### IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

**SESSIONS CASE NO.** :- 17 of 2016

(Under Section 366 of the IPC, arising

out of G.R. Case No2081/15)

Present :- Sri Ashok Kumar Borah, AJS

**Sessions Judge, Sonitpur** 

**Tezpur** 

Prosecutor :- State of Assam

-vs-

Accused :- 1. Sri Nayan Das

Son of Sri Jaldhar Das,

Resident of No.1 Namonigaon Police Station – Rangapara, Dist:- Sonitpur, Assam.

Date of framing Charge :- 05/03/2016.

Date of Recording Evidence :- 28/04/2016, 28/06/2016.

28/07/2016 & 01-12-2016

Date of examination of accused u/s

313 Cr.P.C

Date of Argument :- 01-12-2016.

Date of Judgment :- 01-12-2016.

Counsel for the Prosecution :- Mr. Hari Prasad Sedai

Public prosecutor

Sonitpur.

:- 01-12-2016

Counsel for Accused :- Smt. Dulumoni Sinha, Advocate.

### **JUDGMENT**

- **1.** In this case accused Sri Nayan Das is put for trial for allegation of charge u/s 366 of the IPC.
- **2.** The facts leading to institution of this case, according to the FIR in brief is that in the morning of 06-08-2015 the informant's only

daughter, the victim was missing from their home. After vigorous search they came to know that the accused Nayan Das enticing and eloped her. But they could not trace out the exact whereabouts of them. Hence, this prosecution case. The ejahar was filed by complainant Bapi Dar on 09-08-2015 before the O/C of Rangapara Police station.

- **3.** On receipt of the aforementioned FIR, the Officer-In-Charge of Rangapara Police Station registered Rangapara P.S. Case No. 84/15 u/s 366(A) of IPC. After completion of usual investigation, the O/C Rangapara Police Station sent up the case u/s 366(A) of the IPC r/w 4 of POCSO Act against the accused Sri Nayan Das.
- **4.** On being appeared the accused person before this Court, my learned predecessor-in-Court, after hearing both parties, framed charge u/s 366 of the IPC against the accused Sri Nayan Das. Particulars of the charge were read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined as many as seven witnesses. After examination of the said seven witnesses, learned counsel for the accused submitted to close the evidence on the ground that the statement of the victim no way supported the prosecution case. Learned Public Prosecutor, Sonitpur, Tezpur has also conceded.

On perusal of the statement of the victim including the other witnesses, I think it would be futile to examine the other witnesses of this case. Hence, for the interest of justice, prosecution evidence is closed. Speedy trial is the right of the accused person. Statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.

**6.** I have also heard the argument put forward by the learned counsels of both sides.

- **7.** The point for decision in this case is that -
  - (1) "Whether on 06-08-2015, in the morning accused Sri Nayan Das induced/kidnapped the victim, with intent to compel her to marry against her will or inorder that she may be vorced to illicit intercourse of knowing it likely that she will be forced to illicit intercourse and thereby committed an offence punishable under section 366 of the IPC?

#### Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- 9. PW 1 Sri Bapi Dhar stated before the court that he knows the accused Nayan Das. His house is situated at a distance of less than 1/2 k.m. from his house. Binita Dhar is his daughter. On 6<sup>th</sup> August, 2015 in the forenoon his daughter disappeared from house. He searched for her in the neighbourhood. She was untraceable for three subsequent days. Therefore, he had lodged an ejahar at Rangapara P.S. Ext.1 is the ejahar Ext.1(1) is his signature. The said ejahar was written by a person called Bimal Das Boro. He wrote the ejahar in his words. After more than one month his daughter was recovered from the house of the uncle of the accused at Nalbari. His wife and his brother-in-law had accompanied police to Nalbari. At that time her daughter was 15 years old. He also submitted the birth certificate of his daughter to investigating officer. Ext.2 is the seizure list, Ext.2(1) is his signature. After recovery, his daughter did not state anything to him. He asked her to tell him about the facts but she refused to tell. Now his daughter is in his custody. She has just appeared in the matriculation examination.

In cross-examination he admitted that his marriage took place in the month of July, 1999. His daughter was born on 13<sup>th</sup> September, 2000. At the age of 2 years 3 months he sent his daughter to school for the first time.

