

FORM A

IN THE COURT OF SESSIONS JUDGE, SONITPUR,
TEZPUR

Present: **Sri Chatra Bhukhan Gogoi, AJS, Sessions
Judge.**

[Date of the Judgment]
17-11-2022

[Sessions Case No 194/2018]

(Details of FIR/ Crime and Police Station)

Complainant :	STATE OF ASSAM OR Smti Manju Boro.
REPRESENTED BY	Learned P.P. Mr. M.C. Baruah.
ACCUSED PERSONS	1. Biplab Das, Son of- Late Birendra Das. Village- Sankarpara, P.S.- Fakiragram, District- Kokrajhar.
REPRESENTED BY	Sri Diganta Baruah, Advocate.

FORM B

Date of Offence	17-06-2017
Date of FIR.	08-07-2017
Date of Charge-sheet	31-07-2017
Date of Framing of Charges	11-10-2018
Date of commencement of evidence	20-11-2018
Date on which judgment is reserved	16-11-2022
Date of the Judgment	17-11-2022
Date of the Sentencing Order, if any	NIL

Accused Details

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
Mason	Biplab Das	08-07-2017	24-07-2017	Section 366 IPC.	Acquitted	NIL	17 days.

Form C

A. Prosecution

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smti Manju Boro	Other Witness (Informant).
PW2	Victim "X"	Victim.
PW3	Sri Supen Boro	Other Witness.
PW4	Dr. Sangeeta Sharma	Medical Witness.
PW5	Sewali Boro	Other Witness.
PW6	Sri Gopal Singha	Police Witness (I.O.).

B. Defence Witnesses, if any :

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

C. Court Witnesses, if any :

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

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1	Ext-P-1/ PW2	Statement of victim/PW2 before Magistrate u/s 164 Cr.P.C.
2	Ext-P-2/ PW4	Requisition and Report of Doctor.
3	Ext-P-3/ PW6	FIR.
4	Ext-P-4/ PW6	Charge-sheet.

B. Defence:

Sr. No	Exhibit Number	Description
NIL	NIL	Nil

C. Court Exhibits

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects:

Sr. No	Material Object Number	Description
NIL	NIL	NIL

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

SESSION CASE NO. 194 of 2018

Under section 366 of I.P.C
(Arising out of G. R Case No. 2557 of 2017)

State of Assam

-Vs-

1. Biplab Das

...Accused Person

**Present: Sri Chatra Bhukhan Gogoi,
Sessions Judge,
Sonitpur :Sonitpur.**

For the State : Mr. M.C. Baruah, P.P.

For the accused : Sri Diganta Baruah, Advocate.

Date of Argument : **16-11-2022.**

Date of Judgment : 17-11-2022.

JUDGMENT

1. The brief fact of the prosecution case, as narrated in the FIR is that informant the mother of victim "X" (real name withheld) lodged an FIR in Singri Out Post under Dhekiajuli PS stating inter alia that on 17-06-2017 her daughter disappeared from her house. It is also alleged that at the time of filing FIR she got to know that FIR named accused had kidnapped her daughter. Hence, the case.

2. Having got the informant Singri Out Post made a GDE No. 113 dated 08-07-2017 and forwarded the same to O/C Dhekiajuli PS. After receiving the case, O/C of Dhekiajuli PS got a case registered being Dhekiajuli PS case No. 598/2017 u/s 366 IPC and entrusted S.I. Golap Singha to investigate the case.

3. During the course of investigation, police visited the place of occurrence, recorded the statement of witnesses, recovered the victim girl, got her statement recorded before Magistrate u/s 164 Cr.P.C. vide Ext. 1, also arrested accused Biplab Das and on completion of investigation, police finally laid the charge-sheet (Ext. 4) against accused Biplab Das u/s 366 IPC.

4. In the course of trial, when accused appeared in Court, the learned Chief Judicial Magistrate, Sonitpur, Tezpur vide order 28-08-2018 committed the case record to the Court of Sessions for trial after due compliance of Section 207 of Cr.P.C.

5. Receiving the case record on committal, a case being Sessions Case No. 194/2018 was registered and thereafter, having heard the learned lawyers appearing for both sides and on perusing the materials on record, my learned predecessor vide order dated 11-10-2018 framed charge u/s 366 IPC. The particulars of the offence on being read over and explained accused pleaded not guilty and claimed trial.

6. During the course of trial, the prosecution in order to bring home the guilt of the accused person examined as many as 6 (six) witnesses namely, PW1 Smti Manju Boro the informant, PW2 Victim "X", PW3 Supen Boro, PW4 Dr. Sangita Sharma, PW5 Sewali Boro & PW6 Gopal Singh.

7. Concluding the prosecution evidence accused was examined under Section 313 Cr.P.C. however accused person denied the prosecution evidence as false and misleading. The plea of accused is

total denial of the prosecution case. However, on being asked accused declined to adduce defence evidence.

8. POINT FOR DETERMINATION :

"Whether on 17-06-2017 accused kidnapped/ abducted victim "X" with intent that she may be forced to marry him or in order that she may be forced or seduced to illicit inter course and thereby committed offence punishable u/s 366 IPC as alleged ?"

