

GAHC010008982010



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.A./207/2010

HABIBUR RAHMAN
S/O SAMR UDDIN

2: RUSTUM ALI

S/O LATE MOINUDDIN

3: ABDUL MATALEB

S/O LATE ALIM UDDIN

4: RAHUL UDDIN @ RUHUL AMIN

S/O LATE ALIM UDDIN

5: IDRISH ALI

S/O RUSTAM ALI

6: SIDDIKUR RAHMAN @ ABU BAKKAR SIDDIQUE

S/O RUSTAM ALI
ALL ARE RESIDENT OF VILL. NO. 2 CHARKEY BASTY
P.S. LAMDING
DIST. NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM

2:MUSSTT. RAHIMA KHATUN

W/O LATE ABDUL MAZID
VILL. NO. 2 CHARKEY BASTY
P.S. LAMDING
DIST. NAGAON
ASSAM

Advocate for the Petitioner : MRM RAHMAN, MR D TALUKDAR(AMICUS CURIAE),MR.N UDDIN,MR.G SAROWAR,MR.M DUTTA

Advocate for the Respondent : MR. D DAS(ADDL.PP, ASSAM),,,

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Mr. D. Talukdar, Amicus Curiae.
: Mr. N. Uddin, Adv.

For the Respondents : Mr. D Das, Addl. PP

Date of hearing : 17.05.2024

Date of judgment : 02.08.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. D. Talukdar, learned Amicus Curiae assisted by Mr. N. Uddin, learned counsel for the appellant. Also heard Mr. M.P. Goswami, learned Addl. PP, Assam.
2. The present appeal is filed under Section 374 of the Code of Criminal Procedure, 1973 against the Judgment and Order dated 29.11.2010 passed by the learned Additional Sessions Judge (FTC), Nagaon in Sessions Case No. 154(N)/2006 arising out of C.R. Case No.

1203/2002, convicting the appellants/accused to undergo rigorous Imprisonment for 3 years each and fine of Rs. 500/- each, in default Simple Imprisonment for another 15 days for the offence under sections 366/149 of the IPC and Rigorous Imprisonment for 1 year each for offence under section 148 of the IPC, Simple Imprisonment for 1 year for offence under section 147 of the IPC and Simple Imprisonment for 1 months for offence under Sections 448/149 of IPC. The appellant Nos. 1, 5 and 6 were further sentenced to undergo Simple Imprisonment for 3 years each and a fine of Rs. 500/- each in default Simple Imprisonment for 15 days for committing offence under Sections 380/34 of IPC.

3. THE FACTUAL BACKGROUND:

A. The prosecution case in a nutshell is that one complaint petition had been lodged by complainant Rahima Khatoon before the learned S.D.J.M. Hojai, Sankardev Nagar alleging that on 19.11.2002 at about 02:00 A.M. accused persons namely Rafiqul, Habibur Rahman, Rustam Ali, Abdul Matalib, Rahul Uddin, Idrish Ali and Siddiqur Rahman @ Abu Bakkar Siddique on being armed with dao and lathi forcibly entered into her house by breaking the door of the house and thereafter assaulting her, kidnapped her minor daughter aged 11 years and also looted Rs. 5,070/- by breaking the box where it was kept. It was further alleged that though she lodged one ejahar on 20.11.2002 at Nakhuti O.P., the police did not take any action. It was alleged that the accused Rafiqul raped the girl for one month by wrongfully confining her, under the advice of the other accused persons. It was alleged further that while she went to bring the girl back the accused persons threatened her with dire

consequence and on 27.12.2002, the accused persons chased the girl from the house by assaulting her.

B. In pursuance of the complaint petition, the learned S.D.J.M, to whose court the complaint was transferred recorded the statement of the complainant under section 200 of Cr.P.C. and also of the witnesses. After recording the statement of the complainant and the witnesses, the learned Court on being satisfied that there is material under sections 448/380/427/366-A/376/342 of IPC against the accused issued process against the accused persons namely Rafiqul Islam, Habibur Rahman, Rustam Ali,, Abdul Matalib, Rahul Uddin, Idrish Ali and Siddiqur Rahman @ Abu Bakkar Siddique. Case against accused Rafiqul Islam was filed on the strength of P/A. The learned Magistrate after appearance of the rest of the accused person and after furnishing them copy to them committed the case to the learned Court of Sessions.

