

**In the Court of Additional Sessions Judge,
4th Court, Jalpaiguri.**

Present :- Shri. Somnath Chakrabarti,
Additional Sessions Judge ,
4th Court, Jalpaiguri.

Sessions Case No. 473 of 2013 [S.T No. 15(04)19].
Corresponding to G. R. Case no.3399/2010 arising out of
Maynaguri P.S case No. 402/2010, dt. 05.09.2010, u/s. 448, 376/511
of I.P.C.
Charge u/s. 448, 376/511 of I.P.C.
C.N.R No.WBJP01-005291-2013.

State

Vs.

1) Falin Roy @ Biseswar Roy..... Accused person.

Arguments heard on :- 29.06.2026.

In presence of
Sri. Pranab Bandyopadhyay.....Ld. Public Prosecutor-in-Charge.
And
Sri. Sankar DuttaLd. Advocate for the defence.

Judgment delivered on 09.07.2026.

JUDGMENT

The gravamen of the prosecution case as rolled out from a petition of complaint, lodged by one Manju Roy to the effect that the accd. Falin Roy @ Biseswar Roy gave her indecent proposal as she was living alone in her house with her children as her husband was at Jalpaiguri jail. It is the further case of the complainant that on 07.08.2015 at about 1.00 a.m,

when the complainant was sleeping at her house along with her children, the accd. entered into her house by breaking open the thatched wall of her house, grasped her, touched her private parts, outraged her modesty and also tried to commit rape upon her. Even the accd. threatened her to the extent that had she made any hue and cry, he would murder her and her children. The complainant somehow escaped from his clutches and informed the same to her neighbour, who advised her to lodge complaint at P.S. Hence, the instant case.

On the basis of such information, Maynaguri P.S case no. 402/2010, dt. 05.09.2010 was initiated against the above named accd, u/s. 448 & 376/511 of I.P.C. Police took up investigation and after it's completion, I.O submitted charge sheet, u/s. 448 & 376/511 of I.P.C against the above named accd. person. The case was then committed to the court of Sessions and the Ld. Sessions Judge in turn transferred this case to this Court for trial and disposal.

Charge was framed against the above-named accused persons on 19.04.2019, u/s. 448 & 376/511 of I.P.C, to which he pleaded 'not guilty' and claimed to be tried in Open Court.

Prosecution witnesses were thereafter examined and after closure of prosecution evidence, the above-named accused person was examined,

u/s.313 Cr.P.C, where notion of the accused person was only denial and plea of innocence.

/Point for consideration/

Now, let this Ld. Court consider :-

- 1) Whether the accused person committed offence punishable, u/s. 448 & 376/511 of I.P.C?
- 2) Whether the prosecution has been able to prove it's case beyond all sorts of reasonable doubt?

The prosecution case was set rolling by examining C.S.W.s.1 to 6. Beside oral evidence, some documents were marked as exhibits, which are as follows :-

- 1) Exbt.1– Written complaint,
 - 2) Exbt. 2/1 – Endorsement of the Duty officer in the written complaint,
 - 3) Exbt.3 – Formal F.I.R,
 - 4) Exbt.4 – Rough sketch map
- &
- 5) Exbt.4/1 – Index of the rough sketch map.

/Decision with reason/

To delve deep into this case, it is obvious that the prosecution witnesses have to be scanned to come to a just and definite conclusion.

This is the basic principle of any criminal case that the prosecution must prove its case beyond any reasonable doubt and no innocent person should be convicted merely on the basis of suspicion, however, strong suspicion may be. Suspicion cannot take the place of proof. Now, let us consider the submission of Ld. P.P-in-charge and Ld. Defence counsel. Ld. P.P-in-charge contended that the victim in her evidence stated the fact of house-trespass and outraging of her modesty by the aced. So, to certain extent, prosecution has proved its case. On the other hand, Ld. Defence Counsel contended that the aced. person was falsely implicated and there is no iota of evidence against the aced. to implicate him in the instant case. The summum bonum of his argument is that the prosecution case suffers from want from proper and adequate evidence.

