

**IN THE COURT OF THE SESSIONS JUDGE, SONITPUR
AT TEZPUR**

PRESENT : Sri B. Debnath
Sessions Judge
Sonitpur, Tezpur

SESSIONS CASE NO. 39 OF 2010

**Under Section 341 / 376 (1) of the IPC
(Arising out of G.R. Case No. 1430 of 2009)**

State of Assam

-Versus-

Md. Habibur RahmanAccused person..

[Committed by Smt. M. De, Sub-Divisional Judicial
Magistrate (Sadar), Tezpur, Sonitpur]

A P P E A R A N C E

For the State : Sri D. C. Borah
Public Prosecutor
Sonitpur District, Tezpur

For the Accused : Sri B. Borthakur,
Advocate.

Date of evidence : 21-11-2011, 29-11-2011

Date of Judgment : 29-11-2011

J U D G M E N T

The victim Smt. Hanufa Khatoon lodged an ejahar vide Ext - 1 before the O.C, Sootea Police Station alleging inter-alia that on 5-8-2009 at afternoon about 4 O'clock while she went to the field the accused person restrained her wrongfully and committed rape on her.

2. On receiving the written ejahar the Officer-In-Charge, Sootea Police Station registered Sootea P.S. Case No. 96 of 2009 under Section 376 of Indian Penal Code and after investigation charge sheet was submitted against the aforesaid accused person. The accused has been charge sheeted under Sections 376 of Indian Penal Code.

2. In course of process the case was committed and accordingly, I framed a formal charge against the accused person under Sections 341 / 376 (1) of the Indian Penal Code. The said charge was read over and explained to the accused person to which, the accused person pleaded not guilty rather he claimed to be tried.

3. During trial prosecution side examined 4 (four) witnesses including the victim and then the prosecution evidence was closed as per verbal prayer of the learned Public Prosecutor because no incriminating evidence has been adduced against the accused person. As there is no incriminating evidence against the accused person, examination of accused u/s 313 Cr.P.C. is dispensed with and I heard the accused person and both sides' learned counsel u/s 232 Cr.P.C.

4. The victim (PW-1) deposed that she went to the field along with her younger brother (PW-4). But the accused offered her to marry. That is why a quarrel took place between the accused person and herself. After returning to her house she informed the matter to her parents and she was asked to put a signature on a piece of paper and accordingly she put the signature vide Ext - 1(1). But in cross-examination she deposed clearly that what was written in the ejahar is not known to her. Of course the defence put the denial suggestion that there was no quarrel or the accused did not offer the victim to marry. To establish the aforesaid fact that the accused offered her to marry or even there was a quarrel it is the burden of the prosecution to establish both the material facts but the parents of the victim deposed nothing against the accused person because they are not at all material witnesses. Rather both the parents deposed that their daughter (victim) lodged the ejahar because there was a quarrel. As these are the hearsay evidence of the witnesses, so I have recorded the evidence of PW-4 who supposed to be eye witness of the incident. His name is Ajibur Hussain. The said witness deposed that there was a quarrel between the accused person and the victim but what was the issue regarding the quarrel was not disclosed even he specifically deposed that the accused did not touch the body of the victim. If these are the facts, in my considered view, the prosecution evidence is at not all incriminating towards the accused person to convict him in any punishable offence.

5. Hence, the accused Habibur Rahman is found not guilty and as such, he is acquitted of the charge under

Section 341 / 376 (1) of the Indian Penal Code setting him at liberty forthwith.

The bailor is discharged from the liability of the bail bond.

Given under my hand and seal of this Court on this 29th day of November, 2011.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Dictated and corrected by me
and every page bears my signature.

**(B. DEBNATH)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Transcribed and typed on dictation by me

(I. Goswami)
Stenographer

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