### IN THE COURT OF THE SESSIONS JUDGE, MORIGAON

## Sessions (Spl.) Case No.24/2014 U/S 341/366/511 IPC.

Present: Mr. D. K. Das

Sessions Judge, Morigaon.

State of Assam

Vs.

Md. Faizul Haque ...... Accused

Date of Charge :- 10.02.2015.

Date of recording evidence :- 04.01.2017 and 16.03.2017.

Date of Argument :- 16.03.2017.

Date of Judgment :- 17.03.2017.

#### **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>JUDGMENT</u>

1. The prosecution case in brief is that on 05.11.2014 at around 12.30 P.M. (mid-day), the accused Md. Faizul Hoque wrongfully restrained Miss – X (the real name is withheld to screen the victim from infamy), the niece of the complainant Md. Nur Kasem and also tried to kidnap her with intent to marry her against her will by showing sharp weapon on the PWD road near Bamunjan bridge of village Boribazar under Mikirbheta P.S., while she was returning back from School. It is also alleged in the ejahar that on hearing shout of the victim, the neighbourer Md. Dildar Hussain, Md. Motibur Rahman and Md. Nurul Amin rushed to the spot and recovered the victim from the clutch of the accused. On the very day of the occurrence of incident, the informant went to Boribazar P.P.

and he lodged an F.I.R. On receipt of the F.I.R., the then I/C of Boribazar P.P. made G.D. Entry vide Boribazar P.P. G. D. Entry No.81 dated 05.11.2014 and forwarded the same to the then O/C Mikirbheta P.S. for registering a case under proper Section of law. Accordingly, the then O/C Mikirbheta P.S. after receipt of the same registered a case vide Mikirbheta P.S. Case No.418/14, U/s 341/366 (A)/511 IPC, read with Section 12 of POCSO Act.

The investigation was set in motion. During the course of investigation, the I.O. visited the place of occurrence and drew up the sketch map of the site. Thereafter, examined the victim as well as other material witnesses and also got the victim medically examined. Then, the victim was brought to learned Court and got her statement recorded U/s 164 Cr.P.C. The I.O. arrested the accused person and produced before the learned Court, wherefrom, the accused was remanded to judicial custody. The I. O. during the period of investigation seized one certificate in the name of Miss –X and one white colour knife. Thereafter, the I.O. collected the medical report and upon completion of investigation, he submitted charge-sheet against the above-named accused with allegation of offences punishable U/s 341/366 (A)/511 of IPC, read with Section 12 of POCSO Act. Thereafter, the Ld. Court below committed the case to this Court by finding it to be exclusively triable by this Court. At the time of submitting the chargesheet, the accused was in judicial custody. Subsequently, he was let off on court bail and thereafter, the present accused attended before the Ld. Court and he was furnished with copies of relevant documents as mandated U/s 207 Cr.P.C. Thereafter, having heard Ld. Counsel of both sides and basing upon materials on record my learned predecessor framed charges U/s 341/366/511 of IPC, which were read over and explained to the accused to which he pleaded innocence and claimed to be tried.

#### 2. Point for determination:

(i) Whether the accused on the eventful day i.e. on 05.11.2014 at around 12.30 P.M. (Midday) at village Boribazar under Mikirbheta P.S.

in the district of Morigaon, wrongfully restrained Miss - X, the niece of the complainant?

- (ii) Whether the accused on the same day, time and place tried to kidnap Miss- X with intent to marry her against her will or in order to commit illicit intercourse with her by force ?
- 3. In this case prosecution has examined as many as two PWs and two CWs including the most material witnesses of this case, the informant as PW-1 and the victim as CW-2. But their evidence did not support the prosecution case on material aspects. In such circumstances, prosecution was not willing to examine the remaining witnesses and at the instance of the prosecution its evidence stands closed. The statement of the accused person was recorded U/s 313 Cr.P.C. with respects to the incriminating materials that surfaced against him. 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, it is alleged by the prosecution that on the eventful day the above-named accused wrongfully restrained the victim Miss – X, on the PWD road near Bamunjari bridge and also tried to kidnap her with intent to marry her against her will by showing sharp weapon, while the victim was returning back from School.

