

IN THE COURT OF THE ASSTT. SESSIONS JUDGE, BAKSA

Sessions Case No 19/2019

U/S 120(B)/366(A) IPC

State of Assam

-Versus-

Md. Sahidul Ali

..... Accused

Present : Shri D.M. Hussain, A.J.S.
Asstt. Sessions Judge,
Baksa, Mushalpur

Appearance:

For the State : Dipmoni Boro, Ld. Addl. PP.

For the Accused : Jaynal Abedin, Ld. Advocate.

Charge Framed on : 16-02-2019.

Date of Evidence : 24-01-2020, 26-02-2020 & 18-12-2020.

Date of Argument : 02-01-2021

Date of judgment : 12-01-2021

J U D G M E N T

1. The prosecution case in brief as unfolded from the ejahar dated 21-10-2015 filed by the informant Md. Wazed Ali is that on 19-10-2015 at about 1.30 pm the victim who is his daughter came to Dhamdhama 'Bazar' for repairing golden ornaments but did not return back home. The victim could not be traced even after search and later he came to know that his son-in-law Md. Sahidul Ali had kidnapped his daughter from Dhamdhama 'Bazar' and kept her confined in some unknown place.

2. The said ejahar was received and registered as Barama P.S Case No. 146/15 u/s 366(A) IPC dated 21-10-2015. After completion of investigation charge sheet no. 18/16 dated 31-05-2016 was filed against the accused person namely Md. Sahidul Ali u/s 120(B)/366(A) IPC and against Md. Abidul Ali u/s 366(A) R/W Sec 4 of POCSO Act.

3. The Ld CJM ,Nalbari vide order dated 10-01-2017 sent the case to the Court of Special Judge, Nalbari where it was registered as Special POSCO case no.21/17. Thereafter the case was transferred to the Court of Hon'ble Special Judge, Baksa as the P.O falls under the jurisdiction of Baksa District and was registered as Special POCSO Case no.57/18. On 14-09-2018 copy was furnished to the accused persons. Subsequently the Ld. Special Court, Baksa vide order dated 03-11-2018 held Md. Abidul Ali to be a child in conflict with law and he was forwarded to the Juvenile Justice Board, Baksa for trial. The Ld. Special Court, Baksa Vide order dated 16-02-2019 directed that the case shall proceed against accused Sahidul Ali as Sessions Case in place of Special POCSO case and thereafter Sessions case no.19/19 was registered. Charge u/s 120(B)/366(A) IPC was framed against the accused person namely Sahidul Ali after hearing both the sides. The charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried. On 24-01-2020 the case was transferred to this court for disposal.

4. **POINTS FOR DETERMINATION:**

i) Whether on 19-10-2015 the accused Sahidul Ali entered into an agreement with Abidul Ali to kidnap the victim and in pursuance of the said agreement induced the victim to go from her home so that she may be forced or seduced to illicit intercourse and thereby committed an offence u/s 120 (B) IPC?

ii) Whether on 19-10-2015 at about 1.30 pm at village Bherbheri, the accused induced the victim a minor girl under 18 years to go from her house with intent that she may be forced or seduced to illicit intercourse and thereby committed an offence u/s 366-A IPC ?

5. **DISCUSSION, DECISION AND REASONS THEREOF:**

During the course of trial the prosecution in order to substantiate its case examined 7 witnesses, the statement of the accused was recorded u/s 313 Cr.P.C. wherein he denied the allegations leveled against him and took the plea of innocence and false implication. The defence declined to adduce evidence. I have heard the arguments advanced by learned counsels of both sides and also perused the evidence available on record, my findings with reasons are as follows:

6. P.W-1 Wajed Ali who is the informant deposed that the victim is his daughter. About 4 years back the accused who is his son-in-law called his daughter over phone and took her to his house. His daughter was aged about 14 years at that time. Sahidul handed over his daughter to Abidul. He filed the ejahar one day after the incident. He was in the paddy field at the time when Sahidul called his daughter. He returned back from the paddy field in the evening. His wife Safura Khatun informed him that the victim was missing and Sahidul took the victim to his house. He went to the house of Sahidul but did not find his daughter in his house. He came to know that Sahidul handed over his daughter to his brother Abidul. He searched but did not find his daughter. So he filed the ejahar next day. He heard that his daughter was recovered from Kharupetia by Barama Police. He handed over the photocopy of birth certificate of his daughter to police.

