IN THE COURT OF SESSIONS JUDGE, BARPETA, ASSAM. Special P.O.C.S.O. CASE NO. 54 OF 2016

Under Section 366(A)/344 I.P.C.

Present:- Smti. C. R. Goswami, A.J.S., Special Judge, Barpeta

State of Assam.

-versus-

Naburuddin ... Accused.

APPEARANCE

For the Prosecution : Mr. A. Kayem, learned P.P.

For the accused : Mr.M.Chakraborty, learned Advocate.

Evidence recorded on : 11-05-2017

Argument heard on : 13-06-2017 & 17-07-2017

Judgment delivered on : 17-07-2017.

JUDGMENT

1. The prosecution case in brief, is that on 10-11-2016 one Sahidul Islam lodged an FIR alleging that on 27-08-2016 at about 8.00 P.M., accused Naburuddin and 6 others came to his house by a boat and kidnapped his minor daughter(victim), aged about 14 years. He came to know that the other accused persons named in the FIR performed the marriage in between the victim and accused Naburuddin in spite of knowing that the victim is a minor. Though he requested the accused persons but they did not hand over the victim to him. He requested the village Head-man also, but did not get any relief. So he has filed this case.

- 2. On the basis of the F.I.R. police registered a case, started investigation and after completion of investigation submitted charge sheet against accused Naburuddin U/S 366-A/344 I.P.C read with section 4 of POCSO Act.
- 3. Accused person appeared before this court and faced trial. copies are furnished to him. Charges were framed against the accused persons U/S 366-A/344 read with section 4 of POCSO Act. Charges were read over and clearly explained to the accused person to which he has pleaded not guilty and claimed for trial.
- 4. In course of hearing the prosecution has examined as many as five witnesses. The accused person is examined under section 313 Cr.P.C. He declines to adduce evidence.

5. **Points for determination:**-

- (1) Whether the accused person on 27-08-2016 at about 08.00 P.M. at Siduni, Jania within the jurisdiction of Baghbar Police Station, District Barpeta, kidnapped Sahnaj Parbin, the minor daughter of informant Shahidul Islam from his house, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person ?
- (2) Whether the accused person on the same date, time and place wrongfully confined Sahnaz Parbin for more than ten days?

Decision and reasons thereof:

- 6. The allegation against the accused person is that on 17-08-2016 at about 8.00 P.M., he kidnapped the victim who was aged about 10 years and confined her for more than 10 days. Accordingly the father of the victim, Sahidul Islam lodged the FIR.
- 7. Said Sahidul Islam as PW1 has deposed that about 6/7 months ago one night, at about 8.00 P.M. Naburuddin Ekabbar Ali, Saburuddin, Samez Uddin, Komar Ali and Tukan Ali took away her by their boat tighting her hands and feet. At that time the victim was aged about 14

years. He lodged the FIR and police recovered the victim from the house of the accused. At the time of occurrence the victim was reading at Class-X and he furnished the school certificate to the police. As per the school certificate, the age of the victim was 14 years at the time of occurrence.

In his cross examination he has admitted that the occurrence took place on 27-4-2016 and he lodged the FIR on 10-11-2016. After about 7 months of the occurrence he lodged the FIR, but he did not mention the cause of delay in the FIR. Lalchand, Mohan Chand and Malek Chand Dewani wanted to settle the matter amicaboly. He could not remember the date of birth of the victim. He did not annex the photo copy of the school certificate of the victim along with the FIR. The victim is now in his house. Sajen, Gani, Lal Chand and Malek and others are his neighbours. At the time of occurrence he was in the house of Lal Chand. No hue and cry was made at the time of occurrence. So he did not know about the occurrence. Nobody had seen the taking of victim by the accused persons. He lodged the FIR after 2 ½ months of the occurrence. After 15 days of the occurrence police recorded her statement. He has denied that he did not state before the I/O that the victim was taken by tighting her hands, legs and mouth.

9. The victim Sahnaj Parbin as P.W.2 has deposed that the occurrence took place about 9 months ago. She and the accused love each other. So when the accused came she left with him and stayed with him for 3 months as husband and wife. Their marriage was performed in the house of the accused. After 3 months her father took her back with the help of the police. Now she is carrying 7 months pregnancy. Police produced her before the Medical officer for examination and before the Magistrate for recording her statement under section 164 Cr.P.C.

