

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR**

**SESSION CASE NO. 351 of 2017**

Under section 448/366(A)/294/506/34 of I.P.C  
(Arising out of G. R Case No. 2840 of 2015)

**State of Assam**

**-Vs-**

Musstt. Rabijan Begum  
Musstt. Sarifa Begum  
Babul Hussain

.....Accused Persons

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

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

For the accused : Mr. Someswar Borah, Advocate.

Date of Argument : 03-07-2020 & 17-07-2020

Date of Judgment : 21-07-2020

**J U D G M E N T**

**1.** A criminal case was set in motion on an FIR lodged by Jahanara Begum on 20-10-2015 before the O.C. Tezpur PS alleging that on 19-10-2015 at 12 midnight accused Babul Hussain, Iman Ali, Jakir Hussain, Guljar Hussain, Islam, mother of Julhas and Sarifa Begum entering into the house of the informant, kidnapped her 15 years old daughter Majoni Begum by a white colour vehicle. Hearing hue and cry, the neighbours came there and on being prevented the accused persons, they had assaulted the neighbours, scolded them using filthy language and also threatened the informant to kill her family members.

**2.** The FIR(Ext.1) lodged by PW1 Jahanra Begum the mother of the victim girl on 20.10.2015, led to register of the case being Tezpur PS case No. 1429/15 u/s 143/448/366(A)/294 of IPC. The Investigating Officer collected evidence, got recorded the statement of the victim u/s 164 Cr.P.C., sent the injured persons for medical examination and after investigation, submitted charge-sheet against the accused persons Md. Babul Hussain, Musstt. Rabijan Begum and Musstt. Sarifa Begum u/s 448/366(A)/294/506/34 of the IPC.

**3.** On appearance of the accused Md. Babul Hussain, Musstt. Rabijan Begum and Musstt. Sarifa Begum, the learned Judicial Magistrate 1<sup>st</sup> Class, Tezpur after furnishing copies of the documents as required under section 207 Cr./P.C., committed the case to the Court of Session, being the offence u/s 366(A) IPC exclusively triable by the Court of Session. On committal, the case was transferred to the court of the learned Addl. Sessions Judge, Sontipur, Tezpur.

**4.** All the three accused persons entered their appearance before the court. The learned Addl. Session Judge, Sonitpur, Tezpur after hearing both sides, framed charge against the accused persons u/s 448/366(A)/294/506/34 of the IPC and particulars of the charge on being read over and explained to the accused persons, they pleaded not guilty and claimed for trial. Later on, the case was withdrawn to this Court.

**5.** To bring home the guilt of the accused persons, prosecution examined thirteen witnesses. All the accused persons were questioned under Section 313 Cr.P.C. about the incriminating evidence to which the accused persons denying all the allegations stated that one day Jahanara Begum, the informant of this case along with her daughter-in-law Aijun Nehar came to the house of accused Sarifa Begum when she was not at home and kidnapping her minor daughter Sabikun Nehar solemnized her marriage with Akhtar Hussain, the nephew of Jahanara Begum. With regard to the said incident Sarifa Begum lodged an FIR which is proceeding as POCSO Case No. 78/18 and to get relief from the said case, this case was filed implicating the accused persons falsely. The accused persons elected not to adduce any evidence in defence.

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

7. The points for decision in this case are that -

**(1) Whether accused Babul Hussain, Musstt. Rabijan Begum and Musstt. Sarifa Begum on 19.10.2015 at 12 midnight at village Gotlong, under Tezpur Police Station, in furtherance of common intention, committed house trespass by entering into the house of Jahanara Begum which was used as a human dwelling with intent to commit an offence and thereby committed an offence punishable under Section 448/34 of the IPC ?**

**(2) Whether accused Babul Hussain, Musstt. Rabijan Begum, Musstt. Sarifa Begum on 19.10.2015 at 12 PM midnight at village Gotlong, under Tezpur Police Station, in furtherance of common intention, kidnapped the victim Majoni Begum, 15 years of age, with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with others and thereby committed an offence punishable u/s 366(A)/34 of the IPC ?**

