

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

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

**Sessions Case No. 50/18**

**u/s- 498(A)/376(D)/376 IPC .**

(Committed by learned JMFC, Nalbari in PRC Case No. 352/2019 u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006.)

**State of Assam**

-Vs-

**A-1. Anowar Hussain**

S/o- Muktar Ali

**A-2. Abdul Hussain**

S/o- Muktar Ali

**A-3. Anowara Begum**

W/o- Muktar Ali

**A-4. Muktar Ali**

S/o- Fajur Rahman

All are R/o- Village- Naruapathar,

PS- Mukalmua, Dist- Nalbari, (Assam)

**A-5. Safikul Ali**

S/o- Azizur Rahman

R/o- Village- Batahguli, Panjabari

Dist- Kamrup, (Assam) .....Accused persons

**Appearance:**

For prosecution : Mr. Dhirendra Nath Barman, PP

For defence : Mr. Abdul Majid, Advocate

Date of offence : 04/09/2011

Date of FIR : 04/09/2016

Date of committal : 11/07/2018

Date of framing charge : 23/09/2019

Date of evidence : 27/07/2022, 10/08/2022

Statement of accused recorded on : 03/09/2022

Date of argument : 03/09/2022

Date of Judgment reserved : 03/09/2022

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             | Anowar Hussain  |                |                          | u/s 498(A) IPC            |                        |                  |  |
| A-2             | Abdul Hussain   |                |                          | u/s 376(D)/376 IPC        |                        |                  |  |
| A-3             | Anowara Begum   |                |                          | u/s 498(A) IPC            |                        |                  |  |
| A-4             | Mukhtar Ali     |                |                          | u/s 498(A)/376(D)/376 IPC |                        |                  |  |
| A-5             | Safikul Ali     |                |                          | u/s 376(D) IPC            |                        |                  |  |

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case in nutshell is that on 04/09/2016 Ashmina Begum lodged an ejahar inter alia citing that 1 year prior to the incident she got married to Anowar Hussain. After few days of marriage her husband with other accused persons started demanding dowry demand of Rs. 80,000/- from the informant. On the failure of the payment for dowry demand accused Anowar Hussain married another girl and started living at Sonapur, Guwahati. On 10/08/2016 accused persons namely Abdul Hussain, Anowara Begum and Muktar Ali took her at Guwahati saying that they will take the informant to Anowar Hussain but kept informant in the house of Safikul Ali at Panjabari and kept for about 5/6 days and accused persons namely Abdul Hussain, Muktar Ali and Safikul Ali raped her.

### **Investigation**

2. On receipt of the ejahar, O/C Mukalmua PS registered Mukalmua PS Case No. 306/2016 u/s-498(A)/494/343/376(D) IPC and endorsed Bima Ch. Deka to investigate the case. On completion of the investigation I/O of the case submitted charge-sheet against the accused persons Anowar Hussain, Muktar Ali, Abdul Hussain, anowara Begum and Safikul Ali u/s 498(A)/498/343/376(D) IPC.

### **Committal**

3. On receipt of the charge-sheet learned trial court took cognizance of the case, recorded evidence and issued process to the accused person. The offence u/s 498(A)/494/343/376(D) IPC is exclusively triable at Hon'ble Sessions Court, hence the case is committed in 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 against the accused Muktar Ali of offence u/s 376/376(D)/498(A) IPC, against the accused Abdul Hussain of offence u/s 376/376(D) IPC, against the accused safikul Ali of offence u/s 376(D) and against the accused Anowar Hussain and Anowara Begum of offence u/s 498(A) IPC are framed against the accused persons and its particulars are read over and explained to the accused persons 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 2 numbers of witnesses. PW-1 Asmina Begum and PW-2 Alimun Nessa. Ext-P-1/PW-1 is the ejahar, Ext-P-2/PW-1 is the statement recorded u/s 164 CrPC. 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 adduce evidence in support of their plea of denial.

6. **POINTS FOR DETERMINATION:**

(i) Whether the accused persons Anowar Hussain, Muktar Ali and Anowara Begum since after marriage of Asmina Begum being her husband and parents of her husband subject her to cruelty and thereby committed an offense punishable u/s 498(A) IPC?

(ii) Whether the accused Abdul Hussain, Muktar Ali and Safikul Ali on 10/08/2016 at Batahguli, Panjabari Guwahati in furtherance of common intention, constituting a group committed rape upon Asmina Begum and thereby committed an offense punishable u/s 376(D) IPC?