C. Thereafter, the learned Court of Sessions framed charges under sections 147/148/448/366-A/380/506/149 of IPC and read over to the accused persons to which the accused persons pleaded not guilty and claimed to be tried.

D. To bring home the charge, the prosecution had examined as many as 7 witnesses including the victim and the informant. The defence did not adduce any evidence.

4. SUBMISSIONS MADE ON BEHALF OF THE APPELLANTS:

The learned counsel for the appellants argues the followings:

I. The deposition of PW1 and PW6 are having serious contradictions and inconsistencies in their deposition and therefore

the learned trial court could not have convicted the appellants on the basis of such evidence.

II. The PW1 and PW6 are interested witnesses and the evidences of other witnesses are hearsay evidences and there are also many contradictions amongst the witnesses as regards the mode and manner of commission of the offence.

III. The evidence of PW 1 is not at all trustworthy inasmuch as she deposed that she became unconscious due to injury sustained by her and she could not identify the appellants on dark night of the incident. There is no medical evidence to sustain any such deposition.

IV. There is no evidence of any overt act attributable to the appellants and there is also no evidence to show the presence of the appellants at the place of occurrence, the learned court below committed grave error of law in holding the appellants guilty.

V. It is also contended that the incident took place on 19.11.2002 and the CR case was filed on 31.12.2002. Therefore, there is substantial delay in lodging the FIR and there is no explanation as regards such delay. Therefore, on this count alone, the appellants could not have been convicted.

VI. Though there are allegation of injury upon both the PW1 and PW6, however, there were no medical evidence to suggest any injury inasmuch as admittedly the victims were not medically examined. Thus, the same had created a dent on the prosecution story and therefore the appellants are liable to be granted benefits of doubt.

5. **SUBMISSIONS MADE ON BEHALF OF THE STATE:**

Mr. D Das, learned Additional Public Prosecutor, Assam while defending the judgment impugned in the present appeal contends the followings:

- I.** No error could be said to have been committed by the learned court below in holding the appellants/ convict guilty of the offence with which they were charged.
- II.** The strong motive of the appellant/ convict to commit the crime has been established beyond reasonable doubt through the evidence of PW1 and PW6. The evidence as regards the commission of the offence of kidnapping has been reaffirmed during the cross-examination.
- III.** There cannot be any reason to discard the oral evidence of PW2, PW3, PW4 and PW5 who are the neighbour and reached the place of occurrence after the incident of kidnapping and they corroborated the factum of state of mind of the PW1 at that point of time.
- IV.** The delay has duly been explained in the statement made in the complaint case as well as during the evidence. Therefore such delay shall not be fatal in the given facts of the present case. Accordingly, the learned Additional Public Prosecutor prayed that there being no merit in the present appeal, the same be dismissed and the sentence awarded may be upheld.

6. The learned Amicus Curiae submits that the deposition of the PW1 as regards the place of occurrence and the identification of the accused by her has remained unshaken. Her state of mind and the ransacking of house was also corroborated by PW2, PW3, PW4 and PW5. However, the evidence of PW6 creates a doubt whether it was an act of

kidnapping or not. Mr. Talukdar, learned counsel further submits that it cannot also be said that delay was properly explained. It cannot also be said that the victim is unaware of legal proceeding. According to the PW1, though they went to the police station to lodge an FIR, such FIR was not registered, however, the complaint case was also filed before the learned Magistrate after more than a month. Only reason explained for such delay is the re-appearance of the victim girl. Further, the concerned police officer denied that any FIR was lodged.

7. Before dealing with the arguments advanced by the learned counsel for the parties, let this court first look into the depositions and testimonies of the witnesses.

