

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

PRESENT : **Sri A. Borthakur**
Sessions Judge, Sonitpur
Tezpur

JUDGMENT IN SESSIONS CASE NO. 310 OF 2012

Under Sections 366/376/34 of the Indian Penal Code
(Arising out of G. R. Case No. 385 of 2011)

State of Assam

–Versus–

Md. Jaban Ali
Son of Late Jahur Ali
Resident of Kamar Chuburi
Police Station – Thelamara
District – Sonitpur, Assam

[Committed by Sri K. K. Pathak, Judicial Magistrate, 1st Class, Tezpur, Sonitpur]

A P P E A R A N C E

For the State	:	Sri H. P. Sedai Public Prosecutor Sonitpur District
For the Accused person	:	Sri B. Borthakur Advocate
Date of framing of charge	:	17-12-2012
Date of prosecution evidence	:	10-02-2013, 21-03-2013 03-07-2013, 01-08-2013, 18-09-2013 & 05-02-2014
Date of Argument	:	12-05-2014
Date of Judgment	:	30-05-2014

J U D G M E N T

The accused Md. Jaban Ali and the victim are neighbours. One day, on the request of the accused, the victim, a major girl, accompanied him and moved in bicycle and public bus, from place to place, along with another accused, namely, Md. Narjul (since absconding), who allegedly committed rape on her. The victim neither complained nor raised alarm, at any point of time.

PROSECUTION CASE :

2. The prosecution case, in brief, as unfolded in the ejahar, may be, stated as follows :

One Mr. 'X' lodged an FIR, on 02-03-2011, before the Officer-in-charge of Thelamara Police Station alleging that on 01-03-2011, at about 7 p.m., the accused Md. Jaban Ali taking advantage of his absence at home, kidnapped his daughter Ms.'Y', aged about 14 (fourteen) years, from home.

INVESTIGATION :

3. Based on the above FIR, Thelamara Police Station Case No. 19/11, u/s 366 A of the IPC, dated 02-03-2011, was registered and the Officer in-charge SI Amiruddin Khan endorsed the case to ASI Bhaba Kanta Nath to take preliminary steps.

4. In course of preliminary investigation, ASI Bhaba Kanta Nath, the IO, visited the place of occurrence, drew up a sketch map thereof, recorded the statement of the witnesses, recovered the victim girl, sent her to Kanaklata Civil Hospital, Tezpur for medical examination and to Tezpur Court to get her statement recorded u/s 164 CrPC. The IO arrested the accused and on completion of preliminary investigation, he handed over the case diary to the officer in charge of Thelamara PS, who, based on the case diary, submitted the charge-sheet u/s 366/34 of the IPC against the accused persons.

TRIAL :

5. Since the offence u/s 366/34 of the IPC is exclusively triable by the Court of Sessions, by order, dated 28-09-2012, passed, in GR Case No.385/2011, the learned Judicial Magistrate, 1st Class, Tezpur, after observing necessary formalities, u/s 209 of the CrPC, committed the case of Md. Jaban Ali to this Court of Sessions for trial. The case against the other accused person, namely, Md. Narjul was filed on 19-09-2012. In order to maintain confidentiality, the name and

address of the victim and her relatives, are not disclosed in course of this judgment.

6. On perusal of the evidence, available on the case diary and hearing the learned counsel of both sides, formal charges, u/s 366/376/34 of the IPC, were framed vide order, dated 17-12-2012. The charges were then read over and explained to the accused to which, he pleaded not guilty.

7. In order to prove the charges, levelled against the accused, the prosecution has examined as many as 8 (eight) witnesses, while the defence cross-examined 7 (seven) witnesses out of them. The accused declined to examine any witness in defence.

8. After closing the evidence of the prosecution side, the statement of the accused was recorded u/s 313 CrPC, vide order, dated 19-02-2014. The accused pleaded not guilty and declined to examine any witness in defence.

9. I have heard the argument advanced by the learned Public Prosecutor Sri H. P. Sedai and Sri B. Borthakur, learned defence counsel. I have gone through the entire evidence, proffered by the prosecution and the statement of the accused, recorded u/s 313 CrPC.

