

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SESSIONS CASE NO. :- **204 OF 2014**
(Under Section 366 of the Indian Penal Code arising out of G.R. Case No.1712 of 2014)
Committed by Smt. Audri Bhattacharya, Additional Chief Judicial Magistrate, Sonitpur, Tezpur.

Present :- **Mridul Kumar Kalita, AJS Sessions Judge, Sonitpur Tezpur**

Prosecutor :- **State of Assam**

Accused :- **-vs- Sri Rajen Nath**
 Son of Sri lalit Nath,
 Vill- Sirajuli Napam Pathar (Maila ali)
 Dhekiajuli, Sonitpur (Assam).

Date of framing Charge :- 20-09-2014

Date of Recording Evidence :- 07-04-15

Date of examination of accused u/s 313 Cr.P.C :- 23-04-2015

Date of Argument :- 24-04-2015.

Date of Judgment 05/05/2015

Counsel for the Petitioner :- Mr. Hari Prasad Sedai
 Public prosecutor
 Sonitpur.

Counsel for Opposite Parties :- Sri B. Deka, Advocate,

JUDGMENT

1. On 20th July, 2014, the officer-in-charge of Jamuguri Police Station received an FIR (First Information Report) from one Sailen Bora, wherein it was alleged, *inter alia*, that on 19-07-2014 at about 2 p.m. accused Rajen Nath kidnapped his wife Smti Purnima Bora, aged about 40 years, from his house.

2. On receipt of the aforementioned FIR, the officer-in-charge of Jamuguri Police Station registered Jamuguri P.S. Case No. 68/14 u/s 366 IPC and entrusted Sri Khanindra Das, Sub-Inspector of Police to investigate the case. During the course of investigation accused Rajen Nath was arrested (*on 21/07/2014*), (*G.R. Case No.1712/14 was also*

registered) and he was produced before Ld. Sub-Divisional Judicial Magistrate(S), Tezpur on 21/07/2014, who remanded to him to judicial custody. Ultimately, after completion of the investigation, on 29/07/2014, charge sheet u/s 366 of the Indian Penal Code was laid against the accused Rajen Nath in the court of Chief Judicial Magistrate, Sonitpur and the case was transferred to the Court of Addl. Chief Judicial Magistrate, Sonitpur, Tezpur for disposal. On 03/09/2014 the G.R. Case No.1712/14 was duly committed to this Court, after observing all formalities prescribed by the Code of Criminal procedure by learned Addl. Chief Judicial Magistrate, Sonitpur, Tezpur.

3. On 20/09/2014 Charge, u/s 366 IPC, was framed, in writing, by my Ld. Predecessor-in-office, against the accused Rajen Nath. The Charge was read over and explained to him and, on being asked, he refused to plead guilty and claimed to be tried.

4. On 20/09/2014, accused Rajen Nath was enlarged on bail, on furnishing a bond of Rs.10,000/ with one surety of like amount. He faced rest of the trial remaining of bail.

5. During Trial, the prosecution side examined three Prosecution Witnesses and exhibited two documents, marked as Ext.1 and Ext.2. The accused was examined u/s 313 Cr.P.C during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. The accused declined to adduce any evidence in defence.

6. The point to be determined in this case is as follows:-

“Whether on, 19/07/2014, at about 2 pm, at village Dekasundar, under Jamuguri police Station the accused Rajen Nath, abducted/kidnapped Smti Purnima Bora, the wife of the informant Sri Sailen Bora, with intent (or knowing it to be likely) that she might be compelled to marry against her will or in order that she might be forced her or seduced her to illicit intercourse with the accused and thereby committed an offence punishable under section 366 of the Indian Penal code”

7. I have gone through the entire materials on record, including the oral testimonies of the witnesses, exhibited documents and the statement of the accused recorded under section 313 Cr.P.C very carefully as well as heard argument advanced by Ld. Public Prosecutor and Ld. Defence counsel.

8. PW 1 – Sri Sailen Bora, has stated that he knew the accused namely Rajen Nath. He was a tenant in the house of brother of the accused. In the month of July, last year he had

a quarrel with his wife Purnima Bora. In the evening when he came back from his shop, he was informed by his daughter that her mother is not in the house. He searched his wife but he could not trace her on that day and on the next day, he lodged an FIR in the Jamuguri Police Station. The FIR was written as per his version by Tridip Rai Bhuyan. Ext. 1 is the FIR lodged by him and Ext. 1(1) is his signature. He lodged an FIR against the accused on the basis of suspicion. Later on, on the next day, he found his wife in the house of the accused. He has also deposed that his wife is now staying with him.

