

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 36 of 2020**

Under section 366/376/417 of I.P.C  
(Arising out of G. R Case No. 3005 of 2018)

**State of Assam**

**-Vs-**

1. Md Nekibur Rahman @Mukibur

...Accused Person

**Present: Smti I. Barman,  
Sessions Judge,  
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah, Public Prosecutor

For the accused : Mr. S.E. Alam , Advocate.

Date of Argument : **06-02-2021**

Date of Judgment : **10-02-2021.**

**JUDGMENT**

**1.** The prosecution case as projected in the FIR , in brief is that the accused Md Nekibur Rahman @Mukibur in the pretext of having love affair with the victim 'X', used to visit her house and in absence of her mother/ informant (PW3), he used to take her here and there for

roaming. It is further alleged that the accused also maintained physical relation with the victim. Knowing about their relation, family members of the accused came to the informant's house and discussed to solemnise their marriage but after the family members left the house of the victim, the accused had taken the victim girl away. During search, the informant came to know that the accused had taken the victim girl to a person's house in Borghat. Later on, police recovered her therefrom.

**2.** On receipt of the ejahar from PW 3 the mother of the victim, the O/C Tezpur PS registered the case being Tezpur P.S. Case No. 1586/18 u/s 420/366/376 of the IPC and started investigation of the case. During investigation, the Investigating Officer recorded the statement of the witnesses including the informant, recovered the victim and on completion of investigation having found materials submitted chargesheet against the accused Nekibur Rahman @Mukibur u/s 366/376/420 of the IPC.

**3.** On appearance of the accused person, Learned Judicial Magistrate, 1<sup>st</sup> Class, Tezpur vide order dated 07-02-2020 furnishing copies of the documents as required under section 207 Cr.PC, committed the case to the court of Session, being the offences u/s 366/376 IPC exclusively triable by the court of Session.

**4.** Accordingly, on appearance of the accused person before the court and after hearing both parties, charge u/s 366/376/417 of the IPC was framed against the accused Nekibur Rahman @Mukibur and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

**5.** To substantiate the case, prosecution examined as many as five numbers of witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations leveled against him and examined none.

6. I have heard the argument of the learned counsel of both sides and also have gone through the evidence on record.

7. Points for decision -

*(i) Whether accused Nekibur Rahman @Mukibur on or prior to 3 months of 26-07-2018 at Borghat under Tezpur PS committed rape on the victim and thereby committed an offence punishable u/s 376 of the Indian Penal Code ?*

*(ii) Whether accused Nekibur Rahman @Mukibur dishonestly induced the victim to have physical relation with her promising to marry her and thereby committed an offence punishable u/s 417 of IPC ?*

*(iii) Whether accused Nekibur Rahman @Mukibur abducted the victim girl with intent that she might be compelled to marry him against her will or in order that she might be forced to illicit intercourse and thereby committed an offence punishable u/s 366 of IPC ?*

**Discussions, Decisions and reasons thereof :**

8. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.

9. **PW 1** Muktar Ali only heard that some incident occurred between the victim and a boy.

During cross, she stated that the victim girl got married three times and she is presently living with her third husband.

**10. PW 2,** Najma Saikia stated in her evidence that she heard from others that the victim girl who got married 3/4 times, again went to the company of someone.

**11.** The evidence of the victim's mother (**PW3**) is that the accused sometimes used to visit her house, hence, the villagers enquired the accused the reason of visiting her house. Thereafter, accused had taken her daughter to his uncle's house and then fled away. But after recovery, the victim said her nothing. She proved the FIR as Ext. 1.

During cross, she stated that her daughter first got married with one Asiqul Ali by court marriage but they did not live together. Thereafter, she entered into second marriage with Hannan Ali and one year ago she again got married with Sabik Ali of Dikraijan. She also deposed that police recovered her daughter from the house of her sister-in-law Aimon Nessa. She had not witnessed when her daughter left her house.

