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

Present: Smti Sharmila Bhuyan

Special Judge Nalbari.

# **Spl (P) CASE NO: 11/19**

## U/S-376/312 IPC R/W Section 6 of the POCSO Act.

#### State of Assam

-Vs-

#### Sri Girish Das.

S/O- Sri Prasanna Das.

R/o, Vill- Larma Batahkuchi,

PS- Ghograpar & Dist-Nalbari ......Accused person

Appearance :-

For the prosecution : Mr. K. Sarma, Special PP

For the defence : Mr. P. Sarma, Advocate.

Date of institution of the case : 13/01/19.

Date of framing charge : 16/05/19.

Date of evidence : 09/07/19, 10/07/19, 11/07/19,

12/07/19 & 31/07/19

Statement of accused recorded : 16/09/19.

Date of Argument : 26/11/19.

Judgment Delivered :10/12/19.

### **JUDGMENT**

1. The prosecution case, in brief, is that on 13/01/19 Sri Dandi Ram Das, son of late Bhrigu Ram Das resident of village Larma, Batahkuchu under Ghograpar PS lodged written ejahar before O/C Ghograpar PS inter alia, citing that on 10/01/19 his wife informed him that his daughter, Miss 'X', aged 17 years was bleeding and when she was asked, she told them that Girish Das gave her some tablets with a view to miscarriage her fetus and immediately they brought her to Nalbari Civil Hospital, Nalbari. His daughter also informed them

that said Girish Deka has been maintaining physical relation with her for last few months.

- 2. On receipt of the ejahar O/C Ghograpar PS registered Ghograpar PS Case no.20/19 u/s- 376/312 IPC r/w Sec 6 of the POCSO Act,2012 and entrusted WSI Rajashri Burhagohain with the investigation. During investigation, she visited place of occurrence; drawn the sketch map of the place of occurrence; recorded statement of witnesses; recorded statement of victim; arrested the accused; seized birth certificate of the victim; produced the victim before the doctor for medical examination; produced her before the Magistrate to record her statement u/s-164 CrPC; collected the medical report of the victim. Thereafter, she was transferred and handed over the case diary to O/C, Ghograpar PS and SI Babul Kr. Medhi after completion of investigation submitted charge sheet against the accused Girish Das u/s-376/312 IPC r/w section 6 of the POCSO Act.
- 3. On receipt of the charge-sheet cognizance taken and issued process to the accused for appearance and on appearance after furnishing copies to the accused, framed charge u/s-376/312 IPC r/w section 6 of the POCSO Act,2012 against the accused Girish and when charges were read over and explained to the accused he pleaded not guilty and stood for trial.
- 4. In order to prove the charge against the accused person, prosecution altogether adduces evidence of 10 numbers of witnesses including informant, victim and Medical Officer and exhibited 10 numbers of documents. PW-1 Miss 'X', PW-2 Sri Dandi Ram Das, PW-3 Sri Jiten Das, PW-4 Md. Islam Ali, PW-5 Sri Kushal Das, PW-6 Smt. Subala Das, PW-7 Monowar Hussain, PW-8 Dr. Doli Gogoi (M/O) , PW-9 Dr. Swagata Baishya and PW-10 Rajashsri Burhagohain (WSI),(I/O). Ext-1 statement of PW-1 recorded u/s-164 CrPC, Ext-2 ejahar, Ext-3 seizure list, Ext-4 medical report of PW-1, Ext-5 X-Ray report of PW-1, Ext-6 Laboratory report of PW-1, Ext-7 ultrasound report of PW-1, Ext-8 blood report of PW-1, Ext-9 sketch map of the place of occurrence and Ext-10 charge-sheet. After closures of the evidence of the prosecution, statement of the accused Girish Das recorded u/s-313 Cr.P.C and accused plea is total denial however he declined to adduce evidence in support of his plea of denial.

### 5. **POINTS FOR DETERMINATION**

- (i) Whether accused Girish Das on 10/01/19 at Lorma village under Ghograpar PS committed rape upon Miss 'X'?
- (ii) Whether the accused Girish Das voluntarily caused Miss 'X' then being with a child to miscary, such miscarriage not being caused by you in good faith for the purpose of saving her life?
- (iii) Whether the accused Girish Das on 10/01/19 and prior to 10/01/19 at Lorma Botakuchi village under Ghograpar PS committed aggravated penetrative sexual assault repeatedly upon Miss 'X' and impregnated her who is aged below 18 years?

