

**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. 212 OF 2009

GR Case No. 1353 / 2009

Under Section 366/ 344 / 376 of Indian Penal Code

State of Assam

–Versus –

1. Sri Rupam Nath,
Son of Sri Kenai Nath,
Vill - Oriantali
PS – Dhekiajuli,
Dist – Sonitpur, Assam.
2. Sri Monoj Goswami,
Son of Sri Ganesh Goswami,
Vill – Oriantali,
PS – Dhekiajuli,
Dist – Sonitpur, Assam **Accused Persons**

ADVOCATES APPEARED:

For the State	:	Sri Mahendra Bora, Additional Public Prosecutor
For Monoj Goswami	:	Smti Dulumoni Sinha, Advocate.
For Rupam Nath	:	R. Borah, Advocate
Date of evidence	:	01-04-2010, 04-04-10, 15-07-10, 02-08-10, 20-08-10, 21-07-11, 14-09-11 05-07-12 & 22-11-12
Date of Argument	:	16-08-13 & 30-10-13
Date of Judgment	:	12 – 11– 2013.

J U D G M E N T.

1. The prosecution case, inter-alia, in brief is that the informant Sri Guna Kanta Saikia, lodged an ejahar before Borsola Police Out Post under Dhekiajuli Police Station alleging that on 29th April, 2009 accused Monoj Goswami kidnapped/abducted his daughter Gitanjali Saikia from his residence. It is also alleged that on 23-07-09 said Monoj Goswami informed him that his daughter was missing from his (Monoj Goswami) house. He suspected that accused Monoj Goswami and his family members kept her daughter concealing making a conspiracy.

2. On the basis of the aforesaid ejahar, the Officer-in-Charge of Dhekiajuli PS registered a case, conducted investigation and thereupon laid chargesheet u/s 342 / 366 of IPC against the accused persons, namely, Monoj Goswami and Rupam Nath.

3. After appearance of the accused persons before the Court, the then 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 by my learned predecessor under Section 366 of IPC against accused Rupam Nath and under sections 366/344/376 of IPC against accused Monoj Goswami. Then the contents of charge was read over and explained to the accused to which, they pleaded not guilty and claimed to be tried.

4. To bring home the charges, the prosecution has examined as many as 12 (Twelve) PWs. The accused persons are examined u/s 313 CrPC . The pleas of the accuseds are of total denial and they declined to adduce any defence witness.s

5. Points for determination:

(i) Whether the accused Monoj Goswami and Rupam Nath on last 29-04-09 kidnapped or abducted the victim with intent that she might be compelled (or knowing it to be likely that she will be compelled) to marry against her will or in order that she might be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse and thereby committed an offence punishable u/s 366 of IPC?

(ii) Whether the accused Monoj Goswami after the said day at Oriantoli under Tezpur PS confined the victim for three months and thereby committed an offence punishable u/s 344 of IPC ?

(iii) Whether the accused Monoj Goswami after the said day of 29-04-2009 at Oriantoli under Tezpur PS, committed rape on the victim girl and thereby committed an offence punishable u/s 376 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 the PWs to decide the case at hand.

7. PW 1 is Dr. J. Begum. She deposed that on 29-07-2009 2010 she was at Kanaklata Civil Hospital, Tezpur as Medical and Health officer-1 and on that day in reference to Dhekiajuli PS Case No. 222/2009 on police requisition, being escorted and identified by WHG Lili Das, she examined Smti Gitanjali Saikia, 18 years, D/O Sri Guna Kanta Saikia of village Sirajuli Satra , PS Dhekiajuli. Upon examination she found the following :-

Height – 150 cm , Weight – 46 kg, Teeth – 14/14

General Examination:

Secondary sexual character are well developed. No marks of violence or injury on the private as well as other parts of body. Hymen is absent. Urine for pregnancy test and vaginal smear for spermatozoa sent to Laboratory. No report has been received till date.

Report of X-ray Examination:

Elbow Joint : All epiphysis around the elbow joint are united with respective shafts.

Wrist Joint : Fusion of the epiphysis of the lower ends of radius and ulna are near completion.

Iliac Crest : Epiphysis of iliac has appeared but not fused.

Inference: The girl is of above 18 years of age. There is no positive finding of rape.