10. PW 2, the victim stated that the occurrence took place when she was promoted to class VIII. The occurrence took place at about 5 a.m. on 06-08-2015. She knows the accused since she was student of class VIII. On the day of occurrence she called the accused because they had talks on this issue on the previous day. On the day of occurrence he told her he will take her to the house of his maternal uncle at Nalbari. He used to love her and she also loved her and therefore, she went with him on the day of occurrence. They spent a day in the house of his maternal uncle at Nalbari. Thereafter they stayed at a rented house at Chawk Bazar, Nalbari as husband and wife. They stayed there for the next one month. Thereafter police from Rangapara accompanied by her mother came to their rented house and took them back to Tezpur. Thereafter, she was produced before a Magistrate for recording her statement u/s 164 Cr.P.C. Ext. 3 is her 164 Cr.P.C. statement and Ext. 3(1) to 3(5) are her signatures. She was also subjected to medical examination. At the time of occurrence, she was 15 years old. Material Ext. 1 is her birth certificate.

In cross-examination she admitted that she does not remember the year when she was admitted in the nursery class in Gyandeep Bidya Niketan, Rangapara. From Nursery she studied upoto class VI when she failed in class VI final examination. Therefore she took admitted at Rangapara Bengali High School again in the year 2010. Thereafter she did not fail in class. Therefore in the year 1916 she passed matric examination. She does not know whether the transfer certificate was obtained from Gyandeep Bidya Niketan, Rangapara because her mother used to do all the steps. She also admitted that the accused did not kidnap her as she eloped with him on her own will.

**11.** PW 3 Smti Dipika Dhar who is the mother of the victim stated that the informant is her husband. She knows the accused Nayan Das. At the time of incident her daughter was only 15 years. The house of the accused is situated at a distance of less than  $\frac{1}{2}$  k.m. from their house. The incident took place on  $6^{th}$  August, 2015 her daughter

disappeared from the house. She searched for her in the neighbourhood. She was untraceable for three subsequent days. She was recovered after about one month from Nalbari. The victim was recovered from a rented house of the accused at Nalbari. The victim was handed over by the police personnel of Tezpur Police Station. The victim reported her that on the said day she went to bring flower then she went to the accused. Then police sent her daughter for medical examination and also recorded her statement through learned Magistrate. Police recorded her statement.

- **12.** PW 4 Sri Mridul Dev has stated that he knows the informant and the accused. He also knows the victim. The incident took place in the year 2015. On the day of the incident, at about 8 a.m. mother of the victim informed him that the victim was missing from their home. During investigation, police seized the birth certificate of the victim in his presence. Ext. 2 is the said seizurelist and Ext. 2(2) is his signature. I accompanied police to Nalbari at the time of recovery of the victim.
- **13.** PW 5 Smt. Lovely Sarkar, PW 6 Smt. Konika Dey and PW 7 Smt. Joba Devi no way supported the prosecution case. They stated that at the time of missing of victim, the mother of the victim reported them that her daughter was missing. They heard from the villagers that the victim girl eloped with the accused.
- **14.** These much is the evidence of the prosecution case.
- **15.** Learned counsel for the accused submitted that the prosecution has failed to prove the case beyond any reasonable doubt. Firstly, it is the victim who was in love with the accused and it her own will went with the accused as the victim herself admitted before the court. Secondly, according to the medical evidence the victim's age is above 18 years. Therefore, the alleged charge u/s 366 of the IPC cannot be attracted.
- **16.** On the other hand, learned Public Prosecutor submitted that the accused is required to be convicted as per procedure of law.

## **17.** Keeping in mind, I am going to dispose of the case as follows:

The most important witness is an abduction case is generally the kidnapped woman herself and when the victim is not forthcoming, and the other witnesses are not of a very reliable type, the prosecution evidence must be carefully scrutinized and weighed. Besides, law is well settled that the evidence of the woman should be taken with caution.