**(3) Whether accused Babul Hussain, Musstt. Rabijan Begum and Musstt. Sarifa Begum on 19.10.2015 at 12 midnight at village Gotlong, under Tezpur Police Station, in furtherance of common intention, uttered obscene words to the villagers in or near a public place causing annoyance to others and thereby committed an offence punishable under Section 294/34 of IPC ?**

**(4) Whether accused Babul Hussain, Musstt. Rabijan Begum and Musstt. Sarifa Begum on 19.10.2015 at 12 midnight at village Gotlong, under Tezpur Police Station, in furtherance of common intention, committed criminal intimidation by threatening the family members of the informant with injury**

***to their persons and thereby committed an offence punishable under Section 506/34 of IPC ?***

**Discussions, Decisions and reasons thereof :**

**8.** Mr. M. C. Baruah learned Public Prosecutor appearing for the state while submitting has taken me to the deposition of the victim (PW 2) and PW 3 to PW 6 who were projected as eye witnesses. The learned Public Prosecutor submitted that all the five eye witnesses, categorically stated about the involvement of the accused persons in kidnapping the victim. Mr. Baruah further submitted that the aforesaid witnesses by adducing cogent and reliable evidence demonstrably established the charge of kidnapping of the victim by entering into her house and assault to PW 2 to PW 4 against the accused persons beyond all reasonable doubt.

**9.** Refuting the said argument Mr. Borah appearing for the accused persons submitted with sufficient emphasis that there are contradictions on material points in the evidence of the PWs and said contradictions belie the prosecution version. The learned counsel also submitted that PW 2, PW 3 and PW 6 who were present since beginning of the alleged incident, all made different versions, as such their evidence cannot be accepted. The learned defence counsel further argued that prior to three days of this case, accused Sarifa Begum filed a case against the informant and others alleging kidnapping of her minor daughter and then giving her marriage with the nephew of the present informant and to get the relief from the said case, this case was filed.

**10.** For the purpose of appreciation of the contentions as advanced by the counsel of the parties, it is required to appreciate the evidence on record.

**11.** In the present case, the informant Jahanara Begum (PW1), the mother of the victim is a reported witness, not an eye witness. She stated that on the day of incident at around 12.30 midnight when she was not at home, the incident occurred and in the next morning her daughter Anjuma Khatun (PW 3) informed her over phone that accused Babul Hussain kidnapped her daughter Majoni Begum aged about 16 years. Hearing the incident she came home. She was reported that accused Babul Hussain coming to her house, forcefully

kidnapped her victim daughter by assaulting her (PW1) another daughter Anjuma. Regarding the incident she lodged the Ejahar (Ext. 1). She further stated that Anjuma told her that Babul along with four other male persons and two female namely, Rabijan and Sarifa had come to her house out of whom Babul and Sarifa entered into the house and others were inside the vehicle. After filing the ejahar, the victim was found with tied hands and feet lying near the road in front of Masjid. She noticed injuries on the eyes, leg and hand of the victim girl. Anjuma also reported her that at the time of kidnapping by Babul and Sarifa, they had assaulted Anjuma and Minara and they were also sent for treatment. She noticed injury over eyes of Minara and leg of Anjuma @ Arjuma. Anjuma told her that Babul Hussain had assaulted her by a torch light.

In cross examination she stated that accused Babul Hussain is the uncle of her daughter-in-law Aijun Nehar. Accused Sarifa and Rabijan are the step mother and aunt of Aijun Nehar respectively and Sabiqun Nehar is the sister of Aijun Nehar. Anjuma reported her that three persons were inside the vehicle at the time of incident and others three entered into the house. Hearing hulla, the neighbours came to the place of occurrence. She admitted that she did not produce any birth certificate of the victim girl to the Investigating Officer. She stated that the accused persons filed a case against them prior to three days of this incident. The victim reported her that the accused persons had thrown her near Masjid at 3.30 AM wherefrom she was recovered by police. She denied the suggestion that they gave marriage of Sabiqun Nehar to other person on which a case was filed against her and others before three days of this incident and on the day of incident as police came to her house to recover Sabikun, hence they left house intentionally to avoid arrest.