POINTS FOR DETERMINATION :

10. From the evidence on record and on the basis of oral submissions of the learned counsel for both the sides, the following points emerged for determination :

(1) Whether the accused, on 01-03-2011, at about 7 p.m., in village Kamar Chuburi, under Thelamara PS, kidnapped / abducted Ms.'Y' with intent to compel her to marry him against her will or to force her to illicit intercourse with him ?

(2) Whether the accused on or about the same day, after kidnapping / abduction committed rape on Ms 'Y' ?

THE DECISION AND THE REASONS THEREFOR

11. Since above points are inter-wined and for convenience, both the points one taken together for consideration.

LEGAL POSITION

12. To bring home an offence u/s 366 of the IPC, the prosecution is to prove (a) that the accused kidnapped as understood in Section 360 or 361 IPC or abducted the victim as understood in Section 362 IPC ; (b) that the victim was a female ; (c) that the accused during the kidnapping or abduction had intention or knew it likely that (i) such woman might or would be forced to marry a person against her will or (ii) that she might or would be forced or seduced to illicit intercourse, or (iii) by means of criminal intimidation or otherwise by inducing a woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

13. Section 375 of the IPC defines the offence of 'Rape' and Section 376 of the IPC prescribes the punishment for the offence. In order to bring home the offence of 'rape', the prosecution must prove, (i) that sexual intercourse by a man with a woman, (ii) that sexual intercourse was under the circumstances falling in any of the seven clauses of Section 375 of the IPC. Thus, the basic ingredients of the offence of rape u/s 375 of the IPC are, (a) that the accused committed sexual intercourse with a woman ; (b) that he did so against her will or without her consent ; (c) if there was consent it was obtained by putting her or any person in whom she is interested in fear of death or of hurt ; (d) that when consent was taken under the deceitful belief that accused was her husband ; (e) if consent was taken when the victim was incapable of understanding its nature and consequences due to unsoundness of her mind or intoxication or administration of any stupefying drug or substances by the accused, either personally or through some agent ; (f) when consent was given by the victim under 18 years of age ; (g) when the victim is unable to communicate consent and (h) that when the accused had sexual intercourse with his wife under 15 years of age. It has been further provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact be regarded as consenting to the sexual activity.

14. On the other hand, Section 34 IPC lays down that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner, as if it were done by him alone. What is essential is participation in action. The element of common intention prescribes the condition under which one is criminally liable for acts of other actors.

EVIDENCE :

15. **PW-1, Mr. 'X', is the father of the victim.** His version is that the accused Md. Jaban Ali is known to him. The occurrence took place on a day, at about 7 p.m., at his house, about 1 ½ years back. At that time, he was at

Thelamara Centre. At the time of occurrence, his wife Mrs. 'Z' and daughter Ms. 'Y' were at home. From the villagers, he learnt that his daughter Ms. 'Y' had gone to watch theatre along with the accused without informing him and his wife. They searched to locate his daughter, but she could not be located. In the meantime, he learnt that the accused handed over his daughter to one Najrul of Nagaon for the purpose of marriage, on obtaining Rs.50,000/-. In the night of the occurrence, he lodged an ejahar at Thelamara PS. After about one month, his daughter was recovered from the house of the accused Najrul by police. Thereafter, the police handed over his daughter to him, through Court. On enquiry, his daughter told him that the accused Jaban Ali sold out her to Najrul on receipt of Rs.50,000/-. Since the time of recovery, his daughter Ms. 'Y' has been residing with him. In connection with kidnapping of his daughter, he filed an ejahar at the Thelamara Police Station. He has recognized Ext.1, the ejahar.

16. **In cross-examination**, he has stated that he has filed the case against the accused persons, namely, Jaban Ali and Najrul. The house of Jaban is situated crossing three houses from his house. He does not know the accused Najrul. He learnt about the incident of kidnapping from his wife. Before the incident, Najrul was not known to him. He has denied the defence suggestion that he did not state before the Police that after about one month from the day of incident of kidnapping, his daughter was recovered by police. He did not know that his daughter Ms. 'Y' had been in love with the accused. He forgot the date of occurrence. On the following day of the incident of kidnapping, he lodged the ejahar. At the time of recovery of his daughter, from the house of the accused Najrul, situated at Besera, Morigaon, he was present along with the police. He did not see the act of kidnapping of his daughter by the accused. At the time of occurrence, Ms. 'Y' was not studying in school. She read upto class V and left the school, about ten years before the occurrence. At the time of kidnapping of his daughter, his wife was at home. At the time of departure Ms. 'Y' told his wife that she was going to watch theatre at Thelamara. He has stated that one Rastu wrote the ejahar as per his narration.

