

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE ::::::: BONGAIGAON.**

**GR CASE No. 387/2011.**

***U/S. 363 IPC.***

**State of Assam**

**-Vs-**

- 1. Rejjaul Karim Mazumdar.**
- 2. Sri Nabajit Saha.**

***Present: Sri A.U.Ahmed, AJS***  
***Chief Judicial Magistrate,***  
***Bongaigaon.***

**Name of the informant:**

*Sri Dharanidhar Das.*  
*S/o Late Lakshan Ch. Das.*  
*Asstt. Sub-Inspector, Bongaigaon PS.*  
*PS & Dist. Bongaigaon.*

**Advocates appeared:**

For the Prosecution: ***Mr. T. Bhowmick, Assistant PP.***  
For the Defence: ***Mr. K. Raja.***

Argument heard on: ***29.05.2013.***

Judgment pronounced and delivered on: ***06.06.2013.***

**J U D G M E N T**

- 1.** The prosecution case in brief is that, on 13.06.2011 the informant lodged a written ejahar with the Bongaigaon PS stating inter-alia that on the same day at 9:00 AM while Miss Rohini Roy, Miss Jhunmoni Roy, Miss Mridula Barman and Miss Ranjita Roy who were students of Class-IX reading in

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Birjhora Girls High School were going to school, the accused persons enticed away them in a car having Registration No.AS-19/D-1241 towards Abhayapuri. With help of Jogighopa PS the aforesaid girls were recovered from a Dhaba situated in Singimari from the accused persons. On receipt of the written ejahar, Bongaigaon PS registered a criminal case under section 366-A IPC and started investigation. On completion of investigation, FR was submitted. After going through the C/D I found a prima facie case under section 363 IPC against the accused persons made out and hence cognizance under section 363 IPC was taken against the accused persons. Hence prosecution case has come up.

2. On completion of the appearance of the accused persons, copy was supplied to them. Having very carefully gone through the submissions of both sides as well as case diary I found prima-facie materials under section 363 IPC against the accused persons and as such framed charge accordingly against them. The aforesaid charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

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3. During trial prosecution has examined as many as 7(seven) prosecution witnesses in support of its case. The accused persons have been examined under section 313 CrPC. Defence has examined none. The plea of defence is of total denial.

4. -: **POINT FOR DETERMINATION** :-

*(a) Whether the accused persons enticed or took Miss Ranjita Roy, Miss Rohini Roy, Miss Jhunmani Roy and Miss Mridula Barman who were under 18 years out of the keeping of their lawful guardian without the consent of such guardians?*

5. -: **DECISION AND REASONS THEREOF**:-

I have very carefully gone through the arguments duly advanced by the Ld. Lawyers of both sides as well as evidence on record. In the very beginning the Ld. Lawyer appearing on behalf of the accused persons has contended that the prosecution has failed to prove that at the time of occurrence, the victim girls were under 18 years old. On the other hand, refuting the aforesaid submission the Ld. Assistant PP has submitted that the prosecution has brought sufficient materials into evidence on record to establish that the victim girls were below 18 years. Prior to rebutting rival submissions

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of both sides it would apposite to go through the evidence on record. Hence, I would like to move on to the evidence on record.

6. PW1 is the informant Sri Dharanidhar Das who has stated in his testimony that on 13.06.2011 he was working in the Bongaigaon PS as ASI and on that day while he was doing patrolling duty with CRPF at Bongaigaon Town, on secret information he came to know that female students of Class-IX reading in Birjhora Girls High School namely Miss Rohini Ray, Miss Junmoni Ray, Miss Mridula Barman and Miss Ranjita Ray were kidnapped by the accused person and while the said girls were taking away towards Abhayapuri in a Maruti car bearing Registration No. AS-19/D-1241, with the help of Jogighopa PS they were recovered from a Dhaba and thereafter they were taken to police station. Ext1 is the ejahar and Ext1(1) is his signature.

7. PW2 is Gokul Ch. Barman who is the paternal uncle of the victim Mridula Barman. According to him the occurrence took place in the year 2011 and on the day of the

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occurrence his niece Miss Mridula Barman came to the School. From the police station they came to know that his above said niece was in the police station. Thereafter, he came to the police station. Police handed over the said girl to him. Police informed him that his above said niece was recovered from a Dhaba.

8. PW3 is Miss Rohini Ray who is one of the victim girls. She has stated in her testimony that on the day of the occurrence at 9:00 AM while she was along with her friends Junmoni Ray and Mirdula Ray was going to School, on the road accused persons met them and asked them to go to Koyakujia with them. Thereafter, while they agreed the accused Rejaul Karim took his car and in the said car they all went to Koyakujia. From the Koyakujia the accused person took them towards Goalpara instead of taking them back to Bongaigaon. On the way to going to Goalpara their car was parked before the Shivam Dhaba. While they were sitting in the said Dhaba police recovered them and took them along with the accused person to Goalpara PS and there from they were taken to Bongaigaon PS.

