

HEADING OF JUDGMENT IN SESSION CASE

IN THE COURT OF ADDITIONAL SESSION JUDGE BILASIPARA

Present:- Smti S. Bhuyan, AJS

Additional Session Judge, Bilasipara

Session Case No- 203 of 15

u/s 376 IPC

STATE

Versus

Salam Uddin @ Salam

Accused person

(Committed by Sri M. Bhadani, then learned SDJM (M) Bilasipara in GR (BLP) case No- 353/12 u/s 376 I.P.C. )

Advocate appeared:-

For the state:-Mr. T. Kr. Bhattacharya, Addl. PP

For the accused:- Rabiul Islam, advocate.

Date of institution of the case :- 28-01-12

Date of commitment :- 12-08-15

Date of Framing charge :- 25-01-16

Date of prosecution evidence :- 25-10-16,19-11-16,14-09-17.

Statement of accused recorded on :- 26-09-17

Date of Argument :- 09-10-17

Judgment delivered :- 21-10-17

JUDGMENT

Prosecution Case

1. Prosecution case in brief is that accused Salam Uddin was in love with victim Mrs. X and on several occasions accused had committed rape

on victim on the pretext of marriage. On 26-01-12 accused called victim over the phone and when on the next day at about 06.00 pm victim went to accused's house then accused denied to marry her and accused along with other accused persons assaulted the victim with lathi.

#### Investigation

2. Officer-in-charge of Bilasipara police station on receiving the ejahar from informant Abeda Bibi registered a police case vide No Bilasipara police case No. 60/12 under Section 376/147/325 I.P.C. and SI D. Kalita was entrusted to conduct the investigation of the case and after completion of investigation IO submitted charge sheet against the accused person named herein above u/s 376 I.P.C.

#### Committal

3. On receipt of the charge sheet, Learned SDJM (M) Bilasipara, took cognizance and after furnishing necessary copies to accused person committed the case before the Learned. Sessions Judge, Dhubri for trial and Learned Session Judge, Dhubri made over the case to this court for trial.

#### Charge

4. My then Ld. Predecessor after hearing for both sides and perusal of material on record framed charge u/s 376 IPC against the accused person Salam Uddin and when charges read over and explained to the accused person he pleaded not guilty and claimed to be tried.

#### Trial

5. In order to prove the prosecution charges against the accused person, prosecution adduce evidence of all together 5 number of witnesses. PW- 1 Aktar Ali. , PW-2 Abeda Bibi, PW- 3 Mazahar Ali, PW- 4 Hussain Ali, PW-5 Mrs. X (victim). After closure of the prosecution evidence, statement of the accused person recorded u/s 313 Cr.P.C. Accused plea is denial, however declined to adduced evidence in support of the plea of denial.

6.

POINTS FOR DETERMINATION:-

- i) Whether accused on many occasions prior to filing of the ejahar, at village Bowal Kanuri under Bilasipara PS committed rape on victim Mrs. X ?

#### ARGUMENT

7. Ld. Addl. P.P made submission accused Salam Uddin with false promise to marriage with victim have sexual intercourse with her on several occasions which amounted to commission of rape and therefore he is punishable u/s 376 I.P.C. He further submitted that when victim went to the house of accused as called by accused over the phone, accused Salam Uddin along with other accused persons assaulted victim with lathi causing hurt on her body.
8. Ld. defence counsel made submission that the victim who is star witness of this case has not supported the prosecution case and her evidence overruled the prosecution charge made against the accused and case against and prosecution case against accused is not at all proved and accused entitled acquittal.

#### DISCUSSION, DECISION & REASON THEREOFF:-

9. Prosecution allegation leveled against accused is that prior to filing of the ejahar, on many occasions at village Bowal Kanuri under Bilasipara PS accused had committed rape on victim. I have scrutinized the case record. In this case prosecution adduced evidence of informant, victim and other witnesses. PW-5 is the victim of this case and she being victim is star witness of this case. Now let me analyze evidence on record.
10. PW-1 Aktar Ali deposed informant Abeda Bibi is his wife, victim is his sister in law and he knows accused person and according to him there was love affair in between accused and his sister in law and on the day of incident accused committed rape on victim and accused Salam Uddin threw her into jungle near to his house. His wife lodged ejahar. Police took victim to the hospital for treatment and victim was in hospital for four days. He deposed he was informed about the incident by his wife. In cross he stated the victim did not informed him about the love affair in between accused and victim. He denied that accused did not call victim at his house and did not commit rape on her
11. PW-2 is the informant of the case. Her evidence is that informant is her sister and accused is known to her. She also stated there was love in