**12.** Describing the occurrence, Majoni Begum (PW 2) the victim testified that on 19-10-2015 at 12 mid night while her parents were not at home and she along with her elder sister Anjuma Khatun (PW3), younger sister Aijoni Begum and brother Anarul Islam were sleeping, at that time the accused persons knocked at their door and asked to open the door. As soon as her sister Anjuma (PW3) opened the door, accused Babul, Rabijan, Gulzar, Jakir and all others entered into the room and had assaulted Anjuma with a torch light. Then they

blind folded her (PW 2) eyes with cloth, tied her hands and by assaulting had taken her by a vehicle. They also threatened to kill her. As a result of assault she sustained injuries over eyes and hands. She perceived that she was kept in somebody's house. Confining her there for two days, one day in wee hours they thrown her at the side of road near Masjid and unfolded her eyes. She stated that as a result of assault, PW 3 Anjuma @ Arjuma and Minara also sustained injuries. She proved her statement u/s 164 Cr.P.C. as Ext. 2.

During cross she stated that prior to three days of filing this case, the accused persons filed a case against them. She stated that the accused persons were close relatives of her sister-in-law Aijun Nehar. She further stated that as her eyes were tied with cloths, hence she cannot say clearly the colour of the vehicle by which she was taken but it was like white colour.

**13.** Close on the heels of the evidence of PW2, her elder sister Anjuma Begum deposing as PW 3 stated that on the day of incident at 12 midnight when she along with her victim sister, one another sister and one younger brother were at home, accused Babul @ Babul Ali came to their house and asked to open the door. Hearing the voice of Babul Ali, as soon as she opened the door, accused Babul Ali hold her hair and asked where about the victim. Then on asking the reason for searching the victim, accused Babul Ali gagged the victim's mouth and dragged her out side of the house. At that time accused Sarifa and Rabijan resisted her (PW3) from moving towards the vehicle which was standing in front of her house and also dragged her (PW 3) towards the vehicle. On raising hulla by her younger brother Anarul and sister Aijoni, when neighbour Minara coming there questioned the accused persons for taking the victim forcefully and said that she would inform the matter to the villagers, then accused Babul Ali had assaulted Minara over her eyes. At that time accused Sarifa and Rubijan left the place. Then accused Babul had assaulted over her (PW 3) leg with a torch light. After that the accused persons took the victim girl by the vehicle forcefully. At that time one Samudra came to the place of occurrence and she informed the matter to her mother. Hearing about the incident, on next day morning their mother came home and lodged the FIR. She

further stated that after about two days the victim was found lying with tied legs and blindfolded eyes.

During cross she stated that she had seen the accused persons in the light of bulb. She admitted that before the Investigating Officer, she did not state that Samudra came and saw the incident. She did not know if her parents forcefully gave marriage Sabikun Nehar, the daughter of accused Sarifa Begum with the nephew of her mother.

**14.** Minara Begum who claimed to be an eye witness to the alleged incident deposing as PW-4 stated that on the day of incident at 12 midnight hearing hulla in the house of the informant when she went there, she noticed a white colour vehicle in front of the house of the informant and had seen all the accused persons dragging the victim girl outside of her house while Arjuma was raising alarm. Seeing the incident she caught hold of the victim and questioned the accused persons for taking her forcefully but then the accused Babul gave her fist blow over her right eye and pushed her. As a result she fell down and sustained injury. Thereafter, the accused persons took the victim forcefully by the vehicle.

**15.** PW 5 Bhanu Begum deposed that on the day of incident at 12 midnight the accused persons came to the house of the informant by a vehicle and forcefully had taken away the victim girl aged about 14/15 years when her parents were not at home. Hearing halla, she rushed there and saw Minara preventing the accused in taking the victim forcefully. She also saw the accused persons assaulting Minara as a result, Minara fell down and sustained injury over her right eye. Then the accused persons had taken away the victim by a vehicle.

