

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

**PRESENT** : **Sri P. C. Kalita,**  
Assistant Sessions Judge,  
Sonitpur, Tezpur.

**SESSIONS CASE NO. 75 OF 2014**  
**GR Case No. 1478/ 2014**

Under Sections 366 of Indian Penal Code

**State of Assam** ..... Complainant

**–Versus –**

**Md. Rahul Ali**  
Son of Md. Dilip Ali  
All resident of Hakajan  
PS – Sootea  
Dist – Sonitpur, Assam ..... Accused Person

**ADVOCATES APPEARED**

For the State : Sri Mahendra Bora,  
Additional Public Prosecutor

For the accused person : Sri A. K. Saikia  
Advocate

Date of evidence : 22– 10– 2014 & 18– 05– 2015

Date of Argument : 28– 05– 2015

Date of Judgment : 28– 05– 2015

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

The prosecution case, inter-alia, in brief, is that informant Santi Ram Chetri lodged an ejahar in the Sootea PS alleging that on 23-06-2014, at about 10 a.m., his victim daughter was missing on her way to college. On a specific information, he came to know that the accused person kidnapped his victim daughter.

2. After receiving the aforesaid ejahar, the O/C, Sootea Police Station registered a case, bearing Sootea Police Station Case No. 67/14 u/s 366 of IPC. During the period of investigation, the Investigating Officer produced the victim for medical examination. She was also produced before the Court for recording her statement u/s 164 CrPC by the Magistrate. After conclusion of investigation, the Investigating Officer submitted the Charge sheet against the accused u/s 366 of IPC.

3. After appearance of the accused, the learned Judicial Magistrate, 1<sup>st</sup> Class, Tezpur, committed the case to the learned Sessions Judge, Sonitpur, Tezpur and thereafter, the case was made over to this Court for disposal. Accordingly, this Court took up the trial of the case. Considering the materials available on case record and case diary, the charge was framed against the accused person under Section 366 of IPC. Then the contents of charge was read over and explained to the accused person, to which the accused has pleaded not guilty and claimed to be tried.

4. In order to bring home the charge, the prosecution has examined 3 (three) PWs, including the informant and the victim. Then the accused person has been examined u/s 313 CrPC. The pleas of the accused person are of total denial and he has declined to adduce any defence evidence.

5. **Point for determination :**

Whether the accused, on 23-06-2014, at about 10 a.m., at No.2 Gosai Chapori, under Sootea PS, kidnapped (abducted) the victim girl, with intent (or knowing it to be likely) that she might be compelled to marry you against her will or in order (or knowing it to be likely) that she might be forced (or seduced) to illicit intercourse with the accused and thereby committed an offence u/s 366/34 of IPC ?

### **Discussion, Decision and reasons thereof :-**

6. I have carefully perused the evidence and the materials available on the case record. Heard argument of both sides. Now, let us examine the evidence of the PWs to decide the case at hand.

7. PW-1 Dr. Santeega Sarma, the MO, stated that on 30-06-2014, she was at Kanaklata Civil Hospital, Tezpur as Medical and Health Officer I and on that day, at 2 p.m., she examined the victim girl, in reference to Sootea PS Case No.67/14, being escorted and identified by WPC 396 Sumitra Dutta, in labour room of Kanaklata Civil Hospital, in presence of staff nurse Jitumoni Saikia after taking written consent from the victim as well as her parents. She was examined vide OPD registration No.86437/14. Upon examination, she found the following :

General Examination :

Menstrual history : LMP 10-06-2014, 30 days cycle, flow - average for 4-5 days. History of sexual exposure present on 28-06-2014 to some Rahul Ali.

Identification mark –

1. One blackish mole below the right nostril above the upper lip and
2. One mole over the right side on the bridge of the nose.

Height – 150 cm, Weight – 51 Kg, Teeth – 16/16

At the time of examination, the victim was well dressed, neat and tidy. Gait – normal. Her secondary sexual characters well developed. Vulva, vagina – normal. Hymen – absent. No injury marks present on the private parts as well as other body parts.

Investigation advised –

Vaginal smear for spermatozoa, urine for pregnancy test, US Pelvis and X-ray wrist joint, elbow joint and iliac crest for age determination.

Reports –

1. Vaginal smear for spermatozoa – not seen (done at KCH Laboratory, Lab No.68/14 dt. 30-06-14)

2. Urine for pregnancy test – Negative. ( done at Assam X-ray & Clinical Laboratory, Tezpur, report given by Dr. D. Mahanta, Pathologist, Patient ID No. 19811.

