

**IN THE COURT OF THE SESSION JUDGE, NALBARI**

Present: **Dr. M. Baruah, AJS**  
**Sessions Judge**  
**Nalbari**

**Sessions Case No. 4/21**

**u/s- 376/417 IPC**

(Committed by learned JMFC, Nalbari in PRC Case No. 253/2019 u/s 376/417 IPC)

**State of Assam**

-Vs-

**A-1. Md. Taizuddin Ali**

S/o- Javed Ali

R/o- Vill- No.2 Larkuchi,

PS- Mukalmua

Dist- Nalbari (Assam) .....Accused person

**Appearance:**

For prosecution : Mr. Dharendra Nath Barman,

For defence : Mr. Amir Uddin, Advocate

Date of offence : 19/11/2017

Date of FIR : 17/12/2017

Date of committal : 19/12/2020

Date of framing charge : 19/03/2021

Date of evidence : 28/10/2021, 11/05/2022,  
03/06/2022, 03/08/2022

Statement of accused

recorded on : 16/08/2022  
Date of argument : 02/09/2022  
Date of Judgment reserved : 02/09/2022  
Judgment delivered on : 16/09/2022

### Accused details

Rank of accused	Name of accused	Date of arrest	Date of released on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Taizuddin Ali			<u>u/s-</u> <u>376/417</u> <u>IPC</u>	Acquitted	NA	

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case in nutshell is that on 23/11/2017 prosecutrix lodged a complaint case before learned CJM, Nalbari inter alia citing that prosecutrix live with her mother at Larkuchi and her father stays at Sani road. Accused Taijuddin Ali promising to marry the prosecutrix and established physical relation with prosecutrix for about three months. On 19/11/2017 at about 7.30 pm accused came to prosecutrix's home and giving assurance that he will marry, the accused took her to his residence and spend night together in one room. On next day the family members of the accused driven out the prosecutrix from their home. Accused again took the prosecutrix to other place saying he will marry her and later on the accused fled away leaving the prosecutrix. One bichar was held on the said incident but accused was not present. Accused made false promise to marry the prosecutrix to which prosecutrix has suffered from mentally, physically and socially for which she lodged a complaint case.

### **Investigation**

2. On receipt of the complaint case, O/C Mukalmua PS registered Mukalmua PS Case No. 441/2017 u/s 376/417 IPC and endorsed SI Jugananda Boro to investigate the case. On completion of the investigation I/O of the case submitted charge-sheet against the accused Taizuddin u/s 376/417 IPC.

### **Committal**

3. On receipt of the charge-sheet learned trial court took cognizance of the case and issued process to the accused person. The offence u/s 376 IPC is exclusively triable at Hon'ble Sessions Court, hence the case is committed to the court of Sessions Judge, Nalbari.

### **Charge**

4. The accused person appeared before the court to face trial. After hearing Ld. PP and Ld. Defense counsel and on perusal of the prosecution documents, this court found prima facie materials of offence u/s 376/417 of IPC against the accused. Accordingly charge u/s 376/417 IPC are framed against the accused and its particulars are read over and explained to the accused person to which accused pleaded not guilty and claimed to be tried.

### **Trial**

5. In order to prove the prosecution charges against the accused person, prosecution adduced evidence of 4 numbers of witnesses. PW-1 Saijan Begum, PW-2 Prosecutrix, PW-3 Riaj Ali and PW-4 Makbul Hussain. After closure of the prosecution evidence, statement of the accused person recorded u/s- 313 Cr.P.C. Accused person's plea is of total denial and he declined to adduced evidence in support of their plea of denial.

6. **POINTS FOR DETERMINATION:**

(i) Whether the accused Taizuddin on 19/11/2017 at accused house at vill- Larkuchi under Mukalmua PS and committed rape upon prosecutrix and thereby committed an offence punishable under section 376 IPC?

(ii) Whether the accused Taizuddin since three months of lodging the ejahar on 19/11/2017 have been cheating prosecutrix to deliver her chastity by promising her to marry and thereby committed an offense punishable u/s 417 IPC?

**DISCUSSION, DECISION & REASON THERE OF:**

7. Learned defence counsel made submission that victim did not implicate accused person and her evidence does not bring any incriminating material against the accused persons.

8. The charge against the accused person is that on 19/11/2017 accused person having love affairs with prosecutrix and establishing physical relation with a promise to marry prosecutrix. As this is a case of rape of a girl, therefore, victim of the case is main witness.

9. PW-1 Saijan Begum deposed that she knows the prosecutrix and she is her co-villager. She knows prosecutrix's father and accused Taizuddin Ali as they belongs from the same village. She deposed that she have

no knowledge why prosecutrix lodged the case against the accused Taizuddin.