During cross she stated that she saw Minara in front of the gate of Jahanara, the informant. She had seen the accused persons dragging the victim girl near the vehicle.

**16.** Turning to the evidence of another vital witness PW 6 Anarul Hussain the brother of the victim, I find that according to him on the day of incident when he along with his two sisters i.e. the victim (PW 2) and PW 3 were sleeping, at 12 midnight accused Babul Hussain came to his house and knocked at the door. Then on opening the door by PW 3, accused Babul caught hold of

her hair and enquired about the victim. Thereafter accused caught hold the hair of the victim. Hearing hulla, he got up from the bed and came outside. At that time accused Babul along with two women took the victim by a vehicle forcefully. On being protested by them, the accused persons pushed him as a result he fell down. Hearing hulla neighbour Minara and other women came there. In the morning he went to school and thereafter came to know that the victim with tied hands and blindfolded eyes was recovered by police from a distance of about 1 km away from their house.

During cross he stated that on the next day morning he went to school. He stated that the accused Babul entered into their house and other two women were standing on the road. He saw the accused persons taking the victim forcefully by a white colour vehicle. But as it was night, he could not recognize the type of the vehicle.

**17.** PW 7 Rustam Ali turned hostile. He stated that on the next day morning he heard that the victim was found lying at a distance of 1 km away from her house. They suspected that somebody by assaulting made her fell down there. He further stated that the family members of the victim girl stated that somebody took her from house and after assaulting left her.

**18.** PW 8 Hasina Begum deposed that on the day of incident at about 2/3 AM hearing hulla of the victim, she came out and noticed the victim lying with tied hands and blindfolded eyes. On untying her hands and eyes, the victim reported that accused Babul, Sarifa and wife of Eman Ali kidnapped her.

During cross she stated that she did not know who tied the victim's hands and eyes and left her there.

**19.** Another hostile witness PW 9 Sur Bhanu stated that in the morning hearing cry of the victim when she went there she noticed the victim with tied hands and eyes. In cross examination by defence she stated that the victim told her that the accused persons had kidnapped her. She did not know who left the victim in such state. PW 10 Joygun Nessa only heard that at around 3 AM the victim was found lying with tied hands and eyes.

**20.** PW-11 Dr Arundhati Goswami the Medical and Health Officer at Kanaklata Civil Hospital, Tezpur examined Anjuma Begum (PW 3) and Minara Begum (PW 4) and found the followings:

I. Anjuma Begum

Injury : laceration over right leg size 3 x 2 cm.

The injury was simple in nature.

II. Minara Begum

Bruise around right eye, caused by blunt object and simple in nature.

She proved the medical report as Ext. 3.

During cross she stated that she cannot say the age of the injuries but the lacerated injuries was fresh and those may cause due to fall on hard substance. She stated that so far her memory, the victim gave the history of assault by some person.

**21.** PW 12 Dr. Tutumoni Handique, the Medical and Health Officer, Kanaklata Civil Hospital, Tezpur examined the victim girl on 30-10-2015 who complained pain in eye. On examination she found the following:

Bruise over both the wrist and the age of the injury was more than 24 hours.

In her opinion the injury was simple blunt injury over wrist (bilateral). She proved the medical report as Ext. 4.

During cross she stated that bruise in both wrists may be caused by falling or dashing against any hard substance.

**22.** PW 13 Nareshwar Nath, the Investigating Officer deposed that on being entrusted to investigate the case, he visited the place of occurrence and drew the sketch map of the place of occurrence i.e. the house of the victim vide Ext. 5. During investigation he found that after abduction, the victim was left on road from a few distance of her house on 23-10-2015. He also drew the sketch map of the place where the victim was found vide Ext. 6. Later on, the victim and the accused themselves came to the police station. He arrested the accused, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C., recorded the statement of witnesses and submitted charge sheet against

accused Babul Hussain, Robijan Begum and Sarifa Begum u/s 448/366(A)/294/506/34 of IPC vide Ext. 7. He confirmed the statement of hostile witness Rustam Ali (PW 7) and Sur Bhanu (PW 9) and proved their relevant portion as Ext. 8(1) and 9(1).

