

**IN THE COURT OF THE ASSISTANT SESSIONS
JUDGE, SONITPUR AT TEZPUR**

PRESENT : Sri P.C. Kalita, AJS,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 52 OF 2010

GR Case No. 229 / 2005.

Under Section 366, 343, 372,506 of Indian Panel Code

State of Assam

–Versus –

Md. Ramjan Ali.
Md. Taher Ali,
Vill –Balidonga,
PS – Sootea
Dist – Sonitpur, Assam. **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public Prosecutor

For the accused person : Smti D. Choudhury,
Advocate.

Date of evidence : **15– 07 – 2013, 29-04-11,
04-01-2012 & 11-07-13.**

Date of Argument : **25– 10 – 2013.**

Date of Judgment : **29– 10 – 2013.**

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J U D G M E N T.

1. The prosecution case, inter-alia, in brief is that the informant Miss Rahajan Khaton, lodged an ejahar before Itakhola Police Out Post under Sootea Police Station alleging that on 10-11-2004 at about 9 a.m, while she was returning home from the house of her elder sister Sahjahan BVegum at village Itakhola, on the way back accused Ramjan Ali met her at Iitakhoa Centre, offered her a "pan". After having "pan" (battle nut) she was unconscious and then accused had taken her to the house of Md. Badshah of village Balidonga in a car. Keeping her there for 3 days, accused made her unconscious and thereafter took her to Punjab and sold her there to one Jashpal Nath. After some days, she was conscious and left for home from Punjab.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Sootea PS registered a case, conducted investigation and thereupon laid chargesheet u/s 367/506 of IPC against the accused Md. Ramjan Ali.

3. After appearance of the accused person before the Court, the learned Chief Judicial Magistrate, Sonitpur, Tezpur, committed the case to the Court of learned Sessions Judge, Sonitpur, Tezpur. Thereafter, the learned Sessions Judge, Sonitpur, Tezpur transferred the case to this court for trial. Considering the materials available on case record and relevant documents of case diary, the charge was framed against the accused Md. Ramjan Ali under Sections 366, 343, 372 and 506 of IPC. Then the contents of charge was read over and explained to the accused to which, he has pleaded not guilty and claimed to be tried.

4. To bring home the charge, the prosecution has examined 4 (four) PWs. Further prosecution evidence is closed

considering the stand of Pws and at the instance of learned Addl. Public Prosecutor. The accused is examined u/s 313 CrPC. The pleas of the accused are of total denial and he has declined to adduce any defence witness.

5. Points for determination:

(i) Whether the accused on 10-11-04 at about 9 a.m. at Itakhola under Sootea PS, kidnapped (abducted) the victim Miss Rajahan Khatoon, a woman, with intent that or knowing that it is likely that she might be forced or seduced to illicit intercourse with him and thereby committed an offence punishable u/s 366 of IPC ?

(ii) Whether after the said day at village Baligonga under Sootea PS accused wrongfully confined the said victim for three days in the house of Badshah @ Terimeri Badshah @ Amjad Ali and thereby committed an offence punishable u/s 343 of IPC ?

(iii) Whether the accused after the said day at village Badala, District Ludhiana, State- Punjab sold the said victim, a person under the age of 18 years, with intent that such person should, at any age, be employed for the purpose of prostitution and thereby committed an offence punishable u/s 372 of IPC ?

(iv) Whether the accused after the said day at village Choibari Majgaon under Jamuguri Police Station committed criminal intimidation by threatening the said victim with injury to her person and thereby committed an offence punishable u/s 506 of IPC ?

Discussions, Decision and reasons thereof:-

6. I have carefully perused the evidence and the materials available on the case record. Heard arguments of both sides. Now, let us examine the evidence of PWs to decide the case at hand.

7. PW 1 is the Medical Officer Dr. Ranjan Kumar Das. He deposed that on 16-02-2005 he was at Kanaklata Civil Hospital, Tezpur as Medical and Health officer-1 and on that day in reference to Sootea PS Case No. 10 of 2005 on being escorted and identified by Constable No. 186 Mr. Jogesh Ch. Nath, he examined Miss Rajahan Khatoon, D/O Maniruddin Sah of Choibari Majgaon, PS Jamuguri. Upon examination he found the following :-

Height – 145 cm , Weight – 36 kg, Teeth – 14/14. Vaginal Smear for spermatozoa – absent.

She was average built. Her secondary sexual characters are well developed. Breast, Pubic and axillary hair well developed. Vulva, vagina well developed and intact. Hymen absent.

There are no marks of violence on the private as well as other parts of body. Vaginal smear for spermatozoa absent.

X-ray done at Kanaklata Civil Hospital on 17-02-05. X-ray plate No. 360,361 and 362.

Reports of X-ray examination:

Elbow Joint : Epiphysis of the radial epicondyle of humerus are fused together. Usually it completes at the age of 15 years.

Wrist Joint : Epiphysis of the lower ends of ulna are fused together. Usually it completes at the age of 17 years. Epiphysis of the lower ends of radius are fused together. Usually it completes at the age of 18 years

Iliac crest : Epiphysis of iliac crest are not fused together.