To prove this fact, the prosecution has examined PW-1, the informant. He in his evidence has stated that the victim Miss- X is his niece. The occurrence of the incident took place about 2 (two) years ago. According to PW-1, on the eventful day, while his niece (the victim) was coming back from School, the above – named accused person teased her for

which, the local people caught hold the accused person and was informed him about the occurrence of the incident. PW-1 has further stated that he rushed to the place where the incident occurred and found the abovenamed accused along with other local people. Thereafter, PW-1 along with other local people handed over the accused to police. PW-1 lodged the ejahar vide Ext.1, whereupon Ext.1 (1) is his signature. In his crossexamination, PW-1 has stated that he does not know the contents of the ejahar, as it was written by somebody else and PW-1 just put his signature on the ejahar. PW-1 in his cross-examination has further stated that the accused did not commit any attempt to kidnap the victim i.e. his niece. Further, the victim only told before him (PW-1) that there was an altercation and guarrel in between her and the accused. The accused never tried to outrage her modesty. PW-1 has further stated that the case was lodge against the above-named accused out of misunderstanding, as no such incident took place as alleged in the ejahar. According to PW-1, the victim i.e. his niece is now married to someone else and she blessed with a child.

- 6. PW-2 (Md. Nuruddin) has stated in his evidence that the informant is his cousin brother and the victim is his niece. The accused person was also known to him. According to PW-2, the alleged incident occurred about two years back. PW-2 heard that on the eventful day, while his niece (the victim) coming back from school, then some boys teased her, for which the local people caught hold the above-named accused. So, PW-2 went to the spot and on reaching there, he found the above-named accused was surrounded by local people and after sometimes, the accused person was handed over to the police. In his cross-examination, PW-2 has stated that his niece (the victim) got married with someone else. According to PW-2, the alleged incident was a simple altercation in between his niece and the accused and there was no such incident occurred as alleged in the ejahar.
- 7. CW-1 is Md. Nur Jamal, he in his evidence has stated that the informant is his brother and the victim is his daughter. CW-1 also knows the accused person. According to CW-1, the alleged incident occurred about

three years back. At that time, his daughter (the victim) was studying in Higher Secondary School and she was 16/17 years of age. CW-1 has further stated that one day his daughter, the victim reported him that the abovenamed accused person met her on the road while she was going to school and he scolded her. So, the brother of CW-1 lodged the case. Later on, CW-1 came to know that the accused person was mentally retarded and he usually do such kind of activities in their village. In his cross-examination, CW-1 has stated that the above-named accused person did not attempt to kidnap his daughter. CW-1 did not know about the contents of the ejahar. CW-1 has further stated that later on his daughter, the victim told before him that due to madness, the accused person scolded her on the road.

- 8. CW-2 (the victim girl) has stated in her evidence that the informant is her own uncle. She knows the accused person, who is from their village. According to CW-2, the alleged incident occurred about 2/3 years back and on the eventful day, while she was coming back from school, she met the accused person on the road, who scolded her by using bad words. Then, CW-2 immediately rushed to her house and reported the matter to her family members. Thereafter, her uncle (the informant) lodged the case. CW-2 further stated that at the time of occurrence of the incident, she was 18 years of age. In her cross-examination, CW-2 has stated that the accused person was a mentally retarded person and he used to do such kind of activities in their village. Further, the accused person did not try to kidnap her. CW-2 has further stated in her cross-examination that she does not know the contents of the ejahar. She stated before the police that the accused person only scolded her, while she was coming from school. Later on, CW-2 came to know that due to lunatic problem, the accused scolded her.
- 9. Thus, we have found that none of the witnesses including the most vital witnesses as PW-1 and CW-2 (i.e. complainant and victim) examined by

the prosecution have not stated anything as regards the allegations as alleged in the ejahar against the accused person.

- 10. 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 the accused did not try to kidnap her. So, we have found that the most material witness of this case as PW-1 & CW-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."
- 11. 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 person beyond any reasonable doubt. In the result, the accused is not found guilty for the offences punishable U/s 341/366/511 of IPC and as such, he is acquitted and set at liberty. In this case, victim is not found to be entitled to receive any compensation as defined under victim compensation scheme since the victim has completely negated the prosecution case.

Judgment is delivered and pronounced in the open Court on this 17<sup>th</sup> day of March, 2017 under my hand and seal.

Dictated & corrected by me

Sessions Judge Morigaon.

## **APPENDIX**

# A. Prosecution witness

- 1. PW-1 :- Md. Nur Kasem,
- 2. PW-2:- Md. Nuruddin,
- B. Court Witness:
- 1. CW-1 :- Md. Nur Jamal,
- 2. CW-2 :- Musstt. Salima Khatun.
- C. <u>Defence witness</u>: Nil.
- D. Prosecution Exhibit:
- 1. Ext.1:- the ejahar.
- E. Defence exhibits :- Nil.

Sessions Judge, Morigaon.