

**IN THE COURT OF THE SESSIONS JUDGE SONITPUR::**  
**TEZPUR**

**SESSION CASE NO. 47 of 2020**

Under section 366 of I.P.C  
(Arising out of GR Case No. 623 of 2018)

**State of Assam**

**-Vs-**

**Sri Hiteswar Nath** ...Accused Person

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

For the State : Mr. M.C. Baruah, Public  
Prosecutor

For the accused : Mr K. Deka, Advocate.

Date of Argument : **15-02-2021**

Date of Judgment : **15-02-2021.**

**JUDGMENT**

**1.** The prosecution case in brief is that on 14.02.2018 at around 2.30 P.M., accused Hiteswar Nath had abducted the informant's daughter victim 'X' aged about 14 years.

**2.** Based on the ejahar received on 14.02.2018 from the father of the victim, the Officer-in-charge of Borsola OP forwarded the same to the Dhekiajuli PS to which a case was registered being Dhekiajuli PS Case no. 141/2018 u/s 366(A)

IPC. In course of investigation, the Investigating Officer recorded the statement of the witnesses, sent the victim for medical examination, got recorded her statement u/s 164 Cr.P.C., and on completion of investigation having found materials submitted charge-sheet against the accused Hiteswar Nath u/s 366 (A) of the IPC.

3. On appearance of the accused person, Learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur vide order dated 11.02.2020 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 parties, charge u/s 366 of the IPC was framed against the accused Hiteswar Nath and particulars of the charge on being read over and explained to the accused person, he pleaded not guilty and claimed to face trial.

5. To substantiate the case, prosecution examined four witnesses. In statement recorded u/s 313 Cr.P.C, the accused denied all the allegations leveled against him and 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 Hiteswar Nath on 14.02.2018 at Vill Niz Borsola, under Dhekiajuli PS, abducted the victim aged about 14 years with intent that she might be compelled to marry the accused 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 punishable under section 366 of the IPC ?***

**Discussions, 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.** PW1 Jayanta Hazarika in his evidence stated that on the day of the incident he witnessed the victim going by the front of his shop.

**10.** PW2 the mother of the victim testified that on the day of the incident at around 2.30 PM, her 14 years old daughter went on missing and in course of search came to know that accused Hiteswar Nath had taken away her victim daughter. She further stated that after filing FIR by her husband, police recovered her daughter from the house of the accused and after recovery on being asked, the victim told her that the accused enticed her to go with him and hence she went with him for outing.

During cross she disclosed that she did not know whether the accused had abducted her daughter or she went with him voluntarily. She also stated that PW1 told her that he had seen her daughter walking alone on the day of the incident. She further stated that the victim was recovered from the house of the married elder sister of the accused. She also did not know whether the accused had abduced the victim or she went with him voluntarily.

**11.** PW 3 is the victim herself. She stated that on the day of the incident she alongwith the accused went to his elder sister's house without informing her parents and on the next day police brought her from the house of the elder sister of the accused. She proved her statement u/s 164 Cr.PC as Ext.1.

During cross-examination she clearly stated that the accused had not abducted her. After she reached the house of the elder sister of the accused, as it became evening, hence the elder sister of the accused asked her to stay the night and as she could not inform her parents, hence not finding her, her parents lodged the FIR against the accused. She clearly stated that the accused never induced her to accompany him.

**12.** PW 4 Lilabati Das in her evidence stated that on the day of the incident victim went on missing and in the evening time she was found in the house of the elder sister of the accused.

**13.** In this case in the FIR and in testimony the mother of the victim (PW2) claimed the age of the victim daughter as 14 years at the time of the incident. In statement u/s 164 Cr.PC, the victim mentioned her age as 15 years. Though as per the statement of the victim u/s 164 Cr.PC, she was reading in class IX at the time of the incident, but the investigating officer did not collect any document regarding age of the victim. The victim also refused for medical examination. In the above, though it is unclear as to whether the victim was minor at that time but at the time when she was reading in class IX at that time, it can be held that she was below 18 years at the time of the incident.

**14.** In the above circumstances while deciding a matter of kidnap/abduction, whether motive on the part of the accused in taking the victim has any role to play or not is a matter to be considered. In my quest of above, I could lay my hand on the following few reported cases which are found relevant in this case.

**15.** In *Shyam & another vs. State of Maharashtra*, reported in AIR 1995 SC, 2169, the Apex court also opined that the conduct of the alleged victim girl, therein, subsequent to the alleged kidnapping, goes to show that she was willing party to go with the appellant on her own. The Apex Court has observed that

the prosecutrix was fully grown up and, even if she did not attain the age of 18, was still in the age of discretion, sensible and aware of the intention of the accused, that he was taking her away for a purpose, and yet she did not put up a struggle or raised any alarm.

**16.** Hon'ble Supreme Court of India in the reported case of S. Varadarajan Vs. State of Madras [AIR 1965 SC 942] held as follows:-

"11. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

12. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left

her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

**17.** Now coming to the facts of this case, the victim around whom the entire case revolves is that on the day of the incident the victim went with the accused to his elder sister's house for outing without informing her parents and not finding her, her father lodged the FIR against the accused. Though PW2 the mother of the victim in her evidence stated that after recovery, her victim daughter told that the accused enticed her to go with him, but on contrary to her own version, she in cross examination stated that she did not know whether the accused abducted the victim or she went with him voluntarily. Moreover, the victim in her statement u/s 164 Cr.PC (Ext.1) as well as in her evidence, clearly stated that she voluntarily went with the accused to his sister's house for outing only. The victim never stated that the accused had forcefully taken her or made any inducement to accompany him, rather her evidence disclosed that the accused never induced her to go with him. She never alleged that she was put under threat when she was taken away. Her version clearly reveals that she accompanied the accused to his sister's house on her own will. The victim without raising any objection or without any struggle accompanied the accused. All indicates that she accompanied the accused voluntarily in the entire episode.

**18.** The evidence discussed above, led me to draw the conclusion that it is not a case of abduction against her will or under inducement. Merely accompanying a person without being induced does not result commission of offence u/s 366

IPC. The ingredients of offence u/s 366 IPC is missing in this case and I am constrained to hold that accused cannot be held guilty for the alleged offence. Accordingly, accused Hiteswar Nath is acquitted from the charge u/s 366 IPC and set him at liberty forthwith. His bail bond shall be extended till next six months in view of section 437 A of Cr.P.C.

**19.** Send back the GR case to the learned committal court.

**20.** Judgement is pronounced and delivered in open court under the Seal and signature of this Court on the **15<sup>th</sup>** day of **February, 2021.**

**(I.Barman)**

Sessions Judge,  
Sonitpur, Tezpur.

**APPENDIX**

**Prosecution Witness**

1. **PW 1** :- Jayanta Hazarika.
2. **PW 2** :- mother of the victim.
3. **PW 3**:- Victim
4. **PW 4**:- Grand mother of the victim.

**EXHIBITS.**

**Exhibit 1** : Statement of the victim u/s 164 Cr.P.C.

(I.Barman)

**SESSIONS JUDGE,  
Sonitpur, Tezpur**