During cross he stated that he seized no any article regarding the incident. He denied of having knowledge about filing ejahar by accused Sarifa Khatun. He confirmed that PW 1, the informant did not state before him that the accused persons by entering into her house kidnapped the victim. She also did not state before him about noticing injuries of the victim, Anjuma and Minara. He further confirmed that the victim (PW 2) did not state before him that the accused persons coming to her house knocked at the door and on asking to open the door, when Anjuma opened the door, Babul, Rabijan, Guljar, Jakir and other accused persons entering into the house assaulted PW 3 and forcefully dragged her by tying her hands and blindfolding her eyes and threatened to kill her. She also did not state before him that she was kept in somebody's house and confining her two days, left her in wee hours near Mazjid.

The Investigating Officer also confirmed that PW 3, the victim's elder sister did not state before him that as soon as Babul came to her house, she opened the door, rather she stated that her brother opened the door. She also did not state that she immediately informed the matter to her mother and next day morning her mother came home and filed the FIR and after about two days the victim was found with tied hands and blindfolded eyes. PW 4 did not state before him that after two days the victim was recovered by police from road side. The Investigating Officer further confirmed that PW 6 in statement under Section 161 Cr.P.C. did not state that when he protested, accused Babul pushed him as a result, he fell down.

**23.** Now, I proceed to consider the evidence of the witnesses regarding implication of the accused persons. PW 2 the victim stated that on 19-10-2015 at 12.00 midnight, when she along with her brother and two sisters were sleeping at home, the accused persons coming to her house knocked at the door. On being asked to open the door, when her elder sister Anjuma (PW 3) opened the door, then accused Babul, Robijan, Guljar, Jakir and all accused persons entered

into her room and had assaulted PW 3 with a torch. Thereafter blindfolding her (PW 2) eyes and tying her hands dragged her and by assaulting had taken her by the vehicle and after two days in wee hours left her near a Masjid. So the testimony of the victim reveals that, accused Babul, Robijan, Guljar, Jakir and all accused persons came to her house and all of them entered into the room. So far the evidence of PW 1 the victim's mother is concerned, PW 3 reported her that Babul and Sarifa entered into the house and other four male persons and one female were inside the vehicle. But according to PW 3 the elder sister of the victim, accused Babul, Sarifa and Rabijan came to their house, she did not state that any of the accused persons entered into their house. Another material witness PW 6 the victim's brother testified that the present three accused persons came amongst whom only accused Babul entered into the room when other two female were standing on the road, however he did not mention the name of the two female who along with Babul Hussain allegedly came to his house. Involvement of Guljar and Jakir Hussain as alleged by the victim is not supported by PW 3 and PW 6, the elder sister and brother of the victim respectively who along with their victim sister were present at home on the relevant night. Furthermore, in deposition none including the informant implicated Iman Ali and Islam who were alleged to be involved in the incident as per the FIR. In this case the evidence of PW 1 to PW 3 and PW 6 the victim and her family members made different versions as to who came and who entered into the room. Neighbour Minara Begum (PW 4) who placed herself as an eye witness to the alleged occurrence stated that hearing hulla she came to the place of occurrence and seeing the accused persons dragging the victim towards outside, she caught hold the victim and enquired the accused persons the reason for taking the victim forcefully but the victim herself does not corroborate that PW 4 caught hold her. The victim did not state when PW 4 came, she only stated about sustaining injury by PW 4 as a result of assault. PW 1, the mother of PW 2, PW 3 and PW 6, who was not present at home on that night, in examination-in-chief once stated that in the morning she was informed by PW 3 that accused Babul kidnapped the victim by assaulting PW 3 and again stated that the victim was kidnapped by accused Babul and Sarifa. Further evidence of PW 3 is that hearing hulla, neighbour Minara (PW 4) came there and on being questioned the

accused persons reason for taking the victim forcefully, accused Babul gave her (PW 4) blow over eye, in the mean time other two accused Sarifa and Rabijan left the place and then accused Babul Ali assaulting PW 3 had taken away the victim. Her evidence indicates that accused Sarifa and Rabijan left the place first and thereafter accused Babul had taken away the victim girl. The said version of PW 3 is not supported by any other witnesses. There are serious contradictions amongst the testimony of the vital witnesses regarding presence of the accused persons.

