

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

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

SESSIONS CASE NO.: 47/18

U/S 366 IPC

STATE OF ASSAM

- VS -

TOFAJUL HAQUE

..... Accused person.

Committed by learned JMFC, Nalbari, vide order dated 20/06/2018 in connection with G.R. Case No. : 1572/17

APPEARANCE :

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

Advocate for the defence : Md. Hiteswar Lahkar, Ld. Advocate.

Date of Evidence : 31/10/2018, 15/11/18

Date of Argument : 17/11/2018.

Date of Judgment : 17/11/2018.

J U D G M E N T

1. The gist of the prosecution case in brief is that on 05-10-17 one Nijara Bibi lodged an ejahar at Ghograpar PS alleging, inter alia that on 23-09-17 at about 11 AM the daughter of the informant Babita Begum went to Barkhala Chowk but she did not return. After searching for her daughter everywhere, on 01-10-17 she heard that the accused Tofajul Haque had kidnapped her daughter. Apart from that the other accused Intaz Ali threatened the informant and her family members with dire consequences. Hence this case.

2. On receipt of the ejahar police registered a case as Ghograpar PS Case No.173/17 u/s 366/506/34 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused u/s 366 IPC. Since the offence u/s 366 IPC is exclusively triable by the Court of Sessions, the Learned Judicial Magistrate First Class, Nalbari committed this case to the court of Hon'ble Sessions Judge, Nalbari. 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 three witnesses to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence case was of complete denial and the defence side has not adduced any evidence.

5. **POINTS FOR DETERMINATION**

“Whether the accused Tofajul Haque on 23-10-17 at about 11 AM at Barkhala Chowk under Ghograpar PS induced Miss Babita Begum to go from her house or to do any act/ acts with him and that the accused knew it likely that she will be forced or seduced to have illicit intercourse with him ?”

DISCUSSION DECISION AND REASONS THEREOF

6. I have heard learned counsel of 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 has nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

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

9. For this, let us at first go through the evidence of PW-1, Nijara Bibi, who is the informant of this case as well as the mother of the victim. PW-1 stated in her evidence that about 1 year back at 9 AM her daughter Babita went to her school to participate in some sports. At 3 PM all the children from the neighborhood returned home from school. But her daughter did not return. PW-1 searched for her everywhere, but could not find her. According to PW-1 after 3 days from the occurrence PW-1 lodged an ejahar at Ghograpar PS and after 13 days from the day of lodging the ejahar the police from Ghograpar PS

caught her daughter and the accused at Bilpar Chowk while they were returning from Guwahati.

10. Coming to the evidence of PW-2, Babita Begum, who is the victim of this case, we find her stating that about 1 year back at 11 AM she went to Barkhala High School for sports. According to PW-2 she was away from her house for 13 days. It appears that during those days she stayed in the house of the maternal uncle of the accused at Senikuchi village under Ghograpar PS for 1 day. And thereafter she and the accused went to the house of her maternal aunt at Bhangagarh, Guwahati and stayed there for 12 days. PW-2 stated that as her mother could not find her in the house, out of suspect she lodged this case against the accused. PW-2 further stated that after 12 days while they were returning home, police caught them at Bilpar village under Ghograpar PS.

11. Now if we go through the cross of PW-1 we find her stating that her daughter and the accused are in a relationship since long. PW-1 admitted that she had lodged the ejarah against the accused on suspect and that her daughter had gone with the accused for roaming. It is further revealed from the cross-examination of PW-2 that she is still in good terms with the accused. Apart from that PW-2 has also admitted that on the day of occurrence she had gone with the accused willfully without informing her family members. PW-3 has also stated in his evidence that both the accused and the victim had love affair between them.

12. From the evidence of the PWs it is clear that the victim herself went away with the accused and that this case was lodged only on a misunderstanding.

13. Under the above circumstances, it won't be proper to held the accused guilty of the offence committed u/s 366 IPC. Hence we can assume that the allegations made against the accused in the ejarah are not correct.

O R D E R

14. 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, accused Tofajul Haque 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 17th 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 : Nijara Bibi (Informant)

PW 2 : Babita Begum (Victim)

PW 3 : Hajarat Ali

(B) **Prosecution exhibited documents :**

Ext-1 – Ejahar,

Ext-1(1) – Signature of the informant,

Ext-2 – Statement of the victim recorded u/s 164 CrPC.,,

Ext-2(1) & 2(2) – Signatures of the victim,

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

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

Asstt. Sessions Judge,
Nalbari