(iii) Whether the accused Muktar Ali and Abdul Hussain after marriage of Asmina Begum during her stay at your house committed rape upon Asmina Begum and thereby committed an offense punishable u/s 376 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 persons Anowar Hussain, Muktar Ali and Anowara Begum is that since after

marriage of Asmina Begum being her husband and parents of her husband subject her to cruelty and on 10/08/2016 accused persons Abdul Hussain, Muktar Ali and Safikul Ali in furtherance of common intention, constituting a group committed rape upon Asmina Begum. As this is a case of rape of a girl, therefore, victim of the case is main witness.

9. I have taken up evidence of victims for discussions. PW-1 is the prosecutrix of the case. She deposed that accused Anowar Hussain is her husband, accused Muktar Hussain is her father-in-law, accused Anowara Begum is her mother-in-law, accused Abul Ali and other accused is her brother-in-law. She got married with accused Anowar Hussain in the year 2015. After 3 months of her marriage, her husband eloped with another woman. Thereafter, she stayed in the house of accused for another 2 months. During that period all the accused persons i.e. family members of accused Anowar Hussain tortured her. So she returned to her paternal house. Thereafter, as her husband eloped with another woman, out of anger I filed this case at Doulasal police outpost against the accused persons. Exhibit P-1/PW-1 is the ejahar and P-1(1)/PW-1 is her signature. Police produced her before the learned magistrate where her statement has been recorded u/s- 164 CrPC by the learned magistrate. Exhibit P-2/PW-1 is my statement recorded u/s- 164 CrPC. Now she got married to another person of her village. She have no grievance if the accused persons are released from this case.

In cross examination the prosecutrix deposed that she lodged this case out of my anger and frustration as because her husband eloped with another woman just after their marriage and gave her statement before the magistrate out of anger against the accused persons.

10. PW-2 Alimun Nessa deposed that she know all the accused persons. Informant is her younger sister. She got married to accused Anowar Hussain. Other accused persons are family members and relatives of accused Anowar Hussain. Prosecutrix got married to accused Anowar Hussain on 20-02-15. After three months of their marriage, her husband Anowar Hussain eloped with another woman. As such her sister prosecutrix came to their residence and she filed this case against all the accused persons. Prosecutrix lodged this case against the accused persons as her husband eloped with another woman.

11. On scrutiny of all the statements made above, I found that none of the witness stated that the accused had raped prosecutrix. The prosecutrix in her evidence never stated that the accused raped her. She stated that she got married with the accused and after 3 months of their marriage her husband eloped with another woman and got married. She clearly deposed in her cross that she filed this case out of anger and frustration as because her husband eloped with another woman just after their marriage. She also deposed in her in-chief that she got married to another

person of her village and have no grievance if the accused persons are released from this case. From the evidences on record, I found that the accused persons did not commit rape upon the prosecutrix. The evidence does not bring ingredients of rape as defined u/s 376/376(D) IPC and evidence of victim who is the star witness does not satisfy the ingredients of section 376/376(D) IPC.

12. Regarding the allegation that the accused and his parents committing cruelty against the prosecutrix, it is clear that prosecutrix herself did not uttered a single word for demand of dowry or any property by the accused and his parents. She clearly stated that out of anger she filed a false case against the accused persons. Prosecutrix did not make any statement against the accused Muktar Ali, Anowara Begum and Anowar Hussain on the point of committing cruelty against her and therefore, ingredients of section 498(A) IPC does not attracted to hold accused and his parents guilty of committing the offence of kidnapping which is punishable u/s 498(A) IPC.

13. In view of the aforesaid discussion, I find that prosecution totally failed to bring home the charge of section 498(A)/376(D)/376 IPC against the accused persons namely Anowar Hussain, Abdul Hussain, Anowara Begum, Muktar Ali and Safikul Ali and accordingly, accused persons namely Anowar Hussain, Abdul Hussain, Anowara Begum, Muktar Ali and Safikul Ali are acquitted from the charge of section 498(A)/376(D)/376 IPC and are set at liberty.



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

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

16. 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        | Prosecutrix name changed | Victim/Prosecutrix        |
| PW-2        | Alimun Nessa             | Sister                    |

**ii) Defence:** NIL

**iii) Court:** NIL

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

#### **A. Prosecution:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description</b>              |
|----------------|-----------------------|---------------------------------|
| 1              | Ext-P-1/PW-1          | ejahar                          |
| 2              | Ext-P-2/PW-1          | statement recorded u/s 164 CrPC |

**B. Defence:** NIL

**C. Court Exhibits:** NIL.

**D. Material Objects:** NIL

(Dr. M Baruah)  
Sessions Judge, Nalbari