

***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.90 (BGN)/2016.***

U/S 366 IPC (Arising out of G.R case no.447/16. )

State

Vs.

Sri Budha Sutradhar..... Accused

***Committed by : Sri. B. Sutradhar, Chief Judicial Magistrate,***  
***Bongaigaon.***

***Appearance:- Mr. Nazir Hussain,***

***Additional Public Prosecutor for the State.***

***Mr. Kaushik. Das,***

***Advocate for the accused.***

***Date of Charge : 23.8.2016.***

***Date of Commitment :12.8.2016.***

***Date of evidence : 23.9.16,4.11.16,15.12.16,4.2.17.***

***Statement recorded on : 27.2.2017.***

***Date of argument : 6.3.2017, 23.3.2017.***

***Date of judgment : 23.3.2017.***

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**JUDGMENT**

1. One Nowa Ram Ray, resident of Puroani Bongaigaon, Jogipara, lodged an 'ejahar' with the Bongaigaon Police Station, alleging inter-alia that his elder daughter Dharitri Ray had been induced by the accused to leave her home on 7.5.2016 and that since thereafter his daughter could not be located. Hence the case.

2. Upon receipt of the "ejahar" a case vide Bongaigaon Police Station case no. 298/16 under section 366 IPC was registered and investigation upon.

3. Upon completion of investigation, charge-sheet being No. 110/16 dated 31.5.2016, was laid before the Learned Chief Judicial Magistrate Bongaigaon, who having taken cognizance of the offence and having secured the presence of the accused in his Court furnished copies of the case to the accused person in compliance of the provisions of section 207 Cr.P.C and having found that the offence 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 12.8.2016, with due information to the learned Public Prosecutor, Bongaigaon.

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. Presence of the accused was secured in

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in the instant Court and both sides were heard on the point of charge. Prima-facie materials U/S 366 IPC was made out against the accused person. Accordingly, vide order dated 23.8.2016, a formal charge under 366 IPC was framed, read over and explained to the accused person, to which he pleaded not guilty, claiming trial.

5. Prosecution in order to prove its case, examined 9 numbers of witnesses, including the Medical Officer and the Investigating-Officer.

6. Defendants side cross-examined all the prosecution witnesses, barring PW 9 and declined to adduce defence evidence.

7. The statement of the accused person was recorded U/S 313 Cr.P.C. The accused in his statement stated that the victim and himself were in a love relationship and that they being majors had on their own accord decided to leave their respective houses and that he had not induced the victim in any manner to accompany him, rather the victim had pressurized him to take her along, threatening to end her life, if her wish remained unfulfilled. Accused further submits that, it was at the instance of the victim that he had gone to different places and he had not cheated on the victim as has been alleged. Accused prays for acquittal.

**Arguments :**

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

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8.(a) Learned Additional Public Prosecutor Bongaigaon, submits that Court shall pass order as deem fit after perusal of the case record in its entirety.

8.(b) Learned defence counsel on the other hand, submits that accused is innocent and the victim had on her own will accompanied the accused and for that act of the victim, the accused cannot be put to fault. Learned counsel submits that the guilt of the accused could not be successfully proved by the prosecution in the instant case for which the accused is liable to be acquitted.

9. Heard both sides. Perused the case record.

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

**Points for determination are :**

***1) Whether the accused on the 7<sup>th</sup> day of May 2016 enticed the informant's daughter, and induced her to go alongwith him 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 and thereby committed an offence punishable U/S 366 IPC?***

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

12. **Discussion, Decision and Reasons therefor**

To address the point for determination so framed, it will be worthwhile to peruse the evidence available on record and I proceed to do so.

13. PW 1 is the informant Nowa Ram Ray. PW 1 deposed that on 7.5.2016 at about 8 or 9 P.M. the accused eloped with his daughter and after two days of the alleged incident, the accused informed his other daughter Jyotika that they were at Chapar, whereupon he went to Chapar in search of the duo, but he failed to locate them, whereupon he lodged a case on 16.5.2016 and eventually he could learn that the accused and his daughter were at Mumbai.

PW 1 further stated that on their return from Mumbai they intercepted the accused and the victim at the railway station and thereafter produced them before the concerned police station. PW 1 averred that accused took away his daughter with a false promise and his daughter learning that accused had two earlier wedded wives, left his company.

PW 1 identified the ejahar lodged by him as Ext 1 and his signature thereon as Ext 1(1).