**24.** Another contradiction is that according to PW 3, hearing the voice of Babul Ali, when she opened the door, Babul hold her hair and asked about PW 2, the victim and thereafter gagging mouth of the victim, dragged her outside but in statement u/s 164 Cr.P.C. PW 2, the victim stated that her brother Anarul (PW 6) opened the door. In this respect PW 6 made another version. According to him, hearing hulla, he got up from bed and came outside when Babul along with two women were taking the victim forcefully. So, he then only got up and came outside at the end of the incident while the accused persons were taking the victim. Further according to PW 3, when she was dragged, PW 6 Anarul Hussain and Aijun Nehar raised hulla whereas PW 6's evidence does not reveal that he raised hulla rather stated that hearing hulla, he got up from bed and came outside. The evidence of PW 3 and PW 6 regarding holding hair of PW 3 and victim (PW 2) was not supported by the victim herself. When PW 2, PW 3 and PW 6 were present in the entire episode, how they can depose different versions. The hostile witnesses PW 7 and PW 9 and other two witnesses PW 8 and PW 10 only stated about the fact of finding the victim near Majid, not mentioned the alleged kidnapping part. Though PW 6 stated that on the night hearing hulla neighbour Minara and other women came there but, PW8 Hasina Begum and PW 9 Sur Bhanu disclosed nothing regarding kidnap allegedly occurred on that night. Their evidence shows that in wee hours at around 2/3 AM hearing cry of the victim, they came out and saw her. According to PW 6 and PW 7, the victim was recovered within a distance of 1 km away from their house. So if any such incident of kidnap and assault took place before 2/3 days, they certainly knew it. But they remained silent in that respect. Further PW 2 and PW 3's evidence shows that on the night besides them and brother PW 6, their another sister

Aijoni was present at home along with them but she was not examined by the prosecution. PW 6's evidence also does not reveal presence of Aijun at that time. Further according to PW 5 the neighbour who was projected by prosecution as eye witness, hearing hulla she went to the place of occurrence and noticed Minara (PW 4) in front of the gate of PW 1 preventing the accused persons in taking the victim and at that time the accused persons had assaulted PW 4. Presence of PW 5 on the place of occurrence in the night is not supported by any other witness. Rather, PW 3, the victim's sister's version is that after the victim was taken away, one Samudra came there. Ext. 5, the sketch of the place of occurrence i.e. the house of the informant shows the house of one Rabiul Ali, as a neighbour not the house of Minara Begum (PW 4) or Bhanu Begum (PW 5). The contradictory evidence of the PWs discussed above throw a shadow of doubt in the case of the prosecution.

**25.** The next submission advanced by the learned counsel for the accused persons is that the vital witnesses made different version in statement u/s 161 Cr.P.C. and during trial and as such they are not trustworthy. On careful scrutiny of the evidence of the witnesses, it appears that the Investigating Officer confirmed that PW1 did not state before him that accused Babul, Sarifa and Rabijan entering into the room kidnapped the victim. PW2, the victim also did not state before him the fact of entering into the room by accused Babul, Rabijan, Guljar, Zakir and all accused persons and that by assaulting PW 3 they dragged her and had taken by a vehicle. PW 3 also did not state in statement u/s 161 Cr.P.C. that she opened the door but stated that her brother opened the door. Another material witness PW 6 Anarul Hussain, victim's brother did not state that when he protested, accused Babul made him fell down by pushing. These are serious omissions which are material. Had the incident occurred as narrated by them in deposition, they naturally would have disclosed the same before the Investigating Officer. Contradictory statement of the abovementioned witnesses in the initial stage and during trial also creates doubt.

