

**APPENDIX-12**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS**

**TIHU, NALBARI**

Present : **Siddhartha Bora** , AJS

Date: 14-10-2022

**PRC Case No. - 111/2019**

**U/S. 420/493 of I.P.C\_**

(FIR No. 211/2017, Police Station: Tihu, Nalbari)

COMPLAINANT:	State of Assam
REPRESENTED BY	PULEN BARMAN, LD. APP
ACCUSED	1. <b>Rajib Das (A1)</b> S/O- Kahiram Das Vill: Jalkhana P.S.- Tihu Dist: Nalbari
REPRESENTED BY	Sri Sandeep Talukdar, Ld. Advocate

### **APPENDIX-13**

Date of Offence	30-11-2020
Date of FIR	19-12-2017
Date of Charge sheet	31.07.2018
Date of Framing of charges	23-07-2019
Date of commencement of evidence	02.07.2019
Date on which judgment is reserved	19.09.22
Date of Judgment	30-09-2022
Date of the Sentencing Order, if any	-

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during trial for purpose of S. 428 Cr.P.C.
1.	Rajib Das	-	<b>23-07-2019</b>	U/S 420/493 IPC	Acquitted	-	

## **Judgment**

### **Prosecution Story :**

1. The prosecution case as initiated by lodging of an FIR by one Smti Champa Das, wife of Raji Das, resident of Jalkhana under Tihu P.S. against the accused person mentioned above, in brief, is that The informant Champa Das had been in a love affairs with the accused Rajib Das for one year. With a promise to marry her the accused did a physical relation with her as a result of which she gave birth a boy child just before one month of lodging FIR. The accused put signature in a marriage agreement with a promise to marry her. But, after the birth of the child, the accused got away from her.

### **Investigation :**

2. On receipt of FIR, the police registered a case being Tihu P.S. Case No.- 211/2017 under Tihu Police Station. The Investigating Officer Sri Nabajit Talukdar carried out the investigation in the matter. During the course of investigation, the I.O. recorded the statement of the witnesses u/s 161 Cr.P.C, prepared one sketch map of the place, where the offence was allegedly committed. The I.O then searched the accused person. The accused himself appeared at the police station. He interrogated

him and then produced the same before my Ld. Preceding. After completing the investigation, finally submitted the charge sheet finding sufficient materials against the accused person for the offences u/s 420/493 IPC.

**Appearance of the accused person :**

3. On receipt of summons, the accused person was called upon to enter trial and upon appearance of the accused, copies of relevant documents U/S 173 were furnished to the accused persons in compliance with Section 207 of Cr.P.C.

**Charge against the accused person :**

4. Considering the relevant documents attached with the case records and hearing both the parties, I have found incriminating materials against the accused person to frame charge under section 420/493 of IPC of IPC and accordingly charge was framed U/S 420/493 of IPC which was read over and explained to the accused to which the accused person pleaded not guilty and claimed to be tried.

**Witness examined and Documents Exhibited :**

5. In order to bring home the charge, the prosecution side examined six witnesses including the I/O and the informant/victim.

### **Examination of accused u/s 313 Cr.P.C.**

6. The accused person has been examined and their statements were recorded u/s 313 Cr.P.C. The accused person denied all allegations levelled against him.
7. The defence side did not adduce any evidence.
8. Both the parties put forwarded their intensive arguments in favour of their plea and after hearing the intensive arguments put forwarded by both the learned counsels appearing on behalf of their respective parties, and after going through all the evidences on records and documents attached with the case records, my predecessor framed the following points for determination.

### **Points for determination :**

9. ***Whether the accused person on or about 19/12/17 or earlier at your place Jalkhana, cheated the informant of marrying her with knowledge that you are likely to cause wrongful loss to her person and thereby committed the***

***offence and thereby committed the alleged offence punishable u/s 420/34 of IPC?***

10. ***Whether the accused person on or about 19/12/17 or earlier at your place Jalkhana deceitfully caused a woman namely Chmapa Das who you did not marry to believe that she was married to you and on that belief to cohabit with you or have sexual intercourse with you and that thereby committed an offence punishable u/s 493 of IPC?***

