

*Sessions Case No. 13/19*

**IN THE COURT OF SESSIONS JUDGE, BAKSA:.....AT MUSHALPUR**

Present: Mr. A. Rahman, LL.M, AJS

Sessions Judge

Baksa, Mushalpur

( Committed by Mr. A. M. Mahiuddin, Ld. CJM, Baksa)

**SESSIONS CASE NO. 13/19**

u/s 366 IPC

State

-versus-

Jon Bezbaruah

....Accused

**Appearance:**

For the State : Mr. R. Chetry, Ld. Public Prosecutor, Baksa

For the defence : Miss Ajanta Rabha, Ld. Advocate

Charge framed on : 24.05.2019.

Evidence recorded on : 01.11.2019, 08.01.2021.

Argument heard on : 20.01.2021.

Judgment delivered on : 20.01.2021.

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

1. The instant sessions case was registered on commitment of PRC Case No. 135/18. The prosecution case in brief may be stated as follows: One Shri Banamali Haloi, Vill- Subunsiri on 08.09.2017, lodged a written ejahar with the In-charge of Nikasi Police Outpost to the effect that on 05.09.2017 at about 7pm, accused Jon Bezbaruah kidnapped his only daughter Purabi Haloi (15 years). The

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informant and his relatives went to the house of the accused in search of his victim daughter. But there was no response from the family of the accused. Hence, this case.

2. Police on receipt of the written ejahar registered the case u/s 366 IPC and started investigating the case. During the investigation, the victim girl was recovered and was produced before the Magistrate for recording her statement u/s 164 Cr.PC. She was also sent to Nalbari Civil Hospital for her medical examination. On completion of investigation, charge-sheet was laid u/s 366 IPC against FIR named accused Jon Bezbaruah.

3. My learned predecessor having heard both sides and considering the materials on case diary charged framed u/s 366 IPC against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. Prosecution in order to bring home the charge against the accused, examined as many as five witnesses including the complainant and the victim girl. Considering the evidence of the complainant and the victim girl and hearing learned public prosecutor, further prosecution evidence was closed. Accused person was examined u/s 313 Cr.PC. He denied the prosecution allegation and declined to adduce evidence.

5. I have heard Mr. R. Chetry learned public prosecutor as well as Miss Ajanta Rabha learned Advocate for the accused. Mr. R. Chetry learned public prosecutor through the course of argument, contended that the victim girl was below 18 (eighteen) years on the date of occurrence which is clear from the evidence and the materials on record. Therefore, Ld. PP submitted that even if the victim was in love affairs with the accused, she was not capable of giving a valid consent to accompany the accused. As such, the accused having induced to marry her, without consent of her guardian, took away her. Therefore, Mr. R.

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Chetry has submitted that the prosecution has been able to prove that the accused has committed an offence u/s 366 IPC.

6. On the other hand, Miss Ajanta Rabha learned counsel appearing for the defence stridently argued that the victim girl at the relevant time of occurrence already passed her HSLC examination which is very clear from the contents of the FIR lodged by her father PW-1 Shri Banamali Haloi. Moreover, the prosecution has not submitted any documents to prove that the girl was below 18 years at the relevant time of occurrence. Miss Ajanta Rabha further argued that the alleged victim girl in her statement has clearly stated that because of love affairs, she without informing her parents voluntarily went to the house of the accused. The accused did not make any inducement or threat or influenced her to go to his house on the alleged date of occurrence. Therefore, learned defence counsel has submitted that the prosecution has failed to prove the offence u/s 366 IPC against the accused beyond reasonable doubt. So, the learned counsel has submitted that the accused being innocent is required to be acquitted from the charge.

7. I have considered the above rival submissions of the learned counsel of both sides and carefully scrutinized the evidence. Now the points for determination are as follows:-

**POINT FOR DETERMINATION**

a) *Whether accused Jon Bezbaruah on 05.09.2017 at 7pm, induced victim Miss Purabi Haloi, a minor girl to go with him intending or knowing that she may be forced or seduced to illicit intercourse with any person and thereby committed an offence punishable u/s 366 IPC?*

**DISCUSSION, DECISION AND REASON THEREOF:**

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8. Before appreciation of evidence, it is plausible to go through the relevant evidence of the witnesses. PW-1 Banamali Haloi deposed that about two years back, his daughter Smt. Purabi Haloi was missing from his house as he could not find her despite several search. As such, he lodged Exbt.1 FIR. He has confirmed that Exbt.1(1) is his signature. Police recovered his daughter. After recording her statement in the court and her medical examination, she was given to his custody but subsequently his daughter again eloped to the house of the accused. He has stated that after 7-8 months back on attaining majority, marriage of his daughter was solemnized with the accused in presence of villagers. He has stated that his daughter was 18 (eighteen) years at the time of occurrence.

