

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 100 of 2017

Under section 370/371 of I.P.C.
(Arising out of G. R Case No. 1568 of 2013)

State of Assam

-Vs-

1. Md. Abdul Hasid Accused person.

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

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

For the accused : Mr. Rupjyoti Baruah, Legal Aid counsel.

Date of Argument : 01-02-2021.

Date of Judgment : 09-02-2021.

J U D G M E N T

1. The prosecution case, as it emerges from the FIR lodged on 01-07-2013 by the informant Abul Kalam Azad (PW 2), is that on 30-06-2018 accused Md. Abdul Hasid took away the informant's 4 ½ years old niece Asmina Begum from her home and they suspected that accused had sold the girl to someone in Arunachal Pradesh.

2. The F.I.R. being lodged by the uncle of the child, the O/C Tezpur PS registered the case being Tezpur P.S. Case No. 814/13 u/s 370/371 of the IPC and entrusted S.I. Biddyut Bikash Baruah, Incharge of Borghat Out Post to

investigate the case. Accordingly the investigating officer visited the place of occurrence, recorded the statement of the witnesses, recovered the child victim and on completion of the investigation, laid chargesheet against the accused Md. Abdul Hasid @ Md. Hasid Ali and absconder accused Kachuwa Pabing u/s 370/371/34 of the IPC.

3. Accused Md. Abdul Hasid @ Md. Hasid Ali entered appearance. Due to non appearance of the other accused Kachuwa Pabing, the case was split up for accused Kachuwa Pabing and was proceeded for accused Abdul Hasid. The Learned Judicial Magistrate, 1st Class furnished necessary copies to the accused Abdul Hasid as required under section 207 Cr.PC and committed the case to the Court of Session being the offence u/s 370/371 of the IPC exclusively triable by the court of Session. On committal, after going through the police report and hearing both sides, charge u/s 370/371 of the IPC was framed against the accused Md. Abdul Hasid @ Md. Hasid Ali and particulars of the charge on being read over and explained to the accused, he pleaded not guilty. Therefore, the trial commenced.

4. Trial ensued. To substantiate the case, prosecution examined nine witnesses and one court witness. In statement recorded u/s 313 Cr.P.C, the accused controverted and rebutted the entire evidence against him. Accused pleading innocence, stated that with permission of the parents of the victim who is his niece, took her to Arunachal for an outing only and keeping the victim girl with his wife, when he returned home to take labours to Arunachal, then police went with him to Arunachal to bring the girl back. He also stated that he as labour worked under absconding accused Kachuwa Pabing and for his work, Kachuwa Pabing paid him Rs. 30,000/- but the FIR was lodged implicating him falsely. Defence declined to lead evidence in his defence.

5. I have heard argument of the learned counsels of both sides and also have gone through the evidence on record.

6. The points to be determined in this case is as follows–

1. Whether the accused Md. Abdul Hasid on 30-06-2013, for the purpose of exploitation transported the victim Musstt Asfina @ Asmina

Begum, niece of the informant, to Sepa, Aurnachal Pradesh by inducing her to give chocolate and thereby committed the offence of trafficking punishable U/S 370 of the Indian Penal Code ?

2. Whether the accused habitually sold and dealt in slaves and thereby committed an offence punishable U/S 371 of the Indian Penal Code ?

7. The learned Public Prosecutor has submitted that the evidence on record is clear and consistent and established the charge u/s 370/371 IPC against the accused person by examining its witnesses whose testimonies are corroborative and reliable and their evidence particularly the evidence of the child victim is enough to convict the accused person.

8. The learned counsel for the accused, on the other hand, submitted that there is no evidence led by the prosecution to show that the victim was trafficked by the accused, rather he being cousin brother took her to Arunachal Pradesh for outing only and as such he is entitled to acquittal.

9. In order to appreciate the counter arguments, put forward by the learned counsels appearing for the parties, I would like to depict herein below the core of the prosecution evidence.

