

IN THE COURT OF THE SESSIONS JUDGE, SONITPUR
AT TEZPUR

PRESENT : **Sri A. Borthakur**
 Sessions Judge, Sonitpur
 Tezpur

JUDGMENT IN SESSIONS CASE NO. 246 OF 2011

Under Sections 366/376(1) of the Indian Penal Code
(Arising out of G. R. Case No.1125 of 2009)

State of Assam

–Versus–

Sri Praneswar Basumatary
Son of Late Suren Basumatary
Resident of Jaisiddhi Gaon
Police Station – Sootea
District – Sonitpur, Assam

[Committed by Sri R. Lal, Sub-Divisional Judicial Magistrate, (Sadar),
Tezpur]

A P P E A R A N C E

For the State	:	Mr. H. P. Sedai Learned Public Prosecutor Sonitpur District
For the Accused	:	Mr. B. K. Ghosh Mr. S. E. Alam Learned Senior Advocates Mr. A. Bhuyan, Advocate
Date of framing charge	:	22-02-2012
Date of prosecution evidence	:	09-07-2012, 01-10-2012, 03-12-2012, 08-07-2013 23-09-2013, 24-09-2013, 06-11-2013, 17-12-2013 & 03-02-2014
Date of Argument	:	25-03-2014 & 04-04-2014
Date of Judgment	:	11- 04-2014

J U D G M E N T

The victim, a major and married lady, voluntarily accompanied the accused along with others, in his personal vehicle, to Guwahati and Shillong from Sonitpur district and back with them. At Guwahati and Shillong, she came across many people, but never complained of abduction and rape by the accused. The victim's evidence is full of material contradictions and omissions with her statements u/s 161 CrPC. The medial evidence does not support her evidence.

PROSECUTION CASE :

2. The prosecution case, in brief, as unfolded in the ejahar, may be, stated as follows :

One 'A' (since deceased), a resident of village Bishnupur Manai, under Sootea Police Station, lodged an ejahar, on 25-06-2009, before the Officer-in-charge of the said police station alleging that on 24-06-2009, at about 5 / 5-30 p.m., the accused Sri Praneswar Basumatary took away his daughter-in-law Mrs. 'B', aged about 19 years, who was working in his garden as worker, by his personal vehicle, to some unknown place and since then, her whereabouts could not be known. It was apprehended that his daughter-in-law Mrs. 'B' was pushed to any awkward situation and in the event of her falling into any unwarranted situation, it was prayed to extend help, in accordance with law.

INVESTIGATION :

3. Based on the above ejahar, Sootea Police Station Case No. 70/09, u/s 365 of the IPC, vide GD Entry No. 654, dated 25-06-2009, was registered and SI Jayanta Kalita, the Officer-in-charge of the said police station endorsed the case to SI Naren Sonowal, In-charge, Itakhola PP for investigation.

4. In course of investigation, SI Naren Sonowal, the IO, visited the place of occurrence, that is, the road connecting Nokda Jaisiddhi Kherbari gaon, and drew up a sketch map thereof. The IO recorded the statements of the witnesses, including that of the victim-woman. The IO caused recording of the statement of the victim woman u/s 164 CrPC and

sent her for medical examination and further, handed over her in the custody of her father. Thereafter, on the direction of the Superintendent of Police, Sonitpur, Tezpur, the IO handed over the case diary to the Officer-in-charge of Sootea PS for onward forwarding to the Inspector Jahirul Islam, the Circle Inspector, East Bharali Circle to complete the remaining part of investigation. Accordingly, Inspector Jahirul Islam took up investigation, on 07-07-2009, and as per instruction, he collected the medical report of the victim woman, from Sootea Police Station, visited the place of occurrence at Guwahati and again drew up a sketch map thereof, recorded the statements of some of the witnesses and seized one vehicle. Then the IO Inspector Jahirul Islam arrested the accused and enlarged him on pre-arrest bail, as per order of the Hon'ble High Court. The IO sent the vaginal swab of the victim woman to the Forensic Science Laboratory (FSL), Assam for chemical examination and collected the report. On his prayer, the Court of learned Chief Judicial Magistrate, Sonitpur added Section 376 IPC to the then existing Section 365 of the IPC. Thereafter, on being relieved of the investigation, by the Superintendent of Police, Sonitpur, Tezpur, he handed over the case diary to Sri Saurav Jyoti Saikia, the Sub-Divisional Police Officer (SDPO), Biswanath Chariali. Ultimately, Sri Sunil Kumar, the then SDPO, Biswanath Chariali submitted the charge-sheet u/s 365/376 of the IPC against the accused.

TRIAL :

5. Since the offence u/s 376 of the IPC is exclusively triable by the Court of Sessions, by order, dated 01-12-2011, passed, in GR Case No. 1125/09, the learned Sub-Divisional Judicial Magistrate (S) at Tezpur, after observing necessary formalities, u/s 209 of the CrPC, committed the case to this Court of Sessions for trial. In order to maintain confidentiality, the name and address of the victim and her relatives, are not disclosed in course of this judgment.