7. During cross examination P.W-1 deposed that the accused is his elder son-in-law. Rashida who is the wife of the accused is his elder daughter. Sahidul married Rashida 8 years prior to the incident. His house is about 3 k.m from the house of Sahidul. Prior to the incident there was visiting terms with the accused person and his family members. He admitted that he does not know the date of birth of his daughter and he has stated the age of victim as 14 years on assumption. He deposed that the actual age of his daughter at the time of the incident could be more than 14 years. He deposed that Abidul who is the brother of Sahidul was school going student at the time of the incident. He admitted that he has not seen as to whether the accused kidnapped his daughter or she went to the house of the accused on her own will. He deposed that his elder daughter Rashida is residing peacefully with the accused Sahidul.

8. P.W-2 Hanif Ali whose house is near the house of the informant deposed that one day evening at about 4 p.m hearing hue and cry he went to the house of Wajed Ali and came to know that his daughter had gone to Dhamdhama at about 1/1.30 p.m but had not returned back home. Later he came to know that the accused who is the 'Bhini' of the daughter of Wajed Ali took her. The victim was aged about 14 years at the time of incident and she was a student at that time.

9. P.W-2 during cross examination deposed that he does not know the date of birth of victim and he stated the age of the victim on assumption. He deposed that he never visited the Police Station in connection with this case and he does not know whether the accused forcibly took the daughter of Wajed Ali or the daughter of Wajed Ali herself voluntarily went to visit the house of the accused.

10. P.W-3 Jainur Ali deposed that the incident took place about 4-5 years back. He came back home from fishing at about 7 p.m and heard hue and cry in the house of Wajed Ali and he went there and came to know that the daughter of Wajed Ali was missing. He waited till 12 midnight and came to know that Sahidul had taken the daughter of Wajed Ali.

11. P.W-3 during cross examination deposed that there are 3/4 houses between his house and the house of Wajed Ali. He admitted that he does not know whether the daughter of Wajed Ali was kidnapped or she went on her own will to roam.

12. P.W-4 Dr Urmi Devi Choudhury(M.O) deposed that on 27.10.2015 she was working as M&HO 1 at SMK Civil Hospital, Nalbari. On that day she examined the victim D/O of Wazed Ali brought by WBC 219 Thunuka Kalita and WHG Nazma Ahmed in Case No. 146/15 of Barama P.S and examination was done in presence of female attendant Namita Das. According to the girl she went with a known boy on 19.10.2015, physical relation intercourse occurred in her own wishes 4 to 5 days before. On examination her external genitalia was found healthy. Hymen was torn but found healthy. Vagina and cervix were healthy. Vagina admits 2 fingers easily. Examining fingers stained with menstrual blood and her last menstrual period is day 1. She advised for urine pregnancy test of which the report was not submitted till the time of reporting and vaginal swab was sent for sperm examination. No sperm was seen and X-ray was advised for age estimation. Skeletal age from radiological evidence estimated above 18 years of age. USG of lower abdomen was advised. Normal study was found. Impression is not consistent with recent sexual intercourse or assault. The medical examination report has been exhibited as exhibit 2.

