

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

PRESENT : Sri M. Kalita,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 95 OF 2010

GR Case No. 435 / 2007

Under Section 447/ 366/34 and 376 of Indian Penal Code

State of Assam **Complainant**

-Versus -

1.Md. Rafiqul Islam,
Son of Md. Abdul Hakin
Village- Breajan, Mansiri
PS – Tezpur.
Dist – Sonitpur, Assam **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Sri F. Haque,
Advocate

Date of evidence : **21- 05 – 2011, 21-11-11**
30- 04 - 2012, 19-07-12
& 21-08-12.

Date of Argument : **21– 09 – 2012**

Date of Judgment : **12– 10 – 2012.**

J U D G M E N T

1. Briefly, the prosecution case was that the informant Hatem Ali, a resident of village Kurkani under Tezpur Police Station, lodged the written ejahar against the accused Rafiqul Islam and one another on 18-03-07 before Borghat Police Out Post under Tezpur Police Station stating inter-alia that on 17-03-07 at about 8 p.m. the

accused persons committed criminal trespass into the residence of Chand Mia who is the father-in-law of the informant with some evil motive. Then the accused persons took away the daughter of Chand Mia, namely Miss Anowara Begum by gagging her mouth. She was taken to the bank of Jiaboroli river and committed sexual intercourse with her against her will. As the victim disappeared from the residence, so the family members of the father-in-law of the informant made search for tracing her. Then the victim was found lying near the bank of the river without wearing apparels. So, she was taken to her residence and on being asked the informant came to know about the occurrence. At the time of occurrence the victim also could identify both the accused persons. So, the informant prayed before the police for taking necessary action against the accused persons.

2. After receiving the aforesaid ejahar, the In-Charge of Borghat Police Out Post made a GD Entry on the basis of the ejahar forwarded the ejahar to O/C Tezpur Police Station for registering a case. The Incharge himself started to investigate the case. Accordingly, Officer-in-Charge of Tezpur PS registered a case bearing Tezpur Police Station Case No. 188 /2007. During the period of investigation, the Investigating Officer referred the victim for medical examination. And after completing the investigation, the Investigating Officer submitted the Charge sheet against the accused persons u/s 366-A/376/34 of IPC showing both the accused as absconders.

3. After appearance of the accused Rafiqul Islam, the learned Judicial Magistrate committed the case to the learned Sessions Judge, Sonitpur, Tezpur by filing the case against accused Ali Hussain due to his non-appearance

and after execution of P & A. Thereafter, the case was made over to this Court for trial. Considering the materials available on case record and relevant documents of case diary, the charge was framed against the accused namely, Md. Rafiqul Islam under Sections 447, 366 read with section 34 and 376 of IPC. Then the contents of charge was read over to the accused, to which he pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution has examined as many as 7 (seven) PWs including the Medical Officer and victim to bring home the case. Then the accused has been examined u/s 313 CrPC, wherein he has denied the prosecution case totally. No witness has been examined by defence. And after the close of trial, judgment is delivered.

5. **Points for determination of the case:**

Whether the accused in furtherance of his common intention with other persons kidnapped (abducted) the victim in order that she may be forced or seduced to illicit intercourse with accused by committing criminal trespass into the residence of the victim at the time of occurrence ?

Whether the accused committed rape on the victim at the time of occurrence ?

Discussion, Decision and reasons for Decision:-

6. The prosecution story is that the accused persons committed criminal trespass by entering into the residence of victim at the time of occurrence. They entered into the residence for taking away the victim and

accordingly, the accused along with the other accused forcibly took away the victim by gagging her mouth and also by showing the dagger. Thereafter, the accused committed rape on her near the bank of Jiabhoroli river and she was left by the accused by removing her wearing clothes. Thereafter the victim was found lying near the bank of the river. Then she was brought back the residence.

Now, I like to discuss the evidence of PWs to decide – whether the said prosecution story has been adequately corroborated by the PWs or not ?

7. PW 1 Md. Hatem Ali is the brother-in-law of the victim. He has deposed that on the date of occurrence at about 8 p.m. accused persons forcibly took away her sister-in-law at the time of absence of her father in the residence and she was raped by the accused near the bank of the river. And after getting the information, the PW 1 rushed to the residence of his father-in-law and he came to know about the occurrence from the victim and victim narrated before him that the accused at first took her away to the bank of the river. After getting a glass of water from her then accused committed rape on her by gagging her mouth. Though the village Panchayat tried to settle the matter for 2 days but the Village Panchayat could not settle the matter. So, he lodged the FIR against the accused and he has proved the FIR as Ext.1 He has further stated that at the time of occurrence, the age of the victim was 13 years.

In the cross-examination, PW 1 has stated that his residence was away for a distance of 6 km from the residence of his father-in-law. He did not witness the occurrence. At first he was informed by his brother-in-law

though the occurrence took place on 16-03-07 but he lodged the FIR on 18-03-07 i.e. after two days.