6. On perusal of the evidence, available on the case diary and hearing the learned counsel of both sides, my learned predecessor framed formal charges, u/s 366/376 (1) of the IPC, vide order, dated 22-02-2012. The charges were then read over and explained to the accused to which, he pleaded not guilty.

7. In order to prove the charges, levelled against the accused, the prosecution has examined as many as 20 (twenty) witnesses, while the defence cross-examined only 14 (fourteen) witnesses out of them. The accused declined to examine any witness in defence.

8. After closing the evidence of the prosecution side, the statement of the accused was recorded, u/s 313 CrPC, on 20-02-2014. While pleading innocent, the accused has admitted that the alleged victim woman Mrs. 'B' voluntarily accompanied him. The accused has pleaded, inter-alia, as follows :

“I am innocent. This false and concocted case has been filed by my political opponents, through Mr. 'C', who had no connection with his married daughter Mrs. 'B' with intent to ruin my political career. Mrs. 'B' was used as an instrument in this false case.”

9. I have heard the argument advanced by Mr. H. P. Sedai, learned Public Prosecutor for the prosecution and Mr. B. K. Ghosh, Mr. S.E. Alam, the learned Senior counsels and Mr. A. Bhuyan, learned counsel, appearing on behalf of the accused. I have also gone through the entire evidence proffered by the prosecution and the statement of the accused, recorded u/s 313 CrPC.

POINTS FOR DETERMINATION :

10. From the evidence on record and on the basis of oral submissions of the learned counsel for both the sides, the following points emerged for determination :

(1) Whether the accused, on 24-06-2009, at about 5 p.m., in village Jaisiddhi gaon, under Sootea PS, kidnapped / abducted Mrs. 'B' with intent to compel her to marry him against her will or to force her to illicit intercourse with him ?

(2) Whether the accused on or about the same day, after kidnapping / abduction took the victim married woman Mrs. 'B' to Guwahati and then to Shillong and during her period of stay with him, committed rape on her ?

THE DECISION AND THE REASONS THEREFOR**ARGUMENT :**

11. Mr. H. P. Sedai, the learned Public Prosecutor has submitted that as regards the age, the victim woman (PW-1) herself has claimed to be 18 (eighteen) years, at the time of recording her evidence on 09-07-2012, and thereby contradicted her previous statement of 19 years of age, while giving her statement, u/s 164 CrPC, Ext.1, dated 30-06-2009. No copy of public document, such as, school certificate or birth certificate was seized during investigation and as such, based on the medical evidence of PW-4 and that of PW-13, the radiologist, it can be inferred that the victim woman was aged between 16 to 18 years at the time of the occurrence. Mr. Sedai has fairly submitted that the victim woman has given different accounts of the incident, on material particulars, particularly between her examination-in-chief and statement u/s 161 CrPC. The contradictions of the PWs with their statements u/s 161 CrPC have been clearly brought out on their evidence and in the evidence of PW-16, the IO, in detail. It has been further submitted that Ext.9, the FSL report on vaginal swab examination gave negative test for presence of spermatozoa. The most important question that needs to be decided in this case is whether the victim woman was forcibly taken to Guwahati and then to Shillong by the accused.

12. Mr. S. E. Alam, the learned Senior defence counsel has submitted that the evidence of the alleged victim woman is not wholly reliable, in view of material contradictions with her previous statements, recorded u/s 161 CrPC and 164 CrPC and that she clearly attained the age of 19 (nineteen) years, as she stated, on oath, in the statement u/s 164 CrPC, vide Ext.1 and the medical evidence of PW-4 and of the radiologist PW-13 suggest, as a whole. Mr. Alam has submitted that the evidence of the victim (PW-1) shows that she read upto class IX, but no age proof certificate from school was furnished to the IO and so also, in spite of having birth certificate, it was not given to the police. The victim admitted in her statement, recorded u/s 164 CrPC, dated 30-06-2009, vide Ext.1, that she stated on oath to the effect that she was aged 19 (nineteen) years. Therefore, Mr. Alam has submitted that the victim, who is a married woman, was aged more than 19 (nineteen) years, at the time of the alleged occurrence. It has been submitted that the alleged victim woman's

evidence reveals vital contradictions with her previous statements given before the IO and emphatically submitted further that the instant case is a false and fabricated one with calculated design to ruin the social image of the accused. According to Mr. Alam, the learned Senior defence counsel, none of the PWs has convincingly supported the prosecution case and that out of the two possible views which is favourable to the accused should, in principle, be adopted.

POINT NO. 1 : WHETHER KIDNAPPED / ABDUCTED :

LEGAL POSITION

13. To bring home an offence u/s 366 of the IPC, the prosecution is to prove (a) that the accused kidnapped as understood in Section 360 or 361 IPC or abducted the victim as understood in Section 362 IPC ; (b) that the victim was 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.

(A) F.I.R.

