

**IN THE COURT OF THE SESSIONS JUDGE, SONITPUR  
AT TEZPUR**

**PRESENT** : **Sri A. Borthakur**  
Sessions Judge, Sonitpur  
Tezpur

**JUDGMENT IN SESSIONS CASE NO. 100 OF 2013**  
Under Sections 366/342 f the Indian Penal Code  
(Arising out of G. R. Case No. 472 of 2013)

**State of Assam**

**-Versus-**

**Md. Mazibur Rahman**  
Son of Md. Mahammad Ali  
Resident of Akabasti Bongaligaon  
Police Station -Rangapara  
District - Sonitpur, Assam

[Committed by Smt. B. Kshetry, Addl. Chief Judicial Magistrate, Sonitpur,  
Tezpur ]

**A P P E A R A N C E**

For the State	:	Sri H. P. Sedai Public Prosecutor Sonitpur District
For the Accused person	:	Md. F. Jaman Advocate
Date of framing of charge	:	11-06-2013
Date of prosecution evidence	:	04- 09-2013, 18- 11-2013 27- 01-2014 & 03- 04-2014
<b>Date of Argument</b>	<b>:</b>	<b>22- 04-2014</b>
<b>Date of Judgment</b>	<b>:</b>	<b>08- 05-2014</b>

## **J U D G M E N T**

The accused is the husband of the victim. The victim started living separately after getting involved in quarrel with the second wife of the accused. She has filed petition claiming maintenance from the accused. Ejahar filed after 2 / 2 ½ months from the date of alleged occurrence, without any explanation. The neighbouring PWs have not supported her evidence.

### **PROSECUTION CASE :**

2. The prosecution case may, in brief, be stated as follows :

One Musstt. Jamena Khatun, daughter of Sirajuddin, a resident of Pungpani, under Rangapara Police Station, lodged an ejahar, on 03-03-2013, before the in-charge of Chariduar OP alleging that her husband- the accused Md. Majibur Rahman, after perpetrating physical and mental torture on her, drove her away from his house, about 4/5 years ago. Since the accused has not been paying maintenance to her. She filed a petition claiming maintenance allowance from him. Being enraged with filing of the said case, about 2 ½ months back, on a day, at about 7 p.m., while she was coming back from Tezpur University after doing casual work, on her way, the accused, with the help of Musstt. Rukia Khatun and Md. Fazar Ali, forcibly abducted her and confined at his home. Her legs and hands were tied and confined her for two days in a room, closing the door of the house. On 25-02-2013, however, she could manage to save her life by fleeing away from confinement.

### **INVESTIGATION :**

3. Based on the above ejahar, Chariduar OP, GD Entry No. 43, dated 03-03-2013, was made and on being forwarded registered as Rangapara PS Case No. 43/13 u/s 366/342/34 IPC and the investigation was entrusted to SI Premananda Deka of Chariduar OP, who had already taken up the investigation.

4. In course of investigation, the IO visited the place of occurrence, that is, Akabasti Bongaligaon, drew up a sketch map thereof, recorded the statements of the witnesses, including that of the victim woman, arrested the accused and after completion of investigation, submitted the charge-sheet u/s 366/342 IPC against the accused Md. Mazibur Rahman.

**TRIAL :**

5. Since the charge-sheeted offences u/s 366/342 of the IPC are exclusively triable by the Court of Sessions, the learned Addl. Chief Judicial Magistrate, Sontipur, Tezpur, after observing necessary formalities u/s 209 of CrPC, vide order, dated 02-05-2013, passed, in GR Case No.472/13, committed the case to this Court of Sessions for trial.

6. After consideration of the prima-facie evidence collected during investigation and hearing the learned counsel of both sides, charges u/s 366/342 of IPC have been framed against the accused, vide order, dated 11-06-2013. The charges were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

7. In order to prove the charges, the prosecution has examined 5 (five) witnesses, including the investigating officer, while the defence cross-examined 4 (four) witnesses.

8. On closing the evidence of the prosecution, the statement u/s 313 CrPC was recorded, vide order, dated 02-04-2014. The accused pleaded not guilty and declined to examine any witness in defence.

