

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS, NALBARI**

**Case No. PRC 695/2018 u/s 448/354A/354B IPC**

**STATE**

**-Vs-**

**DIPEN HALOI**

**..... Accused**

Present:     *RUBINA YASMIN, A. J. S.*

Advocates appeared:

Mr Hem Chandra Sarma.....for the State.

Mr. Baharul Islam.....for the accused.

Date of prosecution evidence – 28.01.19, 12.02.19, 05.03.19, 26.03.19, 13.05.19

Date of argument – 16.07.19

Date of judgment – 23.07.19

**Judgment**

1. Shri Dimbeswar Haloi initiated the instant case by filing written "ejahar" before the O/C, Belsore P.S on 30.09.18. The Prosecution case in brief is that on 29.09.18 the informant's daughter Marami Haloi who is a physically disabled child was sleeping alone at home. The accused person taking the advantage of absence of anyone in the house entered the informant's house and undressed her underwear and touched her breast and asked the victim to touch his private part. In the mean time Moina Haloi saw them and informed the same to Pallabi Haloi who is the sister in law of the victim. This led to a hue and cry in the village and all the villagers gathered in their house. Hence the victim's father filed this ejahar.
2. On receipt of the "ejahar" police has registered the case as Belsore P.S. case No.

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213/18 u/s 448/354A/354B IPC and investigated the matter. On completion of investigation, police filed charge sheet against the accused person Dipen Haloi u/s 448/354A/354B IPC.

3. During trial, the accused person was allowed to go on bail. Relevant copies of the documents were furnished to the accused person u/s 207 CrPC. Upon perusal of materials on record and after hearing both sides, sufficient materials were found against the accused person u/s 448/354A/354B IPC and accordingly charges were framed. The contents of the offences were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of the case examined as many as 8 witnesses. Defence side did not examine any witness in support of their defence. The examination of the accused person u/s 313 was taken in which he denied all allegations levelled against them. Defence declined to adduce evidence on their behalf.

5. I have heard argument of both sides.

### **Points For Determination**

6. Upon hearing and perusal of the record, I have framed the following points for determination:

- I. Whether the accused person on 29.09.18 at Pipolibari under Belsore PS criminally trespassed into the house of informant and thereby committed an offence punishable under section 448 IPC?
- II. Whether the accused persons on same date, time and place committed offence of sexual harassment to the victim and thereby committed an offence punishable under section 354A IPC?
- III. Whether the accused persons on same date, time and place has assaulted or used criminal force to disrobe the victim or compel her to be naked and thereby committed an offence punishable under section 354B IPC?

### **Discussions, Decisions and Reasons Thereof**

1. I have carefully gone through the entire evidence on record and materials placed before me.

2. Pw 1 Dimbeswar Haloi deposed in his evidence that the on the date of occurrence at about 8 a.m. He went for his work. On that day at about 10 p.m. his son Bijit Haloi came to him and while crying asked him to go to home. When he went to his house he saw many

people gathered in his house. He saw his daughter Marami Haloi was crying. When he asked her she replied that accused Dipen Haloi entered her room and made her naked and undressed her panty and also touched her breast. He then called all the village people. The village headmen told him to compromise the matter but later suggested him to file the ejahar. Later he filed the ejahr. Ex 1 is ejahar. Ex 1 (1) is his signature.

3. During his cross examination he stated that he has 4 daughters and one son in his family. He stated that he and his brother's family stay together in the same campus. He stated that very often the accused person comes to his place. He stated that when he came to his house he saw Punama Haloi, Tukut @ Bina Das, Bimala Haloi, Prabhat Haloi in his house.

4. Pw 2 Bhanita Haloi @ Moina deposed in her evidence stated that on the date of occurrence she asked Marami to go to a shop and she went. Further she has no knowledge about the occurrence. Ld. App declared the witness as hostile and prayed to cross examine the said witness. During cross she denied the suggestion put forwarded by the prosecution side

5. During her cross examination by the defence side she stated that her house is near to Marami's house but she has not heard any hue and cry. He stated that she has not stated anything before the police.

6. Pw 3 Marami Haloi who is the victim deposed in her evidence that on the date of occurrence she was sleeping alone when Dipen Haloi came to their house. She stated that there was no one at her house. Dipen Haloi put off her panty and touched her breast and asked her to touch his private part. Then Moina Haloi saw them. She then informed the same to her sister in law. When other people came Dipen Haloi went away.

