

IN THE COURT OF THE ASSTT. SESSIONS JUDGE, BAKSA

Sessions Case No.117/19

U/S 366(A) IPC

State of Assam

-Versus-

Sri Dhanjit Barman

..... Accused

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

Committed by : Abdul Mazid Md. Mahiuddin,
Ld. Chief Judicial Magistrate,
Baksa, Mushalpur.

Appearance:

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

For the Accused : Gobinda Ch. Nath, Ld. Advocate

Charge Framed on : 25-11-2019

Date of Evidence : 05-02-20,24-02-20,03-03-20,11-12-20 & 19-12-20

Date of Argument : 22-01-2021

Date of judgment : 30-01-2021

J U D G M E N T

1. The prosecution case in brief as unfolded from the ejahar dated 07-09-2017 filed by the informant Smti Arati Barman is that on 07-09-2017 at about 8.30 a.m her daughter aged about 16 years left home for going to her school Cambridge Academy, Barama. At about 10.45 a.m Smti. Saya Barman informed her neighbour Smti. Manika Baruah that the daughter of Arati Barman was missing. She later came to know that Dhanjit Barman who was the elder brother of Saya Barman had kidnapped her daughter and took her to the house his 'jetha' at Barbari. At about 3 p.m her elder brother Niranjana Barman and the father of the accused Lakhi Barman came to Barbari to bring the victim but Dhanjit Barman refused to hand over the victim and verbally abused her elder brother Niranjana Barman and chased to hit him.

2. The said ejahar was received and registered as Barama P.S case no.128/17 dated 07-09-2017 u/s 366 IPC. After completion of investigation charge sheet no.53/17 dtd. 31-10-2017 was filed against the accused person namely Sri Dhanjit Barman u/s 366 IPC.

3. On 04-10-19, the case was committed to the court of Hon'ble Sessions Judge, Baksa, Mushalpur after complying the provisions of section 207 Cr.P.C. Charge was framed u/s 366(A) IPC against accused Sri Dhanjit Barman after hearing both the sides. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. The case was sent to this court on 05-02-2020 for disposal.

4. POINT FOR DETERMINATION

Whether on 07-09-2017 at about 10.35 a.m at village Alagjhar under Barama P.S the accused induced the victim under the age of 18 years to go from her house with the 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 8 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. PW-1 Arati Barman who is the informant deposed that the victim is her daughter. The incident took place about three years back. At about 8.30 a.m her daughter came to attend classes at Cambridge College Barama. Her daughter was a student of H.S 1st year. She was at Barama Medical at that time along with Manika Barman. Saya Barman who was the sister of accused Dhanjit Barman informed Manika Barman over phone that her daughter has not attended college and she suspected that her daughter went with Dhanjit Barman. She came home. Her elder brother Niranjan Barman came to her house she called Lakhi Barman who is the father of Dhanjit Barman over phone to her house. Lakhi Barman came to her house and her elder brother asked him as to whether he knew the whereabouts of her daughter to which he denied to have any knowledge. Her elder brother Niranjan along with Lakhi Barman came to the house of 'pehi' of Dhanjit Barman at Barbari and they found her daughter along with Dhanjit Barman in the said house at Barbari. Dhanjit Barman verbally abused Niranjan Barman. Her elder brother Niranjan Barman called her over phone that Dhanjit Barman was not allowing her daughter to come with him. She went to Barama P.S and informed the police. She filed the ejahar. At the time of the incident her daughter was aged about 16 years.

7. P.W-1 during cross examination deposed that she filed the ejahar at 6.35 p.m. She does not remember the name of the person who wrote the ejahar.

8. P.W-2 Manika Barman deposed that she does not know the accused. The incident was of the year 2017. She was admitted in Govt. Medical, Barama as she delivered a child. A phone call came from Saya Barman in her mobile phone which was received by the informant Arati Barman. Saya Barman informed that she and the victim came to college together but the victim did not return back home and she suspected that the victim went with the accused Dhanjit Barman. Arati Barman was with her at the Govt. Medical, Barama. Arati asked Saya Barman about the whereabouts of the victim but she disconnected the phone. Arati Barman came to her house leaving her in the medical. She was released from medical on 07-09-2017 and she came to know in her house that police recovered the victim from the house of 'jetha' of the accused Dhanjit Barman at Barbari. The victim was aged about 16 years at that time.

