

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

Present : *Sri Rahul Medhi*
Asstt. Sessions Judge,
Nalbari

(Date of Judgment: 27-09-2022)

(Sessions Case No. 119/2019)

(Details of FIR/Crime: 116/2017 and Police Station:
Ghograpar)

COMPLAINANT	STATE OF ASSAM
REPRESENTED BY	Mr. Mrigen Das, Addl.P.P.
ACCUSED	A1- Md. Mahuruddin Ali A2- Md. Eyasin Ali
REPRESENTED BY	Mr. T. Ahmed

Date of Offence	13/06/2017
Date of FIR	01/07/2017
Date of Charge-sheet	30-09-2017
Date of Framing Charge	13/09/2019
Date of commencement of evidence	05/11/2019, 05/12/2019, 05/03/2020, 18/03/2021, 21/10/2021 & 16/08/2022
Date on which judgment is reserved	Nil
Date of Judgment	27-09-2022
Date of sentencing order, if	

any

Accused details

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charge with	Whether acquitted or convicted	Sentence imposed	Period of detention under gone during trial for the purpose of section 428 of IPC
A-1 A-2	Mahuruddin Ali Eyasin Ali	19/07/2017	10-08-2017	366 of IPC	Acquitted	Nil	21 days

J U D G M E N T

1. The prosecution case which is reflected in the ejahar lodged by one, Musstt. Khadeja Begum on 01/07/2017 before Ghograpar PS alleging inter alia that her minor daughter, Miss Samina Begum (herein after referred as Miss 'X'), aged 14 years was induced and kidnapped by Ashraf Ali and Yasin Ali and on 28/06/2017, her daughter, Miss 'X' informed a woman for her neighbourhood that the accused persons had sold her in Delhi. She further alleged that the accused persons snatched away her mobile phone and other articles and forcefully had physical relation with her. Hence, this case.

2. The FIR was registered as Ghograpar PS Case No.116/2017 u/s-366 of IPC. During investigation stage accused persons, namely, Mahuruddin Ali and Eyasin Ali were arrested and they were later on released on bail. After completing the investigation, the I/O submitted charge-sheet against the accused persons u/s-366 of IPC. The case was committed to the court of Sessions by learned Judicial Magistrate 1st Class, Nalbari. Later on the case was transferred to this court. The accused persons appeared and formal charge was framed against them u/s-366/370 of IPC.

3. During trial prosecution examined nine witnesses including victim. Prosecution evidence was closed. Defence did not lead any evidence. The statement of the accused u/s-313 CrPC is recorded. I have heard arguments from both sides and framed the following point for determination.

4. The following point for determination is framed in this case :-

POINTS FOR DETERMINATION:-

(I) Whether the accused persons in the month of June,2011 at Gorgori village under Ghograpar PS in the district of Nalbari induced Miss ('X') from her house 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 and thereby committed an offence punishable u/s-366 of IPC

?

- (ii) Whether the accused persons on the above mentioned date, time and place committed the offence of trafficking for the purpose of exploitation, transported Miss ('X') by inducement and thereby committed an offence of trafficking punishable under section 370 of IPC ?

PROSECUTION'S EVIDENCE

5. I have scrutinized the evidence on record. Now to arrive at a judicious decision let me discuss and appreciate the testimonies of the witnesses. First of all let me discuss the evidence of PW-1 **Musstt Khadeja Begum** who is the mother of the victim of this case narrated during her evidence that the incident took place 3 years back and at the time of occurrence she was in Guwahati. Her daughter Miss 'X' went to her school on the day of occurrence. But Ashraf kidnapped her daughter from her school and sold her at 3 places in Delhi. After 3 days from the occurrence she returned home and came to know that her daughter was missing. She told the villagers about the missing of her daughter. A village mel was called for. But she did not get back her daughter. After 10 days from the occurrence she lodged a FIR. Later the girl was produced in the police station by the accused persons. She went to the police station and found her daughter there. Her

daughter, Miss ('X') was produced before the court and later her custody was given to her. At the time of occurrence her daughter was 16 years old. At present her daughter is married and she is residing in Delhi.

