

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

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

SESSIONS CASE NO.: 52/18

U/S 366(A) IPC

STATE OF ASSAM

- VS -

MAZAFAR ALI

..... Accused person.

Committed by Ld. JMFC, Nalbari, vide order dated 16-07-2018 i/c with GR Case
No. : 1573/17

APPEARANCE :

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

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

Date of Evidence : 06.09.2018, 14.11.18, 27.11.18.

Date of Argument : 30.11.2018.

Date of Judgment : 30.11.2018.

J U D G M E N T

1. The gist of the prosecution case in brief is that one Md. Jakir Hussain lodged an ejahar alleging inter-alia that one Sri Majafar Ali kidnapped his daughter Mamtaz Parbin who is aged 16 years on 27-09-17. Hence this case.

2. On receipt of the ejahar police registered a case as Ghograpar PS Case No.174/17 u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused 366(A) IPC. Since the offence u/s 366(A) IPC is exclusively triable by the Court of Sessions, the Learned Chief 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 of both sides and on perusal of the case diary, charge was framed against the accused u/s 366(A) 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 6 (six) witnesses to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in separate sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINTS FOR DETERMINATION**

“Whether the accused on 27-09-17 at village Dhurkuchi under Ghograpar PS in the district of Nalbari induced Miss Mamtaz Parbin (a minor

girl under the age of 18 years) to go from her house or to do any act 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 have 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(A) IPC.

7. On the other hand 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. To start with our discussion let us at first go through the evidence of PW-1, Jakir Hussain, who is the informant as well as the father of the victim of this case. PW-1 stated in his evidence that about one year back, one day prior to the occurrence, he called his wife to his pam house situated about 3 miles away from his house for helping him while reaping the paddy. On that night he called his daughter Mamtaz Parbin over phone to come to the pam house on the next day to help her mother while cooking. Next morning from the pam house he went to the market. When he returned to the pam house from the market he asked his wife if their daughter had come or not. When his wife told him that she did not come, he went to his house to call her. But as he could not find her he again went back to work. At 2 PM his daughter called him over phone and told him that while she was coming to the pam

house, the accused took her away in a car. Thereafter he lodged the ejahar against Majafar. After 10-15 days police recovered his daughter from Mukalmua. After recovery she was sent to the CWC for recording of her statement. From CWC his daughter was sent to State Home, Jalukbari. There she stayed for 15 days and after that his daughter filed a petition before the CWC praying to hand over her custody to them.

10. Let us not go through the evidence of PW-2 Mamtaz Begum who is the victim in this case. PW-2 stated that about one year back at 10 AM while she was going to their pam house situated at Rangia Bhalukmari, she met the accused on the way. He asked her where she was going. When she told him that she is going to their pam house he asked her to sit inside a car and told her that he will drop her. PW-2 stated that there was a driver in the car. She sat inside the car and after going a little distance when she found that the accused was taking her in another way she raised hue and cry. Thereafter the accused pressed her mount with his hand and also threatened her by showing a knife. PW-2 also stated that the accused confined her in a house at Mukalmua for 15 days. According her father lodged a case and police recovered her after that from the said house. According to PW-2 at first she was kept at Mukalmua PS and on the next day she was taken to Ghograpar PS. From there she was sent for medical examination and was also produced before the court for recording of her statement u/s 164 CrPC. Thereafter she was sent to State Home, Jalukbari by the Court. She stayed there for one month and after that she was sent with her parents.

11. On going through the cross-examination of PW-1 it is revealed that the date of occurrence was 27-09-17 and the ejahar was lodged on 06-10-17. In his examination n chief PW-1 stated that on the day of occurrence at 2 PM his daughter had called him over phone and told him that while she was coming to the pam house, the accused took her away in a car. In spite of knowing the fact, PW-1 did not lodge ejahar on the day of occurrence. The cause of delay in lodging the ejahar is also not mentioned in the ejahar. From this we can assume that PW-1 knew that the victim willfully went with the

accused and he had consented with the act for which he did not lodge the ejahar. This is made more clear when we find PW-1 stating in his cross that at the time of recording the statement of the victim, he had filed a petition before the CWC praying for custody of his daughter, but as his daughter refused to come along with him she was sent to State Home, Jalukbari.

12. The actual fact is revealed when we go through the cross of PW-5, the I.O.. PW-5 stated in his cross-examination that the victim stated before him that since two years prior to the occurrence she had love affair with the accused and when her parents came to know about her relation with the accused, they wanted to give her in marriage to someone else, for which she eloped with the accused. We also find PW-2 admitting in her cross-examination that whatever is deposed by her in her statement recorded u/s 164 CrPC is tutored. Even PW-3 who is one of the villagers stated in his evidence that on the day of occurrence when he met the informant in the evening he was told that the victim went away with the accused. From the above discussion it appears that the victim had willfully gone away with the accused. Regarding the age of the victim no age certificate of the victim or radiological report is found in the case record to find out whether the victim was a minor at the time of occurrence.

13. As there is no incriminating materials against the accused, we can assume that whatever allegation is made against the accused in the ejahar is not true. Therefore the accused cannot be held guilty u/s 366(A) IPC.

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(A) IPC against the accused.

Hence, accused Mazafar Ali is found not guilty and is acquitted from the charge of offence u/s 366(A) 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 30th 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 : Jakir Hussain (Informant),

PW 2 : Mamtaz Begum (Victim),

PW 3 : Girish Baruah,

PW 4 : Awal Jahir Choudhury,

PW 5 : A.S.I. Bisitra Kalita (I.O.).

(B) **Prosecution exhibited documents :**

Ext-1 – Ejahar,

Ext- 1(1) - Signature of PW-1,

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

Ext-2(1)-2(2) – Signatures of PW-2,

Ext-3 – Sketch Map,

Ext-3(1) – Signature of PW-5,

Ext-4 – Charge Sheet,

Ext-4(1) – Signature of PW-5.

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

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

Asstt. Sessions Judge,
Nalbari