

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 64 of 2020

Under section 366 of I.P.C

(Arising out of G. R Case No. 4085 of 2018)

State of Assam

-Vs-

1. Md Dilwar Hussain

...Accused Person

**Present: Smti I. Barman,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. Munin Ch. Baruah,P.P.

For the accused : Md. F. Haque,
Advocate.

Date of Argument : **11-02-2021.**

Date of Judgment : **11-02-2021.**

JUDGMENT

1. The prosecution case against the accused person as projected in the FIR , in brief is that the informant father of victim 'X' aged about 16 years refused the proposal of Montaz Ali the father of the accused Dilwar Hussain to give marriage the victim with the accused due to minor age of the girl, hence on 10-10-2018, at around 7 p.m., in conspiracy with Mantaj Ali, his son accused Dilwar Hussain abducted his 16 years old daughter victim 'X'.

2. On receipt of the ejahar from the informant, father of the victim, (PW 2) on 13-10-2018 I/C of Mahabhoirab Police Out Post made the GDE No. 239 dated 13-10-2018 and forwarding the same to the O/C Tezpur PS for registering a case, launched investigation of the case. Accordingly, Tezpur PS Case No. 2137/18 u/s 366-A/34 of the IPC was registered. The Investigating Officer recorded the statements of the witnesses, got recorded the victim's statement u/s 164 Cr.P.C. and on completion of investigation having found materials submitted charge-sheet against the accused Dilwar Hussain u/s 366(A) of the IPC.

3. On appearance of the accused person, Learned Chief Judicial Magistrate, Sonitpur, Tezpur after furnishing copies of the documents as required under section 207 Cr.P.C, committed the case to the court of Session, being the offence u/s 366 (A) IPC exclusively triable by the court of Session.

4. Accordingly, on being appeared the accused person before this Court, after hearing both side, charge u/s 366 of the IPC was framed against the accused Dilwar Hussain and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed for trial.

5. To substantiate the case, prosecution examined only two witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations charged against him stating that the victim came to him voluntarily. Defence examined none.

6. I have heard the argument of learned counsel of both sides and also have gone through the evidence on record.

7. The point for decision in this case is that -

(1) Whether accused Dilwar Hussain on 10-10-18 at around 7 p.m. at Gotlong, under Tezpur Police station, abducted the victim with intent that she

might be compelled or knowing it likely that she will be compelled to marry the accused against her will or in order that she might be forced or seduced to illicit intercourse with the accused and thereby committed an offence punishable under section 366 of the IPC?

Discussion, Decisions and reasons thereof :

8. In order to appreciate the argument advanced on behalf of both the sides, it is considered next to outline a sketch of the evidence on record.

9. **PW 1** is the victim, around whose, the entire prosecution case revolves. She testified that on the day of incident, the accused Dilwar Hussain had taken her to Dhekiajuli for outing. At Dhekiajuli, she stayed in her maternal uncle's house for about four days. Thereafter, her father lodged the FIR and police brought her therefrom. She proved her statement u/s 164 Cr.P.C. as Ext.1 and her signature as Ext. 1(1). She further stated that presently, she is in her parental house.

During cross, she stated that on the day of incident, her father scolded her for some matter and hence, she went to Dhekiajuli without informing at home. She stated further that Dilwar did not force her to go to her maternal uncle's house.

10. Corroborating the victim's evidence, PW 2 the father of the victim, also stated that on the day of incident, he scolded his daughter and out of anger, she without informing him went to her maternal uncle's house. He further stated that out of suspicion, he lodged the FIR against the accused.

11. In the case, the evidence of material witnesses i.e. the victim and her father reveals that out of anger she with the accused went to her maternal uncle's house without informing her father. In statement

u/s 164 Cr.P.C. also she stated that on the day of incident she with the accused voluntarily went to Dhekiajuli. Though in FIR it was claimed that at the time of incident the victim was a minor at the age of 16 years, but, in deposition PWs remained silent regarding her age. On the other hand, the evidence of PWs clearly indicates that the victim without any hesitation silently went with him to Dhekiajuli for outing and resides there in her uncle's house. There is no evidence of any inducement or threat on the part of the accused in going the victim with him. Though the informant (PW1) lodged the FIR against the accused alleging abduction of his daughter but victim's evidence as well as the evidence of PW2, the father of the victim negates the same. She appears to have taken a voluntary part in the entire episode. In the above, I find that the ingredients of section 366 is missing in the case.

12. In the above, facts and circumstance of the case, I unhesitatingly hold that the prosecution failed to prove the guilt of the accused beyond any shadow of doubts. Accordingly, accused Dilwar Hussain is acquitted from the charge u/s 366 IPC and set him at liberty forthwith. His bail bond shall extended till next six months in view of section 437 A of Cr.P.C.

13. Send back the GR case to the learned committal court.

14. Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **11th day of February, 2021.**

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur.

APPENDIX

Prosecution Witness

1. Prosecution Witness No.1 :- victim.
2. Prosecution Witness No.2 :- Father of the Victim

EXHIBITS.

Exhibit 1 : 164 Cr.P.C statement of the victim.

(I.Barman)
Sessions Judge,
Sonitpur, Tezpur