17. **PW-2 Md. Amiruddin**. His evidence is that he knows the accused Md. Jaban Ali and also knows the victim Ms. 'Y'. The occurrence took place, on a day, about 2 / 2 ½ years ago. On the day of occurrence, he was at his home. The house of the victim girl is situated crossing two houses from his house. At about 7 p.m., he heard the mother of the victim Ms. 'Y' raising hue and cry at her home. On hearing hue and cry, he went to the house of the victim girl. The victim's mother Mrs. 'Z' told him that the accused Jaban Ali took away her daughter Ms. 'Y' to Thelamara Centre to watch drama, informing her mother that a drama was going to be staged at that place. Later on, she learnt that there was no such drama was staged at Thelamara Centre and that moved the family members of the victim girl to raise 'hulla' at home. The victim girl did not return home. The

family members of the victim looked around to locate Ms. 'Y', but she could not be located. On the following day, the father of the victim Jamaluddin lodged an ejahar with Thelamara PS. After a lapse of about a month, they learnt that Ms. 'Y' was at the house of accused Najrul (proclaimed absconder) at Nagaon. On receipt of the information from reliable source, the police accompanied by parents of the victim girl went to Nagaon and recovered Ms. 'Y' from the house of Najrul and brought to Tezpur. On enquiry, Ms. 'Y' told him that the accused falsely stating her to show drama at Thelamara Centre took away her to Nagaon and detained in the house of Najrul.

18. In cross-examination, he has stated that the original house of accused Najrul is situated at Dhing, district- Nagaon. He has denied the defence suggestion that Najrul occasionally visited their village to deal in white fish. Police did not record his statement.

He denied the defence suggestion that he stated before the police, as follows :

“ Md. Najrul is not a resident of our village. His house is situated at Basamari, under Dhing Police Station. He dealt in white fish in our village for a long period.”

He admitted that he did not state before the police that Mrs.'Z' told him that Ms. 'Y' was taken by the accused to Thelamara stating before him to show drama at Thelamara Centre and that thereafter, she was taken to the house of Najrul at Dhing, Nagaon district. He denied that the accused did not kidnap victim Ms. 'Y'.

19. **PW-3 Ms. 'Z', the mother of the victim.** Her evidence is that she knows the accused Md. Jaban Ali. The occurrence took place on a day, about a year ago. On the day of occurrence, she and his daughter Ms. 'Y' were at home. Her husband Mr. 'X', was away at Thelamara Centre. At about 7 p.m., while she was cooking meal, the accused visited their house twice and the accused requested her to allow him to take her daughter to watch drama at Dhekiajuli. She asked her daughter not to accompany him, but without paying heed to her advice, she accompanied the accused. At about 8 p.m., when her husband returned and enquired her about Ms. 'Y', she informed him that she went with the accused to watch drama. Till late in the night, both the accused and her daughter did not return home, and as such, her husband lodged an ejahar at Thelamara Police Station. For about one month, her daughter could not be found out, despite vigorous search being made. Her husband accompanied by police went to Nagaon and recovered Ms. 'Y' from the house of the absconder accused Nazrul of Besimari under Dhing Police Station. At present Ms. 'Y' is living with

her at their house. In connection with the incident, no village 'Bichar' was held. At the time of occurrence, Ms. 'Y' was aged above 18 years. Ms. 'Y' was medically examined and her statement was recorded by a Magistrate.

