

APPENDIX-12IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPURTEZPUR

Present:- Sri Nabajit Bhatta. AJS. MA, LL.B.
Chief Judicial Magistrate,
Sonitpur, Tezpur

[Date of the Judgment]

[10.11.2022]**[PR Case No-1146 of 2018]**

(FIR NO-196/2018 DATED-12.03.2018/ATTEMPTED TO KIDNAPP OR ABDUCT WITH
INTENT SECRETLY AND WRONGFULLY TO CONFINE PERSON CASE AND DHEKIAJULI
POLICE STATION)

COMPLAINANT :	STATE OF ASSAM OR Miss Bhabana Dutta, D/O:- Late Shyamal Dutta, R/O:- Ward No-9 Dhekiajuli, P/S:- Dhekiajuli, Dist:- Sonitpur, Assam
REPRESENTED BY	Mr. Nalini Kanta Mishra, Ld. Addl. P.P Smt. Karabi Das, Asst. P.P.
ACCUSED PERSONS	1. Md. Kalam Ali, S/O:- Md. Muslem Ali, R/O:- Alisinga, P/S:- Dhekiajuli, Dist:- Sonitpur, Assam 2. Md. Akbar Ali S/O:- Late Naushed Ali, R/O:- Palash Basti Pathar, P/S:- Dhekiajuli, Dist:- Sonitpur, Assam
REPRESENTED BY	Md. Iftekhhar Ansari, Ld. Counsel

APPENDIX-13

Date of Offence	12.03.2018
Date of FIR	12.03.2018
Date of Charge Sheet	31.05.2018
Date of Framing of Charge	08.08.2019
Date of commencement of evidence	19.02.2020
Date on which judgment is reserved	29.10.2022
Date of Judgment	10.11.2022
Date of the Sentencing Order, if any	NIL

ACCUSED DETAILS :

Rank of the Accused	Name of the accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentenced Imposed	Period of Detention undergone during Trial for purpose of Sec. 428 Cr.P.C.
A-1	Md. Kalam Ali	16.03.2018	06.04.2018	Sec-365/511/34 of IPC	Acquitted	NIL	21 Days
A-2	Md. Akbar Ali	16.03.2018	09.05.2022	Sec-365/511/34 of IPC	Acquitted	NIL	54 Days

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, SONITPUR: TEZPUR

P. R. Case No-1146 of 2018

State of Assam

–Vs–

1. Md. Akbar Ali

2. Md. Kalam Ali

.....Accused Persons

Under section-365/511/34 of I.P.C.

Present:

Sri Nabajit Bhatta AJS. MA, LL.B.

Chief Judicial Magistrate, Sonitpur at Tezpur

10th day of November, 2022

Mrs. K. Das, Asst. P.P

..... Advocate for the State

Mr. I. Ansari, Ld. Counsel

..... Advocate for the Accused

Date of Hearing : 19.02.2020, 19.11.2020 & 07.02.2022

Date of Argument : 29.10.2022

Date of Judgment : 10.11.2022

J U D G M E N T

1. Prosecution story in brief is as follows that on 12.03.2018 the informant Miss. Bhabna Dutta lodged an FIR before the O/C of Dhekiajuli Police Station to the effect that on the same date at about 01:00 PM, she went to appear her Higher Secondary Final Examination at Loka Nayak Amiyo Kumar Das College in an auto rickshaw wherein the driver of said auto along with one passenger were present who were wearing mask. It was also stated that when she tried to get down from the said auto rickshaw in front of her college, the driver and the passenger of the said auto grabbed her mouth inside the said auto and fell her down there and thereafter, left the place. Then she acted as in a state of unconsciousness and after sometimes she jumped from the auto and took shelter in a nearby house. Hence, the case.

2. The instant case was registered under section-365/511 of I.P.C. and the police investigated the same. After completion of the investigation police submitted the charge-sheet against the accused persons, namely, Md. Kalam Ali and Md. Akbar Ali under section-365/511/34 of I.P.C.
3. That my Ld. Predecessor in office took cognizance of the offence against the accused persons. On appearance of the accused persons copies of relevant documents were furnished to the accused persons and the charges under section-365/511/34 of Indian Penal Code was framed against both the accused persons and the said charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. Prosecution in order to prove the case has examined four numbers of witnesses including the informant-cum-victim in support of this case. Defence plea was total denial. Defence has adduced no evidence. Statements of accused persons have been recorded under section-313 of Cr. P.C.
5. **POINTS FOR DETERMINATION:-**
 - (i.) Whether the accused persons on 12.03.2018 at about 01:00 PM in furtherance of their common intention attempted to kidnap or abduct the informant, Miss. Bhabana Dutta with intent to cause the informant to be secretly and wrongfully confined and thereby committed an offence punishable under section-365/511/34 of I.P.C.?
6. Heard argument from the Ld. Advocate of both the sides. On perusal of the evidence on record and case diary the very findings are as follows.

DISCUSSION, DECISION AND REASONS THEREOF

7. The prosecution opening the account of examining the witnesses first brought the informant, namely, Miss. Bhabana Dutta as PW-1. The PW-1 has stated in her evidence-in-chief that she could whether the persons who were standing on the dock was the accused persons or not because the said persons were wearing mask. The incident took place in the year 2018 and on the date of alleged incident during day time she went to LOKD College in an Auto wherein the driver of said Auto and one person was sitting backside of Auto. That before reaching college, the person who was sitting backside grabbed her

mouth and she failed to remove her mouth from the act of said person. Thereafter, she pushed the said person. She also stated that once she removed her mouth from the hands of the said person and pushed him. When the said person pushed her, her head touched in a rod which was inside the Auto. Thereafter, she acted as in a state of unconsciousness and they took her in the said condition. She also stated that when the said Auto stopped at Keherukhanda village she fled away from the said Auto and went towards a nearby house. Thereafter, she informed the matter to her family members over phone. Later, her mother went there and rescued her daughter. Thereafter, on the same day she lodged the ejahar. She identified her ejahar as Ext-1 wherein she put her signature as Ext-1(1).

