

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MORIOGAON, ASSAM.

G.R. Case No.2216/2017

U/S 10/11 of Prohibition of Child Marriage Act.

STATE OF ASSAM

-VS-

1. SRI DIBYAJYOTI NATH, S/O: SRI CHANDRA KANTA NATH,

2. SRI CHANDRA KANTA NATH, S/O: LT. GHUTULAI NATH,

3. SRI ARUN NATH, S/O: LT. ANANDA NATH,

ALL ARE R/O: THANASARUA, P/S: MIKIRBHETA,

DIST. MORIGAON, ASSAM

..... ACCUSED PERSONS

PRESENT: -

SMTI. ANAMIKA BARMAN, LL.M., A.J.S.

JUDICIAL MAGISTRATE FIRST CLASS

MORIGAON, ASSAM.

FOR THE STATE: -

MR. M. ISLAM, LEARNED A.P.P.

FOR THE ACCUSED: -

**MR. A. HOQUE, MRS. J. SAIKIA, MR. A. NATH, LEARNED
ADVOCATES.**

EVIDENCE RECORDED ON: - 22.01.2019, 02.04.2019, 24.07.2019

ARGUMENT HEARD ON: - 15.10.2019,

JUDGMENT DELIVERED ON: - 30.11.2019.

JUDGMENT

1. The brief of the prosecution story is that one Md. Nur Islam, who is the president of the Human Rights Protection & Awareness Council, filed an FIR before the Officer-in-Charge, Jaluguti P.P. on 28.08.2017 alleging inter alia that on 27.08.2017, the accused Sri Dibya Jyoti

Nath, aged about 25 (twenty five) years, S/O Sri Chandra Kanta Nath, R/O: village Thanasarua, had married a minor girl, namely, Miss Sumu Devi, aged about 16 (sixteen) years, D/O Sri Arun Nath, of the same village with the cooperation of the remaining accused persons, namely, Sri Chandra Kanta Nath and Sri Arun Nath. Hence the case.

2. On receipt of the FIR, the officer-in-charge of the Jaluguti P.P. registered a GDE No.514 dated 28.08.2017 and forwarded the same to the Mikirbheta P.S. to register the Case. On receipt of the ejahar, Mikirbheta P.S. Case No.317/2017 u/s 10/11 of The Prohibition of Child Marriage Act was registered and investigated into. On completion of the investigation, I/O filed charge-sheet against all the three accused persons, namely, Sri Dibya Jyoti Nath, Sri Chandra Kanta Nath and Sri Arun Nath u/s 10/11 of The Prohibition of Child Marriage Act.

3. On receipt of summons, the accused persons appeared before the court. Copies of relevant documents were furnished to the accused persons under section 207 of Cr. P.C. On finding sufficient materials to presume that the accused persons had committed offences punishable under section u/s 10/11 of the Prohibition of Child Marriage Act, particulars of offence under the said sections were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

4. In support of its case, prosecution examined only 3 (three) witnesses. After closure of prosecution evidence, statements of the accused persons u/s 313 of Cr.P.C. has been recorded wherein they took the plea of denial. Defence declined to adduce evidence. Heard the arguments put forward by the learned Counsels for both the sides as well as gone through the evidences available on record.

5. **Point for determination.**

I. Whether the accused persons performed, conducted, directed or abetted any child marriage, and thereby committed an offence u/s 10 of the Prohibition of Child Marriage Act?

II. Whether the accused persons promoted or permitted solemnisation a child marriage, and thereby committed an offence u/s 11 of the Prohibition of Child Marriage Act?

Discussion, Decision and Reasons thereof:-

6. In this case prosecution examined only 3 (three) witnesses. The informant, Md. Nur Islam, was examined as PW-1, Smt. Runu Devi was examined as PW-2 and the victim Smt. Sumu Devi was examined as PW-3 to prove the charges against the accused persons.

7. Before going to decide the points for determination, let me describe the evidence in brief. *In his examination-in-chief* PW-1/informant, Md. Nur Islam, deposed that he is the informant and he knows the accused persons with regard to this case. He further deposed that the incident had taken place about 1 (one) year prior to the date of his deposition. On the date of the incident he received information that a child marriage was being conducted at the village Thanasarua in the house of accused Sri Arun Nath. He heard that the accused Arun Nath's daughter, who was then a student of Class IX (nine), was being married to the accused Sri Dibyajyoti Nath as per religious rites and rituals. PW-1 along with others collected information from the nearby people and on being confirmed about the said child marriage, PW-1 filed the *ejahar* at Jaluguti Outpost. Ext.-1 is the FIR and Ext.-1(1) is the signature of PW-1. Later, PW-1 heard that the police had arrested the accused Arun Nath and Dibyajyoti Nath and that the said marriage was dissolved after the instant case was filed.