Here in the present case, the victim (PW2) herself give goodbye to the prosecution case by stating that she used to love the accused and the accused also loved her, therefore she went with the accused on the day of occurrence at her own will. They stayed a day in the house of his maternal uncle at Nalbari. Thereafter they stayed at a rented house at Chawk Bazar, Nalbari as husband and wife. They stayed there for the next one month. Thereafter police from Rangapara accompanied by her mother came to their rented house and took them back to Tezpur. In her statement u/s 164 Cr.P.C. she also stated that both the accused and she were in love and initially when Nayal went to Delhi to do some work she could not bear the situation as she was in deep love with the accuse. Then she herself rang Nayan and called him to Rangapara. She also went to Rangapara. The matter came to their parents. In the month of August at the morning time, she herself rang to Nayan. On 06-08-2015 she without informing anybody eloped with Nayan. They went to Baihatachariali in a hired car, then to the house of maternal uncle of Nayan at Nalbari. They performed marriage at the Mandir. After marriage they lived in a rented house as husband and wife. They lead a peaceful marital life for one month eleven days. Therefore, the victim no way supported the prosecution case. From the statement of the victim, it appears that there is no any element that (i) kidnapping by the accused or abduction by him; (ii) that the person so kidnapped or abducted is a woman; (iii) that the accused then intended, or knew that it was likely, -

- (a) That such woman might or would be compelled to marry a person against her will, or
- (b) That she might or would be forced or seduced to illicit intercourse."
- 18. Now, the question comes as to her age. According to her at the relevant time she was 15 years of age. The incident took place on 06-08-2015 the victim was examined on 16-09-2015 that was after about one month ten days. Doctor after thorough ossification test remarked that the victim is above 18 years. In the case of Smt. Kavita Vs. State of Uttar Pradesh and others on 13<sup>th</sup> April, 2012 the Division Bench of Hon'ble Allahabad High Court held that –

"However, we are conscious of the fact that there might be some dispute regarding the petitioner being aged below 18 years or more than that age, on the date of occurrence, but we have considered the age recorded in her school records which was 15-04-1994. We do not have any hesitation in recording that the lady, Smt. Kavita is aged about 18 years of age. The medical assessment of age may also not be conclusive. The determination of age is always in the realm of being the estimated age on account of scientific exercise. This is the reason that the Supreme Court in the case of Jaya Mala V. Home Secretary, Government of Jammu and Kashir, reported in AIR 1982 SC 1297 had observed that if the age has been determined by the doctor medically then three years have to be added to such assessed age. That Judgment has consistently been followed in the cases of the present nature to give weightage to assess the age of the victim so as to appreciating the evidence of minority/majority of the victim in favour of the accused. In addition to that, it is trite that if the girl who is at the verge of majority, walks out of her parent's house to go with any man, then it could not be a case of kidnapping as the same could not be said to be an act of taking away or enticing away a woman below 18 years of age. "

**19.** In the instant case, it is the doctor who reported that at the relevant time the victim was 18 years of age. Besides, there is no element against the accused as to any of the alleged charge.

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20. Considering the conduct and act done by the victim coupled

with the aforesaid mandate, we can presume that the victim cannot

said to be a minor at the relevant time of occurrence.

21. In view of the aforesaid discussions based on the evidence and

materials on record, I have come to the conclusion that the

prosecution has failed to prove the charge u/s 366 of the IPC beyond

any reasonable doubt against the accused. As such, the accused is

acquitted from the charge and set him at liberty forthwith.

22. The liability of the bailor is hereby discharged.

Send back the GR Case record being No. 2081/15 to the

learned committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the 1<sup>st</sup> day

of December, 2016.

(A.K. Borah) **SESSIONS JUDGE,** 

**SONITPUR: TEZPUR** 

Dictated and corrected by me

(A.K. Borah) **SESSIONS JUDGE,** 

**SONITPUR :: TEZPUR** 

Dictation taken and transcribed by me:

Smt. R. Hazarika, Steno

# **APPENDIX**

## **Prosecution Witness**

1. Prosecution Witness No.1 :- Sri Bapi Dhar, informant.

2. Prosecution Witness No.2 :- Victim.

Prosecution Witness No.3 : Smt. Dipika Dhar,
 Prosecution Witness No.4 :- Sri Mridul Dev

5. Prosecution Witness No.5 :- Smt. Lovely Sarkar.

6. Prosecution Witness No.6 :- Smt. Konika Dey

7. Prosecution Witness No.7 :- Smt. Joba Devi @ Deb.

## **EXHIBITS.**

Exhibit 1 : FIR

Exhibit 2 : seizurelist.

Exhibit 3 : 164 Cr.P.C. statement of the victim

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR: TEZPUR