

IN THE COURT OF SESSIONS JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,
Sessions Judge,
Barpeta.**

**JUDGMENT IN SESSIONS CASE NO. 189 OF 2019
(G.R.No.- 3288/2019)
Kalgachia P.S. Case No. 513 of 2019**

Committing Magistrate :-

***Sri Motilal Das,
The then Addl. CJM, Barpeta.***

State of Assam

-versus-

**Mokibul Islam
S/O Iman Ali,
Resident of Dewkura,
P.S. Kalgachia,
District – Barpeta, Assam**

..... Accused.

APPEARANCES :

**For the State : Mr. Lalit Ch. Nath, learned
Public Prosecutor, Barpeta.**

**For the Accused : Mr. Shaib Uddin Ahmed,
learned Counsel, Barpeta.**

CHARGE FRAMED UNDER SECTIONS 366 (A) of IPC

***Date of Charge : 14.08.2019,
Date of Prosecution evidence : 30.08.2019; 24.09.2019
& 03.12.2019
Date of Statement recorded
under Section 313 CrPC : 17.12.2019,
Date of Argument : 24.01.2020,
Date of Judgment : 06.02.2020.***

J U D G M E N T

1). The prosecution case, in brief, is that Kalgachia P.S. Case No.

513 of 2019 under Sections 366(A)/34 of IPC was registered on the basis of a F.I.R. lodged by Abida Khatun, mother of the victim.

In the aforesaid **F.I.R.** (Exhibit-2) dated 25.06.2019, the informant Abida Khatun (P.W.2), who is the mother of the victim girl alleged, *inter alia*, that on 20.06.2019 at about 7:00 PM, the accused person namely Mokibul Islam alongwith others kidnapped her victim daughter when she (victim) went to wash her leg near tube-well which was at a little distance from her (P.W.2) house. On search, they got the information that accused kept the victim in his house. It is alleged in the FIR that accused person proposed her (victim) to marry and allured her to do illicit relation when she went to her school.

On receipt of F.I.R., the Officer-in-charge of Kalgachia Police Station registered a case being **Kalgachia P.S. Case No 513/2019 under Sections 366(A)/34 of the Indian Penal Code.**

During the course of investigation, the victim girl was sent for her medical examination, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the above named accused **Mokibul Islam under Section 366(A) of IPC** vide charge sheet **No.199/2019**, dated **10.07.2019**.

2). On receipt of case record alongwith the case diary, the accused was summoned. On appearance of accused, copy was furnished to him. In due course, learned Addl. CJM, Barpeta committed the case to this court, the same being exclusively triable by the court of Sessions.

3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charge was framed by the undersigned against the accused under **Sections 366 (A) of IPC**, which was read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **05 [five]** number of witnesses including the victim and informant were examined on behalf of the prosecution to prove the charge under **Section 366 (A) of IPC against the accused.**

On closing of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent and stated in his statement that he did not bring the victim to his house. He was falsely implicated in this case. Accused denied to adduce evidence in his defence.

5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Shaib Uddin Ahmed**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Section 366 (A) of IPC.**

6). Now the point for determination before this court are as follows -

(i) Whether the accused on 20.06.2019 at about 7:00 PM within the jurisdiction of Kalgachia P.S., District Barpeta, kidnapped Masuma Parbin, aged about 16 years, minor daughter of informant Abida Khatun, from her home, with intent 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 and thereby committed an offence punishable under Section 366 (A) of IPC ?

DISCUSSION, DECISIONS AND REASONS THEREOF :

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Victim [P.W.1] deposed that her mother lodged this case. She

don't know the accused person by name, but since last 6 months he used to follow her when she goes to her school and he used to propose her. Accused also threatened her that he will kidnap her if she do not agree to his proposal. He also told her that he will do bad work with her. She narrated the incident to her mother.

On 20.06.2019 at about 7:15 PM, she was at her house and her mother was busy in doing kitchen work. When, she went to wash her face and hand near the tube-well, which was 20/30 hands away from her house, then accused person alongwith Sahadat Ali and Iman Ali, kidnapped her. Accused threatened her to kill if she raises hue and cry. Then, they took her to the house of accused Mokibul Islam and accused confined her at his house. P.W.1 stated that she did not allow her to come out from his house. She stayed in the house of accused for 7 days. Accused did not indulge in physical relation with her. She slept with the mother of accused during night.