**Discussions, Decisions and Reasons thereof :**

9. Before appreciating the prosecution evidence, I would like to go through the provisions laid down u/s 420 and 493 of IPC. The provisions under section 420 of IPC reads as follows –

*"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being*

*converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

**10.** Thus, from a bare perusal of the provision, it is evident that to attract the offence under section 420 of IPC the following essential ingredients must be proved by the prosecution –

(i) cheating;

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

**11.** In **Annamalai vs. State of Karnataka**, 2011 Cr.L.J 692(SC), the Apex Court held that *the primary requirement to make out an offence of cheating under Section 415 punishable under Section 420 IPC is that dishonest intention or fraudulent intention at the time of inducement is made and the fraudulent intention or dishonest intention must be present right at the beginning of the transaction time, when the offence of*

*cheating is said to have been committed.* There shall be averment in the complaint i.e. as to the existence of fraudulent intention on the part of the accused. In this regard whether an offence u/s 420 IPC is made out or not, the Supreme Court in **Murarilal vs Gopi Sing(2005)13 SCC 699** held that "*in the absence of any averment in the complaint as from which it can be inferred fraudulent or dishonest inducement having been made by the accused, pursuant to which the complainant parted with his property, it cannot be said that the accused had cheated the complainant.*"

**12.** I have also gone through the provisions laid down under section 493 of IPC. The same is reproduced verbatim for better understanding –

*"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. "*

Thus, to attract the provisions laid down under section 493 of IPC, the following ingredients shall be proved -



1. the accused practiced deception on a woman
2. the intention of the accused to practice deceit was to induce a woman to believe that she was lawfully married to the accused.
3. there was cohabitation or sexual intercourse as a result of the deception.

**13.** Under the above laws in hand, let us proceed to discuss the prosecution evidence on record to check whether the prosecution evidence attracts the ingredients of the offence of section 420 and 493 of IPC. For the sake of convenience, both the points for determination mentioned above are discussed together.

**14.** PW-1- Champa Das has adduced that she has lodged this case against Rajiv Das, Kahiram Das, Kaku Das and Kanak Das about 2 years ago. She had a love affair with Rajib Das and they had physical relation at his house in absence of his parents. Thereafter she became pregnant and she told him what to do then. Then he told him that he would bring medicine to terminate the pregnancy. But the accused neither gave her medicine nor took her to hospital. Then she informed the matter to her mother. One day her mother met him on the road and asked him what he did with her. The accused then came to her house and gave assurance of marrying her and took her to Pathsala lodge. Since they were not allowed to stay at

the lodge, Rajib took her to his house and on that night she stayed there. Next morning at about 4 PM Rajib took her to Govindapur and registered their marriage before Notary and took her to Guwahati at her aunt's house (mahi) Banti Das and on the next morning he took her to GMCH. On that day a child was born to her. She was at hospital for about 8 (eight) days. After she got released from the hospital, he took her again to her aunt's house and he went away. Since then he never returned to take her back. After staying at his aunts house for about 9 days her mother brought her to her parental house as she had no contact with Rajib. Since then she is residing at her parental house from where she lodged this case. Ext-P1/PW1- Ejahar ;Ext-P1(1)/PW-1- her signature

- 15.** At the time of cross examination when she was 9 months pregnant her mother came to know about her pregnancy. When she was 7 months pregnant, she informed Rajib's brother about her pregnancy over phone. She never lodged any complaint for Gaon Bichar. There are house of Tudhister Das , Mahat Barman Das and Narayan Das between her house and the house of the accused. They don't know about their affairs and her pregnancy. On the next day when she came to Guwahati, she lodged the case. She was at hospital for 8 days from 22<sup>nd</sup> November 2017. The date of birth of her child is 22<sup>nd</sup> Nov 2017. She was