#### **Argument**

- 6. Learned Special Public Prosecutor contended prosecution by adducing sufficient cogent, convincing evidence established the prosecution charges against the accused beyond all reasonable doubt.
- 7. It has been argued by learned defence counsel that informant made statement that he heard the incident from the mother of the victim and victim in cross stated she did not disclose the incident to her mother and her mother made statement that her daughter did not disclose any incident to her. Therefore, the statement of informant that victim disclosed incident to her mother and informant came to know the incident from the mother of the victim lodged the case has not been established. Learned defene counsel further submitted the statement of the PW-1, the victim of the case is contradictory and therefre, her evidence is not acceptable. The statement also not established that it was accused who impregnated her and gave her tablet. The PWs did not support the case of the prosecution and same not establish beyond all reasonable doubt.

#### **DISCUSSION, DECISION AND REASON THEREOF:**

8. PW-1 is the victim of the case. Her evidence is that informant is her father. Accused is known to her and incident took place three months prior to the date of recording her evidence. The statement of the PW-1 is recorded on 9th July/19 that means incident took place either in the month of March or April/2019 not in the month of January/2019 or prior to January/2019. She deposed on the date of incident while she was present in the kitchen accused entered, dragged out her from the kitchen and at that time her parents, brother and sister were not present. Thereafter, accused again came to their house while she was in the bedroom and accused asked her to have sexual intercourse with him and she refused. She did not disclose why she was dragged outside from the kitchen. Thereafter, one day accused gave her money and asked her to have physical relationship with him and accused committed sexual intercourse with her. As a result she conceived and accused gave her tablet and took her to the hospital and after taking tablet she miscarried and accused thrown down the fetus and medical expenses were born by the father of the accused. In-chief her evidence is that accused thrice entered into her house and on last time accused had sexual intercourse with her and impregnated her and when she conceived and told the matter to accused he gave her tablets. Her evidence further pointed that after this incident of giving tablet to her for impregnating her, accused again came to her house call her but she did not go with him but accused entered into the room bolted the door of the house from inside laid her on the bed and had sexual intercourse with her. Thereafter accused wanted to pay money. Her father refused to take money and her father lodged the ejahar. Her evidence pointed she made statement before the learned Magistrate u/s-164 CrPC. Her cross pointed she did not disclose the incident that accused dragged out her from the kitchen and on 2<sup>nd</sup> incident when accused entered into her bedroom, her mother noticed accused was sitting by her side. She did not disclose her mother about accused giving her tablet and threw away the fetus by the accused. Her further cross pointed her father wanted financial help from the father of the accused which father of the accused refused and then her father sought help from accused which accused also refused and thereafter, their relation broke down and her father filed the case as accused and his father

refused to give Rs.10,000/- as help to her father. The cross-examination of the PW-1, the victim of the case brought new story that her father lodged the case as father of the accused and accused declined to help her father. The statement of the PW-1 is that accused came thrice and after the first incident of accused having sexual intercourse with her accused again came and her mother noticed accused sitting by her side. She stated it was accused who gave her tablet to terminate her pregnancy but at the same time her evidence pointed she did not disclose the incident of her pregnancy and accused giving tablet to her to any of her family members.

- 9. PW-2 is the informant and father of PW-1. His statement is that when accused gave tablet to his daughter, bleeding started to her and her daughter told the same to her mother but PW-1 the victim in cross stated she did not disclose this incident to her mother. Therefore, the statement of PW-2 that PW-1 told her mother that accused gave her tablet is not believable beyond all reasonable doubt. It is his evidence that he took his daughter to the Nursing Home of Doctor Tapan Deka for medical treatment. He stated all expenses of the treatment of his daughter born by the father of the accused. His cross pointed his son-in-law Tapash asked him to arrange Rs.10,000/- for him and accused being a neighbour he asked father of the accused to lend him Rs.10,000/- for his son-in-law which father of the accused refused.
- 10. The statement of PW-3 is that the accused impregnated his victim sister and it was accused who gave tablet to his sister when she was pregnant. As per the statement of PW-1 incident took place in the month of March/19 or April first. PW-3's statement pointed incident came to light when his sister was three months pregnant. PW-2 in his ejahar stated incident took place on 10/1/19. if all these dates were taken together then on 10/1/19 no incident of rape took place. On 10/1/19 as per Ext-2 ejahar heavy bleeding took place on Miss 'X'. statement of PW-9 Dr. Swagata Baishya pointed she had examined PW-1 on 10/01/19 and that pointed on that day no incident of physical relationship was took place. On that day she was brought with history of ingestion of abortifacient drugs with retain products of conception as per ultrasound and therefore, PW-1 was underwent dilatation and evacuation on 11/01/19 and it was old

infection/abortion i.e whatever physical relationship of PW-1 took place i.e before 10/01/19 and not in the month of March or April as revealed from the statement of PW-1, the victim of the case.