8. PW 2 is the father of the victim. He has deposed that at the time of occurrence he was not at the residence. He was at Napam Centre. After his arrival at his residence he did not ask the victim about the occurrence.

In the cross-examination, PW 2 has admitted that at the time of occurrence the victim had already left the school.

9. PW 3, the victim has deposed that on the date of occurrence at about 8 p.m. while she was staying at her residence and was reading then other accused Ali Hussain came and sought a glass water from her. Then the victim gave a glass of water to Ali Hussain. Then Ali Hussain gagged her mouth by showing dagger and accused Rafiquil Islam took her forcibly to the bank of the river Jiabhoroli. Then she was laid on the earth and the accused committed rape forcibly on her by removing her cloth. Though she tried to save herself but she could not come out from the hands of the accused. At that time her mother arrived at the place by searching her so accused fled away by leaving her there. Then she was taken to the residence of accused Rafiquil Islam by her mother but father of the victim denied the allegation of her mother against the accused. Then immediately her brother-in-law arrived at their residence and she narrated before him about the occurrence and her brother-in-law lodged the FIR. She also produced her clothes before the police. Police also seized the said clothes. She also signed in the seizurelist as witness and she has proved the seizurelist Ext.2. She has proved the Payjama as material Ext. 1 and Churiddar as Material Ext.2 and Panty as Material Ext.3. She was also

referred to the hospital by police. She also gave statement before the magistrate and she has proved the said statement as Ext.3. The victim has further admitted that Ali Hussain did not commit any act. He only assist the other accused Rafiqul Islam to bring her to the bank of river by showing the dagger.

In the cross-examination, the victim has stated that accused had loved her before the occurrence and during the pendency of the case she got married with the accused in the court by executing the agreement through the Notary. At first she narrated the occurrence before her mother and brother-in-law. At first she was called by one person namely – Ali Hussain. On the next day of the occurrence her brother-in-law was called in her residence. Her wearing apparels were not torn at the time of occurrence. PW 3 has denied the fact that the case was filed against the accused falsely as accused refused to get her marry according to her willingness.

10. PW 4 Musstt. Saleha Khatoon, the mother of the victim has stated that at the time of occurrence while she was busy for preparing the food then accused Rafiqul Islam came to her residence along with other accused Ali Hussain and Rafiqul asked a glass of water from her daughter. At the time of occurrence her daughter was reading in Class VI. As her daughter did not gave water then accused Ali Hussain and Rafiqul left their residence. After few minutes the accused came again and took away her daughter. The victim brought to the bank of the river and the accused committed rape on the victim. Then, the victim was brought by her from the bank of the river and she was informed about the occurrence by the victim. After the occurrence though she brought the victim to the

residence of Rafiqul Islam but the family members of accused refused to accept her.

In the cross-examination, PW 4 has stated that at the time of occurrence, the age of his daughter was 23/24 years. She did not witness the occurrence and she was not directly informed by the victim. She desired to arrange the marriage of her daughter with the accused but the accused refused to get her merry so the FIR was lodged. After 4 days from the date of occurrence the FIR was lodged by her son-in-law.

11. PW 5 Abdul Monnash has stated that at the time of occurrence the victim was reading in Class VI and on the date of occurrence at about 7:30 p.m. he heard hue and cry from the residence of the victim. Then he went to the residence of victim and he came to know about the incident from the mother of the accused. Police seized some clothes in his presence and he signed on the seizurelist as witness. He has proved the seizurelist as Ext. 2.

In the cross-examination, PW 5 has admitted that he did not witness the occurrence. Though he was informed about the occurrence by the mother of the victim but he was not informed who had actually committed rape on the victim.

12. PW 6 Musstt. Jubeda Khatoon has stated that at the time of occurrence at about 6.30 p.m. he found the mother of the victim was searching for the victim and at that time, the other of the victim also informed her (PW 6) that accused Rafiqul and Alimuddin were keeping the victim in the bank of the river.

In the cross-examination, PW 6 has admitted that she had stated before the police that accused Ali

Hussain had brought the victim to the bank of the river as she desired to meet Rafiqul at that place.

13. PW 7, the Medical Officer has stated that on 29-03-07 he examined the victim in reference to Borghat Out Post GD Entry No. 327/07 dt. 18-03-07. On examination he did not find any sign or symptom of rape on her private part. Then he submitted the medical report and he has proved the medical certificate as Ext.2.

In the cross-examination, the Medical Officer has admitted that usually the injury occurs if rape is committed to a girl of 13/14 years.

14. So, from the above discussion of evidence of PWs, it is found that except the victim none of the PWs is the eye witness. The FIR was lodged by the brother-in-law of the victim though her father was alive at that time and the informant lodged the FIR after 2 days when the village Panchayat failed to decide the matter. The mother of the victim has clearly admitted that she tried to arrange the marriage between her daughter and accused. As the accused refused to get her married, so the case was filed against the accused.

