



**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE, FAST TRACK
1ST COURT, ALIPURDUAR**

**PRESENT :SRI PROTYAI CHOWDHURY
ADDITIONAL DISTRICT & SESSIONS JUDGE, FAST TRACK, 1ST
COURT, ALIPURDUAR**

JO CODE : WB 01009

**SC 36 of 2019
ST 7(9) 22
CNR No. **WBJP050001642019****

ARISING OUT OF JAIGAON POLICE STATION CASE NO. 172/2017 DATED 06.08.2017 UNDER SECTION 376/511/323 IPC

STATE OF WEST BENGAL V/S. MITHU HOSSAIN

UNDER SECTION 376/511/323 IPC

DATE OF DELIVERY OF JUDGMENT : 07.04.2026

Judgment

This is a case where the sole accused is set on trial for the offense allegedly committed by him which fall under the category of “rape”.

Prosecution case :

The prosecution case alleged against the accused is as follows :

On 06.08.2017 Lilifa Begam Yasmin wife of Rahim Hoque of Eliyasnagar, Guabari, PS Jaigaon, District -Alipurduar lodged written FIR against accused Mithu Hussain at Jaigaon PS alleging that the accused entered her house on 01.08.2017 at 8 PM when the victim woman was sleeping her bed along with her daughter and the accused tried to commit her rape. The victim woman raised alarm and fled out of the house and people arrived at the spot. Thereafter, the accused came out of the house and the assaulted the victim woman.

Hence, this complaint.



F.I.R.

On the basis of the above mentioned police complaint; F.I.R. was drawn up at Jaigaon Police station bearing no. 172/2017 dated 06.08.2017 by SI Aqib Hussain Khan, OC Jaigaon PS against the accused Mithu Hussain son of Majibul Hussain of Eliyasnagar, Jaigaon PS, Alipurduar district under sections 376/511/323 I.P.C. The investigation of the complaint was made over to S.I. of police SI Sreejendra Nath Roy of Jaigaon P.S.

Investigation

S.I. of police SI Sreejendra Nath Roy of Jaigaon P.S. conducted the investigation of this case. During investigation the Investigating officer visited the PO, prepared sketch map and index and examined the available witnesses and recorded their statement under section 161 Cr PC. He sent the victim woman to Latabari BPHC for her medico legal examination. Finally charge sheet was submitted against the accused persons namely Mithu Hossain son of Mojibul Hussain under sections 376/511/323 of I.P.C bearing charge sheet No. 232/2017 dated 30.11.2017.

Framing of charge

Charge has been framed against sole accused person namely Mithu Hossain under sections 376/511/323 of I.P.C. on 23.09.2022.

Examination of accused under section 313 Cr. P. C.

On conclusion of trial, the accused person namely Mithu Hossain examined under section 313 Cr. P. C. Questions was put to the accused person to explain the circumstances appearing in evidence against him. The accused pleaded innocence and denied his involvement in the alleged incident.

Prosecution Witness

P.W. 1	Lutfa Bibi	Mother of the victim woman
P.W. 2	Pukki Bibi	Neighbour of the victim woman
PW 3	Lilifa Begam Yasmin	Lodger of the FIR and victim woman
PW 4	Ex SI Sreejendra Nath Roy	Investigation officer

Documents exhibited

Serial number	Exhibit number	Description of the exhibit



1.	Exhibit 1	Written FIR
2.	Exhibit 2	Signature of the victim woman on the Medical examination report
3.	Exhibit 3	Rough sketch map of the PO
4.	Exhibit 3/1	Index of the rough sketch map.

Prosecution evidence:

PW 1, Lutfu Bibi stated in her evidence that her daughter Lilifa had put the house under lock so her son Mithu could not enter the house. PW 1 further stated that the accused Mithu had slapped Lilifa for that reason.

PW 2, Pukki Bibi stated in her evidence that Lilifa Bibi is her neighbour and Lilifa Bibi had filed complaint against her brother Mithu Hossain. PW 2 further stated that she heard that there was an incident of assault between the complainant and the accused.

PW 3, Lilifa Begam Yasmin stated in her evidence that she lodged FIR against Mithu Hossain since she had a dispute with the accused over house property regarding right to residence. PW 3 further stated that she fear the accused might do her harm and do some immoral act with her. In cross examination PW 3 stated that she did not remember what is written in the FIR. IN cross examination PW 3 further stated that she filed this complaint out of fear that the accused might do some harm to her. In cross examination PW 3 also stated that the complaint was filed due to guess.

PW 4, Ex SI Sreejendra Nath Roy stated in his evidence that he was endorsed investigation of Jaigaon PS case No. 172 of 2017 on 06.08.2017. PW 4 further stated that he visited the PO, examined the witnesses under section 161 Cr PC and prepared rough sketch map with index and sent the VG for medical examination and filed charge sheet against accused Mithu Hossain.

Points for determination.

1. Whether the accused had committed rape of the victim woman?
2. Whether the accused had caused the slightest penetration so as to constitute the offence of rape?

Constituents of the FIR.

First let us look into the contents of the FIR lodged by the complainant. The culpability of the accused person can be arrived only if the following allegations are proved :

1. The accused entered the house of the victim woman on 01.08.2017 at 7PM when the victim woman was lying on her bed.
2. The accused entered the house of the victim woman and attacked her and tried to commit her rape.



