

**IN THE COURT OF SESSIONS
JUDGE::::BAKSA::::MUSHALPUR**

Present: Mr. A. Rahman, L.L.M, AJS, Sessions Judge

Date of Judgment- 31.03.2022

SESSIONS CASE NO. 297/18

u/s 447/376/354 IPC

Parties--

State of Assam

Represented by : Mr. R. Chetry, Learned
Public Prosecutor.

vs.

Dasiram Das

S/o- Lt. Bhabin Das

R/o- Natun Saderi

P.S- Mushalpur

Dist.-Baksa, Assam

---- Accused

Represented by : Mr. G.C. Nath, Learned
Advocate.

Date of offence : 20.04.2018.

Date of FIR : 28.04.2018.

Date of charge-sheet : 30.05.2018.

Date of framing charge : 04.07.2018.

Date of evidence : 14.08.2018, 07.03.2019,

17.06.2019, 23.12.2021.

Statement of accused

recorded on : 31.03.2022.

Argument heard on : 31.03.2022.

Judgment delivered on : 31.03.2022.

Accused details

Rank of accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Dasiram Das	29.04.2018	21.06.2018	u/s 447/37 6/354 IPC	Acquitted	N/A	Nil

JUDGMENT

1. Prosecution story in brief is that on 20.04.2018, at around 7.45 pm, accused Dasiram Das was hiding nearby house of the complainant cum victim woman Smt. X. When she came out from her house in response to a natural call, the accused having undressed himself grabbed her. Thereafter, he tried to commit rape on her by gagging her mouth and forcibly removed her wearing cloth. She somehow managed to escape

from the clutch of the accused by applying force and came to her house. She disclosed the entire occurrence to her husband as soon as he returned home. Although a village bichar was called upon by her husband, but the accused refused to obey the decision of village bichar. Hence, this case.

2. On the basis of written ejehar, the Officer-in-charge of Mushalpur P.S registered the case u/s 448/354B/376/511 IPC. During the course of investigation, police visited the place of occurrence, recorded the statement of the witnesses including the victim. The victim was also produced before the doctor for medical examination and her statement u/s 164 Cr.PC was also recorded. On completion of investigation, police laid charge-sheet against the accused u/s 448/354-B/376/511 IPC.

3. Complying the mandate of Section 207 Cr.PC, Ld. CJM committed the case to this court for trial. Accordingly, the instant sessions case was registered.

4. My Ld. Predecessor upon hearing both sides and considering the materials on case diary framed charges against the accused u/s 447/376/354 IPC. Charges so framed were read over and explained to

the accused to which he denied and claimed to be tried.

5. Prosecution in order to substantiate the charges examined altogether eight witnesses including the M/O and I/O.

6. On closure of the prosecution evidence, the accused was examined u/s 313 Cr.PC. The defence plea is of total denial. The accused declined to adduce defence evidence.

ARGUMENT

7. I have heard argument advanced by Mr. R. Chetry, Ld. P.P, Baksa as well as Mr. G.C. Nath, Ld Advocate for the accused.

8. Mr. R.Chetry Ld. PP has submitted that the prosecutrix who was examined as PW-1 has deposed corroborating the FIR. Moreover, her statement u/s 164 Cr.PC (Exbt.3) also corroborates her testimony before the court. She has explained the cause of delay in Exbt.1 FIR. Moreover, PW-2 who is the husband of PW-1 also corroborates her testimony that the accused on the fateful evening committed rape on her taking advantage of his

absence at his house. Mr. Chetry Ld. PP therefore submitted that the prosecution has been able to prove the case against the accused u/s 447/376/354 IPC.

9. Countering the above argument, Mr. G.C Nath Ld. Counsel for the defence, contended that the testimony of PW-1 is full of contradiction and does not inspire confidence to believe. Moreover, evidence of PW-1 and PW-2 are also contradictory. The case according to Mr. Nath was filed with false and concocted allegation against the accused. So, Mr. Nath argued that the prosecution has failed to prove the case against the accused beyond reasonable doubt.

