

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 183 of 2018

Under section 366 (A) of I.P.C
(Arising out of G. R Case No. 2887 of 2014)

State of Assam

-Vs-

1. Md. Jamaluddin

...Accused Person

**Present: Smti I. Barman,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah,Public Prosecutor

For the accused : S. Begum ,
Advocate.

Date of Argument : **22-05-2019**

Date of Judgment : **22-05-2019.**

JUDGMENT

1. The prosecution case against the accused person as projected in the FIR , in brief is that on 02-12-2014 at about 10 AM accused Md. Jamaluddin had abducted the informant's 14 years old daughter/victim forcefully from his house.

2. On receipt of the ejahar from the father of the victim (PW 1), the I/C of Borghat Police Out Post made the GDE No. **34** dated **03-12-2014** and forwarded the same to the O/C Tezpur PS for registering a case and started investigation of the case. Accordingly, the O/C Tezpur PS registered the case being Tezpur P.S. Case No. 1392/14 u/s 366 (A) of the IPC. During investigation, the Investigating Officer recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C. and on completion of investigation having found materials submitted chargesheet against the accused Md. Jamaluddin u/s 366 (A) of the IPC.

3. On appearance of the accused person, Learned Judicial Magistrate, 1st Class, Tezpur vide order dated 30.08.18 furnishing copies of the documents as required under section 207 Cr.PC, committed the case to the court of Session, being the offence u/s 366 (A) IPC exclusively triable by the court of Session.

4. Accordingly, on being appeared the accused person before this Court, my learned predecessor, after hearing both parties, framed charge u/s 366 (A) of the IPC against the accused Md. Jamaluddin and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed to be tried.

5. To substantiate the case, prosecution examined as many as five numbers of witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations leveled against him and examined none.

6. I have also heard the argument of learned counsel of both sides and also have gone through the evidence on record.

7. The point for decision in this case is that -

(1) Whether the accused Md. Jamaluddin on 02-12-2014 at about 10.00 AM, at Samdhara, Tezpur under Tezpur Police station, induced the victim under the age of 18 years to go with him with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person and thereby committed an offence punishable under section 366 (A) of the IPC?

Discussion, Decision and reasons thereof:

8. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.

9. PW 1 the father of the victim deposed that on the day of incident after returning home from work, he came to know that accused Jamaluddin had taken his victim daughter aged about 14 years. Then he lodged the FIR vide Ext.1. On the next day of the incident police recovered the victim from Dimapur.

During cross, he stated that after some days of recovery of the victim, she again went with the accused, got married with him and since then she is residing with the accused peacefully with two children. He admitted that only on assumption he said her age as 14 years and lateron he knew that out of love affair, the victim went with the accused on her own accord.

10. PW 2, victim the star witness deposed that out of love, she eloped with the accused to Dimapur and after her recovery from Dimapur, she again went to the company of the accused, got married

with him and out of their wedlock two children were born. She proved her statement u/s 164 Cr.PC as Ext.2.

11. Victim's mother PW 3 categorically stated that accused Jamaluddin had taken away her 14 years victim daughter and after 2/3 days police recovered the victim from Dimapur who after recovery told that out of love she went with the accused.

12. As far as **PW4** Md Sahabuddin is concerned, accused had love affairs with the victim and out of love accused Jamaluddin had taken the girl to Dimapur. Then he alongwith his brother and father of the accused brought the victim back from Dimapur but after some days she again eloped with the accused and still residing together as husband and wife with two children.

13. **PW5** Khairul Islam the brother of PW4 testified that knowing that the accused had taken away the victim to Dimapur, he alongwith his brother Sahabuddin(PW4) and father of the accused went to Dimapur and brought back the victim girl with the accused. He also stated that victim is now residing with the accused and they had two children.

14. In the case, parents of the victim in diposition claimed the age of the victim as 15 years but in cross examination they clearly stated that only on assumption they stated her age as 15 years. Victim remained silent regarding her age. On the other hand the victim did not allow to examine her. In the above evidence regarding age of the victim let us see other facts and circumstances of the case.

15. On reading the evidence of the prosecution evidence including the victim and her parents, it reveals that the victim out of love, went to the company of the accused and after recovery from Dimapur, though she was handed over to her parents but after some days, she again eloped with the accused, got married with him and out of the wedlock two

children were born to them. There is complete absence of evidence on record to show that the accused by inducing had taken the girl with him. The evidence of the victim clearly shows that out of love she voluntarily went with the accused. She was not under threat or inducement in going with the accused. No force was used on the part of the accused. The evidence of the PWs does not suffer from any ambiguity. The cogent evidence is that the victim without any enticement went with the accused and at that time or prior to that no role was played by the accused at least. No adverse evidence as regards to the role of the accused is available in the evidence on record. After going with the accused for second time, she voluntarily married with him and out of their said wedlock, two children were born and she is still residing peacefully with the accused. Though the victim's parents alleged that the accused had abducted the victim, but the victim negates the same. Her evidence shows that she went with the accused on her own accord and submitted herself to the accused. The clear evidence of the victim shows that it is not a case of abduction, rather being in love with the accused, she was a consenting party in going with the accused and marrying him willingly. She appears to have taken a voluntary part in the entire episode. In the above, I find that the ingredients of section 366 (A) is missing in the case.

16. In the above, facts and circumstance of the case, I unhesitatingly hold that the prosecution failed to prove the guilt of the accused beyond any shadow of doubts. Hence, accused Jamaluddin is acquitted from the charge u/s 366 (A) IPC and set him at liberty forthwith. His bail bond shall extended till next six months in view of section 437 A of Cr.PC.

- 17.** Send back the GR case to the learned committal court.
- 18.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **22nd day of March, 2019.**

(I.Barman)

Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur.

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- Father of the victim.
2. Prosecution Witness No.2 :- The Victim.
3. Prosecution Witness No.3 : Mother of the victim.
4. Prosecution Witness No.4 :- Sahabuddin.
5. Prosecution Witness No.5 :- Khairul Islam.

EXHIBITS.

- Exhibit 1 : F.I.R.
- Exhibit 1 : Statement of the victim u/s 164 Cr.P.C.

(I.Barman)

**SESSIONS JUDGE,
Sonitpur, Tezpur**