

BEFORE THE SESSIONS JUDGE, GOALPARA

Sessions Case No. 211/2013

U/s: 366(A) of the I.P.C.

State of Assam

-VS-

1. Azibar Rahman Accused person

Present: **Shri.T.K.Bhattacharjee, A.J.S.**
Sessions Judge, Goalpara

Dates of evidence: 24.09.14; 11.03.15; 13.05.15; 17.02.18

Date of argument: 18-06-2019.

Date of Judgment: 29-06-2019.

Advocates appeared:

For the Prosecution : Mr. B.K. Das, Ld. P.P.

For the Defence : Mr. A.K. Ghosh, Ld. Advocates.

J U D G M E N T

1. The brief facts of the prosecution case as unfurled from the ejahar is that on 02/03/2012 at about 3:30 a.m. at Barbalupara under Matia P.S. Dist. Goalpara the informant's sister went missing and later he came to know that the accused Azibar Rahman had kidnapped the minor sister of the informant with the advice of some other and hence this case was filed.

2. On receipt of information to that effect the police registered a case vide AHTU P.S. Case no. 19/2012 u/s 366(A)/34 of the IPC and after the investigations were completed the police submitted a charge-sheet against the above-named accused person u/s 366(A) of the IPC sending him up for the purpose of trial.

3. Thereafter, on appearance of the said accused person before the learned Committal Court the relevant copies were furnished to him and the case was committed, and subsequently, this Court was pleased to frame a charge u/s 366(A) of the IPC against the accused Azibar Rahman on 27-08-2013 and the contents of the said charge was also read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. Accordingly, the trial of this case commenced.

4. In the course of the trial, 5(five) witnesses were examined in support of the prosecution case which included the informant, the victim, the Medical Officer and also the Investigating officer of this case and on conclusion of the prosecution evidence, the examination of the accused person u/s 313 Cr.P.C. was conducted and his statements were recorded during which he declined to adduce any evidence in his defence.

5. Thereafter, the arguments of the Ld. respective counsels of both the sides were heard and the entire evidence in the case record was duly perused in order to determine the matter at hand. The Ld. Counsel for the accused submitted the following decisions in support of his arguments which were also perused:-

(a) Sunil –vs- State of Haryana, CrI. Appeal No. 2308/09 decided on 04-12-09 by the Hon'ble Supreme Court of India.

(b) 2017 (2) Gauhati Law Journal 76.

6. POINTS FOR DETERMINATION:

(i) Whether on or about the 02/03/2012 at about 3:30 a.m. at night at Barbalupara under Matia P.S. Dist. Goalpara the accused

kidnapped or abducted the sister of the informant with intent that she may be compelled or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person, as alleged?

DISCUSSION, REASONS AND DECISION :

7. The PW-1 was the informant who had filed the ejahar, the Ext.-1 informing the police about the occurrence and from his testimony it is found that his sister Ajmina, the victim of this case, went missing one night and later, he came to know that the accused had taken her away by force. His testimony also shows that his sister was studying in Class IX at that time and she was aged about twelve years. The PW-1 also stated in his examination in chief that his sister told him that the accused had taken her away by force. His cross examination shows that no documents like birth certificate or school certificate of the victim were submitted to the police. His cross examination also shows that his sister co-habited with the accused for some time and thereafter, there was a divorce between them.

8. The PW-2 was the mother of the victim and also the mother of the informant and from her testimony, it is found that her daughter was studying in Class IX and aged about twelve years during the occurrence at which time she went missing and later, this witness came to know that the accused had taken her away. Her testimony also shows that her daughter told her that the accused had taken her away. Her cross-examination shows that the birth certificate or school certificate with respect to the age of the victim were not submitted to the police and this witness also could not say the specific day, date or year of the birth of her daughter, the victim of this case. She also stated that the accused and the victim co-habited with each other for some time.

9. The PW-3 was the victim Ajmina Khatun and from her deposition before the court, it is found that she was a student of Class IX during the occurrence and one night, the accused took her away by force and dragged her into a car and took her to Mankachar and kept her there for

about a month in the house of another person. Her cross examination shows that she raised hue and cry and according to her, nobody else was there in her house and her parents had gone to the house of her elder sister which fact was contradicted by the other witnesses, namely the PW-1 & PW-2 who stated that they were at home with the PW-3 during the occurrence. Her cross examination shows that she did not raise any hue and cry when she was allegedly dragged by the accused to the car which was kept waiting at a distance. She also stated that she did not disclose the matter to anybody at Mankachar where she lived for about a month. She also could not say her exact age at the time of occurrence. Her cross examination also shows that a Kabin-Nama was executed between the accused and her but she could not say whether she was married to the accused or not though she stated that there was a divorce between her and the accused. Her cross examination shows that after the divorce, she was married to another person. She also admitted that as she was having a love affair with the accused, she eloped with him on the date of occurrence and thereafter, they were married and lived together as husband and wife. She further admitted that she stated before the court that she went with the accused voluntarily and that there was no fault on the part of the accused. This witness however did not mention anything about disclosing the fact of being taken away by the accused to the PW-1 and the PW-2.

