

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

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

**SESSIONS CASE NO.: 132/19**

U/S 366 IPC

STATE OF ASSAM

- VS -

**Omprakash Das**

..... Accused person.

Committed by Learned JMFC, Tihu, vide order dated 04/09/2019 in connection with PRC Case No. : 65/2019.

**APPEARANCE :**

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

Advocate for the defence : Sri Manash J Mishra.

Date of Evidence : 07/12/2019, 6/01/2020.

Date of Argument : 07/02/2020.

Date of Judgment : 07/02/2020.

## **J U D G M E N T**

1. The gist of the prosecution case in brief is that informant Kushal Kalita lodged an ejahar on 05/01/2019 stating interalia that on 4/01/2019 her 15 years old daughter Sri Gitawali Kalita went to Bank at Kaithalkuchi at about 12 noon. But accused Omprakash Das kidnapped her. Her daughter was in the custody of accused. Hence, this case.

2. On receipt of the ejahar police registered a case as Tihu PS Case No. 04/19 u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused Omprakash Das u/s 366 IPC. Since the offence u/s 366 IPC is exclusively triable by the Court of Sessions, the Ld. JMFC, Tihu 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 person u/s 366 IPC. The charge so framed was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined only 4 witnesses including the informant to prove the charge against the accused person. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence case was of compete denial and the defence side has not adduced any defence evidence.

5. **POINT FOR DETERMINATION**

Whether the accused on 4/01/2019 at about 12 noon induced and kidnapped Sri Gitawali Kalita to go along with him from the road or to do any act with an intent 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 both 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. In the very beginning of our discussion let us go through the evidence of PW 1, Kushal Kalita, who is the informant of this case. PW-1 stated that one year ago at about 2 PM his daughter went out of the house in order to withdraw money from United Bank, Kaithalkuchi. At that time she took her pass book and ATM card with her and while going out she told her mother that she will be also going to her friend's house. When she did not return home till 4 PM his wife called him over phone and told him about the matter. But asked her not to worry as she already told her that she will be going to her friend's house. According to PW 1 when his daughter did not return home that night

on the next morning he called the maternal uncle of his daughter, Abhay Thakuria and told him about the incident. PW 1 stated that he was told by him that he had seen his daughter in the house of the accused. Thereafter PW 1 lodged the ejahar. On that day itself at 12 AM he along with his wife and police went to the house of the accused at Sualkuchi. From there the victim and the accused were brought to the police station.

10. PW 2, Makani Kalita stated that the informant is her husband. The victim Gitawali Kalita is her daughter. About 1 year back between 2-2:30 PM her daughter came to Kaithalkuchi bank from their house. However from the way the accused took her away to his house at Sualkuchi. As she did not return they searched her everywhere. On the next day her husband came to know from her brother that her daughter was in the house of the accused Omprakash. Thereafter he lodged the ejahar. On that night they went to the house of the accused and found both of them there.

11. From the evidence of PW 1 and PW 2 it appears that when they could not search their daughter anywhere they called her maternal uncle on the next day. At that time they were told that he had seen their daughter in the house of the accused. Thereafter the informant lodged an ejahar. If the victim went missing the whole day, they could have lodged the ejahar immediately. But instead of that they preferred to wait till next day. Now if we go through the cross of PW 1 and PW 2 we find that there was a love affair between the accused and the victim and that this case was lodged on a misunderstanding. From the evidence of PW 1 & PW 2 it appears that as they already knew about the relation between the victim and the accused they did not lodge the case immediately.

12. The entire fact is revealed if we go through the evidence of PW 4, Gitawali Kalita who is the victim of this case. PW 4 stated that on the day of occurrence while she was in her house there was a quarrel between her and

her mother. Thereafter she called the accused over phone and asked him to take her with him. According to PW 4 at that time the accused was in his house at Sualkuchi. Later at 12 PM she came out of her house and she told her parents that she will be going to the bank. Between 12:30 to 1:00 PM she met the accused near United Bank, Kaithalkuchi. Thereafter she went away with the accused on his motor cycle to his house at Sualkuchi and stayed there for one day. On the next day police came to the house of the accused along with her parents and brought her to Tihu PS from there.

13. In her cross-examination PW 4 stated that she wilfully went with the accused on the day of occurrence. Apart from that it is revealed from the evidence of the PWs that the matter is compromised already.

14. Hence, in view of the above discussion it appears that none of the ingredients of the offence u/s 366 IPC are fulfilled against the accused. Accordingly the accused is not held guilty u/s 366 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 IPC against the accused.

Hence, accused 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 7<sup>th</sup> 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 Kushal Kalita,

PW 2 : Smti. Makani Kalita,

PW 3 : Sri Dhrubajyoti Kalita and

PW 4 : Smti. Gitawali Kalita.

(B) **Prosecution exhibited documents :**

Ext.1 : Ejahar,

Ext.1(1) – Signature of PW-1.

Ext 2 Statement of victim recorded u/s 164 CrPC.

Ext-2(1) and 2(2) Signatures of PW 2.

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

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

Asstt. Sessions Judge,  
Nalbari