Ext. 1 is the advice slip and Ext. 1(1) is her signature. Ext. 2 is the medical report submitted by her and Ext. 2(1) is her signature. Ext. 3 is the X-ray report and Ext. 3(1) is the signature of Dr. P.K. Barman, MD, Radiologist which she knew.

8. PW 2, Sri Guna Kanta Saikia, the informant, stated that he knows the accused Rupam Nath and Monoj Goswami. Gitanjali Saikia is his youngest daughter. The incident took place on 29-04-09 at night. On the night of occurrence, accused Monoj Goswami kidnapped/abducted his daughter Gitanjali from a Bihu function. On the night of occurrence at about 10 p.m. he came to know that his daughter was in the house of Monoj Goswami. Thereafter there was proposal of marriage from the house of Monoj Goswami. About 3 months, his daughter stayed in the house of Monoj Goswami. There was talks between the two family for their marriage. After three months, on 23-07-09, Monoj Goswami informed that his daughter Gitanjali was missing. Thereafter he went to the house of Monoj Goswami and asked the father of

Monoj Goswami about his daughter who replied in the negative. On 25-07-09 he lodged the ejahar in the Borsola Police Out Post. Ext. 4 is the ejahar and Ext. 4(1) is his signature. Subsequently, on 28-07-09 his daughter made a telephone to him stating that she was left at Keherukhanda turning point. Thereafter, on getting the information some boys of his village took her to his residence and then he took her to the police station. Police got her medically examined at Kanaklata Civil Hospital and recorded her statement u/s 164 Cr.P.C through the Court.

9. PW 3, victim girl, stated that she knows accused Monoj Goswami but does not know the co-accused. On 23-07-09 at about 3 p.m (at night) the occurrence took place. Prior to this incident, Monoj Goswami forcibly took her away from her residence on 27-04-09. She was in the house of Monoj Goswami about three months, after abducting her. Accused Monoj Goswami did not marry her but committed rape on her by taking the advantage of absence of other family members. On 23-07-09 Monoj Goswami and his sister Mousumi Goswami quarreled with her and asked her to remain properly otherwise they will sell her. On that day, due to her menstrual, she remained with Mousumi, sister of Monoj Goswami in a room. At 3 O'clock (at night) 5 persons entered into her room, gagged her mouth and brought her out and took her away in a car. At that time Mousumi was talking with others over telephone and Monoj was sleeping to the adjacent room. The said persons took her to a house and kept her there by tying. She was kept there for 5 (five) days. During that period, the said men provided her fried corn and kept one hand unfastened. During that time, the said people, by covering their face, committed rape on her. The said people coming to know that her father, elder brother lodged the ejahar in the Police Station, then they left her in Keherukhana turning point (before reaching Dhekiajuli) by taking her in a car, one morning. Thereafter, she went to a PCO, made a telephone to her father. Then her elder brother, brother-in-law

and co-villagers came to there and took her. On 23-07-09 she was taken by a car, but she could not remember the number and colour of the said car due to darkness. Police came to their residence and took her to the Police Station and after one day she was admitted at Kanaklata Civil Hospital for medical treatment. Police also recorded her statement through the court. Ext. 5 is her statement u/s 164 Cr.P.C and Ext. 5(1) and 5(2) are her signatures thereon.

10. PW 4, Sri Monoj Saikia, elder brother of the victim, stated that he knows accused Monoj Goswami but does not know the co-accused. Gitanjali Saikia is his own sister. On 23-07-09 accused Monoj Goswami came to their house and informed them that his sister was missing from their house. On 29-04-09 accused Monoj Goswami abducted his sister and since then she was there. On 28-07-09 his sister first came to their residence and told him that she was dropped from a car on the road in front of their house.

11. PW 5, Sri Gyan Biduyt Das, stated that he knows accused Monoj Goswami but does not know the co-accused. He also knows Gitanjali Saikia. On 23-07-09 Guna Kanta Saikia informed him that Gitanjali was missing from the house of Monoj.

12. PW 6, Miss Mousumi Goswami, stated that accused Monoj Goswami is her elder daughter. Rupam Nath is the son of her maternal uncle. She knows Gitanjali. In the month of Bohag, Gitanjali came to their house along with Rupam Nath. The incident occurred on 23-07-09. Gitanjali was three months in their house from the month of Bohag. Thereafter, parents of Gitanjali arranged for the marriage of the prosecutrix and the accused Monoj Goswami. For this, Gitanjali was kept in their house. Thereafter on 23-07-09, Gitanjali fled away from their house along with Rupam Nath.

