

IN THE COURT OF ASSTT. SESSIONS JUDGE ::BAKSA

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

SESSIONS CASE NO.: 05/21

U/S 366(A) IPC

STATE OF ASSAM

-VS-

Lalchan Ali @ Lalchan Fakir

..... Accused person.

Committed by Learned Addl. CJM, Baksa, vide order dated 28-12-2020 in connection with PRC. Case No. : 847/20

APPEARANCE :

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

Advocate for the defence : Md. Nur Alom

Date of Evidence : 10-12-2021

Date of Argument : 22-12-2021

Date of Judgment : 03-01-2022

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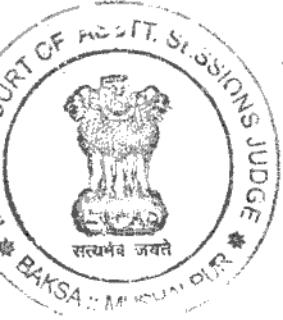


J U D G M E N T

1. The gist of the prosecution case in brief is that on 24-08-2020 the informant Golap Hussain lodged an ejahar alleging interalia that on 23-08-2020 at about 6.00 p.m his minor daughter Kamala Khatun aged about 14 years who was studying in class-VIII was kidnapped by the accused Lalchan Fakir with the help of Sabikul Fakir, Bahar Fakir and Sagiran Nessa. Hence, this case.

2. On receipt of the ejahar police registered a case as Gobardhana PS Case No.139/20, u/s 366(A)/34 IPC and started investigation. After completion of investigation the I/O submitted charge sheet against Lalchan Ali @ Lalchan Fakir u/s 366(A) IPC. Since the offence u/s 366(A) IPC is exclusively triable by the Court of Sessions, the Ld. Addl. 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



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charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.



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 sheets. The defence case was of complete denial and the defence side has not adduced any defence evidence.

5. **POINT FOR DETERMINATION**

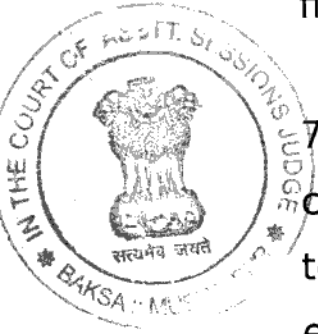
i) Whether you on 23-08-2020 at about 6.00 p.m at village Kajiyamati under Labdanguri P.P, Gobardhana Police Station, kidnapped the victim (name withheld) a minor girl under the age of 18 years with the intent that she may forced or seduced to illicit intercourse with another person and thereby committed an offence punishable u/s 366(A) IPC?

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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.



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.W1, Golap Hussain, who is the informant of this case. P.W1 stated that about 7-8 months back while he was in his shop, someone informed him over phone from his house that his daughter was missing. He came home immediately and searched for the accused in his house but the accused was not there. P.W-1 further stated that he suspected that his daughter eloped with the accused and went to Labdanguri P.P and lodged the

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ejahar. According to P.W-1 that day itself his daughter was recovered by the police from a place which was 10-12 k.m from his house. It is revealed from his evidence that the accused was also with her at that time.

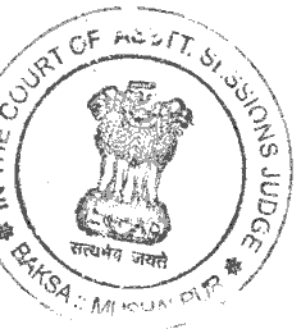


10. Coming to the evidence of P.W-2 Kamela Khatun, the victim of this case we find her stating that she had love affair with the accused. P.W-2 further stated that about one year back one day she went to the house of her maternal uncle without informing anyone. According to P.W2 as her family members could find her, her father thought she was eloped with the accused for which he lodged an ejahar. P.W2 stated that police recovered her after that and produced her before the court for recording of her statement u/s 164 CrPC.

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11. From the evidence of P.W1 and P.W2 it appears that none of them made any allegations against the accused. In his FIR P.W1 had alleged that the accused Lalchan alongwith some other people had kidnapped his daughter. But in his evidence he stated that he suspected that his daughter eloped with the accused. It also appears from the evidence that after being informed that his daughter was missing, P.W1 searched for the accused in his house and when the accused was

not found in his house he lodged the ejarah. From this act of P.W1 it can be assumed that he was aware of the fact that his daughter had some relation with the accused for which after coming home he first went to the house of the accused. Apart from that P.W1 admitted about his suspicion that his daughter eloped with the accused.



12. Even P.W2 clearly stated in her evidence that she went to the house of her maternal uncle on the day of occurrence without informing anyone. In her statement recorded u/s 164 CrPC which is marked as Exhibit 2. P.W1 did not make any allegation against the accused.

13. As revealed from the evidence of the P.Ws there is no doubt that the accused and the victim had love affair and that on the day of occurrence the victim willfully went out of the house without informing anyone. It is also clear that the entire incident occurred due to a misunderstanding.

14. So far as age of the victim is concerned it appears that none of the witnesses stated about the exact date of birth of the victim. The informant stated that the victim was 14 years 7 months old at the time of occurrence. Whereas P.W2, the victim stated that she was 16 years old at the time of

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occurrence.

15. Considering the evidence and materials available on record it is very clear that the ingredients required to constitute an offence u/s 366(A) IPC are not fulfilled at all. It can further be held that the victim voluntarily eloped with the accused Lalchan Ali @ Lalchan Fakir. The victim in her statement u/s 164 CrPC has also stated about the love affair between them. There being no proper supporting evidence, the prosecution story cannot be relied upon.

16. 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 Lalchan Ali @ Lalchan Fakir. Hence, it appears that the ingredients of Section 366(A) IPC is not attracted against the accused.

O R D E R

17. From the discussion made above, I find that the prosecution has miserably failed to prove



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the offence u/s 366(A) IPC against the accused.

Hence, accused Lalchan Ali @ Lalchan Fakir is found not guilty and is acquitted from the charge of offence u/s 366(A) IPC.

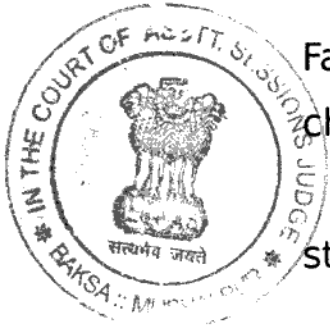
Bail bond furnished by the accused shall stand canceled after period of 6 months.

Given under my hand and seal of this court on this the 3rd day of January 2021

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Dictated & corrected by me

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Baksa, Mushalpur



A P P E N D I X**(A) Prosecution witnesses:**

PW 1 : Golap Hussain (Informant),

PW 2 : Kamala Khatun (victim)

(B) Prosecution exhibited documents :

Ext.1- Ejahar,

Ext.1(1)- Signature of PW 1

Ext.2- Statement of the victim recorded u/s
164 CrPC.

Ext.2(1) and Ext.2(2)- Signatures of victim.

(C) Defence witnesses : Nil.**(D) Defence exhibited document** : Nil.

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