I. **PW-1 Rahima Khatoon** was the informant and mother of the victim. It was testified by her that on the night of occurrence at about 02:00 A.M. the accused persons breaking open the wooden door of her house entered into her house and assaulted her by means of lathi, kick and looted Rs. 5070/- from a wooden box. It was further alleged that the accused persons also kidnapped her minor daughter aged 11 years. It was divulged that she could identify the accused persons in the light of the torch brought by them and also identified them as she could know them from their voices. According to this witness accused Rafiqul, Habibur Rahman, Siddique and Idrish Ali entered into her house and the other 3 accused persons namely Rustam Ali, Abdul Matalib and Rahul Amin were standing at the door step of her house. Later on she stated that Rustam was in his own house. It was revealed by her that, while she raised hue and cry her neighbor

PW-8 came and at that moment she lost her sense. While she regained her sense, she found PW-3, PW-2 and PW-5 etc. at her house and she informed about the occurrence to the said persons. It was disclosed by her that she visited the house of accused Rustam Ali and requested him to return back the girl but Rustam abused her in filthy languages and chased her. Getting no other alternative she lodged ejahar at Nakhuti O.P., but no case was registered by the P.S. It was disclosed by her that she along with her brother Abdul Rahman visited the house of Rustam at Nakhuti Sarkay Basti and her daughter informing her that she was assaulted by accused Rustam, Rafiqul etc., thereafter, she left the house of Rustam and came back with her daughter. It was divulged by her further that after one month, her daughter was found and while she enquired Dilwara about the occurrence Dilwara revealed before her that Rafiqul, Habibur kept her one night in the jungle and Rafiqul raped her and that on the next day she was brought to the house of Rafiqul, there he raped her and that on the next day she was brought to Rafiqul's uncle house at Nagaon and kept there for one month and then Rafiqul brought her to his own house at Nakhuti Sarkey Basti. On the next day she went to Sankardev Nagar Court along with the victim Dilwar and lodged the case.

During cross-examination, she deposed that Rustam Ali was also present with Rafiqul at the time of occurrence and on the next day he was in his own house and that through mistake she in examination in chief stated that Rustam did not accompany the

accused. She admitted that after 10/12 days after the occurrence she left her village and went to her brother's house at Kaliabor and thereafter about one month back again went to Circle Basti along with her brother Abdul Rahman. It was revealed by her that her daughter returned back with her. It was revealed by her during cross that her daughter was a student of Class III at the time of occurrence. It was admitted by her that though she lodged the case on 31.12.2002 but the occurrence happened on 19.11.2002 and she did not mention in the complaint petition regarding delay in lodging the case. She reiterated that immediately after the occurrence she lodged ejahar at Nakhuti P.S. It was admitted by her that the accused persons also lodged ejahar at Nakhuti P.S. It was admitted by her that the accused persons also lodged one police case against them. It was denied by her that the victim herself went along with absconder accused Rafiqul and that she herself got married with Rafiqul as per her own will. It was denied by her that the victim herself eloped with the accused Rafiqul due to her love affairs with Rafiqul. It was denied by her that she forced the accused persons to mutate land in the name of the victim and as they refused to do so, so out of grudge lodged the case.

II. **PW-2 Siddique Ali** deposed that about 6/7 years ago one night while he was sleeping at about 02:00 A.M., hearing noise, rushed towards the house of PW-1 and found that PW-1 was in unconscious state in her house. He also noticed that wearing apparel of PW-1 was also in torned condition and that the

door of the house and box of the house was in broken condition. When PW-1 regained sense, she divulged before him that Rustam's son Idrish, Rafiqul and Bahibur, Siddique by breaking open the door looted Rs. 5070/- and also kidnapped her daughter. He disclosed that he also met PW-3, PW-4, PW-7 and some other persons at the place of occurrence. It was testified by this witness that getting information about the occurrence he along with some other persons of the village and informant PW-1, went to the house of accused Rustam on the next date and while they enquired about the victim, accused Rustam abused them. Thereafter PW-1 left the village and resided in the house of her brother at Kaliabor. After elapse of 1 month, PW-1 found the victim in the house of Rustam and the victim returned back along with her mother. It was revealed by him that on enquiry, the victim divulged before them that accused Rafiqul, Habibur, Siddique and Idrish facibly kidnapped her.