(INFORMANT DIED)

14. The FIR, dated 25-06-2009, vide Ext.5, lodged by Mr 'A', the father in-law of the victim, was reported dead, vide police report on the body of summons, dated 30-03-2012, supported by photocopy of the death certificate No.0530417, issued by the Registrar of Birth and Death, Itakhola NPHC, Sonitpur. The contents of the said FIR reveals that on 24-06-2009, at about 5 / 5-30 p.m., the accused took the victim woman Mrs. 'B' in his private vehicle to some unknown place and this fact came to light only when she did not return home in the evening and during search by the family members. In view of the examination of the victim woman (PW-1) and the undisputed evidence of PW-16 SI Naren Sonowal, the IO, that he launched investigation, on 25-06-2009, at about 5-30 p.m., on the basis of the FIR, Ext.5, aforementioned, this Court is of the opinion that the

inability of the prosecution to examine the informant due to his death, on 03-03-2012, is not fatal to the prosecution case.

15. However, the evidence of PW-2 Mr. 'C', the father of the victim woman, reveals that on 25-06-2009, that is, on the same day of lodging the Ext.5, mentioned above, he also lodged another FIR, in connection with the incident, with Sootea PS, but this FIR, has not been exhibited in the case, without explanation.

(B) AGE OF THE VICTIM
(ATTAINED MAJORITY)

16. PW-1 Mrs. 'B', the alleged victim woman, in her examination-in-chief, has stated that she is married and since her husband left for his work place in Bangalore, on 12-01-2009, he has not returned. In cross-examination, she has stated her age to be 19 (nineteen) years and as per her father's version, she was born in the year, 1994. She has stated that though she has Birth Certificate, it was not furnished to the police and that she read upto class IX and further admitted that in her statement made before the Judicial Magistrate, vide Ext.1, dated 30-06-2009, she stated her age to be 19 (nineteen) years. On perusal of the evidence of PW-3 Mrs. 'D', the mother-in-law of the victim woman Mrs. 'B' and wife of the informant late 'A', it appears that at the time of marriage, she (PW-1) was aged about 18 (eighteen) years. PW-17 Mrs. Farhana sultana, the then learned Judicial Magistrate, 1st Class, Tezpur, who recorded the statement of the victim woman Mrs. 'B' (PW-1), on 30-06-2009, u/s 164 CrPC, vide Ext.1, has stated in cross-examination that "The victim woman stated, on oath, in her statement that she was aged about 19 (nineteen) years and she, being major, she was allowed to go on PR bond." She (PW-17) has recognised Ext.D, the relevant order, where Exts. D(1) and D(2) are her signatures.

17. Turning to the evidence of PW-13 Dr. Bijan Phukan, the radiologist, who subjected Mrs. 'B' to radiological examination, on 30-06-2009, at his private X-ray clinic at Tezpur, on requisition of PW-4 Dr. Palash Moni Keot, the doctor of Kanaklata Civil Hospital, Tezpur has opined that she was above 16 (sixteen) years and below 18 (eighteen) years of age, vide Ext. 4, the radiological report. However, in cross-examination further stated that " The age of a person always varies by two years, found on medical examination". PW-4 Dr. Palash Moni Keot, the doctor, who

examined Mrs. 'B' (the victim), on 29-06-2009, in connection with Sootea PS case No. 70/2009, through his examination in-chief, supported the same view given by PW-13, the radiologist and recognised Ext.2, the medical report containing five pages, but further stated in cross-examination, inter-alia, that the age of the patient was recorded as 19 years on the basis of the entries made in the police requisition and emergency register maintained in the hospital, and further, that she might have attained 19 years of age at the time of examination.

18. On scrutiny of evidence, as above, it transpires that though the evidence of radiologist (PW-13) and the doctor (PW-4) reveal the age of the alleged victim woman (PW-1) as between about 16 to 18 years, but PW-4 has clarified in cross-examination that she might have attained 19 years at the time of examination and further, PW-13 stated that medical determination of age varies by two years, on either side. On the other hand, the victim woman (PW-1) has made different statements about her age, such as, during recording of statement, on oath, under Section 164 CrPC, vide Ext.1, and in evidence, during trial, as stated above. Even PW-3 Mrs. 'D', the mother-in-law, has stated that her daughter -in-law, PW-1 (the victim) was aged about 20 years. The prosecution appears to have not exhibited the Birth Certificate or school certificate in support of age of the victim woman, obviously for failure to seize those material documents, despite availability, during investigation. Therefore, this Court is not satisfied that there is any trustworthy evidence on record on which conclusion that the victim, who is a married woman, was under 18 years of age on the date of occurrence, can safely be founded.

Accordingly, this Court finds that on the day of occurrence, that is, on 24-06-2009, the victim Mrs. 'B' (PW-1) attained the age of 19/20 years, that is, majority, beyond reasonable doubt.

(C) INCEPTION OF OCCURRENCE

(i) Undisputed facts :

19. There is no dispute that Mrs. 'B', the victim woman (PW-1) was a worker in the private tea plantation of the accused, situated at Jaysiddhi gaon and on the day of occurrence, that is, on 24-06-2009, the accused called her to his house for cooking meal. The accused, in his statement recorded u/s 313 CrPC admitted these facts, reinforcing the

evidence led by the prosecution in the case. However, in cross-examination, PW-1, the victim, has stated that she stated in her statement made before the police that as she sustained cut wound while working in the plantation area of the accused, she started working as domestic help at his house.

