months, she informed her mother about the incident, but the accused denied that he impregnated her when her mother confronted him. The accused then gave her some tablets and

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after taking the tablets, she took ill. Then, she informed the Gaonburah about the matter and lodged this case against the accused. She gave birth to a girl, who is about 1 ½ months at present. She lodged the ejahar, Ext.1, wherein Ext.1(1) is her signature. She also gave her statement before the Magistrate and Ext.2 is her statement and Ext.2(1) is her signature.

8) PW.1's mother, say-Y testified as PW.2 that the accused is her neighbour. She usually goes out for work as she is a daily rated labourer. Her other two sons work in Arunachal Pradesh. Her daughter X usually stays alone at home. About a year ago, she noticed that her daughter was pregnant and when confronted, her daughter informed her that she was six months pregnant. Her daughter also informed that during her absence, the accused Joyanal visited her and he used to have sexual intercourse with her daughter, which resulted in her pregnancy. Then, she confronted the accused, and the accused refused to marry her. He brought tablets for her daughter. She (PW.2) did not allow her daughter to consume the tablets provided by the accused and her daughter went to the Police Station and lodged this case against the accused. Her daughter was blessed with a baby girl.

9) It is clear from the evidence of PW.1 and PW.2 that the victim was in relationship with the accused and she continued with her physical relationship with the accused and she became pregnant. Her mother discovered that 'X' was pregnant, but the accused refused to marry her. PW.1's evidence is not substantiated by the evidence of PW.2 that the accused promised to marry her daughter and induced her with threats and coerced her into sexual relationship threatening to kill her. The evidence of PW.1 does not inspire confidence. Her evidence appears to be sketchy.

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It is not possible for a person to continuously coerce a victim and threaten her and then procure her consent to have sexual relationship. It is clear from the evidence of PW.1 and PW.2 that a case was lodged against the accused after he refused to marry the victim, and after he brought tablets for abortion. In her cross-examination, PW.2, however, admitted that she asked the accused to take her victim daughter for abortion to the hospital and the accused refused. The conduct of PW.1 and PW.2 does not at all inspire confidence.

10) Md. Mohibat Ali testified as PW.3 that the incident occurred about 18 months ago. He came to know that the informant (PW.1) lodged an ejahar against the accused. The informant is his neighbour and he came to know that the victim gave birth to a girl.

11) PW.3 did not did not testify against the accused. His evidence does not implicate that the accused impregnated PW.1. Similarly, the evidence of PW.4, Md. Akbar Ali also does not implicate that the accused committed rape on the victim. He testified that the victim 'X' was the mother of a girl child. About three months before birth of the child, he came to know that the accused impregnated 'X'. Then, he tried to settle the matter in the village. But, the matter could not be settled and so his cousin, 'X' lodged the case. It can be safely held that the evidence of PW.4 also does not implicate that the accused committed rape on the victim 'X'. There is no denial that the accused impregnated the victim 'X', but the evidence of the witnesses does not prove that the accused committed rape on the victim by committing sexual assault forcefully against the victim's will and without her consent. There is no evidence of misconception of facts or

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cheating. The victim appears to be a consenting party and she was a major at the time of the incident.

12) The Medical Officer, Dr. Maichona Bailung testified as PW.7 that according to the X-Ray Report, the age of the victim was above 18 years.

13) The evidence of other witnesses also does not implicate that the accused committed rape on the victim.

14) Md. Akbar Ali testified as PW.5 that 'X' is his sister-in-law, who lodged this case against the accused with allegations that the accused impregnated her.

15) In a similar manner, Gulapi Begum testified as PW.6 that 'X' is her sister. About a year ago, she noticed that 'X' was pregnant, and then, she confronted 'X' and then, 'X' replied that the accused impregnated her. Then, she asked 'X' why she did not disclose about the incident before her pregnancy was detected, and 'X' told her that the accused used to visit her and used to indulge in sexual intercourse with promises of marrying her. She advised 'X' to go to the accused, but the accused denied that he had sexual intercourse with 'X'. Thus, the evidence of PW.6 does not inspire confidence. PW.6's evidence belies the testimony of PW.1 and PW.2.