15. On meticulous examination of evidence of victim, it is found that she stated in the evidence that the accused Ali Hussain gagging her mouth by showing dagger then accused Rafiqul took her forcibly to the bank of the river. Thereafter Rafiqul committed rape on her by removing her clothes and after arrival of her mother at the place she was left by the accused persons. She has further admitted that accused Ali Hussain only assisted accused Rafiqul Islam to bring her to the bank of the river. Except that act accused Ali Hussain did nothing. So, for better appreciation of evidence of PW 3, the victim, I deem it

necessary to scrutinize the fact stated in her statement recorded u/s. 164 Cr.P.C.

16. In the statement (Ext.3) the victim had stated that at first accused Hussain caught her hand and accused Rafiqul gagged her mouth. Then she was brought to the bank of river by Rafiqul. Rafiqul removed her clothes and committed rape on her by laying on the earth. At that time Ali Hussain threatened her by showing a dagger and the accused persons left her after hearing the voice of her mother. Then she was brought to her residence by her mother. As village people failed to settle the matter so the FIR was lodged before the Police Station. So, after appreciation of evidence of victim and also after scrutinizing the fact stated by the victim in her statement recorded u/s. 164 Cr.P.C., it is found that the victim has stated some new fact in her evidence because, the victim admitted in the evidence that accused Ali Hussain except assisting Rafiqul to bring her to the bank of the river, thereafter, Ali Hussain left the place. But in the statement she had stated that Ali Hussain was present and he threatened her by showing the dagger and at that time Rafiqul committed rape on her.

17. As there is no any eye witness of the occurrence so the evidence of PW 3, the victim is required to be scrutinized carefully. Because, she has narrated some fact in her evidence which was not stated earlier in her statement recorded u/s 164 Cr.P.C and after comparing the fact between the evidence and the facts stated by her in her statement, it is found that there is no similarity of fact. Rather, she has stated some new fact in her evidence of which her evidence is found not cogent and trustworthy. On the other hand, the victim has stated some new facts which was not stated by the informant in the FIR. In the FIR

it was alleged that both the accused persons were involved for committing crime but in the evidence the victim has stated that only accused Rafiqul Islam committed rape on her. So, such infirmities and contradictions appears in the evidence of victim has made the evidence doubtful. The another important fact which is required to be mentioned that the mother of the victim has admitted that he was not directly informed about the occurrence by the victim though she had tried to arrange the marriage between the victim and the accused Rafiqul Islam. But Rafiqul Islam refused to get her marriage so the case was filed against the accused. Such fact stated by the mother of the victim has also make the prosecution story doubtful.

18. The another important fact is that the victim has admitted in the evidence that during the pendency of the case, she get married with the accused by executing an agreement through the Notary. So, such fact stated by the victim has also raised a question of doubt regarding the reliability of the prosecution story. Moreover, the father of the victim has stated nothing against the accused. Further, he has admitted that he did not enquire the matter from her daughter. He also did not lodge the FIR though he arrived at the residence on the same day for which the evidence of PWs is not found cogent and trustworthy.

19. The sum and substance of the above discussion is that what is stated by the PWs is not found reliable. The infirmities and contradictions revealed by the PWs in their evidence has made the whole prosecution case doubtful. On the basis of such contradictory and doubtful evidence, the accused can not be held guilty for such a heinous offence u/s 366/376 of IPC.

20. So, from the foregoing discussion, it is found that the prosecution has failed to prove the ingredients of offence u/s 447, 366 read with section 34 of IPC and section 376 of IPC against the accused Rafiqul Islam with the material of beyond reasonable doubt for which, accused Rafiqul Islam is entitled to acquittal on benefit of doubt.

O R D E R

21. As the prosecution has failed to prove the case beyond all reasonable doubt against the accused person, so the accused is acquitted on benefit of doubt and set at liberty forthwith.

22. The bail bonds stand discharged immediately from the case.

23. The seized articles shall be returned to the victim in due course of time if it was not done earlier.

24. Given under my hand and seal of this Court on this day, the 12th day of October, 2012.

(M. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M. Kalita)
Assistant Sessions
Judge,
Sonitpur Tezpur

Dictation taken and
transcribed by me :

(R.Hazarika),
steno.

A P P E N D I X

Prosecution witnesses :

PW 1 : Md. Hatem Ali, informant,
 PW 2 : Md. Chan Mia,
 PW 3 : Victim,
 PW 4 : Musstt Saleha Khatoon.
 PW 5 : Md. Abdul Monnash,
 PW 6 : Musstt. Jubeda Khatoon,
 PW 7 : Dr. Bubul Saikia, M.O.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : Ejahar,
 Exhibit 2 : Seizurelist,
 Exhibit 3 : Statement u/s 164 Cr.P.C.
 Exhibit 4 : Report.

Material Exhibits: :

Material Ext. 1 : Payjama
 Material Ext.2 : Churiddar,
 Material Ext.3. : Panty.

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(M. Kalita)
 Assistant Sessions Judge,
 Sonitpur : Tezpur.