(D) WHETHER INDUCED TO GO BY DECEITFUL MEANS

(I) (Voluntarily accompanied accused)

20. According to the victim woman, PW-1 Mrs. 'B', on 24-06-2009, at about 4 p.m., after her duty was over at the accused's house, she was returning home, and on her way, she came across PW-7 Ms. Anima Basumatary and PW-8 Ms. Namita Basumatary and all of them, were proceeding together. She has stated that on the side of Jaysiddhi gaon, the accused, accompanied by his sister, maternal uncle (Shyam Charan Narzary), PW-9 Bhuban Sapkata @ Guruji, two PSOs (PWs 10 and 12), appeared at that place, with a vehicle which was driven by driver and he requested them to board his vehicle, but picked up only her (PW-1) and moved away. She has further stated, on her enquiry, as to why only she was picked up leaving behind the other two girls, the accused assured to drop her in the house of a Rava person, but she was not dropped accordingly and she was forced to sit in his vehicle and moved towards Tezpur.

21. Thereafter, the accused dropped his sister at her house at Tezpur, with whom she wanted to stay, but the accused did not allow her. All the persons in the vehicle visited the accused's sister's house at Tezpur and the accused's sister gave her a pair of salwar-kamij to her. Then all of them moved towards Guwahati and reached Guwahati at about 9 p.m. At Guwahati, all of them stayed in a doubled storied house belonging to the accused. At that house, all of them had dinner, cooked by her, and then on being shown by the accused, she retired to a room situated at the upper floor, on the side of the kitchen. She has stated that on the side of her bed room, the maternal uncle of the accused (Shyam Charan Narzary) and Guruji (PW-9) slept on a sofa, while the two PSOs (PWs 10 and 12) slept in some other room. On the following day, morning, the accused accompanied by his maternal uncle, Guruji (PW-9), she, two PSOs and a new driver left for Shillong, by the same vehicle, from Guwahati for a visit and returned to Guwahati, in the evening of the same day. All of them made shopping in

Guwahati and then stayed at the same house of the accused. Then, on the following day, morning, that is, on 26-06-2009, except the maternal uncle (Shyam Charan Narzary), all of them returned to Tezpur, by the same vehicle. She gave the statement, Ext.1, before a Judicial Magistrate.

22. In cross-examination, PW-1, the victim, has, inter-alia, **admitted** that since the father of the accused was the friend of her grandfather Gangaram, she addressed the accused as 'uncle'. The maternal uncle of the accused Shyam Charan Narzary and Guruji (PW-9) were known to her since before. She has admitted the defence suggestion that she, in her statement made before the police, did not state that the accused, though asked all the three girls to board his vehicle, he picked up her only and move away and that when she enquired from him as to why he did not bring the other two girls, he replied that she would be dropped in the house of a Rava family, but she was not dropped accordingly and further, that she was forcibly asked to sit. She has further admitted the defence suggestion that she did not state in her statement made before the police that when the accused dropped his sister at Tezpur, she expressed her willingness to stay with his sister, but he did not allow her to stay with his sister. She has, however, denied the defence suggestion that these facts, stated before the Court, are newly fabricated facts.

23. PW-1, the victim woman has denied the defence suggestion that in her statement given before the police, she stated that at about 4 p.m., one tractor loaded with garden articles came to the house of her uncle (the accused) and at about 4-30 p.m., she travelled on the said tractor towards her home and got down near Jaysiddhi foot ball field and at that moment, she noticed the vehicle of the accused coming. Thereafter, her uncle's (the accused) vehicle stopped and the uncle (the accused) asked her to board his vehicle, if she was going home, with assurance to drop her at her home. When she came to know that they were going to Guwahati and Shillong, she requested her uncle (the accused) to allow her to accompany them and when she requested the other two girls, who were nearby, to accompany them, they refused assuring to visit later on. Thereafter, all of them, namely, she, his sister, Guruji and the two PSOs travelled to the house of unty Mrs. Kalamshree Deka and passed the night. Therefrom, she took two 'suriders' and then arrived Guwahati at 8 / 8-30 p.m. At Guwahati, they stayed at the house of the accused. At the accused's house at Guwahati, she watched TV and after having dinner, stayed in a

room. On the following day, early morning, she prepared tea and served to all and then at about 6 a.m., left for Shillong, for a trip. In course of journey to Shillong, at about 9-30 a.m., her father (PW-2) telephoned her for going to Shillong without informing anybody, to which she replied that "coming to see Shillong only". She visited police bazaar, park and Godapani. At about 1-30 p.m., they returned from Shillong and had lunch at a 'dhaba' (road side hotel). She also told the police of Sootea PS, over a phone call received therefrom, that her uncle (the accused) did not entice her away and that she on her own wish went.

24. In cross-examination, PW-1 Mrs. 'B' (the victim) has further stated that when she was travelling from Sootea towards Tezpur or at Tezpur, she never raised any objection, before any person or the accused, refusing to visit Guwahati or did not even raise hue and cry. She did not even complain to any person at Guwahati or Shillong.