8. In cross-examination, PW-1 has stated that she could not identify the driver of said auto and the said driver was wearing mask. She also stated that she did not give the registration number of auto and the description of the driver and another person who was inside the auto. She stated that police did not call her after the arrest of accused persons. She also stated that she did not raise hue and cry inside the auto. Many vehicles were passing through the said road. She stated that she did not know the person where she took shelter at the time of incident.
9. PW-2, Smt. Sumita Dutta stated in her evidence-in-chief that the informant is her daughter. She stated that the incident took place on 12.03.2018. She further stated that on the date of incident at about 01:30 PM, someone has called her over phone and informed her that her daughter had been kidnapped by some miscreants and thereafter, her daughter somehow went towards their house and was crying in their house situated at Keherukhanda. Thereafter, she along with one Raju Ghosh went to the house of said person at Keherukhanda and found her daughter at his house. She also stated that when she asked her daughter, she stated that one person of an auto wherein she was travelling had grabbed her mouth and thereafter, during pulling pushing she fell down when she touched with a rod of the said auto. She stated that there said auto took her to somewhere. Later, she fled away from the said auto at Keherukhanda

and went towards the house of said person wherein she found her daughter. Thereafter, she lodged the ejarah.

10. In cross-examination, PW-2 has stated that her daughter did not sustain any injury on her head. She stated that she was also not medically examined.
11. PW-3, Sri Bhupen Hazarika has stated in his cross-examination that he does not know the informant and the accused persons. He also stated that he does not know anything about the incident. The cross0examination of PW-3 was declined by defence side.
12. PW-4, Sri Prabin Hazarika has stated in his cross-examination that he does not know the informant and the accused persons. He also stated that he does not know anything about the incident. The cross0examination of PW-4 was declined by defence side.
13. I have minutely perused the evidences on record including the cross-examination of the witnesses. In this case, PW-1 is the informant-cum-victim and PW-2 is the mother of the informant-cum-victim of this case. PW-3 and PW-4 are the independent witnesses of this case. The prosecution has failed to examine the I.O. of this case.
14. In this case the PW-1 who was the victim has deposed that on the day of incident she was proceeding to LOKD College in an Auto wherein the driver of said Auto and one person was sitting backside of Auto. Then the person who was sitting backside grabbed her mouth and she failed to remove her mouth from the act of said person. Thereafter, she pushed the said person. Once she removed her mouth from the hands of the said person and pushed him. When the said person pushed her, her head touched in a rod which was inside the Auto. Thereafter, she acted as in a state of unconsciousness and they took her in the said condition. When the said auto stopped at Keherukhanda village she fled away from the said auto and went towards a nearby house. Thereafter, she informed the matter to her family members over phone. The PW-2 is the informant but she was hearsay witness. She has deposed that when she asked her daughter, she stated that one person of an auto wherein she was travelling had grabbed her mouth and thereafter, during pulling pushing she fell down

when she touched with a rod of the said auto. That the said auto took her to somewhere. Later, she fled away from the said auto at Keherukhanda and went towards the house of said person wherein she found her daughter. PW-3 & PW-4 had no knowledge regarding the case. From the evidence of the PW-1 it appears that she could not identified the accused persons. She also could not identify the alleged driver and the passenger of said auto. Further the PW-1 has stated nothing against the accused persons. PW-2 had also not seen the incident. So, from the evidence of the witnesses, no incriminating materials had been found against the accused persons.

15. Hence, considering all above discussions it appears that the prosecution has not proved the case against the accused persons beyond reasonable doubt. Thus keeping view of what has been discussed above this court has no least hesitation that the prosecution has failed miserably to establish the guilt of the accused persons U/S: 365/511/34 of I.P.C. Hence, the accused persons, namely, Md. Kalam Ali and Md. Akbar Ali are not found guilty.

ORDER

Accused persons, namely, Md. Kalam Ali and Md. Akbar Ali are acquitted from the Charge under section-365/511/34 of I.P.C. and set at liberty forthwith.

Bail-bonds of the accused persons are extended for six months in view of section-437A of Cr PC.

Judgment is prepared and pronounced in open court. Given under my hand & seal of this court on this 10th day of November, 2022 at Tezpur.

(Sri Nabajit Bhatta)
Chief Judicial Magistrate,
Sonitpur: Tezpur

Dictated and Corrected by me

Chief Judicial Magistrate,
Sonitpur: Tezpur

APPENDIX -14**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES****A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Miss. Bhabana Dutta	Informant-cum-victim
PW-2	Smt. Sunita Dutta	OTHER WITNESS
PW-3	Sri Bhupen Hazarika	OTHER WITNESS
PW-4	Sri Prabin Hazarika	OTHER WITNESS

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

B. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Ex-1/PW-1	FIR
2	Ext-1(1)	Signature of PW-1

B. Defence:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

B. Material Objects:

Sr. No.	Exhibit Number	Description
NIL	NIL	NIL

Chief Judicial Magistrate,
Sonitpur: Tezpur