During cross-examination, he deposed that his house is just adjacent to the boundary of the house of the accused persons and that he had terms with the accused persons. It was also revealed that complainant's house was also adjacent to his house. It was denied by him that Dilwara had love affairs with Rafiqul and she herself eloped with the accused at the day time. It was admitted by him that though Rustam's house was just adjacent yet, they did not visit the house of Rustam in search of victim on that very night. It was denied by him that he did not state before the Magistrate about witnessing PW-1's cloths in torn condition. It was

denied by him that he did not state before the Magistrate regarding recovery of Dilwara about one month back by her mother at Rustam's house. This witness showed ignorance about the fact, if marriage was performed between the victim and accused at Bhuragaon, Morigaon, at the house of Rafiqul's uncle. It was denied by him that in the statement before Magistrate, he did not disclose the name of Habibur.

III. **PW-3 Abdul Goni** who was the neighbor of PW-1, deposed that about 7 years ago one night at about 02:00 A.M. hearing the hue and cry of PW-1, he immediately rushed to the house of PW-1 and on his arrival found that door of PW-1's house was in broken condition and PW-1 was lying on the ground inside her house. It was disclosed that the box of the house was also found in broken condition. It was also disclosed that he called the neighbours and sometimes later PW-2, PW-5 and PW-7 and some other persons arrived at Rahima's house. It was divulged that PW-2 poured water in the face of PW-1 and PW-1 regained sense. It was disclosed that Rahima informed that Rustam Ali, Idrish Ali, Siddique, Habibur Rahman and Rafiqul, forcibly kidnapped her daughter and also looted Rs. 5070/- from the box. It was disclosed that he along with some persons searched the victim but could not trace out her. It was also disclosed that in the morning he witness, PW-2, Rahim and some others went to the house of Rustam Ali and enquired about the matter but he replied that he had no knowledge about the occurrence. Thereafter PW-1 lodged ejahar at P.S. It was divulged that in spite of vigorous search the

victim could not be traced out, so PW-1 went to the house of her brother at Kaliabor. It was disclosed that after a month, Rafiqul brought the victim to the house of his father Rustam Ali. It was disclosed further that during that period PW-1 also came back to her village and noticed her daughter in the house of Rustam Ali and the victim Dilwara came back to her mother's house and both of them returned back to Kaliabor.

During cross-examination, he deposed that his house was just adjacent to the house of the PW-1. It was revealed that he had no relationship with accused, PW-1. According to him, he had no quarrel with the accused Rustam and suggestion forwarded by defence side that due to quarrel with accused Rustam he had deposed falsely is straightway denied by this witness. He admitted that he never heard earlier that accused Motalib was also involved in the case. It was denied by him that he did not disclose before Magistrate that one month later Rafiqul brought the victim to the house of Rustam and that later the victim returned back to the house of her mother.

IV. **PW-4 Intaj Ali**, during his examination-in-chief deposed that on the night of occurrence at about 02:00 AM, he hearing the noise from PW-1's house rushed to the house of Rahima and found Rahima lying in unconscious state and that witness PW-3 and PW-2 were pouring water in the face of Rahima after which she regained sense. It was disclosed that while Siddique, Goni etc. enquired Rahima then Rahima informed that Rustam Ali, Idrish Ali, Siddique, Habibur Rahman and Rafiqul,

Raful and Motalib breaking the door of the house looted Rs. 5,070/- from the box and also kidnapped her daughter Dilwara. During his cross-examination, he deposed that after reaching the house of PW-1, he found her lying outside her house. He also stated that iron kabza of the door was found in broken condition. As his house was 150 nols away, so he could not hear any screaming sound from the house of PW-1. He also deposed that he had no personal knowledge about the occurrence.

V. **PW-5 Abdul Hamid** deposed in his evidence that on the date of occurrence at 02:00 A.M., hearing the noise from the house of PW-1, he went to the house of PW-1 and found that door of PW-1's house was in broken condition and the box was also in broken condition. It was disclosed that the daughter of PW-1 was not found in the house. It is also disclosed that he witnessed PW-1's wearing cloths in torn condition and while he enquired PW-1, PW-1 informed that Rustam Ali, Idrish Ali, Siddique, Habibur Rahman and Rafiqul entered into the house of PW-1 by breaking the door and looted Rs. 5,070/- and also kidnapped her daughter Dilwara. During cross-examination, he deposed that his house was 100 nols away from the house of the PW-1. It was denied by him that Rafiqul helped PW-1 in her cultivation. It was also disclosed by him that while he came to the house of PW-1, he found 15/16 persons at the place of occurrence.