10. The PW-4 was the Medical Officer who examined the victim on 9.4.2012 at Goalpara Civil Hospital and found the age of the victim to be below eighteen years. The medical report, the Ext.-3, shows that there was no sign of recent sexual intercourse, no sign of injury over the victim's body, no sign of physical violence over her body and private parts etc. and from the cross examination of this witness it is found that the age of the victim was only quoted approximately which according to the PW-4 may vary by two years on either side.

11. The PW-5 was the police official of Goalpara AHTU Police Station who took part in the investigation of this case and he had collected the

medical report and also submitted the charge-sheet against the accused vide Ext.-4. His cross examination reveals that he did not seize any age certificate of the victim girl in connection with this incident.

12. The prosecution side did not examine any other witnesses and in the course of arguments, the learned counsel for the prosecution submitted that the deposition of the victim may be scrutinized very carefully and thereafter, an appropriate decision may be arrived at. On the other hand, the learned counsel for the accused submitted that the prosecution case is full of loopholes and inconsistencies and the age of the victim could not be established by the prosecution and moreover, the evidence on record clearly shows that the victim voluntarily eloped with the accused and therefore, the accused deserves to be acquitted. The learned counsel for the accused also submitted the decision of the Hon'ble Supreme Court of India in the case of **Sunil Vs. State of Haryana which was decided on 04.12.2009 vide Criminal Appeal No. 2308/09** and also the decision reported in **2017(2) Gauhati Law Journal 76 (Nur Rahman and ors. Vs. State of Assam and anr.)** in support of his submission.

13. On a careful scrutiny of the entire materials available in the case record, it is found that the informant (PW-1), the mother of the victim (PW-2) and the victim herself stated that the victim was reading in Class IX at that time and that the PW-1 and PW-2 had stated that the victim was aged about twelve years at the time of the occurrence; but no documents like birth certificate or school certificate etc. of the victim were submitted in support of the age of the victim. On the other hand, during the deposition of the victim, she admitted that there was a love affair between her and the accused and the evidence on record also shows that they were married and co-habited for some time after which there was a divorce between them. The fact that the victim was dragged to a car which was at a distance and thereafter, taken to Mankachar and kept for a month there during which period no hue and cry was raised shows that the victim voluntarily accompanied the accused which is also apparent

from the Ext.-2, the statement of the victim recorded u/s 164 of the Cr.P.C. Further, the PW-1 and the PW-2 both claimed that they were in their house at that time; but the victim (PW-3) stated that she was alone in her house at that time.

14. Apart from that, in the instant case, the age of the victim is shrouded in the absence of the school certificate which could have easily been obtained as the victim was studying in school at that time but no documents were brought on record in support of the actual age of the victim and in view of the ratio of law that 2-3 years can be added to the age mentioned by the Medical Officer, I am of the opinion that the prosecution case suffers from numerous infirmities which are severe in nature. Further, the deposition of the victim during the trial shows that she was inconsistent on material aspects with her statement recorded u/s 164 Cr.P.C and on the other hand, no mark of injury or other signs of sexual intercourse or any violence perpetrated on her person or private parts could be established and from the above facts and circumstances, it is apparent that there is a massive dent in the prosecution case and moreover, the admitted love affair between the parties has added more colour to the dark shades in the prosecution case and therefore, taking into account all the above facts and circumstances, I am of the opinion that the prosecution has failed to establish the charge against the accused beyond reasonable doubt and that the ingredients of Section 366(A) of the IPC are very much lacking in the instant case.

15. In the result, the accused person named above is not found guilty u/s 366(A) of the IPC beyond reasonable doubt and as such he is acquitted of the said charge and set at liberty forthwith. His bail bond shall however remain in force for the next six months.

16. A copy of this judgment shall be forwarded to Ld. District Magistrate, Goalpara and also the Superintendent of Police, Goalpara for their information and necessary action.

Given under my hand and the seal of this court on this the 29th day of June/2019.

(T. K. Bhattacharjee)
Sessions Judge,
Goalpara.

Dictated & corrected by me:

Sessions Judge,
Goalpara.

Appendix:

Prosecution Witnesses:

PW1:- Rafizul Haque,
PW2:- Mustt. Saifun Nessa,
PW3:- Mustt. Ajmina Khatun,
PW4:- Dr. Manasi Dutta (MO),
PW5:- Dhanmani Deka (IO),

Prosecution Exhibits:

Ext.1:- Ejahar,
Ext.2:- Statement of the victim,
Ext.3:- Medical Report,
Ext.4:- Charge-sheet,

Court witnesses:-Nil.

Defence Witness: Nil.

Sessions Judge
Goalpara