In a criminal case, appreciation of evidence is one of the first and foremost tests to consider the credibility and reliability of the prosecution case both oral and documentary. The finding of the facts, the question of Law and the conclusion of the judgement in a criminal case mainly based on the appreciation of evidence. Therefore, appreciation of evidence is the heart and soul of the dispensation of justice delivery system in criminal case. Criminal case involves life and death problems of a citizen and the destiny of the citizen is to be decided by carefully analyzing and scrutinizing the

evidence adduced by the prosecution. *The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in this case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted.* The paramount consideration of the court is to be ensure the prevention of miscarriage of justice.

Now, let us consider the evidence as adduced by the prosecution witnesses.

In the present case, P.W.1 is the complainant, who stated that 15 years ago at about 1.00 a.m at night, when the complainant was lying asleep in her room, at that time, the accd. cutting the thatched wall of her house, entered into her room, placed a sharp-cutting weapon in her body, touched his hand in different parts of her body and thereby tried to molest her. The complainant raised hue and cry and when her neighbours came to her rescue, the accd. fled away from the spot. This witness proved her written complaint (marked as Exbt.1).

During cross-examination, this witness stated at the time of incident, her two sons were with her, though she could not state the date of such incident, even the complainant could not recollect the date of her interrogation by police. This witness further stated in her cross-

examination that the house of Balaram was adjacent to her house but could not specifically say the name of her neighbour, who came to her rescue.

P.W.2/Balaram Roy stated in his evidence that he knew the victim and accd. as they are his neighbours. According to this witness, on the date of incident, when he was in his house, complainant came to his house and stated that accd. Falin came to the house of the victim and committed some mischief. Then he along with his family came to the house of the victim and told her that necessary steps to be taken on the next date.

During his cross-examination, this witness only stated that the victim is his next door neighbour and he used to call her as 'Manju Didi.'

P.W.3/Dhiren Roy, another neighbour of the victim as well as accd. stated in his evidence that on the date of incident, when he was in his house, P.W.1 told him that accd. Falin came to her house by breaking open the fencing and tried to commit rape upon her and apart from it, he did not know anything. During cross-examination, nothing substantial came out from the evidence of P.W.3.

P.W.4/Dharani Roy stated in his evidence that he knew the victim as well as accd. as his neighbour. According to this witness, on 16.07.2010, when the husband of the victim was not at his house at about 2.00 at night, accd. Falin Roy entered into the house of complainant and tried to commit

rape upon her, when she was sleeping in her house along with her two sons. This witness further stated that after hearing the shouting of the complainant, he along with neighbours rushed to the spot and found accd. fleeing away from the spot.

During cross-examination, this witness stated that he was interrogated by police and also stated that husband of Manju was detained at Correctional Home at Jalpaiguri and further averred that he stated before the police about the incident.

P.W.5/Pratima Roy is the wife of P.W.3, who stated in her evidence that she knew both the accd. and the complainant as her neighbour. According to this witness, hearing shouting of Manju, they went to her house and came to know from her that accd. Falin entered into her house and tried to commit rape upon her. This witness again stated that reaching the spot, they found the fencing of the house was cut by Falin though categorically stated that she could not say as to why accd. came to the house of complainant.

P.W.6/Tshiten Dukpa is the I.O of the present case, who stated in his evidence that on 15.09.2010, when he was posted at Maynaguri P.S, O.C/Manabendra Shekhar Rakshit received one complaint case, u/s.156(3) of Cr.P.C, filled up the formal F.I.R and as he was his colleague, he knew his

hand-writing and signature (marked as Exbt.2/1 and Exbt.3). This witness further stated that being a first I.O during investigation, he visited P.O, prepared rough sketch map with index (marked as Exbts.4 & 4/1), recorded statement of the available witnesses and thereafter, on being transferred handed over the case docket to O.C. This witness further stated that the second I.O of this case submitted charge sheet.

During cross-examination, this witness stated that he did not collect any document regarding ownership of the house, where the alleged incident took place, neither did examine the wife and mother of Balaram, nor did examine the children of Manju Roy. This witness further stated in his cross-examination that though he enquired regarding P.S case No.307/10 lodged by the victim but did not take any steps regarding investigation of two complaints lodged by victim.

