



**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 37 of 2015
ST 1(4) 16
CNR No. WBJP05-001261-2015**

ARISING OUT OF FALAKATA POLICE STATION CASE NO. 940/2014 DATED 05.10.2014 UNDER SECTION
376 (2) (i) (l) IPC

STATE OF WEST BENGAL V/S. FAZLU RAHAMAN

UNDER SECTION 376 (2) (i) (l) IPC

DATE OF DELIVERY OF JUDGMENT : 06.03.2026

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 05.10.2014 Safiyar Rahaman daughter of Late Shertula Mia of Dalimpur, Mill road, Falakata PS, District -Alipurduar lodged written FIR against accused Fazlu Rahaman at Falakata PS alleging that the accused Fazlu Rahaman had enticed her daughter Nilifa Begam when she was returning from Dasami mela of the village on 04.10.2014 at 10:30 PM and took her to the near by jungle and committed her rape. His daughter was rescued by the local people who heard her cried. Then the accused fled from there.



Hence, this complaint.

F.I.R.

On the basis of the above mentioned police complaint; F.I.R. was drawn up at Falakata Police station bearing no. 940/2014 dated 05.10.2014 by S.I. of police SI Santosh Lama, IC Falakata PS against the accused Fazlu Rahaman son of Jakhiruddin Mia of Dalimpur Mill Road, PS Falakata, Alipurduar district under sections 376(2) (i) (1) I.P.C. The investigation of the complaint was made over to S.I. of police SI N Barman of Falakata P.S.

Investigation

SI N Barman of Falakata 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 U/S 161 Cr PC. Medical examination of the victim woman was done by medical officer at Falakata Hospital and Birpara State General hospital. The statement of the victim woman was recorded U/S 164 Cr PC. Sexual capability test of accused was done by medical officer. The vaginal swab of the victim woman was sent to RFSL. Finally charge sheet was submitted against the sole accused person namely Fazlu Rahaman under sections 376 (2) (i) (1) of I.P.C and under section 6 of POCSO Act 2012 bearing charge sheet No. 01/2015 dated 01.01.2015.

Framing of charge

Charge has been framed against sole accused persons namely Fazlu Rahaman under sections 376 (2)(i)(1) of I.P.C.

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

On conclusion of trial, the accused person namely Fazlu Rahaman 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

PW 1	Safiar Rahaman	Lodger of FIR and father of victim girl
PW 2	Bapan Sarkar	Neighbour of the victim girl
PW 3	Jaya Sur	Acquaintance of the victim girl.
PW 4	Hossain Ali Haque	Acquaintance of the victim girl.



PW 5	Dr Apurba Saha	Medical officer of Alipurduar District hospital
PW 6	Sujan Sarkar	Acquaintance of the victim girl.
PW 7	Dr. Krishnapada Biswas	Medical officer of Alipurduar District hospital
PW 8	SI Nirmal Barman	Investigation officer

Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1/1	Signature of PW 1 on the written complaint.
2.	Exhibit 2	Medical report of victim girl prepared by PW 5
3.	Exhibit 2/1	Signature of PW 5 on the medical report of victim girl
4.	Exhibit 3	Discharge certificate victim girl prepared by PW 5
5.	Exhibit 4	Capability test report of the accused prepared by PW 7.
6.	Exhibit 4/1	Signature of PW 7 on the capability test report of the accused.
7.	Exhibit 5	Formal FIR
8.	Exhibit 6	Rough sketch map of the PO
9.	Exhibit 6/1	Index of the rough sketch map of the PO.
10.	Exhibit 7	Seizure list
11.	Exhibit 8	Report on date of birth of victim girl submitted by PW 8

Prosecution evidence:

PW 1, Safiar Rahaman stated in his evidence that two and half year ago at 10:30 PM his daughter Nilifa Begam had gone to see the images of goddess Durga. PW 1 further stated that his daughter went to attend nature call when she was returning back and the accused attempted to grave her at that time. PW 1 further stated that his daughter cried and local people gathered. PW 1 also stated that his daughter informed him and he lodged a complaint at the local PS. In cross examination PW 1 stated that his daughter did not say anything against the accused. In cross examination PW 1 also stated that the accused had admonished his daughter as she was attending nature call on the road. In cross examination PW 1 also stated that he lodged this complaint on the advice of local people.

PW 2, Bapan Sarkar stated in his evidence that the incident took place 2 years ago at a *dasami mela* in the village. PW 2 further stated that he heard there was scuffling between Nilima and the ac-



cused. In cross examination PW 2 stated that he could not say from whom he heard about the incident.

PW 3, Jaya Sur stated in her evidence that she heard that the accused committed rape of Nilifa on the day of Durga Puja while she was returning back home. PW 3 further stated that she heard about this incident from her family members. In cross examination PW 3 stated that the family members of Nilifa told her that the accused had done dirty act. In cross examination PW 3 also stated that the accused showed indecent gesture. In cross examination PW 3 also stated that the family members of Nilifa did not tell her about any incident of rape.

PW 4, Hossain Ali Haque stated in his evidence that he went to the house of Nilifa on hearing hue and cry and heard that local people had detained the accused Fazlur Rahaman. In cross examination PW 4 stated that he could not say why Fazlur Rahaman was detained by local people.