20. **In cross-examination**, PW-3 has stated that accused Jaban Ali is her neighbour. They have 4 kathas of land, which was originally belonged to the father of the accused. She has admitted that Jaban Ali requested them to return the plot of land on which their house is standing, but they refused to return. She has denied the defence suggestion that on several occasions quarrel broke out between them and the accused Jaban Ali, over the possession of the plot of land on which their house is standing. She has admitted that her daughter Ms. 'Y' and Nazrul were arrested by police and that both were arrested on the basis of the ejahar, they lodged. She has stated that Nazrul is a resident of Nagaon and he deals in fish selling. She has denied the defence suggestion that the absconder accused Nazrul stayed in their house for about 2/3 months, in connection with business of fish selling. She has denied the defence suggestion that the accused Jaban Ali did not kidnap her daughter, as alleged and that they have filed the instant false case against the accused with intent to grab the land belonging to the accused.

21. PW-4 Dr. Tutumoni Handique, the doctor, has deposed that on 09-05-2011, she was attached to Kanaklata Civil Hospital, Tezpur as M&HO-I. On that day, in connection with Thelamara PS Case No. 19/11, she examined Ms. 'Y', being identified and escorted by woman Constable Chitralkha Das.

On examination, I found as follows :

On Examination :

Height - 146 cm

Weight - 37 Kgs

Built - average

Gait - Normal

Teeth - 8/8 8/8

Identification mark - Mole present in left cheek.

Well dressed.

Secondary sexual characters are well developed.

Hymen absent.

No injury seen in her private parts or recent sexual intercourse.

Her vaginal smear could not be taken as menstrual bleeding was present. LMP 08-05-2011.

X-ray done at Assam X-ray Clinic and Laboratory on 09-05-2011 by Dr. P.K. Barman, Radiologist.

OPINION :

(1) Age of the person under investigation appeared to be just above 18 years.

Urine for HCG – Negative.

Enclosure :

- (i) Urine for HCG
- (ii) X-ray report and paltes.

OPINION :

Age of the victim under investigation is just above 18 years.

There is no mark of violence on her private as well as other parts of the body.

There is no positive finding suggestive of rape.

PW-4 (the doctor) has recognised Ext. 2, the Medical Report, where Ext. 2(1) is her signature.

22. **PW-5 Ms. 'Y', the victim girl.** Her evidence is that the accused Md. Jaban Ali, was known to her. The occurrence took place, on a day, about 2 / 2 ½ years back. On a day, at about 7 p.m., she was at home along with her mother Mrs. 'Z', and was busy in cooking meal for the night. The accused came to their house and requested her to accompany him to watch movie. She repeatedly declined to accompany him to the cinema hall to watch movie. However, ultimately, on the repeated request of the accused, she agreed to accompany him and accordingly, the accused took her to Keherukhanda village, on a bicycle. On reaching Keherukhanda, the accused called one Narjul Islam, who was not known to her earlier. The accused handed over her to Narjul Islam and then the accused left the place. Thereafter, Narjul took her forcibly to Dangabasti, situated a few miles away from the place, by hiring a Maruti Car. Narjul kept her in the house of his grand-father Miraj Ali and confined her for three days. Then, she was taken to Biskuti village in Darrang district, where she was confined for about one week, by a Winger public bus in the house of Narjul's elder sister. Thereafter, she was brought back to the house of Narjul's brother Moidul Islam in Nagaon district. Narjul accompanied her throughout the journey from Tezpur to Nagaon. In all the places, Narjul kept and behaved her like his wife. Narjul committed sexual intercourse on her against her will and consent. One day, she secretly telephoned her father Jamaluddin and informed him about the place, where she was confined

forcibly by Narjul. On receipt of the information, her father along with the police of Thelamara PS went to the house of Narjul at Besamari of Nagaon district and recovered her. Then, the police recorded her statement and produced before a Magistrate to get her statement recorded. She gave statement before the Judicial Magistrate at Tezpur. She put her thumb impression on the statement given before the Magistrate. The police sent her to Kanaklata Civil Hospital, Tezpur for medical examination. At the time of the occurrence, she was aged about 14 / 15 years. She did not have any formal education.