3. USG Pelvis – Normal pelvic organs with non-gravid uterus. Detailed report as per enclosure No. 4.

4. X-ray report –  
Epiphysis of the lower ends of the radius and ulna are closed.  
All epiphysis of the bones around the left elbow joint have fused with their respective shafts.

Epiphysis of the iliac crest has appeared and remains open.

Opinion – Age of the person under investigation is above 18 years.

OPINION –

1. No signs and symptoms of recent sexual intercourse seen at the time of examination.
2. No mark of violence or any injury mark on her private as well as other parts.
3. Age of the person under investigation is above 18 years.
4. No other injury found at the time examination.
5. She was not pregnant at the time of examination.

Ext.1 is the medical report and Ext.1(1) is her signature. Ext.2 is the advice slip and Ext.2(1) is her signature. Exts. 3 and 4 are the labs reports. Ext.5 is the ultra sonography report and X-ray report.

8. PW-2, the victim girl, stated that she knows the accused Rahul Ali. Informant Santi Ram is her father. Last year, in the month of June, she was studying in Jamuguri THB College in BA, 4<sup>th</sup> Semester. At that time, she was 20 (twenty) years old. On the day of occurrence, she went away with the accused person without informing her parents and there was late on her returning home. Then, her father lodged the ejarah to be missing her. She did not return home for a few days and after 3/4 days, police recovered her from a hotel of Tezpur. Police recorded her statement, sent her for medical examination and also recorded her statement through the Court. Ext. 6 is her statement of the Court and Exts. 6(1) and 6(2) are her signatures.

9. PW-3 Shanti Ram Chetri, the father of the victim, stated that about 8/10 months ago, her victim daughter going for attending the college, having not returned, lodged the ejarah. At the time of occurrence, she was 19/20 years old. Later on, police recovered her, recorded her statement and sent for medical examination. Ext.7 is the ejarah and Ext. 7(1) is his signature.

Legal position :

**u/s 366 IPC – Kidnapping, abducting or inducing woman to compel her marriage, etc.**

10. Section 366 IPC defines, as follows :

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or

seduced to illicit intercourse with another person shall also be punishable as aforesaid.

In order to constitute an offence u/s 366 IPC, the prosecution must prove :

- (i) Kidnapping or abducting of any woman ;
- (ii) Such kidnapping or abducting must be –
  - (i) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will ; or
  - (ii) in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse ; or
  - (iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

11. It is not in dispute that the victim girl is a major, above 18 years old.

12. Now, from the evidence on record, it is seen that PW-2, the victim, is the prime witness in the present case. This PW-2 in her deposition, nowhere stated that the accused person kidnapped her. During cross-examination, this PW-2 rather stated that the accused person did not take away her. She has no allegation against the accused person and no objection if the accused is acquitted. She in her earlier statements stated before the Court as tutored by the police.

PW-3, the father of the victim girl also, does not support at all the prosecution case. In cross-examination, this PW-3 stated that he does not like to proceed with the case.

PW-1 is the MO.

13. It is, thus, seen that the ingredients of offence u/s 366 IPC is lacking in the present case.

14. In view of the above discussion and considering all aspects, I hold that the prosecution has failed to prove the case u/s 366 IPC against the accused person, beyond all reasonable doubt. Hence, I acquit him from the said offence, on benefit of doubt.

15. The accused person be set a liberty forthwith and his bail bond stand cancelled.

16. The case is disposed of accordingly.

Given under my hand and seal of this Court on this day, the 28th day of May, 2015.

**(P.C. Kalita)**  
Assistant Sessions Judge,  
Sonitpur : Tezpur.

Dictated and corrected by me.

**(P.C. Kalita)**  
Assistant Sessions Judge,  
Sonitpur : Tezpur.

Dictation taken and  
transcribed by me :

(J. K. Muru)  
Steno.

A P P E N D I X

Prosecution witnesses :

PW-1 : Dr. Sangeeta Sarma  
PW-2 : the victim girl  
PW-3 : Sri Santi Ram Chetri

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits :

xt.1 : Medical report  
Ext.2 : Advice Slip  
Exts.3 & 4 : Lab reports  
Ext.5 : Ultra-sonography report  
Ext.6 : Statement u/s 164 CrPC  
Ext.7 : ejahar

Material Exhibits : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(P.C. Kalita)  
Assistant Sessions Judge,  
Sonitpur : Tezpur.