During cross-examination she testified that the occurrence took place in the month of Ramadan and at that time she was in Guwahati for collecting taxes for Ramadan. She does not know the date of birth of her daughter. Her daughter was married to Azizur Ali after two months from the occurrence. Her daughter was taken away by Ashraf. She did not go to Delhi in search of her daughter and she has not seen her daughter eloping with Ashraf. At the time of occurrence, her daughter was alone in her house. Police handed over her daughter to her. She has not mentioned the name of Maharuddin in the ejahar and she has lodged the ejahar against Ashraf and Yasin.

6. **PW-2 Musstt. Amir Banu** is elder sister of the victim testified that informant is her mother and the occurrence took place about 2 years back. At the time of occurrence the victim was studying in class -VI and most of the time her mother stays in Guwahati. In the absence of her mother her sister, the victim used to stay in the house of her maternal uncle. Yasin and Ashraf pretended that they loved the victim. They took the victim to Delhi and solemnized her marriage with a Bihari person after selling her. One day after 15 days from the occurrence she called her over phone and told her that she is

in Gaziabad, Delhi. When she asked her how she reached there she told her that Yasin and Ashraf gave her in marriage to a person at Gaziabad. She asked her to take her back. She informed the villagers. After 10 days Ashraf, Yasin and Maharuddin brought back the victim from Gaziabad and produced her in the police station.

During cross-examination she admitted that her sister was given in marriage at Dhubri after 1 year from the occurrence. She does not know the date of birth of the victim. She has not seen the incident as she was in her husband's house at Guwahati and she was ailing. The victim did not call her from Gaziabad she called someone else. The victim had love affairs with Ashraf and she was taken away by Ashraf. She went away with Ashraf with a view to get married with him. One day Ashraf came to their house with a proposal to marry the victim but they had difference of opinion. Thereafter, victim and Ashraf eloped. The victim attained puberty 12 years prior to the occurrence.

7. **PW-3 Md. Kutubuddin Ali** deposed that at that time a poor girl from their village eloped with Ashraf Ali. He does not know the name of the girl. In connection with that there was a village 'mel, and both the accused persons were present in the 'mel'.

During cross-examination he admitted that he has not seen the accused Ashraf taking away the victim. Accused Maharuddin is the brother of Ashraf. Both the accused

persons are not involved in the incident. The victim was given marriage after two months of the occurrence.

8. **PW-4 Md. Mainul Islam** deposed that accused Ashraf was in love with the daughter of the informant. Her name is Moina. He heard that on the day of occurrence she eloped with the accused Ashraf.

During cross examination PW-4 deposed the same thing as to that of PW-3.

9. **PW-5 the victim, Miss ('X')** in her evidence in-chief deposed that on the day of occurrence at about 4 pm while she was going to the house of her friend at Darkuchi, the accused persons, namely, Eyasin, Maharuddin and one Ashraf forcefully took her to Guwahati in a Maruti. They kept her in a house at Guwahati. She does not know who the owner of the house in which the accused kept her. There all the three of them committed rape upon her. On the next day they took her to Delhi by train. They reached Delhi after three days. On reaching Delhi all of them sold her to a man and a woman at Gaziabad. She stayed in Gaziabad for one month. There she was assaulted by them and was forced to indulge in prostitution. They used to keep her locked in a room. One day she managed to take their mobile and ran inside the bathroom and made a call to one of her aunts in their village. She cannot recall her name. After 2 months from the occurrence Eyasin, Maharuddin and Ashraf went to Delhi and took her to the house of the aunt of Ashraf at Arara. They did

not take to the village but handed her over to Ghograpar PS on the next day. Thereafter, she was sent for medical examination and was produced before the court for recording of her statement. Her custody was given to her mother. Ashraf had assured to marry her but he did not come to her house for one year. Till one year she was waiting for him but as he did not come she got married to another person at Dhubri. She exhibited her statement as Ext. 1.

