

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

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

SESSIONS CASE NO.: 172/16

U/S 366 IPC

STATE OF ASSAM

- VS -

ABDUL KADER

..... Accused person.

Committed by learned SDJM(S), Nalbari, vide order dated 19-10-2016 in connection with GR Case No. : 1057/16

APPEARANCE :

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

Advocate for the defence : Md. Joynal Abdin, Ld. Advocate.

Date of Evidence : 04-04-2017, 07-06-17, 11-07-18,
22-11-18

Date of Argument : 27/11/2018

Date of Judgment : 27/11/2018

J U D G M E N T

1. The gist of the prosecution case in brief is that on 16-07-16 one Khalilur Rahman lodged an ejahar alleging, inter alia that on 11-07-16 at about 11:30 AM his daughter Miss Asmina Khatun, after going to Sani Road Chowk to do photo copy of some documents did not return home. Though the informant searched his daughter everywhere, he could not find her. On 22-07-16 the informant was given a notice from the Police Station. Thereafter the informant came to know that the accused Abdul Kader, Shahjahan Ali, Mirajul Haque, Abdul Karim, Nur Islam and Amir Ali had kidnapped his daughter and confined her somewhere. Hence this case.

2. On receipt of the ejahar police registered a case as Mukalmua PS Case No.239/16 u/s 366(A)/346/34 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused Abdul Kader u/s 366 IPC. Since the offence u/s 366 IPC is exclusively triable by the Court of Sessions, the Learned SDJM(S), 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 7(seven) witnesses 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. **POINTS FOR DETERMINATION**

“Whether the accused on 11-07-16 at about 11:30 AM at Soni Road Chowk under Mukalmua PS induced Miss Ashmina Khatun 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 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 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 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, Miss Ashmina Khatun, who is the victim of this case. PW-1 stated that she passed the HSLC examination in 1st division and on the day of occurrence at about 11 AM she went to Sonirod Chowk for doing some photostate of Marksheet, Admit card etc. for making on line application for allocation of laptop. At that time the accused was waiting in a car at the side of the chowk and called her. When she went near him he applied something in her nose and pulled her. Thereafter

she became senseless. After four days when she regained back her sense she came to know that the accused confined her in a house in a town of Haryana. According to PW 1 the accused intended to sell her. When she raised hue and cry the neighbours came to help her. Then she told them in details and gave them the mobile number of her father and those people called her father from the mobile of accused. Her father asked the accused to bring back his daughter. The accused then brought his daughter from Haryana and kept her in a char area of Assam. The people of 'char' informed her father and after that her father brought her and the accused to the Mukalmua Police Station.

10. PW-2, Md. Khalilur Rahman, who is the informant of this case deposed that on the day of occurrence the victim went to Sanirod Chowk for doing photostate of Marksheet, Admit etc. at 11-30 AM. After that his daughter went missing. He searched his daughter for 4 days and came to know from the villagers that the accused had kidnapped his daughter. PW-2 further stated that he went to the house of accused and the family members of the accused told him that they did not know about his whereabouts. He also came to know from the brother-in-law (Bhini) of accused that accused took away his daughter to Haryana and was about to sell. Thereafter he lodged an ejahar. As they were searched by police the accused came with the victim to the house of his father at Kalarchar. On being informed by other people PW 2 went to Kalarchar and brought his daughter with the accused and handed over them to police station. According to PW 2 at the time of occurrence his daughter was about 16 years old.

11. PW-3, Musstt. Aziran Nesa who is the wife of the informant & the mother of the victim stated in her evidence that one day about 6/7 years ago at about 9 AM her daughter came to the Soni Road Chowk for doing photocopy of mark-sheets and admit card. As she did not return back till evening they searched for her everywhere but could not trace out her. According to PW 3 they searched for her for several days and during search they came to know that the accused who was performing imamati in the Mosque was not in the Madrasa. Suspecting that the accused had kidnapped their daughter her husband lodged ejahar. After almost 16 days of lodging the

ejahar police recovered the victim. PW 3 also stated that her daughter told her that while she went to make Photo copy of the mark-sheets at the Soni Road Chowk, the accused applied some scent in her nose and kidnapped her and took her to different places like Delhi.