taken to the house of Mina Das and Arjun Das at Govindapur who are the relatives of the accused. It is not a fact that the accused had not taken her to Govindapur and that he took her to the house of Mina Das and Arjun Das. She has mentioned in the FIR that the accused signed an agreement to marry her. It's is not a fact that the accused had not signed in any such agreement. A DNA test of her child and the accused was conducted and she knows that the report is negative. She has not given any application to the police for conducting DNA test for the second time. Police interrogated her on the day of lodging the FIR and after 15 days from that day as well. It is not a fact that she has not stated before police that the accused told her that he would bring medicine to terminate her pregnancy, that he did not return to give her medicines; that he gave her assurance that he would marry her, that he took her to Pathsala and then to his house, that he took her to her aunt Banti Das' house; that after releasing from hospital he kept her at her aunt's house and went away and never return to take her back; that after 9 days her mother brought her back to her parental house. It is not a fact that she has not stated before police that the accused registered their marriage before Notary. For 8 months she lied to her mother that she was having periods. It's is not a fact that she deposed falsely before the

court on the day of deposition. It is not a fact that she had a love affair with some other person. It is not a fact that when she had no option she falsely lodged this case against the accused as he is a rich man and can fulfil all her needs and the needs of her child.

**16.** Now, from the evidence adduced by PW1, it clears out that PW1 has adduced in her examination in chief almost all the things she has mentioned in her ejahar. Let us see whether the defence side could rebut the evidence adduced by PW1 in her examination-in-chief. The defence side tried to bring contradictions of her evidence adduced at the time of her examination in chief. The defence side even confirmed it by the testification of PW 5, the I.O. of this case. But, after going through 161 Cr.P.C. statements of Chmapa Das, it clears out that after releasing from hospital he kept her at her aunt's house and went away and never return to take her back; that after 9 days her mother brought her back to her parental house – are not stated to the I.O. of this case. These statements are not affect the core of the prosecution story. As such the contradiction brought by the defence side in this regard is not material to the prosecution case. From the perusal of the 161 CrPC statements, it also clears out that the accused told her that he would bring medicine to terminate her pregnancy, that he did not return to give her

medicines; that he gave her assurance that he would marry her – these statements are almost told to I.O.at the time of interrogation. As such I do not find that the contradiction brought by the defence side in this regard affects the core of the prosecution case.

**17.** Now. from overall appraisal of the evidence of PW1, the informant and victim of this case, it is evident that what PW1 has adduced in her evidence has supported the allegation levelled against the accused. I do not find any inconsistency of the ejahar and the evidence adduced by PW1. The defence side tried rebut the evidence of PW1. But, the defence side could not succeed in totality. As such I find her evidence cogent and reliable. But, considering the facts and circumstances of the instant case, single witness does not established the allegation against the accused. The evidence of PW1 must be corroborated by the other prosecution evidence. Let us proceed to check out this.

**18.** PW2- Surma Das has adduced in her evidence that the informant is her daughter and she knows the accused persons. Her daughter had a love affair with the accused but she doesn't know about their relationship. When her daughter was 9 months pregnant, she came to know that the accused had sexual relation with her daughter. When she asked the accused about the matter he admitted the fact and

assured her of marrying her. On that day in the evening, the accused took her daughter to a hotel at Pathsala but due to lack of proper documents, the hotel authorities did not allow them to stay there. Thereafter the accused took her to his house and spent the night there. On next morning the accused took her daughter to Govindapur and kept her at his relative house namely Mina Das and Arjun Das. She stayed there of 5-6 days. Thereafter the accused called her over phone and informed her that he would do court marriage and asked her to arrange advocate and some money. She hired a car of Kandarpa Kalita driven by driver Mani Konwar. The accused put vermilion on her daughter's forehead in presence of Gita Das, Pulok Das and Moni Konwar at the house of Arjun Das. Therefore they returned from there and the accused along with her daughter and Palash Das went to Guwahati on Bohagi Train. When they reached Guwahati, the accused stayed at her sister Banti Das house. At that time her daughter was admitted to GMCH and a child was born to them. She gave money to them. Thereafter, when she was discharged, the accused requested her sister to keep her daughter at her house for one week but the accused did not return and took her back. Ext-P2/PW2- Seizure list; Ext-P2(1)/PW2- her signature.

