IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

Sessions (Spl.) Case No.19/2016 U/S 366 A IPC

Present : Mr. D. K. Das, Sessions Judge, Morigaon.

State of Assam

Vs

Md. Shahidul Islam Accused.

Date of Charge :- 15.02.2017.
Date of recording evidence :- 23.03.2017.

Date of Argument :- 24.03.2017.

Date of Judgment :- 24.03.2017.

Appearance for the Parties

Advocate for the State:- Mr. A. Kalam, Ld. P.P.

Advocate for the accused:- Mr. U. C. Roy, Ld. Advocate.

<u>J U D G M E N T</u>

 Prosecution case in brief is that about one month ago from the date of filing the ejahar, the accused namely – Md. Shahidul Islam kidnapped the minor niece of the informant, while she was coming to attend the meeting, which was held in the field of Tinisukia Jama Masjid by inducing her. Therefore, the informant went to Laharighat P.S. and filed an ejahar to that effect on 24.03.2016. On receipt of the said ejahar, the O/C Laharighat P.S. registered a case vide Laharighat P.S. Case No.119/2016, U/s 366 A IPC against the abovenamed accused person.

Investigation was set in motion. During the course of investigation the I.O., visited the place of occurrence and examined the material witnesses. Thereafter, the I.O. subjected the victim to medical examination and also got her statement recorded U/s 164 of Cr.P.C. The I.O. drew up sketch map of the place of occurrence and searched for accused person. The I.O. arrested the accused and produced before the learned Court, wherefrom, he was remanded to judicial custody. Subsequently, the accused person was let off on Court bail. Thereafter, the I.O. collected the medical report and upon completion of investigation and finding sufficient incriminating materials submitted charge-sheet with allegation of offences punishable U/s 366 A IPC, read with Section 4 of POCSO Act against accused Md. Shahidul Islam. On appearance of the accused persons, the learned Court furnished copies of relevant documents as mandate U/s 207 Cr.P.C. to him. Thereafter, the learned Court below sent the case record to this Court by finding it to be exclusively triable by this Court. On receipt of the case record and after having heard Ld. Counsel of both sides and basing upon materials on record framed charge U/s 366 A IPC against the accused person, which was read over and explained to the accused person to which he pleaded innocence and claimed to be tried.

2. Point for determination:

(i) Whether the above-named accused person about one month ago from the date of filing the ejahar at village Outolabori under Laharighat P.S. induced the minor niece of the informant to go from her house with intent that she might be or knowing that she is likely forced or seduced to illicit intercourse.

- 3. In this case prosecution has examined as many as 3 (three) PWs including the most vital witness i.e. the informant and the victim as PW-1 and PW-2. But their evidence did not support the prosecution case from any angle. Therefore, the Ld. P.P. has prayed for closing down of further prosecution evidence and, accordingly prosecution evidence is closed. In that event examination of the accused person as warranted U/s 313 Cr.P.C. found to be redundant, therefore, the same was dispensed with for ends of justice. The accused declined to adduce defence evidence.
- 4. I have heard argument so advanced by Ld. Counsel of both sides. Considering the evidence on record, I have come to the following decisions.

DISCUSSION, DECISION AND REASONS THEREOF

- 5. In this case the prosecution has alleged that on the particular day while the victim was coming to attend the meeting, which was held in the field of Tinisukia Jama Masjid, the above-named accused kidnapped her by inducing her.
- 6. Deposing as PW-1, the informant has stated in his evidence that the victim is his niece and the accused is also known to him. At the time of occurrence of the incident, the age of his niece (victim) was around 16 years. PW-1 has further stated that on the eventful day, both the accused and his niece eloped since they had love affairs. On getting the information about the incident, PW-1 lodged this instant case against the accused. According to PW-1, there was love affair in between the accused and his niece. In his cross-examination, he has stated that he lodged the case as his niece went missing. Later on, PW-1 came to know that both the accused and his niece (victim) had love affairs and as such his niece went with the accused. His niece is now the wife of the accused. PW-1 has further stated that he lodged this case against the accused out of misunderstanding.

PW-2 is Nazima Khatun (the victim), she in her evidence has stated that the informant is her maternal uncle and the accused is her husband. PW-2 has further stated that on the eventful day she eloped with the accused, as she had love affairs with him and thereafter, they got married. According to PW-2, as on the eventful day, she went missing, so her maternal uncle lodged this case. PW-2 also informed her family members that on the eventful day, she voluntarily went with the accused. In her cross-examination, PW-2 has stated that she is now leading a happy conjugal life with the accused (her husband). The accused did not kidnap her. Her maternal uncle lodged the case out of misunderstanding.

PW-3 (Musstt. Fatema Khatun) has stated in her evidence that the victim is her daughter and the accused is the husband of her daughter. According to PW-3, about one year ago her daughter went missing from her house. Her brother (the informant) lodged this case as he came to know that her daughter went with the accused person. After few days, her daughter was recovered and she told before them that she eloped with the accused as she had love affairs with the accused. PW-3 has further stated in her evidence that at present, her daughter is living with the accused as husband and wife. In her cross-examination, PW-3 has stated that her daughter told before her that she went with the accused at her own free will. The accused did not kidnap her daughter. According to PW-3, her daughter was a matured girl at the time of the occurrence of incident. The case was lodged out of misunderstanding. At present, her daughter (the victim) is leading a happy conjugal life with the accused.

Thus, we have found that none of these three witnesses including two vital witnesses (i.e. PW-1, the informant and PW-2, the victim) uttered a single word as regards kidnapping being allegedly committed by the accused. It is also clarified from the evidence of these witnesses that the victim was a matured girl at the time of the occurrence of incident.

5

7. Considering the evidence on record, we have found that the material

part of the prosecution case remained un-substantiated, as the victim herself

stated that she had love affairs with the accused and she voluntarily eloped with

the accused on the eventful day. So, we have found that the most material

witness of this case as PW-1 & PW-2 did not support the prosecution allegation

in its material aspects. Section 232 Cr.P.C. mandates an acquittal of the accused

from an offence, which states that " If, after taking the evidence for the

prosecution, examining the accused and hearing the prosecution and the

defence on the point, the Judge considers that there is no evidence that the

accused committed the offence, the Judge shall record an order of acquittal."

8. In view of the above discussion and in view of Section 232 Cr.P.C., I

have found that the prosecution has failed to establish the guilt of the accused

beyond any reasonable doubt. In the result, the accused is not found guilty for

the offence punishable U/s 366 A of IPC and as such, he is acquitted and set at

liberty. In this case, since the victim girl has completely negated the prosecution

case, therefore, she is not entitled to receive any compensation under section

357 A Cr.P.C.

Judgment is delivered and pronounced in the open Court on this 24th

day of March, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

APPENDIX

A. Prosecution witness

1. PW-1: - Md. Riaz Uddin,

2. PW-2: - Miss Nazima Khatun,

3. PW-3: - Musstt. Fatema Khatun,

- B. <u>Defence witness</u>: Nil.
- C. Prosecution Exhibit : Nil.
- D. Defence exhibits :- Nil.

Sessions Judge, Morigaon.