During cross-examination she admitted that there was no love affair between herself and Ashraf. She had never seen the accused persons prior to the occurrence. The house of Eyasin is at a little distance away from her house and the house of Ashraf is far from her house. Her father expired about 20 years back. We are five brothers and sisters. Eyasin had introduced her to Ashraf. She stated before the Magistrate that "Ashraf stays near her house and she is in love with him since last one year. Few days back her family members came to know about her affair with Ashraf and they refused to give her in marriage with him. On the 10th day of Ramadan month she met Ashraf and eloped to Delhi with him. At Delhi Ashraf kept her in the house of a lady at Gaziabad and he came back to Guwahati for money. When he came to know about the case lodged by her family, Ashraf brought her back from Delhi. She stated before the police that she was in love with Ashraf and during the month of Ramadan Ashraf assured her that he will marry her and took

her to Delhi along with Eyasin. Some of her villagers brought her back from Delhi. Ashraf, Eyasin and Mohuruddin did not go to Delhi to bring her back. She stated before the police that there was no physical relation between her and Ashraf. She neither stated before the Magistrate nor before the police that Ashraf, Eyasin and Mohuruddin committed rape upon her. They kept her in a house at Guwahati. She does not know who was the owner of the house in which the accused kept her. There all the three of them committed rape upon her. On the next day, they took her to Delhi by train. They reached Delhi after three days. On reaching Delhi all of them sold her to a man and a woman at Gaziabad. She stayed in Gaziabad for one month. There she was assaulted by them and was forced to indulge in prostitution. They used to keep her locked in a room. One day she managed to take their mobile and ran inside the bathroom and called to one of her aunt in their village. Ashraf and Mohuruddin are brothers. She did not give her clothes to the police after returning from Delhi. She told the police about the man and woman in whose house she stayed. Her mother lodged the ejahar before her recovery.

10. **PW-6 Md. Hakim Ali** deposed that the occurrence took place about 2 years back. Police came to informant's house as her daughter was kidnapped. He heard that the accused persons had kidnapped the victim from her house. He doesn't know the victim's name. He also heard that the

victim was taken to Delhi. Later on the kidnappers brought the victim back and handed her over to police.

During cross examination he stated that he did not see the incident himself. He doesn't remember the date of incident. The victim is now married. She was married off after the incident. He doesn't know if she was in love with Ashraf. Informant has three daughters. Victim is younger than Amir Bhanu. Amir Bhanu is informant's elder daughter. Ashraf and Eyasin were present in the village Bichar. Bichar was held while the victim was in Delhi. He didn't talk to the victim after she returned from Delhi. Accused Mohuruddin is the elder brother of Ashraf (Juvenile).

11. **PW-7 Md. Nur Islam** deposed in his evidence that Informant is his sister. He knows the accused as well. The incident took place about three years ago. Informant's daughter had gone to school on that day. She did not return from the school. After one month, his sister got a call from the missing girl. The victim informed her mother that she was in Delhi and Mohoruddin, Ashraf and Eyasin had kidnapped her. The victim was brought back from Delhi by the accused. The victim has been married off. Presently she is staying with them.

During cross-examination he stated that he doesn't know the date of birth of the victim. She used to read in Narayan Gaon School. At that time he didn't know who kidnapped her. Victim was married off after the 2 years of the

incident. Victim has two sisters. Victim's elder sister Amir Bhanu is also married. Victim did not tell him anything after coming back from Delhi. He did not see how she came to Thana from Delhi. Victim was not in love with Ashraf. The victim did not call up her mother from Delhi. He doesn't know the name of the person to whom the phone call was made by the victim. He did not tell the police who kidnapped the victim.

12. **PW-8 Dr. Dipti Choudhury** deposed that on 13/07/2017 she examined Miss 'X', aged 14 years, daughter of Lt. Babul Ali. The victim was accompanied by WPC 72 Mayarani Dihingia vide ref. Case No. Ghograpar PS 116/17 u/s-366 of IPC. Victim refused medical examination. But X-Ray was done. As per X-Ray report estimated age was 18 years and below 19 years. She exhibited the X-Ray report as Ext-2.

