

IN THE COURT OF ASSTT. SESSIONS JUDGE :::::NALBARI

Present : Himakshi Thakuria Buragohain.
Asstt. Sessions Judge,
Nalbari.

SESSIONS CASE NO : 25/18

U/S 366 IPC

STATE OF ASSAM

- VS -

DULU DAS @ NABA KR. DAS

..... Accused person.

Committed by learned CJM, Nalbari, vide order dated 10.04.2018 in connection with G.R. Case No. : 327/2017

APPEARANCE :

Advocate for the prosecution : Sri Mrigen Das, Learned Addl. PP.

Advocate for the defence : Sri Sonapati Sarma.

Date of Evidence : 18/06/2018, 09/08/2018,
29/10/2018

Date of Argument : 08/11/2018.

Date of Judgment : 08/11/2018

J U D G M E N T

1. The gist of the prosecution case in brief is that informant Dipa Barman lodged an ejahar before Nalbari Sadar Police Station on 04/03/2017 stating interalia that on 2/03/2017 at about 7 AM her daughters Monalisha Barman and Bandita Barman went to tuition to Janarpar. But at that time the accused Dulu Das kidnapped her daughter namely Sri Manalisha Barman and took her away on a pulsar bike. Hence, this case.

2. On receipt of the ejahar police registered a case as Nalbari PS Case No. 156//2017 u/s 366(A) IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused 366 IPC. On perusal of the case record the learned Chief Judicial Magistrate, Nalbari committed this case to the court of Hon'ble Sessions Judge, Nalbari u/s 366 IPC. On receipt of the committal paper and GR Case record, Hon'ble Sessions Judge, Nalbari started Sessions case against the accused and thereafter transferred this case to this court for disposal.

3. After hearing the learned counsels for both sides and on perusal of the case diary, charge was framed against the accused u/s 366 IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined as many as 4 (Four) witnesses including the informant and the I/O to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINT FOR DETERMINATION**

Whether the accused on 2/03/2017 at about 07:00 AM at village- Janorpar under Nalbari PS kidnapped (or abducted) a girl namely Miss Monalisha Barman with intent that she may be compelled to marry other person against her will or in order that she may be forced (or seduced) to illicit intercourse ?

DISCUSSION DECISION AND REASONS THEREFOR:

6. I have heard learned counsel for both the parties and gone through the evidence on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 366 IPC.

7. On the other hand, the learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the victim nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is expedient at this stage to cast a glance at the evidences of the prosecution witnesses.

9. In order to find out whether the accused had committed the offence of kidnapping the victim or not, let us at first go through the evidence of PW-2 Dipa Barman, who is the informant in this case. PW-2 stated that about 1 year back while her daughter Monalisha Barman was studying in class X, one day at 7 AM she went for tuition at Janorpar village. At 7: 15 AM

her tuition sir called her over phone and informed her that one boy took away her daughter on his motor cycle. Her younger daughter Bandita Barman also accompanied Monalisa to tuition. When she asked the tuition sir about Bandita he told her that she was crying in his house. Thereafter PW 2 went to the house of the accused as she was told by her tuition mates and her younger daughter that the accused had taken away her daughter. She did not find the accused in his house. Thereafter she came to the Nalbari PS and lodged the ejahar at 2 PM. After three days police recovered her daughter from the house of the elder sister of the accused along with the accused at Jalah village in the district of Barpeta. According to PW 2 at the time of occurrence her daughter's age was 17 years.

10. Now let us go through the evidence of PW-3, Monalisha Barman, who is the victim in this case. PW-3 stated that about 1 year back on the day of occurrence at about 8 AM while she was going for tuition in the house of one Ali sir situated near Gandhi Park, Nalbari along with her friend, Karishmita Barman and her sister Bandita, on the way the accused Naba asked her to accompany him in his motorcycle. According to PW 3 she refused to go with him, but the accused forced her to go with him and did not let her go to tuition. Thereafter he threatened her with dire consequences and took her to the house of his elder sister on his bike. PW-3 stated that it took half an hour to reach his elder sister's house. She did not know the name of the place. PW 3 further stated that she tried to leave his sister's house but the accused did not let her do so. In this manner she stayed there for four days and after four days police went and recovered her. She was brought to Nalbari PS. PW-3 further stated that from there she was produced before the court and from the court she was sent to State Home, Jalukbari. Next day she was again produced before the court for recording her statement. Thereafter her custody was given to her mother. It appears that at present PW 3 is pursuing her HS 1st year course.

