IN THE COURT OF THE SESSIONS JUDGE:: NALBARI

<u>Present</u>: Mrs. S. Begum.

Sessions Judge,

Nalbari.

Special (P) Case No: 14/18 u/s- 366 IPC r/w section 4 of the POCSO Act.

State of Assam

......Complainant

-Vs-

Binay Das

.....Accused person

Appearance :-

For the prosecution : Mr. D. Barman, PP

For the defence : Phanidhar Deka, Advocate

Date of argument : 18/01/2019

Date of Judgment : 18/01/2019

JUDGMENT

- 1. The prosecution case which is reflected in the ejahar lodged by one Purnima Baishya on 05/04/18 is that on that very day her daughter, who is 17 years old, became untraced and they could not find her out. Thereafter while they called one of her friend, they could know that accused Binay Das forcibly took her away by a motorcycle near from their house. On the basis of the ejahar Belsor PS Case No. 59/18 u/s-366 IPC has been registered.
- 2. The police force set into motion on receipt of the ejahar and on completion of the investigation police submitted charge-sheet u/s-366 IPC r/w section 4 of the POCSO Act against the accused Binay Das.

- 3. While the accused entered into his appearance before this court, getting prima-facie material against the accused u/s-366 and u/s- 4 of the POCSO Act charge was framed accordingly and read over to the accused to which he pleaded not guilty and claimed to be tried.
- 4. The prosecution to bring home the charge against the accused examined as many as 3 witnesses including the victim and the informant. The case of the accused is of denial.

5. **POINT FOR DETERMINATION.**

- i) Whether the accused on 05/04/18 at 12:00 O'clock at noon at Jowardi (Besimari) village under Belsor P.S. kidnapped Miss Dhritismita Baishya (hereinafter referred as "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 the aforesaid date, time and place committed penetrative sexual assault upon "Miss X" and thereby committed an offence punishable u/s- 4 of the POCSO Act.

DECISION AND REASONS THEREOF

6. Now let me scrutinize and appreciated the evidence on record to arrive at a just decision. First of all let me discuss the evidence of PW-1, Purnima Baishya, who is the informant cum mother of the victim. She during her evidence disclosed that on 05/04/18 she went to Nalbari and while she return back to her house she could know that her daughter became untraced from their house. On search, she could know that her daughter went with accused Binay. On the next day of the incident she lodged the ejahar at Belsor. She exhibited Ext-1 as the ejahar. 3/4 days subsequent to the incident police

recovered the victim from the house of the accused. It is disclosed that police brought the victim before the doctor for medical examination as well as the victim was also brought before the magistrate. The zimma of the victim was given to her. It is revealed by this witness that thereafter on the month of November, 2018 the victim again eloped with the accused and the marriage between the victim and accused has been solemnized socially and she does not want to proceed with the case. She also disclosed that at present the victim and accused is living as husband and wife and the age of the victim was 18 years at the time of occurrence. During cross examination she revealed that the victim had love affairs with the accused and hence she herself eloped with the accused.

- 7. PW-2, who is the victim of this case disclosed during her evidence that she had love affairs with the accused and as her parents were not willing to get her marry with the accused, so she herself eloped with the accused. She also disclosed that police recovered her from the house of the accused and her statement u/s-164 CrPC got recorded by the magistrate. She exhibited Ext-2 as her statement recorded u/s- 164 CrPC. It is also disclosed that subsequent to few months of the incident she again eloped with the accused. Thereafter her marriage was socially solemnized with the accused and at present she is living with the accused as husband and wife. She disclosed that her age was above 18 years at the time of the incident.
- 8. PW-3 Dwijen Baishya, who is the father of the victim, disclosed during his evidence that about 6 months ago his daughter eloped with the accused and as they could not trace out his daughter so his wife lodged the ejahar. Thereafter police recovered the victim after 3/ 4 days of the incident and zimma of the victim was given to his wife. He also disclosed that subsequent to few months of the incident, the victim again eloped with the accused and the marriage between the victim and the accused was solemnized socially as per

Hindu rites and rituals. At present the victim and the accused are living happily as husband and wife. He revealed that at the time of occurrence age of the victim was 18 years.

- 9. It is argued that the informant instituted a false and fabricated case against the accused. It is submitted that in the ejahar allegation was brought against the accused that he kidnapped the victim.. But from the statement of the victim it is clear that the victim herself eloped with the accused and got married with him. It is submitted that without any basis the accused person has been implicated and that the accused deserves to be acquitted.
- 10. On the basis of the evidence on record let me discuss whether the prosecution has been able to bring home the charge against the accused. In the instant case, the informant, victim and father of the victim nowhere brought any allegation against the accused though in the ejahar it was mentioned that the accused kidnapped the victim. The victim in her statement recorded u/s- 164 CrPC as well as in her evidence nowhere stated that she was kidnapped by the accused. Rather she revealed that she herself eloped with the accused as she had love affairs with the accused. PW-1 the informant cum mother of the victim, PW-2 the victim and PW-3 father of the victim disclosed during their evidence that the age of the victim was 18 years at the time of alleged occurrence. It is also disclosed by the victim and her parents that at present the victim and the accused are living happily as husband and wife. It transpires from the evidence on record that the victim herself eloped with the accused as she had love affairs with the accused and at present the victim and accused are living happily as husband and wife.
- 11. Marshalling the evidence on record, it appears that the prosecution has miserably failed to establish a case u/s- 366 IPC and section 4 of the POCSO Act against the accused beyond reasonable doubt. On benefit of doubt, the accused is acquitted.

- 12. The accused Binay Das will go on a fresh bail of Rs. 10,000/-with surety of like amount u/s- 437-A IPC assuring that he will appear before the higher court as and when such court issue notice in respect of any appeal or petition filed against the judgment and order of this court.
- 13. Judgment is pronounced at the open court in presence of the accused.
- 14. Judgment written in separate sheet be kept with record.

Given under my hand and the seal of this court on this the 18^{th} day of December, 2018

Sessions Judge Nalbari

Dictated and corrected by me

Sessions Judge Nalbari

APPENDIX

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

PW-1 Purnima Baishya (informant)

PW-2 "Miss X" (victim)

PW-3 Dwijen Baishya (father of the victim)

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

Nil.

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

Ext-1 Ejahar.

Ext-2 164 CrPC Statement of the victim.

D. **Defence Exhibit.**

Nil.

Sessions Judge, Nalbari.