13. **PW-9 Nabajit Talukdar** I/O of this case deposed in his evidence that On 01/07/2017, he was posted as 2nd Officer at Ghograpar PS. On that day, receiving an FIR, he registered the same as the i/c OC. The case was registered as Ghograpar PS Case No. 116/2017 u/s 366 of IPC. The FIR was lodged by one, Musstt Khadeja Begum against the accused, Ashraf Ali and Eyasin Ali. The investigation was taken over by him. He immediately rushed to the place of occurrence where in recorded statement of witnesses and prepared the sketch map. But the accused persons could not be traced out on being searched on that day. The victim was

also untraceable. On 13/07/2017, receiving information that the victim, Miss 'X' was loitering around Nalbari Town. After receiving the information, the O/C Ghograpar PS, Sri Babul Kr. Medhi rushed to Nalbari and found the victim on the road leading towards SMKCH, Nalbari and brought her to the PS. Later on, the victim was sent for medical examination and recorded her statement u/s 161 of CrPC and till then the accused could not be trace out. On 14/07/2017, the accused, Ashraf Ali surrendered in the PS and produced a birth certificate claiming to be a minor, when he was immediately produced before the JJB, Nalbari. On 19/07/2017, one, Mohoruddin who is the elder brother of Ashraf surrendered before the PS. The said Mohoruddin was behind the juvenile, Ashraf to commit the crime. Then, the said Mohoruddin was arrested and produced before the court who was sent to the judicial custody. Then on 24/09/2017, the accused, Eyasin Ali appeared before the PS with a pre-arrest anticipatory bail, after which his statement was recorded and released after being arrested. The victim was produced before the court and her statement u/s 164 CrPC recorded. Her medical report was collected along with the 164 CrPC statement.

After completion of the investigation, he submitted the charge-sheet against the accused, Eyasin Ali and Mohoruddin vide CS No. 99/2017 dated 30/09/2017 u/s 366 IPC. The FIR was lodged by Khadeja Begum with a thumb impression. He Exhibited the sketch map as P-3/PW-9. He also Exhibited the

charge-sheet as-P-4/PW-9.

During cross-examination he stated that the FIR is a typed one and there is no mentioned of the scribe of the FIR. The FIR was lodged in 01/07/2017 wherein it is mentioned that the incident took place 18 days prior to the date mentioned in the FIR. He has not visited the house of the elder sister of the victim, Amir Bhanu at Guwahati. He has not visited the hotel at Guwahati where the victim had alleged to have been kept. He has not taken out the call details of the phone number which was mentioned in the FIR. During investigation, the place at Gajjabad was not visited where the victim had alleged to have been kept along with another woman. The statement of the said woman was not recorded by him. The mobile phone and Rs. 1,400/- belonging to the victim which was alleged to have been snatched away, could not be recovered. He also admitted that the victim in her statement before him had stated that she was in love with Ashraf and during the month of Ramdan, Ashraf assured her that he will marry her and took her to Delhi along with Eyasin and also stated before him that Ashraf, Eyasin and Mohuriddin had not committed rape upon her. It is also admitted by him that the victim had neither stated before the court and not before him that on the day of occurrence at about 4:00 PM, while she was going to house of her friend at Darkuchi, the accused persons, namely, Eyasin, Mohoruddin and Ashraf

forcefully took her to Guwahati in a Maruti. It is also admitted by him that the victim had stated before him that she had a affair with Ashraf since 1 year. As per medical report, the age of the victim was mentioned as above 18 years and below 19 years at the time of the incident. No garments were seized from the victim.

