

SESSIONS CASE NO: 103 OF 2013  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED:SHRI MIZANUR RAHMAN

DISTRICT:DHUBRI  
IN THE COURT OF THE ASST. SESSIONS JUDGE, DHUBRI

SESSIONS CASE NO:103/ 2013  
U/S 366A IPC

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: 1) SHRI MIZANUR RAHMAN

PRESENT: YUSUF AZAZ, ASST. SESSIONS JUDGE, DHUBRI

ADVOCATE FOR THE PROSECUTION: SHRI K.A HUSSAIN

ADVOCATE FOR THE ACCUSED: SHRI H. RAHMAN

CHARGE FRAMED ON: 26/7/2013

EVIDENCE RECORDED ON:13/11/2013, 11/8/2015, 19/10/2015, 4/1/2016,  
9/5/2016

ARGUMENT HEARD ON: 25/1/2017

JUDGMENT DELIVERED ON: 25/1/2017

**JUDGMENT**

1. The prosecution in this case was launched by the lodging of an ejahar with the Officer in Charge of Dhubri Police Station on 14/10/2011 by the informant, Shri Moslem Ali to the effect that the accused persons namely, Shri Mizanur Rahman, Shri Nazim Uddin Sk, Shri Aminur Rahman, Shri Jianur Rahman and Shri Moklesur Rahman had kidnapped his minor daughter, Smti M.B (name withhold to protect the identity of the victim) on 7/10/2011.

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SESSIONS CASE NO: 103 OF 2013  
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2. Upon receipt of the ejahar the police registered Dhubri Police Station case no.565/ 2011 under section 366A/ 34 of the Indian Penal Code (IPC) and started investigation in the case. After completion of the investigation the police submitted chargesheet against the accused, Shri Mizanur Rahman only under section 366A IPC.
3. The abovenamed accused, Shri Mizanur Rahman appeared and entered trial and accordingly the formal charge under section 366A IPC was framed and the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
4. The prosecution examined as many as eight witnesses; whereas the defence declined to adduce evidence.
5. The statement of the accused under section 313 CrPC is recorded. The defence case is to the effect that the victim and the accused had love affair and they eloped and married.
6. I had heard the arguments put forwarded by the parties. The learned counsel for the accused has submitted that the prosecution has failed to prove its case; hence the accused ought to be acquitted.
7. Upon hearing and on perusal of the record I have framed the following point for determination-
  - (1) Whether the accused had induced the victim, who was a minor at that time, to come with him with the intention that she would be forced to illicit intercourse and thereby committed offence under section 366A IPC?

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

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**POINT FOR DETERMINATION NO.1:**

8. The prosecution has examined the victim (PW1) and she had deposed that she had love affair with the accused and that they eloped and married. The PW1 (victim) had stated that she was about 19 years of age at that time and she voluntarily married the accused.
9. The prosecution has also examined the informant, Shri Moslem Ali (PW2) and he had also deposed that the victim went with the accused and at present they are living as husband and wife.
10. The prosecution has also examined some independent witnesses namely, Shri Hussain Ali (PW3), Shri Abdul Jalil (PW4), Shri Mohibul Hoque (PW5), and Shri Nazimuddin Sk (PW7) who have all deposed that the victim and the accused loved each other and they eloped and married and are staying as husband and wife.
11. It is seen from the evidence on record that the victim voluntarily went with the accused as she loved the accused and they married and are presently residing together as husband and wife. In view of the above the only point which is required to be determined is as to whether the victim was above the age of consent at the relevant time, i.e whether the victim was major or minor at the relevant time.
12. The PW2, Shri Moslem Ali, the father of the victim had specifically stated that the victim was about 13 years of age at the relevant time, but his evidence cannot be believed and relied upon because it appears that he is an interested witness as he had deposed falsely that the victim was kidnapped by the accused and he had also lodged ejahar based upon the said allegation.

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13. In addition to the above the prosecution has failed to bring on record any documents showing the age of the victim like the school certificate, age certificate etc. and in fact the I/O, Shri Hangshu Nath Thakuria (PW6) had also failed to seize any such document relating to the age of the victim. It is settled that the ossification tests to determine age is to be done only as a last resort when other documentary evidences like, matriculation certificate, certificate of the school where the minor first studied are not available. In the instant case at hand no such documents relating to the age of the victim was seized and no explanation is provided for the same; as such not much reliance could be placed upon the oral evidence of the PW2, Shri Moslem Ali that the victim was about 13 years of age at that time. On the contrary, the victim (PW1) had specifically stated in her evidence that she was about 19 years of age at the relevant time. Further, the PW7, Shri Nazimuddin Sk had also stated in his cross examination that the victim was about 19/20 years of age at the relevant time.

14. The prosecution had also failed to prove the medical report of the victim and her ossification report by examining the medical officer who had conducted the tests and prepared the report. The perusal of the chargesheet reveals that the I/O had stated that the name of the Medical Officer who had prepared the medical report is illegible, but he took no steps to ascertain the name of the said medical officer. Moreover, the prosecution was afforded several opportunities to bring the medical officer who had prepared the report of the victim but the prosecution had also failed to identify or examine the said medical officer; as such it is held that the prosecution has failed to prove the medical report and the report of the ossification tests done on the victim.

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15. In view of the above discussions it is held that the prosecution has failed to prove that the victim was a minor at the relevant time; as such it is held that the prosecution has failed to prove that the accused had kidnapped or abducted the victim or induced her; as such it is held that the accused had not committed the offence under section 366A IPC.

DECISION: The prosecution has failed to prove that the accused had committed the offence under section 366A IPC.

ORDER

16. The accused namely, Shri Mizanur Rahman is acquitted under sections 366A IPC and he is set at liberty. The bail bond of the accused shall remain in force for six months from today.

17. The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 25<sup>th</sup> day of January, 2017 at Dhubri.

YUSUF AZAZ,  
ASST. SESSIONS JUDGE, DHUBRI

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**APPENDIX**

**PROSECUTION EXHIBITS:**

- 1) EXHIBIT 1- STATEMENT U/S 164 CrPC
- 2) EXHIBIT 2- EJA HAR
- 3) EXHIBIT 3- CHARGESHEET

**DEFENCE EXHIBITS**

NONE

**PROSECUTION WITNESSES**

- 1) THE VICTIM
- 2) SHRI MOSLEM ALI
- 3) SHRI HUSSAIN ALI
- 4) SHRI ABDUL JALIL
- 5) SHRI MOHIBUL HOQUE
- 6) SHRI HANGSHU NATH THAKURIA
- 7) SHRI NAZIMUDDIN SK
- 8) SHRI MOINUL HOQUE

**DEFENCE WITNESSES**

NONE

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