10. PW 1 Dr. Hemanta Koch, the Sr. Medical Officer of Chariduar CHC, Chariduar deposed that on 09-07-2013 he examined the victim at around 10.45 a.m. in reference to Tezpur PS Case No. 814/13 u/s 370/371 of IPC but found no injury. He proved the medical report as Ext. 1 and arrest memo in connection with Tezpur PS case NO. 814/13 as Ext. 2.

11. It is the evidence of Md. Abdul Kalam Azad, the informant as well as the uncle of the victim that on the relevant day, the accused lured his 4/5 years old niece with chocolates to accompany him. Lateron, one of the villagers reported him that accused Abdul Hasid had taken away the girl to Arunachal but he did not tell why the accused took the girl. He heard from one co-workers of the accused that accused had sold the girl to some person. Lateron, the girl was

recovered from Sepa in Arunachal. He further stated that the accused lured the victim by giving chocolates and taking her to Arunachal sold her there.

During cross, he stated that he has no personal knowledge about the case. He lodged the case, as heard from other person but could not remember who had reported him about the incident. He also did not know who had taken the victim girl or where she was taken.

12. PW 3 Md. Jiabur Rahman Khan testified that on 30-06-2013 accused took the victim Asmina Begum, aged about 3/ 4 years, to Sepa in Arunachal Pradesh and sold her to a teacher for an amount of Rs. 30,000/-. He came to know about the said fact when he as a VDP Secretary along with police went to Sepa to bring back the girl. He further stated that victim's mother told him that accused took her daughter Asmina Begum to Sepa in Arunachal and sold her to a teacher at a cost of Rs. 30,000/-. He also stated that when he went to Sepa along with police to bring back the victim, the said teacher did not allow them to bring back the victim unless the consideration amount was repaid to him and hence they went for the 2nd time to the said house and paying Rs. 25,000/- to the said teacher brought back the girl. He proved the search list as Ext. 4.

In cross examination he stated that he did not know when the victim went out from home. After one day, the victim's mother reported him about the incident.

13. PW 4 Md. Ikramul Hussain turned hostile. He stated that he heard that accused by enticing the victim girl, kidnapped her and took her to Arunachal Pradesh.

14. Musstt Asma Khatoon, the mother of the victim, deposing as PW 5 stated that on the day of incident when her 4 years old daughter was playing in front of her house, accused Abdul Hasid, her nephew luring her daughter to give chocolates, took her with him. In spite of search, they did not find the girl. They also did not find the accused at his home and therefore they suspected that the accused kidnapped her daughter. Lateron, villagers apprehended the accused and thereafter police along with VDP Secretary went to Sepa in search of her daughter and recovered the girl from some house in Sepa but she did

not know the name of the person from whose house her daughter was recovered. After recovery, her victim daughter told that accused took her to Sepa by an Indica car. She heard that the accused sold her daughter at consideration amount of Rs. 30,000/- .

During cross, she stated that she herself had not gone to Arunachal Pradesh and she did not have personal knowledge from whom or from whose house her victim daughter was recovered. It is only Jiabur Rahman (PW 3) who knew from whose house the girl was recovered. She further stated that her brother Abdul Kalam Azad paid Rs. 30,000/- to accused Abdul Hasid to bring back her daughter. She stated that she did not know who had taken his daughter. She knew the facts from Jiabur Rahman

15. Describing the occurrence, CW 1 the victim deposed that on the fateful day when she was playing in front of her house, accused Abdul Hasid asked her to accompany him to her grand father's house situated in Nagaon by luring her to give chocolates and instead took her by a Maruti car to Sepa and then he gave her chocolate. She stated that the accused took her in the morning time and they reached Sepa at day time. The accused took her to one person's house where she stayed for 10 days. She further stated that she was engaged there to wash utensils wherefrom police brought her back. During cross she clearly stated that she deposed in court without being tutored by her mother.

16. PW 6 Mr. Lod Tabyo deposed that when he was posted as O/C of Sepa Police station, East Kameng district, he received a WT message on 03-07-2013 from Borghat Police Out Post of Assam police in connection with Tezpur PS Case No. 814/13 for recovery of one missing girl child. Accordingly, he engaged some police staff to search for the child and later on they recovered the child with the accused in whose custody the girl was found. He further stated that initially a person of Assam sold the child to a man of Arunachal Pradesh who again sold the child to one lady.