9. During cross examination P.W-2 Manika Barman deposed that she does not know the date of birth of the victim.

10. P.W-3 Dhana Barman deposed that the incident is of the year 2017. Manika Barman was admitted in medical for her delivery. He was also at the medical. Saya Barman informed Arati Barman over phone that the victim was missing from the college and Dhanjit Barman had taken the victim. The victim was recovered from Barbari in the presence of police. The victim was aged about 16 years at that time. The victim was recovered on the same day on 07-09-2017.

11. P.W-3 during cross examination deposed that he does not know the date of birth of the victim. He admitted that he had not stated before police that the age of victim was about 16 years at that time.

12. P.W-4 Tarani Kalita deposed that he came to know the accused after the incident. The victim is his 'Bhatija'. The victim was aged about 16 years at the time of the incident. The incident took place on 07-09-

2017. The victim went to College. Manika Barman received information over phone that the victim was missing from college. The victim was later recovered from Barbari from the house of the 'Jetha' of the accused.

13. P.W-4 during cross examination deposed that he does not know the date of birth of the victim. He admitted that he did not state before police that the victim was aged about 16 years at that time.

14. P.W-5 Dr. Dipti Choudhury (M.O) deposed that on 08-09-2017 at 11.45 a.m she was posted at SMK Civil Hospital, Nalbari as S.D.M & H.O. The victim was brought and identified by WPC/109 Ranju Basumatary of Barama P.S in connection with Barama P.S case no.128/17 u/s 366 IPC. The victim refused medical examination. Only X-ray was done for age determination. X-ray No.9680 on 14.09.2017 show the estimated age of the victim above 16(sixteen) years and below 18(eighteen) years as reported by Dr. Prabodh Kr. Sarma(Radiologist, SMK Civil Hospital).

15. During cross examination P.W-5 deposed that the age determined through radiological examination may show variation +/-2 years.

16. P.W-6 who is the victim deposed that the informant is her mother. She knew accused Dhanjit Barman. On 07.09.2017 at about 8.20 am she was going to Cambridge Academy, Barama along with Saya Barman who was the sister of the accused in their bicycles. The accused Dhanjit Barman stopped them at Barama chowk and induced her to come with him and he took her to Barimakha to the house of his related "jethi". She was kept confined in a room which was locked from the outside. Thereafter her parents recovered her on the same day at about 3-4 pm with the police help. She was aged about 15 years 11 months at the time of incident. Her date of birth was 15.11.2001. Police

brought her to Barama P.S from where she was sent to Nalbari court for recording her statement and to SMK Civil Hospital, Nalbari for her medical examination. Thereafter her parents brought her back to her house.

17. During cross examination P.W-6 (victim) deposed that she stated before court as per instruction of parents of the accused and stated that her mother was looking for a boy for her who was to come after puja for engagement and so she eloped with the accused and came to Barimakha. She deposed that she stated before police as per instruction of the parents of the accused person, and told her parents that she was going to college and came out of her house at about 8.20 a.m and met the accused at Barama chowk and both of them went to Barimakha in a car. She also deposed that she stated before police as per instruction of the parents of the accused that she was in love with the accused about 6 months back and so she eloped with him. She admitted that she has not stated in her statement before police and court that on 07.09.2017 at about 8.20 am, she was going to Cambridge Academy, Barama along with Saya Barman who was the sister of the accused in their bicycles and the accused Dhanjit Barman stopped them at Barama chowk and induced her to come with him. She also admitted that she had not stated before police and court that she was kept confined in a room which was locked from outside.

18. P.W-7 Narayan Ch. Roy deposed that on 07-09-2017 he was working as 2nd Officer at Barama P.S. On that day the O/C Barama P.S endorsed him to investigate the case. The investigation of this case was conducted by A.S.I Dewan Rahijuddin Ahmed of Barama P.S. he submitted charge-sheet of this case on 31-10-2017 on the basis of investigation done by A.S.I Rahijuddin Ahmed against the accused Dhanjit Barman u/s 366 IPC.