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9. PW4 is Miss Mridula Barman who is also one of the victim girls. According to her the occurrence took place about one year back. While on the day of the occurrence at 9:00 AM she alongwith Ranjita, Rohini and Junmoni was going to School, Ranjita proposed for visiting Koyakujia. While they agreed Ranjita over telephone called accused persons. Thereafter accused persons came with a Maruti car and they were taken to Koyakujia. On the way to Kuyakujia they taken to a Dhaba where they changed their school inform and put on regular dresses. Coming back from Koyakujia bebore reaching Goalpara town while they were taking preparation for taking rice O/C Goalpara came and took them to Goalpara. O/C, Goalpara handed over them to Bongaigaon PS. Police handed over her to her uncle.

10. PW5 is Miss Ranjita Roy who is the one of the victim girls. She has stated in her testimony that at present she is 17 years old and reading in class X. On 13.06.2011 the occurrence took place while she was reading in Class IX. On the day of occurrence while at 9 AM she was going to school with her sister Smt. Tulika Roy, on the way she met Miss

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Rohini Roy who is the lover of the accused person Nabajit Saha. There after Rohini went to their house for natural call. There after behind her Rohini, Mridula and Jhunumoni were coming. While she was about to go to her school after leaving her sister in her school, Rohini dragged her and took her to Bagheswari Temple. With her Mridula and Jhunumani also came there. Coming there they found the accused persons standing with a car. Rohini took her into the car. After getting into the car Rohini fed her a chocolate. On the way they were taken to a Dhaba where they changed the school uniforms and put on general dresses. She put on the dress brought by Rohini. From the Dhaba they were taken to Koyakujia where they spent half an hour. While they were coming back, behind their car, police van of Jogoghopa PS was coming. They were taken to Golden Dhaba for changing their dresses where they were caught by Jogighopa PS. They were taken to Jogighopa PS. The accused persons directed them to tell police that they were their elder brothers. The accused person Rejaul Karim stated before police that the accused persons had taken them for selling. There after they were taken to Bongaigaon PS. Rohini, Mridula and Ranjita were reading with her in same class.

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11. PW6 Miss Jhunumani Roy who is one the victims of this case. She has stated in her testimony that at present she is 16 years old. The occurrence took place about 2 years back. On the day of occurrence at 9:00 Am while she along with Rohini, Ranjita and Mridula was going to school the accused person Nabjit Saha asked them for roaming and called the rest accused person to come with a car over phone. Accordingly the rest accused person came with an Alto Car and took them towards Koyakujia. Before reaching Koyakujia they were taken to a hotel where they changed their school dresses and put on general dresses. There after they came to Koyakujia and there from they were taken to one hotel and finding them there police took them to Jogighopa PS.

12. PW7 is Sri Khargeswar Rabha who the Investigation Officer. He has stated in his testimony that on 13.06.2011 he was working in Bongaigaon PS and on that day on receipt of a written ejahar from the informant a criminal case was registered and he was asked to investigate the same. Thereafter, he visited the PO and recorded the statements of witnesses including the victim girls. After arrest the accused persons were forwarded to

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the judicial custody. Subsequently, he took steps for getting the victim girls medically examined but they did not come forward. On completion of investigation, FR was submitted.

**13. 361. Kidnapping from lawful guardianship.--**

*Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation.-The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.*

**14.** It has not been challenged and disputed by the defence that at the time of occurrence, the victim girls were reading in Class IX (Nine). The occurrence in question took place in the month of June. In Assam School session starts in the month of January. It is found that almost after 2 years of the occurrence the victims have been examined in the court. It is evident from evidence of the investigating officer that as the victims not came forward, he did not get them medically examined for ascertaining their age. It is also found that the

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prosecution has not examined any person from the school where the victim girls at the time of occurrence were reading or their parents for ascertaining their age. It has been observed in the *Judgment- Nabi Hussain Vrs State of Assam reported in “MANU/GH/0571/2012”* that an evidence of a witness which has remained completely unshaken cannot be disbelieved. It is found that PW6 one of the victim girls has stated in her testimony that she is 16 years old at present (as on 02-05-2013) and her such evidence in respect of her age has remained completely unshaken. PW5 who is one of the victim girls has stated in her deposition that she is at present 17 years old (as on 05-04-2013) and it is found that the defence simply denied that at present PW5 is not 17 years old. There is no meaningful and effective cross-examination of PW5 and PW6 as regards their age in order to make their evidence doubtful.