**26.** In the case PWs mentioned about a white colour vehicle by which the victim was allegedly taken away, but they did not mention the number or type of the vehicle. If according to PW 1 seven persons came there, the vehicle should

be at least 8 seaters big vehicle to take the victim along with them. According to PW 6, the victim's brother, as it was night, hence he could not recognize the type of the vehicle. The Investigating Officer also did not enquire about the vehicle which was used in alleged offence of kidnap of the victim girl.

**27.** That apart, evidence of the victim girl PW 2 reveals that, confining her two days, she was left near Masjid but in statement u/s 164 Cr.P.C. she stated that she was kept for five days and again stated that she was thrown on 23.10.2015 i.e. after three days. The statement of the victim was recorded on 29-10-2015. If she was recovered on 23.10.2015, there is nothing what prevented the Investigating Officer not to get her statement recorded u/s 164 Cr.P.C. immediately in such a case of kidnap of a minor girl. He waited for 6 days for recording her statement u/s 164 CR.P.C. On the other hand, so far the evidence of another vital witness PW 6-the victim's brother is concerned, in the morning he went to school and thereafter came to know that the victim was recovered. His evidence indicates that on the very day the victim was recovered. In this case each and every material allegation remained uncorroborated, hence not believable. It is also not acceptable that after kidnapping a girl at midnight and confining her somewhere for 2/5 days, one would left her without doing anything.

**28.** As regards to recovery of the victim girl, according to the victim and PW 4 Minara Begum, police recovered her from the side of road near Masjid. But the I.O. did not corroborate her version, he stated that the victim herself came to the police station. The fact of recovery of the victim by police was not stated by PW 4 in statement u/s 161 Cr.P.C. which was confirmed by the Investigating Officer. Other witnesses also did not state that the victim was recovered by police. Further as per evidence of the victim after she was left near Masjid, the accused persons unfolded her eyes by removing the cloth. But her mother (PW1) and sister (PW 3) stated that the victim was found lying with tied legs and unfolded eyes and according to PW 6, PW 8 and PW 9 when the victim was found, her hand and eyes were tied up. But the victim nowhere stated that her legs were also tied up. Moreover, according to the victim, herself she was thrown at the side of road near Masjid by unfolding her eyes. She did not state that the

accused persons left her with tied hands or legs. When she was left, none was present. If the accused persons unfolded her eyes at the time of leaving her there, how the others found her with tied eyes and hands or legs. The inconsistent and contradictory version of PW 1 to PW 4, PW 6, PW 8 and PW 9 raises doubt about the truthfulness of their evidence.

**29.** In this case three persons PW 2, PW 3 and PW 4 sustained injuries. Ext. 3 injury report reveals that PW 3 and PW 4 were examined on 20.10.2015 at 12.15 PM whereas PW 2 the victim was examined on 30.10.2015. The alleged incident was occurred on the midnight of 19.10.2015. If the victim was recovered after 2/3 days of the incident, why the Investigating Officer waited for one week after recovery to get her examine. Sending her after one week for medical examination creates doubt. Further the evidence of PW 3 disclosed that on arrival of police, she was sent to hospital along with the victim for medical examination. It is surprising how the victim could be sent to hospital along with PW 3 on very next day i.e. on 20-10-2015 when the victim was allegedly recovered after 2 or 5 days.

**30.** There is another factor for disbelieving the prosecution case. The accused persons took the stand that it is a false case and it was instituted due to enmity. In statement u/s 313 Cr.P.C. the accused persons pleaded that prior to three days of this case, the informant Jahanara Begum and her daughter-in-law Aijun Nehar came to the house of accused Sarifa Khatun when she was not at home and kidnapping her minor daughter Sabikun Nessa solemnized her marriage with the nephew of Jahanara Begum on which Sarifa filed an ejarah which was registered as POCSO Case No. 78/18 and after three days of that incident filed this case against the accused persons falsely. The informant in cross examination admitted about filing the case against them prior to three days of this case. In the case at hand, the evidence of the victim being not self contradictory, but the same having also been contradicted by her family members and other evidence on record including the medical evidence, it is clearly far from being safe to rely their evidence. The testimony of the PWs

discussed above suffers from infirmity. On the face of such evidence, the possibility of instituting a false criminal case cannot be ruled out.

