

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

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

SESSIONS CASE NO.: 108/2019

U/S 366 IPC

STATE OF ASSAM

- VS -

Golap Roy

..... Accused person.

Committed by Learned JMFC, Nalbari, vide order dated 06.08.2019 in connection with PRC No. 14/2018

APPEARANCE :

Advocate for the prosecution : Mr. Mrigen Das, Learned Addl. PP.
Advocate for the defence : Mr. R. Choudhury & Mr. D. Nath.
Date of Evidence : 27/09/2020, 19/10/2020, 06/11/2020
Date of Argument : 29/05/2020
Date of Judgment : 08/06/2020

J U D G M E N T

1. The gist of the prosecution case in brief is that on 05/12/2017, the informant, Phulen Barman lodged an ejahar alleging inter alia that on 04/12/2017 at about 10 AM his daughter, Monalisa Barman , aged

about 14 years went missing from his house. Though he searched her everywhere, he could not find her. Later on, on the same day at about 1 pm, the accused, Golap Roy called him on his mobile phone and informed him that the accused, Golap Roy had love affair with his daughter and made her elope with him. Hence, this case.

2. On receipt of the ejahar police registered a case as Tihu PS Case No. 204/17 u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused, Golap Roy 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 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 4 (four) 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 compete denial and the defence side has not adduced any defence evidence.

POINT FOR DETERMINATION

5. Whether the accused on 04/12/2017 at about 10 AM in

Dahukaunia village under Tihu PS, Nalbari induced Miss Monalisa Barman to go from her house 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 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, Phulen Barman who is the informant of this case. PW-1 stated that about 1 ½ years back, his daughter Monalisa Barman eloped with the accused, Golap Roy to Sialmari village. When they could not find their daughter anywhere he lodged an ejarah. Later, his daughter was recovered by Tihu PS and her custody was handed over to them. According to PW-1 his daughter stayed in his house for 4 months and after her recovery, she again eloped with the accused. It appears that at present the victim is residing in

PW1's house.

10. PW2, Hemen Das stated in his evidence that on the day of occurrence about 1 year back, he heard that the accused, Golap Roy made the victim eloped with him.

11. PW-4, Biplab Das stated in his evidence that about 2 years back when the victim was 14 years old the accused, Golap Roy made her elope with him. PW-4 further stated that on the day of occurrence the father of the victim came to him and asked him to accompany him to the police station as his daughter was missing. According to PW-4 thereafter he went to the police station with him. Later PW-4 came to know that the victim returned home but he could not state how she returned back.

12. Now coming to the evidence of PW-3, Monalisa Barman, who is the victim of this case, surprisingly we find her stating that the accused is her husband. According to PW-3, one day about 2 years back at 10 AM, the accused made her elope with him from Barama Bazar to Guwahati in a bus. There PW-3 got married to the accused in Ganesh temple at Ganeshguri and stayed in a rented house at Guwahati for 1 month. PW-3 stated after 1 month they came to the house of the accused and stayed there for 5 months. Thereafter police went there and brought her to the police station.

13. Now if we go through the evidence of PW-1, PW-2, PW-3 and PW-4 we find that none of them has alleged anything against the accused. PW-1 himself stated that his daughter Monalisa Barman willfully eloped with the accused. In his cross he clearly stated that after his daughter's recovery she again willfully went to the house of the accused. Apart from that PW-1 stated in his cross that he has no objection if the accused is acquitted from his case.

14. It is further revealed from the evidence of PW-3 that she got married to the accused in Ganesh Temple at Ganeshguri. In her cross also PW-1 clearly stated that she had love affair with the accused and he did not kidnap her. PW-3 also stated that she willfully went with the accused and she led conjugal life with the accused for 8 months.

15. Regarding the age of the victim, though we find PW-1 and PW-4 stating that at the time of occurrence the victim was 14 years old we do not find any age certificate or any medical documents in proof of that.

16. To sum up the entire discussion we find after a careful perusal of the evidence on record that the victim willfully went with the accused. Under such circumstances we cannot hold the accused guilty of the offence committed u/s-366 IPC.

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, the accused Golap Roy 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 8th day of June/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 Phulen Barman (Informant)

PW 2 : Sri Hemen Das

PW 3 : Smti. Monalisa Barman (Victim)

PW 4 : Sri Biplab Das

(B) Prosecution exhibited documents :

Ext. 1 : Ejahar

Ext. 1(1) : Signature of the informant

Ext. 2 : Victim's statement recorded U/S 164 Cr.P.C.

Ext. 2(1) : Signature of the victim.

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

Asstt. Sessions Judge,
Nalbari