13. P.W 5 (victim) deposed that the accused is her "bhini". The incident took place in the year 2015 at about 7 a.m. She was in her home. The accused called her over phone to come to Dhamdhama along with the ornaments. She came to Dhamdhama. The accused told her to wait at Dhamdhama and told her that he would return after sometime. The accused came in one maruti car and told that he would make ornaments at some other place. She got inside the car and reached Nalbari highway. The accused handed her to his younger brother Abidul who took her to Tezpur in a bus. Abidul kept her for 2 days in the house of some unknown person at Tezpur. Hasmat who is the "Bardeuta" of the accused came to Tezpur and recovered her and brought her to Barama P.S. She was sent for medical examination at

Nalbari. Abidul forcefully had physical relationship with her at Tezpur. She was sent to Nalbari for recording her statement. She was 14/15 years age at the time of incident. Her date of birth is 05.02.2001. The statement of the victim recorded u/s 164 Crpc has been exhibited as exhibit 3.

14. PW 5 during cross examination deposed that after the incident she got married at Hajo on her own will and had 2 children out of the wedlock. She admitted that Sahidul had married her elder sister and Sahidul is residing with her elder sister. At the time of the incident Abidul was a student of High school. Her house is one and half km from Dhamdhama and about 1 k.m from the house of her elder sister. She was in the car for about half an hour. She informed her mother that she was going to Dhamdhama for making ornaments. She knew the grocery and the goldsmith shop at Dhamdhama. She refused to get inside the car. There was gathering of people at Dhamdhama town. 2/3 passengers were in the bus. The bus stopped at stoppages from Nalbari to Tezpur. She did not state before any passengers of the bus that she was forcefully brought by Abidul as her mouth was gagged by Abidul. She admitted that Abidul did not gag her mouth during the whole journey from Nalbari to Tezpur. She and Abidul were sitting in different seats. Later, said she and Abidul were sitting in the same seat. Abidul paid the bus fare. She did not tell the conductor of the bus when he came to collect the bus fare that she was forcefully brought by Abidul as her mouth was gagged by Abidul. The conductor and other passengers saw Abidul gagging her mouth but no passengers restrained Abidul from gagging her mouth. She had met the persons in whose house she was kept at Tezpur for 2 days. She told the persons that she was forcefully brought by Abidul but they did not inform the police. Sahidul is residing peacefully with her elder sister

15. P.W- 6 Prabin Das deposed that he heard that the victim was taken by someone in the year 2015. He had not seen the incident. Police took his signature in the seizure list. The seizure list has been exhibited as exhibit 4.

16. PW 6 during cross examination deposed that he does not know why police took his signature.

17. P.W-7 Lalchand Ali (I.O) deposed that on 21-10-2015 he was posted as A.S.I at Barama P.S. On that day the O/C Barama P.S endorsed him Barama P.S Case no.146/15 for investigation. He recorded the statement of the complainant Wazed Ali at the police station. Next day on 22-10-2015 he visited the place of occurrence at village Bherbheri. He drew a sketch map of the P.O and recorded the statement of witnesses. The sketch map has been exhibited as exhibit 5. Thereafter he went to Dhamdhama O.P as the house of the accused Sahidul Ali falls under the said O.P. He visited the house of the accused but could not find the accused. Thereafter he returned back to Barama P.S. He transmitted W.T message to all the police stations of Assam for tracing out the accused. The father of the accused produced the victim at Barama P.S on 27-10-2015. He recorded the statement of the victim u/s 161CrPc and sent the victim to S.M.K Civil Hospital, Nalbari for her medical examination and on the same day the statement of the victim u/s 164 CrPc was recorded at Nalbari Court. The accused obtained anticipatory bail from Nalbari Court and accordingly he was released on bail. He collected the medical report of the victim on 09-11-2015. The original birth certificate of the victim was produced by Hasmad Ali who was the father of the victim and after seizure he returned him back the original birth certificate of the victim. The charge-sheet was submitted by Narayan Ch. Ray Attached Officer of Barama P.S.