8. *During his cross examination* PW-1 stated that he has not submitted the list of persons in the Court from whom he had collected the information regarding the said child marriage. He further stated that he had not seen the marriage himself and that he had neither interrogated the bride and the groom nor their parents regarding the marriage. He had heard about the incident while he was in his house after which he filed the FIR in the P.S. He did not go to the houses of the bride and groom. He also did not see any wedding pandal or other wedding arrangements in the houses of the bride and groom. It is not a fact that no such incident had taken place as has been mentioned by him in his FIR. It is not a fact that no incident had taken place on the date of occurrence mentioned in the FIR.

9. *In her examination-in-chief* PW-2, Smt. Runu Devi, deposed that she knows the informant and the accused persons. The accused persons are her co-villagers. She further deposed that the incident had taken place in the year 2017. On the date of the incident, at about 07:00 am, she went to the road near the house of accused Dibyajyoti on hearing some noise. The cause of the noise Miss Sumu Devi, who is the daughter of the accused Arun Nath, was talking to the accused Dibyajyoti for which Sumu Devi's mother assaulted her and sent her away to the house of accused Dibyajyoti. When PW-2 reached the place of occurrence, she saw

that Sumu Devi along with some villagers were waiting outside the house of accused Dibyajyoti. On asking Sumu Devi about the matter, she told PW-2 about the incident. Thereafter, PW-2 came back from the place of occurrence. However, as per PW-2's knowledge, no marriage ceremony had taken place at the place of occurrence on that day. Defence declined to cross examine this witness on her deposition.

10. *In her examination-in-chief* PW-3/victim, Miss Sumu Devi deposed that she does not know the informant but she knows the accused persons standing on the dock. The accused Arun Nath is her father, the accused Dibyajyoti is her ex-boyfriend and the other accused person is the father of the accused Dibyajyoti. PW-3 and the accused persons are co-villagers. PW-3 did not get married to the accused Dibyajyoti. She does not know anything about the incident. She also does not know why police had arrested her father and the remaining accused persons. Ext.-2 is her statement u/s 164 CrPC and Ext.-2(1) is her signature. Defence declined to cross examine this witness on her deposition.

11. Now, after going through the case record, it is seen that the informant had lodged this case against the accused persons alleging that the accused persons were involved in child marriage of one Miss Sumi Devi, daughter of the accused Sri Arun Nath, with one Sri Dibyajyoti Nath. However, the informant/PW-1 in his evidence deposed that he had heard only about the incident from others after which he lodged the case. PW-2 deposed that on the date of the incident no marriage ceremony of the victim had taken place at the place of occurrence. The victim/PW-3 also denied getting married to the accused Dibyajyoti. The defence thoroughly cross-examined the informant/PW-1 wherein he admitted that he had never inquired from the parents of the victim or the victim herself regarding the alleged marriage nor he went to their house or saw any kind of marriage-preparation in their house. Now, the cardinal principle of criminal jurisprudence is that the prosecution must prove its case against the accused beyond reasonable doubt. However, in the instant case, the prosecution has miserably failed to prove the same in the light of cogent evidence.

12. Considering the above, I came to the safe conclusion that, the prosecution has failed to prove the charge u/s 10/11 of the Prohibition of Child Marriage Act against the accused persons beyond reasonable doubt. Accordingly, accused persons are found not guilty of the offence charged against them and are acquitted.

ORDER

13. Accused persons, namely, Sri Arun Nath, Sri Dibyajyoti Nath and Sri Chandra Kanta Nath, are acquitted of the charges brought against them and are set at liberty forthwith.
14. The bail bonds of the accused persons are extended for a period of 6 (six) months as per section 437-A, CrPC.
15. Given under my hand & seal of this Court and delivered in the open Court on this 30th day of November, 2019.

Dictated and corrected by me

(ANAMIKA BARMAN)

(Miss. Anamika Barman)

Judicial Magistrate First Class, Morigaon

Judicial Magistrate First Class

Morigaon, Assam

APPENDIX

PROSECUTION WITNESSES:

1. P.W.-1, MD. NUR ISLAM.
2. P.W.-2, MRS. RUNU DEVI.
3. P.W.-3, MISS SUMU DEVI.

DEFENCE WITNESSES:

NIL

EXHIBITED DOCUMENTS:

EXT.-1, IS THE FIR,

EXT.-1(1), IS THE SIGNATURE OF MD. NUR ISLAM,

EXT.-2, IS THE STATEMENT OF MISS SUMU DEVI U/S 164 CrPC,

EXT.-2(1) IS THE SIGNATURE OF MISS SUMU DEVI.

(ANAMIKA BARMAN)
JMFC, Morigaon
Assam