

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,
MORIGAON :::::::::: ASSAM.**
PRESENT : Ms. M. Hussain, AJS,
Asstt. Sessions Judge, Morigaon.

JUDGMENT IN SESSIONS CASE NO. 103/2019

U/S 328/376(1) IPC

[Arose out of G.R case no. 178/2018]

[Committed by learned JMFC, Morigaon]

State of Assam

- Vs -

Md. Abu Hanifa

S/O Md. Abdul Khaleque Master,

Village – Sapkati (near Jamme Maszid),

P.S. Laharighat,

District – Morigaon (Assam).

...Accused person.

APPEARANCE :

Advocate for the State : **Mr. N. A. Choudhury, Addl P.P.**

- And -

Advocate for the accused : **Mr. A. Kadir Amin.**

Date of framing charge : 28.11.2019.

Date of recording Evidence on : 09.01.2020.

Date of hearing Argument on : 09.01.2020.

Date of delivering the Judgment on : 10.01.2020.

JUDGMENT

FACTS & GENESIS OF TRIAL:

1. Prosecution case arose when informant-cum-victim filed a written ejahar stating inter-alia that on 17.1.2018 at about 11 a.m., she went to Nagaon and was on her way to return. While she was waiting for bus at Jaluguti then accused person addressed her as sister-in-law and picked her up in his private Indica car and gave her biscuits to eat. When victim consumed said biscuits she became senseless. Accused person had sexual intercourse with her and on 18.1.18 at about 5.00 a.m. left her nearby her husband's house. Hence, this case.

2. On the basis of said ejahar Laharighat police station registered the same being Laharighat P.S. Case No. 16/18, U/S 376 IPC and started investigation. On completion of investigation, the Investigating Officer submitted charge-sheet against accused person Md. Abu Hanifa **U/S 376(1)/328 IPC.**

3. The case being exclusively triable by Hon'ble Court of Sessions, was committed by learned JMFC, Morigaon after complying with the provision of Section-207 Cr.PC as per mandate of Section-209 Cr.P.C. Upon committal of the case, Hon'ble Sessions Judge, was pleased to make over the case to this Court for trial and disposal.

4. As per direction accused person Md. Abu Hanifa appeared before this Court.

5. Learned Addl. PP Mr. N.A. Choudhury opened up the case by describing the charge brought against the accused person and also stated by what evidence he proposed to prove the guilt. Heard both sides on point of charge. On consideration of materials placed, that is the case record, case diary etc, learned Court opined that there is ground for presuming that accused person committed offences **U/S 328/376(1) IPC.** Accordingly formal charges framed in writing. Charges explained to accused person, to which he pleaded not guilty and claimed for trial.

6. The prosecution during the course of trial, examined altogether 1 (one) witnesses including the victim. After closure of the prosecution evidence, at the instance of prosecution, the accused person was examined **U/S 313 Cr.PC.** The defence case is of total denial of the prosecution allegation. The accused person expressed reluctance to adduce defence evidence.

7. I have heard **Mr. N. A. Choudhury**, learned Addl. P.P. and **Mr. A. Kadir Amin**, learned counsel for the accused person. Also carefully perused the materials on record.

POINT FOR DETERMINATION :

- i. Whether accused person on 17.1.2018 at about 11.00 a.m. administered to informant cum victim certain stupefying thing or caused the same to be taken by victim with intent to cause hurt to her, or knowing it to be likely to cause hurt thereby, or with the intention to commit or facilitate the commission of the

offence of rape upon the said victim, and whether accused person thereby committed an offence punishable –

- U/S 328 IPC ?

- ii. Whether accused person on or about same day time and place, committed rape on victim and whether thereby committed an offence punishable–

- U/S 376(1) IPC ?

THE DECISION & THE REASONS THEREOF :

8. PW-1, Victim-cum-informant deposed that in the year 2018 on 18th January she went for treatment to Nagaon Foridul Nursing home. At that time her husband was working in Kerala. It was night time and when she returned it was already dark and she failed to find vehicle bound to her home. As accused person was known to her since before, she came to his residence along with him and after staying that night in his house in the next morning she returned home. She deposed that her family members asked her to file case against accused person so she filed this case. She endorsed her thumb impression on ejahar. Learned magistrate recorded her statement she endorsed her thumb impression. In cross examination she deposed that she accompanied accused person voluntarily. In the house of accused person even though she stayed for the night she did not sleep with him. She deposed that accused person did not commit rape on her, nor did he administer her any biscuit or stupefying substance which rendered her senseless at any point of time. Under pressure from her family members she filed this case against accused person and also deposed before learned magistrate incriminating him. Accused person is innocent. She pleaded ignorance about contents of her ejahar. As she did not return home and stayed in accused person's house for the night her family members got suspicious. His mother also resides with him.

9. The essential ingredients of the offence under sec. 328 IPC are as follows-
Accused administered poison –

- (a) With the intention of causing hurt.
(b) With knowledge that it is likely to cause hurt; and

(c) To facilitate the commission of an offence.

10. From bare perusal of Section-**376 IPC**, it appears that the offence of rape in its simplest terms is a ravishment of a woman without her consent, by force, fear or fraud. Rape is the offence when a man had carnal knowledge of a woman by force against her will.

11. It appears in her cross examination victim gave direct clean chit to accused person. She negated the entire prosecution allegation that accused person administered her stupefying substance and raped her. Even victim pleaded ignorance of the contents of ejahar. Victim is the kernel of prosecution story. I found no reason why she should not be believed. It appears there is total dearth of incriminating evidence as against accused person.

12. From the above discussion and the analysis of evidence on record goes on to show that prosecution has failed to prove the ingredients **U/S 376(1)/328 IPC** against the accused person beyond all reasonable doubt.

RESULT / O R D E R

The accused person Md. Abu Hanifa stands acquitted **U/S 328/376(1)** of IPC.

His bail bond stands extended to six months w.e.f today.

Let the record of G.R case no. 178/2018, be sent back along with a copy of this judgment and order.

Judgment pronounced in open Court and given under my hand and seal of this Court on 10th day of January, 2020, at Morigaon.

Typed to my dictation and corrected by me.

Asstt. Sessions Judge, Morigaon.

Asstt. Sessions Judge, Morigaon.

APPENDIX

1. The prosecution has examined the following witnesses :-

PW – 1 = is Informant-cum-victim (name with held).

2. The prosecution side Exhibits :

Nil.

3. Defence side has examined witness.

Nil.

4. Defence side Exhibits :

Nil.

5. Court witness & Exhibits.

Nil.

Asstt.Sessions Judge, Morigaon