18. PW 7 during cross examination deposed that as per the ejahar the date of incident was on 19-10-2015. The ejahar was filed after two days of the incident on 21-10-2015. The P.O was about 22 km from Barama P.S. As per the medical report of the victim(Exhibit-2) the age of the victim was above 18 years. In the seizure list it is not mentioned whether the original or the photocopy of the birth certificate of the victim was seized. In the seizure list the name of the person whose birth certificate was seized was not mentioned. It was not mentioned in the case diary that the original birth certificate of the victim was produced before him. It is also not mentioned in the case diary that he

returned the original birth certificate of the victim to her father. He did not seize any other articles during his investigation. The victim girl appeared before the Barama P.S voluntarily after about 7 days of the date of incident. He had not recorded the statement the father of the accused who brought the victim to Barama P.S. He did not visit Dhamdhama and Tezpur along with the victim during investigation. He did not visit any place accompanied by the victim during his investigation. As per the ejahar it appears that the father of the accused was mentioned to be dead at the time of filing the ejahar on 21-10-2015. P.W-1 Wazed Ali did not state before him that accused Sahidul called his daughter over phone and took her to his house and handed over his daughter to Abidul. P.W-1 did not state before him that his wife Safura Khatun informed him that his daughter was missing and Sahidul took her to his house and he went to the house of Sahidul but did not find his daughter. P.W-1 did not state before him that his daughter was recovered by Barama Police from Kharupetia. P.W-5 did not state before him that accused Sahidul came in one Maruti car and told her that he would make ornaments at some other place.

19. The accused in his statement recorded under 313 Cr.PC stated that the victim was in love with Abidul who was a student of class X .He objected to the marriage between the parties and so the family members of the victim filed a false case against him .

20. Section 120-A IPC provides the definition of criminal conspiracy. —When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

21. Section 366-A IPC provides —Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from

any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

22. It appears that admittedly the accused Sahidul was the son in law of the informant and the accused had married his elder daughter Rashida about 8 years prior to the alleged incident and there was visiting terms with the accused person and his family members. PW 1 admitted that he was in the paddy field and he returned home only in the evening and he has not seen as to whether the accused Sahidul kidnapped his daughter or she went to the house of the accused on her own will. PW 1 admitted that his elder daughter Rashida was residing peacefully with the accused. PW 1 admitted that he does not know the date of birth his daughter and he has stated the age of victim as 14 years on assumption and the actual age of his daughter at the time of the incident could be more than 14 years. PW 7 (I.O) deposed that P.W-1 did not state before him that accused Sahidul called his daughter over phone and took her to his house and handed over his daughter to Abidul and that his wife Safura Khatun informed him that his daughter was missing and Sahidul took her to his house and he went to the house of Sahidul but did not find his daughter.

23. It appears that P.W-2 during his cross examination admitted that he does not know the date of birth of the victim and he stated the age of the victim on assumption. He also admitted that he does not know whether the accused forcibly took the victim or the victim voluntarily went to visit the house of the accused.

24. PW 3 also admitted during his cross examination that he does not know whether the victim was kidnapped or she went on her own will to roam.

25. It appears that the victim PW 5 deposed that the accused called her over phone to come to Dhamdhama along with the ornaments and she came to Dhamdhama. PW 5 admitted during cross examination that she knew the goldsmith shop at Dhamdhama and informed her mother that she was going to Dhamdhama for making ornaments.

26. PW 1 deposed that the accused came in one maruti car and told that he would make ornaments at some other place. But PW 7 (I.O) deposed that P.W-5 victim did not state before him that accused Sahidul came in one Maruti car and told her that he would make ornaments at some other place. PW 5 deposed that she refused to get inside the car. But PW 5 admitted that there was gathering of people at Dhamdhama town. There is no evidence to show that the victim raised hue and cry when she was asked to get inside the car.