between her sister and accused and accused with promise to marry her sister committed sex with her several times and on the day of incident accused called his sister and committed rape on her and assaulted her and then accused threw her into jungle near his house. She stated her sister told her that accused assaulted her and threw her into jungle and therefore she lodged the ejahar. In cross she denied that she did not mentioned in the ejahar and before police that accused assaulted her sister and accused committed rape on her.

12. PW-3 Mazahar Ali deposed hearing hue and cry in the house of accused he went there and found victim in injured condition, immediately he called police and police came to the place of occurrence and took victim by 108 ambulance to the hospital. His further evidence is that subsequently he heard that accused and his family members assaulted victim.

13. PW-4 Hussain Ali deposed he heard that there was love affair in between accused and victim.

14. PW-5 is the victim. Her evidence is that she had love affairs with the accused. Accused wanted to both of them wanted to marry each other and accused came to his sister's house to get proposal of his marriage with her but her sister refused and therefore altercation took place. Thereafter her sister lodged the ejahar.

15. From scanning of the evidence of PW-5 , PW-1 and PW-2 it is seen that PW-5 the victim of the case did not made a single allegation against the accused and she totally deviated and overturned the statement made by the PW-2, the informant and statement of PW-1. On scrutiny of the evidence of PW-1 it is seen that he heard about the incident from his wife, the informant of the case. The PW-2 informant did not speak that she narrated incident to her husband. PW-1 did not heard anything from the victim. From the scrutiny of the evidence of PW-2 it is reveal that her sister only told her that accused assaulted her. Evidence of PW-2 does not shown that victim told her that accused committed rape on her. PW-5 the victim of the case did not speak about the commission of rape on her. Her evidence thrown out the statement of PW-2 and thereby making statement of PW-1 and PW-2 is un-believable and not reliable piece of evidence.

16. In this case victim who is the star witness and most venerable witness does not support the prosecution charges against the accused. On scrutiny of the material available on record it is seen that there was no any

injury found on the person of victim while examining her by the doctor on 06-02-12.

17. According to PW-1, PW-2 and PW-3 victim was admitted at hospital on the date of incident and date of incident was 27-01-12 but evidence of PW-5 and medical report available on the record shown that she was not treated on 27-01-12. i.e on the day of incident as alleged by the PW-1, PW-2 and PW-3. PW-5 victim did not whisper that she was assaulted by accused. She did not speak that she sustained any kind of injury and medico legal report of victim available on the case record does not shown any kind of injury sustained by victim of this case and therefore, the evidence adduced by the PW-1, PW-2 and PW-3 are not admissible, reliable and acceptable piece of evidence.

18. From the evidence on record more specifically from the evidence of PW-5 it is crystal clear that prosecution totally failed to bring home charge u/s 376 I.P.C against the accused person Salam Uddin @ Salam and he is acquitted from the charge of section 376 I.P.C and is set at liberty.

19. Bail bond of accused person will remain stands for next six (6) months u/s 437(A) Cr.P.C.

20. Send back the GR case record to the learned committal Court with a copy of the judgment.

21. Given under hand and seal of this Court on this 21<sup>st</sup> day of October 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Dictated and Corrected by me,

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara

Typed by,

Swmkhwr Brahma, Stenographer Gr. III.

APPENDIX

PROSECUTION WITNESS:-

PW- 1 Aktar Ali. ,  
PW-2 Abeda Bibi,  
PW- 3 Mazahar Ali,  
PW- 4 Hussain Ali,  
PW-5 Mrs. X (victim)

PROSECUTION EXHIBIT:- NIL

DEFENCE WITNESS :- NIL

DEFENCE EXHIBITES :- NIL

COURT EXHIBITES :- NIL

COURT WITNESS :- NIL

(Smti S. Bhuyan)

Addl. Session Judge, Bilasipara