

P.R.C no. 10/2020

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI

P.R.C no. 10/2020

u/s 363 I.P.C

State of Assam

-Vs-

Moinul Islam.....Accused

PRESENT: K.C. Boro, A.J.S.

ADVOCATES APPEARED:

For the State : Mr. D. Talukdar, Ld. A.P.P,

For the accused : Mr. Azaharuddin Ahmed, Ld. Advocate,

Dates of evidence : 12/03/20.

Date of argument : 27/10/20.

Date of judgment : 31/10/20.

J U D G M E N T

PROSECUTION CASE:

1. The prosecution case in brief as unfolded from the 'ejahar' dated 17/11/2019 filed by the informant, Lalita Ray is that on 17/11/19 at about 1 am, while her daughter Miss Babita Ray (aged about 16 years) was near a cattle market, the FIR named accused person namely Md. Moinul Ali manipulated her daughter and eloped with her to somewhere and remained hidden. The accused person himself informed them about the said incident through phone number 967 850 9011. They have not received any information about their daughter even after enquiry. Hence the case.

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2. The said 'ejahar' was received and registered as Nalbari P.S case no. 836/19 u/s 363 I.P.C. After completion of investigation charge-sheet no. 488/19 dated 30/11/19 was submitted against accused, Moinul Islam u/s 363 I.P.C R/w Section 8 of POCSO Act. Copy was furnished to the accused person. Vide order dated 17/01/20 passed by the Hon'ble Special Judge, Nalbari in Special (P) case no. 56/19, accused Moinul Islam was discharged from the charge of section 8 of POCSO Act and accordingly, formal charge u/s 363 I.P.C was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

3. **POINT FOR DETERMINATION:**

Whether the accused Moinul Islam on 17/11/2019 at about 1 pm, near from cattle market under Nalbari P.S, kidnapped Miss Babita Ray, who is under the age of 18 years, by taking or enticing her out of keeping of the lawful guardianship without consent of the lawful guardian and thereby committed an offence punishable u/s 363 I.P.C?

4. **DECISION AND REASONS THEREOF:**

The prosecution examined two (2) witnesses while the defence declined to adduce any evidence. Finding no incriminating materials the recording of statement in defence of the accused person u/s 313 Cr.P.C was dispensed with. I have heard the argument advanced by learned counsel of both the sides and also perused the evidence available on record, my findings with reasons are as follows :

5. PW 1 Lalita Ray who is the informant deposed that she filed this case against the accused person. On 17/11/19, her daughter went to roam outside along with the accused person. Both her daughter and the accused person worked together. As her daughter did not return, she filed the case. Her daughter later returned home. Her daughter went to a house of accused person's friend situated in Dhubri.

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The accused did not elope with her daughter. Exhibit 1 is the ejahar and Exhibit 1(1) is her signature.

6. PW 2 Babita Ray deposed that the informant is her mother. She knows the accused person. The accused person took her to Dhubri. She and the accused person work in the same company and as such she went to Dhubri with the accused person. They stayed in a house of their friend in Dhubri. Her statement was recorded in court. Exhibit 2 is her statement and Exhibit 2(1) & 2(2) are her signature.

7. On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence. The accused person namely Md. Moinul Islam is found not guilty u/s 363 I.P.C and hence, acquitted and set at liberty forthwith. Bail bond shall remain in force for a further period of six months.

Given under my hand and seal of this court on this 31st day of October, 2020.

Chief Judicial Magistrate
Nalbari

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APPENDIX

Prosecution witness:

PW 1- Lalita Ray (Informant),

PW 2- Babita Ray,

Prosecution Exhibits:

Exhibit 1- Ejahar,

Exhibit 1(1)- Signature of informant Lalita Ray,

Exhibit 2 - Statement of victim u/s 164 CrPC,

Exhibit 2(1) - Signature of victim,

Exhibit 2(2) - Signature of victim,

Defence witnesses :

Nil

Defence Exhibits :

Nil

Chief Judicial Magistrate,
Nalbari

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ORDER

Accused Moinul Islam is represented by his Ld. Engaged counsel.

Judgment is pronounced and delivered in open court.

On appreciation of the testimony of witnesses and the materials available on record, I find that the prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond reasonable doubt by leading clear, cogent & convincing evidence.

The accused person namely Moinul Islam is found not guilty u/s 363 I.P.C and hence, acquitted and set at liberty forthwith. Bail bond shall remain in force for a further period of six months.

Hence, this case stands disposed of.

Chief Judicial Magistrate,
Nalbari