13. PW 7, Smti Bhabani Goswami, stated that accused Monoj Goswami is her son and Rupam Nath is her nephew. The occurrence took place in the year 2009 in the month of Bohag (Assamese month). At first Rupam Nath brought Gitanjali to their house and then introduced with her. Thereafter, last Bohag, she (Gitanjali) came to their residence and told her that she had love affairs with Monoj and so she came without informing her parents. Then she informed the parents of Gitanjali and talked to them and they agreed to arrange their marriage and for this Gitanjali stayed their house for about 3 months. After 3 months, she admitted in the Civil Hospital for operation purpose and then Gitanjali had fled away from their residence.

14. PW 8, Sri Rupam Goswami, stated that Monoj is his younger bother. He knows Rupam Nath. He also knows Gintanjali since the date when she had come to their house. Gitanjali had been staying in their house for about three months. He did not know about the purpose of her arrival at their house. The guardians of both families initiated the process of solemnization of marriage between his younger brother and Gitanjali. After three months, one day Gitanjali left their house without the knowledge of any person. He came to know after one week that Gitanjali was recovered by police.

15. PW 9, Smti Himadri Saikia, stated that she knows accused Monoj Goswami and does not know the other accused. She also does not know Gitanjali Saikia. One day Rupam Goswami came and told before her that one girl was brought by Monoj Goswami, but the said girl fled away after few days.

16. PW 10, Smti Jamuna Devi, stated that accused Monoj Goswami is her nephew. Accused Rupam Nath is the son of her brother-in-law. Her residence is adjacent to the residence of accused Monoj Goswami. She came to know Gitanjali whenever she was brought by Monoj Goswami. The said girl had been staying in the residence of Monoj Goswami for three months and

the process was initiated by the guardians of both the families for solemnization of marriage between Gitanjali and Monoj Goswami. But after three months the said girl left the house of Monouj Goswami. Later on, she came to know that police recovered the said girl. Gitanjali Saikia was staying at the residence of Monoj Goswami because Monoj Goswami proposed to marry her.

17. PW 11, Smti Ilarani Devi, a social worker, stated that she knows both the parties of this case. The occurrence took place about 3 months back. Gitanjali Saikia fled away with Monoj Goswami and used to reside in the residence of Monoj Goswami. After three days, the parents of Monoj and she went to the house of father of Gitanjali for talks for their marriage. Father of Gitanjali refused to keep his daughter and then Gitanjali was kept in the house of Monoj Goswami. Thereafter, one day, Gitanjali left the house of Monoj Goswami.

18. PW 12, Sri Mahendra Nath Borah, S.I of police (I.O.), stated that on 25-07-2009 he was serving as SI of police at Borsola Police Out Post. On that day, one Guna Kanta Saikia lodged an ejahar in the Out Post and then he made a GD Entry, forwarded the ejahar to the Dhekiajuli Police Station for registration and he undertook for investigation of the matter. Accordingly, he visited the place of occurrence, prepared the sketch map vide Ext. 7 and recorded the statement of witnesses available there. Thereafter, after getting secret information that victim Gitanjali Saikia had eloped with one Rupam Nath, he made search at the residence of Rupam Nath but could not trace out the victim as well as suspect Rupam Nath. During the course of investigation, on 28-07-09, he recovered the victim from Keherukhanda village. He brought the victim to Dhekiajuli Police Station, referred the victim to Kanaklata Civil Hospital, Tezpur for medical examination and recorded the statement u/s 164 Cr.P.C of the victim through the court. During investigation, he seized one pair of Mekhela chadar of victim on being produced by one Tarun Nath of Rikamari village vide

seizurelist Ext. 6 and Ext. 6(1) is his signature. On 01-09-09, he arrested the accused persons while they were traveling from Tezpur to Dhekiajuli by bus. After completing the investigation, he submitted the chargesheet against both the accused persons namely, Monoj Goswami and Rupam Nath u/s 366 and 342 of IPC vide Ext. 8 and Ext. 8(1) is his signature.

19. From the ejahar (Ext. 4), it appears that the incident took place on 29-04-09, but the ejahar was lodged on 25-07-09. Thus, it appears that there was 89 days delay in lodging the ejahar but the delay so occurred, has not been explained in the ejahar nor by the prosecution witnesses. Non explanation of inordinate delay in lodging the ejahar, is fatal for the prosecution.