7. During her cross examination she stated that Palabi Haloi and near about 50 ladies gathered their place. She stated that on the date of occurrence she then went to shop with Moina. She has admitted that she stated before police that the women of her neighbourhood has actually tried to blemish her character by involving her with Dipen Haloi. She admitted that her father arranged for a village meeting and in that meeting her father asked Dipen to pay 2 lac or marry her and as he refused so her father filed the case. She also stated that Dipen frequently comes to their place. She has stated that Bhanita @ Moina has seen them together and that Moina has only blemished her character before the people. She further stated that she does not love Dipen Haloi. On the date of occurrence her uncle and aunty were present in house. They share the common campus. She also stated that she was not willing to file the ejahar so her father has filed. Her father took her to police station while filing the ejahar. She has not read the ejahar nor was she read over. She further stated

that her father has not asked her anything about the occurrence.

8. Pw 4 Pallabi Haloi deposed in her evidence that on the date of occurrence at about 10:30 a.m. Bhanita Haloi informed her that Dipen Haloi has put off Marami Haloi's panty. So she went to her house and saw Marami crying. When she asked her she replied that Dipen has put off her panty.

9. During her cross she stated that she is the siter in law of the victim and that they reside in the same campus. She stated that when Bhanita informed her Bijoya Haloi, Barnali Das and Manmati Haloi were present. She stated that 4 women went to Marami's house. She denied the suggestion put forwarded to her by the defence side.

10. Pw 5 Bijoya Haloi deposed in his evidence that Bhanita has informed her that she has seen Dipen entering Marami's room. When they went to Marami's house and asked her she told that Dipen came to her place and went away after drinking water.

11. During her cross examination she stated that when she acem to Marami's place already there were 30-40 people in her house. She has denied the suggestion put forwarded by the defence side.

12. Pw 6 Dr. Barnali Pathak deposed in her evidence that on 30.9.18 at around 4:35 p.m. he examined Marami Haloi. On examination he found genital organs well developed vulva healthy, hymen ruotured non tendered vagina admit two fingers and cervix healthy. No injury was found in her body. Results of laboratory investigation shows vaginal swap from microscopy examination that there was no sperm. No evidence was found of recent sexual intercourse. Ex 2 is injury report. Ex 2 (1) is her siganture.

13. During her cross she stated that as per column 13 (b) of ex 2 as she asked the victim she reported that she has been in sexual relationship with the accused since a year.

14. Pw 7 Bina Das deposed in her evidence that the occurrence took place in September 2018 at about 10:30 – 11 a.m. She stated that on that day she was in her relative's house when Palalbi Haloi called her and informed her that Dipen Haloi had entered the house of the victim and was found in compromising position with her. When she went to ask Marami she replied that Dipen Haloi had put off her panty and asked her to touch hs private part and Dipen touched her breast. She also told her that Dipen many a times had done the same to her.

15. During her cross she stated that Pallabi Haloi has informed her when she was near Marami's courtyard. When Pallabi informed her Barnali Das and many other people were present. She stated that she was in Po for 2 hours and that police has interrogated her in Marami's place itself. She ahs denied the suggestion put forwarded by the defence side.

16. Pw 7 ASI Bandhuram Baishya deposed in his evidence that on 30/09/18 an ejahar

was filed by Dimbeswar Haloi. The o/c registered the case and entrusted him with the task of investigation. He went to PO on 30.9.18 and prepared the sketch map and recorded the statement of the witnesses. He collected the medical report. On completion of investigation he submitted charge sheet against the accused persons u/s 448/354A/354B IPC. Ex 4 is the sketch map. Ex 4 (1) is his signature. Ex 5 is Charge sheet. Ex 5 (1) is his signature.

17. During his cross examination he stated that ejahar was filed after 24 hours of the occurrence. He recorded the statement of the witnesses on 30.9.18. He stated that He has recorded the statement of Bhanita Haloi. Pw pallabi Haloi has not stated before her that when she went to Marami's house Marami told her that Dipen Haloi had told him to put off her panty. Pw 5 Bijoya Das has not stated that Bhanita and Marami had told her about the occurrence. Pw 7 also not stated that Pallabi has informed her and then she went to Marami's house.

18. Now on going through the entire evidence on record the prosecution story in nutshell can be described as that the accused person criminally trespassed into the house of the informant and put off Marami Haloi's panty and touched her breast and also asked him to touch his private part.

