

**IN THE COURT OF THE SESSION JUDGE, NALBARI**

Present: **Dr. M. Baruah, AJS**  
**Sessions Judge**  
**Nalbari**

**Sessions Case No. 39/22**

**u/s- 366 IPC r/w section 10 of the Prohibition of**  
**Child Marriage Act, 2006.**

(Committed by learned JMFC, Nalbari in PRC Case No. 352/2019 u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006.)

**State of Assam**

-Vs-

**A-1. Rafiqul Islam**

S/o- Md. Hamid Ali

R/o- Village- Kurabori,

PS- Mukalmua,

Dist- Nalbari, (Assam) .....Accused person

**Appearance:**

For prosecution : Mr. Dhirendra Nath Barman, PP

For defence : Smti. Kakali Devi, Advocate

Date of offence : 24/11/2016

Date of FIR : 28/11/2016

Date of committal : 12/05/2022

Date of framing charge : 18/05/2022

Date of evidence : 09/06/2022,

Statement of accused

recorded on : 17/08/2022  
Date of argument : 30/08/2022  
Date of Judgment reserved : 30/08/2022  
Judgment delivered on : 12/09/2022

### Accused details

Rank of accused	Name of accused	Date of arrest	Date of released on bail	Offence charged with	Acquitted or convicted	Sentence imposed	Period of detention undergone during trial
A-1	Rafiqul Islam	09/05/2022	18/05/2022	u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006	Acquitted	NA	9 days

## **JUDGMENT**

### **Prosecution Case**

1. Prosecution case in nutshell is that on 28/11/2016 Abeda Begum lodged an ejahar inter alia citing that on 24/11/2016 at about 9.50 pm the accused Rafiqul Islam kidnapped her daughter Rabina Sultana by gagging her mouth. The family members made search but they did not get any information about her daughter. Later on one co-villager informed the complainant that accused Rafiqul Islam kept her daughter at his relatives house.

### **Investigation**

2. On receipt of the ejahar, O/C Mukalmua PS registered Mukalmua PS Case No. 411/2016 u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006 and endorsed SI Munnaf Ali Ahmed to investigate the case. On completion of the investigation I/O of the case submitted charge-sheet against the accused Rafiqul Islam u/s 366 IPC.

### **Committal**

3. On receipt of the charge-sheet learned trial court took cognizance of the case, recorded evidence and issued process to the accused person. The offence u/s 366 IPC is exclusively triable at Hon'ble Sessions Court, hence the case is committed in the court of Sessions Judge, Nalbari.

### **Charge**

4. The accused person appeared before the court to face trial. After hearing Ld. PP and Ld. Defense counsel

and on perusal of the prosecution documents, this court found prima facie materials of offence u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006 against the accused. Accordingly charge u/s- 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006 are framed against the accused and its particulars are read over and explained to the accused person to which accused pleaded not guilty and claimed to be tried.

### **Trial**

5. In order to prove the prosecution charges against the accused person, prosecution adduced evidence of 4 numbers of witnesses. PW-1 prosecutrix, PW-2 Abeda Begum, PW-3 Khasnur Ali and PW-4 Majibur Rahman. Ext-P-1/PW-1 is the statement recorded u/s 164 CrPC, Ext-P-2/PW-2 is the ejahar. After closure of the prosecution evidence, statement of the accused person recorded u/s- 313 Cr.P.C. Accused person's plea is of total denial and he declined to adduced evidence in support of their plea of denial.

6. **POINTS FOR DETERMINATION:**

(i) Whether the accused Rafiqul Islam on 24/11/2016 at 9.50 pm at vill- Adadbari under Mukalmua PS kidnapped prosecutrix who is under 15 years with intend that she may be compelled to marry against her will or in order that she may be forced to seduced to illicit intercourse and thereby committed an offense punishable u/s 366 IPC?

(ii) Whether the accused Rafiqul Islam on or after 4/5 days from 24/11/2016 married prosecutrix who is under the age of 18 years and thereby committed an offence punishable u/s 10 of the Prohibition of Child Marriage Act, 2006?

**DISCUSSION, DECISION & REASON THERE OF:**

7. Learned defence counsel made submission that victim did not implicate accused person and her evidence does not bring any incriminating material against the accused persons.

8. The charge against the accused person is that on 24/11/2016 accused person kidnapped prosecutrix with intend that she may be compelled to marry against her will or in order that she may be forced to seduced to illicit intercourse and married prosecutrix. As this is a case of kidnapping of a girl, therefore, victim of the case is main witness.

9. I have taken up evidence of victims for discussions. PW-1 is the prosecutrix of the case. She deposed that informant is her mother and the accused is her husband. About 7 years ago she eloped with the accused and got married without the consent of her parents. Therefore her mother lodged an ejahar before Mukalmua PS. After marriage she stayed in the house of accused/ husband which is about 2/3 kms away from her paternal house.

After about two years police called her to the Mukalmua Police Station so she went to the police station and thereafter police escorted her to Nalbari Court for recording her statement before the Magistrate. Ext-P1/PW-1 is her statement before the Magistrate and Ext-P1(1)/PW-1 is her signature. She also deposed that accused did not force her or induced her to elope with him. She voluntarily went with the accused as she had love affairs with him. Now she have two daughters aged about 5 years and 6 months. At present she is staying with her husband.

In cross examination the prosecutrix deposed that she do not have any objection if the accused is acquitted.

