

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**::::UDALGURI**

**Present : Smti. N. Talukdar,
Addl. Sessions Judge,
Udalguri.**

Sessions Case No. 47/2019**U/S 366-A IPC****GR Case No. 443/2018****State of Assam****-Vs-****Mun Mun Rabha.....Accused.**

For the Prosecution : Mr. R. Sarma, Addl. Public Prosecutor.

For the Accused : Mr. M.C. Narzary, Learned Advocate.

Date of Evidence : 03-08-19: 16-08-19.

Date of Argument : 21-08-2019.

Date of Judgment : 27-08-2019.

J U D G M E N T

1. The prosecution in brief is that on 06-05-18, at about 11 am while the victim went to Habibhanga village to visit the house of her relatives the accused took her away with inducement. During search of the victim, next day in the morning at about 8 am the father of the victim girl received a phone call from the house of the accused Mun Mun Rabha informing that the victim was in the house of the accused. Hence, the father of the victim lodged a written FIR with the Officer-in-Charge of Kalaigaon P.S.

2. On the basis of the FIR, Kalaigaon PS Case No. 46/18, U/S 366-A IPC was registered and after completion of investigation police submitted charge-sheet U/S 366-A IPC against the accused Mun Mun Rabha.
3. Learned Addl. Chief Judicial Magistrate, Udalguri after having complied with the provision under Section 207 Cr.P.C found that the offence under Section 366-A I.P.C., is exclusively triable by the Court of Sessions and accordingly, she committed the case to the Court of Sessions on 14-05-2019. Thereafter, the learned Sessions Judge vide Order dated 17-05-2019, transferred the case to this court for disposal.
4. In consideration of the submission of the learned counsel for both the parties and in consideration of materials on record and having found sufficient grounds for presuming that the accused had committed offence under Section 366-A I.P.C., charge was framed there under and the ingredients of charge under Section 366-A I.P.C., were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
5. The prosecution in order to prove its case examined the following 04(four) witnesses.
 - PW1- Munia Rabha.
 - PW2- Laba Ram Deka.
 - PW3- Victim-A.
 - PW4- Dr. Bhadra Kanta Sarmah.
6. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
7. Situated thus, the point for determination in the instant case are set up as follows:-

(I) Whether the accused induced victim 'A' a minor girl under the age of 18 years with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry him against her will or that she might be forced or seduced to illicit intercourse with him?

DISCUSSION, DECISION AND REASON FOR DECISION:

8. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel Mr. M.C. Narzary. Learned defence Counsel has argued that the ingredients of Section 366-A I.P.C., have not been established in the present case.
9. Before appreciating the arguments put forward by learned counsel for both parties, I would like to discuss the evidence adduced by the prosecution.
10. PW1 is Munia Rabha, co-villager of accused. In his evidence PW1 had deposed that about one year ago, one day while he was working in a house near the house of accused, on hearing hue and cry in the house of the accused, he went there. He saw Police in the house of the accused. He also saw the father of the victim girl. The Police took the victim girl from the house of the accused. He had never seen the victim in the house of the accused earlier. He did not know as to how the victim came to the house of the accused and why Police took her from there. In cross-examination, PW1 had stated that he did not know about the love affairs between the victim and the accused.
11. PW2 is Laba Ram Deka, the informant of this case and father of the victim girl. In his evidence PW2 had deposed that about one and a half years ago, one day his daughter victim-A went to her friend's home but till evening she did not return back. Then they made search for her but failed to trace her out. Next day, she called him over phone and informed that she had love affairs with the accused and she was in the house of the accused. Then

PW2 went to the house of Gaonburah and expressed before him his reluctance to give his daughter in marriage to the accused. Then on advice of Gaonburah, PW2 lodged FIR with the Officer In-charge of Kalaigaon PS. Later on, the Police rescued the victim from the house of the accused, produced her before the Court and got her statement recorded by the learned Magistrate. The victim was produced before the Doctor but she refused to undergo medical examination. PW2 took custody of his daughter from the court. The accused was arrested by the Police and produced before the court. After about 40 days of the incident, while the accused was in jail, his daughter again left home and went to the house of the accused. Since then she has been living with the accused in his house. PW2 had heard that she got married with the accused. PW2 had deposed that at the time of incident, his daughter was aged about 18 years. Ext-1 is the FIR. Ext-1(1) is the signature of PW2. In cross-examination, PW2 had stated that he had no allegation against the accused. His daughter voluntarily went with the accused.