15. It has been submitted by the Ld. defence Counsel that the age of the victim girls being not proved by documentary evidence has created a doubt in respect of age of victim girls reliance on the *Judgment – Pabitra Swary Vrs State of Assam reported in “2010(3)GLT732/MANU/GH/*

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0883/2009". PW3 and PW4 have not stated in their evidence that how much old they were at the time of occurrence. However it appears that without oath they have stated that they are at present 15 years and 17 years old. Normally in the beginning of the session of Class IX, the age of a student of Class IX will be 14/15 years. I have very carefully gone through the aforesaid Judgment. Considering circumstance of the instant case and unshaken evidence on material point I find no substance in the submission.

16. It has been submitted by the Ld. Defence Counsel that the victim girls at their sweet will went with the accused persons. The evidence on record shows that the accused persons did applied any force for taking away the victim girls. There is evidence that the victim girl Miss Rohini Roy had love affairs with the accused person Sri Nabajit Saha. It is evident that the victim girls came out their houses in school uniform for going to school with normal dresses secretly. There was a plan. It can be safely presumed that the accused persons were involved in making of aforesaid plan. Is any force necessary for constitution of the offence incorporated in the section 361 of

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the IPC? The taking need not be by force, actual or constrictive and it is immaterial whether the victim consents or not. The object of the section 361 of the IPC is at least as much to protect children of tender age from being abducted for seduced for improper purpose as for protection of rights of parents and guardians having lawful charge or custody of minor or insane persons. The gravamen of this section lies in the taking or enticing of a minor under ages as specified in the section out of keeping of lawful guardian without consent of such guardian. In my considered opinion, force is not at all necessary.

**17.** It has been contended by the Ld. Defence Counsel that the guardians of the victim girls did not lodge any FIR stating that the accused persons took away or enticed the victim girls from their lawful custody and as such this case has no footing at all. The circumstances of the instant case do not suggest that the guardians allowed the victim girls to go with the accused persons. Hence, I find no force in the submission.

**18.** The Investigation Officer Sri Khargeswar Rabha marked as PW7 has admitted in his cross-examination that he

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refrained from getting the statement of the victim girls recorded by the Court U/S.164 CrPC as they refused to attend the Court. He has further admitted in his cross-examination that he did not seize the age proof certificates of the victim girls. I find no reason as to why the investigation officer refrained from collecting age proof certificates from the School where at the time of occurrence the victim girls were studying or from their parents and from seizing the vehicle by which the victim girls were taken away. It has become crystal clear the concerned investigation officer investigated the case in a perfunctory manner. A case cannot go on the ground of any irregularity committed by the investigation agency or prosecution agency. In view of the discussion made in the foregoing paras I am of the opinion that at the time of the occurrence the victim girls were below 18 years.

**O R D E R**

- 19.** In the result, I find the accused persons guilty U/S.363 IPC and accordingly they are convicted.
  
- 20.** On the point of sentence the accused persons are heard and to that effect their statements are recorded.

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Considering nature and object of the offence as well as age of the accused persons, I feel hesitation to shower the benefits laid down U/S.360 of the CrPC upon them. In my considered opinion, they deserve to be punished.

21. The accused persons have prayed for leniency in sentencing them. It is evident that on the same day the victim girls were recovered and the accused persons were just grown young man. *Taking into consideration of all aspects, including trends of the unruliness among the youth in the society, I do hereby order the accused persons to suffer R.I for 6(six) months and to pay a fine of Rs.500/-(Rupees Five Hundred) i/d SI for 1(one) month each for the section 363 IPC. Set off earlier detention. Let a copy of the Judgment be furnished to the accused persons at free of cost. The Judgment be up-loaded in the official Web-site. Accordingly, the case is disposed of on contest.*

22. The Judgment is pronounced and delivered in the open Court on this 6<sup>th</sup> June, 2013 under my hand and seal of this Court.

(Sri A.U. Ahmed)  
Chief Judicial Magistrate,

**BONGAIGAON.**

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*Dictated and corrected by me.....*

**(Sri A. U. Ahmed)  
Chief Judicial Magistrate,  
BONGAIGAON.**

**:A P P E N D I X:**

The prosecution examined:

- 1. PW1- Sri Dharanidhar Das.**
- 2. PW2- Sri Gokul Ch. Barman.**
- 3. PW3- Smt. Rohini Ray.**
- 4. PW4- Miss Mridula Barman.**
- 5. PW5- Smt. Ranjita Ray.**
- 6. PW6- Smt. Jhunumoni Ray.**
- 7. PW7- Sri Khargeswar Rabha.**

The prosecution exhibited:

- 1. Ext1- Ejahar.**
- 2. Ext2- Charge Sheet.**

The Defence examined & exhibited: - Nil.

**(A. U. Ahmed)  
Chief Judicial Magistrate  
BONGAIGAON.**

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