**19.** At the time of cross examination, she has testified that she doesn't know where police took her signature. She has not seen any marriage agreement in the court. The agreement is in the custody of accused and police has not seized the same. It is not a fact that marriage has been registered and she doesn't have any document. One advocate went to Guvindapur. His name is Mukul Medhi. Police interrogated her on the date of lodging the FIR and after 7 day from lodging the same. A meeting was called in their village when her grand son was born. Neighbours don't know about the love affairs of her daughter with the accused. The daughter had no menstruation period for 9 months. She has not asked the reason to her daughter. It is not a fact that she has not stated before police that she came to know after 9 months that her daughter was pregnant. It's not a fact that she has not stated before police that on being asked about the matter the accused assured her of marrying her. It is not a fact that she has not stated before police that the accused had sexual relation with her daughter. It is not a fact that she has not stated before police that on that day in the evening the accused took her daughter to a hotel at Pathsala but due to lack of documents, the hotel authorities did not allow them to stay there, that the accused took his daughter to Govindapur and kept her

there for 5-6 days at the house of Mina Das and Arjun Das. Thereafter the accused called her and asked her to arrange advocate and money, that she hired a car of Kandarpa Kalita which was driven by driver Mani Konwar, that accused put vermilion on her daughters forehead in presence of Gita Das, Pulak Das and Mani Konwar at the house of Arujun Das, that on that day the accused along with Palash Das and her daughter went to Guwahati and they stayed at her Sister Banti das' house, that a child was born to them at GMCH and that she gave them money. It is also not a fact that she has not stated before police that after discharge the accused requested her sister to keep her daughter at her house for 1 week. On 22-11-2017 her grandson was born. It is not a fact that she deposed falsely before the court. It is not a fact that she conspired to marry her daughter to the accused as he is a rich person.

**20.** PW2 is the mother of the victim and the informant. In her rebuttal evidence the defence side tried to bring some contradictions of the evidence adduced by her at the time of examination-in-chief. I have perused the evidence of PW5. In the rebuttal evidence of PW5, the defence side confirmed that PW2 had not stated before PW5 that the accused assured her of marrying her daughter ; that the accused had sexual relationship with her daughter; that in the



evening the accused took the victim to a hotel at Pathsala and that due to lack of documents they were denied to stay at the hotel ; that the accused kept PW1 at the home of Mina Das and Arjun Das for 5-6 days ; that the accused caused her and asked her to manage money and advocate, that PW2 hired a car of Kandarpa Kalita which was driven by Mina Konwar; that accused put vermilion on the victims forehead in presence of Gita Das PulakDas and Mina Knowar; that Pulash Das took the victim to Guwahti and stayed at Bonti Das home, that a child was born at GMCH, that she gave them money; that after discharge the accused requested her sister to keep the victim at her house for 1 week. To check it out I have gone through the statements of PW2 recorded under section 161 of CrPC. After a meticulous perusal of the same, it is evident that PW2 has not stated exactly all the statements mentioned above in her 161 Cr.P.C. statements but overall perusal of the same reveals out that PW2 stated before Police that she came to know about her daughter pregnancy at the time of 10 months ( i.e. after 09 months) pregnancy of her daughter. PW2 has further stated to PW5 that the accused promised before PW2 to marry the victim and took her to Govindapur where he kept her for some days. From Govindapur the victim was taken by the accused to GMCH where the victim was admitted and

in GMCH a child was born. After release from GMCH, the accused took her daughter to her younger sister's house in Guwahati. Now, from a meticulous perusal of the 161 statements of PW2, it appears that there is some minor contradictions in between the evidence adduced before the Court and the 161 statements made before Police. One of such is PW2 stated before police that her daughter had a unborn child of the accused in the stomach of her daughter. To have a child of anybody in the stomach any female, one must have sexual relationship with that female. As such the evidence adduced by PW2 before this Court and the contradiction brought by the defence side in this regard, does not cause any fatal to the prosecution case. The fact in issue of this case is that the accused had a sexual relationship with the victim and he promised to marry the victim for their relationship, but later on the accused cheated the victim by not marrying the victim. Now, from the evidence adduced by PW2, I find all the materials that directly connected with the fact in issue of this case. Therefore, the contradictions confirmed by the defence side has no any effect in admissibility of the evidence adduced by PW2. Per contra I find her evidence supports the allegations and corroborated the evidence of PW1. Therefore, I find her evidence cogent and reliable.

