

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,  
MORIGAON :::::::::: ASSAM.**

**PRESENT : Ms. M. Hussain, AJS,**  
Asstt. Sessions Judge, Morigaon.

**JUDGMENT IN SESSIONS CASE NO. 160/2018**

**U/S 366/376 IPC**

[ Arose out of G.R. Case No. 1318/14]  
[ Committed by learned SDJM(S), Morigaon ]

**State of Assam**

**- Vs -**

**1. Md. Imdadul Islam @ Imradul**

S/O- Md. Nurul Islam

**2. Md. Mahidul Islam @ Maidul**

S/o- Md. Abdul Manash

Both are village of – Gunaibori, Belubori.

P.S. Moirabari

District – Morigaon (Assam).

...Accused persons.

**A P P E A R A N C E :**

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

- And -

Advocate for the accused : **Mr. U.C. Roy and Mr. A. B. Siddique**

Date of framing charge : 16.02.2019.

Date of recording Evidence on : 06.03.2019

Date of hearing Argument on : 06.03.2019.

Date of delivering the Judgment on : 08.03.2019.

**J U D G M E N T**

**FACTS & GENESIS OF TRIAL:**

**1.** Prosecution case set out in written ejahar filed by informant-cum-victim that on 22.6.2014 at about 10 a.m. accused person Abdul Rahman called victim over phone and took her to Guwahati. Victim came to know that he will sell her there. So, she escaped from there and called accused person Mahidul Islam over phone.

Accused person Mahidul Islam with assurance to bring home, took her to an unknown school and raped her at about 9.00 p.m. Hence, this case.

**2.** On the basis of said ejahar Laharighat P.S. registered the same as Laharighat P.S. Case No. 197/14 U/S 366A/372/34 IPC and started investigation. On completion of investigation, the I/O submitted charge-sheet against accused Md. Imdadul Islam @ Imradul, Md. Mahidul Islam @ Maidul and Abdul Rahman **U/S 366/376/34** of IPC, to stand up trial for said offence.

**3.** The case being exclusively triable by Hon'ble Court of Sessions, was committed by learned SDJM(S), Morigaon after complying with the provision of Section-207 Cr.PC as per mandate of Section-209 Cr.PC. as against accused persons namely Md. Imdadul Islam @ Imradul and Md. Mahidul Islam @ Maidul. 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 persons Md. Imdadul Islam @ Imradul and Md. Mahidul Islam @ Maidul appeared before this Court.

**5.** Learned Addl. PP Mr. N.A. Choudhury opened up the case by describing the charges brought against the accused person and also stated by what evidence they 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 persons Md. Imdadul Islam @ Imradul committed offences **U/S 366 IPC** and Md. Mahidul Islam @ Maidul committed offences **U/S 376 IPC**. Accordingly formal charges framed in writing. Charges explained to accused person, to which they pleaded not guilty and claimed for trial.

**6.** The prosecution during the course of trial, examined 3 (three) witness. After closure of the prosecution evidence, at the instance of prosecution, the accused persons have been examined U/S 313 Cr.PC. The defence case is of total denial of the prosecution allegation. The accused persons expressed reluctance to adduce defence evidence.

**7.** I have heard **Mr. N. A. Choudhury**, learned Addl. P.P. and **Mr. U.C. Roy** and **Mr. A. B. Siddique** learned counsel for the accused persons. Also carefully perused the materials on record.

**POINT FOR DETERMINATION :**

- i. Whether accused person Md. Imdadul Islam @ Imradul, on **22.06.2014** at about **10.00 a.m.** kidnapped or abducted the informant-cum-victim with intent that she may be compelled to marry with him or in order that she may be forced (seduced) to illicit intercourse or knowing it likely that she will be forced (seduced) to illicit intercourse. Whether accused person has thereby committed an offence punishable -

**U/S 366 IPC ?**

- ii. Whether accused person Md. Mahidul Islam kidnapping victim, committed rape on her and thereby committed an offence punishable -