During cross he stated that after recovery of the girl, she was brought to Sepa Police station along with a lady from whom the child was recovered but he did not know the name of the lady from whom she was recovered.

17. PW 7 Sri Dambing Pabing testified that one Kachuwa Pabing visited his house with the accused in the morning along with a girl child aged about

6/7 years. The accused persons asked him whether he needs the girl as a domestic helper. Seeing the tender age of the victim, he said that he could keep her only after consulting with her parents. Then the accused persons went out from his house with the child and after 2/3 days, Arunachal as well as Assam police along with some NGO persons came to his house, to enquire about the girl. At the police station he came to know that Kachuwa Pabing paid Rs. 30,000/- to the accused and that Kachuwa was to pay money monthly to the accused for keeping the said girl. At the police station accused Kachuwa Pabing stated that accused Abdul Hasid has to return Rs. 30,000/- to him. However, the accused returned Rs. 25,000/- keeping Rs. 5000/- as a cost of transportation. Thereafter, the said little girl was handed over to O/C Sepa PS by the accused persons. He proved his signature [Ext.4(2)] in the house search list, Ext. 4.

18. PW 8 Inspector of Police, Bidyut Bikash Baruah, the Investigating Officer, deposed that on 01-07-2013 when he was posted as Incharge at Borghat Police Out Post, on receipt of an FIR, from one Abdul Kalam Azad, the O/C of Tezpur PS registered the case being Tezpur PS Case No. 814/13 u/s 370/371 of IPC and endorsed him to investigate the case. Accordingly, he recorded the statement of the informant at Borghat Police Out Post, visited the place of occurrence, drew the sketch map (Ext.5) and recorded the statement of witnesses. On 07-07-2013 he arrested the accused after he was apprehended by the villagers. During investigation he found that the accused sold the victim to one Kachuwa Pabing of Khenuwabasti of village Pabing gaon under Sepa PS, Dist. East Kameng, Arunachal Pradesh at Rs. 30,000/-. On 08-07-2013 he along with his staff went to Sepa PS with Md. Jiaur Rahman Khan and with the help of local gaonburah Sri Dambing Pabing recovered the victim and brought her back to Tezpur PS. On completion of investigation, he submitted the charge sheet against the accused persons Md. Abdul Hasid @ Md. Hasid Ali and absconding accused Kachuwa Pabing u/s 370/371/34 of the IPC vide Ext. 6. He confirmed the statement of the hostile witness PW 4 Ikramul Islam as made before him (Ext.7(1)).

During cross he stated that due to illness, the informant did not accompany him to Sepa. He stated that at the time of recovery, the victim was alone in the house of accused Kachuwa Pabing. He did not produce the child victim before the learned Chief Judicial Magistrate, Sepa.

19. PW 11 Sri Rajib Borah, the bench Assistant of the learned Judicial Magistrate, 1st class, Tezpur proved the signature of the then learned Judicial Magistrate, 1st class, Tezpur Mr. K. Pathak as Ext. 8(1) who recorded the statement of the victim's mother u/s 164 Cr.P.C.

20. In this case, the informant alleged that the accused Abdul Hasid kidnapped their 4½ years old child and sold her at Arunachal Pradesh and later on the child victim was recovered from Sepa. In statement u/s 164 Cr.P.C., the victim's mother (PW 5) stated that the accused Abdul Hasid had lured her victim daughter to give chocolates and on the pretext of taking to her grand mother's house, he had taken her to Sepa and she was engaged there to wash utensils in one person's house. Accused stands charged under section 370/371 of IPC in this case.

21. Offence u/s 370 deals with trafficking of a person which is reproduced herein below:

[370. Trafficking of person. – (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by –

First. – using threats, or

Secondly. – using force, or any other form of coercion, or

Thirdly. – by abduction, or

Fourthly. – by practising fraud, or deception, or

Fifthly. – by abuse of power, or

Sixthly. – by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

Commits the offence of trafficking.