When put to cross-examination PW 1 disclosed that he could learn from his daughter Jyotika that his elder daughter had gone to Chapar on her own will.

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14. PW 2 Tuleshwari Ray, deposed that on the relevant day accused had eloped with her daughter and that they could subsequently know that the duo was at Mumbai and that 15 days after the alleged occurrence accused and her daughter returned back to Bongaigaon as her daughter could learn that the accused was already a married man.

In her cross-examination PW 2 admitted that his daughter was in a love relationship with the accused who use to frequent their place and that her daughter went away as she was in love with the accused.

15. PW 3 Ranjan Baruah is a reported witness. PW 3 stated that on the day of return of the accused and the victim from Mumbai he had caused their appearance at the police station.

16. PW 4 and PW 5 also deposed in tune with PW 3.

17. PW 6 is the victim of the instant case. PW 6 deposed that on the relevant day, the accused proposed to elope, which proposal she turned down, requiring the accused to inform her parents but the accused threatened to end his life at their house under which compelling circumstances she accompanied the accused to Nalbari and therefrom to Mumbai, to the accused's friend's place. PW 6 stated that accused loved and enticed her making false statements despite the fact that the accused was already a married man with two wives and children.

PW 6 identified her statement recorded U/S 164 Cr.P.C as Ext 2 and her signatures thereon as Ext 2(1) and 2(2) respectively.

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In her cross-examination PW 6 admitted that she had gone with the accused on her own will, a fact which she had also admitted in her statement U.S 164 Cr.P.C. PW 6 clarified that she had gone with the accused as the accused threatened to end his life. PW 6 further disclosed that she had not stated in her statement U/S 164 Cr.P.C that the accused was a married man with two wives. PW 6 also revealed that the accused was with her all along at Mumbai.

18. PW 7 deposed that after learning about the alleged elopement of her sister she tried to contact her sister and could learn that her sister was at Chapar initially and thereafter at Nalbari and finally at Mumbai and that she required her sister to return back home and on her return alongwith the accused, they were handed over to the police. PW 7 also admitted the subsistence of a love relationship between the accused and the victim.

19. PW 8 is the Investigating Officer of the instant case. PW 8 deposed that assuming the responsibility of investigation she visited the place of occurrence interrogated the witnesses, caused the medical examination of victim and also caused the recording of the statement of the victim U/S 164 Cr.P.C and on completion of investigation submitted charge-sheet being Ext 3 against the accused. PW 8 identified her signature on Ext 3 as Ext 3(1) and the signature of Dulal Ch. Kalita on the ejahar as Ext 1 (2).

In her cross-examination PW 8 clarified that she had not made attempts to investigate the case either at Nalbari or Mumbai nor she had

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seized any train tickets from the custody of the accused. PW 8 confirmed the fact that PW 2 and PW 5/ Raju had not reported to her that the accused was previously married.

20. PW 9 is the Medical Officer who examined the victim on her production before her on 27.5.2016 at Bongaigaon Civil Hospital. PW 9 on examination of the victim, found that the victim had well developed sex characters and she failed to find any injury over the victim's body parts or the presence of spermatozoa. PW 9 estimated the victim's age between 21 to 25 years.

PW 9 identified the medical report of the victim as Ext 4 and her signature thereon as Ext 4 (1).

21. This in nutshell is the evidence available on record.

22. In the instant case, the accused stands charged U/S 366 IPC. An offence U/S 366 IPC has the following essential ingredients :

(i) Kidnapping or abducting of any woman;

(ii) Such kidnapping or abducting must be -

(i) 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

(ii) in order that she maybe forced or seduced to illicit intercourse,or knowing it to be likely that she will be forced or seduced to illicit intercourse;

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or

(iii) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be, or knowing that she will be, forced or seduced to illicit intercourse.

It is immaterial whether the woman kidnapped is a married woman or not.

23. Therefore, to bring home an offence U/S 366 IPC the prosecution is to prove that the accused kidnapped or abducted the victim and that the victim of the aforesaid kidnapping or abduction was a female and that the accused during the kidnapping or abduction had the intention or knew it likely that such woman might be forced to marry a person against her will or that she might be or forced to illicit intercourse or by means of criminal intimidation or otherwise induce a woman to go from one place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

24. In fact, the intention of the accused is the basis and the gravamen of an offence U/S 366 IPC. The volition, intention and the consent of the women are "nihil ad rem" except in so far as they bear upon the intention with which the accused kidnapped or abducted her. If the accused kidnapped or abducted the woman with the necessary intent, detailed in section 366 IPC, the offence is completed whether or not the accused succeeded in effecting his purpose, even if, in the event, the woman in fact consented to the marriage or the illicit intercourse taking place. The unlawful intention detailed in section 366

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IPC must be present on the point of abduction or kidnapping.

