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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE :::: BILASIPARA  
:::: DHUBRI**

Present:- Shri J. Borah, AJS  
Additional Sessions Judge,  
Bilasipara.

**Session Case No- 63 of 2019**

u/s 448/376 Indian Penal Code

**State of Assam**

-Vs-

**Delbor Hussain**

..... **accused person**

Date of framing charge :- 06-09-2019  
Date of recording evidence :- 19-03-2020  
19-10-2020  
Date of Argument :- 28-10-2020  
Date of Judgment :- 06-11-2020

**Advocates Appeared in the case:**

For the State of Assam :- Mr. T. Kr. Bhattacharya, Ld. Addl. P.P  
for the State of Assam.  
For the defence :- Mr. Ajibar Rahman,  
Ld. Advocate for the defence.

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

1. This case is under section 448/376 Indian Penal Code, so, the name of the victim is not mentioned and she is hereinafter referred to as 'X'.

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2. The prosecution case, in brief, is that 'x', the informant lodged an ezahar with the Bilasipara police station on 28-05-2019 informing that on 25-05-2019 at 12 at night her husband Taher Ali was not at house. Taking the advantage of his absence, the accused Delbor Hussain entered into the informant's house, gagged her mouth and tried to commit rape on her. When she refused, the accused Delbor Ali assaulted her causing injuries on her body. When the husband of the informant appeared, the accused had gone away.

So, the informant prayed for taking necessary action against the Delbor Hussain.

3. The Bilasipara police station received the ezahar and registered as Bilasipara police station case no. 497/2019 under section 448/376/325/34 Indian Penal Code. The Bilasipara police station investigated the case and having found prima facie u/s 448/376 Indian Penal Code against the accused Delbor Hussain, laid the charge sheet before the court for trial.

4. The accused Delbor Hussain appeared in the court of the Sub-Divisional Judicial Magistrate (M) Bilasipara and he was furnished copy. Learned Sub-Divisional Judicial Magistrate having found the case under section 448/376 I.P.C which is triable exclusively by the court of Sessions, committed to this court for trial.

5. The accused Delbor Hussain, hereinafter called the accused, appeared in this case. Charge was framed u/s 448/376 I.P.C against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove the charge against the accused, examined only 3 (three) witnesses namely-

- |                   |       |
|-------------------|-------|
| 1. Taher Ali      | P.W-1 |
| 2. 'x'/the victim | P.W-2 |
| 3. Juran Ali      | P.W-3 |

7. 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.

8. Heard argument for both sides.

9.

**POINTS FOR DETERMINATION**

- i. Whether accused on 25-05-2019 at about 12.00 Mid-Night at village Nayeralga Part II under Bilasipara police station, committed house trespass by entering into the house of informant 'x' in order to commit rape on her and thereby committed offence u/s 448 I.P.C?
- ii. Whether accused on 25-05-2019 at about 12.00 Mid-Night at village Nayeralga Part II under Bilasipara police station, committed rape on 'x' and thereby committed offence u/s 376 I.P.C?

**DECISION AND REASONS THERE OF**

10. In this case P.W-2 is the informant as well as alleged victim. P.W-1 Taher Ali is the husband of the informant and P.W-3 Juran Ali is the independent witness.

11. Since P.W-2 is the informant as well as alleged victim, so, she is the prime witness in this case. Let us see the evidence of this witness at first.

P.W-2 has stated in her evidence that she is the informant in this case. The occurrence took place 9 (nine) months ago (from the date of adducing her evidence on 19-03-2020). On the day of occurrence her husband was not at their house. She went to tube well. A man went toward her. She raised hue and cry. At such the man had gone away. When her husband came home, she told her husband about the occurrence. They suspected the accused and accordingly they lodged ezahar against him. Ext-1 is the ezahar and Ext-1(1) is her signature. She gave her statement before the Magistrate. Ext-2 is the said statement and Ext-2(1)(2)(3) are her signatures. She was also medically examined.

In her cross P.W-2 has stated that she could not identify the person who approached her. She suspected the accused. She denied that she gave her statement as taught by others.

12. Thus, careful scrutiny of evidence of P.W-2 'x' shows that she has adduced evidence not in compliance with the content of ezahar. When P.W-2 wrote in her ezahar that the accused entered into her house, gagged her mouth and committed rape on her. But in her evidence P.W-2 has stated that when she went to tub well someone approached to her and when she

shouted the person had gone away. There is no evidence that the accused entered into her house, gagged her mouth and committed rape on her. So, there is contradiction in the content of the ezahar and the evidence adduced by P.W-2 'x' in this case. This contradiction is vital and this may affect the prosecution case.

Secondly, P.W-2 scribed in the ezahar that the accused entered into her house and she could identify the accused. But in her evidence P.W-2 has categorically stated that she could not identify the accused. This vital contradiction belies the prosecution case.

Another aspect is that P.W-2 has nowhere stated in her evidence that the accused committed rape on her. P.W-2 has uttered not a single word that the accused committed rape on her. So, it is lapse on the part of the prosecution case.

13. Now let see the evidence of P.W-1 Taher Ali and P.W-3 Juran Ali

P.W-1 Taher Ali has stated that the informant is his wife. He knows the accused. On the day of occurrence, he was not at his house. He went to attend a village meeting. After end of the meeting, when he returned to his house, he found his wife raising hue and cry. On being asked, she replied that someone came to their house, but she did not tell the name of the person.

In his cross P.W-1 has stated that the accused is his neighbour.

14. P.W-3 Juran Ali has stated in his evidence that he knows the informant. He also knows the accused. But he knows nothing about the occurrence.

Cross examination of P.W-3 was declined by the defence.

15. Thus, scrutiny of evidence of P.W-1 and P.W-3 shows that P.W-1 is the husband of the informant. According to P.W-1, at the time of occurrence he was not at his house. When he came to his house, his wife told him that someone came to their house. P.W-1 has not stated that his wife told him to commit rape on her by the accused. Rather P.W-1 has evinced that his wife did not tell him the name of the person who came to their house. In such a situation, the evidence of P.W-1 is found dearth of merit.

P.W-3 has stated that he knows nothing about the occurrence. In such a situation, the evidence of P.W-3 has got little value.

16. Considering above all aspects, it leads to conclusion that the prosecution evidence is not sufficient and reliable to prove the offence as alleged against the accused. The prosecution case is dearth of merit.

17. The prosecution has failed to prove it's case u/s 448/376 I.P.C against the accused beyond all reasonable doubt.

18. Held, the accused is not guilty u/s 448/376 I.P.C

19. The accused is, accordingly acquitted and set at liberty.

The bail bond 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 06<sup>th</sup> day of November, 2020 at Bilasipara, Dist- Dhubri.

(Shri J. Borah)

Adl. Sessions Judge, Bilasipara

Transcribed & typed by,

S. Brahma, Stenographer Gr. III.

## **APPENDIX**

### **PROSECUTION WITNESSES :-**

P.W-1 Taher Ali

P.W-2 'x'/the victim

P.W-3 Juran Ali

### **PROSECUTION EXHIBITS :-**

Ext-1 Ezahar,

Ext-2 Statement of 'x' recorded u/s 164 Cr.P.C.

DEFENCE WITNESS :- NIL  
DEFENCE EXHIBITS :- NIL  
COURT WITNESS :- NIL  
COURT EXHIBITS :- NIL

(Shri J. Borah)

Addl. Sessions Judge, Bilasipara