On 26.06.2019 police recovered her from the house of accused. Police examined her and sent her to doctor for her medical examination, but she refused to undergo medical examination as accused did not do anything bad with her. Police got her statement recorded u/s 164 CrPC by learned Magistrate. Ext.1 is her statement recorded under Section 164 CrPC and Ext.1(1) & 1(2) are her signatures. She gave her statement before the learned magistrate voluntarily and nobody tutored her.

In her cross-examination, P.W.1 has stated that the house of accused is at little distance from her house. His house is on the other side of the road. As accused did not allow her to come out, so she could not escape from the house of accused.

Police took her statement at thana. She told before police in her statement that she loved the accused since class VIII, as accused threatened her. She also told before police that as her father arranged her marriage with a different boy forcefully, so she left her house and voluntarily went to the house of accused at about 7:15 PM of 20.06.2019. Thereafter, she gave her statement before the learned Magistrate. She also told before learned Magistrate that she loved the accused for last 3 years and he also loves her and she left her house with him on 20.06.2019 as her father arranged her marriage with a different

boy. She also state before learned Magistrate that accused did not kidnap her.

She denied that she had deposed falsely before the Court; that he had deposed before the Court on being tutored by someone else.

8). Abida Khatun [P.W.2] who is the informant of this case has deposed that victim is her daughter and she knows the accused person.

P.W.2 stated that before 6 months of lodging this case, accused used to follow her victim daughter while going to school and proposed her. Accused also talked to her in indecent manner.

P.W.2 further stated that on 20.06.2019, her victim daughter went to wash her face and hand near the tube-well, which was at little distance from her house. They do not have tube-well at their house. When, she did not return even after passing of 25 minutes then she searched for her, but did not find her. Next day, she heard from other people in a shop that her victim daughter was seen in the house of accused. Then, she reported the matter to the headman of their society. Leading citizen of the public took signatures of mine and her husband, but they could not recover her victim daughter. Then, she waited for 2/3 days hoping for her recovery. Then, on 25.06.2019, she lodged the ejahar. Ext.2 is the ejahar and Ext.2(1) is her signature. Police also brought the accused to thana. Victim narrated the incident to her. She also told her that accused did not allow her to come out from his house and confined her there.

In her cross-examination, P.W.2 has stated that the house of accused is near her house. She came to know from the roadside people that victim is in the house of accused. She did not see the incident herself and nobody nearby her house knows about the incident.

P.W.2 denied that victim went to the house of accused voluntarily as they wanted to get her married with other boy forcefully; that she had deposed falsely before the Court.

She did not go to the house of accused to bring back her victim daughter.

9). **Wajed Ali [P.W.3]** has stated that he knows the accused person of this case, who resides near his house. He knows the informant as well as victim of this case. Incident took place before 3-4 months ago.

P.W.3 stated that police came to the house of accused. So, he went there. He found the victim at the house of accused. Police examined him and he did not ask the victim anything.

P.W.3 heard that she failed in class X. The parent of the victim wanted to give her marriage so she went to the house of accused. Accused did not bring her.

In his cross-examination, P.W.3 has stated that the house of victim is adjacent to the house of accused. Victim went herself to the house of accused. Accused did not confine her in his house.

10). **Kurban Ali [P.W.4]** has stated that he knew the accused, informant and victim of this case. Incident took place before 5-6 months ago. He was at his house at the time of incident.

P.W.4 stated that at about 9.00-10.00PM, the father of the accused namely Iman Ali called him to his house and he went there. He found many people there. He also see the victim girl at the house of accused. Iman Ali told him that victim has come to his house. On being asked victim told him that she loves accused and has come to the house of accused as her parent wanted to marry her other person. Then, they persuaded her to go to her house but she refused to go there. After that, she was kept to the zimma of mother of accused and her aunty (Mahi) in the night. Next day morning, they handed over the victim girl to her parent but she returned back to the house of accused on the same day. As she was minor, they informed the police and police took her with them.

In his cross-examination, P.W.4 has stated that the house of accused is adjacent to the house of victim. Victim went to the house of accused voluntarily. Accused did not force her to go with him.

11). **Abdul Awal [P.W.5]** has stated that he knew the accused person, informant and victim of this case. Incident took place more than 3

months ago. He came from market at about 7.00-8.00 AM and saw police in the house of accused. He saw victim near the police. Victim told that she had been threatened by her family members and she loves accused. Police took the victim girl with them.