16) Truth will always surface. Due to the contradictions writ at large, it can be held that the victim was a consenting party. She testified that the accused threatened her not to divulge about the incident to anyone, but on the contrary, her sister testified as PW.6 that the accused promised her sister 'X' that he would

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marry her and then he used to visit her and have sexual intercourse with her sister 'X'. The accused, thus, gets the benefit of doubt. It can be safely held that the prosecution has failed to prove that the accused threatened the victim and criminally intimidated her with dire consequences and with such threats, he committed rape on her by forcefully assaulting her sexually.

17) Dr. Maichana Bailung testified as PW.7 that on 24.01.2018, she was posted at North Lakhimpur Civil Hospital as M & H.O. On that day, at about 12.45 pm, she examined 'X' and found that there were no external injuries on the body or private parts of the victim. The M.O. opined that there were no signs of rape or injury on the private parts of the victim. According to the X-Ray Report, the age of the victim 'X' was above 18 years and she was carrying 20 weeks pregnancy. Ext.2 is the Medico Legal Report, wherein Ext.2(1) is her signature.

18) The I.O. is a formal witness. He testified as PW.8 that on 23.01.2018, while serving as the Officer-in-charge (Acting) at Bihpuria P.S., he received the ejahar from 'X' and registered a Bihpuria P.S. Case No.4/2018 u/s 376/ 493/ 506 IPC, and embarked upon the investigation. He recorded the statements of the witnesses, who came to the Police Station. He went to the place of occurrence and prepared sketch map, Ext.4, wherein Ext.4(1) is his signature. He forwarded the victim to the Magistrate, who recorded her statement u/s 164 CrPC. He also forwarded the victim for medical examination. He arrested the accused and forwarded him to the court. Later, he collected the Medico Legal Report and on finding prima facie case, submitted charge-sheet against the accused u/s 376/ 493/ 506 IPC. Ext.5 is the charge-sheet, wherein Ext.5(1) is his signature.

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19) Recapitulating the entire evidence, it is held that the prosecution has failed to prove beyond a reasonable doubt that the accused is complicit. The evidence of PW.1 and PW.2 is contradictory to the evidence of PW.6. The evidence of PW.6 belies the evidence of PW.1 and PW.2. It is held that the victim was a major at the time of the incident. There is no evidence that the accused cheated the victim and induced her to have sexual relationship with him with a false promise of marriage.

20) The prosecution failed to prove beyond a reasonable doubt that the accused threatened the victim and criminally intimidated her. The prosecution also failed to prove beyond a reasonable doubt that the accused committed sexual assault on the victim by committing rape against her will and without her consent.

21) It is not possible for a person to continuously commit sexual assault on victim, in her own house. If the victim was terrified earlier, what made her so brave to come out with the truth at a later stage. The accused took no responsibility of his child. He impregnated the victim and left her unmarried. Unfortunately, due to the contradictions apparent in the evidence, the accused could not be brought to book.

22) The accused, Md. Joyal Ali is acquitted from the charges u/s 376 / 506 IPC on benefit of doubt, and is set at liberty forthwith.

23) The victim deserves compensation. She is fending for herself and her daughter without any source of income. She is an unwed mother. This case is recommended for compensation to be paid from 'Nirbhaya Fund'.

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24) Send a copy of this Judgment and to the Secretary, District Legal Services Authority, Lakhimpur, North Lakhimpur, for assessment of compensation to be paid to the victim from 'Nirbhaya Fund' or from the Assam Victim's Compensation Scheme.

Judgment is signed, sealed and delivered in the open Court on the 9th day of March, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

APPENDIX**SESSIONS CASE NO.38(NL)2018.****LIST OF WITNESSES FOR PROSECUTION :**

1. PW.1 - Victim/informant 'X'.
2. PW.2 - 'Y', the mother of the victim.
3. PW.3 - Md Mohibat Ali.
4. PW.4 - Md Akbar Ali, S/o Harimuj Ali.
5. PW.5 - Md Akbar Ali, S/o Sattar Ali.
6. PW.6 - Smt Gulapi Begum.
7. PW.7 - Dr Maichena Bailung, M.O.
8. PW.8 - Sri Kamaleswar Deka, I.O.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

- Ext.1 - F.I.R.
Ext.2 - Statement of the victim 'X' u/s 164 CrPC.
Ext.3 - Medico Legal Report.
Ext.4 - Sketch map.
Ext.5 - Charge-sheet.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Transcribed and typed by :

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