9. During cross-examination, this PW has stated that at the time of incident, the age of his wife was 40 years. At that time, his elder son was 19 years of age and his daughter was 9 years of age. As there was a quarrel between his wife and himself, so his wife herself left the house. Only for a night she was out and thereafter she is residing with him. He has also further stated that the accused is not involved in this case and he lodged the FIR on suspicion. As because the accused was known to his wife earlier and therefore, she took shelter in the house of the accused on the night she left my house.

10. PW 2- Smti Purnima Bora, who is the victim of this case, has stated that she knew the accused namely Rajen Nath. She was a tenant in the house of brother of the accused. In the month of July, last year she had a quarrel with her husband Sailen Bora. Out of anger she left her husband's house and took shelter in the house of the accused as the accused was known to her. She has also stated that her husband lodged the FIR on the next day as he could not find her on the day when she left her husband's house. Police and her husband later on found her in the house of the accused and she came back with her husband. She was brought before the Court where she gave her statement to Magistrate. Ext. 2 is the statement recorded by the Judicial Magistrate and Ext. 2(1) is her signature.

11. During cross-examination, this witness has stated that on the day of incident, she on her own left her husband's house. No one compelled her or has taken her by force from her husband's house. Since they were tenants of the elder brother of the accused, the accused was known to her since last 7/8 years and therefore she took shelter in his house. She further stated that she has nothing to depose against the accused.

12. P.W-3, Sri Biswajit Bora has stated that he knew the accused namely Rajen Nath. Purnima Bora is his mother. About 6 months ago, when he was not at his home, his mother had a quarrel with his father and left their house. Later on, his father lodged an FIR and his

mother was found in the house of the accused from where she was taken back to their house.

13. During cross-examination, this PW 3 has stated that as he was not present at his house at the time of the incidence he do not know how his mother left the house. The accused was known to him as we were tenants of his elder brother since last 7/8 years and sometimes he used to visit at his brother's house so we conversant with him. As his mother had quarrel with his father she took shelter in the house of the accused. After her recovery she is now continuously residing with us.

14. Now, to find out whether any offence, u/s 366 IPC, was committed by the accused Rajen Nath, we have to see whether he, kidnapped or abducted Purnima Bora, with an intention or knowledge that she would be compelled to marry him or would be forced or seduced to illicit intercourse.

15. If we peruse the testimony of prosecution witnesses, even cursorily, it will be apparent that the victim i.e. PW 2 went along with the accused Rajen Nath on her own. She has very clearly stated that she left her husband's house out of anger and she took shelter in the house of the accused, who was known to her. She has also stated very categorically that no one compelled her or has taken her by force from her husband's house. It is also apparent that as the victim and her husband were the tenant of the elder brother of the accused, he was known to her since last 7/8 years. The first informant of this case, Sri Sailen Bora (PW 1), who is the husband of the victim, has clearly stated that he lodged the FIR against the accused on the basis of suspicion. I do not have any reason for disbelieving the testimonies of PW 1 and PW 2. The son of the alleged victim has also stated that his mother had a quarrel with his father and had left the home and later on she came back. There is no evidence, on record, to even remotely suggest that the accused had even tried to abducted/kidnapped Smti Purnima Bora, the wife of the informant Sri Sailen Bora, with intent (or knowing it to be likely) that she might be compelled to marry against her will or in order that she might be forced her or seduced her to illicit intercourse with the him.

16. In view of the reasons stated above, I am of the considered opinion that the prosecution has miserably failed to prove the charge u/s 366 IPC against the accused Rajen Nath. Accordingly, the accused Rajen Nath is hereby acquitted of Charge u/s 366 IPC. His bail bonds shall remain in force for next six months from the date of this order.

17. Let a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my Hand and Seal of this Court on this 5th day of May, 2015.

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR : TEZPUR

Dictated and corrected by me.

(M. K. Kalita)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me :

Smti R. Hazarika, Steno

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Sri Sailen Bora
2. Prosecution Witness No.2 :- Smti Purnima Bora
3. Prosecution Witness No.3 :- Sri Biswajit Bora.

EXHIBITS

1. Exhibit No.1 :- FIR dated 20/07/2014
2. Exhibit 1(1) :- Signature of Sailen Bora.
3. Exhibit No.2 :- Statement of Purnima Bora.
4. Exhibit No.2(1) :- Signature of Purnima Bora.

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR : TEZPUR