3. The victim woman raised alarm and came out of the house to save herself.
4. Local people arrived at the spot on hearing the cry and alarm of the victim woman.
5. The accused came out of the house of victim woman and assaulted her.

Now, the allegations raised by the lodger of FIR will have to be examined to find out whether such allegations would constitute any offence or make out a case against the accused under section 376 of the IPC and whether the allegations have been proved by the prosecution through direct evidence.

Allegation of offence under section 375 IPC

First, the allegations under Section 375 of the IPC must be examined. The said provision reads as under:

Section 375. Rape--- A man is said to commit "rape" if he-----

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
 - (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person;
- or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
 - (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,
- under the circumstances falling under any of the following seven descriptions:
First – Against her will.
Secondly – Without her consent.

The Hon'ble Supreme Court in **State of UP vs Naushad (2013) 16 SCC 651** pointed out that section 375 IPC defines the offence of rape, and enumerates six descriptions of the offence. The description "secondly" speaks of rape "without her consent". Thus, sexual intercourse by a man with a woman without her consent will constitute the offence of rape.

Now Section 90 IPC defines consent which reads as under :

Section 90. Consent known to be given under fear or misconception.--- A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury , or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception."



We have to examine as to whether in the present case, the accused is guilty of the act of sexual intercourse with the prosecutrix against her consent.

Whether the accused committed rape of the victim girl

Rape is a heinous offence that can be committed on a woman and it is for this reason, court heavily lean in favour of such a victim. The Hon'ble Apex Court in **State of Punjab v Gurmit Singh & Ors, (1996) 2 SCC 384** observed that : "If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice". Again, the Hon'ble Apex Court in **Ranjit Hazarika v State of Assam (1998) 8 SCC 635** laid down that: "The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances". Again the Hon'ble Apex Court in **State of Rajasthan vs N K 2000 (5) SCC 30** laid down that "it is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness, a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the Court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do."

Now, the prosecutrix is the victim and her statement is not to be viewed with doubt, disbelief or suspicion. While appreciating the prosecutrix, the court may look for some assurance of her statement since she is a witness who is interested in the out come of the charge leveled by her. It must be borne in mind that the principle is that an injured witness was present at the time when the incident happened and that ordinarily such witness would not tell lie as to the actual assailant, but there is no presumption or any basis for assuming that statement of such a witness is always correct or without any exaggeration. Even section 114 A of the Evidence Act does not visualize a presumption like that of section 113 A and section 113 B of the Evidence Act. It clearly shows that so far as allegation of rape is concerned, the evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without ex-



ception, be taken as the gospel truth. Thus, the veracity of the story projected by the prosecution qua allegation of rape must, thus, be examined.

The Hon'ble Apex Court in **Radhu vs State of Madhya Pradesh 2007 (12) SCC 57** laid down that "It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

The questions arising for consideration before us are: Whether the prosecution story, as alleged inspires confidence of the Court on the evidence adduced? Whether the prosecutrix, is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been a victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether the prosecutrix was deprived of her will by show of authority? Whether there was unexplained delay in lodging the FIR?

Let us appreciate the facts of the prosecution case. The accused Mithu Hossain entered the house of the victim woman when she was lying on the bed. The accused attacked the victim woman and tried to commit her rape. The victim woman came out of the house to save herself. Thereafter she was assaulted by the accused outside the house.

The prosecutrix as PW 3 stated in her evidence that she had dispute with the accused over right to residence in the house property. PW 3 also stated that she feared that the accused might do some harm to her so she filed the complaint. This version is not in consonance with the report of the incident recorded in the FIR. The prosecutrix stated in the FIR that the accused Mithu Hossain tried to



commit her rape by entering her house when she was lying on the bed. But the prosecutrix as PW 3 did not make any statement regarding sexual assault by the accused person. The other prosecution evidence, PW 1 the mother of the victim woman stated that the victim woman lodged the FIR since the accused Mithu had slapped the victim woman. Thus, there is no evidence in the record to suggest that the accused had sexually assaulted the victim woman.

In this case, the lodger of FIR submitted as PW 3 that she did not remember what is written in the FIR. She also stated that she filed the complaint out of fear. Thus, it comes from the evidence of PW 3, the lodger of the FIR that she did not know what is written in the complaint. Such a statement by main prosecution witness PW 3 (the lodger of the FIR) raises doubt over the veracity of the facts alleged in the written FIR.

The evidence of the prosecution when read as a whole, is full of discrepancies and does not inspire confidence. The gaps in the evidence, the several discrepancies in the evidence and other circumstances make it highly improbable that such an incident ever took place.

Hence, it is,

ORDERED

The sole accused person namely Mithu Hossain is not found guilty of the offence charged punishable under section 376/511/323 IPC accordingly acquitted under section 235 Cr PC.

The bail bond of the accused shall remain in force for a period of 6 months in view of the provision contained in Section 437 A of the Cr PC.

Alamat be disposed of according to the procedure of law after the expiry of the appeal period.

Addl. Dist. Judge, FTC. I
Alipurduar
JO. Code – W.B. 01009

Dictated and corrected by

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