25. Turning to the evidence of PW-2 Mr.'C', the father of the victim woman (PW-1), it is seen that he has corroborated the evidence of PW-1, the victim, his daughter, so far, the telephonic talking between him and his said daughter and questioning her for going like that without informing anybody, to which she replied that the accused assuring to drop, half way, took her away. He admitted the defence suggestion that while PW-1 Mrs. 'B' was at the house of Gangaram, the maternal grand-father, she eloped with her present husband. PW-3 Mrs. 'D', the mother-in-law of the victim (PW-1) has, inter-alia, deposed that one day, her daughter-in-law (PW-1) expressed willingness to accompany the accused to Guwahati, but she advised not to go, but after about two days, she came to know from the villagers that she left for Guwahati along with the accused and PW-7 Ms. Anima Daimary, who is her (PW-1) friend, told her that she saw them going. She informed all about this to her (PW-1) father PW-2 Mr. 'C'. According to her, PW-2 Mr. 'C' asked them to find out Mrs. 'B' (PW-1) and thereafter, her husband late 'A' along with her (PW-3) went to Sootea PS, where her husband lodged the ejahar. She (PW-3) has further stated that after one day, she left for Guwahati and PW-1, the victim, returned to their house and before that when she talked with her (PW-1) from Sootea PS, she (PW-1) informed her that she (PW-1) would go to Shillong and then come back home. Thereafter, at Sootea PS when she met PW-1, the victim, she (PW-1) told her (PW-3) that she went on visit to Shillong.

26. PW-5 Arun Nath, who is a resident of No.1 Jaisiddhi gaon, deposed to have seen three girls, namely, PW-1 Mrs. 'B', PW-7 Ms. Anima Basumatary and PW-8 Ms. Namita Basumatary getting down from a tractor, on road, near his house and PW-1 Mrs. 'B' raising hand to stop the vehicle of the accused, which was coming. The vehicle stopped. PW-1 Mrs. 'B' wanted to accompany the accused, but the accused refused as there was no room in the vehicle, but she insisted to accompany them somehow. The other two girls (PWs 7 and 8), when expressed willingness to accompany, PW-1 Mrs. 'B' (the victim) told them that they need not go on that day, and then, PW-1, Mrs. 'B' boarded the vehicle and left. PW-7, aforementioned, corroborated the evidence of PW-5 Arun Nath, but further stated that of course, Mrs. 'B' (PW-1) forcibly accompanied the accused and told them that she had informed her family and thereafter, she (PW-7) informed her mother-in-law (PW-3) that PW-1 Mrs. 'B' left for Guwahati along with the accused. PW-8 Smt. Namita Basumatary has corroborated the evidence of PWs 5 and 7, so far PW-1 Mrs. 'B', on her own wish, accompanied the accused, in his vehicle, to Guwahati, accompanied by the accused's sister, two police personnel (PWs 10 and 12) and Guruji (PW-9) is concerned. PW-9 Bhuban Sapkata @ Guruji, PW-10 Surendra Saharia and PW-12 Indreswar Nath, the PSOs, and PW-11 Ganga Charan Sarma, the driver, have, as a whole, supported the facts elicited by the defence in the cross-examination of PW-1 Mrs. 'B' (the victim) and the evidence of PWs 5, 7 and 8. PW-14 Ms. 'E', the sister of the victim woman (PW-1), has stated that as she heard in the year, 2009, the accused took her elder sister to Guwahati and then visited Shillong and both of them returned. PW-15 Smt. Mintu Chakraborty, the landlady of the rented house of the accused at Guwahati has stated that she does not know about any occurrence in the said house rented out to the accused, at any point of time.

27. PW-6 Dharmeswar Borah has deposed that on 28-07-2009, the police seized the accused's Travera vehicle, in his presence by Ext.3, the seizure memo.

28. On perusal of the cross-examination of PW-16 SI Naren Sonowal, the IO, it appears that Sootea PS, GD Entry No. 651, dated 25-06-2009, vide Ext. 'Ka'(1), it is revealed that PW-1 Mrs. 'B', the victim woman, informed over mobile phone No.9435704084 to the effect that she, on her own wish, accompanied her uncle (the accused) to Shillong, on a trip and that none forced her to accompany him and further, that somebody to

malign the reputation of the accused spread lie that he enticed her away. He recognised Ext. 'Ka'(2), the signature of PW-19, SI Jayanta Kalita, through correspondence, who made the aforesaid GD Entry, Ext. 'Ka'(1). PW-19, aforementioned, has deposed to have made the said GD Entry, Ext. 'Ka'(1), in the General Diary, Ext. 'Ka'. The defence has confronted him (PW-16) with the denial parts of statements, the victim woman (PW-1) made in her statement u/s 161 CrPC, stated above, which he confirmed to have stated by her (PW-1) before him.