- 21.** PW-3- Narayan Das has adduced that she knows the informant and the accused person. She doesn't know anything about the incident.
- 22.** The cross-examination of PW3 is declined.
- 23.** PW-4- Kunja Barman has adduced in his evidence that she knows the informant and the accused person. She doesn't know anything about the incident.
- 24.** The cross-examination of PW4 is declined.
- 25.** From the evidence of PW3 and PW4, I do not find any materials in connection with the allegation levelled against the accused in FIR. For this reason the defence side also declined to cross-examine them.
- 26.** PW5- Nabajit Talukdar, the I/O of this case has adduced in his evidence that on 19-12-2017 the informant Champa Das had lodged an ejahar before him. He registered the case and took the charge of investigation himself. He then went to the place of occurrence on 20-12-2017, drew sketch map, recorded the statement of witnesses. He also searched for the accused in his house but could not find the accused Rajib Das on that day. However he found accused persons Papu Das , Abhiram Das and Kanak Das. On 21-12-2017 accused Rajib Das appeared before him at PS. He interrogated him and

arrested him and forwarded the accused to court. He also interrogated the other accused persons. **He also seized a deed of marriage and a notary certificate.** DNA sample of the child of the informant and the accused were collected and forwarded for forensic examination. He collected the report on 27-7-2018. On 31-8-2018 he submitted CS only against accused rajib Das u/s 493 IPC. Ext-P3/PW5- Chargesheet ;Ext-P3(1)/PW5- signature of chargsheet; Ext-P4- Sketch map; Ext-P4(1)- My Signature .

**27.** At the time of cross examination he testified that he has not recorded the statement of Kunja Das as mentioned in sketch Map. **He has not seen the deed of agreement and certificate in the court and He has not taken it as MR exhibits. He has also not produced these documents before the court for making "seen" these documents.** He has not recorded the statement of any person - petition writer or advocate. He has not recorded the statement Mina Das and Arjun Das of Govindapur village. PW1 had not stated before him that the accused had taken her to the house of Minu das and Arjun Das; that the accused told her that he would bring medicine to terminate her pregnancy but did not give her the medicine; that after discharge from hospital the accused took her to his aunt's house Banti Das; that after 9 days her mother brought her to

her parental house from her aunt's house. PW1 has not stated before him that the accused registered one marriage before notary. He has recorded the statement of PW2 on 19-12-2017 i.e. on the date of lodging FIR. PW2 has not stated before him that after 9 months, she came to know that her daughter PW1 is pregnant. PW2 had not stated him that the accused assured her of marrying her daughter. PW2 has not stated that the accused had sexual relationship with her daughter. PW2 had not stated before him that in the evening the accused took the victim to a hotel at Pathsala and that due to lack of documents they were denied to stay at the hotel. PW2 has not stated before him that the accused kept PW1 at the home of Mina Das and Arjun Das for 5-6 days. PW2 had not stated before him that the accused caused her and asked her to manage money and advocate, that PW2 hired a car of Kandarpa Kalita which was driven by Mina Konwar; that accused put vermilion on the victims forehead in presence of Gita Das PulakDas and Mina Knowar; that Pulash Das took the victim to Guwahti and stayed at Bonti Das home, that a child was born at GMCH, that she gave them money; that after discharge the accused requested her sister to keep the victim at her house for 1 week. It is not a fact that no deed of agreement and notary certificate were seized and that he falsely submitted the CS against the accused u/s

493 IPC. He collected the forensic report after 4 months and on perusal of the same. He came to know that the result is negative. However, forensic expert would in a better position to explain the same. He recorded the statement of victim and informant on the day of lodging FIR and the other statement are recorded on the next day.

**28.** The contradictions confirmed by the defence side by the rebuttal evidence of PW5 has already been discussed. As such I am not going to repeat the same. Now, from the evidence of PW5, it becomes crystal clear that at the time of investigation he seized two documents- a deed of marriage and a notary certificate. The seizure memo of these two documents are exhibited by the prosecution at the time of evidence of PW2. But, the two documents are found not exhibited by the prosecution side, which is very essential for finding out the truth in the instant case. The I.O. of this case has admitted in his rebuttal evidence that he has not produced these two documents before this Court for the purpose of "Seen". If these two documents were seized it is the duty of the I.O. to produce before this Court for making "seen" of these two documents. Further it is the duty of the prosecution side also to take step for bringing these two documents from the person under whose custody these two documents are in possession. But, it is not

done by the prosecution side to exhibit both these two documents at the time of evidence.