9. I have heard the argument advanced by both sides and I have gone through the evidence, proffered by the prosecution and further, the statement of the accused, recorded u/s 313 CrPC.

**POINTS FOR DETERMINATION :**

10. The points for determination are :

1. Whether the accused, prior to 2 ½ months before 03-03-2013, on a day, at about 7 p.m., on Tezpur University Road, at village Akabasti Bongali, under Rangapara PS, abducted or induced Musstt. Jamena Khatun, his wife, who was living apart, in order or knowing it to be likely to compel her to sexual intercourse ? and

2. Whether the accused, on or about the same day, time and place, wrongfully confined Musst. Jamena Khatun, in his house ?

**THE DECISION AND THE REASONS THEREFOR**

11. In view of the above points are being interwind and the nature and quality of evidence, on record, both the above points are taken together for consideration.

**LEGAL POSITON :**

12. In order to bring home the charge u/s 366 IPC, the prosecution must prove (i) that the accused induced the victim to go from any place ; (ii) that such inducement was by deceitful means ; (iii) that such kidnapping or abduction took place with the intent that the victim may be induced or compelled to marry any person against her will or may be seduced to illicit intercourse as a result of such kidnapping or abduction. On the other hand, Section 340 IPC defines what is 'wrongful confinement' which is punishable u/s 342 IPC. The gist of the offence is wrongul prevention of a person from proceeding beyond certain circumscribing limits.

**EVIDENCE OF VICTIM :**

13. Musst. Jamena Khatun, the alleged victim in the case, in her evidence, has deposed that the accused Md. Mazibur Rahman is her husband. About five years ago, he married another woman and then left her. She has two daughters from the side of the accused. During their conjugal life, the accused used to demand money from her parents through her, but as she could not pay the money, as demanded, he subjected her to torture and drove away out of his house. Thereafter, the accused has married another woman. The name of the accused's second wife is Rubia Khatun. She was with the accused when he contacted the second marriage. Since the time of contacting the second marriage, the accused has not taken stock of her plight with the two daughters. In this connection, a case claiming for maintenance allowance is pending against the accused. The accused has not divorced her till date. After filing of the case, claiming maintenance, the accused forcibly took her away from the road of Tezpur University in the evening hours. He took her to his house, where she was

confined for two days. She was tied up with rope for two days in his house. Thereafter, she was kept confined in a room of the accused's house for about 2 / 2 ½ months. During this period, the accused armed with a 'dao' remained on guard at the door step of the house. However, one day, morning, she managed to flee away from the house and then filed the case against the accused, in the Court at Tezpur. The complaint petition which was filed before the Court at Tezpur was forwarded to Tezpur PS for investigation. The police sent her to Kanaklata Civil Hospital, Tezpur for medical examination. She put her thumb impression on the ejahar.

14. In cross-examination, she has stated that her elder daughter's age is about 11 years and the second daughter is aged about 10 years. Her two daughters were born after three years of their marriage. There is no visiting terms between the house of the accused and her house after the maintenance case was filed against the accused. She has admitted that she has filed this case against the accused after getting involved in a quarrel with the accused's second wife. She has denied the defence suggestion that she has filed the instant false case against the accused for having not received any maintenance allowance from the accused. The accused abruptly abducted her from the Tezpur University road gagging her mouth and as such, she could not raise any alarm. One Falakan Ali had seen the accused abducting her on the road, on a motorcycle. At the time of occurrence, there were pedestrians on the road and they also witnessed the occurrence. The accused is still her husband as he has not given her divorce.

15. She has denied the defence suggestion that she filed the instant case falsely as the accused did not give maintenance allowance to her, and on the other hand, his second wife got involved in quarrel with her. She has denied the defence suggestion that the accused did not abduct her and that she was not tied with a rope at home for two days and thereafter, confined her at his house for about 2 / 2 ½ months.