(II) INFERENCE :

29. On close scrutiny of the above evidence, on record, it is crystal clear that PW-1 Mrs. 'B', the alleged victim married major woman and thus a fully grown up woman, in fact, voluntarily accompanied the accused, whom she addressed as 'uncle', along with his sister, maternal uncle (Shyam Charan Narzary), PW-9 Bhuban Sapkata @ Guruji and his two PSOs, namely PW-10 Surendra Saharia, PW-12 Indreswar Nath as well as PW-11 Ganga Charan Sarma, the driver, in his private vehicle, bearing registration No. AS 12 B 0016 (Travera) from near Jaysiddhi gaon. PW-1, the victim, has specifically admitted all the material facts suggested by the defence in her cross-examination. It transpires from the evidence of PW-7 Ms. Anima Basumatary and PW-8 Ms. Namita Basumatary, who were, at the relevant time, were with PW-1 while boarding the accused's vehicle and in presence of PW-5 Arun Nath and further, PWs 9,10,11,12, who were in the said vehicle with the accused, have consistently corroborated the very fact that the accused never applied force to the victim (PW-1) to accompany him in the vehicle to Guwahati.

30. What it convincingly further appears is that the victim (PW-1) herself deposed that the accused's sister at Tezpur gave her one pair of Salwar-kamij to her, which she accepted and then accompanied the accused and others to Guwahati and then stayed at the accused's rented house, where she cooked meal and served to all at the said home. It is further noticed that on the following day, they went, on a trip, to Shillong and after returning, on the same day, evening, again stayed at the accused's rented house at Guwahati and that in course of the journey, she went for sight seeing at Shillong and for shopping at both the places and dined together at a road side 'dhaba'. It transpires that during the alleged course of abduction by the accused, PW-1, the victim, did neither put up

struggle nor raised any alarm and moved comfortably around two cities, namely, Guwahati and Shillong, without protest. The accused in his statement, recorded u/s 313 CrPC, admitted the victim's (PW-1) accompaniment with him and others from place to place, aforementioned.

31. Situated thus, though the accused facilitated the victim woman's (PW-1) desire to visit Guwahati and Shillong, as she never visited those places earlier, leaving her matrimonial home, the same cannot certainly be regarded as an overt act on his part for inducement of the victim by deceitful means, rather the victim's conduct, discussed in detail, in course of the journey from Jaisiddhi gaon to Shillong -via- Guwahati and return, invariably leads to the only conclusion that she accompanied the accused and others, aforementioned, on her own accord. Under such proved circumstances, this Court is of the considered opinion that PW-1 Mrs. 'B', the victim, certainly accompanied the accused voluntarily, beyond all reasonable doubt.

POINT NO.2 : WHETHER RAPED :

(A) LEGAL POSITION :

32. Section 375 of the IPC defines the offence of 'Rape' and Section 376 of the IPC prescribes the punishment for the offence. In order to bring home the offence of 'rape', the prosecution must prove, (i) that sexual intercourse by a man with a woman, (ii) that sexual intercourse was under the circumstances falling in any of the seven clauses of Section 375 of the IPC. Thus, the basic ingredients of the offence of rape u/s 375 of the IPC are, (a) that the accused committed sexual intercourse with a woman ; (b) that he did so against her will or without her consent ; (c) if there was consent it was obtained by putting her or any person in whom she is interested in fear of death or of hurt ; (d) that when consent was taken under the deceitful belief that accused was her husband ; (e) if consent was taken when the victim was incapable of understanding its nature and consequences due to unsoundness of her mind or intoxication or administration of any stupefying drug or substances by the accused, either personally or through some agent ; (f) when consent was given by the victim under 18 years of age ; (g) when the victim is unable to communicate consent and (h) that when the accused had sexual intercourse with his wife under 15 years of age. It has been further

provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact be regarded as consenting to the sexual activity.

(B) ANALYSIS OF EVIDENCE :

(i) Doctor's evidence :

33. PW-4 Dr. Palash Moni keot, the doctor, who examined Mrs. 'B' (the victim), on 29-06-2009, at 7-30 p.m. on requisition of Sootea PS, in connection with the said PS Case No. 70/2009, at Kanaklata Civil Hospital, Tezpur, found as follows (*relevant portion*) :

“ Examination :

Identification mark –

(i) One black mole – right molar prominence on the cheek.

(ii) Left little finger – 1 cm cut mark obliquely, proximal phalange.

She is average built and of fair complexion.

Gait is normal.

She is well dressed.

No stains on cloths was seen at the time of examination.

Height - 5 feet 2 inch

Weight - 46 Kgs

Teeth - 31

Her LMP was 22 June, 2009

Her secondary sexual characters are well developed.

Auxiliary and pubic hair is present, but scanty.

No matted pubic hair seen.

No marks of receipt injury seen in her private parts or any part of her body.

Both breast are well developed.

Nipple prominent and well developed.

Montgomery tubercles are present.

No marks of injury seen.

Vaginal Examination :

Vagina admits two fingers.

Vulva and vagina are well developed.

No matted pubic hair seen.

Hymen is absent.

Vaginal smear taken and sent for examination.

Two slides sent to Kanaklata Civil Hospital Laboratory and another two slides handed over to SI Naren Sonowal, in-charge, Itakhola Police Out Post, on 29-06-2009, for microscopic examination in Forensic Science Laboratory, Guwahati for expert opinion.