VI. **PW-6** is the victim. She disclosed that during her statement disclosed that at the time of occurrence she and her mother resided at Nakhuti Sarkay Basti. It was disclosed that her

father already expired 4 months prior to the date of occurrence. It was disclosed that she was sleeping with her mother on the night of occurrence at their house at Sarkay Basti and at about 02:00 AM, by breaking the door of their house 7 persons entered into the house and assaulted her mother and looted Rs. 5070/- from the box. It was revealed that she could identify the persons who entered into the room as Rafiqul, Habibur, Siddique and Idrish in the light of the torch, which was lightened by the accused persons. According to her accused Rafiqul gagged her mouth with his hand and taking her into his lap brought her to the jungle and at that time Habibur, Siddique and Idrish were also along with them. It was disclosed by her that at the time of incident, accused Rustam, Rahul and Motalib were present outside their house and she also met them in the jungle. It was revealed that from the jungle, except Rafiqul and Habibur, all the other accused left the place and accused Rafiqul caused forcible sexual intercourse with her inspite of restraint made by her. It was disclosed that in the next morning she was brought to the Rafiqul's uncle house and in the said house she was kept confined for about one month and the accused also used threat. Allegation was also brought that Rafiqul also assaulted her. It was revealed by her that after some days, one day she noticed her mother and immediately left the house of the accused and accompanied her mother to the house of her maternal uncle at Kaliabor. It was also divulged by her that she revealed before PW-3, PW-4, Idrish, PW-5 etc. regarding the whole incident and also gave statement before Magistrate which

she exhibited as Ext.2. She disclosed that her age was 11 years at the time of occurrence and at that time she was reading at class-III. During cross-examination, she deposed that the year of her birth as 1991. It was revealed by her that at the time while she was kidnapped, the lamp of the house was not burning and while she was taken away there was fog. It was revealed that there was torch light in the hand of Rafiqul. It was admitted by her that it was dark outside on the date of occurrence and Rafiqul alone carried a torch and he lighted the torch at some interval. It was revealed by her that while she was brought to house of Rustam's brother from the jungle, she was brought in a small motor vehicle at about 12 noon and they got into the said vehicle from the nearby road of the jungle. It was revealed that thereafter, they arrived at Bhuragaon. It was admitted that at Bhuragaon there were female members in the house, where she was kept and Rafiqul's aunt served meal to her. It was revealed that except the family members of Rafiqul's uncle house, she was not allowed to meet any other persons and while she had to bath and to go to latrine Rafiqul accompanied her. It was denied by her that at Bhuragaon marriage was solemnized between Rafiqul and herself and that Giasuddin was the Ukil of the marriage. It was revealed by her that while she was brought to Sarkay Basti from Bhuragaon, she was brought in a hired vehicle and at day time she was brought to Rafiqul's house and though the neighbouring persons like Siddique etc. saw her while she was brought to Rafiqul's house, yet nothing was done by them and she also did

not reveal anything to them. It was revealed by her that except witness PW-5 the other witnesses PW-3 and PW-4 were not related to her.

VII. **PW-7 Faizur Rahman @ Faizul**, during his examination-in-chief deposed that on the date of occurrence at about 02:00 AM, hearing noise he went to the house of PW-1 and found that PW-1 was in a senseless condition and on enquiry PW-1 revealed before her that Habibur Rahman, Rustam Ali, Abdul Matalib, Rahul Uddin, Idrish Ali and Abu Bakkar Siddique assaulting her, kidnapped her daughter Dilwara and also looted Rs. 5,070/- by breaking the box. It was revealed by him further that he witnessed the door of PW-1's house in broken condition and one wooden box of the house of PW-1 was found in broken condition. It was divulged by her that while he and the village people went to the house of Rustam, they did not find anybody in the house. It was revealed that about one month later, PW-1 informed him that she noticed her daughter in the house of Rustam and the victim was brought by her mother.