19. P.W-8 Rahijuddin Ahmed(I/O) deposed that on 07-09-2017 he was posted as attached Officer at Barama P.S. The O/C Barama P.S endorsed him to take up pre-step investigation of Barama P.S case no.128/17 u/s 366 IPC. He along with other police personnel visited the house of Kanak Chandra Barman who was the (peha) of the accused at village Pakhamara under Barbari P.S and he recovered the victim along with the accused Dhanjit Barman. The victim and accused were brought to the Barama police station. Next day on 08-09-2017 the victim was sent to S.M.K Civil Hospital, Nalbari for her medical examination and thereafter to the court of C.J.M, Nalbari for recording her statement u/s 164 CrPC. The accused Dhanjit Barman was also forwarded to the court of C.J.M , Nalbari from where he was sent to judicial custody. On 09-09-2017 he visited the P.O which was the Tempo Stand at Barama. He recorded the statement of witnesses and the informant and drew sketch map. On 15-09-2017 after completion of pre-step investigation he submitted the case diary to the O/C, Barama P.S.

20. P.W-8 during cross examination deposed that on 07-09-2017 at about 6.35 p.m he was endorsed to investigate the case. As per the Exhibit-5 sketch map the P.O was shown as the house of the informant. P.W-1 Arati Barman did not state before him that she called Lakhi Barman over phone to her house. P.W-1 did not state before him that her elder brother informed her over phone that Dhanjit Barman was not allowing her daughter to come with him. P.W-2 Manika Barman did not state before him that she stated that the age of the victim was 16 years at the time of the incident. P.W-3 Dhana Barman did not state before him that Saya Barman informed Arati Barman over phone that the victim was missing from college and Dhanjit Barman had taken the victim. P.W-6 victim did not state before him that as per instruction of the parents of the accused she was stating before him that she was in love with the accused about 6 months back and so she eloped with him. P.W-6 did not stated before him that on 07-09-2017 at about 8.20 a.m she was going to Cambridge Academy, Barama along with Saya

Barman who was the sister of the accused in their bicycles and the accused Dhanjit Barman stopped them at Barama chowk and induced her to come with him. P.W-6 did not state before him that she was kept confined in a room which was locked from outside.

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. The victim in her statement recorded u/s 164 CrPC stated that she was a student of H.S 1st year at Cambridge Academy, Barama. Saya Barman who was the sister of Dhanjit Barman studied with her. She knew Dhanjit Barman for 2-3 months who worked in a 5 Star Hotel at Guwahati. Her mother was looking for a groom who was to come after Puja for engagement so on 07-09-2017 at about 9.30 a.m she told her parents that she was going to college but she eloped with Dhanjit to Barimakaha where they stayed in the house of a related grandmother of Dhanjit. Her parents came to know that she eloped and they came with police and brought her back.

23. The victim in her statement recorded u/s 161 Cr.P.C stated that on 07-09-2017 at about 8.20 a.m she told her parents that she was going to college and met Dhanjit Barman at Barama Bazar. Thereafter they both went to Pakhamara via Barimakha in a vehicle to the house of Kanak Chandra Barman. She was in love with Dhanjit Barman for about six months and so both of them eloped .

24. It appears that the P.W-1 deposed that she called Lakhi Barman over phone to her house. P.W-1 also deposed that her elder brother Niranjana Barman informed her over phone that Dhanjit Barman was not

allowing her daughter to come with her. But P.W-1 did not state the same before the I/O in his statement recorded u/s 161 Cr.P.C.

25. It appears that P.W-2 could not identify the accused in the court and during her cross examination admitted that she does not know the date of birth of the victim.

26. It appears that P.W-3 deposed that Saya Barman informed Arati Barman over phone that the victim was missing from the college and Dhanjit Barman had taken the victim. But P.W-3 had not state the same before the I/O in his statement recorded u/s 161 Cr.P.C.