In her cross examination she has stated that she and the victim loved each other. The accused did not take her forcibly. She had gone along with the accused at her own will with an intention to continue their marital life. While police arrested the accused she filed an

application praying to release the accused. She has exhibited the said application as Ext.A and her signature as Ext.A(1). The Affidavit which is executed by her is exhibited as Ext.B and her signatures as Ext.B(1),B(2) and B(3). She made the statement before the Magistrate as tutored by her father and the police. She is stil willing to continue her marital life with the accused person. The accused person is an innocent.

- 10. The Medical officer who is examined as P.W.3 and as per her opinion, her age was above 16 years and below 18 years and she did not find the evidence of recent sexual intercourse or any injury on her body.
- 11. One Maniruddin as P.W.4 has deposed that he does not know anything about the occurrence.
- 12. One Akel Uddin as P.W.5 has deposed that he knows both the accused and the victim and he heard that accused and the victim already got married. They have already settled the matter and the accused is now staying at his father-in-law's house.
- From the above discussions of the evidences of the prosecution witnesses, it is revealed that the alleged occurrence took place on 27-8-2016, but in spite of having knowledge about the occurrence, the informant filed the case on 10-11-2016 that means after about 2 $\frac{1}{2}$ months of the occurrence the informant lodged the FIR. According to the informant at the time of occurrence he was in the house of his neighbour Lal Chand and as no hue and cry occurred in his house he could not know about the occurrence. But the victim has clearly stated that she and the accused loved each other and she had gone along with the accused at her own will as she wanted to continue her marital life with the accused person. The accused person did not take her forcibly. She has further stated that at the time of arrest of the accused she filed an application to release him. She has exhibited the said application as Ext.A and her signature as Ext.A(1). The said petition was suspported by an Affidavit. She has exhibited the said Affidavit as Ext.B and her signatures as Ext.B(1),B(2)and B(3)

respectively. She is still willing to continue her marital life with the accused person. The accused is not guilty. The other prosecution witnesses do not know anything about the occurrence.

According to P.W.4 the accused and the victim already got married and the accused is now staying along with the victim at her paternal house.

- 14. Under such circumstances, it is clear that the prosecution has failed to prove that the victim was forcibly taken by the accused against her will and consent and she was confined by the accused. Hence the prosecution has failed to bring home the guilt of the accused person for any offence. Therefore the accused person is acquitted and set at liberty.
- 15. Bail bond executed by the accused person and the surety are extended for another period of six months from the date of this judgment under section 437-A Cr.P.C.
- 16. Send copy of this Judgment and order to the Hon'ble Gauhati High Court and also to the District Magistrate, Barpeta under section 365 Cr.P.C.

Given under my hand and seal of this Court on this 17^{th} day of July,2017.

Dictated & corrected by me.

Sd/- Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta (Smti. C. R. Goswami) Special Judge, Barpeta

APPENDIX

(A)Prosecution Exhibits:

Ext.1 : F.I.R.

Ext.1(1)&

Ext.1(2) :Sig. of Sahidul Islam

Ext.2 :Statement

Ext.2(1) & 2(2):Sig. of Sahnaj Parbin

Ext.3 : Medical Report

Ext.3(1)::Sig. of Dr.M. Devi

(B)Defence Exhibits:

Ext.A :Petition No.4069/16 Ext.A (1) :Sig. of Sahnaj Parbin

Ext.B :Affidavit

Ext.B(1),

Ext.B(2)&

Ext.B(3) :Sigs. of Sahnaj Parbin

(C)Exhibits produced by witnesses:Nil.

(D)Court Exhibits:Nil.

(E)Prosecution witnesses:

P.W.1 : Sahidul Islam

P.W.2 : Mst. Sahnaj Parbin

P.W.3 : Dr.Mamata Devi,Demonstrator,Deptt.of Forensic

Medicine, FAA Medical College Hospital, Barpeta

P.W.4 : Maniruddin

P.W.5 : Md. Akel Uddin

(F)Defence witnesses:Nil.

(G)Court witnesses:Nil.

Sd/-

(Smti. C. R. Goswami) Special Judge, Barpeta