Explanation 1. – The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or

practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2. – The consent of the victim is immaterial in determination of the offence of trafficking.

22. Section 370 discloses that whoever for the purpose of exploitation, recruits, transports, harbours, transfers or receives a person or persons by using threat, force, coercion and abduction, practicing fraud or deception by abuse of power and by inducement commits the offence of trafficking. The offence of trafficking gets completed as soon as a person recruits, transports, harbours, transfers and receives a person or persons for exploitation by using threat, force, coercion and abduction, practising fraud or deception by abuse of power and by inducement.

23. In the case, it is not in dispute that the victim girl is aged about 4/5 years and she was recovered from Sepa, Arunachal Pradesh.

24. Now, coming to the evidence on record, it is found that according to the victim, on the day of incident she was playing in front of her house while her mother with her aunty were gossiping. At that time her cousin brother-the accused Abdul Hasid with lure to give chocolates, took her therefrom saying that he would take her to her grandfather's house situated at nagaon and instead took her to Sepa by a maruti car and then offered her chocolates. She stated that the accused took her in the morning time and they reached Sepa at daytime. The accused took her to a house of one person where they stayed for ten days and in those days she was engaged to clean utensils. Thereafter she was brought back by police. In cross examination she firmly stated that she was not tutored by her mother. She also stated that she knew that her grandfather's house is at Nagaon and people told her that the place where the accused took her was Sepa. Corroborating her evidence, PW5 Asma Khatoon the mother of the victim also stated that on the day when she was at home and her victim daughter aged about 4 years was playing in front of their house, accused Abdul Hasid lured her daughter with chocolates to accompany him and thereafter took away her daughter from home. During search they did not find the accused and lateron the villagers apprehended the accused.

Thereafter police along with VDP secretary Jiabur Rahman found her daughter from a house at Sepa, Arunachal Pradesh and after recovery, the victim told her that the accused took her to Sepa by an Indica car. She also heard that the accused sold her victim daughter to a person at Sepa for an amount of Rs. 30,000/-. PW 3 Jiabur Rahman the then VDP Secretary accompanied the police to Sepa to bring the victim girl and after his arrival at Sepa, he came to know that the accused taking the victim to Sepa, sold her to a teacher for a consideration of Rs. 30,000/- and when they went to Sepa to bring the girl back, the person who purchased the girl, refused to hand over the girl unless they paid the amount which he parted with while purchasing the girl. Therefore, they returned back home and again went to Sepa and giving Rs. 25,000/- to the said teacher, brought back the child. PW5 the victim's mother in cross examination also stated that her brother Abdul Kalam Ajad paid Rs. 30,000/- to the accused Abdul Hasid to bring the child. The evidence of another vital witness PW 7 Dambing Pabing, the village goan burah, resident of Khenowabasti Pabing gaon, Arunachal Pradesh disclosed that one day Kachuwa Pabing along with the accused Abdul Hasid taking one girl of 6/7 years old, came to his house and enquired whether he would keep the child as domestic helper but seeing the tender age of the girl when he said that he would like to consult with the child's parents, they left his house and after 2/3 days, police of Assam and Arunachal Pradesh along with some NGO persons came to his house to enquire as to whether he kept a girl as domestic helper to which he replied that he returned the girl with the accused on the very day. He heard at the police station that Kachuwa Pabing paid Rs. 30,000/- to the accused for the girl and that Kachuwa was to pay money monthly to the accused for keeping the girl. At the police station Kachuwa also disclosed that accused Abdul Hasid returned Rs. 25,000/- to Kachuwa Pabing keeping Rs 5000/- as transportation cost after which the girl was handed over to the O/C Sepa. The evidence of PW 7 clearly reveals that the accused Abdul Hasid sold the girl to accused Kachuwa Pabing for a consideration amount of Rs. 30,000/- and at the time of bringing the child back, they had to return the purchase money. PW 6 the then O/C of Sepa Police station also corroborated that the accused sold the girl to a gentleman of Arunachal Pradesh who again sold the