No marks of recent injury seen on vulva and vagina.

Uterus is normal in size and ante-verted.”

Opinion :

1. At the time of examination, she has no recent signs of recent sexual intercourse.
2. She has no signs of recent violence on any part of her body.
3. Vaginal smear report for expert opinion is handed over to SI Naren Sonowal, i/c Itakhola OP, for forensic Science Laboratory Examination, Guwahati. Reports awaiting, and hence, final report cannot be given now.”

Ext.2 is recognised to be the Medical Report, containing five pages, where Ext.2(1) is his signature.

34. PW-18 SI Jahirul Islam, the other IO, deposed that he forwarded the vaginal swab of the victim woman to the FSL, Assam, Guwahati through the SDPO, vide Ext.8, the forwarding letter and collected Ext.9, the chemical analysis report from the FSL. Ext. 9 reads as follows (*relevant portion*)

“ DESCRIPTION OF ARTICLES

Exhibit 1 : Two nos of slides said to have contain smear of vaginal swab.

RESULT OF EXAMINATION

“Exhibit no. Sero-2490/A (as marked) gave negative test for presence of spermatozoa. “

(ii) VICTIM'S EVIDENCE :

35. According to PW-1, Mrs. 'B', the alleged victim woman, at the rented house of the accused at Guwahati, the accused asked her to sleep in a room, situated adjacent to the kitchen of the upper floor of the double

storied building, where she went to bed, while the accused's maternal uncle (Shyam Charan Narzary) and PW-9 Guruji slept on a sofa set, placed on the side of her room, and the two PSOs (PWs 10 and 12) stayed in some other room. Mrs. 'B' (PW-1) has stated that thereafter, when she went to the room to sleep, the accused followed her into the room and then bolted the door from inside. When she tried to come out of the room, the accused threatened to sit inside the room. Then, the accused verbally threatened her fear of pistol and gun. She was subjected to torture in different manners, throughout the night and forcibly committed sexual intercourse with her, two / three times. But in cross-examination, she has admitted the defence suggestion that she did not state these material facts in her statement made before the police, even in her second statement given on 26-09-2009.

(iii) OTHER EVIDENCE & SKETCH MAP, EXT.7

36. PW-16 SI Naren Sonowal, the IO, in his cross-examination, has specifically admitted that PW-1 Mrs. 'B', the victim did not state the above facts relating to the incident of rape on her, in her statement made before him.

37. PW-20 Shri Sunil Kumar, the then SDPO, Biswanath Chariali, has deposed to have only submitted the charge-sheet, Ext. 11, on the basis of materials available on the case diary.

38. PW-9 Shri Bhuban Sapkata @ Guruji, who is a priest by profession, has stated that PW-1 Mrs. 'B' went to sleep in a room, while the accused and he slept in the drawing room and the accused's maternal uncle (Shyam Charan Narzary) slept in the bed room used by the accused and the two PSOs (PWs 10 and 12) stayed in a bamboo made room, situated at the backyard of the building. PW-10 Shri Surendra Saharia has corroborated the evidence of PW-9.

39. PW-15 Mintu Chakravarty, the landlady of the house at Guwahati rented out to the accused, has deposed that she is not aware of any incident at any point of time, in the house occupied by the accused.

40. PW-18 SI Jahidul Islam, the other IO, who had drawn up Ext.7, the sketch map of the rented house of the accused at Guwahati, bearing

house No. 57, 1st Floor, shows that the said first floor of the house consists of three rooms, where mark 'B' is indicated as the room with one bed, where the victim stayed. The room mark 'B' shows that it is attached with bath room and there is one door connecting the adjacent drawing room, marked 'C' with one bed and one sofa set. According to the IO (PW-18), the accused PW-9 Bhuban Sapkata @ Guruji stayed in the said drawing room, marked 'C'. The sketch map, Ext.7, further shows that in the other room of the said floor of the house, the accused's maternal uncle Shyam Charan Narzary stayed. Further, marked 'E' is indicated as the kitchen, which appears to be situated adjacent to the room marked 'B'.

(iv) ANALYSIS OF DOCTOR'S EVIDENCE :

41. Upon close scrutiny of the evidence of PW-4 Dr. Palash Moni Keot, the doctor, with reference to Ext.2, the medical report vis-a-vis the FSL report, Ext.9, it appears that the medical evidence does not support the evidence of the victim woman (PW-1) that she was raped and even the vaginal swab examination gave negative test for presence of spermatozoa. The medical evidence of PW-4, the doctor, further shows no signs of recent violence on any part of the victim's (PW-1) body. Thus, as per medical evidence, though no rape is proved, it is the duty of the Court to see whether the evidence of the victim (PW-1) is otherwise cogent and trustworthy to be relied on.