12. Coming to the cross-examination of PW 1 we find her stating that there are many shops and people in 'Sanirod Chowk'. It also appears that many vehicles ply towards Doulasal through 'Sanirod Chowk'. If Sanirod Chowk is such a busy place/ area then it is not possible for the accused to kidnap the victim from there in a car after making her senseless, until and unless she herself goes with him. PW 1 also denied the suggestion put forward by the defence that 'she did not tell before the police that accused was waiting in a car by the side of the chowk and called her, that when she went near to him he applied something in the nose and pulled her and then she became senseless, that after four days when she regained back her sense she came to know that accused had confined her in a house in the town of Haryana, that the accused intended to sell her that when she raised hue and cry and started to weep then neighbourer came and asked her and on being asked by them she gave the mobile number of her father and those people called her father from the mobile of accused.' However, on perusal of the evidence of PW 7, it appears that the said contradiction is proved as we find PW 7 stating that PW 1 also did not state about any such fact before him. If the allegations made by PW 1 were true, she would have definitely stated those facts to the police. Again, the allegation that the accused after meeting PW 1, made her consume some medicine for which she could not do or speak anything for about 1 month also can not be believed as PW-1 herself stated in her examination in chief that after 4 days from the occurrence when she regained back her sense and came to know that she was in a village at Hariyana.

13. Now if we go through the statements of the victim recorded u/s 164 CrPC which is marked as Ext-1, we find her stating many different incidents which she did not mention at all in her examination in chief. As none of the PW s has deposed anything in their examination in chief which the victim had deposed in Exhibit-1, a doubt arises in our mind regarding the truthfulness in the prosecution story.

14. From the evidence of PW 4 and PW 5 it appears that their evidence are hearsay and nothing is revealed from their evidence except the fact that both the victim and the accused were recovered together. Regarding the age of the victim it appears from the evidence of PW 6 that the skeletal age from radiological evidence is estimated to be above 18 years. We also find that no birth certificate of the victim is submitted along with the case record. However, if we go through the cross-examination of PW 2 we find her stating that she was married in the year 1996 and the victim was born after two years of her marriage. As such it can be presumed that the victim was more than 18 years at the time of occurrence.

15. Again, from the cross-examination of PW 2 and PW 3 also we find that they did not lodge the ejahar on the day of occurrence. Whereas they lodged the ejahar after four days from the occurrence. No cause of delay is also mentioned in the ejahar. As such we can assume that the informant was aware of the fact that his daughter had gone with the accused willfully.

16. Under the above circumstances, it will not be proper to hold the accused guilty u/s 366 IPC. Therefore it appears that the allegations made against the accused in the ejahar are not true.

O R D E R

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

Therefore, accused Abdul Kader is found not guilty under the above section. Accordingly he is acquitted from the charge of offence u/s 366 IPC and 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 27th 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 : Miss Asmina Khatoon(Victim)

PW 2 : Md. Khalilur Rahman (Informant)

PW 3 : Musstt. Aziran Nesa,

PW 4 : Sahadat Hussain Talukdar,

PW-5 : Ayub Ali,

PW 6 : Dr. Urmi Devi Choudhury,

PW 7 : Sri Ajit Das

(B) **Prosecution exhibited documents :**

Ext-1 – Statement of the victim recorded u/s 164 CrPC.,

Ext- 1(1) to 1(3) - Signatures of the victim,

Ext-2 – Ejahar,

Ext-2(1) – Signature of PW 2.

Ext-3 Medical Examination report,

Ext-3(1), 3(2) : Signature of PW 6,

Ext-4 : Sketch map,

Ext-4(1) : Signature of PW 7,

Ext-5 : Charge Sheet,

Ext- 5(1) : Signature of PW 7.

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

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

Asstt. Sessions Judge,
Nalbari