child to another lady. During cross he stated that the lady from whom the child was recovered was brought to Sepa Police Station but he did not know her name. Taking the evidence of PW7, it is also found that the accused Abdul Hasid sold the girl to absconder accused Kachuwa Pabing, but the girl was not recovered from his house. The evidence of PW 6 reveals that the girl was recovered from the house of one lady, however neither she was made as an accused nor a witness in the case. As per the evidence of the Investigating Officer (PW 8), accused Abdul Hasid was apprehended by the villagers and during interrogation, came to know that he sold the girl to Kachuwa Pabing of Khenuwabasti of village Pabing gaon under Sepa Police station. Accordingly he along with PW 3 and staff of Sepa PS went to Pabing gaon and with the help of Dambing Pabing (PW7), the village gaonburah recovered the girl from the house of Kachuwa Pabing but did not find Kachuwa Pabing. Though PW 6 and PW 7 made different version as to from where the girl was recovered but the evidence remained undemolished to the effect that the accused Abdul Hasid sold the girl aged about 4/5 years to Kachuwa Pabing for a consideration amount of Rs. 30,000/-. PW 4 Ikramul Hussain, the hostile witness also corroborated the part that he heard that accused Abdul Hasid with a lure of chocolates had taken the victim girl to Arunachal.

25. Further, in statement u/s 313 Cr.P.C., the accused took the plea that he took the victim who is his niece to Arunachal with permission of her parents for outing only. But according to the victim's mother, the accused had taken her daughter with a lure of chocolate to go to her grand father's house but lateron being unable to find her daughter and not finding the accused at home, they suspected that the accused had kidnapped her daughter. Her evidence also disclosed that lateron the villagers apprehended the accused and thereafter police along with VDP Secretary Jiabur Rahman recovered her daughter from Sepa. Had the accused only taken the victim for outing, he would not have come back without her and there would not have been any monetary transaction to secure the girl back. In statement u/s 164 Cr.P.C. (Ext. 8) also, the victim's mother deposed that on the day of incident her nephew accused Abdul Hasid told her that he would take her 4/1/2 years old

child Asmina Khatun to shop for giving chocolate and would take her to her Nana's (grand father) house but instead of taking her to Nana's house, he had taken her to Arunachal Pradesh and sold her at Sepa to an unknown person. That apart, the accused in examination u/s 313 Cr.P.C. also pleaded that he had taken the girl to Arunachal with permission of her parents and keeping the child with his wife in Arunachal Pradesh, he came home to take labour to Arunachal and then police with him went to Arunachal Pradesh to bring the girl. Had there been an iota of truth in his statement, he could have adduce the evidence of his wife. Moreover, the evidence of the PWs shows that the child was not recovered from the house of the accused, rather the minor child was recovered from one lady's house to whom accused Kachuwa again sold the child. Had the parents permitted the accused to take their child along, they would not have searched for the child or reported the matter to police. The accused failed to show any reason behind his alleged false implication by the informant. Further admittedly the accused is the relative of the informant party. If no occurrence would have taken place, one relative would not have caused the apprehension of the other relative, where there no enmity between them is alleged. To sum up the testimonies of each witnesses, it disclosed that all the material witnesses including the victim, appears to corroborative, coherent and trustworthy about the prime accusation and this court finds that defence side failed to dismantle the credence of the witnesses bringing out any sort of material contradictions.

26. Regarding selling of the child, there is evidence that accused sold the child at Rs. 30,000/-. The victim's mother stated that her brother paid Rs. 30,000/- to the accused to bring back the child. In respect of transaction of money, the accused during examination u/s 313 Cr.P.C., stated that he worked as labour under Kachuwa Pabing and for the work Kachuwa Pabing paid Rs. 30,000/- to the accused. But he adduced no evidence to substantiate that he worked under Kachuwa Pabing, rather he admitting the fact of receiving Rs. 30,000/- from Kachuwa Pabing, makes it evident that he took money of Rs. 30,000/- from Kachuwa Pabing as consideration for selling the girl at Arunahal Pradesh and to take back the girl, he had to return the money

which he took as consideration amount and for that the maternal uncle of the victim gave the amount to the accused.