10. I have considered the above rival submissions of Ld. Counsels of both sides and very thoroughly and minutely gone through the evidence on record. Now the point falling for determination is as follows:-

POINTS FOR DETERMINATION:

a) Whether accused on 20.04.2018 at around 7.45 pm at village- Pamelichupa committed criminal trespass by entering into the premises of the

complainant Smt. X with an intention to outrage her modesty and thereby committed offence u/s 447 IPC?

b) Whether the accused on the same date, time and place committed rape on Smt. X and as such liable to be punished u/s 376(1) IPC?

c) Whether the accused on the same date, time and place used criminal force upon Smt. X with an intent to outrage her modesty and thereby committed offence punishable u/s 354 IPC?

DISCUSSION, DECISION AND REASON

THEREOF:

11. Considering the allegations in the FIR and also the facts and circumstance of the case, all the said three points are being discussed together.

12. PW-1 Smt. X has proved that Exbt.1 FIR was lodged by her and Exbt.1(1) is her signature. The accused is her neighbour. On 20.04.2018 at around 7.30 pm, she went to latrine. At that time, the accused came and gagged her mouth and pulled her on the ground over a cloth. Thereafter, the

accused forcibly raped her. Then, she pushed away the accused and came running to her house. Her husband reported the occurrence to local public and gaonburah. Although, she called upon a local village bichar but the accused denied the allegations. She went to police station three days to lodge the FIR but could not do so as the Officer-in-charge was absent. Exbt.2 is her medical examination report. Exbt.2(2) is her signature. She also proved that her Exbt.3 statement was recorded by Ld. Magistrate.

13. PW-2 Mr. X (name withheld) is the husband of PW-1. He stated that on the relevant evening of occurrence at about 7.30 pm, he was not at home as he was at his workplace. When she returned home at 9 pm, his wife PW-1 reported him that the accused made himself naked and committed rape on his wife. On the same night, a local bichar was held with regard to the incident but no decision could be arrived. Subsequently, he lodged the FIR. PW-2 is a reported witness.

14. PW-3 Smt. Purnima Das is the mother-in-law of PW-1. She deposed that on the fateful evening of occurrence, she was not at home. After three days, when she returned home, PW-1 informed that accused came to their house and committed rape.

Thus, it appears that PW-3 is a reported witness.

15. During cross-examination, PW-3 has made it clear that PW-1 has three children.

16. PW-4 Miss Bana Das is a neighbour of accused as well as PW-1. He deposed that he heard accused committed rape on PW-1 for which a village bichar was held. Evidence of PW-4 is based on hearsay and does not help the prosecution in any way.

17. PW-5 Shri Achyut Chandra Das is a next door neighbour of PW-1. His evidence is that about one year back, the occurrence took place. PW-2 called a village meeting where PW-1 told the public that accused pulled her hand. Thus, PW-5 also does not support the prosecution case that the accused committed rape on PW-1.

18. Similarly PW-6 Paresh Das also deposed that a local bichar was held in connection with the incident between the accused and the victim. He heard accused pulled PW-1 forcibly during night. So, the evidence of PW-6 also does not support the prosecution allegation of rape on PW-1 by the accused.

19. In his cross-examination, he has clearly stated that he himself did not see the occurrence.

20. PW-7 Dr. Dipti Choudhury Senior M&HO, SMK Civil Hospital, Nalbari examined PW-1 on 02.05.2018 at 1.20 pm with reference to Mushalpur P.S Case NO. 39/18 u/s 448/354-B/376/511 IPC.

21. She recorded the history from PW-1 that there was a forcible intercourse upon her by one person. After the incident, she had intercourse with her husband four days later.

22. She has opined that there was no evidence of recent sexual intercourse/assault upon PW-1. PW-7 has proved that Exbt.2 is the medical examination report.