27. It appears that P.W-6 victim deposed that on 07-09-2017 at about 8.20 a.m while she was going to Cambridge Academy, Barama along with Saya Barman the sister of the accused in their bicycles, the accused Dhanjit Barman stopped them at Barama chowk and induced her to come with him and she was kept confined in a room which was locked from outside but P.W-6 did not state the same in her statement recorded u/s 161 Cr.P.C and u/s 164 Cr.P.C. P.W-6 admitted during her cross examination that she stated before court that her mother was looking for a boy who was to come after Puja for engagement so she eloped with the accused and came to Barimakha. P.W-6 also admitted that she stated before police that she told her parents that she was going to college and came out of her house at about 8.20 a.m and met the accused at Barama chowk and both of them went to Barimakha in a car. P.W-6 also admitted that she stated before police that she was in love with the accused for about 6 months and so she eloped with him.

28. It appears that P.W-6 deposed that the statements made by her before police u/s 161 Cr.P.C and before court u/s 164 Cr.P.C were as per instruction of the parents of the accused. But it appears that the said fact is not reflected in the statements recorded u/s 161 Cr.P.C nor u/s 164 Cr.P.C that the said statements were given under pressure as per

instruction of the parents of the accused person. It also appears that there is no evidence that oral or written complaint was made by the victim before any competent authority, court or police alleging that the statements u/s 161 Cr.P.C and u/s 164 Cr.P.C were given by her under pressure or duress.

29. It appears that the prosecution has not exhibited any document to prove the age of the victim. As per the medical report the estimated age of the victim from radiological evidence was above 16(sixteen) years and below 18(eighteen). P.W-5 (M.O) during cross examination deposed that the age determined through radiological examination may show variation +/-2 years.

30. The law is well settled that statement recorded under section 164 Cr.P.C cannot be treated as substantive evidence but such statement can be used for the purpose of contradicting or corroborating the earlier testimony of the witness, while statement under section 161 Cr.P.C can be used only for the purpose of contradicting the earlier testimony of the witness. It is also well settled that when two views are possible on the evidence adduced the view favourable to the accused should be adopted.

31. On appreciation of the testimony of witness and the materials available on record, I find that there is no eye witness to the incident except the victim and the evidence of P.W-1, P.W-2, P.W-3, P.W-4 and P.W-7 appears to be hearsay. There is apparent inconsistency between the version of the statement of the victim earlier recorded u/s 164 Cr.P.C and u/s 161 Cr.P.C and her evidence before court recorded as P.W-6 which impeach the credibility of the witness. The prosecution has failed to establish the essential ingredients so required to constitute the charged offence beyond all reasonable doubt and the accused is thus entitled to benefit of doubt.

32. The accused person namely Sri Dhanjit Barman is found not guilty u/s 366 (A) I.P.C and hence, acquitted and be set at liberty forthwith. The bail bond stands extended for a further period period of six months. Let a copy of the judgment be forwarded to the District Magistrate, Baksa as per section 365 Cr.P.C.

Given under my hand and seal of this court on this 30th day of January, 2021.

Asstt. Sessions Judge
Baksa,Mushalpur

Dictated & Corrected by me
Asstt. Sessions Judge
Baksa,Mushalpur

APPENDIX

Prosecution Witnesses:

- P.W-1 Smti. Arati Barman
- P.W-2 Mankia Barman
- P.W-3 Dhana Barman
- P.W-4 Tarani Kalita
- P.W-5 Dr. Dipti Choudhury(M.O)
- P.W-6 Victim(name withheld)
- P.W-7 Narayan Ch. Roy (I/O)
- P.W-8 Dewan Rahijuddin Ahmed (I/O)

Prosecution Exhibits:

- Ext.1- Ejahar.
- Ext.1(1)-Signature of the informant.
- Ext.2- Medical examination report
- Ext.2(1), Ext-2(2) & Ext-2(3)- Signatures of the M.O.
- Ext.2(4) & Ext.2(5)- Signatures of the victim.
- Ext.3-Statement of the victim recorded u/s 164 Cr.P.C
- Ext.3(1) & Ext.3(2)- Signatures of the victim.
- Ext.4-Charge-sheet
- Ext.4(1)- 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