



S.C. 259 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 259 of 2019

ST 7 (6) 2023

CNR No. WBJP050014262019

**ARISING OUT OF SAMUKTALA POLICE STATION CASE NO. 42/2015 DATED
22.01.2015.**

UNDER SECTION 376/506/323/34 of IPC

STATE OF WEST BENGAL V/S. PANKAJ DAS, TULSHI DAS

UNDER SECTION 376/323/506 of IPC

DATE OF DELIVERY OF JUDGMENT : 05.06.2026

This is a case where the two accused are set on trial for the offense allegedly committed by them which fall under the category of rape.



Judgment

Prosecution case :

The prosecution case alleged against the accused is as follows :

On 22.01.2015, a complaint was lodged by Swapna Barman daughter of Hemanta Barman of Madhya Parokata, Samuktala PS, Alipurduar district that she was introduced with the accused Pankaj Das son of Parimal Das of Purba Chepani Samuktala PS one year prior to lodging the complaint. The accused had promised to marry her. It is further submitted that the accused induced the victim girl with the promise of marriage and started to mingle with each other. On 16.01.2015 the accused came to the house of the victim girl when she was alone and committed her rape and threatened to cause her death if she informed anyone about the incident of rape. Thereafter the accused was unwilling to marry the victim girl and she went to the house of the accused to talk about marriage. The victim girl came to learn that the marriage of the accused has settled with another lady. There Tulshi Das, the mother of the accused Pankaj Das assaulted her and drove her away from the house. 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. 42/2015 dated 22.01.2015 by SI of police SI Binod Gazmare against the accused namely Pankaj Das son of Parimal Das, Tulshi Das wife of Parimal Das, Amrita Das and Priyanka Das all of Purba Chapani PS-Samuktala,



Alipurduar district under sections 376/506/323/34 I.P.C. The investigation of the complaint was taken up by SI of police SI Harish Barman of Samuktala PS.

Investigation

SI Harish Barman 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 and sent the victim girl to Alipurduar Hospital for medical examination and collected her medical examination report. He also sent the victim girl for recording of her Judicial Statement under section 164 Cr PC and collected the statement recorded by the Judicial Magistrate. He collected the birth certificate of the victim girl. Finally, the charge sheet bearing no 409/2016 dated 31.10.2016 was filed against the accused persons namely Pankaj Das son of Parimal Das and Tulshi Das wife of Parimal Das both of Purba Chepani, PS-Samuktala District Alipurduar under section 376/323/506 I.P.C.

Framing of charge

Charge has been framed against accused person namely Pankaj Das under Section 376/323/506 of I.P.C and against the accused Tulshi Das under section 506 IPC on 07.06.2023.

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

On conclusion of trial, the accused persons namely Pankaj Das and Tulshi Das were examined under section 313 Cr. P. C. Questions were put to the accused persons to explain the circumstances appearing in evidence against them. The accused pleaded innocence and denied their involvement in the alleged incident.



Prosecution Witness

P.W. 1	Swapna Barman	Lodger of FIR and victim girl.
P.W. 2	Nayanti Ray	Classmate of the victim girl.
P.W. 3	Dipali Barman	Sister of the victim girl
P.W. 4	Kiran Barman	Mother of the victim girl.
P.W. 5	Dr Udayan Mitra	Medical officer of Alipurduar District hospital.

Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1	Signature of the PW 1 on the written complaint.
2.	Exhibit 2	Signature of PW 1 on the medical examination report.
3.	Exhibit 2/1	Medical examination report of victim girl prepared by PW 5
4.	Exhibit 2/2 (series)	Signature of PW 5 on the medical examination report.
5.	Exhibit 3 & 3/1	Signature of PW 1 on the 164 Cr PC statement
6.	Exhibit 4	Signature of PW 4 on the seizure list.

Prosecution evidence: A critical analysis

PW 1, Swapna Barman is the lodger of FIR and victim girl. She stated in her evidence that she had love relation with Pankaj Das and her family did not approve the relation and she went with Pankaj Das to a place together. PW 1 further stated that



she filed complaint before the police. In cross examination PW 1 stated that now Pankaj Das is her husband and she has no complaint against Pankaj Das. In cross examination PW 1 further stated that she did not know the contents of the complaint.

PW 2, Nayanti Ray is the classmate of the victim girl. She stated in her evidence that she has no knowledge about the incident and do not know if FIR has been filed.

PW 3, Dipali Barman is the sister of the victim girl. She stated in her evidence that there was love relation between Swapna Barman and the accused. PW 3 further stated that Swapna Barman filed complaint against the accused about 10 years ago since the accused refused to marry Swapna Barman and there was a dispute. In cross examination PW 3 stated that Swapna Barman is now residing happily with the accused.

PW 4, Smt Kiran Barman is the mother of the victim girl. She stated in her evidence that Swapna filed FIR against the accused since the accused was not willing to marry her. In cross examination PW 4 stated that Swapna Barman is residing with the accused at her matrimonial house. In cross examination PW 4 further stated that she has no accusation against the accused.

PW 5, Dr. Udayan Mitra is the medical officer of Alipuduar District Hospital. He stated in his evidence that he examined Swapna Barman on 30.01.2015 at Alipurduar District hospital. PW 5 further stated that on examination he found that the hymen was deflorated but he did not find any other external injury on her private parts. PW 5 also stated that his opinion was consistence with recent sexual intercourse but final opinion was reserved pending for non availability of FSL report.



Allegation constituting offence:

First let us look into the contents of the FIR lodged by the victim girl/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 had given proposal of marriage to the victim girl.
2. The accused started to mingle with the victim girl.
3. The accused committed rape of the victim girl on 16.01.2015 when she was alone in the house.
4. The accused refused to marry the victim girl.
5. The victim girl went to the house of the accused to talk about marriage and she was assaulted and driven away from there.

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 girl 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 girl or makes her to do so with him or any other person; or



(c) *manipulates any part of the body of a girl so as to cause penetration into the vagina, urethra, anus or any part of body of such girl or makes her to do so with him or any other person; or*

(d) *applies his mouth to the vagina, anus, urethra of a girl 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 allured her with the promise of marriage and there is allegation of commission of rape on the prosecutrix by the accused against her will and there is allegation of threatening to cause death of the victim girl 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 girl does not make any statement regarding sexual harassment by the accused person. The victim girl does not state that she was raped by the accused. The victim girl also does not state about any allurement by the accused on the promise of marriage. Furthermore the victim girl 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 girl as PW 1 that her family disapproved her relation with the accused. So an FIR was filed against the accused. It also appears from the statement of PW 3 that the victim girl had dispute with the accused since the accused refused to marry the victim girl. It also appears from the statement of PW 4 that the accused was not willing to marry the victim girl so she filed FIR against the accused. We find here that there are witnesses such as the mother and the sister of the victim girl. These witnesses may have knowledge of the surrounding circumstances which may throw beacon of light on the aspect of rape. The mother of the



victim girl stated that her daughter filed FIR against the accused since the accused was not willing to marry her but now there is no allegation against the accused. Similarly the sister of victim girl stated that there was dispute between the accused and the victim girl since the accused refused to marry the victim girl but now the victim girl is residing with the accused. Such statement of the victim girl 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 girl 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 Pankaj Das is not found guilty of the offence charged punishable under section 376/323/506 IPC and the accused persons namely Tulshi Das is not found guilty of the offence charged punishable 506 IPC and all the accused are 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

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