



S.C. 222 of 2018

**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 222 of 2018
ST 6 (5) 19
CNR No. WBJP050010432018**

**ARISING OUT OF ALIPURDUAR POLICE STATION CASE NO. 499/2015 DATED
08.12.2015**

UNDER SECTION 376/506 IPC

STATE OF WEST BENGAL V/S. MITHUN MAHANTA

UNDER SECTION 376/506 IPC

DATE OF DELIVERY OF JUDGMENT : 28.07.2026

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 08.12.2015 the complainant Tinku Debnath Barman wife of Sushanta Barman of Purba Baro Chowki, Chalonirpaak, Alipurduar PS, Alipurduar District lodged a written complaint before IC Alipurduar PS against Mithun Mahanta son of Nityananda Mahanta of Purba Baro Chowki, Chalonirpaak, Alipurduar PS, Alipurduar District that on 26.11.2015 at 7 PM the victim woman was alone in her room and her parents in law and her minor son had gone to the shop and her husband went to Kerala for job. The accused Mithun Mahanta entered the room where the victim woman was lying in the bed and the accused closed the door and pressed the mouth of the victim woman and opened her wearing apparel and forcefully committed her rape. Thereafter the accused threatened the victim with a knife and told her not to tell anyone about the incident of rape. The victim woman informed her husband over phone about the incident and her husband returned home on 05.12.2015. Then the victim woman lodged this complaint.

F.I.R.

On the basis of the above mentioned police complaint; F.I.R. was drawn up at Alipurduar Police station bearing no. 499/2015 dated 08.12.2015 by S.I. of police SI Bhibuti Bhusan Barman against the accused Mithun Mahanta son of Nityananda Mahanta of Purba Baro Chowki, Chalonirpaak, Alipurduar PS, Alipurduar District under sections 376/506 I.P.C. The investigation of the complaint was made over to SI S Bhadra of Alipurduar P.S.



Investigation

SI S Bhadra of Alipurduar P.S. conducted the investigation of this case.

During investigation the Investigating officer SI S Bhadra of Alipurduar P.S. went to the PO and prepared rough sketch map of the PO with index and recorded statement of witnesses under section 161 Cr PC and sent the VG to Alipurduar District Hospital for medical examination.

Finally, charge sheet was submitted against the sole accused person namely Mithun Mahanta son of Nityananda Mahanta of Purba Baro Chowki, Chalonirpaak, Alipurduar PS, Alipurduar District under sections 376/506 of I.P.C vide charge sheet No. 570/2017 dated 16.11.2017.

Framing of charge

Charge has been framed against sole accused person namely Mithun Mahanta under Sections 376/506 of I.P.C. on 31.05.2019.

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

On conclusion of trial, the accused person namely Mithun Mahanta 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	Tinku Debnath Barman	Victim woman and lodger of FIR
P.W. 2	Dr. Udayan Mitra	Medical Officer Alipurduar District Hospital



P.W. 3	Kesab Barman	Neighbour of the victim woman
PW 4	Bimal Barman	Neighbour of the victim woman
PW 5	SI Bibhuti Bhusan Barman	Recording officer
PW 6	EX SI B B Barman	Recording officer
PW 7	SI Nayan Das	Investigation officer

Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1/1	Signature of PW 1 on the written FIR
2.	Exhibit 1/2	Endorsement of PW 5 on the written FIR
3.	Exhibit 2/1	Signature of PW 1 on the medical examination
4.	Exhibit 2/2, 2/3	Signature of PW 2 on the medical report.
5.	Exhibit 3	Formal FIR
6.	Exhibit 3/1	Signature of PW 6 on the formal FIR

Prosecution evidence:

PW 1, Tinku Debnath Barman stated in her evidence that she was in her bed room on 26.11.2015 at 7 PM when Mithun Mahanta entered her room. PW 1 further stated she was lying on her bed and Mithun Mahanta entered the room and closed the door and pressed her mouth and raped her against her will. PW 1 also stated that she tried to scream and Mithun Mahanta showed a knife and threatened her by saying that he would murder her son and husband and other family members if she informed the incident to anybody. PW 1 further stated that she informed the incident to PS after 12-13 days as she waited for her husband who was not at home and had gone to Kerala. PW 1 also stated that she informed the incident to her husband and her parents in law.