25. Now having comprehended the law relating to the offence U/S 366 IPC when the evidence available on record is visited, it is seen that prosecution failed to examine any eye-witness to the alleged act of kidnapping, in which circumstances the evidence of the victim assumes much importance. Now reading the evidence of the victim, it emerges that the victim had accompanied the accused on her own will.

There is no dispute regarding the majority of the victim. The victim being a major had exercised her discretion to be with the accused.

Though PW 6 / victim had averred that the accused proposed to elope with her as his parents would not accept the alliance, but the fact remains that be what the circumstances, she agreed to go with the accused.

PW 6 / victim had stated that accused threatened to end his life if she did not accompany him. But besides this stray averment, she had not stated as to what was the conduct of the accused, which raised the apprehension that accused would have, in fact, ended his life whereby she was compelled to take the step of elopement. She had not indicated that the accused had taken preparations to end his life. Even for the sake of the argument if it is assumed that the accused had stated that he would end his life by consuming poison., but whether that statement of the accused had any compelling effect, or whether that statement was being acted upon by the accused is not discernable from the evidence, for which, it cannot be construed as an act of inducement by the accused to force the victim woman to take the alleged drastic step and to hold that inducement by the accused existed at the

relevant point.

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26. Further the PW 6's evidence is silent in respect of the accused taking her along with the intention of forcing her to illicit sexual intercourse or relation. In fact her evidence is silent if the accused at all intended to sexually exploit her. Further the PW 6 had alleged that the accused had forbidden her to make contact with her family, but the evidence of PW 7 and PW 1 discloses that the duo themselves had informed about their whereabouts to PW 7. Again how the victim was kept confined without contact with the outside world is not forth coming from the evidence. No evidence of forced restraint is made out. That being so, it is surprising, why the adult female failed to come out in the open against the accused. Apparently a consent of the victim, existed.

27. Again the evidence of PW 1, 3, 4, 5 and 6 discloses that the accused and the victim girl were found in the railway station on their return from Mumbai and were intercepted therein and thereafter produced before the concerned police station. The mere finding of the victim girl in the company of the accused is not sufficient evidence to hold that the accused, had kidnapped the victim. As discussed above, victim admittedly having consented to go with the accused, case of forceful abduction not made out.

28. In fact the evidence of PW 6 / victim, apparently disclosed a case of willful elopement rather than the case of kidnapping as alleged. As discussed above, there is no evidence in respect of presence of the accused's intention of forcing the victim to illicit sexual relation at the point of

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elopement either. The necessary intent as detailed in Section 366 IPC is absent, therefore. Accordingly I am constrained to hold that prosecution has failed to prove the charges against the accused beyond all reasonable doubts. The accused cannot be held guilty of commission of the offence he is charged with. Accused deserves to be acquitted accordingly.

29.

**O R D E R**

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

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

Given under my hand and the seal of this Court on this 23<sup>rd</sup> day of March, 2017.

( M. C. Bordoloi )

ASSTT. SESSIONS JUDGE,  
BONGAIGAON.

Dictated and corrected by me

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

APPENDIX

Prosecution witness :

- PW 1 - Nowa Ram Ray.
- PW 2 - Tuleshwari Ray.
- PW 3 - Ranjan Baruah.
- PW 4 - Keshab Ch. Das.
- PW 5 - Raju Barman.
- PW 6 - Dharitri Ray.
- PW 7 - Jutika Barman.
- PW 8 - Reboti Baruah.
- PW 9 - Dr. Hafiza Ahmed.

Prosecution exhibit

- Ext 1 - Ejahar
- Ext 1(1) – Signature of the informant.
- Ext 1 (2) – Signature of Inspector Dulal Ch. Kalita.
- Ext 2 - Jabandandi of the victim.
- Ext 2 (1) and Ext 2 (2) – Signatures of Dharitri Ray.
- Ext 2 (1) – Signature of Dhanmoni Deka.
- Ext 3 – Charge-Sheet.
- Ext 3 (1) – Signature of S.I. Reboti Baruah.
- Ext 4 – Medical Report.
- Ext 4 (1) – Signature of Dr. Hafiza Ahmed.

Defence witness

NIL

Defence exhibit

NIL

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