Opinion.

1. Age of the concern victim is 18 years.
- 2 There are no sign that suggest rape. Her urine for pregnancy test is weakly positive, that means she may carrying early weeks of pregnancy, for confirmation Ultra Sonography was advised but, did not get the report.

Ext. 1 is the medical report submitted by him and Ext. 1(1) is his signatures. Ext. 2 is the X-ray report and Ext. 3 is the Report of Urine for pregnancy test.

8. PW 2 Md. Abdul Hssain, a driver, deposed that he knows the accused Ramjan Ali. The incident occurred on a day about 5/6 years ago at Itakhola. Accused Ramjan Ali used to visit the residence of Rajahan Khatoon and on the day of occurrence accused had taken away Rajahan Khatoon from the road. Accused took her to Punjab and sold her there. Lateron, she left Punjab and arrived at home. Thereafter, the parents of Rajahan lodged an ejahar in the Police Station.

9. PW 3 Musstt Sahjahan Begum, elder sister of victim Rajahan, stated that one day about 7 years ago, her sister Rajahan came to their house. On that day her sister returned back to her home. After 3 / 4 days of her returned back, her mother came to her house searching for Rajahan. They thereafter made search for her sister, but did not find her. After one month, from the day of incident, her sister return back and told before them that on the day of occurrence accused met her on the road and offered her a "Pan". Thereafter, her sister went away with the accused. The accused keeping her sister at village Balidonga in the house of one Badshah for 3 days, took her to Punjab and sold her there. Her sister fled away from Punjab and told before her about the incident. For this, her sister lodged the ejahar. Thereafter, her sister got married with a man at Bihar and since then her sister and her mother Rabia have been residing at Bihar.

10. PW 4, Sri Keshab Nath, an LP School teacher and VDP Secretary, stated that he does not know the accused, but knows the informant/victim. One day in the year 2004-05, Rabia Khatoon came to him and told him that her daughter Miss "X" was going to

elder sister's house but on the way she was missing. He asked Rabia to lodge an ejahar. After 3 months of the occurrence the victim Miss "X" returned home, came to his residence along with her mother and told him that on the day of occurrence while she was returning from her elder sister's house at Itakhola, on the way accused Ramjan met him. Thereafter accused offered her a "Pan" and as a result, she was found unconscious. Accused kept her at village Balidonga for 3 days and thereafter took her to Punjab and sold there. After 3 months, staying at Punjab Miss "X" returned home and told about the occurrence. Now, the victim got married with a man from Bihar. She knows that the mother of victim has been residing at Bihar with victim Miss "X".

11. From the ejahar, it reveals that the date of occurrence was 10-11-04, but the ejahar was lodged on 12-02-05. Thus, it appears that there was delay of 93 days in lodging the ejahar. But there is no mention in the ejahar and in the deposition of the witnesses as to why there was delay in lodging the same, which is fatal to the prosecution.

It may be mentioned here that on several dates processes (summons and Bailable W/A) have been issued to the victim-informant and her mother Rabia Khatoon. But the said Bailable W/A have returned unexecuted with reports stating that both the witnesses had left their residence long back in connection with their jobs and they have no contact with their families. So, the prosecution could not produce the victim and her mother in the court due to lack of proper address. In this connection, PW 3 Sahjahan Begum, elder sister of victim and PW 4 in their respective depositions stated that the victim had already married with a man from Bihar and since then she has been residing at Bihar. These two witnesses though stated that the victim Miss "X" now residing at Bihar but they could not furnish the appropriate address of the victim of Bihar.

12. Now, from the evidence on record, it is seen that PW 1 is the Medical Officer. According to the opinion of the MO, the victim is 18 years old. This witness in cross examination stated that he was not confirmed whether the victim was pregnant or not at the time of examination. PW 3 and PW 4 are hearsay witnesses. PW 2 is the brother-in-law of the victim. This witness in cross-examination stated that he did not know as to when, from the date of return of the victim Miss "X" from Punjab, the ejahar was lodged. It is, thus, seen that the prosecution witnesses do not support the case u/s 366, 343, 372 and 506 of IPC against the accused.

13. In view of the above discussion and considering all aspects, I hold that the prosecution has failed to prove the case u/s 366, 343, 372 and 506 of IPC against the accused beyond all reasonable doubts. Hence, I acquit the accused from the said offence.

14. The accused be set at liberty forthwith. His bail bond stands cancelled.

The case is disposed of accordingly.

15. Given under my hand and seal of this Court on this day, the 29th day of October, 2013.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Transcribed and typed by me.

(R. Hazarika)
Steno.

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A P P E N D I X

Prosecution witnesses :

PW 1 : Dr. R. K. Das,MO,
PW 2 : Md. Abdul Hussain,
PW 3 : Musstt. Sahjahan Begum,
PW 4 : Sri Keshab Nath.

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : Medical report.
Exhibit 2 : X-ray report.
Exhibit 3 : Pregnancy Test report.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(P.C. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.