#### IN THE COURT OF THE SESSIONS JUDGE :::::: NALBARI

<u>Present</u>: Mrs. S. Begum. Sessions Judge, Nalbari.

# **SPECIAL (P) CASE NO : 41/17** u/s- 366 IPC

State of Assam ......Complainant
-Vs
Md. Nurul Ali .....Accused person

#### Appearance:-

For the prosecution: Mr. D. Barman, Public

Prosecutor

For the defence : Mr. A. Islam, Advocate.

Date of argument : 03/12/2018. Date of Judgment : 03/12/2018.

#### J U D G M E N T

- 1. The prosecution case, which is reflected in the ejahar lodged by one Altaf Hussain is that on 07/09/17 at about 8:30 PM his daughter Miss Mafida Begum (herein after referred as Miss "X"), aged 15 years old, went out from her house towards school. Sometimes later, the informant could know that some unknown persons kidnapped his daughter from her way to the school in a red coloured four wheeler vehicle. It is also stated that on the same day in the morning his daughter has received call in his mobile from a number, which is reported to be 98598-58246, and she talked over mobile phone several times. On the receipt of the ejahar Belsor PS Case No.194/17 u/s- 366 IPC has been registered.
- 2. Police force set in to motion and on completion of investigation submitted charge sheet against accused Nurul Ali u/s- 366 IPC r/w section 4 of the POCSO Act. While the accused entered in to his

appearance before this special court, getting prima-facie materials against the accused to charge u/s- 366 IPC and section 4 of the POCSO Act., charge is framed accordingly and read over to the accused to which he pleaded not guilty and claimed to be tried.

3. The prosecution to bring home the charge against the accused examined as many as 3 witnesses including the informant. Plea of the accused is of denial. However, the accused did not adduce any evidence. Heard arguments from both the sides.

#### 4. POINT FOR DETERMINATION

- i) Whether the accused 07/09/2017 at about 8:30 AM kidnapped Miss "X" with intend that she may be compelled to marry against her will or in order that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s- 366 IPC.
- ii) Whether the accused on 07/09/2017 committed penetrative sexual assault upon Miss Mafida Begum, aged 15 years 6 months, and thereby committed an offence punishable u/s– 4 of the POCSO Act, 2012.

#### **DECISION AND REASONS THEREOF**

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-3 who is the informant. He narrated during his evidence that the occurrence happened about 1½ years ago. On the date of occurrence his daughter was missing and he searched for his daughter everywhere but could not traced her out. Then he lodged the ejahar at Belsor PS. It is disclosed by this witness that after filing of the ejahar his daughter herself appeared at Belsor PS and police informed him about appearance of his daughter. Thereafter the informant himself and his wife went to Belsor PS. They met his daughter at

the Belsor PS. He revealed that police brought his daughter before the doctor for medical examination and thereafter she was brought before the magistrate by the police. It is also disclosed that the statement of the victim got recorded by the magistrate u/s- 164 CrPC and the magistrate gave zimma of his daughter to him and his wife. It is further discloses that after recovery of his daughter, her marriage was solemnized with the accused as per their consent and at the time of occurrence the age of his daughter was 18 years. He revealed that his daughter was living with the accused happily after the marriage and his daughter died on 16/11/2018 due to high pressure in pregnant state at GMCH. He also disclosed that he and accused Nurul brought his daughter to Hospital as she was suffering from high-pressure. During cross examination this witness revealed that he has cordial relationship with the accused at present and he has no objection, if the accused is acquitted.

- 6. PW-2, Janmoni Begum during her evidence disclosed that the occurrence happened about one year ago. She heard from police that accused Nurul kidnapped Miss "X". Later on she could know that police recovered the victim. During cross examination this witness revealed that marriage between Miss "X" and accused Nurul has been solemnized as per the consent of the parents of Miss "X" and at present she stays at the house of accused Nurul.
- 7. PW-1, Dr. Doly Gogoi during her evidence testified that she examined the victim on 23/09/17 at SMK Civil Hospital, Nalbari. The doctor disclosed that on examination of the victim, her hymen was torn but no fresh injury was found. Other organs were found normal. From the x-ray report it is seen that age of the victim is above 16 years and below 18 years. This witness exhibited Ext-1 as the medical report and Ext-2 as the X-Ray report.
- 8. Though in the instant case the informant PW-3, who is the father of the victim, lodged the ejahar against the accused but during his evidence he testified that after recovery of his daughter, her marriage was

socially solemnized with the accused with the consent of himself and his wife. He also revealed that his daughter was living with the accused happily after the marriage and his daughter died on 16/11/2018 due to high blood pressure in pregnant state at GMCH. During cross examination the informant revealed that he has cordial relationship with the accused and he has no objection, if the accused is acquitted. PW-2 Janmoni Begum also testified that marriage between the accused and the victim was solemnized as per consent of the parents of the victim. None of the witnesses stated that the victim was kidnapped by the accused, rather it transpires from the evidence on record that marriage between the accused and the victim was solemnized as per consent of the parents and they were living as husband and wife till death of the victim. Now the point to be determined is what was the age of the victim at the time of occurrence.

- 9. Evidence of the informant shows that the age of the victim was 18 years at the time of occurrence. Doctor's evidence and the evidence of radiological report shows that the age of the victim was above 16 years and below 18 years on the date of incident. However, as per the medical jurisprudence there may be variation of 2 years on either side regarding the age and criminal jurisprudence says that when 2 views are possible then the view favourable to the accused should be accepted. In the instant case as per the informant the age of the victim was 18 years at the time of occurrence. So I accept that the age of the victim was 18 years at the time of occurrence. The statement of the victim recorded us/- 164 CrPC shows that she herself eloped with the accused.
- 10. Evidence is lacking that the victim was induced or forcibly taken away by the accused. Rather, it appears that the victim herself eloped with the accused due to her love affairs with the accused. As she is a major girl and consenting party, hence there is no ingredient u/s- 366 IPC and section 4 of the POCSO Act.
- 11. Marshalling the evidence on record, it appears that the prosecution has miserably failed to establish a case u/s- 366 IPC against

the accused beyond reasonable doubt. On benefit of doubt, the accused is acquitted.

- 12. The accused Nurul Ali is allowed to remain on previous bail.
- 13. Judgment is pronounced at the open court in presence of the accused.

Send a copy of judgment to District Magistrate, Nalbari.

Given under my hand and the seal of this court on this the  $3^{\text{rd}}$  day of December, 2018.

Session Judge, Nalbari

Dictated and corrected by me

Sessions Judge, Nalbari

#### **APPENDIX**

### A. <u>Prosecution witness</u>.

PW-1 Dr. Doly Gogoi

PW-2 Jonmoni Begum

PW-3 Altaf Hussain (Informant)

### B. <u>Defence witness.</u>

Nil.

# C. <u>Prosecution Exhibit.</u>

Ext-1 Medical Report

Ext-2 X-Ray Report

# D. <u>Defence Exhibit.</u>

Nil.

Sessions Judge, Nalbari.