PW 5, Dr. Apurba Saha stated in his evidence that he examined Nilifa Begam on 06.10.2014 at Alipurduar District hospital as medical officer. PW 5 further stated that he found hymen ruptured, old ruptured and patient mentally disabled during examination. PW 5 further stated that he could not ascertain if the victim was subjected to recent sexual violence or not. In cross examination PW 5 stated that he is not sure from the examination whether ruptural injury of the victim was caused out of sexual assault or not.

PW 6, Sujan Sarkar stated in his evidence that he knew Safiar Rahaman and Lilifa Begam as his co-villagers and Nilifa Begam had gone mad

PW 7, Dr Krishnapada Biswas stated in his evidence that he examined Fajlu Rahaman on 05.10.2014 at Alipurduar Hospital as Medical Officer. PW 7 further stated that he opined on examination that the patient was not incapable of doing sexual intercourse. In cross examination PW 7 stated that test of sexual intercourse and potency test are different things and confirmatory potency test of the patient was not done.

PW 8, SI Nirmal Barman stated in his evidence that he was endorsed investigation of this case when he was posted at Falakata PS on 05.10.2014. PW 8 further stated that he visited the PO, prepared rough sketch map of the PO with index, examined available witnesses, sent the VG for medical examination to Birpara SD hospital, seized vaginal swab and wearing apparel of the VG, prepared seizure list and sent the seized articles to RFSL, sent the VG to the court for recording of 164 Cr PC statement, sent the accused to the hospital for capability test, collected the copy of 164 Cr PC statement of the VG, capability test report of the accused. PW 8 further stated he filed charge sheet No. 1/2015 dated 10.02.2015 under section 376 (2) (i)(l) IPC. IN cross examination PW 8 stated that he did not collect the report of vaginal swab from RFSL.



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. On 04.10.2014 the victim girl went to dasami mela of Durga Puja.
2. The accused enticed the victim girl with money.
3. The accused took the victim girl to the jungle and committed her rape.
4. The victim girl was recovered by local people when she raised alarm.
5. The accused fled from the place on seeing people arriving at that place.

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 de-



scription "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 victim girl 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 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.

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 is 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 Fazlu Rahaman enticed the victim girl with money when the victim girl went to dasami mela. Thereafter the accused Fazlu Rahaman took the victim girl to the jungle. The accused Fazlu Rahaman committed rape of the victim girl. The victim girl raised alarm and local people arrived at that place. On seeing those people, the accused fled from there.

The lodger of FIR as PW 1 stated in his evidence that his daughter Nilifa Begam had gone to see goddess Durga images and she attended nature's call on her way while returning back. At that time the accused attempted to grab the victim girl and she cried and local people gathered there. PW 1 also stated that the accused had admonished his daughter as she was attending nature's call on the road. This version is not in consonance with the report of the incident recorded in the FIR. In the FIR it has been stated that the accused enticed the victim girl with money and committed rape on her in the jungle. But the lodger of FIR as PW 1 did not submit that the accused enticed his daughter with money and took her to the jungle and committed rape of her. It has been mentioned by PW 1 that the accused attempted to grab his daughter and admonished her for doing nature's call on the road. Significantly, the lodger of FIR in his evidence as PW 1 gave a version of incident which is not in unison with the FIR.

It has been mentioned in the FIR that the victim woman was recovered by local people who heard her cry and alarm at the time of incident. However, the local people Bapan Sarkar examined as PW 2 stated that he heard that there was scuffling between the victim girl and the accused and Hossain Ali Haque examined as PW 4 stated that Fajlur Rahaman was detained in the house of Nilifa but he did not know the reason for it.

Thus we find that the evidences adduced by the prosecution do not point at the criminal liability of the accused. Such evidences do not suggest that the accused had committed rape of the victim girl. So, on scrutiny of the prosecution evidence we can draw conclusion that the accused is exculpated from the charges of rape.

FIR not proved

In this case, the lodger of FIR submitted as PW 1 that he lodged the complaint on the advice of local people and he had no knowledge about the contents of the FIR. Also, his daughter did not tell anything against the accused. Such a statement by main prosecution witness PW 1 (the lodger of the FIR) raises doubt over the veracity of the facts alleged in the written FIR.

Medical evidence

During investigation the police officer had sent the victim girl to Alipurduar hospital for medical examination. The prosecution produced the medical examination report of the victim girl which is marked as exhibit 3. The medical officer on examining the victim girl found old ruptured of hymen



and he could not ascertain if the victim was subjected to recent sexual violence. The medical officer was not sure from examination if the ruptural injury of the victim girl was caused out of sexual assault or not. So it is impossible to draw scientific inference whether the victim woman was sexually assaulted or not.

We are thus left with the sole testimony of the lodger of FIR to prove the guilt of the accused. But the testimony of the lodger of FIR is not found to be trustworthy and there is no corroboration.

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 Fazlu Rahaman is not found guilty of the offence charged punishable under section 376 (2)(i)(1) of 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

Addl. Dist. Judge, FTC. I
Alipurduar
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