19. Now in order to convict the accused u/s 354 B IPC the prosecution must establish that the accused person has assaulted or used criminal force to disrobe the victim or to compel her to be naked. On perusal of the entire evidence it is seen that no one was present in informant's house at the time of occurrence and that Bhanita @ Moina has seen the accused and Marami together. When the evidence of Bhanita @ Moina is seen it transpires that she was declared a hostile witness. Prosecution could not elicit anything by cross examining the said witness. Moreover, during her cross by defence she has stated that she has not heard anything. Moreover, on perusal of the evidence of Pw 3 that is the victim no amount of force used by accused is seen. She simply stated that the accused asked him to touch his private part and put off her panty. She has not uttered a single sentence which could indicate that she was forced to do so. Moreover on perusal of the injury report it is seen that victim herself has reported that she had been in sexual relationship with the accused person since a year. No amount of assault or criminal force used by accused could be indicated by the evidence of the victim. Further perusal of her evidence reveals that she was not even willing to file the case and it was her father who filed the case and that the ejahar was not read over to her. She further revealed that her father filed this case as Dipen refused to marry her or give her Rs 5 lacs.

20. Perusal of the evidence of M/o shows that there was no sexual intercourse and no injury was seen in body and that the victim changed the apparel and took her bath. Evidence

of M/o indicates that victim was in normal condition even after the occurrence as she changed her clothes and also took bath. Further she has herself admitted that she went to shop with Moina after the occurrence which seems to be quite abnormal for a girl who has been sexually harassed. Moreover she having sexual relationship with the accused since a year without having any other's knowledge and her behaviour after the occurrence indicates that there was no force or compulsion from the accused side. Further she herself admitted that the women tried to blemish her charecter by involving her with Dipen Haloi. This statement itself raises a doubt to the prosecution case.

21. Further on perusal of the evidence of other Pws many discrepancies have been found. Pw 4 Pallabi Haloi stated that she was told about the occurrence from Moina haloi whereas the latter denied to have any knowledge about the occurrence. Moreover whatever she has deposed in her chief that she went to Marami and aksed her and that the latter replied to her that dipen ahd put off her panty has not been stated by her during her 161 CrPc statement. Thus ommission of such statement, which is the base on which the prosecution case solely depends upon, amounts to contradiciton. Pw 5 Bijoya Haloi did not even utter any incriminating materials against accused Dipen Haloi.

22. Over and above Pw 7 who claims that Marami has told her about the occurrence, stated that she stayed in Marami's house for more than 2 hours on the date of occurrence and police recorded her statement on the same day. But ejahar was actually filed the next day after the occurrence that is on 30.09.18 and police came to PO on 30.09.18 itself. Moreover she did not state before I/o that she went to Marami's house to ask her about the occurrence. Therefore her statement becomes wholly unreliable. Also no iota of evidence found u/s 354A against the accused person.

23. It is an established law that the prosceution has the burden to prove the case and the evidence must be cogent and consistent with the charges levelled against the accused. However, minor contradiction can be ignored but the evidence led by the prosecution must be strong enough to outlast the relentless attack made by the defence side. Unfortunately in this instant case the prosecution evidence lacks that credibility and quality thereby giving rise to reasonable doubt to the prosecution case.

24. Therefore, the vital witnesses examined by prosecution side could not establish the guilt of the accused person beyond reasonable doubt. Accordingly, accused person Dipen Haloi is not held guilty of the offence punishable u/s 448/354A/354B IPC and accordingly, he is acquitted and set at liberty forthwith.

25. The bail bond furnished on behalf of the accused person shall remain in force for a further period of six months.

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Given under my hand and seal of this court on this 23<sup>rd</sup> day of July, 2019.

Rubina Yasmin  
J.M.F.C. Nalbari

### **APPENDIX**

#### **Prosecution witness:**

*PW 1 – Dimbeswar Haloi*  
*PW 2 – Bhanita Haloi*  
*PW 3 – Marami Haloi*  
*PW 4 – Pallabi Haloi*  
*PW 5 – Bijoya Haloi*  
*PW 6 – Dr. Barnali Pathak*  
*Pw 7 – Bina Das*  
*PW 8 – ASI Bandhuram Baishya*

#### **Defence witness:**

*Nil*

#### **Exhibits:**

*Ex 1 – Ejahar*  
*Ex 2 – Injury Report*  
*Ex 3 – Sketch map*  
*Ex 4 – Charge sheet*

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