20. Section 366 IPC reads as follows :

"Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine ; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

In view of the above, to prove an offence under this Section the prosecution must prove –

- (a) the accused kidnapped under section 360 or 361 of IPC or abducted the victim under section 362 IPC,

(b) that the victim must be 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.

21. PW 3, the prosecutrix, is the star witness, in the present case. Her deposition is that she knows accused Monoj Goswami but does not know the co-accused. On 23-07-09 at about 3 a.m. (late night) the incident occurred. Prior to the occurrence, on 28-04-09 accused Monoj Goswami forcibly had taken away her from her residence. After abducting her, she stayed at the house of the accused about three months. In cross-examination, this witness stated that the accused forcibly abducted her on 28-04-09 at about 4 a.m. from her residence when all the members of her family were present, who did not come to her house earlier. Later, she stated that on the day of occurrence, accused had taken away her from the road, about one km away, from their house, not from her residence, when she was going to her friend Seema Das's house. Near the place of occurrence, there were houses of Biren Das, Kereng Das, Jogeswar Das and Rajen Medhi. After two days of the occurrence, i.e. on 30-04-09 the family members of Monoj informed about her staying there to her family members. Then her parents, elder brother and co-villagers namely, Din Saikia and Munu Medhi came to the house of the accused. There was a talk between them that the marriage between the prosecutrix (PW 3) and the accused Monoj will be solemnized after three months and then her parents and the co-villagers came back. During her stay at the residence of the accused Monoj Goswami, her family members used to come to the residence of the accused Monoj

Goswami and she used to move freely and also freely talked to her parents.

PW 2 , Sri Guna Kanta Saikia, the informant, father of the prosecutrix, stated that on 29-04-09 at night hours accused Monoj Goswami had taken away his daughter from a Bihu function. On the night of occurrence i.e. 29-04-09 at about 10 a.m., he came to know that his daughter (PW 3) was in the house of the accused Monoj Goswami. About three months, his daughter stayed there. There was proposal from the family of the accused for solemnization of their marriage and both the family talked to their marriage. In cross this witness stated that on 29-04-09 when the accused took away his daughter, he did not lodge any ejarah as because there was a talk of compromise going on between them for the marriage of his daughter and the accused Monoj Goswami. He did not object to the staying of his daughter in the house of the accused as because there was an arrangement of their marriage between the two family and the matter was known to the public.

PW 4, elder brother of PW 3, stated that on 29-04-09 accused Monoj Goswami had taken away his sister and since then she was there.

PW 5 to PW 11 do not support at all the testimony of PW 3 to the effect that accused persons abducted the prosecutrix (PW 3).

22. From the testimony of prosecutrix (PW 3), it is seen that on 28-04-09 accused Monoj Goswami had taken away the prosecutrix from their residence. In cross, this witness stated about two different places of her taking away by the accused Monoj Goswami, in one place she stated from her residence and in other place from the road in front of her friend's house Seema Das. Whereas PW 2, father of the prosecutrix stated that on 29-04-09 at night time accused Monoj Goswami abducted his daughter (PW 3) from a Bihu function. Likewise PW 4 also stated that accused

Monoj Goswami abducted his sister (PW 3). But he is silent about time of abducting and about the place from where (PW 3) was abducted.

According to M.O.(PW 1), the age of the prosecutrix (PW 3) is above 18 years.

Thus, it appears that the evidence of the prosecutrix (PW 3) did not inspire confidence and was self contradictory. PW 2 and PW 3 also made contradictory statements regarding the date and place of abducting the prosecutrix (PW 3).

Rape.

23. Section 375 of IPC defines rape, as follows:

"375. Rape – A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First – Against her will.

Secondly, - without her consent.

Thirdly, - with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly, - with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly,- with her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly, - with or without her consent, when she is under sixteen years of age.

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

To bring home an offence u/s 376 of IPC, the prosecution must prove :

"(i) accused had sexual intercourse with a woman;

(a) if the woman is below sixteen consent or willingness on her part would be irrelevant, except when the victim is his wife ;

(b) if the victim not united by wedlock with accused be sixteen or above, the Court is to find on evidence that there was no willing participation or active consent on the part of the victim woman."