Discussion, Decision and Reasons thereof:

9. I have heard arguments of the learned lawyers appearing for both sides.

10. Learned counsel appearing for State Sri Munin Chandra Baruah vociferously contended that this is a clear case of kidnapping of the victim by accused person who was married at the time incident and prosecution witnesses have adduced very natural, credible and trustworthy evidence to substantiate the charge. The evidence of victim PW2 Victim "X" clearly shows that she has been abducted by accused with force with a view to marry her or to seduced to illicit intercourse and this fact has been candidly narrated by the victim duly supported by her mother PW1 Smti Manju Boro who is the informant of the case & father PW3 Sri Supen Boro. The I.O. also corroborated the evidence of PW1, PW2 & PW3 in material particulars. Accused kidnapped her in a very pre-planned manner but due to the FIR lodged by informant, police recovered the victim girl from the aunt's house of accused. Nevertheless, the offence of kidnapping has been fully made out against the accused person.

11. On the other hand, learned counsel Sri Diganta Baruah appearing for accused highly disputed the submission of the learned counsel appearing for the State contending inter alia that no case of kidnapping has been established by the prosecution for sustaining conviction. It is contended that the victim is a major woman at the time of alleged offence and she voluntarily went with accused as they were in love affairs for several years. From the evidence and statement of the alleged victim (PW2) recorded by Magistrate u/s 164 Cr.P.C., it is crystal clear that the victim voluntarily went with the accused to the house of his aunt. Therefore, it clearly suggests that she voluntarily went with accused not as a result of any force or with criminal intent to seduce her to illicit inter course rather she voluntarily went with the accused out of love affairs they had since long.

12. Now, in order to decide whether accused is guilty u/s 366 IPC, it is necessary to read Section 366 IPC which is quoted below:

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.— *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 ten years, and shall also be liable to fine; 1[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]."*

13. Having heard the rival contentions of learned counsels appearing for both sides and on careful consideration of the evidence available on record, particularly, the evidence of the victim PW2 as well as her statement recorded by Magistrate u/s 164 Cr.P.C. marked as Ext. 1, it transpires that she knows the accused for last four years and have been in affairs and about 15 days prior to the incident, accused asked her to

go with him. Accordingly, she accompanied him without knowing the fact that accused was a married person. As per her own version, accused did not force her to go with him. She was in Bangalore for three years and after her return she went with accused without knowing the fact that in the meantime accused married another girl.

14. The evidence on oath of the victim (PW2) clearly reveals that she had voluntarily accompanied the accused to the residence of his aunt's and stayed there. Therefore, the basic ingredients of offence of Section 366 IPC namely, the forceful compulsion of marriage, by kidnapping or by abducting her by accused by inducement is clearly absent in the present case. The victim girl being major 20 years of age, she went with accused at her own sweet will without having any enticement, force or compulsion on the part of the accused.

15. In the face of the evidence of alleged victim PW2, the evidence of other witnesses namely, PW1 Smti Manju Boro the informant, PW3 Supen Boro, PW4 Dr. Sangita Sharma, PW5 Sewali Boro & PW6 Gopal Singh appears not worthy of credence as it does not tally with the version of the victim though the victim moved from one place to another without the knowledge of her guardian but, this does not however made out a case u/s 366 IPC when the basic element of her voluntariness to go with the accused is writ large and enticement & force with the intention to seduce her is clearly absent.

16. In this regard, this court beg to refer recent judgment of Hon'ble Apex Court delivered in CRIMINAL APPEAL NO(s).592 OF 2022 rising out of SLP (CRL.) No(s). 1806 of 2021) (Mafat Lal & Anr – Appellant Versus The State Of Rajasthan – Respondent) wherein Hon'ble Apex Court held in para 7 as under:

"7. Kidnapping would necessarily involve enticing or taking away any minor under eighteen years of age if a female for the offence under Section 363 IPC. In the present case, the abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own

free will. Section 366 IPC would come into play only where there is a forceful compulsion of marriage, by kidnapping or by inducing a woman. This offence also would not be made out once the appellant no. 2 the abductee has clearly stated that she was in love with the appellant no.1 and that she left her home on account of the disturbing circumstances at her parental home as the said relationship was not acceptable to her father and that she married appellant no.1 on her own free will without any influence being exercised by appellant no.1."

17. The above being the prosecution evidence on record, this court has no option but to acquit accused Biplab Das from the offence u/s 366 IPC on the ground of insufficiency of evidence and set him at liberty forthwith.

18. His bail bond is however, extended till next six months in view of section 437(A) of Cr.P.C.

19. Send back the GR case to the learned committal court.

20. Let a copy of the judgment be forwarded to the learned District Magistrate, Sonitpur as provided in section 365 Cr.P.C.

21. Judgement is pronounced and delivered in open court under the Hand and Seal of this Court on this **17th day of November, 2022.**

(C.B.Gogoi)
Sessions Judge,
Sonitpur, Tezpur.