In cross examination PW 1 stated that there are houses of Bimal Barman, Shyamal Barman, Mantu Mahanta, Bajo Hansda, Kartick Hansda surrounding the house of her matrimonial home. In cross examination PW 1 also stated that she informed the incident to her husband at first and she lodged complaint as per instruction of her husband after he came home.

PW 2, Dr Udayan Mitra stated in his evidence that he attended the patient Tinku Debnath Barman aged 28 years at Alipurduar District hospital and the patient stated during examination that one Mithun Mahanta of her locality forcefully intercourse with her on 26.11.2015 at 7 PM. PW 2 further stated that he did not find external injury on the body of the patient and the hymen of the patient was deflorated. PW 2 also stated that his opinion was not consistent with recent sexual assault. In cross examination PW 2 stated that he did not find external injury on the person of the VG as per the medical report and he could not say if the VG was subjected to forceful sexual intercourse.

PW 3 , Kesab Barman stated in his evidence that he knew Tinku Debnath but he is not aware if Tinku Debnath had lodged complaint against the accused. PW 3 further stated that he was not present at home at the time of incident.

PW 4, Bimal Barman stated in his evidence that Tinku Debnath and Mithun Barman are his neighbour but he is not aware if Tinku had lodged the complaint against the accused.

PW 6 , SI Bibhuti Bhusan Barman stated in his evidence that he was posted as SI at Alipurduar PS on 08.12.2015 and he prepared formal FIR and put his endorsement on



the written complaint. In cross examination PW 6 stated that he did not mentioned in the formal FIR, the cause of delay in lodging FIR. In cross examination PW 6 also stated that there is no signature of the complainant in column 14 of the formal FIR.

PW 7 , SI Nayan Das stated in his evidence that perused the CD and visited the PO, reexamined the witnesses and recorded statement of one witness Nripen Das and submitted charge sheet under section 376/506 against Mithun Mahanta. IN cross examination PW 7 stated that he did not ascertain delay of 13 days regarding filing of complaint and he did not see any knife in part of his investigation.

Allegation constituting offence:

First let as look into the contents of the FIR lodged by the complainant, victim woman. The culpability of the accused person can be arrived only if the following circumstances are proved :

1. The victim woman was alone in her room on 26.11.2015 at 7 PM and her parents in law and her minor son had gone to the shop and her husband went to Kerala for job.
2. The accused entered the room where the victim woman was lying in the bed
3. The accused closed the door and pressed the mouth of the victim woman and opened her wearing apparel and forcefully committed her rape.
4. The accused threatened the victim with a knife and told her not to tell anyone about the incident of rape.
5. The victim woman informed her husband over phone about the incident and her husband returned home on 05.12.2015.



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.

Whether the accused committed rape of the victim girl

In the present case it appears that allegations had been raised against the accused of committing rape of the victim woman inside the bathroom at night. The Hon’ble Supreme Court pointed out in **State of UP vs Naushad (2013) 16 SCC 651** laid down the following:



"17. Section 376 IPC prescribes the punishment for the offence of rape. 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. 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".

"18. How is "consent" defined? Section 90 IPC defines consent known to be given under 'fear or misconception' which reads as under.

"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."

"Thus, if consent is given by the prosecutrix under a misconception of fact, it is vitiated."

"A woman's body is not a man's plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he want to indulge in it."

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.

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

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?

The prosecution story as recorded in the FIR, the prosecutrix was alone in the house on 26.11.2015 while her parents in law and child had gone to *pan* shop. The accused Mithun Mahanta entered the room at about 7 PM and bolted it from inside. Thereafter the accused pressed the mouth of the prosecutrix and forced himself upon her and removed her cloths and committed her rape against her will. The accused threatened to cause harm to the husband and child of the prosecutrix if she informed anyone about the incident. The husband of the prosecutrix was in Kerala and she informed him over phone. It is also reported that the prosecutrix only informed her husband about the



incident. She did not inform any other person about the incident out of shame of ignominy.