11. From the evidence of PW 2 and PW 3, it appears that at the time of occurrence the younger sister of the victim and one of the victim's friend Karishmita were present. It is also revealed from the evidence of PW 2

that as told by the tuition mates of the victim she went to the house of the accused. Hence, it appears that at the time of occurrence the victim was not alone. When the victim was not alone she could have raised hue and cry when the accused threatened her with dire consequences and forced her to go with him. It is revealed from the evidence of PW 3 that it took half an hour to reach his elder sister's house. If the accused had forcefully taken away the victim to his elder sister's house for half an hour the victim could have raised hue and cry. Apart from that it is not possible for the accused to take away the victim on his motor cycle forcefully until and unless she herself goes with him. This is made clear when we find PW 2 stating in her cross examination that after reaching home Bandita told her that Monalisha went out for roaming somewhere with Dulu in the bike of one Ashim Barman. We also find PW 2 stating in her cross that she did not ask Ashim Barman anything about that.

12. Now if we go through the evidence of PW 1, Ashim Barman we find him stating that in the year 2017 one day the parents of the victim came to his house in order to ask about the victim as the accused is his friend. PW 1 stated that according to them the sister of the victim Bandita Barman saw the victim going with the accused. PW 1 further stated that he told them that he doesn't know where their daughter went.

13. It is revealed from the cross of PW 1 that the accused and the victim had love affair. PW 3 also stated in her cross that she had friendship with the accused.

14. Another thing which we notice in the evidence of PW 2 is that she did not tell any of the villagers about the occurrence. From this we can assume that the PW 2 was aware of the fact that the victim had willfully gone with the accused. Coming back to the evidence of PW 3 we find her stating no where that the accused had forced her to have sexual intercourse with him during her stay in the house of his elder sister. Regarding the age of the victim we don't find any age proof of the victim anywhere in the case record.

15. From the evidence of the PWs, it appears that none of ingredients of Sec. 366 IPC are fulfilled against the accused person. Under the above circumstances, it will not be proper to hold the accused guilty of the

offence under the aforesaid section.

O R D E R

16. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 366 IPC against the accused.

Hence, the accused Dulu Das @ Naba Kr. Das is found not guilty and is acquitted from the charge of offence u/s 366- IPC.

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused shall stand canceled after period of 6 months.

Given under my hand and seal of this court on this the 8th day of November /2018.

Asstt. Sessions Judge,
Nalbari

Dictated & corrected by me

Asstt. Sessions Judge, Nalbari

A P P E N D I X

(A) **Prosecution witnesses:**

- PW 1 : Sri Ashim Barman,
- PW 2 : Sri Dipa Barman (Informant),
- PW 3 : Sri Monalisha Barman (Victim),
- PW 4 : SI Monalisha Madhav Bhakta (I/O)

(B) **Prosecution exhibited documents :**

- Ext-1 : Ejahar,
- Ext-1(1), 1(2) : Signatures of PW-2,
- Ext-2 : Statement of victim recorded u/s 164 CrPC,
- Ext-2(1),2(2) & 2(3) : Signatures of PW-3
- Ext-3 : Seizure list,
- Ext- 3(1) : Signature of PW 4,
- Ext-4 : Sketch Map,
- Ext-4(1) : Signature of PW 4,
- Ext-5 : Charge Sheet,
- Ext-5(1) : Signature of PW-4.

(C) **Defence witnesses** : Nil.

(D) **Defence exhibited document** : Nil.

Asstt. Sessions Judge,
Nalbari