

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,
MORIGAON :::::::::: ASSAM.**

PRESENT : Ms. M. Hussain, AJS,
Asstt. Sessions Judge, Morigaon.

JUDGMENT IN SESSIONS CASE NO. 92/2017

U/S 366A IPC

[Arose out of G.R. Case No. 500/2017
[Committed by learned CJM, Morigaon]

State of Assam

- Vs -

Rajib Bangthai.

S/O Shri Dilu Bangthai.

Village – Bura Konwargoan,

P.S. Jagiroad,

District – Morigaon (Assam).

...Accused person.

APPEARANCE:

Advocate for the State : **Mr. N. A. Choudhury, Addl P.P.**

- And -

Advocate for the accused : **Mr. B. Bordoloi.**

Date of framing charge : 14.11.2017.

Date of recording Evidence on : 6.03.18, 17.07.18, 26.07.18,
15.09.18 & 16.08.19.

Date of hearing Argument on : 24.10.2019.

Date of delivering the Judgment on : 25.11.2019.

JUDGMENT

FACTS & GENESIS OF TRIAL:

1. The prosecution case came to existence when one Maneswar Deori (informant) lodged a written ejahar stating inter-alia that on 20.02.17 at about 7.00 PM accused person Rajib Bangthai kidnapped his minor daughter. In search of victim, delay occasioned in filing the case.

2. On the basis of said ejahar, Jagiroad Police Station registered a case being Jagiroad P.S. Case No. 64/17, U/S 366A IPC, and investigation started. On

completion of investigation, the I/O submitted charge-sheet against accused person Rajib Bangthai U/S 366A IPC to stand up trial for said offence.

3. The case being exclusively triable by Hon'ble Court of Sessions, was committed by learned CJM, Morigaon after complying with the provision of Section-207/209 Cr.PC. Upon committal of the case, Hon'ble Sessions Judge, was pleased to make over the case to this Court for trial and disposal.

4. As per direction accused person Rajib Bangthai appeared before this Court.

5. Learned Addl. P.P Mr. N.A. Choudhury opened up the case by describing the charge brought against the accused person and also stated by what evidence he proposed to prove the guilt. Heard both sides on point of charge. On consideration of materials placed, that is the case record, case diary etc, this Court opined that there is ground for presuming that accused person committed offence U/S 366A IPC. Accordingly formal charge framed in writing. Charge explained to accused person, to which he pleaded not guilty and claimed for trial.

6. The prosecution during the course of trial, examined altogether 8 (eight) witness. After closure of the prosecution evidence, at the instance of prosecution, the accused person was examined U/S 313 Cr.PC. The defence case is of total denial of the prosecution allegation. The accused person expressed reluctance to adduce defence evidence.

7. I have heard **Mr. N. A. Choudhury**, learned Addl. P.P. and **Mr. B. Bordoloi**, learned counsel for the accused person. Learned counsel for accused person while relying upon *Nareswar Nath Vs. State of Assam [2011 (1) GLT 104]*, submitted that prosecution failed to prove the case beyond reasonable doubt U/S 366 IPC. Also carefully perused the materials on record.

POINT FOR DETERMINATION :

Whether accused person on 20.02.17 at about 7.00 p.m., induced victim, minor daughter of informant from in front of his house, with intent that the said victim may be or knowing that it is likely that the victim will be forced (or seduced) to illicit intercourse with another against her will and whether

accused person thereby committed an offence punishable –

U/S 366A IPC ?

THE DECISION & THE REASONS THEREOF :

8. From bare perusal of Section 366A IPC, it appears that there are three essential ingredients to constitute offence of procurement of minor girl:-

i) The victim must be induced by accused;

ii) She must be minor;

iii) She must be induced by accused person to go from any place or to do any act with intent that the victim may be or knowing that it is likely that, she will be, forced or seduced to illicit intercourse by another person.

8A. The word "inducement" even though not defined under the Code, it is one of the basic requirements U/S 366A IPC. As per "Oxford Advanced Learner's Dictionary" the word 'induce' and 'inducement' means as under.

'Induce ' - to persuade or influence somebody to do something.'

'Inducement ' - a thing that persuades somebody to do something.

As per literal meaning ' inducement ' is an act or process of enticing or persuading another person to take a certain course of action. Inducement may amount to bargain or allurement in given facts and circumstances.

9. PW-1, Shri Moneswar Deori (informant) deposed that on 20.02.17 at about 7.00 PM he was absent at home. But after about 10/15 minutes when he returned home, he failed to trace out his daughter. Then he got news from one Maina Bordoloi of his village that accused person kidnapped his daughter from his residence, when she was 15 years of age, a student of class-IX. While he went to accused person's house, he found neither victim and accused person was not there. He got news from village people that accused person and victim were in Oajari and accordingly when he went there, again found none. He went to accused person's house, he found accused person and victim there. Police recovered victim from accused person's house. He identified ejahar Exhibit-1 bearing his signature Exhibit-1(1). In cross-examination, PW-1 deposed that he never met accused person at his house, even though he visited his house earlier.

10. PW-2, Miss. Sainika Deori (victim) identified accused person in Court and deposed that on 20.02.17 at about 7.00 PM she was at home and her parents were absent, but her younger sister Miss. Padma Deori was with her, when accused person came to their house and forcefully kidnapped her, saying that if she shout, her parents will be kidnapped. Thereafter, he took her to Oajari in a tempo and brought her to his aunt's house. She continued that at the time she was 15 years of age and was studying in class-IX. She identified her statement Exhibit-2 made before learned Magistrate bearing her signature as Exhibit-2(i) and 2(2). In cross-examination, PW-2, deposed that she stated before learned Magistrate that she was in love with accused person for about two years and so on the relevant day she went with accused person and on the same day police and her father recovered her.

