

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

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

SESSIONS CASE NO.: 73/18

U/S 366 IPC

STATE OF ASSAM

- VS -

DIPJYOTI SARMA

..... Accused person.

Committed by learned JMFC, Tihu, vide order dated 02.11.18 in connection
with PRC Case No. : 44/18

APPEARANCE :

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

Advocate for the defence : Mrs. Pranita Haloi, Ld. Advocate.

Date of Evidence : 29.11.2018, 06.12.18, 18.12.18

Date of Argument : 03.01.2019.

Date of Judgment : 03.01.2019.

J U D G M E N T

1. The gist of the prosecution case in brief is that on 22-05-18 one Sailen Sarma lodged an ejahar at Tihu PS alleging, inter alia that on 21-05-18 his daughter, Garima Devi, aged about 17, did not return home from her school. On that day at about 5 PM he received a phone call from his daughter from a mobile bearing no.7636989870, whereby she informed him that she had gone somewhere with the accused. When the informant asked her about her whereabouts the mobile phone was snatched away from her as the same belonged to the accused. Hence this case.

2. On receipt of the ejahar police registered a case as Tihu PS Case No.81/18 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, Tihu 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 6(six) witnesses including 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. **POINTS FOR DETERMINATION**

“Whether the accused on 21-05-18 at village Nannattari under Tihu PS induced Miss Garima Devi to go from her house or to do any act/ acts with him and that he 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, Sainen Sarma, who is the informant as well as the father of the victim of this case. PW-1 stated in his evidence that in the month of May, 2018, one day at about 10:30 AM his daughter Garima Devi who is a student of HS 2nd year had gone to Tihu College for attending her classes. When his daughter did not reach home till 03:30 PM, he asked his niece Priyanka Sarma about her whereabouts as she studies in the same class with his daughter. According to PW-1 Priyanka told

him that Dwipjyoti had gone to their college and the victim might have gone with him. On the next day his elder brother Manab Sarma and his son Partha Pratim Sarma went to the house of Dwipjyoti. As they did not get any good respond from the family members of the accused PW-1's brother told them that they will lodge an ejahar against him. Thereafter on that day at about 4 PM PW-1 lodged an ejahar against Dwipjyoti at Tihu PS. It is further revealed from the evidence of PW-1 that on the next day of lodging the ejahar at about 7 AM the father of the accused came to their house and told them that they will bring his daughter to the Police Station. Thereafter PW-1 and his wife went to Tihu PS at about 10 AM and after they reached the mother and aunt of Dwipjyoti brought their daughter to Tihu PS.

10. PW-2, Khiroda Sarma, who is the wife of the informant as well as the mother of the victim stated in her evidence that about 5 months back one day at about 09:00 AM her daughter Garima Devi who is a student of HS 2nd year had gone to Tihu College for attending her classes. When her daughter did not reach home till 04:00 PM they searched for her everywhere but could not find her. On the next day of the occurrence her husband lodged an ejahar at Tihu PS. According to PW-2 on the day of occurrence her daughter had gone to college along with their niece Priyanka Sarma who studies in the same class with her. When they asked her about their daughter she told them that she does not know where she had gone. After 2 days from the occurrence when the mother and aunt of Dwipjyoti brought their daughter to Tihu PS, they also went to the Police Station.

11. Coming to the evidence of PW-3, Garima Devi, who is the victim of this case, we find her stating that on 21-05-18 at about 10:00 AM she had gone to Tihu College which is situated at a distance of 1km from her house for attending her classes. According to PW-3 at 12 PM as the classes were over she came out of the college and met Dwipjyoti. PW-3 stated that when Dwipjyoti asked her where she will go after her classes, she told him that she will go to her house. PW-3 further stated that thereafter Dwipjyoti asked her to sit on his bike and told her that he will drop her in her house, for which PW-3

sat on his bike. But Dwipjyoti took her to the house of his paternal aunt at Dumni. According to PW-3 there they stayed for two days. After 2 days the mother and aunt of the accused brought them from there. It appears from the evidence of PW-3 that from Tihu Chowk to Tihu PS the accused did not accompany them.

11. Now if we go through the cross examination of PW-3 we find her denying the suggestion of the defence that she neither stated before the Magistrate nor before the police that, when the accused asked her to sit on his bike, the accused took her to the house of his paternal aunt at Dumni after 2-3 hours and that they stayed there two days. We find PW-6 the I.O. confirming the statement of the victim. On the other hand PW-6 stated that the victim stated before him that she had love-affair with the accused and she called him outside the college and thereafter they went to Guwahati at 1PM and on the way they stopped in the house of the friend of the accused at Mirza for 2 days. According to PW-6, PW-3 stated before him that Dwipjyoti did not force her to go with him. But she willfully went with him. On perusal of Exhibit-2 also we find PW-3 stating the same thing. PW-3 has admitted the said fact in her cross-examination. Apart from that we find PW-4, Dimbeswar Haloi stating in his evidence that about 1 ½ – 2 months back he heard that the daughter of PW-1 had eloped away with a boy. PW-4 also stated that he heard that the victim returned on the next day.

12. From the cross-examination of PW-3 and PW-6 and evidence of PW-4 as well as on perusal of Exhibit-2 it is clear that the victim willfully went away with the accused .

13. Regarding the age of the victim, though PW-1 and PW-2 has stated that at the time of occurrence, PW-3 was 17 years old, we do not find any age certificate of the victim in the case record to prove the said plea. Apart from that we find PW-6 stating in his cross that in the medical report of the victim the age of the victim is stated to be more than 18 years.

14. Under such circumstances, it won't be proper to hold the accused guilty u/s 366 IPC. Hence we can assume that the allegations made against the accused for committing an offence u/s 366 IPC 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.

Therefore, accused Dwipjyoti Sarma is found not guilty under the aforesaid 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 3rd 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 : Sailen Sarma (Informant),

PW 2 : Khiroda Sarma,

PW 3 : Garima Devi (Victim),

PW 4 : Dimbeswar Haloi,
PW 5 : Naren Rajbongshi,
PW 6 : A.S.I. Bisweswar Choudhury (I.O.).

(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,
Ext-3 – Sketch Map,
Ext-3(1) – Signature of the I.O.,
Ext-4 – Charge-sheet,
Ext-4(1) – Signature of the I.O..

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

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

Asstt. Sessions Judge,
Nalbari