

***Sessions Case No. 283/18***

**IN THE COURT OF SESSIONS JUDGE, BAKSA:.....AT MUSHALPUR**

Present: Mr. A. Rahman, LL.M, AJS

Sessions Judge

Baksa, Mushalpur

( Committed by Mr. Binod Prasad, Ld. JMFC, Baksa)

**SESSIONS CASE NO. 283/18**

u/s 448/376/323/506 IPC

State

-versus-

Khargeswar Deka

....Accused

**Appearance:**

For the State : Mr. R. Chetry, Ld. Public Prosecutor, Baksa

For the defence : Smt. C. Begum and Mr. M. Mazumdar, Ld. Advocates

Charge framed on : 16.05.2018.

Evidence recorded on : 18.07.2018, 12.04.2019, 15.07.2019, 23.10.2019.

Argument heard on : 04.01.2021

Judgment delivered on : 04.01.2021.

**J U D G M E N T**

1. The prosecution case unfolded in the ejahar (FIR) dated 15.01.2016 lodged by Shri Ajit Deka, Vill- Oubari under Goreswar Police Station in brief is that on the intervening night of 14.01.2016 and 15.01.2016 at about 12 O'clock, he returned home having had his 'uruka' feast and witnessed that accused Khargeswar Deka was forcibly

***Sessions Case No. 283/18***

committing rape on his wife Smt. X (name withheld). The accused having seen the arrival of the complainant, ran away by applying force on him. On 15.01.2016 at about 11.30 am, the accused again visited the house of the complainant and damaged the household articles and assaulted his wife with a lathi causing grievous injury on her person. Hence, this case.

2. Police after due investigation, submitted charge-sheet against the accused person u/s 448/376/323/506 IPC. Learned Judicial Magistrate First Class having complied the mandate of Section 207 Cr.PC committed the case to the court of Sessions and accordingly, the instant Sessions Case was registered.

3. My learned predecessor upon hearing both sides and considering the materials on record, framed charges u/s 448/326/323/506 IPC against the accused person. The charges being read over and explained to the accused were denied and he claimed to be tried.

4. To substantiate the charges against the accused, the prosecution examined altogether six witnesses including the complainant and his victim wife. After closure of the prosecution evidence, accused was examined u/s 313 Cr.PC. The defence plea is of total denial and the accused declined to adduce defence evidence.

5. I have heard Mr. R. Chetry learned public prosecutor. Also heard Smt. Chaminara Begum learned Advocate assisted by Mr. M. Mazumdar. I have also very thoroughly and carefully scanned the evidence. Now the points for determination are as follows:-

**POINT FOR DETERMINATION**

a) *Whether on 15.01.2016 at around 12 am, the accused at Village Oubari committed lurking house trespass by entering into the house of the informant with an intention to commit rape on his wife and thereby committed an offence punishable u/s 448 IPC?*

***Sessions Case No. 283/18***

*b) Whether the accused person on the same date, time and place, committed rape on Smt. X the wife of the informant and thereby committed an offence punishable u/s 376 IPC?*

*c) Whether on the same date, time and place, the accused committed offence u/s 323 IPC by voluntarily causing simple hurt to Smt. X?*

*d) Whether on the same date, time and place, the accused committed criminal intimidation to the complainant and his wife with dire consequence with life and thereby committed offence punishable u/s 506 IPC?*

**DISCUSSION, DECISION AND REASON THEREOF:**

6. Before appreciation of evidence, it is plausible to go through the relevant evidence of the witnesses.

7. PW-1 Ajit Deka being the informant had deposed that about two years back, on a certain night at around 8-9 pm on the eve of 'Magh Bihu', a feast was arranged in their village. A quarrel developed between himself and the accused at the place of feast where both of them were beaten up. So, out of misunderstanding, he lodged the FIR. The accused scuffled with his wife. In cross-examination, he stated that he did not see the scuffle between the accused and his wife.

8. PW-2 Smt. X is the alleged victim as well as wife of PW-1. She has clearly deposed in an unambiguous language that on the relevant day, a feast was arranged in their village on the eve of 'Magh Bihu'. Her husband PW-1 and the accused entered into a quarrel after consuming liquor in the place of feast. Accordingly, local people advised to file the FIR against the accused to malign his reputation. She stated that Exbt.1 is the medical examination report. Exbt.1(1) and Exbt.1(2) are her signatures. She has also confirmed that Exbt.2 is her statement recorded before the Magistrate

***Sessions Case No. 283/18***

and Exbt.2(1) is her signature. In her cross-examination, PW-2 also stated that the case arose out of misunderstanding.