**12.** So far the evidence of the victim (**PW4**) is concerned, two years ago the accused often used to visit her house. One day the villagers caught hold of him and enquired him why he visited their house to which the accused replied that he had relation with her. Then the villagers sent the accused from the village and the family of the accused took her to the uncle's house of the accused and after some time they dropped her in her elder sister's house saying that they would take her back next day morning. Police recovered her from her elder sister's house. She proved her statement u/s 164 Cr.P.C. as Ext. 2.

During cross, she admitted that before Magistrate she mentioned her age as 20 years. She also confirmed that no court marriage took place between her and Asiqul Ali.

**13.** Co-villager Taslima Begum (**PW5**) testified that the victim girl got married 2/3 times. She heard that the victim girl went to her elder sister's house. She stated that the victim had a child through her second husband and after the incident she gave birth to a son through one another.

**14.** In the instant case admittedly the victim is a married major woman having a child at the time of incident. The victim's evidence around whose the entire case revolves reveals that accused often visited her house and one day villagers caught hold of him on suspicion and asked him the reason of visiting her house, to which he replied that he had relation with her. Hearing his reply, the villagers sent him away. Her evidence also disclosed that the family members of the accused took the victim to the uncle's house of the accused and after some time they dropped her in her elder sister's house saying that they would come next morning to take her wherefrom she was recovered by police. Victim's mother also admitted that police found the victim in the elder sister's house of the victim. The evidence of the victim clearly indicates that no part was played by the accused in taking the victim girl from her house. The accused had not taken her, rather after he was sent from village by the villagers, his family had taken her. Though in statement u/s 164 Cr.P.C. she stated that on 25.07.2018 at 10.00 pm accused had taken her to the house of his uncle promising to marry her but in deposition she stated another version. Further the evidence of the victim's mother (PW3) that the accused had taken her daughter to his uncle's house and then he fled away is not supported by the victim herself.

**15.** Further in statement u/s 164 Cr.P.C. the victim stated that the accused did have physical relation with her many times, but in evidence she or her mother remained silent in that respect. The evidence of PW 5 co-villager of the victim girl disclosed that the victim married three times before the incident and after the incident she again got married.

**16.** The evidence discussed above, it reveals that the victim herself negates the role of the accused in alleged abduction or rape. The victim herself made different version at different time recorded u/s 161 Cr.P.C., 164 Cr.P.C. as well as in deposition. The victim's mother also remained silent with regard to alleged rape or cheating on the victim by the accused. Furthermore, though the victim's mother testified that the accused had taken her daughter, but there is no evidence that the accused forced or threatened or induced the victim in any way to accompany him. Rather the evidence of the PWs indicates that the victim being a major one was a consenting party in the entire episode, if any. In the above, I find that the ingredients of offences under section 366/376/417 IPC is missing in the case and the accused can not be held guilty for the offences charged against him.

**17.** In the above, facts and circumstance of the case, I unhesitatingly hold that the prosecution failed to prove the guilt of the accused. Accordingly, accused Md Nekibur Rahman @Mukibur is acquitted from the charge u/s 366/376/417 IPC and set him at liberty forthwith. His bail bond shall extended till next six months in view of section 437 A of Cr.PC.

**18.** Send back the GR case to the learned committal court.

**19.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **10<sup>th</sup> day of February, 2021.**

(I.Barman)

Sessions Judge,  
Sonitpur, Tezpur.

SONITPUR DISTRICT JUDICIARY

**APPENDIX**

**Prosecution Witness**

- |    |                          |    |                       |
|----|--------------------------|----|-----------------------|
| 1. | Prosecution Witness No.1 | :- | Muktar Ali.           |
| 2. | Prosecution Witness No.2 | :- | Najma Saikia.         |
| 3. | Prosecution Witness No.3 | :  | Mother of the victim. |
| 4. | Prosecution Witness No.4 | :- | The Victim.           |

5. Prosecution Witness No.4 :- Taslima Begum.

**EXHIBITS.**

Exhibit 1 : F.I.R.

Exhibit 2 : Statament u/s 164 Cr.P.C.

**(I.Barman)**

**SESSIONS JUDGE,  
Sonitpur, Tezpur**