- 11. The statement of PW-4 is that he was called by Dandi Das for 'bichar' and on asking Dandi Das, Dandi told him that accused impregnated his daughter and gave her tablet and after two days of the 'bichar' when he again met PW-2 at Botakuchi Chowk and on asking PW-2 Dandi told him that 'bichar' took place, Gaonburah was present and accused took his daughter to hospital, gave tablet and bear all medical expenses.
- 12. PW-6 is the mother of PW-1. Her evidence is that at the time of "Magh Bihu" she noticed heavy bleeding of her daughter and asked her what happened to her daughter but she did not disclose. The cross-examination of PW-1 victim and statement of PW-6 pointed that PW-1 did not disclose any incident to her mother and PW-6 not whisper a single word that it was accused who had sexual intercourse with her daughter PW-1 and he impregnated her and gave medicine to abort her. There is a variation in the statement within the family members of PW-1.
- 13. PW-7 is Monowar Hussain and he stated one day Gopal Das son of Dandi called him to their house telling him that something happened to victim and he advised them to take victim to the hospital and on next day he went to their house and informed him that victim was taken to hospital at Nalbari. His further evidence is that after lodging of the ejahar by Dandi, O/C called him and asked him to bring the medical papers from Dandi and accordingly he took medical papers from Dandi and handed over the same to the police.
- 14. PW-9 is the I/O of the case. Her evidence evidence pointed during investigation he visited the place occurrence; recorded the statement of the witnesses; drew sketch map of the place of occurrence; produced the victim for her medical examination; produced the victim before the learned Magistrate for her statement u/s-164 CrPC; seized the birth certificate of the victim and finding incriminating materials against the accused arrested him and produced him

before the Magistrate. Thereafter, she was transferred and she handed over the

case diary to the O/C Ghograpar PS. PW-9 statement pointed that hospital

furnished medical papers of PW-1 to her parents and statement of PW-7 is that

he took medical papers from parents of PW-1 and gave it to police. Gopal did

not disclose him who gave tablet to PW-1. Therefore the fact that accused gave

tablet and he impregnated PW-1 is not established beyond all reasonable doubt.

15. In view of the aforesaid discussion, I come to my definite finding that

prosecution failed to establish the charge of section-376/312 IPC r/w Sec 6 of

the POCSO Act against accused Girish Das beyond all reasonable doubt and

accused entitled benefit of doubt and I hold him not quilty u/s- 376/312 IPC r/w

Sec. 6 of the POCSO Act.

16. In the result, accused Girish Das is acquitted from the charge of section-

376/312 IPC r/w Sec. 6 of the POCSO Act and is set at liberty.

17. However, his bail bonds shall remain stands for next 6 (six) months u/s-

437-A CrPC.

Judgment is given under my hand and seal of this court on this the 10<sup>th</sup>

day of December, 2019.

(S. Bhuyan) Special Judge

Nalbari

Dictated & corrected by me

(S. Bhuyan) Special Judge,

Nalbari.

Typed by: Devajit Roy.

Stenographer Grade II.

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## APPENDIX

#### **A.** Prosecution witnesses

PW-1 Miss 'X',

PW-2 Sri Dandi Ram Das,

PW-3 Sri Jiten Das,

PW-4 Md. Islam Ali,

PW-5 Sri Kushal Das,

PW-6 Smt. Subala Das,

PW-7 Monowar Hussain,

PW-8 Dr. Doli Gogoi (M/O),

PW-9 Dr. Swagata Baishya and

PW-10 Rajashsri Burhagohain (WSI).

## B. <u>Defence witness</u>

NIL

## C. <u>Prosecution Exhibits</u>

Ext-1 statement of PW-1 recorded u/s-164 CrPC,

Ext-2 ejahar,

Ext-3 seizure list,

Ext-4 medical report of PW-1,

Ext-5 X-Ray report of PW-1,

Ext-6 report of Miss PW-1,

Ext-7 ultrasound report of PW-1,

Ext-8 blood report of PW-1,

Ext-9 sketch map of the place of occurrence and

Ext-10 charge-sheet.

## D. <u>Defence Exhibit</u>

Nil.

(S. Bhuyan) Special Judge,

## Nalbari