

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

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

SESSIONS CASE NO.: 167/2020

U/S 366 (A) IPC

STATE OF ASSAM

- VS -

Sanjay Das

..... Accused person.

Committed by Learned JMFC, Nalbari, vide order dated 25.11.2019 in connection with PRC No. 454/2018

APPEARANCE :

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

Advocate for the defence : Mr. J. Kalita, Ms S. Sultana, Mr. H. Rahman

Date of Evidence : 05/02/2020, 19/02/2020

Date of Argument : 29/02/2020

Date of Judgment : 29/02/2020

J U D G M E N T

1. The gist of the prosecution case in brief is that on 27/06/2014 one Hariram Das lodged an ejahar alleging interalia that at about 3 PM his daughter aged about 17 years was forcefully kidnapped by the accused Sanjay Das in a tempo from Ambari chowk of Kasimpur village. Hence, this case.

2. On receipt of the ejahar police registered a case as Nalbari PS Case No. 429/14 u/s 366 (A) IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused Sanjay Das u/s 366 (A) IPC. Since the offence u/s 366 (A) IPC is exclusively triable by the Court of Sessions, the Ld. JMFC, 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 for 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 as many as 5 (five) witnesses including the informant and the victim to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence plea was of complete denial and the defence side has not adduced any defence evidence.

POINT FOR DETERMINATION

5. Whether the accused on 27.06.14 at about 3 PM at Kashimpur village under Nalbari PS forcefully kidnapped Smti. Sangita Das (a minor girl aged about 17 years) to go from Ambari chowk with him with an intention that she may be or knowing it likely that she will be compelled to marry against her own will or will 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 (A) IPC.

7. On the other hand, the 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. In the very beginning of our discussion let us go through the evidence of PW-1, Sri Hariram Das who is the informant of this case. PW-1 stated that about 5 years back one day his daughter went out of the house by telling them that she will be going to Kasimpur chowk. But she went missing from there. PW-1 also stated that after searching for her daughter everywhere

they could not find her and hereafter he lodged an ejahar in Nalbari PS. PW-1 further stated that on the next day his daughter was recovered by police of Mukalmua PS and he went to the police station on being informed and found the accused and the victim there.

10. Now let us go through the evidence of PW-2, Sangita Das, who is the victim of this case. PW-2 stated that on the day of occurrence she and the accused met at Ambari chowk. Thereafter she eloped with him to Guwahati in a traveler. According to PW-2 they reached Guwahati at 7:30 PM. Thereafter the accused took her to the house of her cousin Momi Talukdar at Ulubari. PW-2 stated that they stayed there that night. PW-2 further stated that on the next morning the accused told her that he will take her to his house at Chenga and at about 6 AM they left for Chenga and reached Mukalmua at 10 AM. PW-2 also stated that while they were waiting near the police station the elder sister of the accused and his aunt reached there and they gave her the bus fare and asked her to return back to her home. But PW-2 refused to return. Thereafter police came and took her and the accused to the police station.

11. If we go through the evidence of PW-1 and PW-2 we find none of them has deposed anything against the accused. Though PW-1 stated that when he went to the police station he found both the accused and the victim there, in his cross-examination he stated that after the occurrence he came to know that his daughter had love affairs with the accused. PW-2 has admitted in her cross-examination that about her statement made before the police that the accused did not kidnap her and that she willfully went with the accused. PW-2 has clearly stated that she went with the accused so that she can get married to him. According to PW-2 the accused also wanted to marry her. But only because of the interference of the aunt and elder sister of the accused their marriage was not solemnized.

12. It is very clear from the cross examination of PW-2 that the accused did not kidnap her whereas she herself went with him with an intention to get married to him. PW-3, Mina Rajbongshi who is the mother of the victim also clearly stated that in her evidence that on the day of occurrence her daughter eloped with the accused to Guwahati and stayed there in the house of my niece. Prior to the occurrence there was a love affair between the accused and the victim.

13. Regarding the age of the victim we find that PW-1 stated the age of the victim as 17 years. Whereas in his cross-examination PW-1 stated that at the time of occurrence his daughter was 18 years old. PW-2 also stated that she was 19 years old at the time of occurrence. Hence it is clear that PW-2 was not a minor at the time of occurrence.

14. In view of the above discussion it appears that the allegations made against the accused in the ejahar are not true. Under such circumstances the accused cannot be held guilty of the offence u/s 366 (A) IPC.

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 (A) IPC against the accused.

Hence, accused Sanjay Das 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 29th day of February /2020.

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 : Sri Hariram Das (Informant)

PW 2 : Smti. Sangita Das (Victim)

PW 3 : Smti. Moromi Barman

PW 4 : Smti. Mina Rajbongshi

PW 5 : SI Jagadish Kalita

(B) Prosecution exhibited documents :

Ext. 1 : Statement of PW 2 recorded u/s 164 CrPC

Ext. 1(1) : Signature of PW 2

Ext. 2 : Ejahar

Ext. 2(1) : Signature of O.C. Kamal Ch. Bora

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