

**:IN THE COURT OF THE SESSIONS JUDGE, NALBARI:**

Present: Smti S. Bhuyan.  
Session Judge,  
Nalbari.

**(Criminal Appeal Case No. 20/19)**

**Appeal against the Judgment & order dated  
30/08/2019 passed by learned Principal Magistrate,  
Juvenile Justice Board, Nalbari in connection with  
JJB Case No. 1/2019.**

**1. Mr. X (CCL) (Name withheld)**

S/O- Mr X (Name withheld)

Address: Withheld .....Appellant

**-Versus-**

**State of Assam**

**Advocates appeared:-**

For the Appellant :- Mr. Abdul Majid, Advocate.

For the Respondent :- Mr. Dharendra Nath Barman, PP

Date of argument :- 23/07/2021

Date of judgment :- 06/08/2021

**JUDGMENT**

1. This is an appeal preferred by the CCL Mr. X (therefore, his name and address withheld) as appellant u/s-101(2) of the Juvenile Justice (Care & Protection of

Children) Act hereinafter referred to as "ACT" being highly aggrieved and dissatisfied with the impugned judgment and order passed by the then learned Principal Magistrate, JJB, Nalbari dated 30/08/2019 in JJB Case No. 1/2019 wherein the learned Principal Magistrate, hold that offence u/s-366 IPC is a heinous offence and CCL was well acquainted with the aftermath of the offence committed the offence and therefore, his trial will be held before the Children Court as an adult and directed the CCL and his bailor to appear before the Children Court, Nalbari to face trial.

2. The prosecution case in a nutshell is that on 16/11/2017 informant lodged an ejahar against Mr. X and one Dip Rai inter-alia citing that on on 15/11/2017 at about 1.30 pm, he along with his wife and child came to Nalbari to see Raas festival from his house, then the ejahar named CCL and other kidnapped his wife and child and his wife had a mobile with SIM Card No. 8638773263.

3. On receipt of the ejahar, O/C Nalbari PS registered Nalbari PS case No. 866/17 u/s-366 IPC and started investigation and after completion of investigation I/O submitted charge-sheet against the CCL Mr. X u/s- 366 IPC.

4. The then learned CJM, Nalbari on receipt of the charge sheet send the case to learned Principal Magistrate, JJB, Nalbari for disposal.

5. I have gone through the record of the trial court. It is appeared from the record that on the alleged date of incident Mr 'X' was below 18 years and he was a child in conflict with law (CCL). The school documents of the CCL available with record shows date of birth of CCL is 02/01/2000 and the date of incident is 15/11/2017 and as such his age was 17 years 10 months 13 days on the date of incident and therefore, he is a Child in Conflict in Law (CCL).

6. As per Rule 2(10) of the "ACT": "10. (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended: Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail."

7. Section 2(12) of the ACT says: "12. (1) When any person, who is apparently a child and is alleged to have

committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person: Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order. Apprehension of child alleged to be in conflict with law. Role of person in whose charge child in conflict

with law is placed. Bail to a person who is apparently a child alleged to be in conflict with law.

8. Section 2(15) of the ACT says: "15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18: Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

9. The Assessment report of the CLL is quoted below:" On questioning it was found that the boy has taken money from Bandhan Bank in order to do business with the person who has given the case. In order to scip the money the person told him to accompany his wife to Sibsagar. The boy went to Sibsagar with his wife. He was not aware that he is doing a bad thing. Physically and mentally he is not prepared to do the crime."

10. Section 2(33) of the ACT defines heinous offence as: (33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any

other law for the time being in force is imprisonment for seven years or more;

11. Section 366 IPC Says: "Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

12. But here in this case the offence committed by the CCL is not heinous offence as per section 2(33) of the ACT. Because under section 366 IPC there is no minimum punishment prescribed. For example under section 376 IPC the minimum punishment prescribed which shall not be less than 7 years.

13. From the aforesaid discussions, I came to definite finding that learned trial court has erred in law in passing the order dated 30/08/2019 holding that offence u/s-366 IPC falls within the meaning of 'heinous offence' as defined u/s-2(33) of the ACT.

14. Accordingly, the impugned order dated 30/08/2019 passed by the Principal Magistrate, JJB, Nalbari in JJB Case

No. 1/19 is hereby set aside. The case is remand back to the Principal Magistrate, JJB, Nalbari for trial disposal.

15. In the light of the above the appeal is allowed.

16. CCL will appear before the Juvenile Justice Board, Nalbari on or before 04/09/2021 to receive further instruction and learned Principal Magistrate on receipt of the record disposed off the record within a short period a short period in accordance with law.

17. Send a copy of judgment along with record of JJB Case No. 1/19.

Judgment delivered under hand and seal of this court on this 6<sup>th</sup> day of August, 2021 at Nalbari, District- Nalbari

(Smti S. Bhuyan)  
Session Judge, Nalbari

Dictated and corrected by me.

(Smti. S. Bhuyan)  
Session Judge, Nalbari

Typed by:  
Biswajit Bhattacharjya,  
U.D.Asstt.