

District : Bongaigaon

IN THE COURT OF ASSTT. SESSIONS JUDGE :::::::::: BONGAIGAON.

Present:- Smt M.C. Bordoloi, M.A, LL.B (AJS)
Asstt. Sessions Judge,
Bongaigaon.

Sessions Case No. 120 (M)/2016.

U/S 366 IPC (Arising out of G.R case no.824/2016.)

State

Vs.

1. Titu Das..... Accused

Committed by : Shri B. Sutradhar, Chief Judicial Magistrate,
Bongaigaon.

Appearance:- Mr. Nazir Hussain,

Additional Public Prosecutor for the State.

Mr.

Advocate for the accused.

Date of Charge : 1.12.2016.

Date of Commitment : 8.11.2016.

Date of evidence : 20.1.17,23.2.17,19.4.17.

Statement recorded on : 21.4.2017.

Date of argument : 21.4.2017.

Date of judgment : 28.4.2017.

J U D G M E N T

1. The prosecution case in brief is that the wife of the informant/Narayan Ray on 24.8.2016 at about 1:00 P.M. was kidnapped by accused Titu Das taking advantage of the absence of the informant and his

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family members at their house. Whereafter an ejahar was lodged with the Manikpur Police Station on 25.8.2016.

2. The officer of the concerned Police Station upon receipt of the ejahar, registered a case vide Manikpur Police Station Case No. 245/2016, U/S 366/34 IPC and caused investigation of the case and apprehended the accused during investigation.

3. Upon completion of investigation, charge sheet being no. 109/16 was laid before the learned Chief Judicial Magistrate, Bongaigaon, who having taken cognizance of the offence secured the attendance of the accused from the judicial custody and serviced copies of the case to the accused in compliance of the provisions of Section 207 Cr.P.C and having found that the case was one exclusively triable by the Court of Sessions, committed the case record to the Court of Hon'ble Sessions Judge, Bongaigaon, vide order dated 8.11.2016.

4. Upon receipt of the case record from the learned committal Court, The Hon'ble Sessions Judge, Bongaigaon, transferred the case record to the instant Court for trial and disposal.

5. The attendance of the accused was secured from judicial custody in the instant Court and on prayer, accused was enlarged on bail to enable him to face trial while on bail. Charge U/S 366 IPC was framed vide

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order dated 1.12.2016 and the charge so framed, when read over and explained to the accused, he pleaded not guilty, claiming trial.

6. Prosecution in order to establish its case, examined as many as 5 numbers of witnesses including the Investigating Officer. The defence side cross-examined all the prosecution witnesses but declined to adduce defence evidence.

7. The statement of the accused was recorded U/S 313 Cr.P.C. Accused in his statement, reiterated his innocence and claimed and averred that it was the informant's wife who had gone along with him following a marital discord with her husband, requesting him to take her to her uncle's place and that he had been framed in the instant case by the informant and the form to avoid payment of dues to him.

8. From the trend of cross-examination and the accused's statement U/S 313 Cr.P.C, it is discernible that the defence plea is that of complete denial of guilt.

9. Heard the arguments forwarded by the learned counsels of both sides.

9.(i). Learned Additional Public Prosecutor, Bongaigon, submits that the guilt of the accused is successfully proved and that conviction ought to be recorded against the accused.

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9.(ii). Refuting the above submissions, learned counsel for the accused, submits that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt and that accused deserves acquittal.

10. Heard both sides. Perused the case record.

11. The point for determination that has surfaced in the instant case is as follows :

The points for determination are :

1) Whether on the 24th day of August , 2016 the accused enticed the informant's wife namely Swapna Ray and induced her to go from Patiladaha, Bowbari with intent that she may be compelled to or knowing it likely that she will be compelled to marry against her will or that she may be forced to illicit intercourse with her and thereby committed an offence punishable U/S 366 IPC?

12. My decision on the above point for determination alongwith reasons is given hereinunder :

Discussion, Decision and Reasons therefor

To address the point for determination so framed above, the evidence available on record is perused.

13. PW 1- Narayan Ray is the informant in the instant case. His evidence is significant only in so far as his lodging of ejahar vide Ext 1 is

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concerned. PW 1 admittedly was not present at the scene of occurrence and could only learn about his wife going traceless after his returned from work, leading him to search for her, but without avail. PW 1 had made a stray statement that accused on various occasions had announced to people that he would take away the informant's wife for good, but PW 1 failed to state in whose presence accused had made such announcement.

PW 1 had also admitted having mentioned in Ext 1 that the accused had kidnapped his wife taking advantage of his absence from home though in fact his wife went missing while she had gone to fetch her daughter from school. PW 1 also admitted that his wife had a mobile along with her that he had not telephoned her on the relevant day. PW 1 admitted further that the accused was a labour under a mason.

14. PW2 – Sudhan Ch. Ray, deposed in the same tune as that of PW 1. Further PW 2 added that he was reported by one Ajay that he had seen the informant's wife and the accused at Bijni sitting.

But in his cross-examination PW 2 disclosed that he was at his house at the fateful day and he was ignorant as to how his wife disappeared.

15. PW 3- Swapna Ray, is the victim in the instant case. PW 3 disclosed that on the fateful day when she had gone to fetch her daughter from school she met the accused on the road and thereafter she felt some water being sprinkled on her body, following which, she went with the accused and only after reaching Kamakhyaguri she realised that she was at Kamakhyaguri,

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whereupon she telephoned her husband to bring her back and thereafter her husband rescued her.

PW 3 identified her statement recorded U/S 164 Cr.P.C as Ext 2 and her signatures thereon as Ext 2(1) and Ext 2(2).