9. PW-2 Smt. Purabi Haloi is the alleged victim of this case. She deposed inter alia that about two years back, out of love affairs she without informing her parents went to the house of the accused because her parents did not have consent for her marriage with her husband/accused. After lodging the case, she was brought back home. She was sent for her medical examination and her statement was recorded. She has confirmed that Exbt.2 is her medical report and Exbt.2(1) and Exbt.2(2) are her signatures. Exbt.3 is her statement before the court. Exbt.3(1) and Exbt.3(2) are her signatures. She has also stated without any hesitation that after attaining her majority, she again came to the house of the accused and her marriage was solemnized in presence of the local persons of both sides. Now, she is leading a conjugal life with the accused.

10. PW-3 Shri Prabhat Rajbongshi and PW-4 Shri Bhumidhar Haloi deposed almost in the similar line. According to them, in the year 2017 on a certain evening, Purabi Haloi (PW-2) out of love affairs eloped with the accused. She refused to come back for which his father PW-1 lodged the case.

11. PW-5 Shri Niraj Ch. Haloi deposed that about four years back, PW-1 informed him that his daughter Purabi Haloi (PW-2) was missing. As such, he accompanied by PW-1 went to the house of the accused and found PW-2. But she refused to return. As such, PW-1 lodged the case.

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12. As per Exbt.1 FIR, the occurrence took place on 05.09.2017. Therefore, this date is very crucial for determination of the age of PW-2 at the relevant time of occurrence. From Exbt.2, it becomes clear that PW-2 was produced before the doctor at SMK Civil Hospital, Nalbari, but she declined to undergo medical test with regard to her private parts. The X-ray report available with the case records shows that the doctor opined her age to be above 16 (sixteen) years and below 18 (eighteen) years. It is clear from Exbt.1 FIR that PW-2 passed HSLC examination. Prosecution did not produce either her birth certificate or her HSLC certificate/admit card to prove her age.

13. On the other hand, PW-1 has made it clear that her daughter PW-2 was 18 (eighteen) years at the relevant time of occurrence. Therefore, the age of PW-2 as given in Exbt.1 is not correct. Moreover, PW-2 has also stated that her age was 18 (eighteen) years at the relevant time of occurrence.

14. ***In Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir, the Hon'ble Supreme Court has ruled that the determination of age on the basis of ossification test, always varies two years on either side.*** Therefore, the age of PW-2 at the time of occurrence might be 18 (eighteen) years if we consider the lower limit of her age as mentioned in Exbt.2.

15. From the above discussion of oral and documentary evidence, it becomes clear that prosecution has failed to prove beyond reasonable doubt that PW-2 was below 18 (eighteen) years on the relevant time of occurrence.

16. Again, it is proved from the evidence of PW-2 that out of love affairs, she voluntarily eloped to the house of the accused. Therefore, it is conclusively proved that the accused did not force, induce or threaten her to go to his house. Rather she voluntarily and with her own willingness went to his house due to love affairs.

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17. In the teeth of above discussion and observation, it is held that the prosecution has failed to prove the offence against the accused. Accordingly, the accused stands acquitted. The bail bond shall remain in force for another six months in the spirit of Section 437(A) Cr.PC.

18. Judgment is declared and delivered in the open court under my hand and seal on this 20<sup>th</sup> day of **January, 2021**.

Dictated and Corrected by :

Mr. A. Rahman,  
Sessions Judge,  
Baksa, Mushalpur

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**ANNEXURE:**

List of prosecution witness:

PW1 ... Banamali Haloi ... Informant

PW2 ... Smt. Purabi Haloi

PW3 ... Prabhat Rajbongshi

PW4 ... Bhumidhar Haloi

PW5 ... Niraj Ch. Haloi

List of defence witness:

Nil

List of documents exhibited:

Exbt.1 :FIR

Exbt.2 :Medical report

Exbt.3 :Statement of the victim

Sessions Judge,  
Baksa, Mushalpur