27. From the combined reading of the evidence of the victim and other witnesses what distinctly transpires is that the accused lured the child of chocolates and on the pretext of taking her to her grand father's house took her to Sepa, Arunachal Pradesh and sold her there. The entire act of the accused in taking the victim to Arunachal was with ill motive as the victim was deceived showing lure of chocolate. The whole episode i.e. from taking the victim and selling her to Kachuwa Pabing for Rs. 30,000/-, clearly shows that the accused Abdul Hasid transported the minor girl for the purpose of exploitation in the form of slavery. The victim is categorically clear regarding role of the accused Abdul Hasid and I find no any ambiguity in the involvement of the accused in the crime as discussed above. In the light of the above discussions of the evidence on record, this court does not find any reason to disbelieve the evidence of the PWs. Their evidence is clinching and prosecution has proved the involvement of the accused Abdul Hasid in trafficking the 4/5 years old child and selling her, who was engaged in slaves and thereby the charge brought against the accused u/s 370(4) IPC stands proved beyond all reasonable doubt. Accordingly, the accused Abdul Hasid is convicted for commission of offence u/s 370(4) IPC.

28. As regards the complicity of the accused in charge u/s 371 IPC, evidence is silent as to whether the accused habitually imports, exports, removes, buys, sells, trafficks or deals in slaves and as such the charge u/s 371 IPC fails. Accordingly, accused Abdul Hasid is acquitted from the charge u/s 371 of the IPC.

29. Accordingly, accused Abdul Hasid is convicted for the offence punishable u/s 370(4) of the IPC. I have heard the accused on the quantum of sentence and recorded his statement u/s 235(2) of the Cr.P.C. Accused/convict pleading innocence, prayed for leniency.

In the present case, the accused being a relative, has trafficked a minor girl of 4/5 years and sold her in another state. More particularly, the offences of

those nature needs to be dealt with stringently with intend to prevent the social menace. However, considering the age of the accused who is 26 years old I sentence the convict Abdul Hasid to undergo Rigorous Imprisonment for ten years with fine of Rs. 30,000/- in default to undergo Rigorous Imprisonment for another 6 months for the offence punishable u/s 370(4) of the IPC. The fine amount on realization be paid to the victim.

30. Convict be sent to the Central Jail, Sonitpur, Tezpur to serve the sentence.

31. Let a free copy of the Judgment be furnished to the convict.

32. Also send a copy of the Judgment to the District Magistrate, Sonitpur, Tezpur as per provision of section 365 Cr.P.C.

33. Given under my Hand and Seal of this Court on this the 9th day of February, 2021.

**(I. Barman)
SESSIONS JUDGE
SONITPUR : TEZPUR**

Dictated and corrected by me

**(I. Barman)
SESSIONS JUDGE,
SONITPUR :: TEZPUR.**

APPENDIX

Prosecution Witness

PW No.1	:-	Dr. Hemanta Koch (M.O.)
PW No.2	:-	Informant Md. Abdul Kalam Azad,
PW No. 3	:-	Md. Jiabur Rahman Khan
PW No. 4	:-	Md. Ikramul Hussain,
PW No.5	:-	Musstt Asma Khatoon
PW No. 6	:-	Victim
PW No. 7	:-	Mr. Lod Tabyo,
PW No. 8	:-	Daming Pabing
PW No. 9	:-	SI Bidyut Bikash Baruah, I.O.,
PW No. 10	:-	Sri Rajib Borah.

Documents proved by prosecution.

1.	Exhibit No.1	:-	Medical report.
2.	Exhibit No.2	:-	Arrest memo.
3.	Exhibit No.3	:-	FIR
4.	Exhibit No.4	:-	Search list.
5.	Exhibit No. 5	:-	Sketch map
6.	Exhibit No. 6	:-	Charge sheet
7.	Exhibit No. 7(1)	:-	A portion of the statement of PW 4 Ikramul Islam 161 Cr.P.C.
8.	Exhibit No. 8	:-	Statement of the victim's mother u/s 164 Cr.P.C.

(I.Barman)
SESSIONS JUDGE
SONITPUR: TEZPUR