PW 3 in her cross-examination disclosed that she could not recollect how she had gone to Kamakhyaguri and that she had not reported to any one at Kamakhyaguri about the alleged occurrence.

16. PW 4 is the Investigating Officer at the instant case, who assuming responsibility of investigation, visited the informant's house situated at Bowbari under Manikpur Police Station, traced the sketch map of the place of occurrence interrogated the witnesses, arrested the accused, caused medical treatment of the victim, and also caused the recording of the victim's statement U/S 164 Cr.P.C and on completion of investigation submitted charge-sheet U/S 366 IPC. PW 4 identified the medical report of the victim as Ext 3 charge-sheet as Ext 4 and his signature thereon as Ext 4 (1).

The Investigating Officer in his cross-examination confirmed the fact that the informant had not stated before him that the accused had sold his wife's bicycle and ear-rings nor the informant had stated before him that the accused had announced before the villagers that he would kidnap the informant's wife.

PW 4 also confirmed the fact that PW 2 or PW 3 had not stated, that the accused had sprinkled sand and water over the victim's body. PW 4 admitted that he had not recovered the accused or the victim.

17. Now from the perusal of the evidence, it is seen that the

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informant/ PW 1 and PW 2 were not witnesses to the alleged act of kidnapping. PW 1 in his first statement that is Ext 1 had stated that the accused had kidnapped his wife from the house but in his deposition in Court on oath, he had contradicted his first statement and stated that his wife went missing from the road when she had gone to pickup her daughter from school.

18. Again PW2 had disclosed that he was at house at the relevant time. That the accused had gone to kidnap the informant's wife from PW 1's house is not forthcoming from the evidence of PW 2 either, who was all along at the house on the relevant day. Therefore, that accused visited the informant's house on the relevant day is not proved. That the victim became traceless from the road is forthcoming thus.

19. *Now it is to be seen whether the disappearance of the victim woman can be attributed to the accused or whether culpability can be fixed on the accused.* PW 1 has testified in his evidence that the accused had previously announced to the co-villagers about his intention of his taking away the informant's wife for good. But this fact has not been stated before the Investigating Officer by PW 1 during the course of investigation. This omission is a contradiction which cannot be ignored. Had the accused made such announcement, the informant would have first reported about the same to the Investigating Officer at the very first place to point the nail of accusation towards the accused. Further the said fact has not received any corroboration from any of the witnesses examined by the prosecution. Apparently the evidence of PW 1 on that above fact is an afterthought.

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20. Now coming to the statement of the victim, recorded U/S 164 Cr.P.C being Ext 2, it is seen that PW 3 / victim had stated that she had gone with the accused just like that on her own discretion. Admittedly the victim is a major woman. In her statement on oath in Court, she had also stated that she had gone away with the accused, though she had stated, that she followed the accused after some water was sprinkled on her by some person. PW 3 had not implicated the accused as the person sprinkling water on her person. Further she had not reported to the Investigating Officer about the accused sprinkling water or any body else sprinkling water on her.

21. The failure of the victim to report about the fact of sprinkling water on her person causing her to follow the the accused is an omission and same cannot be ignored. Had there been such a predicament she would have reported about the same immediately to the Investigating Officer at the very first opportunity. It apparently is an afterthought. Again there is no basis to infer that the water so sprinkled allegedly, had its effect on the victim woman, as the same does not offer any scientific explanation. Nevertheless fact remains, that the victim woman had gone with the accused willingly.

22. It is further seen that prosecution failed to show that the accused took the victim woman with him forcibly or rather allowed the victim woman to accompany him with the intention as detailed in Section 366 IPC. There is not evidence forthcoming to show that the accused was occupied with the intention of marrying the victim woman against her will or to seduce her or to force her to illicit intercourse. Rather from the evidence of PW 3 it has come to the fore that after the victim and the accused had reached, Kamakhyaguri, the

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victim was attended to by the sister-in-law of the accused and was served food by her. In fact, the victim had not made any whisper in respect of any conduct of the accused to indicate that the accused was occupied with the idea of seducing her or that he intended to seduce her against her will.

23. The evidence on record goes on to show that the victim being a major had for what ever reason had gone with the accused willingly and accused had not induced the victim woman to go with him. Accordingly in the above circumstances, I am but to hold that prosecution has miserably failed to prove the guilt of the accused beyond all reasonable doubt. Accused deserves acquittal.

24.

O R D E R

In the light of the foregoing discussions, accused Titu Das is acquitted of the charge U/S 366 IPC and set at liberty forthwith.

The bail bond of the accused persons shall remain in force for a period of 6(six) months from today.

Given under my hand and the seal of this Court on the 28th day of April, 2017.

(M. C. Bordoloi)

ASSTT. SESSIONS JUDGE,
BONGAIGAON.

Dictated and corrected by me

(M. C. Bordoloi)
Asstt. Sessions Judge,
Bongaigaon.

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APPENDIX

Prosecution witness :

- PW 1 - Narayan Ray.
- PW 2 - Sudhan Ch. Ray.
- PW 3 - Swapna Ray.
- PW 4 - S.I. Haider Ali Ahmed.

Prosecution exhibits

- Ext 1 - Ejahar.
- Ext 1 (1) – Signature of Narayan Ray.
- Ext 1 (2) – Signature of the then O.C. Dhananjay Kr. Das.
- Ext 2 – Statement of the victim U/S 164 Cr.P.C.
- Ext 2(1) and Ext 2 (2) – Signature of the victim woman.
- Ext 3 – Medical report.
- Ext 4 – Charge sheet.
- Ext 4(1) – Signature of S.I. Haider Ali Ahmed.

Materials Ext –

Nil.

Defence witness-

Nil

Defence exhibit -

Nil

(M. C. Bordoloi)
Assistant Sessions Judge,
Bongaigaon.