PW 3, the prosecutrix, stated that taking advantage of absence of his family members, accused Monoj Goswami committed rape on her. In cross this witness stated that she could not say as to how many days accused Monoj raped her. She told her parents several times that accused Monoj raped her but her parents lodged no ejarah in the Police Station. She also stated that she did not sustain injury on her private parts at the time of committing rape. Later on, she stated that she did not get injury anywhere except her private parts. On the other hand, Medical Officer (PW 1) found no violence or injury mark, on the private as well as other parts on the prosecutrix. Thus, it appears that both witnesses have made contradictory statements each other. She further stated that she did not raise any objection at the time of committing rape as because accused Monoj promised to marry her. Though accused Monoj raped her, she did not conceive.

The prosecutrix (PW 3) also made another story that on 23-07-09 at 3 a.m. (at night) when she was sleeping with Mousumi, sister of Monoj, due to her menstruation, five unknown miscreants entering into the room, by gagging her mouth, brought her out and took away her in a car to somewhere else. At that time Mousumi was talking with some one over telephone and accused

Monoj was sleeping to the adjacent room. Those unknown people kept her in a house by tying her hands about five days and the said people committed rape on her by covering their faces.

The Medical evidence (PW 1) shows that the victim girl is above 18 years of age and the Medical Officer found no positive finding of rape on the victim (PW 3). PW2, father of the prosecutrix (PW 3) did not utter a single word that her daughter (PW 3) told him about committing rape on her by the accused Monoj.

PW 4 to PW 11 do not support at all the aforesaid testimony of PW 3.

Offence u/s 344 of IPC.

24. In order to establish an offence 344 of IPC, the prosecution must prove :

- (i) Wrongful restraint of a person;
- (ii) Such restraint must prevent that person from proceeding beyond certain circumscribing limits.

The prosecutrix (PW 3) in her chief nowhere stated that accused persons kept her confined at their house. In cross this witness stated that during her stay in the house of the accused Monoj Goswami she used to move freely and also freely talked to her parents.

This PW 3 also in chief stated that on 23-07-09 at night time five unknown miscreants took her away from the house of the accused Monoj Goswami and kept confined her in a house. But this witness could not identify those miscreants and the place where she was kept confined. In cross this witness admitted that police took her to show the place where she was kept confined, but she could not show that place to the police.

PW 2, father of the prosecutrix, does not support the aforesaid version of the prosecutrix (PW 3). Other witnesses PW 4 to PW 11 also do not support at all the prosecution case. That

apart, the prosecutrix (PW 3) could not identify the said miscreants who took her away from the house of accused Monoj Goswami and thereafter kept her confined.

In view of the evidence on record, it is seen that there is no materials to shows that the accused persons wrongfully confined the prosecutrix (PW 3).

25. In view of the above discussion and considering all aspects, I hold that the prosecution has failed to prove the case u/s 366 of IPC against the accused Rupam Nath and u/s 366/344/376 of IPC against accused Monoj Goswami beyond all reasonable doubt. Hence, I acquit the both the accused persons from the said offence.

12. The accused persons are set at their liberty forthwith. Their bail bonds stand cancelled.

The seized articles, if any, be destroyed in due course of time.

The case is disposed of accordingly.

25. Given under my hand and seal of this Court on this day, the 12th day of November, 2013.

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

Dictated and corrected by me.

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

Dictation taken and
transcribed by me :

(R. Hazarika),
steno.

A P P E N D I X

Prosecution witnesses :

PW 1	:	Dr. J. Begum (MO),
PW 2	:	Sri Guna Kt. Saikia, informant.
PW 3	:	Victim,
PW 4	:	Sri Monoj Saikia,
PW 5	:	Sri Gyan Biduyt Das,
PW 6	:	Miss Mousumi Goswami,
PW 7	:	Smti Bhabani Goswami,
PW 8	:	Sri Rupam Goswami,
PW 9	:	Smti Himadri Saikia,
PW 10	:	Smti Jamuna Devi,
PW 11	:	Smti Ilarani Devi,
PW 12	:	Sri M.N. Borah (IO),

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1	:	Advice slip
Exhibit 2	:	Medical report
Exhibit 3	:	X-ray report,
Exhibit 4	:	Ejahaar
Exhibit 5	:	164 Cr.P.C statement of the victim.
Exhibit 6	:	Seizurelist.
Exhibit 7	:	Sketch map.
Exhibit 8	:	Chargesheet.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil.

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