

IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions Case No. 91/2018

Present : Mr. P. Das
Sessions Judge, Morigaon.

State of Assam

-VS-

Md. Wahidul Islam @ Wahiduj Jaman Accused

Date of Charge : 08.10.2018.

Date of Argument : 24.05.2019.

Date of Judgment : 17.06.2019.

Appearance for the Parties

Advocate for the State :- Mr. A. Kalam, Ld. P.P.

Advocate for the Accused :- Mr. A. Hannan, Ld. Advocate.

J U D G M E N T

1. The prosecution case in brief is that, since many days the accused Wahidul Islam @ Wahiduj Jaman S/o Md. Nur Jaman of village-Katah Guri, under Mikirbheta PS by giving promise to marry the sister of the informant committed sexual intercourse with her forcefully and on 07.07.2017, the accused was caught red handed while he was committing rape with his sister. On the basis of the ejahar Mikirbheta P.S. Case No. 248/2017 was registered under section 457/376 IPC and investigation started. After completion of investigation, charge sheet was filed against the accused Wahidul Islam @ Wahiduj Jaman u/s 457/376 IPC. Subsequently, vide order dated 08.10.2018 charge was framed against the said accused under section 376 IPC. The charge upon being denied led to commencement of the trial.

2. POINTS FOR DETERMINATION

Whether the accused Md. Wahidul Islam @ Wahiduj Jaman is guilty of committing an offence punishable u/s 376 IPC?

DISCUSSION, DECISION AND REASONS THEREOF

3. Heard learned public prosecutor for the State and the learned defence counsel Mr. A. Hannan for the accused person. Perused the relevant materials on record.
4. The accused is facing prosecution on the allegation that he committed sexual intercourse upon the sister of the informant with a false promise of marriage and thereby, he committed the offence of rape punishable u/s 376 of the IPC.
5. In this context the prosecutrix adducing evidence as PW-1 has stated that the informant was her elder brother and that the accused is presently her husband. She further stated that at the time of the incident she was aged about 20 years and she was having a love affair with the accused, which was not being accepted by the parents of the accused, though it was accepted by her parents. She also stated in her evidence that pursuant to such love affair, there was physical relationship between her and the accused. She stated that the accused had physical relationship with her with a promise of marriage, but later when he wanted to marry her, it was opposed by his parents and that subsequently the instant case was lodged. PW-1 has further deposed that subsequently she and the accused got married. In her cross examination by the learned defence, the prosecutrix has stated that the physical relationship between her and the accused prior to her marriage was with her consent; that the case was lodged by her family due to misunderstanding. She also stated in cross examination that presently, she and the accused are living together peacefully as husband and wife. The prosecutrix stated in her cross-examination that the accused did not commit any offence upon her and that the accused was innocent and that he should be acquitted.
6. From the aforesaid evidence of the prosecutrix, it is clear that she was a major at the time of the alleged incident. That, though there was physical relationship between her and the accused before their marriage with him, but the said relationship was stated to be with her consent. She also stated that after having physical

relationship with her with the promise of marriage, when the accused wanted to marry her, it was opposed by his parents.

7. From the aforesaid evidence of the prosecutrix on record, the ingredient of a false promise of marriage by the accused is not made out. Secondly, on the basis of this evidence, the ingredients of sexual intercourse upon the prosecutrix against her consent, amounting to rape, is also not made out.

8. Therefore, on the basis of the evidence on record, the charge of the accused having committed sexual intercourse upon the prosecutrix with a false promise of marriage, thereby amounting to rape punishable under section 376 of the IPC is not proved.

9. Consequently, the prosecution case fails due to lack of evidence and the accused is entitled to be acquitted.

ORDER

10. On the basis of the evidence and relevant materials on record of the case, the accused Md. Wahidul Islam @ Wahiduj Jaman stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.

11. His bail bonds and sureties stand discharged.

12. A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with Section 365 of the Cr.PC.

13. Given under my hand and seal on this the 17th day of June, 2019.

Dictated and corrected by me

(P. Das)
Sessions Judge Morigaon,

(P. Das)
Sessions Judge
Morigaon, Assam

APPENDIX

A. Prosecution witness

1. PW-1 :- Prosecutrix.

B. Defence witness : Nil.

B. Prosecution Exhibit :

1. Ext.1 :- The statement U/s 164 Cr.PC.

C. Defence witness : Nil.

D. Defence exhibits :- Nil.

(P Das)
Sessions Judge, Morigaon

Sessions Case No. 91/2018**17.06.2019:**

Accused Md. Wahidul Islam @ Wahiduj Jaman is present along with learned defence counsel.

The judgment, in separate sheet is ready and pronounced in the open court. On the basis of the relevant materials and evidence on record, the accused Md. Wahidul Islam @ Wahiduj Jaman stands acquitted. The accused, if in detention, shall be set at liberty forthwith, if not wanted in any other case.

His bail bonds and sureties stand discharged.

A copy of this judgment and order shall be sent to the learned District Magistrate Morigaon in compliance with section 365 Cr.P.C.

The instant case is disposed of on the aforesaid terms.

Sessions Judge
Morigaon, Assam