#### IN THE COURT OF SESSIONS JUDGE cum SPECIAL JUDGE :: :: :: SIVASAGAR

Present :- Sri S. K. Poddar, AJS Special Judge, Sivasagar.

# Spl. (P) Case No. 09 of 2019 u/s 366, 376(2)(f) IPC and Section 6 of POCSO Act 2012

#### State of Assam

-Vs-

Sri Niranjan Bezbaruah ...... Accused

Committing Magistrate: - Judicial Magistrate 1<sup>st</sup> Class, Nazira.

### **APPEARANCE:**

For the prosecution : Mr. Srimanta Gogoi, Special P.P. For the accused : Mr. Pulin Gogoi, Advocate

Date of commitment : 29.10.2018
Date of framing Charge : 07.03.2019
Dates of Evidence : 02.04.2019
Date of Argument : 02.04.2019
Date of Judgment : 02.04.2019

#### <u>JUDGMENT</u>

1. Prosecution case in brief is that on 21.05.2018, informant Sri K. Gohain lodged an FIR with O/C, Namti P.S. alleging, inter alia, that on that day, at about 9 AM, while his daughter victim 'R' (name withheld) came out from Namti Peoli Phukan College for returning home, she was forcibly taken by accused Niranjan Bezbaruah from the road. It is also mentioned in the FIR that his eldest daughter Smt. P Gohain got married with accused Niranjan Bezbaruah, but she also came back to her paternal house as she was subjected

to mental and physical tortures on demand of dowry. It is also alleged that nature of the accused is not good and he is a man of bad character.

- 2. On receipt of the FIR, Namti P.S. Case No. 11/2018 u/s 366 IPC was registered and investigated. During investigation, victim was recovered. She was medically examined and also recorded her statement in Court u/s 164 Cr.P.C. Accused was arrested and forwarded to Court for judicial custody.
- On completion of investigation, I.O. has submitted Charge-Sheet against the above named accused person u/s 366 IPC. Upon submission of Charge-Sheet, vide order dated 29.10.2018, learned Judicial Magistrate 1st Class Nazira, by complying the provision of Section 209 Cr.P.C. has committed the case for trial before this Court since the offence u/s 366 IPC is exclusively triable by the Court of Sessions.
- 4. It may be noted here that initially the instant case was registered as Sessions Case No. 135 (S-N) of 2018. However, after perusal of the materials on record and during hearing on charge, there is sufficient material to proceed under the provisions of POCSO Act, 2012. As the offences under POCSO Act are exclusively triable by Special Judge, as such vide order dated 07.03.2019, the instant case was re-registered as Spl. (P) Case No. 09 of 2019.
- 5. Upon hearing both the sides, charge has been framed u/s 366, 376(2)(f) IPC read with Section 6 of POCSO Act, 2012 against the accused Niranjan Bezbarua to which he pleaded not guilty and claimed to stand trial. During trial, prosecution side has examined two witnesses viz. the informant and victim.
- 6. Considering the nature of evidence of victim and informant, examination of accused u/s 313 Cr.P.C is dispenses with. I have heard argument of Id. Special P.P. Mr. Srimanta Gogoi and Mr. Pulin Gogoi, learned defence counsel and gone through the evidence on record and disposed the case by applying powers u/s 232 Cr.P.C without calling the accused to enter into defence. I have

considered the submission of both the sides.

## 7. <u>POINTS FOR DETERMINATION ARE</u>

- (i) Whether on 21.05.2018 accused kidnapped or abducted the victim? If so, what was the intention of the accused behind such Kidnap/ abduction?
- (ii) Whether accused being relative has committed rape on the victim?
- (iii) Whether victim was subjected to aggravated penetrative sexual assault or she was subjected to sexual assault by the accused?

#### **DECISION AND REASONS THEREOF:**

- 8. PW 1 Sri Kumud Gohain, father of the victim, while claiming the age of the victim as 19 years in his evidence deposed that on 21.05.2018, due to non-return of victim from her college till evening hours, they searched her and came to know that victim was taken by accused Niranjan Bezbaruah. On this, on the next day he lodged the FIR vide Exbt. 1. Subsequently, after about 14 days, police apprehended the accused and recovered victim from Kakapathar area under Tinsukia District. Police took the victim for medical checkup and also brought her to Court. From Court victim was given in his custody. On asking victim, she informed him that accused being her brother-in-law, took her with him for visit. Presently victim was married to others boy and she was at her matrimonial home. In cross examination, PW 1 admitted that he has lodged the FIR on suspicion. Now he does not want to prosecute this case any further. He has no objection in acquittal of the accused from this case.
- 9. PW 2 the victim in her evidence deposed that accused Niranjan Bezbaruah is known to her being her brother-in-law. Presently she is aged about 19 years. She read upto Class-XII. On 21.05.2018, at about 12 noon, accused met her at her college and on his request, she went with him for social visit without informing her parents. Accused took her with him to Tinsukia and kept her at the house of his relative for about 14 days. Subsequently, police came there and apprehended the accused and brought her therefrom. Police took her for medical checkup and also in Court. She gave her statement in

