

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

**SESSIONS CASE NO.** :- **92 OF 2015**  
*(Under Section 366-A of the Indian Penal Code arising out of G.R. Case No. 1216 of 2011)*  
*Committed by Smt. M. Sarmah, Judicial Magistrate, 1st class, Tezpur.*

**Present** :- **Mridul Kumar Kalita, AJS  
Sessions Judge, Sonitpur  
Tezpur**

**Prosecutor** :- **State of Assam**

**Accused** :- **-vs-  
Md. Anowar Hussain**  
 Son of Abdul Sattar  
 Vill- No.2 Sonmillon,  
 PS -Dhekiajuli, Sonitpur (Assam).

Date of framing Charge :- 28-04-2015

Date of Recording Evidence :- 20-05-2015

Date of examination of accused u/s 313 Cr.P.C :- 20-05-2015

Date of Argument :- 20-05-2015

Date of Judgment 20-05-2015

Counsel for the Petitioner :- Mr. Hari Prasad Sedai  
Public prosecutor  
Sonitpur.

Counsel for Opposite Parties :- N. Islam, Advocate,

**JUDGMENT**

**1.** On 10<sup>th</sup> day of June, 2011, the In-charge of Rakshasmari Police Out Post under Dhekiajuli Police Station received an FIR (First Information Report) from one Md. Amir Uddin, wherein it was alleged, *inter alia*, that on the night of 09-06-2011 accused Anowar Hussain and Dildar Hussain kidnapped his sister Miss Halima Khatoon, aged about 15 years, from his house while she went out for attending nature's call.

**2.** On receipt of the aforementioned FIR, the In-charge of Rakshasmari Police Out Post Sri Satish Sahoo, SI, made Rakshasmari OP GDE No. 175 dt. 10/06/2011 and forwarded the same to O/C, Dhekiajuli Police Station for registering a case and he himself took up the

investigation of the case. The officer-in-charge of Dhekiajuli Police Station registered Dhekiajuli P.S. Case No. 227/11 u/s 366 (A)/34 IPC. After completion of the investigation, charge sheet was laid, on 30/04/2014, against the accused Anowar Hussain showing him as absconder and the other accused namely, Dildar Hussain was not sent up for the trial as sufficient evidence was not found against him. Ld. Chief Judicial Magistrate, Sonitpur transferred the case to the Court of Addl. Chief Judicial Magistrate, Sonitpur, Tezpur for disposal. On 28-04-2014 the G.R. Case No.1216/11 was duly committed to this Court, after observing all formalities prescribed by the Code of Criminal procedure by learned Judicial Magistrate, 1st class, Tezpur.

**3.** On 28/04/2015, Charge u/s 366 IPC was framed, in writing, against the accused Anowar Hussain. The Charge was read over and explained to him and, on being asked, he refused to plead guilty and claimed to be tried.

**4.** During Trial, the prosecution side examined three Prosecution Witnesses and exhibited one document, marked as Ext.1. The accused was examined u/s 313 Cr.P.C during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded innocence. The accused declined to adduce any evidence in defence.

**5.** The point to be determined in this case is as follows:-

*"Whether on, 09-06-2011 at No.1 Sanmillon Village, under Dhekiajuli police Station the accused Anowar Hussain, abducted/kidnapped Miss Halima Khatun, with intent (or knowing it to be likely) that she might be compelled to marry against her will or in order that she might be forced her or seduced her to illicit intercourse with the accused and thereby committed an offence punishable under section 366 of the Indian Penal code"*

**6.** I have gone through the entire materials on record, including the oral testimonies of the witnesses, exhibited documents and the statement of the accused recorded under section 313 Cr.P.C, very carefully, as well as heard argument advanced by Ld. Public Prosecutor and Ld. Defence counsel.

**7.** PW 1 – Amiruddin has stated that he knew accused Anowar Hussain. Victim Miss Halima Khatun is his sister. He has stated that on 09-06-2011, at night, when his sister went out for nature's call, she did not return. They searched her and on the next day they came to know that his sister has eloped with the accused Anowar Hussain, who also resides

in their village. On the next day, PW 1 – Amiruddin lodged an FIR before Rakshasmari Police Out Police. Ext. 1 is the FIR and Ext. 1(1) is his signature. He has further deposed that after few days, Halima was recovered and later on he came to know from her that she voluntarily went with the accused. Thereafter, she has been married to accused according to the *Shariat*. He has also deposed that at the time of incident the age of his sister was 18 years. During cross-examination, this prosecution witness, who is also the first informant of this case, has stated that his sister eloped without informing them; therefore, he lodged the FIR.

**8.** PW 2- Halima Begum (Khatun), who is the victim of this case, stated that the accused, who is standing in the Dock, is her husband. On 09-06-2011 at night at about 9 p.m. she voluntarily eloped with the accused person as they were in love. She accompanied the accused Anowar Hussain to Dimapur and after one and half month her father asked her to return home for arranging marriage with the accused person then she came back to their house. Her marriage was performed with the accused, according to *Shariat*, with the consent of her guardian. She has also stated that they have a daughter of about 1 ½ years of age from this wed-lock and at present she is residing with the accused as his wife. She has also stated that at the time when she eloped with the accused, she was above 18 years of age.

**9.** P.W-3, Abdul Latif, who is the father of the victim stated that the accused is known to him. Victim Halima is his daughter. She had eloped with the accused and at that time her age was more than 18 years. Now, they are residing together as husband and wife.

**10.** Now, to find out whether any offence, u/s 366 IPC, was committed by the accused Anowar Hussain, we have to see whether he, kidnapped or abducted Halima Khatun, with an intention or knowledge that she would be compelled to marry him or would be forced or seduced to illicit intercourse.

**11.** If we peruse the testimony of prosecution witnesses, even cursorily, it will be apparent that the victim i.e. PW 2 eloped with the accused Anowar Hussain on her own as they were in love with each other. She has very clearly stated that she eloped with the accused voluntarily and now she is his wife and there is a child out of the wedlock between herself and the accused. She has also stated that she is now residing with the accused as his wife. This testimony of the PW 2 is corroborated by the oral testimony of other

prosecution witnesses also. The prosecution has miserably failed to prove the ingredients of offence punishable under section 366 of the Indian Penal Code in this case.

**12.** In view of the reasons stated above, accused Anowar Hussain is hereby acquitted of Charge u/s 366 IPC. His bail bonds shall remain in force for next six months from the date of this order.

**13.** Let a copy of this order be forwarded to the District Magistrate, Sonitpur, Tezpur u/s 365 Cr.P.C.

Given under my hand and Seal of this Court on this 20<sup>th</sup> day of May 2015.

**(M. K. Kalita)**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**

Dictated and corrected by me.

**(M. K. Kalita)**  
**SESSIONS JUDGE,**  
**SONITPUR :: TEZPUR**

Dictation taken and transcribed by me :

Smti R. Hazarika, Steno

## **APPENDIX**

### **Prosecution Witness**

1. Prosecution Witness No.1 :- Amiruddin (informant)
2. Prosecution Witness No.2 :- Halima Begum (Khatoon)
3. Prosecution Witness No.3 :- Abdul Latif.

### **EXHIBITS**

1. Exhibit No.1 :- Ejahar (First Information Report).
2. Exhibit No.1(1) :- Signature of PW 1 – Md. Amiruddin.

**( M. K. Kalita )**  
**SESSIONS JUDGE**  
**SONITPUR : TEZPUR**