During cross-examination, he deposed that his house was ½ KM away from PW-1's house. It was denied by him that he did not state before the Magistrate regarding observing the door of PW-1 and the box inside the house in broken condition and regarding looting of money amounting to Rs. 5,070/- and about the fact stated by PW-1 that her daughter was found in the house of Rustam and PW-1 brought her back.

8. As discussed hereinabove, from the evidence of PW1, it is

gathered that the occurrence took place on the night of 19.11.2002 at about 2 a.m. She could identify accused Rafiqul, Habibur Rahman, Siddik and Idrish, who entered the house and accused Rustam Ali, Abdul Matlib and Rahul Amin were standing at the door step of her house and later on she stated that Rustam Ali was in her house. According to her, she visited the house of accused Rustam Ali to bring back the girl. When she failed, she went to lodge the ejahar at Nakhuti OP. Admittedly, she filed the FIR one month after recovery of her daughter. She was conspicuously silent in her evidence-in-chief when she recovered her daughter. In her evidence, she even did not depose the date of occurrence. During her cross, she deposed that after 10/12 days of the incident, she left the village, where the incident took place to her brother's place at Kaliabor and after one month, she again came back to the village, where the incident took place and tried to visit the house of accused Rustam Ali and she saw her daughter in the house of accused Rustam Ali. During cross, she also deposed that her daughter voluntarily came back with her and then they went to the house of her brother at Kaliabor and filed the case.

9. In view of the aforesaid testimonies, in the considered opinion of this court, a doubt has been created as regards whether the incident was an incident of kidnapping or it was a voluntary act on the part of the victim. Such doubt further fortifies through the evidence of PW6 (the victim). The victim, in her deposition, though stated that she was forcefully taken by the accused initially to a jungle and there she was raped by accused Rafiqul, her statement including her cross-examination, if read as a whole, disclose that on the next morning of the date of occurrence she was brought to the house of Rafiqul and was kept in that

house for a month. According to her, after some days, she saw her mother and immediately left the house of the accused and accompanied her mother to the house of her maternal uncle at Kaliabor. She also stated that she was brought to the house of accused Rustam's brother from jungle in a small motor vehicle at about 12 noon. Thereafter, they reached a place called Bhurgaon and at Bhurgaon there were female members in the house where accused Rafiqul's aunt served milk to her. She also deposed that she was brought Nakhuti Sarkay Basti from Bhurgaon in a hired vehicle and it was a day time the neighbouring person like Siddik (PW2) also saw her while she was brought to Rafiqul's house and she also did not reveal anything to him.

10. In view of the aforesaid, a further doubt is created more particularly for the reason that according to her own testimony she was being moved from one place to another through public places in the day time and in vehicles and finally she was brought to the residence of Rafiqul, which is situated in the village where the alleged incident took place. Therefore, aforesaid deposition has also created a doubt as regards the factum of kidnapping.

11. Chapter XVI of IPC contains offences against human body. Section 366 is included in this chapter. Kidnapping / abduction simpliciter is defined under Section 359 IPC. However, if kidnapping is done with an intention of committing murder or for ransom or to induce/ seduce a woman to marry or to have illicit intercourse, stringent punishments are provided under Section 363 A to Section 369. Section 366 IPC stipulates that whoever kidnaps/ abducts any woman with the intent that she may be compelled or knowing that she will be compelled, to either get her

married or forced / seduced to have illicit intercourse, they shall be punished with imprisonment up to 10 years and fine.

12. From the text of the aforesaid Section, it is clear that to establish commission of an offence under Section 366, the prosecution requires not only to lead evidence to prove kidnapping simpliciter but also requires to lead evidence to portrait the specific intention as mentioned hereinabove of the kidnapper. Therefore, in order to constitute an offence under Section 366 IPC besides proving the factum of the abduction, the prosecution has to prove that said abduction was for one of the purposes mentioned and as discussed hereinabove.

13. From the evidence as discussed hereinabove, a doubt has been created whether the victim has voluntarily joined or voluntarily continued to stay with the accused. Though she has stated that it was a forceful rape and forceful kidnapping, in view of the facts disclosed during the cross-examination, this court is unable to treat her evidence to be of sterling quality and/or unimpeachable. Therefore, some corroboration should be required which lacks in this case. There was no medical evidence as there was no investigation by police, rather it was a complaint case. In fact the complaint was lodged after more than one month from the alleged date of the commission of the offence.

