### IN THE COURT OF SPECIAL JUDGE ::::::: BILASIPARA

Present: Shri J. Borah, A.J.S

Special Judge,

Bilasipara

### Special (POCSO) Case No- 09 of 2019

u/s 366/376 Indian Penal Code

#### **State of Assam**

-Vs-

#### **Ashraf Ali**

..... accused person

Date of framing charge :- 08-07-2019

Date of recording evidence :- 25-09-2019,

30-09-2019.

Date of Argument :- 10-10-2019

Date of Judgment :- 10-10-2019

### **Advocates Appeared:**

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P

for the State of Assam

For the defence :- Mr. Shanti Uddin Seikh,

Ld. Advocate for the defence.

### <u>JUDGMENT</u>

- 1. This case is u/s 366/376 Indian Penal Code. So, the name of the victim is not mentioned and she is, hereinafter, referred to as 'x'.
- 2. The prosecution case, in brief, is that Nurbhanu Khatun, the informant lodged an ezahar with Bilasipara police station on 30-05-2013 informing that 'x' is her daughter. 'x' was 15 years old at the time of occurrence. On 24-05-2013 at about 02.00 P.M, the accused Ashraf Ali called

'x' to the house of one Felani. The accused Ashraf Ali confined 'x' inside the house of Falani and thereafter he committed rape on 'x'. After the occurrence, 'x' narrated the same to the informant. She called a village meeting. But the accused namely Ashraf Ali, Mannaf Ali, Sona Ulla, Ashan Ali and Barek Ali assaulted the informant and her daughter.

So, the informant prayed for taking necessary action against the accused persons.

- 3. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 480/13 u/s 109 Indian Penal Code and u/s 6 of Protection of Children from Sexual Offences Act. The case was investigated and having found prima facie u/s 109 Indian Penal Code and u/s 6 of Protection of Children from Sexual Offences Act against the accused Ashraf Ali, laid the charge sheet before the court for trial.
- 4. The accused Ashraf Ali, hereinafter called the accused, appeared in this case. Charge was framed u/s 366/376 Indian Penal Code, I.P.C in short, against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- 5. The prosecution, in order to bring home the charge against the accused, examined 3 (three) witnesses namely-

1.	Nurbanu Bibi	P.W-1
2.	Sopial Ali	P.W-2
3.	`x'/ the victim	P.W-3

- 6. The accused was examined u/s 313 Cr.P.C and his statement was recorded where he denied all allegations levelled against him in the evidence adduced by the prosecution witnesses and also declined to adduce evidence in defence.
- 7. Heard argument for both sides.

# 8. **POINTS FOR DETERMINATION**

i. Whether accused on 24-05-2013 at about 02.00 P.M at village Gutipara part IV, induced 'x' to go with him with intent that she might be compelled to marry him against her will or in order that she may be forced or seduced to illicit intercourse by him or with other and thereby committed offence u/s 366 I.P.C? ii. Whether accused on 24-05-2013 at about 02.00 P.M at village Gutipara part IV, committed rape on 'x' and thereby committed offence u/s 376 I.P.C?

### **DECISION AND REASONS THERE OF**

- 9. In this prosecution case P.W-1 Nurbanu Bibi is the informant, P.W-2 Sopial Ali is an independent witness and P.W-3 'x' is the alleged victim.
- 10. Now let's see the evidence available on record.
- 11. P.W-1 Nurbanu Bibi has stated in her evidence that she is the informant in this case. 'x' is her daughter. The occurrence took place about 5/6 years ago (from the date of adducing her evidence on 25-09-2019). The accused went to the house of one Falani. At that moment, her daughter 'x' also went to the house of Falani. When 'x' entered into the house, the accused closed the door of the house. When she got to know about that, she suspected the accused to do some evil against her daughter 'x' and accordingly she lodged the ezahar against the accused. But her daughter told her, after lodging of the ezahar that the accused did nothing against her. Ext-1 is the ezahar and Ext-1(1) is her signature.

In her cross P.W-1 has stated that she did not know what was scribed in the ezahar.

12. P.W-2 Sopial Ali has stated in his evidence that he knows the informant, the victim 'x' and the accused. He knows nothing about the occurrence.

Cross examination of P.W-2 was declined by the defence.

13. P.W-3 'x' has stated in her evidence that the informant is her mother. She knows the accused. On the day of occurrence at noon, she went to the house of her sister-in-law named Falani. The accused also went to the house of the said Falani. When she was inside the house, one boy, not the accused, closed the door of the house. She bullied the boy for such act. When her mother knew about the occurrence, she (her mother) lodged the ezahar against the accused. The accused did not do any voluptuous act on her. She gave her statement before the Magistrate.

In her cross P.W-3 has stated that the accused did nothing evil against her.

14. Thus, careful scrutiny of evidence of P.W-1 to P.W-3 shows that P.W-1 who is the informant of this case adduced evidence not incriminating the accused. Rather she evinced that when she heard that the accused closed the door confining her daughter 'x', she has suspected the accused to do some evil on her daughter 'x'. Owing to suspicion she lodged the ezahar. Her daughter 'x' told her that the accused did not do anything on her. But she had already lodged the ezahar. So, the evidence of P.W-1 mere on suspicion.

Same is the evidence of P.W-3 'x', the alleged victim. She sternly denied to do voluptuous act on her by the accused. She admitted that someone closed the door of the house where she was. But it was not the accused who closed the door. She told her mother, the informant that the accused did not do anything wrong against her, but she had already lodged the ezahar against the accused. Thus, the evidence of P.W-3 is not inculpatory. She has not entangled the accused with the occurrence.

The evidence of P.W-2 is not considerable as he knew nothing about the occurrence.

- 15. Thus, the evidences of P.W-1, P.W-2 and P.W-3 are not inculpatory against the accused. The evidence as projected by the prosecution is not sufficient and satisfactory to prove the offences as alleged against the accused. The prosecution case is dearth of merit.
- 16. The prosecution, thereby, has failed to prove it's case u/s 366/376 I.P.C against the accused beyond all reasonable doubt.
- 17. Held, the accused is not guilty u/s 366/376 I.P.C.
- 18. Accused is, accordingly, acquitted and set at liberty.

Bail bonds of accused stands cancelled and the bailor is discharged from all liabilities.

The case is disposed of.

Given under my hand and seal by this court on this 10<sup>th</sup> day of October, 2019 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Special Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

# **APPENDIX**

## **PROSECUTION WITNESSES:-**

P.W-1 Nurbanu Bibi

P.W-2 Sopial Ali

P.W-3 'x'/ the victim

## **PROSECUTION EXHIBITS:-**

Ext-1 Ejahar.

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITS :- NIL

COURT WITNESS :- NIL

COURT EXHIBITS :- NIL

(Shri J. Borah)

Special Judge, Bilasipara