**29.** Further from the rebuttal evidence of PW5, it is also evident that he had not examined any person – the petition writer or the advocate who were involved in making the deed of marriage and notary certificate. He also admitted that the I.O. had not examined Mina Das and Arjun Das of Govindapur in whose house the victim and the accused were staying. As they were the witnesses who witnessed the marriage of the accused and the victim as such their evidence are very essential to finding out the truth of this case. Further the I.O. shall also examine the younger sister of the mother of the victim namely Banti Das who was the witness of presence of the accused at the time of delivery of the child of the victim in the hospital of GMCH as well as who was requested by the accused to keep the victim at her house for some days after discharge from GMCH. But the I.O. has not interrogated any of them. Thus, it is seen that there is very serious defect in the investigation of the I.O. Nabajit Talukdar, which causes serious fatal to the prosecution case.

**30.** PW6, Dr. Manalisa Choudhury has adduced in her evidence that on 20.03.2018 she received the parcel from her Dy DFS, Kahilipara, Guwahati, Assam

in connection with Tihu PS Case No.211/2017 dated Nil u/s 420/493 of IPC vide memo no.PNB/Crime-SR/2018/1187 dated 19.03.2018. The parcel 1(one) consisted of three(3) exhibits in a Thermos Flask containing ice which was sealed with the impression seal corresponding with the seal impression forwarded.

Description of Articles :

1. One sealed EDTA vial contains 2ml ( approx) liquid blood of Champa Das collected by doctors of Swahid Mukunda Kakati Civil Hospital, Nalbari with blood donar authentication card. (Exhibit No. DNA 1539/18).
2. One sealed EDTA vial contains 2ml( approx) liquid blood of Dhiman Das collected by doctors of Swahid Mukunda Kakati Civil Hospital, Nalbari with blood donar authentication card. (Exhibit No. DNA 1540/18).
3. One sealed EDTA vial contains 2ml ( approx) liquid blood of Rajib Das collected by doctors of Swahid Mukunda Kakati Civil Hospital, Nalbari with blood donar authentication card (Exhibit No. DNA 1541/18). And finding the report; That one of the maternal allele of the amplified loci of Exhibit No. DNA 1540/18 ( as marked) matches with one of the respective allele in the



DNA profile of Exhibit No. DNA 1539/18 (as marked).

4. The non-maternal allele of Exhibit No. DNA 1540/18 (as marked ) is not matching with the DNA profile of Exhibit No. DNA 1541/18 (as marked). Exhibit-P5/PW6 is the Forensic Report ; Exhibit-P5(1)/PW6 is her signature

**31.** During the time of cross-examination she testified that in her report the exhibit marked as Exhibit DNA 1540/18(Baby) matches with the Exhibit No. DNA 1539/18 (victim/mother), but Exhibit No. DNA 1540/18(Baby) is not matching with the Exhibit No. DNA 1541/18 ( accused) – it's a fact.

**32.** From the evidence of PW6, who is the Forensic Expert in DNA testing, it becomes obvious that the DNA sample of the mother matches with the DNA of the child but the DNA sample of the child does not match to the DNA sample of the accused. As the DNA sample of the accused does not match with the DNA sample of the child, as such it casts a doubt upon the allegation levelled against the accused in Ext.1.

**33.** Now. let us proceed to determine the points for determination of this case. For the sack of convenience both the points are discussed together.. Now, as per the allegation levelled in Ext.1, PW1 who

is the victim and the informant of this case has adduced in her evidence the same thing. I do not find any discrepancy or exaggeration in this regard. Besides the defence side also could not rebut her evidence. As such her evidence supports the allegation. The evidence of PW2 also supports the allegation mentioned in Ext.1 and her evidence also corroborates to the evidence of PW1. As per the deposition of PW1 and PW2, there took place an agreement in between the prosecutrix and the accused which is called Deed of Agreement. There is also a Notary certificate of marriage of the accused and the prosecutrix. But. the prosecution side did not exhibit these two vital documents to prove the fact of marriage of the accused and the prosecutrix. In this regard I find a serious defect of investigation on the part of PW5, the I.O. of this case.