27. PW 1 deposed that the accused handed her to his younger brother Abidul who took her to Tezpur in a bus and kept her for 2 days in the house of some unknown person at Tezpur and forcefully had physical relationship with her at Tezpur. But it appears that the victim PW 5 admitted that there was 2/3 passengers in the bus and the bus stopped at stoppages from Nalbari to Tezpur but she did not state before any passenger of the bus that she was forcefully brought by Abidul. The victim admitted that Abidul did not gag her mouth during the whole journey from Nalbari to Tezpur. She admitted that she even did not tell the conductor of the bus when he came to collect the bus fare that she was forcefully brought by Abidul.

28. The statement of the victim recorded u/s 164 has been exhibited as Exhibit 3. The victim in her statement stated that the accused Sahidul was her 'bhini' and she was in love with him for 3 years. On 19-05-2015 Sahidul called her over phone and she went to Dhamdhama and thereafter they eloped to Tezpur and resided for about one week as husband and wife.

29. PW 5 deposed that her date of birth was 05.02.2001 and she was about 14/15 years at the time of the incident. But it appears that as per the (Exhibit 2) medical report the Skeletal age of the victim from radiological evidence was estimated to be above 18 years of age. It appears that the prosecution has not produced any original birth certificate of the victim. The prosecution had exhibited the seizure list as exhibit 4 but P W 7 (I.O) admitted that in the seizure list it is not mentioned whether the original or the photocopy of the birth certificate

of the victim was seized. It was not mentioned in the case diary that the original birth certificate of the victim was produced before him and he returned the original birth certificate of the victim to her father. PW 6 who is the seizure witness deposed that he does not know why police took his signature in the seizure list.

30. It appears from the evidence of PW 7 (I.O) that the victim girl appeared before the Barama P.S voluntarily after about 7 days of the date of the alleged incident. It appears that there is vital contradiction between the evidence of the victim/PW 5 and her statement recorded u/s 164 Crpc (Exhibit 3). The law is well settled that when two views are possible on the evidence adduced the view favourable to the accused should be adopted. There is no eye witness to the incident except the victim. The accused was admittedly the 'bhini' of the victim and there was visiting terms between them prior to the incident. PW 1, 2 & 3 admitted during cross examination that they do not know whether the victim was kidnapped or she went on her own will.

31. The prosecution has failed to establish the essential ingredients of offence u/s section 120 (B)/366 (A) IPC beyond all reasonable doubt.

32. The accused person namely Md. Sahidul Ali is found not guilty u/s 120 (B)/366(A) I.P.C and hence, acquitted and be set at liberty forthwith. The bail bond stands extended for a further period of 6 months. Forward a copy of the judgment to the District Magistrate, Baksa as per section 365 Crpc .

Given under my hand and seal of this court on this 12th day of January, 2021.

Asstt. Sessions Judge
Baksa, Mushalpur

Dictated & Corrected by me

Asstt. Sessions Judge
Baksa, Mushalpur

APPENDIX

Prosecution Witnesses:

- PW-1- Wazed Ali (informant).
- PW-2- Hanif Ali.
- PW-3- Jainur Ali.
- PW-4- Dr. Urmi Devi Chaudhary.(M.O)
- PW-5- Victim.
- PW-6- Prabin Das.
- PW-7- Lalchand Ali.(I/O)

Prosecution Exhibits:

- Ext. 1 -Ejahaar.
- Ext. 1(1) -Signature of the Wazed Ali.
- Ext.2 -Medical examination report.
- Ext.2(1),2(2) -Signatures of the M.O
- Ext. 2(3) -Signature of the victim in the medical report.
- Ext.3 -Statement of the victim recorded u/s 164CrPc
- Ext.3(1) -Signature of victim.
- Ext.4 -Seizure list.
- Ext.4(1) -Signature of Prabin Das
- Ext4(2) -Signature of I/O.
- Ext.5 - Sketch Map
- Ext.5(1) - Signature of I/O

Defence witnesses:

Nil

Defence exhibits:

Nil

Asstt. Sessions Judge,
Baksa, Mushalpur