23. **In cross-examination**, she has stated that she does not know her date of birth. She went to school. She has not submitted any document in proof of her age. They have five children. She is the third amongst them. Her immediate elder sister is aged about 17/18 years. Her eldest brother is aged about 30/35 years. Her eldest sister is younger to the eldest brother by 2/3 years. After 3/4 years of her birth, she was born. Narjul is a resident of Besamari village, Nagaon. She did not know Narjul. Jaban Ali is their neighbour. The plot of land on which their house is standing is belong to her eldest brother. She has denied the defence suggestion that the plot of land on which their house is standing was belong to Jaban Ali. She has denied the defence suggestion that a village 'mel' was convened regarding elopement with Narjul twice and that in the village 'mel', a sum of Rs.35,000/- was imposed as fine on the accused Narjul. She has stated that police did not record her statement. She has admitted that she stated in her statement made before the Magistrate that Narjul, confined her in his house at Nagaon. She has denied the defence suggestion that she did not state in her statement made before the Magistrate that accused Jaban Ali handed over her to Narjul Islam after he was called. She has admitted that she passed her days in happiness with the families of Narjul at Dangabasti, Besamari, Nagaon, Biskuti gaon at Darrang district and at Dhekiajuli. She has denied the defence suggestion that she was not handed over to Narjul by Jaban Ali. She has denied the defence suggestion that they were living on a plot of land by encroaching the house belonging to Jaban Ali.

24. **PW-6 Sri Subhas Sah**. His evidence is that on 09-05-2011, he was attached to the Court of Judicial Magistrate, 1st Class, Tezpur, Smt. Gitali Rabha, as Bench Assistant. On that day, the learned Judicial Magistrate, 1st Class, Smt. Gitali Rabha recorded the statement of the victim girl Ms. 'Y', u/s 164 CrPC, in her Official Court Chamber. On completion of recording of the statement of the victim, on the direction of the learned Magistrate, he obtained the RTI of the victim girl Ms. 'Y'. He has recognized Ext. 5, the statement of the victim, where Ext. 5(1) is the signature of Smt. Gitali Rabha, recognized through correspondence.

25. **In cross-examination**, he has stated that there is no official seal under the signature of the learned Magistrate Smt. Gitali Rabha, on Ext.5, the statement of the victim. He has admitted that that he omitted to put his signature under the thumb impression of the victim on Ext.5, the statement, in testimony of the fact that he obtained the thumb impression of the victim.

26. **PW-7 ASI Bhaba Kt. Nath, the IO**, has deposed that on 02-03-2011, he was attached to Thelamara PS as ASI. On that day, the Officer-in-charge of Thelamara PS, SI Amiruddin Khan, entrusted him to conduct the preliminary investigation in Thelamara PS Case No. 19/11 u/s 366 IPC. The ejahar was lodged by one Mr. 'X', on 02-03-2011. Ext. 1 is the ejahar, where Ext. 1(2) is the signature of SI Amiruddin Khan with his note. In course of preliminary investigation, he visited the place of occurrence, on 03-03-2011, and drew up a sketch map thereof. The place of occurrence was on road in village Kamarchuburi, near the house of the complainant. Ext.3 is the sketch map of the place of occurrence, where Ext.3(1) is his signature. He recorded the statement of the complainant on 02-03-2011, at 10-25 p.m., noon, at the police station. He recorded the statement of the witnesses at the place of occurrence on the same day, that is, on 03-03-2011. He recovered the victim woman on 09-03-2011, at 12-10 a.m., from the house of accused Narjul Haque, situated at Besamari gaon, under Dhing PS, district – Nagaon. At the time of recovery of the victim, he did not find the accused at his home at Besamari. On the same day, that is, on 09-03-2011, he sent the victim for medical examination to Kanaklata Civil Hospital, Tezpur and got her statement recorded u/s 164 CrPC. He recorded the statement of the victim girl, u/s 161 CrPC. He arrested the accused Md. Jaban Ali from his house situated at Kamarchuburi gaon, Thelamara. After completion of investigation, he handed over the case diary to the Officer-in-charge of Thelamara PS, on 14-06-2011,

27. **In cross-examination**, he has admitted that in the ejahar, Ext.1, the complainant Mr. 'X', the father of the victim girl, stated that his daughter Ms. 'Y' was kidnapped by the accused Narjul from his house. He did not collect any documentary evidence in support of age of the victim girl.