Now the question of *mens rea* on the part of the accused Mithun Mahanta has to be examined from evidence on record. The victim woman, as PW 1 stated that she was lying on the bed alone in her room and the accused entered the room and pressed her mouth and raped her against her will. We also find that the victim woman stating as PW 1 that she tried to scream but the accused showed a knife and threatened that he would murder her son, husband and other members of her family. Furthermore, we find the victim woman stating as PW 1 that she informed the incident to PS after 12-13 days and her husband was not at home so she waited for him and lodged the complaint after 12-13 days. We also find that the victim woman informed the incident to her husband and parents in law.

It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

Delay in lodging FIR

The Hon'ble Apex Court in **Ramdas and Others versus State of Maharashtra (2007) 2 SCC 170** pointed out that it is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circum-



stances of the case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.



In the instant case, only the prosecutrix (PW 1) and the medical officer (PW 2) have been examined to prove the case of prosecution. On scrutinizing the evidence of the prosecutrix (PW 1), she does not appear to be a witness of sterling quality on whose sole testimony a conviction can be sustained. She had deviated from the case narrated in the FIR. In the FIR the prosecutrix specifically stated that she had informed only her husband about the incident. But since her husband was in Kerala she waited for him to return and lodged complaint after 12-13 days. However, the prosecutrix (PW 1) stated that she informed her husband and her parents in law about the incident of alleged rape. So, it is quite incomprehensible what prevented the prosecutrix from lodging her FIR immediately after the incident. Her evidence on the question of delay in lodging the report is unsatisfactory and if her deposition is taken as it is, the inordinate delay in lodging the report remained unexplained. Thus, we find that the statement of the prosecutrix fail to explain the delay in reporting the matter, and lodging of FIR. While it is trite law that unexplained delay in lodging FIR is commonly considered fatal to the prosecution's case, we observe that in the instant case the delay was never even acknowledged much less explained. Thus, it is our considered opinion that the necessary benefit of such an omission must accrue to the accused respondent.

Whether the accused sexually assaulted the victim woman.

The other significant evidence on record comprises the statement of Dr Udayan Mitra PW 2 the medical officer who examined the victim woman. One of the crucial point in this case is whether sexual intercourse took place between the accused and the prosecutrix and whether such act was with or without the consent of the prosecutrix. The victim woman as PW 1 stated that the accused pressed her mouth and raped her



against her will. Generally there is resistance if somebody wants to commit rape on an unwilling woman. In that case i.e. if resistance is offered, there is the possibility of marks of violence on the breast, thigh and other parts of the victim. Now the medical officer (PW 2) stated in his evidence that he found the hymen of the victim woman deflorated but there was no external injury. Thus, the doctor stated that his opinion is not consistent with recent sexual assault. As per the medical report of the doctor no external injury was found on the person of the victim woman and it cannot be said that the victim woman was subjected to forceful sexual intercourse.

Thus, we find that the version of evidence given by both the prosecutrix as PW 1 and the evidence of other prosecution witnesses are not in consonance.

It appears from the evidence on record that the elements of the offence constituting rape could not be established through prosecution evidence. It has been alleged that the prosecutrix, victim woman was forcefully raped by the accused. But the prosecution evidence does not support the allegation of rape.

The evidence on record do not suggest that the accused Mithun Mahanta had committed any sexual assault upon the prosecutrix .

Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the Court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality



and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected. The prosecution failed to prove the charge brought against the accused beyond any shadow of reasonable doubt.

Hence, it is

ORDERED

The sole accused person namely Mithun Mahanta is not found guilty of the offence charged punishable under section 376/506 IPC and 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 me

Addl. Dist. Judge, FTC. I

Alipurduar

JO. Code – W.B. 01009