

# SUPREME COURT OF INDIA

Abdul Gafur

Vs.

State of Assam

(A Pasayat and D Jain JJ.)

06.12.2007

## JUDGMENT

**Dr. ARIJIT PASAYAT, J.**

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Gauhati High Court dismissing the appeal filed by the appellant.
3. Background facts according to the prosecution in a nutshell are as follows:

On the night of 11.4.88 at about 6.30 P.M. the accused Abdul Gafur, Hokoï Mian, Najir All, Sayed Ali, Latif Ali, Aklas Mian, Ashu Mian and Tabai Mian being armed with deadly weapons namely, dao, lathis, dagger etc. surrounded the house of Satyendra Nath Gupta at village Brahrnanshashan, assaulted him, his wife Smti Hemamalini Gupta, his son Subhendu Gupta, his eldest daughter Anjali Gupta and his relatives Sushil Chanda causing grievous injuries to them, tied them up and then looted gold ornaments, namely, chains, bangles, ear rings etc. valued at Rs.42,950.00 from the possession of the female inmates of the house, namely, Hemamalini Gupta, Anjali Gupta, Mitra Gupta, Rubi Gupta and Nell Gupta. That apart two of the accused persons, namely, Hokol Mian and Aklas Uddin committed rape respectively on Mitra Gupta and Rubi Gupta and decamped with the looted booties. During the course of occurrence Sushil Chandra Gupta the son of Satyendra Nath Gupta informed police over telephone that decoity was being committed in the house of Satyendra Nath Gupta and that Satyendra Nath Gupta and his wife were assaulted by the decoits causing grievous injuries to them. At the Nilambazar out post a general diary vide entry no.212 at 8.15 p.m. on the night of 11.4.1988 was recorded and on the basis of such information enquiry was launched. Thereafter Satyendra Nath Gupta also lodged a written Ejahar with police of Nilambazar out post.

The Officer Incharge of Nilambazar out post sent the written ejahar to the Officer Incharge of Karimganj P.S. whereupon the Officer Incharge of Karimganj P.S. registered a case under Section 395/397/376 of the Indian Penal Code, 1860 (in short the 'IPC'). S.I. of police T.C. Bailong after completion of enquiry/investigation submitted charge sheet against the accused Abdul Gafur, Hokoi Mian, Bolo Mian, Sayed Ali, Aklas Uddin, Najir Ali, Latif Ali, Ashu Mian and Tabai Mian for alleged commission of offences punishable under Section 395 and 397 IPC.

The charges against the accused Najir Ali, Ashu Mian and Tabai Mian were proven and they were declared to be proclaimed absconders. The case against other six accused persons, namely Abdul Gafur, Hokoi Mian, Bolo Mian, Sayed All, Alas Uddin and Latif Ali was committed to the Court of Sessions by learned Judicial Magistrate, 1st Class, Karimganj.

4. During trial nine witnesses were examined to further the prosecution version.

5. Placing reliance on the evidence of witnesses-PWs. 1, 2, 3, 5 and 8, the trial court found that accused appellant 1,2,3,5&6 guilty of offence punishable under Section 395 read with Section 397 IPC and accused appellant Nos. 3 & 5 were guilty of offence punishable under Section 354 IPC. For the offence relatable to Section 395 read with Section 397, each was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- with default stipulation. For the offence relatable to Section 354 IPC they were sentenced to rigorous imprisonment of one year each.

6. The convicted accused persons preferred an appeal before the High Court. As afore-stated the High Court dismissed the appeal and affirmed the conviction and sentence.

7. In support of the appeal learned counsel for the appellant submitted that the High Court has disposed of the appeal cryptically without even discussing the various submissions made. There are also several infirmities in the conclusions arrived at.

8. Learned counsel for the respondent-State on the other hand supported the judgment of the trial court and the High Court.

9. The High Court has noted as if a telephonic message was given by a stranger regarding decoity. However, in evidence it has given that the information was given not by a stranger but by Sushil Chandra Gupta, PW 1. In the information given it was stated that some stranger had committed decoity.

10. The accused persons are not strangers and were practically neighbours of the informant and his family. The High Court noted that there was no intention to falsely implicate accused persons because of enmity and there was no reason as to why dignity of two young girls would be put at stake by alleging rape. It is to be noted that in fact rape was alleged but the Trial Court found that there was no material to substantiate the plea of rape. The evidence is totally inconsistent and lacks credence. The High Court's observations were clearly based on surmises and contrary to the factual scenario. The High Court has noted that the evidence of PWs. 1,2,3,5 & 8 stand fully corroborated by the medical evidence. Significantly, on consideration of the evidence of PW 4, it is clear that the evidence of this witness is clearly contrary to the medical evidence. To add to the confusion, it is noted that the High Court recorded as finding that appellant Abdul Gafur was absconding. As a matter of fact the evidence of Investigating Officer (in short the 'I.O') shows that he had arrested

Abdul Gafur on the date the First Information Report (in short the 'FIR') was lodged. Unfortunately the High Court has merely referred to certain conclusions of the Trial court without analyzing the evidence and various submissions made by the appellants. To add to the vulnerability of the prosecution version, the FIR was lodged long after the incident and in fact law was already set on motion after the telephonic message had been received.

11. The aforesaid infirmities in the background of admitted animosity between the parties renders the prosecution version unacceptable. The Trial Court and the High Court did not analyse the evidence correctly and acted on mere surmises and conjectures. That being so, the appellants deserve to be acquitted, which we direct.

12. Appeal is allowed. The appellants are acquitted of the charges. They be set forth at liberty if not required in any other case.