

Code (in short the 'IPC').

2. The fact as disclosed in the First Information Report (in short FIR) is that on 19.5.11 one Smti Nandeswari Borah lodged FIR before the O/C, Behali P.S. alleging that on 18.4.11 the accused kidnapped minor daughter of the informant Smti Mousumi Borah from the house of the informant and confined her in the house of the accused. On receipt of ejahar police registered Behali P.S. Case No.93/11 U/S-366(A) of the IPC and investigated the same and on completion of investigation submitted charge-sheet against the accused U/S-366 (A) of the IPC.

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3. On appearance of the accused copy was furnished to the accused by the learned court of Sub-Divisional Judicial Magistrate, Biswanath-Chariali and case was committed to the court of Hon'ble Sessions Judge, Sonitpur, Tezpur.

4. On being receipt of this case from the committal court, the learned Sessions Judge, Sonitpur, Tezpur, registered the case and transferred the same to this court for disposal.

5. On appearance of the accused before this court, my predecessor after hearing both the sides formally framed charge against the accused U/S-366/376 of the IPC. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. To bring home the charge the prosecution has examined four witnesses including the victim girl. Defence cross-examined said PWs but

adduced no evidence. The statement of the accused recorded U/S-313 of the Cr. P.C. Defence plea is of total denial.

THE POINT FOR DETERMINATION IS

7. (i) Whether the accused on 18.4.11 at village Natun Serelia under Behali P.S. had kidnapped the daughter of the informant namely ; Mousumi Borah with an intent that she might be compelled or knowing it to be likely that she would be compelled to marry any person including the accused against her will or in order that she might be forced or seduced to have illicit intercourse or knowing it to be likely that she would be forced or seduced to have illicit intercourse, and thereby committed an offence punishable U/S-366 of the IPC ?

(ii) Whether on the same day, time and place, the accused after kidnapping Mousumi Borah committed rape on her person when she was with the accused during the kidnapping period and thereby committed the offence punishable U/S-376 of the IPC ?

DECISION AND REASONS THEREOF

8. To arrive at a judicial decision, let the evidence on record be appreciated.

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9. PW-1 Sri Nandeswari Borah who deposed that the accused is known to her. On 18.4.11 at about 7 p.m. when she along with her husband returned home then their daughter Mousumi Borah was not found in the house.

On the very next day she came to know that Mousumi was taken by the accused Prasanta Borah to his house and found her daughter being confined by the accused in his house for which ejahar was lodged which is Ext.1 where Ext.1(1) is a signature of PW-1. The victim girl was recovered and she was pregnant. Thereafter, marriage ceremony was solemnized between Mousumi Borah and accused.

In cross-examination PW-1 deposed that ejahar was lodged about one month back from the date of occurrence. She also deposed that the victim girl instituted a case against PW-1 for which PW-1 has lodged ejahar against the accused in the instant case. She also deposed that marriage ceremony of Mousumi Borah and the accused was performed in the temple at the instance of PW-1.

10. PW-2 is the victim girl Mousumi Borah who deposed that accused is her husband. Since 3/4 years (from the date of deposition) she have love affairs with the accused but her family members did not agree with that relationship and she was subjected to torture by her family members. Finding no other way she herself eloped with the accused and got married with him. Thereafter, her mother lodged FIR against the accused for which accused was arrested by police and PW-2 was brought to court for recording her statement. Ext.2 is her statement where Ext.2(1) is her signature. PW-2 further deposed that she is living peacefully with the accused as husband and wife.

In cross-examination PW-2 deposed that prior to the occurrence the accused helped the family members of PW-2 and her family members insisted the accused to stay as 'Ghar-jamai' and when accused refused then PW-2 was forced by her family members to go for abortion. When she refused to do so then her mother lodged false FIR against the accused.

11. PW-3 is Smti Rupali Borah who is the mother of the accused

deposed that on 18.4.11 her son brought Mousumi Borah to the house of PW-3. Later on both of them got married in the temple and at present they are living peacefully as husband and wife along with their child in the house of PW-3.

In cross-examination PW-3 deposed that Mousumi Borah voluntarily came to the house of PW-3 and she was not kidnapped by the accused. She also deposed that instant case is concocted one.

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12. PW-4 is Sri Budheswar Borah who deposed that accused is his nephew. On 18.4.11 PW-2 Mousumi Borah eloped with the accused. Thereafter, both of them got married in the temple and at present they are living as husband and wife along with their child.

In cross-examination, PW-4 deposed that the accused did not kidnap PW-2 rather she came to the house of the accused voluntarily. PW-4 also deposed that instant case is false and concocted one.

13. To prove the charge U/S-366 of the IPC, the prosecution is to prove :- (a) That the accused kidnapped as understood in Section 360 or 361 IPC or abducted the victim as understood in Section 362 IPC (b) that the victim of the aforesaid kidnapping or abduction was a female (c) that the accused during the kidnapping or abduction had intention or knew it likely that - (i) such woman might or would be forced to marry a person against her will, or (ii) that she might or would be forced or seduced to illicit intercourse, or (iii) by means of criminal intimidation or otherwise by inducing a woman to

go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

- But in the instant case in hand, it transpires from the evidence of the PWs including the victim girl Mousumi Borah that she came to the house of the accused and at present she is living peacefully with the accused as husband and wife along with their child. PW-3 & PW-4 clearly stated that their daughter Mousumi Borah herself came to the house of the accused at the time of occurrence wherefrom she was recovered by police. PW-1 herself deposed that to save her skin from the case instituted by the victim girl against PW-1, she has lodged FIR against the accused in the instant case. All PWs categorically stated that at present the victim girl and the accused are living peacefully as husband and wife and both of them got married in the temple. The evidence of PW-2 it is seen that she has not supported the prosecution case in any manner and there is no whisper in evidence regarding alleged occurrence of committing rape by the accused on PW-2. In my view, there is no question of kidnapping or abducting and committing rape by the accused of the victim girl as alleged since victim herself came to the house of the accused to stay with him voluntarily. The victim girl Mousumi Borah who deposed as PW-2 clearly stated that her parents had objection to the marriage of accused and Mousumi Borah for which she came to the house of the

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(5)

accused. The victim girl also deposed that she is living with the accused as husband and wife. PW-1 being the mother of the victim

girl clearly stated that she has no allegation against the accused. On careful scrutiny of evidence on record, I find that prosecution has miserably failed to establish essential ingredients of Section 366/376, IPC against the accused beyond all reasonable doubts to hold the accused guilty.

15. In the light of aforesaid discussion, I am of the view that the prosecution has failed to prove its case U/S-366/376, IPC against the accused beyond all reasonable doubts.

16. Accordingly, I hold the accused not guilty and he is acquitted of the charge U/S-366/376, IPC and set at liberty forthwith.

17. Judgment prepared, pronounced and delivered in the open Court under my hand and seal of this Court on this the 29th day of June, 2013 at Biswanath Chariali.

Judge,

(Sri S. Khound.)
Additional Sessions

Biswanath Chariali.

Dictated & Corrected by me

(Sri S. Khound.)
Additional Sessions Judge
Biswanath Chariali.
