

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

PRESENT : Sri M. Kalita,
Assistant Sessions Judge,
Sonitpur, Tezpur.

SESSIONS CASE NO. 217 OF 2011

GR Case No. 1653/2010.

Under Section 366 of Indian Penal Code

State of Assam **Complainant**

-Versus -

Md. Sonowar Hussain,
S/O Abdul Sattar Ahmed,
Village- Kukila Part 1,
PS - Abhayapuri.
Dist - Bongaigaon, Assam..... **Accused Person**

ADVOCATES APPEARED:

For the State : Sri Mahendra Bora,
Additional Public
Prosecutor

For the accused person: Sri D. Medhi,
Advocate

Date of evidence : 13- 03- 2012 &
21- 04- 2012 .

Date of Argument : 31- 07 - 2012

Date of Judgment : 10- 08 - 2012

J U D G M E N T

1. The prosecution case was that the informant Md. Yearuddin, a resident of Kukila village, 1st part under Abhayapuri Police Station, district Bangaigaon, lodged the ejahar before Rangapara Police Station on 29-08-2010 against the accused stating inter-alia that his wife Mafida Khatoon has been staying at a rented house of Sri Dhaneswar Basumtary at Rangapara. The informant was working as a cook at a Dhaba situated at Biswanath Charali and on 27-08-2010 at about 3 p.m. the wife of informant along with his nephew came out from the rented house for going towards Biswanath Charali to meet him. When they reached Rangapara Bus Station then the accused suddenly came to the place and took away the victim forcibly. His nephew could identify the accused. As he was busy for searching his wife so he had to lodge the ejahar after 2 days. So, the informant prayed before the police for taking necessary action.

2. After receiving the aforesaid ejahar, the Officer-in-Charge of Rangapara PS registered the case bearing Rangapara Police Station Case No. 168 / 10 u/s 366 of IPC. Police investigated the case. During the period of investigation, the Investigating Officer produced the victim before the Magistrate for recording her statement U/s 164 Cr.P.C. The victim was also produced before the medical Officer. And after completing the investigation, the Investigating Officer submitted the Charge sheet against the accused u/s 366 of IPC by showing the accused as absconder.

3. After appearance of the accused before the Court, the learned Judicial Magistrate committed the case to

the learned Sessions Judge, Sonitpur, Tezpur. Then the case was made over to this Court. After considering the materials available on case record and police report U/s 173 of Cr.P.C, the charge was framed against the accused under Section 366 of IPC. Then the contents of charge was read over and explained to the accused to which the accused pleaded not guilty and claimed to be tried.

4. The prosecution has examined 5 (five) PWs including the victim and Investigating Officer to bring home the case. Then the accused has been examined u/s 313 CrPC, wherein he has denied the prosecution case totally. No witness has been examined by defence. After the close of trial, judgment is delivered.

5. **Points for determination of the case:**

1. Whether the accused abducted the victim with the intention to compel her marry with him or knowing it likely that she might be forced or induced to sexual intercourse at the time of occurrence ?

2. If so, whether the victim willingly left with the accused at the time of occurrence ?

6. PW 1 is the informant. He has deposed that one year ago on one day while his wife who was staying at a rented house at Rangapara became ready to go to Biswanath Charali accompanied with a boy of landlord and when she reached the bus station of Rangapara then she had to send back the boy to the residence for bringing medicine. While she was standing at the bus station then accused came with a Indica car and forcibly took away his wife by the said car and after getting the information he came to Rangapara for lodging the FIR. Then he came to

know from his wife that some people helped her to arrive her parental residence. PW 1 has proved the ejahar as Ext. 1.

In the cross-examination, PW 1 has stated that at the time of occurrence he was working as a cook at Biswanath Charali. At first the landlord informed him about the occurrence. On the same day he lodged the FIR which was written by police. Police did not brought him to Jorhat where his wife was detained by accused for investigation.