**ANALYSIS OF EVIDENCE :**

16. On scrutiny of the evidence of PW-1, Musstt. Jamena Khatun, PW-2 Musstt. Monowara Begum, PW-3 Musstt. Maharam Nessa and PW-4 Musstt. Asma Begum, it transpires, as a whole, that PW-1 is the wife of the accused and out of their wedlock, two daughters were born. PW-1, the victim, has admitted that she

has not been maintaining visiting terms with the accused, after she got separated along with her children, from him and that she filed the instant case, after she got involved in quarrel with the accused's second wife Musstt. Rubia Khatun, when all of them including the accused were living together. The accused, as she has deposed in cross-examination, is still her husband. However, from the evidence of PWs 2,3 and 4, who are neighbours of the matrimonial home of the PW-1, the alleged victim, it appears that they have never seen any quarrel, while living together of the two wives and the children with the accused. This Court is of the opinion that the evidence of the neighbours, aforementioned, who are neutral witnesses in the case, cannot be said to have stated anything false. Therefore, in the back drop of the facts and circumstances, more particularly the evidence of the accused contacting second marriage, during the subsistence of first marriage with PW-1 and her separation, in the meanwhile, the possibility of a motivated implication of the accused with the alleged victim cannot be ruled out.

17. The story of the occurrence given by the victim PW-1 Musstt. Jamena Khatun that after filing of the case, claiming maintenance, the accused forcibly abducted her from the road of Tezpur University, in the evening hours of a day and took her to his home and confined for two days, where she was tied with rope and her (PW-1) further evidence that she was confined in a room of the accused's house for about 2 / 2 ½ months and during this period, the accused armed with a 'dao' remained on guard at the door steps of the house, cannot be believed in view of the remaining PWs, aforementioned, not supporting her account of the incident. On the other hand, from the evidence of PW-5 SI Premananda Deka, the IO, it appears that the ejahar, Ext.1 was received on 03-03-2013 from the victim (PW-1) and her statement u/s 161 CrPC was recorded, on 09-03-2013, that is, after six days of occurrence, on her voluntary appearance at Chariduar OP, in connection with the incident that allegedly took place 2 / 2 ½ months before, which indicates the possibility of exaggeration of the story of the incident. The inordinate delay in lodging the ejahar, without any explanation certainly casts doubt and it is fatal to the prosecution case. What it further appears is that the victim (PW-1) was also not subjected to medical examination, during investigation, obviously due to the reason that the ejahar was lodged, after inordinate delay, as aforementioned, by which time, the medical evidence, if any, might have vanished. Moreover, the prosecution has not examined the alleged eye witness Md. Falakan Ali obviously for being not cited as witness in the charge-sheet. Therefore, this Court is of the considered opinion that the

evidence of the alleged victim woman (PW-1) does not instill confidence in mind of this Court to warrant conviction of the accused with the charges.

**C O N C L U S I O N**

18. For the above stated reasons, this Court is constrained to hold that the prosecution has miserably failed to prove the charges against the accused, beyond all reasonable doubt.

19. Accordingly, the accused Md. Majibur Rahman is acquitted of the charges u/s 366/342 of the IPC and set at liberty forthwith.

The judgment and order, as above, pronounced in the open Court, in presence of both the sides, on this the 8th day of May, 2014.

**( A. BORTHAKUR )**  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR

Typed to my dictation and corrected by me, and each page bears my signature:

**(A. BORTHAKUR)**  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR

Dictation taken and typed by me :

(J.K. Muru, Steno )

\* \* \* \* \*

**SESSIONS CASE NO. 100 OF 2013**

**ANNEXURE**

**LIST OF PROSECUTION WITNESSES**

PW-1 : Musstt. Jamena Khatun  
PW-2 : Musstt. Manowara Begum  
PW-3 : Musstt. Maharam Nessa  
PW-4 : Musstt. Asma Begum  
PW-5 : Sri Premananda Deka, IO

**LIST OF DEFENCE WITNESSES**

N I L

**LIST OF DOCUMENTS EXHIBITED BY PROSECUTION**

Exhibit -1 : Ejahar  
Exhibit -2 : Sketch Map  
Exhibit -3 : Charge-Sheet

**MATERIAL EXHIBIT**

N I L

**DEFENCE EXHIBIT**

N I L

**(A. BORTHAKUR)**  
SESSIONS JUDGE,  
SONITPUR :: TEZPUR