(v) STATEMENT U/S 164 Cr.PC

42. With regard to the statement, recorded u/s 164 CrPC, vide Ext.1, dated 30-06-2009, PW-1, the victim, in her cross-examination admitted that from 26-06-2009 to 29-06-2009, that is, for 4 (four) days, she stayed at her father's house, that is, PW-2, and then she was produced at Sootea PS, on 29-06-2009 and thereafter, on 30-06-2009, she was produced at Tezpur Court to get her statement recorded by the learned Judicial Magistrate. The evidence of PW-17, the learned Judicial Magistrate, shows that though the victim was directed to be produced on 29-06-2009, for her statement, she was not produced on that day and instead produced on 30-06-2009. PW-17 has recognized Exts. 'B' and 'C', the relevant orders in GR Case No. 1125/09. PW-16 SI Naren Sonowal, the IO, has admitted these facts in cross-examination. He admitted that from 26-06-2009 to 29-06-2009, the victim remained in the custody of her father, PW-2. Here it may be

mentioned that PW-1, the victim, in her cross-examination, stated that for filing the case, her father-in-law refused to accept her back, and as such, her father (PW-2) took her to his home from Sootea PS, on 26-06-2009. The defence has elicited some reasons of political rivalry in the evidence of PWs 1 and 2, behind filing of this case against the accused. Thus, on careful consideration of the evidence, on record, this Court finds that though PW-1, the victim, has supported the facts, narrated in her statement, Ext.1, the same cannot be relied on, beyond doubt.

(vi) INFERENCE :

43. There is no doubt that in order to sustain conviction u/s 376 IPC, the testimony of the victim alone is permissible, if inspires confidence and appears to be natural and truthful. However, in view of the clear evidence, discussed above, that the victim (PW-1) had accompanied the accused voluntarily to Guwahati and Shillong cities along with other persons, in the same vehicle and besides visiting various places of her interest at Shillong and further, doing shopping at both the places, aforementioned, did not raise any objection to any person whom she came across, in course of the journey, and even to her known elderly persons, aforementioned, who, in the relevant night, stayed in the adjacent rooms to her room of stay. Further, her evidence clearly appears to be full of material contradictions and material omissions with her statements recorded u/s 161 CrPC and not even supported by the remaining PWs, who were with her during the journey. Therefore, in view of unreliable, uncorroborated testimony of the victim (PW-1) and her highly unnatural conduct, this Court has no hesitation to hold that no conviction of the accused can be based, even with the aid of Section 114 A of the Evidence Act, beyond all reasonable doubt.

C O N C L U S I O N

44. For the reasons, set forth above, this Court is constrained to hold that the prosecution has failed to prove the charges levelled against the accused, beyond all reasonable doubt.

45. Accordingly, the accused Sri Praneswar Basumatary is acquitted of the charges u/s 366/376(1) of IPC and set at liberty forthwith.

46. The seized vehicle may be released to the registered owner, in due course of law.

47. The judgment and order, as above, is pronounced in the open Court, in presence of the accused and the learned counsel for both the sides, on this the 11th day of April, 2014, under the Hand and Seal of this Court.

Accordingly, the case is disposed of.

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictated and corrected by me :

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and
typed by me :

(J.K. Muru, Steno)

* * * * *

SESSIONS CASE NO. 246 OF 2011
ANNEXURE
LIST OF PROSECUTION WITNESSES

PW-1	:	Mrs. 'B' the victim
PW-2	:	Mr. 'C', victim's father
PW-3	:	Mrs. 'D', mother-in-law of victim
PW-4	:	Dr. Palash Moni Keot, the doctor
PW-5	:	Sri Arun Nath
PW-6	:	Dharmeswar Borah
PW-7	:	Ms. Anima Basumatary
PW-8	:	Ms. Namita Basumatary
PW-9	:	Sri Bhuban Sapkata @ Guruji
PW-10	:	Sri Surendra Saharia
PW-11	:	Sri Ganga Charan Sarmah
PW-12	:	Sri Indreswar Nath
PW-13	:	Dr. Bijan Phukan
PW-14	:	Mrs. 'E', sister of victim
PW-15	:	Smt. Mintu Chakraborty
PW-16	:	SI Naren Sonowal, the IO
PW-17	:	Smt. Farhana Sultana, the Magistrate
PW-18	:	SI Jiarul Islam, another IO
PW-19	:	SI Jayanta Kalita, another IO
PW-20	:	Sri Sunil Kumar, SDPO

LIST OF DEFENCE WITNESSES

N I L

LIST OF DOCUMENTS EXHIBITED BY PROSECUTION

Exhibit -1	:	Statement u/s 164 CrPC
Exhibit -2	:	Medical Report
Exhibit -3	:	Seizure memo
Exhibit -4	:	Radiological Report
Exhibit -5	:	Ejhar
Exhibit -6	:	Sketch Map
Exhibit -7	:	Sketch Map

Exhibit –8 : Forwarding letter
Exhibit –9 : FSL Report
Exhibit –10 : GD Entry
Exhibit –11 : Charge-sheet

MATERIAL EXHIBIT

N I L

DEFENCE EXHIBIT

Exhibit –‘Ka’ : GD Entry of Sootea PS
Exhibit –B & C : Relevant orders, in GR Case No. 1125/09
Exhibit –D : Relevant order, in GR Case No. 1125/09

(A. BORTHAKUR)
SESSIONS JUDGE,
SONITPUR :: TEZPUR