Court vide Exbt. 2. From Court, she went with her parents and informed about the fact of this case. Presently she was married to S. Lahon and living conjugal life with him. In her cross-examination the victim has admitted that she went with the accused on her own. Accused did not put force on her for going with him. She has no objection in acquittal of the accused from this case.

- 10. From the above evidence on record, so far age of the victim is concerned, it appeared that on the date of evidence she claimed her age as 19 years. Incident is of about 10 months back. Thus it appears that she was major on the date of incident. During investigation she was medically examined at Sivasagar Civil Hospital and in the medical examination report, which was made part of charge sheet, her age was mentioned as above 18 years. No other evidence was brought on record on age of the victim. It can safely be held that on the date of alleged incident, the victim was aged above 18 years of age.
- 11. Now coming on the charge of abduction and rape, from the evidence of PW 2, the victim, it appears that on the day of occurrence, i.e. on 21.05.2018, on request of the accused, she went to Tinsukia with the accused for social visit without informing her parents. From her cross-examination, it also reveals that she went with the accused on her own and accused did not use force on her for going with him. PW 1 being father of the victim simply deposed that due to non-finding of victim till evening of 21.05.2018, on the next day he lodged the FIR. Subsequently, police recovered the victim and on asking the victim, she informed him that accused being her brother-in-law took her with him for visit. In his cross examination PW 1 admitted that he lodged the FIR on suspicion. So from the evidence of PW 1 and PW 2, it appears that none of them deposed anything against the accused involving him with the alleged offence of kidnap/abduction.
- 12. So far charge of penetrative sexual assault/rape is concerned, from the evidence of PW 2 the victim, it appears that while giving statement in court she has not stated anything against the accused for making sexual assault

on her. In her evidence the victim nowhere stated that during her stay at the house of relative at Tinsukia for about 14 days, accused has committed rape or she was subjected to penetrative sexual intercourse by the accused with or without consent. However in her 164 Cr.P.C she has stated about physical relation by claiming her age as 17 years and on that basis charge under Pocso Act was framed but as she the victim did not corroborated the same during trial, that part of statement cannot be accepted as admissible evidence. Most probably considering his relation with accused and the fact that she was married with other boy, she has suppressed the entire fact during evidence or under some pressure she had exaggerated the facts in her 164 Cr. PC statement. So from the evidence of victim, it is seen that there is no evidence of rape/penetrative sexual assault on the victim by the accused.

- 13. Considering above, I am of the opinion that prosecution has failed to prove the ingredients of charge u/s 366, 376(2)(f) IPC and Section 6 of POCSO Act 2012 against the accused Sri Niranjan Bezbaruah. As such, the accused Niranjan Bezbaruah is acquitted from the charge u/s 4 366, 376(2)(f) IPC and Section 6 of POCSO Act, 2012 and set at liberty forthwith.
- 14. Bail bond executed by the accused and his surety is extended for another six months from today u/s 437-A Cr.P.C.
- 15. Considering the nature of the case, the matter is not referred to DLSA for granting compensation u/s 357 (A) Cr.P.C.
- 16. Send a copy of the judgment to learned District Magistrate, Sivasagar u/s 365 Cr.P.C.
- 17. Judgment is pronounced in open court. The case is disposed of on contest.

Given under my hand & Seal of this Court on this the, 2<sup>nd</sup> day of April, 2019 at Sivasagar.

Special Judge Sivasagar

## <u>APPENDIX</u>

- 1. Prosecution witnesses :-
  - PW 1 Sri Kumud Gohain (Informant)
  - PW 2 Victim 'R'
- 2. <u>Defence witnesses</u> None
- 3. <u>Court witnesses</u> None
- 4. Exhibits by prosecution :-
  - Exbt. 1 FIR
  - Exbt. 2 Statement of the victim given u/s 164 Cr.P.C.

Special Judge <u>Sivasagar</u>