28. **PW-8 Md. Amiruddin Khan, the IO**, has stated that on 16-06-2011, he was attached to Thelamara PS, as its Officer-in-charge. On that day, he received the case diary of Thelamara PS Case No. 19/2011, from ASI Bhaba Kanta Nath, after completion of preliminary investigation. After going through the case diary, prepared by ASI Bhaba Kt. Nath, he found that the preliminary investigation was already completed and there was no scope for further investigation. Accordingly, he, based on the evidence, so far collected by ASI Bhaba Kt. Nath, during preliminary investigation, submitted the charge-sheet u/s 366 / 34 IPC against the accused persons, namely, Narjul Ali and Md. Jaban Ali,

showing the accused Narjul Ali absconder. Ext.4 is the charge-sheet, where Ext.4(1) is his signature.

In cross-examination, he has denied the defence suggestion that he has laid the charge-sheet against the accused Md. Jaban Ali without having found prima-facie incriminating materials against him.

ANALYSIS OF EVIDENCE :

AGE OF THE VCITIM

(Attained majority)

29. According to PW-1, Mr. 'X', the father of the victim girl, as stated in the FIR, Ext.1, at the time of the occurrence, his daughter was aged about 14 (fourteen) years and in cross-examination stated that she read upto class V and left the school, about ten years before the occurrence. If it is so, at the time of the occurrence, his victim daughter was above 18 (eighteen) years of age and this fact is supported by the victim's mother PW-3 Mrs. 'Z', who stated that at the time of the occurrence, she was aged above 18 (eighteen) years. The aforesaid age of the victim girl, as stated by her parents (PWs 1 and 3) has been corroborated by the medical evidence of PW-4 Dr. Tutumoni Handique, the doctor, who examined her, on 09-05-2011, stating that she was above 18 (eighteen) years, vide Ext.3, the medical report. PW-7 ASI Bhaba Kanta Nath, the IO, in his cross-examination specifically stated that he did not collect any documentary evidence, in support of age of the victim. Therefore, though PW-5 Ms. 'Y', the victim girl claimed that at the relevant time of the occurrence, she was aged 14/15 years, yet based on the corroborative testimony of her parents (PWs 1 and 3) as well as the medical evidence of PW-4, it can be concluded, in absence of any documentary evidence, such as birth certificate or school certificate, that she attained the age of majority, that is, 18 (eighteen) years or above, beyond all reasonable doubt.

(B) WHETHER ABDUCTED & RAPED

30. From the evidence of PW-5 Ms. 'Y', the alleged victim girl, it transpires that on the repeated request of the accused Md. Jaban Ali, on the day of occurrence at about 7 p.m., she accompanied him to watch movie, on a bicycle, but the accused took her to Keherukhanda village and then handed over her to one Narjul Islam (since proclaimed absconder), who was earlier not known to her and then the accused Md. Jaban Ali left the place. Thereafter, Narjul forcibly took her, in a hired Maruti Car, to Dangabasti and confined her for three days in the house of his grand-father Miraj Ali. Then she was moved to Biskuti village in Darrang district, in a Winger public bus and confined in the house of his sister for about one week. Thereafter, Narjul again took her to the house of his brother Moidul Islam in Nagaon district. Her evidence further reveals that Narjul

accompanied her throughout her journey and at all the aforesaid places of stay, he kept and behaved her like his wife and also committed sexual intercourse on her, allegedly against her will and consent. She was ultimately recovered from the house of Narjul, on her telephonic message, situated at Besamari in Nagaon district, by her father (PW-1) accompanied by the police of Thelamara PS. It is surprisingly found from her cross-examination that she passed her days in happiness with the families of Narjul at Dangabasti, Besamari, Nagaon, Biskuti gaon in Darrang district and at Dhekiajuli, Sonitpur district. She gave a statement before the learned Judicial Magistrate at Tezpur, vide Ext.5, which is proved by PW-6 Sri Subhas Sah, the then Bench Assistant to the Court, aforementioned. On perusal of the aforesaid statement, recorded u/s 164 CrPC, Ext.5, dated 09-05-2011, it appears that she passed about 2 ½ months in the company of Narjul and during this period, he allegedly forcibly developed physical relation with her.