**U/S 376 IPC ?**

**THE DECISION & THE REASONS THEREOF :**

**8. P.W-1,** Victim (name with held) deposed in her evidence that about 5 years ago she was in love with accused Imdadul. Accused person called her to Laharighat and she came but accused person did not come as per stipulation. But she met his friend Abdul Rahman who picked her to Guwahati but fled away. So, she returned to Jagiroad. She deposed that she called Mohidul and he picked her up from Jagiroad to her residence. She deposed that she in grudge filed this case. She identified Exhibit-1, her ejahar and Exhibit-1(1) her signature. She also identified Exhibit-2 her statement before learned magistrate and Exhibit-2(1), 2(2), her signatures. At that time she was about 18 years of age. In cross examination she deposed that ejahar was written by someone for her and she pleaded ignorance about its contents. She deposed that she accompanied both the accused persons to Guwahati and to Jagiroad willingly and that neither of the accused persons committed rape on her. She deposed before learned magistrate as per dictated of her family members she testified. Both the accused persons are innocent.

**9. P.W-2,** Abdul Khaleque deposed in his evidence that about 5/6 months ago he was absent at home. On my returning he failed to trace out his daughter. After 3 days victim was recovered. On asking victim did not reply to his questions. His cross examination was declined.

**10. P.W-3,** Jarina Khatun deposed in her evidence that she does not know any of the accused persons. About 2/3 years ago victim went out for sojourn and went back after 3 days. She kept mum, on asking, where she spent these three days. Her cross examination was declined.

**11.** Section – **366 IPC**, it appears that there are four essential ingredients to constitute the offence :-

- i) Accused must have kidnapped or abducted victim ;
- ii) She must be a woman ;
- iii) She must be induced or forced by the accused person to have illicit intercourse or to do any act, knowing it to be likely that she will be forced or seduced to illicit intercourse.
- iv) Inducement may be by criminal intimidation, abuse of authority or by other means ;

The word "inducement" even though not defined under the Code, it is the basic requirement of the law **U/S 366 IPC**. As per "Oxford Advanced Learner's Dictionary" the word 'induce' and 'inducement' means as under.

' Induce ' - to persuade or influence somebody to do something.

'Inducement ' - a thing that persuades somebody to do something.

As per literal meaning ' inducement ' is an act or process of enticing or persuading another person to take a certain course of action. Inducement may amount to bargain or allurement in given facts and circumstances.

**12.** 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.

**14.** It appears there are two different versions in testimonies of victim under oath, while deposing evidence and while deposing statement before magistrate. It appears per-se her evidence that her statement u/s 164 Cr.P.C. is not voluntary but tutored one. In cross examination victim deposed that accused persons did not

commit rape on her and she accompanied both the accused persons to Guwahati and to Jagiroad willingly. So, there is total absence of inducement by Imdadul Islam. The root cause of filing this case, as appears, is grudge, which is prevalent between parties inter-se. P.W-2 and P.W-3 did not support P.W-1. Be that, as it may, even if we consider entire evidence in case record, it appears prosecution failed to prove the offence u/s 376 IPC. Victim gave direct clean chit to accused persons. There is also total dearth of evidence u/s 366 IPC as against accused persons.

**15.** From the above discussion and the analysis of evidence on record it goes on to show that prosecution has failed to prove the case **U/S 366 IPC** against the accused person Imdadul Islam and u/s 376 IPC as against Mahidul Islam beyond all reasonable doubt.

**RESULT / O R D E R**

Accused person Md. Imdadul Islam @ Imradul stands acquitted **U/S 366 IPC** and Md. Mahidul Islam @ Maidul stands acquitted **U/S 376 IPC**.

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

Let the record of G.R.Case No. 1318/14, 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 08<sup>th</sup> day of March, 2019, at Morigaon.

Typed to my dictation and corrected by me.

Asstt. Sessions Judge, Morigaon.

Asstt. Sessions Judge, Morigaon.

Typed by : I. Majid  
Computer Typist

**APPENDIX**

1. The prosecution has examined the following witnesses :-  
  
PW – 1 = is victim (name with-held).  
PW – 2 = is Abdul Khaleque.  
PW – 3 = is Jarina Khatun.
  
2. The prosecution side Exhibits :  
  
Exhibit – 1 = is the Ejahar.  
Exhibit – 2 = is the statement of victim recorded U/S 164 Cr.PC.
  
3. Defence side has examined witness..  
  
Nil.
  
4. Defence side Exhibits :  
  
Nil.
  
5. Court witness & Exhibits.

Asstt. Sessions Judge, Morigaon