In his cross-examination, P.W.5 has stated that the house of accused is adjacent to the house of victim. Victim went to the house of accused voluntarily. Accused did not force her to go with him and stay at the house of accused. Police examined her.

P.W.5 denied that he did not state before police that victim told that she had been threatened by her family members; that ha had given false evidence before the Court.

12). From a close perusal of the statement of the victim (P.W.1), who is star witness of this instant case, has deposed in her evidence before Police that she had love affairs with the accused person prior to the incident and she fled away with accused from her house voluntarily out of love affairs. P.W.1 has stated that her father arranged her marriage with a different boy forcefully, so she left her house and voluntarily went to the house of accused on 20.06.2019. The victim also stated almost the same story in her statement (Ext.1) recorded by learned Magistrate under Section 164 CrPC. She clearly deposed there that accused did not kidnap her. She willingly went to house of accused.

Moreover, her mother (P.W.2) who lodged this case has stated that she came to know the alleged incident from the roadside people and she did not see the incident herself. Neighbouring people of her house did not know the alleged incident.

Thus, it is crystal clear that accused did not kidnap her. This case was lodged with a false story by P.W.2 against the accused person.

Further, independent witnesses P.W.3, P.W.4 and P.W.5 who are from the same village deposed clearly in their cross-examination that victim went herself to the house of accused and he did not confine her in his house. Moreover, there is no allegation of sexual intercourse by the accused with victim.

From the above evidence, it is crystal clear that the victim alongwith the other independent witnesses did not support the alleged incident, as per prosecution story. Prosecution side has also failed to prove the age of victim and there is no consistency in the statement of victim in her statement given in Court with her statement given before Police and learned Magistrate.

13). In the case of ***Utpal Mishra -versus- State of Assam, 2015 [2] GLR 542***, it has been held by the Hon'ble Gauhati High Court in **Para No.-22** of its judgment as follows:

PARA NO-22

The principals of criminal jurisprudence are that :

- a) There should be legal, reliable and unimpeachable evidence to prove that the prosecution story "must be true" rather than "may be true";**
- b) It is settled principle of criminal jurisprudence that more serious the offence, stricter is the degree of proof;**
- c) Standard of proof in a criminal case: burden is always on the prosecution and the same never shifts. Prosecution can never derive any benefit from the weakness of the defence version;**
- d) Holding a witness "implicitly reliable" leads to denial of judicial consideration of the infirmities in evidence;**
- e) Defence witnesses can not be disbelieved by relying on conjectures and surmises: they are entitled to equal treatment with those of the prosecution;**
- f) If two views are possible in a criminal case, the view favourable to the accused should be accepted;**

g) The averment/allegation with respect to the commission of rape has got to be clear and specific for basing a finding of guilt rather than being just inferential. The evidence/averments/allegations must fulfill the ingredients of offence of RAPE as defined under Section 375 of IPC;

h) The prosecution must prove the case in the manner in which they are alleged to have caused. It is elementary where the prosecution has a definite and positive case, it must prove the whole of that case;

i) In a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such situation.

14). Hence, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion.

15). Consequently, the charge under **Sections 366 (A) of IPC** is held to be not proved against the accused Mokibul Islam beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused **Mokibul Islam** is acquitted on benefit of doubt under **Sections 366 (A) of IPC.**

16). In the result, accused **Mokibul Islam** is **acquitted** of the charge under **Sections 366 (A) of IPC**, levelled against him, on benefit of doubt.

His bail bond stand discharged.

17). Given under my hand and seal of this Court on this **06th day of February, 2020.**

Dictated & corrected by me.

Sd/-

Sessions Judge, Barpeta.

A P P E N D I X

(A) **Prosecution witnesses:**

P.W.1	= Masuma Parbin, the victim,
P.W.2	= Abida Khatun, the informant,
P.W.3	= Wajed Ali,
P.W.4	= Kurban Ali,
P.W.5	= Abdul Awal.

(B) **Prosecution Exhibits:**

Ext.1	= Statement of the victim recorded under Section 164 CrPC,
Ext.1(1) & 1(2)	= Signature of the victim,
Ext.2	= Ejahar,
Ext.2(1)	= Signature of Abida Khatun,

(C) **Defence witnesses:** Nil.

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-

Sessions Judge, Barpeta.