10. PW-2 Abeda Begum deposed that she is the informant of this case. Victim is her daughter and accused is her son-in-law. Incident took place in the year 2016. Her daughter eloped with the accused for which she lodged an ejahar. Out of anger she implicated the accused of kidnapping her daughter in the ejahar. Ext-P2/PW-2 is the ejahar and Ext-P-2(1)/PW-2 is her signature in the ejahar. Now her daughter is staying with the accused as husband and wife and they have two daughters. She do not have any grievance now. Later on she came to know that her daughter voluntarily went with the accused.

In cross she deposed that she do not have any grievance if the accused is acquitted from the case.

11. PW-3 Khasnur Ali is the father of the prosecutrix. He stated that prosecutrix is his daughter and accused is his son-in-law. About 7 years ago his daughter had love affairs and she voluntarily fled away with the accused. Out of grievance and anger his wife lodged the ejahar. After his daughter eloped away prosecutrix married with the accused and presently staying with the accused as husband and wife. He do not have any grievance with the accused as his daughter is staying peacefully with the accused. He have no objection if the accused is acquitted.

12. PW-4 Majibur Rahman deposed that informant is his paternal aunt and victim is his cousin sister. About 7 years ago victim voluntarily eloped with the accused. Thereafter, they got married and now staying as husband and wife.

13. On scrutiny of all the statements made above, I found that none of the witness stated that the accused had kidnapped prosecutrix. The prosecutrix in her evidence never stated that the accused kidnapped her. She stated that she had love affairs with the accused and she voluntarily went with the accused. She is now married with the accused and have two children of 5 years and 6 months. PW-3 the father of prosecutrix also stated that his daughter is now living happily with the accused. He do not have any grievance now if the accused person is acquitted PW-2 the mother of the prosecutrix stated that out of anger she implicated the accused of kidnapping and lodged a case against her son-in-law. She deposed in her cross

that she have no objection if the accused is acquitted. From the evidences on record, I found that the accused did not kidnap the prosecutrix nor compelled to marry her against her will or in order that she may be forced to illicit intercourse. The evidence does not bring ingredients of kidnapping as defined u/s 366 IPC and evidence of victim who is the star witness does not satisfy the ingredients of section 366 IPC.

14. Regarding the allegation that the accused kidnapped the prosecutrix, it is clear that none of the prosecution witnesses had uttered a single word of kidnapping the prosecutrix by the accused. The victim also did not make a single statement that she was kidnapped by the accused. She clearly stated that she voluntarily went with the accused as they have love affairs. Victim did not make any statement against the accused Rafiqul Islam on the point of accused kidnapping her against her will and consent and therefore, ingredients of section 366 IPC does not attracted to hold accused guilty of committing the offence of kidnapping which is punishable u/s-366 IPC.

15. Regarding the charge that the married prosecutrix who is under the age of 18 years and thereby committed an offence punishable u/s 10 of the Prohibition of Child Marriage Act, 2006, the prosecution did not adduce evidence to prove the date of birth of the victim. The witnesses stated that the accused and the victim got married in the year 2016. the Exhibit -2 (ejahar) states that the cause of



occurrence took place on 24/11/2016 and alleged that the age of the victim was 15 years. Whereas the victim in her statement u/s 164 CrPC stated her age to be 19 years. The charge sheet does not reveal about submission of medical examination report of the victim. Therefore I found that there is no concrete proof about the age of the victim at the time of her marriage with the accused. It is also found that the victim and the accused are Muhammadan and they are presently staying together as husband and wife having two child. There is still a conflict whether the Muhammadan Personal Law would prevail or the Prohibition of Child Marriage Act shall prevail. Considering the fact and circumstance of this case, I found that taking a harsh decision would affect the family of the accused and the victim. As there is no concrete proof of the victim girl at the time of her marriage, so the prosecution has failed to prove the alleged offence against the accused beyond reasonable doubt.

16. In view of the aforesaid discussion, I find that prosecution totally failed to bring home the charge of section 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006 against the accused Rafiqul Islam and accordingly, accused Rafiqul Islam is acquitted from the charge of section 366 IPC r/w section 10 of the Prohibition of Child Marriage Act, 2006 and is set at liberty.

17. However, his bail bonds shall remain stands for next six (6) months u/s 437(A) Cr.P.C.

18. Send a copy of the judgment to the District Magistrate, Nalbari.

19. Send back the PRC case record to the learned committal Court with a copy of the judgment.

Given under hand and seal of this Court on this 12<sup>th</sup> day of September, 2022 at Nalbari District Nalbari.

(Dr. M. Baruah)  
Sessions Judge, Nalbari

Dictated and Corrected by me,

(Dr. M. Baruah)  
Sessions Judge, Nalbari

Typed by,  
Anzima Brahma  
Stenographer Gr-III

## **APPENDIX**

### **LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES**

#### **i) Prosecution**

<b>RANK</b>	<b>NAME</b>	<b>NATURE OF EVIDENCE</b>
PW-1	Prosecutrix name changed	Victim/Prosecutrix
PW-2	Abeda Begum	Mother
PW-3	Khasnur Ali	Father
PW-4	Majibur Rahman	Independent

#### **ii) Defence:**

NIL

#### **iii) Court:**

NIL

### **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

#### **A. Prosecution:**

<b>Sr. No.</b>	<b>Exhibit Number</b>	<b>Description</b>
1	Ext-P-1/PW-1	statement recorded u/s 164 CrPC
2	Ext-P-2/PW-2	ejahar

#### **B. Defence:**

NIL

**C. Court Exhibits:**

NIL.

**D. Material Objects:**

NIL

(Dr. M Baruah)  
Sessions Judge, Nalbari