



S.C. 116 of 2019

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

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

JO CODE : WB 01009

SC 116 of 2019

ST 1 (4) 2022

CNR No. WBJP050006052019

**ARISING OUT OF SAMUKTALA POLICE STATION CASE NO. 148/2018 DATED
02.07.2018.**

UNDER SECTION 376/506 of IPC

STATE OF WEST BENGAL V/S. ISLAM MIA

UNDER SECTION 376/506 of IPC

DATE OF DELIVERY OF JUDGMENT : 02.06.2026

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.



Judgment

Prosecution case :

The prosecution case alleged against the accused is as follows :

On 02.07.2018, a complaint was lodged by Nilima Khatun wife of Mahabul Rahaman of Uttar Panialguri, Samuktala PS, Alipurduar district that she was sleeping alone in her room on 01.07.2018 and her husband had gone away for carrying passengers in his magic vehicle. At 10 PM the accused Islam Mia, the *bhasur* of the victim woman came to the room of the victim woman and asked for nut range kept inside her room and entered her room and committed her rape by covering her mouth. Thereafter the accused gave money to the victim woman and told her not to tell anything about the incident of rape. The accused also threatened to drive away the victim woman from the house if she informed anyone about the incident of rape. Hence this complaint.

F.I.R.

On the basis of the above mentioned police complaint; F.I.R. was drawn up at Samuktala PS bearing no. 148/2018 dated 02.07.2018 by SI of police SI L P Bhutia against the accused namely Islam Mia son of Late Sabed Ali Mia of Uttar Panialguri, PS-Samuktala, Alipurduar district under sections 376/506 I.P.C. The investigation of the complaint was taken up by SI of police SI Kajal Sarkar of Samuktala PS.



Investigation

SI of police SI Kajal Sarkar of Samuktala PS conducted the investigation of this case. He visited the PO and prepared rough sketch map with index, He recorded the statement of available witnesses under section 161 Cr PC. He conducted medico-legal examination of victim woman. Statement of the victim woman was recorded under section 164 Cr PC. Conducted sexual capability test of the accused and collected the report. He seized vaginal swab of the victim and sent it to RFSL, Jalpaiguri for chemical examination and expert opinion. Finally, the charge sheet bearing no 257/2018 dated 31.10.2018 was filed against the accused person namely Islam Mia son of Late Sabed Ali Mia of Uttar Panialguri, PS-Samuktala, District Alipurduar under section 376/506 I.P.C.

Framing of charge

Charge has been framed against accused person namely Islam Mia under Section 376/506 of I.P.C on 06.04.2022.

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

On conclusion of trial, the accused person namely Islam Mia was examined under section 313 Cr. P. C. Questions were 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	Nilima Khatun	Lodger of FIR and victim woman.
P.W. 2	Mahibul Rahaman @ Janab	
P.W. 3	Dr Kanailal Ghosh	Medical officer of Samuktala PHC.



Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1	Signature of the PW 1 on the written FIR.
2.	Exhibit 2/1	Signature of PW 1 on the 164 Cr PC statement.
3.	Exhibit 3	Signature of PW 1 on the medical examination report.
4.	Exhibit 3/1	Medical examination report
5.	Exhibit 3/2	Signature of PW 3 on the medical examination report.

Prosecution evidence: A critical analysis

PW 1, Nilima Khatun is the lodger of FIR and victim woman. She stated in her evidence that she had a dispute with her husband, so she filed the FIR. In cross examination PW 1 stated that she filed the FIR against her bhasur due to dispute with her husband but she could not tell what is written in the FIR.

PW 2, Mahibul Rahaman @ Janab stated in his evidence that he did not know who filed the FIR and he did not have knowledge about the alleged incident.

PW 3, Dr Kanailal Ghosh is the medical officer of Samuktala PHC. He stated in his evidence that he examined Nilima Khatun on 02.07.2018 at SAMuktala PHC and the victim woman told history of sudden and forceful attack on her and raped on her by the accused. PW 3 also stated that he found the hymen of the victim woman ruptured during examination but he did not give any opinion in the report.



Allegation constituting offence:

First let us look into the contents of the FIR lodged by the victim woman/complainant. The culpability of the accused person can be arrived only if the following circumstances are proved which are sequentially summarized below:

1. The accused entered the room of the victim woman on the pretext of taking nut range.
2. The accused committed rape of the victim woman when she was alone in the house.
4. The accused covered the mouth of the victim woman.
5. The accused gave money to the victim woman to not to tell anyone about the incident of rape.
5. The accused threatened drive away the victim woman from the house if she tell anyone about the incident of rape.

Elements of the offence:

Now the moot question is whether aforementioned allegation constitute the offence for which case was registered.

Section 375 related to sexual offence. The section read as under

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.

In the present case it appears that there is allegation that the accused committed rape on the prosecutrix against her will and there is allegation of threatening the victim woman if she disclosed the fact of rape.

As far as the law relating to appreciation of the testimony of the victim of rape is concerned, the law is well settled. The Hon'ble Apex Court in **State of Punjab vs Gurmit Singh (1996) 2 SCC 384** laid down that:

“In cases 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 not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.”

“The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim sexual assault alone to



convict and accused where her testimony inspires confidence and is found to be reliable.”

“The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.”

We find here that the victim woman does not make any statement regarding sexual assault by the accused person. The victim woman does not state that she was raped by the accused. The victim woman also does not state that the accused had threatened her. Furthermore the victim woman submitted that she has no knowledge about the contents of the written complaint. In the present case the evidence of the prosecutrix fails to lend credence to the prosecution case. The evidence is read in its totality and the story projected by the prosecutrix is found to be improbable and thus liable to be rejected.

It appears from the statement of victim woman as PW 1 that she had dispute with her husband. So an FIR was filed against the accused. We find here that the victim woman should have informed her husband about the alleged incident. The husband of the victim woman may have knowledge of the surrounding circumstances which may throw beacon of light on the aspect of rape. However, such witness was not examined before this court. Such statement of the victim woman and other prosecution witnesses do not make the action of the accused person liable under section 376 IPC. It fails to satisfy the ingredients of the offence laid down under section 375 IPC.



Thus, the statement of the victim woman does not make the action of the accused an offence under section 376 IPC. It fails to satisfy the ingredients of the offence laid down under section 375 IPC. Thus, the accused can not be held liable for any act under section 376 IPC.

The prosecution has to prove its case beyond reasonable doubt. There is no corroborating witness to lend credence to prosecution version of the alleged incident. Thus, the prosecution failed to prove the charge brought against the accused beyond any shadow of reasonable doubt.

Hence it is

ORDERED

The accused person namely Islam Mia is not found guilty of the offense charged punishable under section 376/506 IPC and the accused is 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

Typed and printed by me

Addl. Dist. Judge, FTC. I

Alipurduar

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