**31.** With regard to allegation under section 294/506 IPC, though in the FIR, it was alleged that hearing hulla when the neighbours came to the place of occurrence and prevented the accused persons, they assaulted the villagers and scolded them using filthy language but in deposition neither the informant nor any other witnesses including the victim stated that the accused persons scolded anyone. Except the statement of the victim, there is also no iota of evidence that the accused persons threatened the victim. The fact of threatening was not stated by the victim in statement u/s 161 Cr.P.C. as well as u/s 164 Cr.P.C. It is surprising to note that when PW 2, PW 3 and PW 6 were present in the entire episode why they did not whisper anything about rebuking and threatening.

**32.** The above discussed contradictions and discrepancies do not inspire confidence to believe the witnesses who claimed to be the eye witnesses. It is settled law that in a criminal trial, the prosecution is required to prove its case beyond all reasonable doubt. It is also settled that in the event of existence of two probabilities, the benefit should always go in favour of the accused persons. In this case, as reveals from the above discussed evidence, the failure of the eye witnesses to corroborate each other's evidence raises doubt about the truth of their evidence. Serious contradictions noticed amongst the statement of the witnesses. If one witness is believed, the another one cannot be believed. The contradictions in the evidence of the family members on material point have adversely affected the prosecution case. In view of the vital discrepancies in the ocular and medical evidence as well as content of the FIR makes the prosecution case doubtful and I find it hard and unsafe to believe the contradictory evidence given by the witnesses. It is not a case where it can be said that the balance of evidence tilts in favour of the prosecution. Rather the average testimony is more in favour of the accused persons than to the prosecution and as such it is a fit case in which the theory of benefit of doubt deserves to be adopted.

**33.** In all, tested on the overall scrutiny of the evidence as a whole discussed above, I am inclined to hold that the prosecution failed to prove the guilt of the accused persons Musstt Rabijan Begum, Nusstt Sarifa Begum and Babul Hussain for the alleged offences beyond all reasonable doubt. Accordingly, accused persons, Musstt Rabijan Begum, Nusstt Sarifa Begum and Babul Hussain are acquitted from the charge u/s 448/366(A)/294/506/34 IPC on benefit of doubt and set them at liberty forthwith. Their bail bonds shall extended till next six months in view of section 437 A of Cr.PC.

**34.** Send back the GR case to the learned committal court.

**35.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **21<sup>st</sup> July, 2020.**

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

Dictated and corrected by me.

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

## **APPENDIX**

### **PROSECUTION WITNESSES:**

|                        |   |                             |
|------------------------|---|-----------------------------|
| Prosecution Witness 1  | : | Jahanara Bwegum             |
| Prosecution Witness 2  | : | Majoni Begum                |
| Prosecution Witness 3  | : | Arjuma Begum @ Anjuma       |
| Prosecution Witness 4  | : | Minara Begum                |
| Prosecution Witness 5  | : | Bhanu Begum                 |
| Prosecution Witness 6  | : | Md. Anarul Hussain          |
| Prosecution Witness 7  | : | Md. Rustam Ali,             |
| Prosecution Witness 8  | : | Musstt Hasina Begum         |
| Prosecution Witness 9  | : | Musstt Sur Banu             |
| Prosecution Witness 10 | : | Musstt Joygun Nessa         |
| Prosecution Witness 11 | : | Dr. Arundhati Goswami, M.O. |
| Prosecution Witness 12 | : | Dr. Tutumoni Handique, M.O. |
| Prosecution Witness 13 | : | Nareshwar Nath, I.O.        |

### **EXHIBITS :**

|            |   |  |
|------------|---|--|
| Ext. 1     | : | FIR                                      |
| Ext. 2     | : | Statement of the Victim u/s 164 Cr. P.C. |
| Ext. 3 & 4 | : | Medical reports                          |
| Ext. 5 & 6 | : | Sketch Maps                              |
| Ext. 7     | : | Charge sheet.                            |

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