**34.** PW2 is the mother of PW1 who is the prosecutrix of this case. Other than PW1 and PW2 none supports allegation mentioned in Ext.1. It was duty of the prosecution to summon the younger sister of the mother of the prosecutrix namely Banti Das as well as Mina Das and Arjun Das wherein the prosecutrix and the accused were staying for some days, if the I.O. of this case fails to interrogate them. Further, the advocate, in whose presence the deed of agreement and notary certificate were executed,

shall also be summoned for examination before this Court. Other than this, the prosecution side could have summoned the Notary who has issued the Notary Certificate. But all are found absent in this case.

**35.** Further at the time of rebuttal evidence of PW1, she admitted that she knows that the report of the DNA test of her child and the accused is negative. As such it is her prime duty to apply for conducting DNA test of the accused and the child for the second time. But she did not do it also. In her rebuttal evidence she admitted that She has not given any application to the police for conducting DNA test for the second time. Thus, the mere fact that the informant gave birth of a baby does not establish the fact that the accused had sexual relationship with the prosecutrix as a result of which the prosecutrix gave birth of the baby. Because, the DNA test of baby does not match with the DNA test of the child given birth by the prosecutrix as per the report of the forensic expert herein PW6.

**36.** Thus, from the appraisal of the evidence of prosecution side, it is established that the accused did not have either any dishonest intention right from the very inception or cheated the prosecutrix by promising to marry. Similarly there is no proof as to cohabitation or sexual intercourse of the accused with the prosecutrix as a result of which the child was delivered by the prosecutrix in GMCH. Thus, I find the absence

of ingredients of the offence under section 420 and 493 of IPC in the instant case. Hence, the points for determination no. 1 and 2 are decided negatively and in favour of the accused person.

**Decision : The points for determination no.1 and 2 are decided negatively and in favour of the accused person.**

**37.** Thus, from the discussion made above and the decisions made in the above points for determination, this court finds that prosecution has failed to prove the commission of the offences under section 420/493 of IPC against the accused person. It is the prime duty of the prosecution to adduce evidence that can successfully shoulder the burden of proving the guilt of the accused beyond all reasonable doubts. The evidence of prosecution side must be such as to enable the trial court to act upon it with conviction and must inspire the confidence of the trial court to come to one plausible conclusion, only that the accused persons can be convicted for the alleged offence, otherwise not.

**38.** The accused person Rajib Das is, therefore, acquitted for the offence punishable under section 420/493 of IPC and he is set at liberty forthwith.

**39.** Bail bond remain extended for another 6 (six) months as per section 437(A) of the Cr.P.C.

**40.** Accordingly, the case is disposed of on contest.

Given under my hand and seal of this court in presence of both sides on this 14<sup>th</sup> October, 2022.

( *Siddhartha Bora* )

Signature

Judicial Magistrate First Class

**APPENDIX-14**

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

**A. Prosecution:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
PW1	Champa Das	Victim/informant
PW2	Surma Das	Hearsay Witness
PW3	Narayan Das	Hearsay Witness
PW4	Kunja Barman	Hearsay Witness
PW5	Nabajit Talukdar	Police Witness

**A. Defence Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
DW1		Nil

**B. Court Witnesses, if any:**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)</b>
CW1		Nil

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

**A. Prosecution:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit- P1/PW1	Ejahaar
2.	Exhibit- P2/PW2	Seizure List
3.	Exhibit-P3/PW5	Chargesheet
4.	Exhibit-P4/PW5	Sketch Map
5.	Exhibit-P5/PW5	Forensic report

**B. Defence:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit D-1/DW1	Nil
2.	Exhibit D-2/DW2	Nil

**C. Court Exhibits:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	Exhibit C-1/CW1	Nil

2.	Exhibit C-2/CW2	Nil
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**D. Material Objects:**

<b>Sl. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1.	MO1	Nil
2.	MO2	Nil

**(Siddhartha Bora )**  
Signature  
Judicial Magistrate First Class, Tihu