In the present case, the present accd. person was charged, u/ sections 448 & 376/511 of I.P.C. The burden of proof is on the prosecution to establish all the elements of the offence. In rape cases, the burden of proving non-consent by the prosecutrix is on the prosecution. While evaluating the evidence of the victim, the court must remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the

attempt of rape upon her. In case of involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should, unless the discrepancies are such as are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.

In such type of case, evidence of the victim is the best evidence and she is the best witness. But she stated in her examination that 15 years ago at about 1.00 a.m at night, when the complainant was lying asleep in her room, at that time, the accd. cutting the thatched wall of her house, entered into her room, placed a sharp-cutting weapon in her body, touched his hand in different parts of her body and thereby tried to molest her. The complainant raised hue and cry and when her neighbours came to her rescue, the accd. fled away from the spot. It is very surprising that the complainant nowhere in her evidence revealed about the factum of attempt to rape upon her by the accd. Even she unequivocally stated that the accd. tried to molest her but whether he was succeeded in his nefarious design, was not at all revealed by the complainant. Thus the complainant made a complete 'U turn' from her F.I.R so far the attempt of rape by the accd. upon the complainant is concerned. So far allegation, u/s.448 of I.P.C, i.e house-trespass of the accd. is concerned, the I.O of this case in his cross-

examination stated unequivocally that he did not ascertain as to whether the house of the victim belonged to the victim herself or her husband. So, when the very root of sec.448 of I.P.C, i.e the ownership of the house, which was alleged to be trespassed by the accd. cannot be ascertained, how such allegation can be labeled against the accd. Even no photograph of such house or breaking open the thatched wall was submitted by the Investigating Agency, or any such evidence was either exhibited at the time of evidence. Furthermore, from the evidence of the P.W.6, it is also crystal clear that there is a case and counter case as there was a complaint case, u/s.156(3) of Cr.P.C, which was investigated by the I.O. Even from the evidence of P.W.2, it has come out before this court that he stated the complainant that 'necessary steps to be taken on the next day.' So, it can be safely said in no uncertain terms that it is a case of false implication and it cannot be ruled out that there might be some family feud between the victim and the accd. As such, what it appears from the trend of examination and cross-examination of the witnesses is nothing but an aberration of the fact. Here in her examination, though V.G stated that the accd. tried to molest her but P.W.s. 2,3,4 &5 brought the story of attempt to rape upon the victim, which the victim herself apart from her F.I.R, never stated in her examination before court. Therefore, only corroborating a part of an incident

and making an over exaggeration over the statement of the victim by other P.W.s makes the prosecution case doubtful. Apart from this oral evidence, when this court perused the documentary evidence, no Medical examination report of the prosecutrix was done by the investigating agency. Even, no wearing apparels of the deceased was either seized or sent to R.F.S.L to corroborate the allegation against the accd. person. The evidence of the victim is not trustworthy, cogent and it does not inspire any confidence of the court regarding the happening of the alleged incident. So, it is crystal clear that there is no iota of evidence to prove the claim of the victim that the accd. entered into her house forcefully by breaking the thatched wall of her house and attempted to commit rape upon her. So, the evidence of the victim can not be taken as sacrosanct and on the basis of surmise and conjecture, accd. person can not be held guilty in this case. Furthermore, the evidence of the I.O also does not throw any specific statement, which incriminates the present accused person directly involved with the offence punishable u/s. 448, 376/511 of I.P.C.

Thus, the prosecution case fails.

It is ,therefore,

O R D E R E D

that the accused namely, Falin Roy @ Biseswar Roy is found not guilty

for commission of offence made punishable under sections 448 & 376/511 of I.P.C and accordingly he is acquitted from this case, u/s.235(1) Cr.P.C.

The surety/sureties be discharged from bail bond/bonds.

The seized alat, if any, be disposed of after the expiry of the period of appeal.

D/C by me.

Additional Sessions Judge,
4th Court, Jalpaiguri.

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09.07.2026.

J.O Code – WB00619.