23. PW-8 Kandarpa Kr. Baruah is the Investigating Police Officer of this case. He has testified that on the basis of the ejehar lodged by PW-1, Inspector Pabitra Kalita, the then Officer-in-charge of Mushalpur P.S registered the case and the case was endorsed to him for investigation. He has given the details of investigation of the case and stated that on completion of investigation, he submitted charge-sheet. He has proved that Exbt.4 is the

sketch map of place of occurrence and Exbt.5 is the charge-sheet.

APPRECIATION

24. PW-1 during her cross-examination has very clearly stated that on the fateful day her husband PW-2 was present till 5pm and she had a quarrel with Pranita Das who is the wife of accused. Her husband was also present during night. Thus, it appears that at the time of alleged occurrence, PW-2 was very much present at his house. But, PW-2 he returned home on the fateful night at around 9 pm. Thus, there is serious contradiction in the deposition of PW-1 and PW-2.

25. It is also revealed from the cross-examination of PW-1 that Bana Das (PW-4) and her brother resided nearby her house. Any alarm raised by her could be heard by them. She also made it clear that on the relevant evening, her mother-in-law PW-3 was also residing in the same courtyard. Surprisingly enough, PW-1 stated that when the accused caught hold and laid her on the ground she did not make any alarm.

26. This statement of PW-1 makes her entire

testimony unbelievable. If the accused indeed, applied criminal force upon her in order to outrage her modesty, definitely she would have raised alarm and PW-3, PW-4 and other neighbouring persons would have heard the occurrence.

27. In Exbt.1 FIR, PW-1 stated that the accused tried to outrage her modesty. But in her statement before the court as well as in Exbt3, she stated that the accused committed rape on her. Thus, there is serious discrepancy in her statement before the court and her Exbt.1 FIR which renders her testimony unbelievable and unreliable.

28. Needless to say that in a case of rape, the sole version of the prosecutrix is sufficient to record conviction of the accused provided her testimony is wholly reliable, trustworthy, inspires confidence and does not suffer from any doubt.

29. It has been already observed that the testimony of PW-1 suffers from serious doubt and as such unbelievable.

30. The evidence of PW-2 and PW-3 who are merely reported witnesses, cannot be relied on in view of serious doubt on the veracity of testimony

of PW-1.

31. In the light of the above discussion, I find and hold that the prosecution has failed to prove the case against the accused person beyond reasonable doubt.

32. Accordingly, all the aforesaid three points are answered in the negative. The accused stands acquitted on benefit of doubt.

33. The bail bond is hereby extended for another six months in the spirit of Section 437-A Cr.PC.

34. Judgment is declared and delivered by reading out the operative part in the open court under my hand and seal of this court on this **31st** day of **March, 2022**.

Dictated and Corrected by:

Mr. A. Rahman
Sessions Judge,
Baksa, Mushalpur

Sessions Judge,
Baksa, Mushalpur

APPENDIX:
LIST OF PROSECUTION / DEFENCE / COURT
WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Smt. X (name withheld)	Victim and Eye-witness
PW2	Mr. X (name withheld)	Reported witness
PW3	Smt. Purnima Das	Reported witness
PW4	Miss Bana Das	Reported witness
PW5	Shri Achyut Chandra Das	Reported witness
PW6	Shri Pares Das	Reported witness
PW7	Dr. Dipti Choudhary	Medical Witness
PW8	Kandarpa Kr. Baruah	I/O

B. Defence witnesses:

NIL

C. Court witnesses:

NIL

LIST OF PROSECUTION/ DEFENCE/ COURT
EXHIBITS

A. Prosecution Exhibits:

Sl. No.	Exhibit Number	Description
1.	Exbt.1	FIR
2.	Exbt.2	Medical report
3.	Exbt.3	Statement of the victim
4.	Exbt.4	Sketch map
5.	Exbt.5	Charge-sheet

B. Defence Exhibits:

NIL

C. Court Exhibits:

NIL

D. Material Objects:

NIL

(Mr. A. Rahman)
Sessions Judge,
Baksa, Mushalpur