7. PW 2 is the victim. She has deposed that about 1 ½ years ago on the date of occurrence while she was staying at Rangapara at a rented house she was got ready to go to Biswanath Charali to meet her husband. She came out from her residence along with the boy of the landlord but after arrival at the Bus she had to send the boy to her residence as she left the medicine at the residence. While she was standing at Bus stand for five minutes accused came with a car and forcibly took away on the pretext of bringing her to Biswanath Charali. Though she raised alarm on the road but her mouth was gagged with a handkerchief and she became senseless. She came to know that she was detained in a house situated near Jorhat. During that period she was threatened by the accused that she would be sold to other person. The accused also took away her earring and after 3 days one lady helped her to board a bus for coming to Borpeta. Police interrogated her. She was also produced before the court for recording her statement.

In the cross-examination PW 2 (victim) has stated that some shop keepers were there at the place of occurrence. She raised alarm and some people heard the alarm. She was staying at the rented house of one Dhaneswar Basumatary for the purpose of taking medical

treatment but no rent was given. She was detained in a room by the accused and the room was locked from outside. Though some people saw her but neighbouring people behaved her as maid person. Police did not take her to Jorhat for investigation purpose. PW 2 has denied some suggestions put to her by defence.

8. PW 3 Sri Dhaneswar Basumatary, the landlord of the victim, has stated that the occurrence took place in the year 2010. On the date of occurrence he was staying at his shop and his tenant, the victim was ready for going to Biswanath Charali with his son. Lateron he came to know from his son that the victim had been taken away by the accused. Thereafter he informed the matter to the husband of the victim. Then the husband of the victim, Yearuddin came to Rangapara and lodged the ejahar.

In the cross-examination PW 3 has stated that he had met the accused for the first time at Suwalkuchi. Accused also never visited his residence before the occurrence. On the same day the FIR was lodged by the informant.

9. PW 4 Sri Jogeswar Basumtary, the son of landlord has stated that he was requested by the victim to go with her to Biswanath Charali. When he was going with her then the victim asked him to bring some medicine from the residence so he left her and came back to the residence. But when he returned to the place then he saw from the distance that accused had already took away the victim in a Indica car and he informed the matter to his father and thereafter informed the matter to the husband of the victim.

In the cross-examination PW 4 has stated that he visited Borpeta, the parental house of the victim on several times. The victim had stayed at their rented house for one year. But accused never visited his residence at any time. He also noticed that accused gagged the mouth of the victim.

10. PW 5, the Investigating Officer has stated that on 30-08-2010 the written FIR was received by O/C of Rangapara Police Station and after receiving the FIR O/C registered a case and directed him to complete the preliminary investigation of the case. Then he inspected the place of occurrence at Rangapara Bus stand. He prepared the sketch map. He also recovered the victim from Borpeta where he came back her from the parental house with the help of police of Borpeta PS. Then he produced the victim before the Magistrate. The victim was referred by him for medical examination. Then after completing preliminary investigation he handed over the case diary to O/C Rangapara PS. Thereafter, Second Officer Golap Deka submitted the chargesheet against the accused. PW 5 has proved the chargesheet as Ext.4.

In the cross-examination PW 5, the Investigating Officer has admitted that he did not interrogate any persons or any shop keepers from the place of occurrence. He also never visited Jorhat for investigation purpose. No FIR was received on the date of occurrence. He also could not trace out the car engaged for committing the crime by the accused.

11. So, from the above discussion of evidence of PWs, it is found that the informant alleged in his ejahar as

well as in the evidence that at the time of occurrence his wife got ready for boarding a bus at Rangapara bus stand for going to Biswanath Charali to meet him where the informant was working as a cook. The victim was accompanied by the son of the landlord and from the bus stand the victim was taken away forcibly by the accused in an Indica Car. The PW4, the son of the landlord has stated that he noticed from the distance that the accused had taken away the victim forcibly in an Indica car. So, except the victim and the PW 4 none of the PWs have witnessed the occurrence. But another important fact which is pertinent to be mentioned that the informant alleged in the ejahar that before the occurrence his wife had stayed in the rented house of one Dhaneswar Basumatary for 20 days only but the son of landlord PW 4 has stated that the victim had stayed at their rented house for one year. So, it is found that the PWs except I.O have made some contradictory statement regarding the staying of the victim at the rented house, because the son of landlord had made some contradictory fact in his evidence.