9. PW-3 Smt. Pratima Deka is the sister in law of PW-1. She was declared hostile. However her positive evidence is that about three years back on a certain mid night at around 12 O'clock, she heard that the accused assaulted her brother in law (PW-1) physically. In her cross-examination by the defence side, she has very clearly stated that father of the accused is a VDP Secretary and on the fateful night on account of 'Magh Bihu' festival, a feast was prepared by the father of the accused. A quarrel developed between the father of the accused and PW-1 in connection with the marketing for feast.

10. PW-4 Shri Karuna Bezbaruah also deposed almost in the similar line of PW-3. He was also declared hostile. His positive evidence is that PW-1 Ajit Deka is his neighbour. He also stated that due to 'Magh Bihu', festival feast was arranged on the relevant night. He heard that a quarrel developed between PW-1 and the accused when both were under intoxication.

11. PW-5 Dwijen Deka is the elder brother of PW-1. He has clearly deposed that on the relevant fateful night, feast was arranged by local people to celebrate 'Magh Bihu' uruka. Father of the accused prepared the feast. Later on, he came to know that a quarrel took place between his younger brother and the father of the accused. In cross-examination, he has stated that he has no personal knowledge about the occurrence.

12. PW-6 Nayanmoni Das was the Investigating Officer of this case. According to him on 15.01.2016, while he was working as an Attached Officer at Goreswar Police Station, the Officer-in-charge having registered Exbt.3 FIR, endorsed him to investigate. Accordingly, he made investigation of the case. He has confirmed that Exbt.4 is the sketch map prepared by him. Exbt. 4(1) is his signature. He has confirmed that Exbt.3(2) is the signature of Shri Pradip Rajbongshi In-charge of Suagpur Police Outpost. He has deposed that having completed the investigation, he

***Sessions Case No. 283/18***

submitted Exbt.5 charge-sheet. Exbt.5(1) is his signature. During cross-examination, he denied the suggestion that he did not properly investigate the case and filed the charge-sheet without any lawful basis.

13. Now upon careful scrutiny and appreciation of the evidence, it becomes crystal clear that PW-1 and PW-2 are the prime witness of the prosecution. Therefore, the fate of the prosecution case hinges on their testimonies. It is palpably clear that on the relevant night of occurrence, feast was arranged in their village to celebrate 'Magh Bihu'. Both the accused and PW-1 in drunken state, involved in a quarrel and beating. Therefore, the FIR was lodged due to misunderstanding. PW-2 has not stated anything that the accused outraged her modesty or scuffled with her and applied criminal force. In the phase of the evidence of PW-1 and PW-2, the evidence of PW-3, PW-4 and PW-5 is immaterial for the prosecution case. When the prime witnesses PW-1 and PW-2 does not support the prosecution allegations and the charges against the accused, further discussion of evidence is redundant. What follows from above discussion and reasons is that due to misunderstanding, PW-1 lodged the FIR.

14. The prosecution has failed to prove the charges against the accused. So, the accused stands acquitted. The bail bond shall remain in force for another six months in the spirit of Section 437(A) Cr.PC.

15. Judgment is declared and delivered in the open court under my hand and seal on this **04<sup>th</sup>** day of **January, 2021**.

Dictated and Corrected by :

Mr. A. Rahman,  
Sessions Judge,  
Baksa, Mushalpur

*Sessions Case No. 283/18*

**ANNEXURE:**

List of prosecution witness:

PW1 ... Ajit Deka  
PW2 ... Smt. X (name withheld)  
PW3 ... Smt. Pratima Deka  
PW4 ... Karuna Bezbaruah  
PW5 ... Dwijen Deka  
PW6 ... Nayanmani Das ... I/O

List of defence witness:

Nil

List of documents exhibited:

Exbt.1 :Medical report  
Exbt.2 :Statement of the victim  
Exbt.3 :FIR  
Exbt.4 :Sketch map  
Exbt.5 :Charge-sheet