31. Thus, it is apparent that the victim, who attained majority, was made to move from one place to another and there is no evidence that she ever raised alarm and further, complained to the family members of Narjul (since proclaimed absconder) at different places, during 2 ½ months period, against the accused Md. Jaban Ali. Therefore, it can safely be inferred that the victim PW-5 Ms. 'Y' was moving willingly without protest from the time, she left her parental home, along with the accused Md. Jaban Ali. What it can be further concluded that the alleged act of rape on her (PW-5) by Narjul cannot bind the present accused Md. Jaban Ali, as she, a major girl, was apparently a consenting party to such act, because she neither raised alarm nor reported the incident to any person whom she came across during the period, rather she stated that she passed the days merrily.

32. Turning to the evidence of PW-1, Mr. 'X', the father and PW-3 Mrs. 'Z', the mother, it is found that the accused Md. Jaban Ali is a neighbour to their house and their daughter (the victim) left home with the said accused without paying heed of PW-3's advice not to accompany him to watch 'drama' at Dhekiajuli and further, admitted in cross-examination by PW-3, that the said accused requested them to return the plot of land, on which their house is standing, which originally belonged to his father, but they refused to return, indicating existence of enmity between them. The evidence of PW-2 Md. Amiruddin, a neighbour, shows that he did not see the accused's alleged act of abduction of the victim and the police did not even record his statement, during investigation. PW-7 ASI Bhaba Kanta Nath, the IO, in cross-examination has admitted that in the FIR, Ext.1, the informant - father (PW-1) stated that his daughter was kidnapped by the accused Najrul from his house. This piece of material fact appears to have negated the very foundation of the prosecution case and more particularly, the evidence of PW-3 Mrs.'Z', the mother and PW-5 Ms. 'Y', the alleged victim girl, that the accused Md. Jaban Ali abducted her from her

parental home. The evidence of PW-8 SI Amiruddin Khan, the then Officer in-charge of Thelamara PS reveals that based on the evidence collected by PW-7, the IO, during preliminary investigation, he submitted the charge-sheet, Ext.4, against the accused persons.

33. Considered thus and applying the principles laid in **State of Assam VS Mintu Paul [2006 (Suppl) 1 GLT 426]** and **Tafiz Ali & Anr -Vs- State of Assam [2007 (3) GLT 481]**, this Court is of the considered opinion that the accused cannot be held guilty of abduction and rape of Ms 'Y' in confinement, beyond reasonable doubt.

C O N C L U S I O N

34. For the reasons, set forth above, this Court is constrained to hold that the prosecution has miserably failed to prove the charges levelled against the accused Md. Jaban Ali, beyond all reasonable doubt.

35. Accordingly, the accused Md. Jaban Ali is acquitted of the charges u/s 366/376/34 of IPC and set at liberty forthwith.

36. The judgment and order, as above, is pronounced in the open Court, in presence of the accused and the learned counsel for both the sides, on this the 30th day of May, 2014, under the Hand and Seal of this Court.

Accordingly, the case is disposed of.

(**A. BORTHAKUR**)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictated and corrected by me :

(**A. BORTHAKUR**)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and
typed by me :

(J.K. Muru, Steno)

* * * * *

SESSIONS CASE NO. 310 OF 2012

ANNEXURE

LIST OF PROSECUTION WITNESSES

PW-1 : Mr. 'X', the informant
PW-2 : Md. Amiruddin
PW-3 : Mrs. 'Z'
PW-4 : Dr. Tutumoni Handique, the MO
PW-5 : Ms. 'Y'
PW-6 : Sri Subhas Sah
PW-7 : SI Bhaba Kt. Nath, IO
PW-8 : Md. Amir Uddin Khan, IO

LIST OF DEFENCE WITNESSES

N I L

LIST OF DOCUMENTS EXHIBITED BY PROSECUTION

Exhibit -1 : Ejahar
Exhibit -2 : Medical report
Exhibit -3 : Sketch Map
Exhibit -4 : Charge-Sheet
Exhibit -5 : Statement u/s 164 CrPC

MATERIAL EXHIBIT

N I L

DEFENCE EXHIBIT

N I L

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR