

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE No.2
SONITPUR :: TEZPUR

Sessions Case No. 113 of 2014

Under section 366/323 I.P.C
(Arising out of G.R. Case No. 1344 of 2012)

State of Assam

-Vs-

Sri Someswar @ Khomeswar Gayari.... Accused.

Present

Ms. A. Ajitsaria, AJS,
Addl. Sessions Judge No.2, Sonitpur, Tezpur

Date of Evidence : 7.8.14, 10.12.14, 3.1.15

Date of Hearing : 23.4.2015

Date of Judgment : 6.5.2015

For the State : Sri Khemraj Adhikary, Addl Public Prosecutor.

For the accused : Sri Nilakhya Sharma

J U D G M E N T

1. The prosecution case, in a nutshell, is that on 29.5.2012, Smt Lakheswari Swargiary lodged an FIR before Dhekijauli PS stating, inter alia, that the accused Sri Someswar @ Khomeswar Gayari and others kidnapped her daughter, Pramita at about 7.30 PM on 28.5.2012. The same was registered as Dhekiajuli P.S Case No. 245 of 2012.

2. After due investigation, charge-sheet was submitted against the accused person, namely, Sri Someswar @ Khomeswar Gayari, under section 366/323 IPC.

3. The accused entered appearance and after observing necessary formalities, the offence being Sessions triable, was committed to the Court of Sessions for trial by the learned Chief Judicial Magistrate, Sonitpur, Tezpur.

4. After hearing both sides and on perusal of the police report furnished u/s 173 of the CrPC, formal charge u/s 366/323 IPC was framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, this trial.

5. In support of the case, the prosecution examined 11 witnesses and defence examined none. The plea of defence is of total denial.

6. After closure of the prosecution evidence, the accused person was examined u/s 313 of the CrPC.

POINTS FOR DETERMINATION

Whether the accused, Sri Someswar @ Khomeswar Gayari kidnapped "Pramita" from her residence situated at Ward No.8, Dhekiajuli Town on 28.5.2012 and whether the accused caused hurt to Lakheswar Swargiary ?

7. I have carefully examined the evidence on record and heard arguments of both sides.

DECISION AND REASONS THEREOF

8. PW 1, Dr. Bibha Noni Keot deposed that on 3.6.2012, she had examined Pramita Swargiary, aged about 22 years, D/O Lt Haren Swargiary and on examination she had found that there was no mark of injury on her body and her private part. PW 1 stated that report of vaginal smear for spermatozoa was negative and no spermatozoa was seen. PW 1 opined that the (i) age of the person under investigation was above 18 years, (ii) there are no marks of injury on any part of her body as well as per private parts (iii) there were no signs of recent sexual intercourse, at the time of examination. PW 1 exhibited as Exhibit 1 her Report, as Exhibit 2 the Emergency OPD Slip, as Exhibit 3 the Vaginal smear report, as Ext 4

the HCG Report, as Ext 5 the Xray and Ultra-sonography Report, as Exhibit 6 the USG film and xray plates.

9. In cross-examination PW 1 stated that xray examination and USG vide Ext 4 and 5 were not conducted in K.C Hospital and that they were not conducted in her presence.

10. PW 2, Dr. Kaushik Bhuyan Keot stated that on 29.5.2012 he examined Smt. Lakheswari Swarigiary at Dhekiajuli CHC and on examination he found all the vitals normal including blood pressure, pulse, respiratory rate and consciousness. PW 2 stated that during systemic examination including abdomen, chest, neurological examination and cardio logical examination, he did not find anything adverse. PW 2 exhibited his report as Ext 7. The defence declined to cross examination.

11. PW 3, Pramita Swarigiary deposed that on Monday, 28.5.2012, there was a marriage near her house. Her mother was not very well and as such, she had taken her mother to the doctor where she was administered saline and they returned in the evening at about 6.30 PM. PW 3 stated that she locked the door, her mother was taking bath. Her college friend, Tarun Basumatary came with another boy namely, Geremsa. On being asked by Tarun, she opened the door, both came inside her house and she gave them water. PW 3 stated that one other person came in the house and pulled her by hand. Then, two persons entered in their house, she shouted and her mother came. PW 3 stated that there were other boys too. They put her in the vehicle forcibly and she was taken to a place called Shantipur. PW 3 stated that she did not know the persons who forcibly took her in the vehicle in the house. PW 3 stated that there was one male and one female in the house. PW 3 stated that in the house, she heard one male and female conversing and on hearing the same, she came to know that the said two persons in the house were the brother and sister-in-law of the accused. PW 3 stated that then she came to know that the accused had sent people to abduct her. PW 3 stated that later one man came and shifted her to Batasipur where the accused was there. PW 3 stated that later police rang on the mobile phone of the accused and over the said phone she spoke to her uncle/mama who was in the police station and she asked her mama to come and take her. PW 3 stated that the accused told her that he loved her and gave a marriage proposal. PW 3 stated that he forcibly put her on the bike and took

her again to Shantipur. PW 3 stated that again she was brought to Dhekiajuli where his car was kept. PW 3 stated that in the morning at about 5 Am, the accused called for a car and she was taken to another place where she was kept for one day and then taken to Udalguri for a day. PW 3 stated that on Friday she was taken to Kamakhya and the accused forcibly married her. PW 3 stated that on Friday night the accused kept her in the hotel at Guwahati, next day on Saturday she was brought to Shantipur in the house of the brother of the accused from where the police came and took her to the Police Station. PW 3 stated that her mother filed FIR, she was brought before the Magistrate and her statement (Ext 9) was recorded. PW 3 stated that she was also taken to the doctor for examination.

12. In cross-examination, PW 3 stated that at the time of occurrence she was working as a teacher at Dhekiajuli school. PW 3 stated that she had known the accused since 2010. PW 3 stated that she used to dance and the accused used to produce small documentary musical albums. PW 3 stated that both of them had good relation. PW 3 denied that she had a love affair with the accused. PW 3 denied that she wanted to marry the accused. PW 3 stated that she had visited the hardware shop of the accused once and twice. PW 3 stated that they exchanged mobile messages. PW 3 stated that she had sms the accused saying that she loved him. PW 3 denied that since her mother was against their marriage , she had deposed falsely in the case. PW 3 stated that police had interrogated her. PW 3 stated that she stated before the police that she was in love with the accused person before the date of occurrence. PW 3 denied that she stated before the police that her mother was against their marriage. PW 3 stated that she could not say whether the accused gave their marriage proposal to her mother as no such proposal was given in her presence. PW 3 denied that on 28.5.2012 both of planned to elope with the help of their friends and she so eloped. PW 3 stated that when she was taken to different places and to Kamakhya by the accused she did not scream and shout. PW 3 stated that only she and her mother were there in their family. PW 3 stated that forcible marriage was not possible in a place like Kamakhya Mandir, Guwahati. PW 3 denied that she did not state before the police that the accused did not force her to marry him; that later she deposed falsely because of pressure from her mother; that she stated before the police that because of family pressure she eloped with police; that she stated before the police that when she tried to elope,

her mother got hurt though no one inflicted any assault on her. PW 3 stated that when she was taken from places to places she did not raise hue and cry. PW 3 denied that she herself eloped with the help of her friends and compelled the accused to marry her at Kamakhya and that she married him. PW 3 stated that Tarun Baumatary was her friend. PW 3 stated that she did not state before the police about Tarun and Garem. PW 3 denied that she had deposed falsely for the sake of her mother as she was alone; that the persons entered in her house as she had voluntarily opened the door. PW 3 stated that the persons who put her in the vehicle/car were not in the Court. PW 3 stated that she was in the police station and her mother was there with her and her relatives were also there. PW 3 stated that she knew Chaya Daimary. PW 3 stated that she was a surrendered NDFB cadre who resided near their house. PW 3 denied that Chaya Daimary had asked her not to marry the accused. PW 3 stated that she could not say whether Chaya had threatened the accused . PW 3 stated that she had spoken to her mother in the police station. PW 3 stated that she was in the police station on Saturday and Sunday along with her mother. PW 3 stated that during that period she did not interact with the accused. She was brought before the Magistrate on Monday. PW 3 stated that along with her, her mother and some relatives were there, when she was brought before the Magistrate after which, her statement was recorded by the Magistrate. PW 3 denied that she deposed falsely before the Magistrate. PW 3 stated that she had clicked a smiling photograph after her marriage with the accused. PW 3 stated that both, she and the accused signed in the Marriage Register at Kamakhya. PW 3 stated that no one forced her to sign in the marriage Register. PW 3 stated that she had clicked photo at the Kamakhya Mandir along with Uday Boro, Surabhi, Puja Boro (Uday's wife), Puja's brother. PW 3 stated that she did not scream and shout when her photo was being clicked. PW 3 stated that they had clicked photo in front of the office of the Kamakhya Marriage Registration Branch. PW 3 denied that she deposed falsely before the Magistrate. PW 3 stated that she knew Basu Boro , a Sadhak/priest who was known to their family. PW 3 denied that they had taken advice of Basu Boro and he told her mother that if she was married to the accused, she will become a widow.

13. PW 4, Bhaben Pathak, deposed that Pramita was known to him but the accused was not known to him. PW 4 stated that on the date of occurrence at about

7 PM, he was at home and he heard hue and cry and came out of his house. PW 4 stated that mother of Pramita was shouting, she stated that Pramita had been taken away by some people. PW 4 stated that he did not see who took her. The defence declined to cross examine PW 4.

14. PW- 5, Smt Lakheswari Swargiary, stated that the victim was her daughter. On the date of occurrence, in the evening, she was there in the house with her daughter Pramita, two persons came to her house and they sought water. PW 5 stated that then the said two persons closed her eyes with their hands and thereafter they took away her daughter, since they had closed her eyes and it was dark, she could not see anything, she became nervous and shouted, hearing which neighbours came. PW 5 stated that they informed the police, called her relatives and someone wrote the FIR (Ext 8) where she signed. PW 5 stated that the said two persons were not there in the Court.

15. In cross-examination, PW 5 stated that she had not written the FIR nor had she dictated the FIR to the writer and, as such, she could not say the contents of the FIR or its writer. PW 5 stated that she did not recognise the two persons who had taken her daughter away.

16. PW- 6, Sanjib Das deposed that the accused was not known to him but Pramita was known to him. PW 6 deposed that on the date of occurrence, he was closing his shop, he heard hulla coming from the house of Pramita and he went there along with other villagers and was informed by Pramita's mother that she was kidnapped. The defence declined to cross examine the said witness.

17. PW 7, Sri Lila Nath, deposed that the accused person was not known to him and Pramita, who resided in his neighbourhood was known to him. PW 7 stated on the date of occurrence at about 7 PM, while at home, he saw a vehicle, later he heard hull and came out on the road and saw the vehicle leave. PW 7 deposed that later he heard from the mother of Pramita that she had been abducted. PW 7 deposed that he did not know the persons who took away Pramita. The defence declined to cross examine the said witness.

18. PW-8, Trinayan Kumar deposed that he knew the accused person and Pramita. PW 8 stated that the occurrence was about 2 years, both the accused and Pramita used to visit his shop and they used to speak to each other. PW 8 stated that he heard Pramita asked the accused to marry her, upon which the accused had told Pramita that he could not marry as Pramita's mother was not agreeable to marriage. PW 8 stated that Pramita came to the house of the accused and thereafter he heard that both of them married in Kamakhya. PW 8 stated that thereafter he heard that a case had been lodged against the accused.

19. In cross-examination, PW 8 stated that he knew both the accused and Pramita and he knew that they both had a love affair. PW 8 stated that both used to make cinema together and Pramita voluntarily married the accused.

20. PW 9, Chiti Ram Daimari, deposed that he knew the accused person and Pramita. PW 9 stated that the occurrence was about 2 years, both the accused and Pramita used to roam about with each other and later he heard that the accused had brought Pramita to his house, so he went and told his brother, Phanin as to why he had not produced both of them before the villagers. Phanin said that he would ring his brother, the accused and take confirmation from him. PW 9 stated that Phanin then took confirmation and said that both had married. PW 9 stated that both Pramita and the accused came before them in the evening and he saw sindur and mangalsutra worn by Pramita. On being questioned, they said that they had married at Kamakhya. PW 9 stated that since they knew that an FIR was lodged, therefore he informed them that they would be taken to the police station on the next date. In the meantime, however, police came and took both of them.

21. In cross-examination, PW 9 stated that the accused and Pramita had a relationship since the past two years before their marriage. PW 9 stated that Pramita on several occasions, had come to the house of the accused and they used to shoot film together. PW 9 stated that they had many albums in their name. PW 9 stated that Pramita came to the house of the accused to get married herself and her mother had objected to the same. PW 9 stated that both had taken the blessings of the villagers after getting married.

22. PW 10, Harkeswar Daimari deposed that the accused and Pramita got married and came to the village and all the villagers gave blessing to them as per the custom of their village, they showed them the photograph of their marriage, after some time police came to their village along with one lady and they took the accused and Pramita. The defence declined to cross examine the said witness.

23. PW 11, Radhika Basumatary deposed that she knew that there was a love affair between Pramita and the accused, later Pramita eloped with the accused and married him in Kamakhya. PW 11 stated that they returned to the village and the brother of the accused called all the villagers and they paid respect to all the elders and took their blessings. PW 11 stated that on being asked by the villagers, Pramita informed them that she had on her own volition married the accused person. PW 11 stated that later on the same day, the police came and took away both the accused and Pramita.

24. In cross-examination, PW 11 stated that they had gone to Kamakhya to marry with their friends. PW 11 stated that both of them were in love with each other from before their marriage and they used to make Boro films. PW 11 stated that when the villagers while the villagers had decided to take both of them to the police station on the next day, however, the police came to the village and took them away.

25. PW 12, Phanin Gayari @ Goiary, brother of the accused, stated that Pramita used to visit the house of the accused, who used to make Boro film in which she took part. PW 12 stated that both the accused and Pramita were in love with each other and they got married in Kamakhya, Guwahati. PW 12 stated that when he got the information of their marriage and after they returned he called all the villagers and Pramita stated before the villagers that she had married the accused on her own volition and therefore all the villagers blessed both of them. PW 12 stated that thereafter they had thought that they would take them to the police station but before that Pramita's mother sent the police, who took them away.

26. In cross-examination, PW 12 stated that before the marriage the accused and Pramita were in love and they went to the Kamakhya with their friends and got married. Thereafter they came to the village and took the blessing of elders.

27. PW 13, Sub Inspector Ms Jonali Das, stated that on 29.5.2012 when she was posted at Dhekiajuli PS as Attached Officer, Lakheswari Swargiary lodged an FIR (Ext 8) and the same was received by OC Ananta Das and registered as Dhekiajuli PS Case No. 245 of 2012 u/s 366/34. Later the said case was endorsed to her for investigation. PW 13 stated that during the course of investigation, she recorded the statement of witnesses, visited the place of occurrence, prepared sketch map (Ext 10). PW 13 stated that before she could collect the medical report of victim Pramita Swargiary, she was transferred to Bihaguri OP, under Tezpur PS. Records reveal that medical report was collected by SI Sudarshan Roy of Dhekiajuli PS and he submitted chargesheet (Ext 11) on 31.1.2013.

28. In cross-examination, PW 13 stated that the case was endorsed to her on 29.5.2012 at about 10.35 AM. PW 13 stated that she had asked the informant about the occurrence. PW 13 stated that the occurrence was of 28.5.12 at 7.30 PM. PW 13 stated that she did not record the statement of the FIR writer. PW 13 stated that she had gone in search of the accused thrice but she did not find him. PW 13 stated that the witnesses had stated before her that the victim and the accused were in love before their marriage. PW 13 stated that the victim Pramita had stated before her u/s 161 CrPC that she had a love affair with the accused before her marriage with him, that her mother was against their marriage and she eloped with the accused and on 1.6.12 she married the accused in Kamakhya Mandir, that the accused did not force her to marry him, it was only because of the non co-operation of her family members that she had to elope and marry the accused. PW 13 stated that the victim did not state before her that the friends of the accused forcibly took her away, put her in the vehicle and she was forced to marry the accused, that the accused had sent others to pick her up forcibly from her house. PW 13 stated that the victim did not state before her, the name of any person who allegedly kidnapped her.

29. In the instant case, the accused is facing charge of having abducted Pramita, daughter of complainant Smt. Lakheswari Swargiary. The medical evidence of PW 1 establishes that the alleged victim girl, namely Pramita was of 22 years of age at the time of the alleged occurrence. In the FIR (Ext.8), the age of Pramita has been mentioned as 20 years. Thus, admittedly the complainant's daughter was not a minor on the date of occurrence.

30. The complainant's daughter, being a major at the time occurrence, it is to be seen whether she was forcibly abducted by the accused person or not. PW 5, the complainant in her evidence stated that two persons came inside her house, they sought water, closed her eyes and forcibly took away her daughter. PW 5 categorically stated that the said two persons were not there in the Court on the date of deposition, meaning thereby that, PW5 did not implicate the accused person in the dock, to be the person who had allegedly abducted her daughter.

31. Coming to the evidence of the alleged victim girl it is seen that Pramita (PW 3) stated that two persons forcibly took her to Santipur in one house where she heard the voice of the brother and sister-in-law of the accused and it was then that she realized that the accused had sent people to abduct her. In cross examination, however, PW3 admitted that the accused was known to her since the year of 2010 and she used to dance for the musical albums produced by the accused. PW3 further admitted that she had a good relation with the accused and that she had exchanged mobile messages expressing her love for the accused person. Though PW3 denied that she voluntarily planned and eloped with the help of her friends and married the accused in Kamakhya Mandir, PW 3 admitted that no one forced her to sign on the marriage register in the Kamakhya Mandir and that she had happily clicked photographs of her marriage with her accused in the Kamakhya Mandir along with her friends. PW 3 also admitted that she never raised hue and cry when she was taken to Santipur or when she was in Kamakhya mandir while the marriage ceremony was performed.

32. PW 8, PW 9, PW 10, PW 11 and PW 12 have all, deposed that the accused and the alleged victim girl Pramita was known to have a love affair before the date

of occurrence and subsequently they married each other in Kamakhya Mandir, whereafter they came to the village and sought the blessings of the elders.

33. From the evidence on record it is therefore crystal clear that the alleged victim girl who was a major at the time of occurrence, on her own volition eloped with the accused and entered into marital relationship. In her statement before the IO at the first instance, the alleged victim girl, as elicited in cross examination and confirmed by the IO (PW 13), had in no uncertain terms stated that she had with the help of her friends planned her exit from home and when her mother (PW 5) tried to stop her, she hurt herself. The IO confirmed that the alleged victim girl stated before him that she had married the accused in Kamakhya Mandir. Subsequently, however, she resiled from her statement, giving a different version before the Ld Magistrate. The alleged victim girl though tried to go back on her story in her evidence-in-chief however, in her cross examination she was completely demolished. From the totality of the evidence, it is therefore clear that (i) the alleged victim girl, herself left her mother's house and the accused neither did abduct her nor did he had her abducted and (ii) that the complainant suffered simple injuries when she tried to stop her daughter from going away with her friends. Since the accused was not present in the house of the complainant on the night she left, the question of the accused causing hurt to the complainant does not arise.

34. In view of the discussion aforesaid, this Court holds that accused, Someswar @ Khomeswar Swargiary, is not guilty of the offence charged and, as such, he is acquitted of the charge u/s 366/323 IPC and set at liberty forthwith.

35. Considering the facts of the instant case, this matter is not referred to District Legal Services Authority for granting compensation u/s 357A Cr.P.C. Send a copy of the order to Learned District Magistrate, Sonitpur u/s 365 Cr.P.C.

The judgment is signed, sealed and pronounced in open court, in the presence of both sides, on this the 6th day of May, 2015.

Additional Sessions Judge No. 2,
Sonitpur, Tezpur.

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

- P.W. 1: Dr. Bibha Noni Keot
- P.W. 2: Dr. Kaushik Bhuyan Keot
- P.W. 3: Pramita Swargiary
- P.W. 4: Bhaben Pathak
- P.W. 5: Smt Lakheswari Swargiary
- P.W. 6: Sanjib Das
- P.W.7: Lila Nath
- P.W.8: Trinayan Kumar
- P.W.9: Chiti Ram Daimari
- P.W.10: Harkeswar Daimari
- P.W.11: Radhika Basumatary
- P.W.12: Phanin Goiary

2. Witnesses for Defence : NIL

3. Court Witnesses : NIL

4. Prosecution Exhibits:

- Ext. 1 to 6: Medical Report
- Ext 7: Injury Report
- Ext 8: FIR
- Ext 9 : Statement u/s 164 CrPC
- Ext 10: Sketch Map
- Ext 11: Chargesheet

5. Defence Exhibits : NIL

6. Material Exhibits: NIL

Addl. Sessions Judge No.2
Sonitpur, Tezpur