14. Thus, it was not proved beyond reasonable doubt that the appellants had intentionally kidnapped PW6 to perform marriage. Thus, from the overall assessment of the materials on record, this court is having unhesitant conclusion that the evidence of PW1 and PW6 do not inspire any confidence to convict the accused of the offence charged.

15. The law is well settled that it is the duty of the prosecution to

establish the charge against the accused beyond reasonable doubt and that the benefit of doubt must always go in favour of the accused. It is true that in an offence against woman more particularly sexual offence a person can be convicted on the basis of sole testimony of the victim provided it is of unimpeachable quality and deposition is truthful.

16. By now it is well settled that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is also equally well settled that conviction can be made on the basis of the sole testimony of the prosecutrix. However, when a conviction is based on sole testimony of the prosecutrix, the Court are to be extremely careful in examining the testimony. (Ref: **Manakchand @ Moni Vs State of Haryana** reported in **2023 SCC Online SC 1397**).

17. It is not enough for the court that the accused is named by victim in the commission of the offence in her statement but such evidence must create a confidence upon the court to be unimpeachable. The Hon'ble Apex Court in the case of **Sujit Biswas vs State of Assam** reported in **(2013) 12 SCC 406** while dealing with the concept of proof beyond reasonable doubt and suspicion, held that such suspicion, however grave it may be, cannot take the place of proof. It was further held that in a criminal case, the court has a duty to ensure that mere conjecture or suspicion does not take the place of legal proof. Clear, cogent and unimpeachable evidence is necessary before an accused is condemned as a convict and the basic and golden rule of criminal jurisprudence must be applied. However, in the case in hand, the learned trial court convicted the accused persons in ignorance of the settled proposition of law and ignored the material contradiction in the evidence of the PW1 and PW6.

18. The evidence of PW2, PW3, PW4, PW5 and PW7 are the evidence

in the nature of res gestae inasmuch as they were not eye witnesses to the incident and they reached the place of occurrence after the alleged incident took place. Therefore, in view of the nature of evidence of PW1 and PW6, evidences of PW2, PW3, PW4, PW5 and PW7 lost its force.

19. Yet another aspect of the matter is that since there was no police investigation, the complaint was lodged long after the date of incident, there was no medical examination of the victim immediately after the date of occurrence, no material evidences were collected from the place of occurrence and the conviction was imposed on the basis of a private complaint. Such factum has also dented the case of the prosecution inasmuch as material evidences were not available before the court.

20. In the present case, this court has noticed that the incident took place on 19.11.2002 at about 2 a.m. and the complaint was admittedly filed on 31.12.2002. In between the victim (PW6) was in the company of accused Rafiqul and she was travelling from one place to another and was present in public places. Though crime was stated to be reported to the police and was alleged that the police refused to register the FIR, no complaint case was filed immediately and as finally the complaint case was filed, it cannot also be presumed said that the PW1 is unaware of such right of filing a case before the Magistrate in the event the FIR is not registered by the police. Upon considering the aforesaid circumstances, belated filing of the private complaint would bear relevance. If we look into the statement of PW1 (the complainant) and the explanation given for delay in the touchstone of factum of the present case, is not worthy of acceptance inasmuch as it is her statement that in between she saw her daughter (PW6) in the residence of accused Rafiqul and the PW6 also

deposed that while she saw her mother i.e. PW1, she came with her mother. Thus, explanation given for filing the complaint after more than one month in the light of the evidence of PW1 and PW6, does not appear to this court to be reliable and acceptable.

21. Accordingly, in view of the discussion, reason and determination made hereinabove, this court is of the unhesitant view that the appellants are entitled for benefit of doubt and accordingly they are acquitted from the charges granting them benefits of doubt. Accordingly, the impugned judgement 29.11.2010 passed by the learned Additional Sessions Judge (FTC), Nagaon in Sessions Case No. 154(N)/2006 is set aside and quashed so far same relates to the present appellants.

JUDGE

Comparing Assistant