

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

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

**SESSIONS CASE NO.: 26/18**

U/S 366 IPC

STATE OF ASSAM

- VS -

**AJAY NATH**

..... Accused person.

Committed by learned JMFC, Nalbari, vide order dated 19.03.18 in connection  
with GR Case No. : 888/17

**APPEARANCE :**

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

Advocate for the defence : Mr. Pratul Kr. Sarma, Ld. Advocate.

Date of Evidence : 05.01.2019.

Date of Argument : 17.01.2019.

Date of Judgment : 17.01.2019.

## J U D G M E N T

1. The gist of the prosecution case in brief is that on 01.06.2017 one Paresh Kalita lodged an ejahar at Kamarkuchi Outpost alleging, inter alia that on that day at about 5 PM while his daughter namely Pampi Kalita aged about 16 years was walking towards Barbhag College, the accused Ajay Nath kidnapped her. Hence this case.

2. On receipt of the ejahar police registered a case as Nalbari PS Case No.366/17 u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against the accused 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 PRC 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 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 3(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 sheets. The defence case was of compete denial and the defence side has not adduced any defence evidence.

5. **POINTS FOR DETERMINATION**

“Whether the accused on 01-06-17 at about 5 PM induced Miss

Pompi Kalita to go along with him 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 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, Paresh Kalita, who is the informant of this case as well as the father of the victim. PW-1 stated in his evidence that on 01.06.17, when he reached home at 5 PM he could not find his daughter in the house. According to PW-1 at that time she was a student of class- ix and was 15 years old. Thereafter he searched for her everywhere. As he could not find her he lodged an ejahar. On the next day from the occurrence, a lady from Panjabari, Guwahati, in whose house his daughter was kept called him over phone and informed him that Pompy, Ajay and one of her friend, Monika were in their house. Thereafter PW-1 informed the police and went to Panjabari along with them and his wife. On reaching Panjabari they went to the house and found Pompy, Ajay, Monika and Dipjyoti.

10. Let us now go through the evidence of PW-3, Namita Kalita, who is the elder sister of the victim of this case. PW-3 stated that at about 5 PM her sister went missing from their house. On the next day of the occurrence her sister was recovered from the house of the elder sister of her friend at Panjabari along with three of her friends.

11. From the evidence of PW-1 and PW-3 it appears that on the day of occurrence the victim was missing from their house. But if we go through the cross-examination of PW-1 we find him stating that on the day of occurrence his daughter along with Ajay, Monika and Dipjyoti went to visit the house of the elder sister of Monika at Panjabari. But as he did not know about the fact, he lodged the ejahar on suspect.

12. The entire incidence becomes more clear if we go through the evidence of PW-2, Pompy Kalita, who is the victim of this case stated that Ajay Nath was her friend and on 06.01.2017 she along with her friend Monika, Dipjyoti and Ajay went to the house of the sister of Dipjyoti at 4 PM. They reached her house at Panjabari at 7:30 PM. Thereafter the elder sister of Dipjyoti called her father over phone and told him that PW-2 was in her house. On the next day her parents and Monika's parents came to Panjabari along with the police and brought them to Kamarkuchi Outpost from there.

13. Even PW-2 stated in her cross-examination that PW-1 had lodged the ejahar on a misunderstanding as did not know that they had gone to the house of the elder sister of the accused at Panjabari.

14. Under such circumstances, it will not be proper to hold the accused guilty u/s 366 IPC. As such we can assume that the allegations made against the accused in the ejahar are not true.

**O R D E R**

15. 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 Ajay Nath 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 17<sup>th</sup> day of January/2019.

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 : Paresh Kalita (Informant),

PW 2 : Pompy Kalita (Victim),

PW 3 : Namita Kalita.

(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(3) – Signature of the victim.

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

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

Asstt. Sessions Judge,  
Nalbari