

IN THE COURT OF ASSTT. SESSIONS JUDGE ::BAKSA

Present : Himakshi Thakuria Buragohain.
Asstt. Sessions Judge,
Baksa, Mushalpur



SESSIONS CASE NO.: 57/21

U/S 366(A) IPC

STATE OF ASSAM

-VS-

Azijul Hakim

..... Accused person.

Committed by Learned CJM, Baksa, vide order dated
15-09-2021 in connection with PRC. Case No. :
343/20

APPEARANCE :

Advocate for the prosecution : Mr. Dipmoni Boro,
Ld. Addl. PP.

Advocate for the defence : Md. Nur Alom

Date of Evidence : 07-02-2022

Date of Argument : 09-02-2022

Date of Judgment : 09-02-2022

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J U D G M E N T

1. The gist of the prosecution case in brief is that on 20-07-2017 one Esab Ali lodged an ejahar alleging interaila that on the same day at about 3.00 a.m the accused Azijul Hakim kidnapped his daughter Nurbhanu Khatun aged about 16 years from his house. Hence this case.

2. On receipt of the ejahar police registered a case as Gobardhana PS Case No.233/17, u/s 366 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against Azijul Hakim, u/s 366(A) IPC. Since the offence u/s 366(A) IPC is exclusively triable by the Court of Sessions, the Ld. CJM, Baksa committed this case to the court of Hon'ble Sessions Judge, Baksa. On receipt of the committal paper and PRC Case Record, Hon'ble Sessions Judge, Baksa started Sessions case against the accused and thereafter transferred this case to this court for disposal.

3. After hearing the learned counsels of both sides and on perusal of the case diary, charge was framed against the accused u/s 366(A) IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.



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4. During trial, prosecution side examined as many as 2(two) witnesses including the informant and victim to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINT FOR DETERMINATION**

i) Whether the accused on 20-07-2017 at about 3.00 a.m at village Barapetagon under Gobardhana P.S, kidnapped the victim (name withheld) a minor girl under the age of 18 years with the intent that she may be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366(A) IPC?

DISCUSSION DECISION AND REASONS THEREOF

6. I have heard learned counsel for both the parties and have gone through the evidence and materials on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 366(A) IPC.

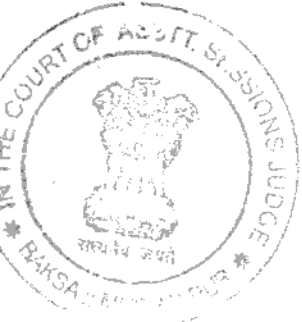


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7. On the other hand, learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the victim has nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

9. For determining the actual fact, let us go through the evidence of P.W-1, Esab Ali, who is the informant of this case. P.W-1 stated that about 4 years back he found his daughter missing from his house. As he could not find his daughter anywhere he lodged an ejarah at Labdanguri P.P under Goabardhana P.S. According to P.W1 on the next day his daughter was recovered by the police. It appears that at the time of occurrence P.W1's daughter was 17-18 years old and at that time she was studying in high school. It is further revealed from the evidence of P.W1 that his daughter had love affair with the accused and at present she is married to the accused and is residing in his house.

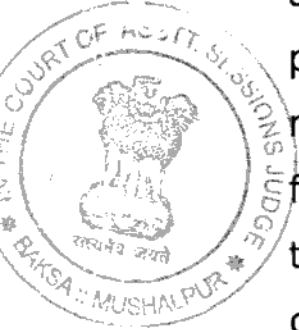


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10. Coming to the evidence of P.W2, Nur Bhanu Khatun, the victim we find her stating that about 4 years back she went to the house of her paternal aunt. According to P.W2 her family members thought that she eloped with the accused for which they lodged an ejahar. Even P.W2 stated that at the time of occurrence she was 18-19 years old and was a student of H.S.L.C at that time. P.W2 also stated that she is residing with the accused as his wife.

11. On perusal of the evidence of P.W1 and P.W2 it appears that there is no allegation against the accused anywhere in their evidence. It also appears that as the victim was missing from the house the informant lodged the ejahar on misunderstanding. Apart from that it is revealed from the evidence of both the P.Ws that both the accused and the victim were in love with each other and at present they are residing together as husband and wife.

12. So far as the age of the victim is concerned it is revealed from the evidence of both P.W1 and P.W2 that at the time of occurrence the latter was 18 years old and was a major.



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13. Considering the evidence and materials available on recovered it can be inferred that the victim voluntarily eloped with the accused Azijul Hakim. The victim in her statement recorded u/s 164 CrPC which is marked as Ext.2 has clearly stated about the love affair between them and that she willfully eloped with the accused. There being no proper supporting evidence as discussed above, the prosecution story cannot be relied upon.

14. Therefore it is found and hold that the victim eloped with the accused on her on accord for which she made no resistance. There is no evidence to prove the minority of the victim and no specific evidence about the involvement of the accused in the whole affair. In view of the above discussion it is held that the prosecution has not been able to prove the charge against the accused Md. Azijul Hakim. Hence, it appears that the ingredients of Section 366(A) IPC is not attracted against the accused.

O R D E R

15. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 366(A) IPC against the accused.

Hence, accused Md. Azijul Hakim is found not guilty and is acquitted from the charge of

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offence u/s 366(A) IPC.

Bail bond furnished by the accused shall stand canceled after period of 6 months.

Given under my hand and seal of this court on this the 9th day of February 2022



h 09.02.2022
Asstt. Sessions Judge,
Baksa, Mushalpur

Dictated & corrected by me

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Asstt. Sessions Judge,
Baksa, Mushalpur