10. PW-2 is the informant and prosecutrix of this case. She lodged an FIR against accused Taizuddin Ali. The incident took place about 4 to 5 years ago. She had love affair with the accused during the time of the incident. The accused took her to his residence to marry her. But his family members did not allow her to enter his house. For that reason she filed the case against the accused. After filing the case family members of the accused had an amicable settlement with her parents and they got married in presence of both the family members. Now she is staying with the accused and they have two children. Before their marriage accused had physical relationship with her. She gave thumb impression on the complaint petition as she did not know how to read and write. She also gave statement before the magistrate u/s- 164 CrPC. Police produced her before the doctor of SMK Civil Hospital, Nalbari and she was examined by the doctor.

In cross she deposed that before marriage she had consented of having physical relation with the accused. She lodged the case as because family members of accused did not accept her. Now she is staying with the accused peacefully as husband and wife. She do not want to proceed with the case.

11. PW-3 Rijaj Ali stated that he knows the prosecutrix and accused. The incident took place about 5 years ago. Prosecutrix and the accused had love affairs and they eloped 5 years ago. The mother of the prosecutrix did not agree with their love affair for which the case was filed. Now the prosecutrix and accused got married and staying as husband and wife peacefully and also have a male child. The allegation that the accused committed rape upon prosecutrix is false.

12. PW-4 Makbul Hussain in his evidence deposed that he knows the prosecutrix and accused who is his neighbour and nephew. The incident took place about 6 to 7 years ago. Prosecutrix and the accused had love affairs and prosecutrix left her house and went to the residence of accused to stay with him. The family members of the accused objected to it and did not allow the prosecutrix to stay with the accused for which prosecutrix lodged the case against the accused. Now the prosecutrix and accused got married and staying as husband and wife peacefully and also have a male child about 2 to 3 years old.

13. On scrutiny of all the statements made above, I found that none of the witness stated that the accused forcibly had physical relation with the prosecutrix. The prosecutrix in her evidence never stated that the accused had sexual relation with her on promise to marry her. She stated that she had love affairs with the accused and accused took her to his home to marry her but the family

members of the accused opposed prosecutrix to enter in their house. For that reason prosecutrix filed the said complaint case. The prosecutrix voluntarily went with the accused to his residence. Now the accused and the prosecutrix got married and have two child. From the evidences on record, I found that the accused never forced or induced the prosecutrix to deliver her chastity on such false promise to marry her. The evidence does not bring ingredients of cheating as defined u/s-417 IPC and evidence of victim who is the star witness does not satisfy the ingredients of section 417 IPC.

14. Regarding the allegation that the accused committed rape on the prosecutrix, it is clear that none of the prosecution witnesses had uttered a single word of committing rape to the prosecutrix by the accused. The victim also did not make a single statement that accused committed rape on her. She deposed that she had physical relation with the accused on her own consent. She did not mention in her statement that accused Taizuddin made any attempt to rape her. She clearly stated that as the family members of the accused did not allow her to enter their house so she lodged the ejahar against the accused. Victim did not make any statement against the accused Taizuddin on the point of accused committing sexual intercourse with her against her will and consent and therefore, ingredients of section 376 IPC does not attracted to hold accused



guilty of committing the offence of rape which is punishable u/s-376 IPC.

15. In view of the aforesaid discussion, I find that prosecution totally failed to bring home the charge of section 417/376 IPC against the accused Taizuddin and accordingly, accused Taizuddin is acquitted from the charge of section 417/376 IPC and is set at liberty.

16. However, his bail bonds shall remain stands for next six (6) months u/s 437(A) Cr.P.C.

17. Send a copy of the judgment to the District Magistrate, Nalbari.

18. Send back the PRC case record to the learned committal Court with a copy of the judgment.

Given under hand and seal of this Court on this 16<sup>th</sup> day of September, 2022 at Nalbari District Nalbari.

(Dr. M. Baruah)  
Sessions Judge, Nalbari

Dictated and Corrected by me,

(Dr. M. Baruah)  
Sessions Judge, Nalbari

Typed by,  
Anzima Brahma  
Stenographer Gr-III

## **APPENDIX**

### **LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**

#### **i) Prosecution**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW-1	Saijan Begum	Independent
PW-2	Prosecutrix name changed	Victim/Prosecutrix
PW-3	Riaj Ali	Independent
PW-4	Makbul Hussain	Independent

**ii) Defence:** NIL

**iii) Court:** NIL

### **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:** NIL

**B. Defence:** NIL

**C. Court Exhibits:** NIL.

**D. Material Objects:** NIL

(Dr. M Baruah)  
Sessions Judge, Nalbari