12. During the course of argument, the learned defence counsel has submitted that though the occurrence was alleged to be happened at Rangapara Bus Station but no person from the place of occurrence was examined by the Investigating Officer though they are vital witnesses as well as they are the eye witnesses of the occurrence. So, such failure of the Investigating Officer had made the prosecution case doubtful. The learned defence counsel has raised any point that the prosecution has failed to establish while the victim had to stay at Rangapara though her residence situates at Bangaigaon District. The prosecution has failed to establish the purpose of her staying at Rangapara because it has also been revealed by the

prosecution that the informant who is the husband of the victim was staying at Biswanath Charali. So, such infirmity appears in the evidence of PWs has casted the clouds of doubt in the reliability of the evidence of the PWs because the victim herself has admitted that though she was staying at a rented house but the rent was not paid to the landlord. Even the landlord has admitted that the victim was residing at his residence but not in the rented house. In this context, I like to discuss the statement of the victim recorded u/s. 164 Cr.P.C. In the said statement the victim has stated that she was asked by the accused to go to Biswanath Charali with him because he would go to the place where her husband was staying because her husband had to pay Rs. 3000/- to him (to accused). In the statement she further stated that the accused disclosed before her that he would marry her but such fact has not been stated by the victim in her evidence. So, the evidence of victim has not been supported by the fact stated by her in the statement recorded u/s. 164 Cr.P.C. Hence, the evidence of victim is found not coherent to inspire confidence.

13. The learned defence counsel has further stated that the PW 1 the informant and the landlord have admitted that on the same day the FIR was lodged by the informant but after perusal of Ext.1, it appears that FIR was lodged after 2 days. So, such infirmity appears in the evidence has also made the prosecution case doubtful. By citing the case law in the case of **Suraj Mal Vs. State (AIR 1979 SC 1408.)**, the learned counsel has submitted that it was observed by the Apex Court that *“it is well settled that where the witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses.”* It has been also revealed in the evidence of I.O that the I.O did not investigate the case properly because he neither visited Jorhat where the victim was alleged to

be detained and also nor visited the rented house. So, improper investigation of I.O. has made the prosecution case doubtful.

14. So, from the discussions stated above, it is found that the prosecution has failed to prove the ingredients of offence u/s. 366 of IPC with material of reasonable doubt . The infirmity and conformity appears in the evidence of PWs has casted the clouds of doubt regarding the reliability of evidence. Hence, the evidence of PWs is found unreliable and not trustworthy. So, the accused is entitled to acquittal on benefit of doubt.

O R D E R

15. As the prosecution has failed to prove the case beyond all reasonable doubt against the accused, so the accused is acquitted on benefit of doubt and set at liberty forthwith.

16. The bail bond stands discharged immediately from the case.

17. The Judgment is given under my hand and seal of this Court on this day, the 10th day of August, 2012.

(M. Kalita)
Assistant Sessions Judge,
Sonitpur, Tezpur.

Dictated and corrected by me.

(M. 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 : Mr. Yearuddin (informant)
PW 2 : Victim
PW 3 : Sri Dhaneswar Basumatary,
PW 4 : Sri Jogeswar Basumatary,
PW 5 : Sri Prafulla Deka,

Defence Witness : Nil

Court Witness : Nil

Prosecution Exhibits: :

Exhibit 1 : FIR
Exhibit 2 : statement of victim.
Exhibit 3 : Sketch map
Exhibit 4 : Chargesheet.

Material Exhibits: : Nil

Defence Exhibit : Nil

Court Exhibit : Nil

Exhibit produced by witness : Nil

(M. Kalita)
Assistant Sessions Judge,
Sonitpur : Tezpur.