12. PW3 is victim-A. In her evidence PW3 had deposed that accused is her husband. About one and half years ago, the occurrence took place. She had love affairs with the accused. Therefore on the date of occurrence, she eloped with the accused and got married with him. Then her father lodged FIR. The Police recovered her from the house of the accused. She was produced before the Magistrate who recorded her statement U/S 164 Cr.P.C. Though she was produced before the doctor by the Police but she refused to undergo medical examination. As per advice of the doctor, X-ray of her bone was done at Mangaldoi. The accused was arrested by the Police and he was sent to judicial custody by the Court. While he was in jail, she again went to his house. Since then she had been living with the accused as husband and wife. At the time of incident, she was aged about 18 years. Ext-2 is the statement recorded by the learned Magistrate U/S 164 Cr.P.C. Ext-2(1) and 2(2) are the signatures of PW3. In cross-examination, PW3 had

revealed that she voluntarily went with the accused. The accused did not use force upon her to go with him.

13. PW4 is Dr. Bhadra Kanta Sarmah. In his evidence PW4 had deposed that on 08-05-2018, the victim of the instant case was produced before him at Udalguri Civil Hospital but she had refused to undergo medical examination. PW4 advised her X-ray of right wrist, right elbow and right iliac crest for determination of her radiological age. Ext-3 is the medical report and Ext-3(1) is the signature of PW4. Ext-4 is the report regarding radiological age of the victim on the basis of X-ray report. Ext-4(1) is the signature of Dr. Arabinda Deka. PW4 is acquainted with his signature. Cross-examination of PW4 had been declined by the defence.

14. On appraisal of the evidence on record, it appears that there is no evidence available on record that victim was forcibly taken away by the accused. PW2 and PW3 are the principle and material witnesses of the case. PW2, the father of the victim girl, had clearly revealed in cross-examination that he had no allegation against the accused and his daughter voluntarily went with the accused. PW2 had deposed that after about 40 days of the incident, while the accused was in jail, his victim daughter again left home and went to the house of the accused. Since then she has been living with the accused in his house and she got married with the accused. PW3, the victim girl, in her evidence had identified herself as wife of accused Mun Mun Rabha. She had deposed that she had love affairs with the accused. Therefore on the date of occurrence, she eloped with the accused and got married with him. She had further deposed that though she was produced before the doctor by the Police but she refused to undergo medical examination. PW3 had categorically revealed in cross-examination that she voluntarily went with the accused. The accused did not use force upon her to go with him. PW1 an independent witness had deposed that he did not know as to how the victim came to the house of the accused and why Police took her from there. With regard to age of the victim, PW2 had specifically

stated that at the time of incident his daughter was eighteen years old. Therefore, in this case it cannot be held that the victim was minor on the date of occurrence. The victim (PW3) also revealed in her deposition that at the time of incident she was aged about 18 years corroborating with her father (PW2). The victim being major had consented voluntarily to go with the accused. As such there is no evidence to show that the accused kidnapped the victim from the custody of her lawful guardianship with intent to force or seduce her to illicit intercourse with him or with any other person. Therefore, no offence under Section 366-A IPC is made out against the accused person.

15. In view of above discussion it appears that the prosecution has failed to establish the charge under Section 366-A I.P.C. against the accused Mun Mun Rabha beyond all reasonable doubt.
16. Situated thus the point for determination is decided in the negative and against the prosecution.

ORDER

17. In the result, the accused Mun Mun Rabha is found not guilty under Section 366-A I.P.C., and acquitted of charge under Section 366-A I.P.C., and set with liberty forthwith.
18. Bail bond executed by the accused Mun Mun Rabha and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.
19. Send back the original case record of GR Case No. 443/18 to the court of learned Chief Judicial Magistrate, Udalguri, alongwith a copy of the Judgment, forthwith.

20. Judgment is signed, delivered and pronounced in the open court today the 27th day of August, 2019.

Dictated and Corrected

(N.Talukdar)
Addl. Sessions Judge
Udalguri

(N.Talukdar)
Addl. Sessions Judge
Udalguri

IN THE COURT OF ADDL. SESSIONS JUDGE.....UDALGURI.**SESSIONS CASE NO. 47/2019****APPENDIX**

(A) Prosecution Exhibits :

Ext.-1 : FIR.

Ext.-2 : Statement of Victim U/S 164 Cr.P.C.

Ext.-3 : Medical report.

Ext.-4 : Report regarding radiological age of the victim.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Munia Rabha.

PW2- Laba Ram Deka.

PW3- Victim-A.

PW4- Dr. Bhadra Kanta Sarmah.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)
Addl. Sessions Judge.
Udalguri.