DISCUSSION DECISION AND REASONS THEREOF

14. From the evidence as discussed above, it is evident from the evidence of PW-5 the victim that it is admitted that Ashraf was a neighbour of her and she was in love with him since last 1 year and when her family members came to know about the affair, they refused to give her in marriage with Ashraf for which on the 10th day of the Ramdan she met Ashraf and eloped with him to Delhi and thereafter Ashraf keeping her in a house of a lady at Gaziabad returned to Guwahati for money and on return when he came to know that a case has been lodged by her family, Ashraf brought her back from Delhi. It is also admitted by the PW-5 that she has stated before the police about her affairs with Ashraf and on assurance by Ashraf to marry her she went with Ashraf and Eyasin to Delhi. It is also admitted by PW-5 that she did not have any physical relation with Ashraf and had admitted not stating before the Magistrate or the police about rape committed on her by Ashraf, Eyasin and Mohuruddin. It is further admitted by PW-5 that she did not give her cloth to the police after returning from Delhi.

15. It is further clear from the evidence of PW-8, the M/O that the victim, PW-5 was brought for medical examination on 13/07/2017 which was refused. However, the X-Ray report is clear that the estimated age of the victim was 18 years and below 19 years which was exhibited by Ext-2.

16. The evidence of PW-9, the I/O is clear that he had not visited the place at Guwahati where the victim had alleged to have been kept and had also not taken out the call records of the phone number which was mentioned in the FIR and the PW-9 did not visit the place at Gaziabad and he further admits that the PW-5 in her statement before him had admitted having love affairs with Ashraf and during Ramdan she eloped with Ashraf to Delhi to get married to him.

17. Further from the evidence of PW-1 & PW-2, it is clear that at the time of the occurrence PW-1 & PW-2 the mother and elder sister of the victim were at Guwahati and PW-1 returned home when she was told about the incident by the villagers. It is also admitted by PW-1 & PW-2 that after the occurrence the victim, PW-5 was married away to one Azizul Ali after 2 months from the incident. From the evidence of PW-6 & PW-7 it is clear that they know nothing about the incident and came to know later on about the incident.

18. From the evidence as discussed above, it appears that at the time of the incident, the PW-5 the victim was a major and was having love affairs with one Ashraf and there is no any evidence to implicate accused Mohuruddin Ali and Eyasin

Ali with the incident as it is admitted by PW-5 in her cross that she on her own had gone to Delhi with Ashraf and Eyasin and there is no any evidence to come to the conclusion that the victim was kidnapped. Further it is clear that there was no any physical relation between the victim and the accused persons and apart from Ashraf there is no any evidence against the other accused persons. Further it is clear from the record that the said Ashraf was declared a child in conflict with law and the case is proceeding against him separately and from the evidence as discussed above, there is no any implicating evidence against the accused, namely, Mohuruddin Ali and Eyasin Ali.

19. The prosecution has miserably failed to prove the offence of kidnapping against the accused persons. Point for determination is decided in negative.

20. The accused person is facing trial under section 366 of IPC and from the evidences on record, there is no hint of allegation found against the accused person. In result, it is held that the prosecution has failed to prove the case beyond reasonable doubt. Accordingly, Accused Md. Mahuruddin Ali and Md. Eyasin Ali are held not guilty u/s-366 of IPC and they are acquitted. Accused persons are set at liberty forthwith. Surety stands extended for next six months.

10. Judgment is delivered in the open court. Case is disposed of on contest.

Given under the hand and seal of the court on this the
27th day of September, 2022.

Asstt. Sessions Judge,
Nalbari.

Dictated and corrected by

Asstt. Sessions Judge,
Nalbari.

D. Roy (Stenographer Grade-II)

APPENDIX-14

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution Witness:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS,

		PANCH WITNESS, OTHER WITNESS)
PW1	Musstt. Rukiya Begum	OTHER WITNESS
PW2	Musstt. Shehnaz Parbin	VICTIM

B. Defence Witness, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MIDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1		
DW2		

C. Court Witness, if any: NOT APPLICABLE

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MIDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1		
CW2		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sl No	Exhibit Number	Description
1	Exhibit P-1/PW-2	164 CrPC statement of the victim
2		

B. Defence : NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1.		
2		

C. Court Exhibits :NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1		
2		

D. Material Objects : NOT APPLICABLE

Sr. No.	Exhibit Number	Description
1		

Asstt. Sessions Judge,
Nalabri.