

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

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

SESSIONS CASE NO.: 60/19

U/S 366 IPC

STATE OF ASSAM

- VS -

RATUL ALI

..... Accused person.

Committed by Learned CJM, Nalbari, vide order dated 11/04/2019 in connection with PRC Case No. : 70/19.

APPEARANCE :

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

Advocate for the defence : Md. Baharul Haque

Date of Evidence : 1/06/2019, 24/06/2019.

Date of Argument : 29-07-2019.

Date of Judgment : 29-07-2019.

J U D G M E N T

1. The gist of the prosecution case in brief is that on 20/06/2018 the informant Birjan Ali lodged an ejahar stating interalia that on the same day at 8-30 AM his daughter Parbin Sultana aged about 16 years went to attend her HS 1st year class at BK Bhanduri Junior College, Barama. But as she did not return home till the evening, the informant searched for her everywhere and came to know that the accused Ratul Ali had kidnapped her and confined her somewhere. Hence, this case.

2. On receipt of the ejahar police registered a case as Nalbari PS Case No. 431/2018 u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused Ratul Ali u/s 366 IPC. Since the offence u/s 366 IPC is exclusively triable by the Court of Sessions, the Ld. CJM 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 as many as 5(five) witnesses including the informant and victim 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. **POINT FOR DETERMINATION**

Whether the accused on 20/06/18 at 8-30 AM at Vill- Dipta in the district of Nalbari induced Miss Parbin Sultana to go from her house or to do any act with an intention that she may be compelled to marry against her will or she may be forced or seduced to illicit intercourse ?

DISCUSSION, DECISION AND REASONS THEREOF

6. I have heard learned counsel for 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 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 determining the actual fact let us at first go through the evidence of PW 1, Birjan Ali, who is the informant of this case. PW-1 has stated that about 1 year back at 9-30 AM his daughter Parbin Sultana went to attend her classes at BK Bhandari Junior College, Barama. According to PW 1 as he works near her college he often go to meet her in college. On that day also he went to meet his daughter from work. But while he was looking for her, one of the professors told him that his daughter did not come to college that day. Then he returned back from the college. When PW 1 reached Dipta

Chowk, one Arif called him over phone and told him that he accused Ratul Ali took away his daughter from the way to her college in a vehicle. Immediately PW 1 came home and searched for his daughter everywhere but he could not find her. Thereafter he lodged the ejarah after taking advise from the principal of the college. On the next day he came to know that the parents of the accused along with 2-3 villagers handed over his daughter to the police station.

10. PW 3, Akima Bibi, who is the mother of the victim stated in her evidence that about 1 year back one day at 9:00 AM while her daughter Parbin was going to attend her classes at B.K. Bhandari Junior College, Barama, accused Ratul Ali took her away from the way in a maruti car. On the next day the father of the accused along with other villagers brought his daughter to the police station.

11. Coming to the evidence of PW 2, Parbin Sultana, who is the victim of this case we also find her stating that about 1 year back between 9:00 AM to 10:00 AM while she was going to attend her class at BK Bhandari Junior College, Barama, accused Ratul Ali took her away from the way in a maruti car to the house of his aunt at Satpur. According to PW 2 she stayed there that night. On the next day the father of the accused along with other villagers took her to the police station.

12. From the evidence of the aforesaid PWs it appears that all of them has alleged that the accused had kidnapped the victim from the way to her college. But if we go through the cross-examination of PW 2 we find her admitting her statement before the police that she had called Ratul Ali over phone and asked him to meet her. PW 2 also admitted about her statement made before the Magistrate that she had love affair with the accused since 7 years and on 20/6/17 she called Ratul Ali over phone and asked him to meet her. PW 2 also admitted that she stated before the Magistrate that the accused did not kidnap her but she wilfully went away with him.

13. A brief perusal of the statement of PW 2 marked as Exhibit 2 reveals that the accused and the victim were in a relationship since 7 years and on the day of occurrence i.e. on 20/06/2018 the victim herself called the accused to Borjar and eloped with him willfully.

14. PW 4, Baharul Islam and PW 5, Majnur Ali also stated in their evidence about the love affair between the victim and the accused and also about the elopement of the victim with the accused. Again if we go back to the evidence of PW 1 we find him stating that he he was informed by one Arif over phone that the victim was kidnapped by the accused. It is also revealed from his evidence that there are 6/7 houses between his house and the house of the accused. But PW 1 did not state anywhere that he went to the house of the accused to search for his daughter. From this we can assume that PW 1 knew about the whereabouts of his daughter and also knew the fact that she willfully went with the accused.

15. Regarding the age of the victim, it appears that the informant did not submit any document i/c with the age of the victim.

16. From the above discussion it appears that none of the ingredients of the offence u/s 366 IPC are attracted against the accused. Hence, the accused Ratul Ali cannot be held guilty of the offence u/s 366 IPC as alleged by the informant in the ejahar.

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.

Hence, accused Ratul Ali 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 29th day
of July/2019

Asstt. Sessions Judge,
Nalbari

Dictated & corrected by me

Asstt. Sessions Judge, Nalbari

(A) **Prosecution witnesses:**

PW 1 : Md. Birjan Ali (informant),
PW 2 : Miss Parbin Sultana (victim),
PW 3 : Akima Bibi,
PW 4 : Md. Baharul Islam and
PW 5 : Md. Majnur Ali.

(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) Signatures of PW 2.

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

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

Asstt. Sessions Judge,
Nalbari