11. PW-3, Smti. Pinku Deori deposed that victim is her daughter and she also identified accused person in Court in her evidence. She deposed that at the relevant time when she and her husband was absent at home, victim and her other daughter (Padma Deori) were present at home. On her return, she found victim was not at home. Her younger daughter (Padma Deori) reported that she was ignorant when and to where her sister (victim) has gone. She deposed that at that time victim was studying Class-X, aged about 15 years. In cross-examination, PW-3 deposed that accused person kidnapped her daughter from Bhabani Bangthai's house (her sister-in-law), who resides adjacent to her house.

12. PW-4, Smti. Bhabani Bangthai identified in her evidence that victim is her niece and she also identified accused person in her evidence. She deposed that at the relevant time she saw accused person and victim going on road. That she informed victim's mother and on the next day victim was found at accused person's house. Victim was 15 years of age at that time. -In cross-examination, PW-4 deposed that she went to accused person's house to recover victim on the next day and she saw victim near the courtyard of her aunt, (whose name she did not know).

13. PW-5, Smti. Manju Deori deposed that on the relevant day when on search victim could not be traced out, she heard that victim went away with accused person on the next day. She continued that thereafter she heard that victim was found at accused person's house, after two days from the date of

occurrence and at that time she was about 17 years of age. In cross-examination, PW-5 deposed that she came to know from her brother and others that victim eloped with accused person. She deposed that she visited informant's house occasionally, so whether accused person used to visit informant's house or not, she pleaded ignorance.

14. PW-6, Shri Moon Bordoloi, deposed that when informant reported him that her daughter with one boy has been apprehended by police, PW-6 proceeded and found accused person and victim at police station. He came to know about victim's minority at that time. In cross-examination, he deposed that he heard about victim's minority from her parents, but he did not see any age proof document of victim.

15. PW-7, Mrs. Sunmoni Begum (I/O) deposed that on 21.02.17 she was posted at Jagiroad police station as woman S.I. of Police. On that day Maneswar Deori (informant) filed one written ejahar, which was registered as Jagiroad P.S. Case No.64/17 and she was entrusted with investigation. She identified ejahar Exhibit-1 bearing signature of then O.C. Jagiroad P.S. Exhibit-1(2) ; Sketch map of place of occurrence Exhibit-3, bearing her signature Exhibit-3(1). She also Identified Exhibit-4, seizure list (vide zimma No. 22/17) bearing her signature as Exhibit-4(1). Ultimately she identified charge-sheet Exhibit-5, bearing her signature Exhibit-5(1), U/S 366A IPC against accused person. In cross-examination PW-7 deposed that she did not record statement of Saban Deka and Ankur Dewri, whose houses are mentioned as nearby place of occurrence. She deposed that original birth certificate is not found in record.

16. PW-8, Dr. (Mrs) Nasreen Ahmed (M.O), deposed that on 22.02.17 she was in duty as Sr.M.O. & H.O, at Morigaon Civil Hospital. On that day, she examined victim in connection with Jagiroad P.S. Case No. 64/17. She identified medico legal report Exhibit-6 under her hand and seal. In cross-examination, PW-8 (M.O.) deposed that radiological age has been determined which shows victim is less than 18 years of age.

ANALYSIS

17. In this case, accused person is facing trial U/S 366-A IPC. PW-1 (father) is the informant and from his evidence it appears that he was absent at home at the relevant time. His evidence discloses that from one Maina Bordoloi of their village,

he came to know that accused person Rajib Bangthai kidnapped his daughter (victim), when she was 15 years of age. However, Investigating Officer (I.O.) for reasons best known to him did not examine said Maina Bordoloi and her name also did not surfaced in column-6 of charge-sheet. Victim (PW-2) is the kernel of the prosecution case. It appears from victim's evidence that she deposed her age as 15 years at the relevant time and also incriminated accused person by deposing that he kidnapped her forcefully. However, victim failed to stand to test of cross-examination while she deposed that she stated before learned Magistrate that she was in love with accused person for about two years and on the relevant day she accompanied accused person at about 7.00 PM, however, got recovered on same day by police.

18. When I perused her statement U/S 164 Cr.PC (Exhibit-2) it appears Exhibit-2 supported her version in Court. Statement U/S 164 Cr.PC even though not a piece of substantive evidence, it appears, victim's evidence stands corroborated by same. When I viewed, victim's evidence vis-à-vis Exhibit-2, it appears from her statement (Exhibit-2) to her evidence in-chief in Court, victim improved her version a lot. However, while differentiating shaft from the grain by analysis of evidence, it came to surface that victim failed to stand cross-examination when she admitted having said before learned Magistrate about her love affair with accused person, also that on relevant date she accompanied accused person on her own.

18A. In these categories of cases the evidence of victim occupies utmost importance because it is the victim who knows actually what was the ordeal. Her status is that of an injured witness Evidence Act envisages that it is the quality not the quantity of evidence that weighs. Even without corroboration, in fit cases Court of law can sustain conviction if victim is found of sterling nature but not otherwise. Law cherish personal liberty. Here lies the need for judicial scrutiny by Court of law. In this case as discussed in para no.18 above, it appears victim failed to stand the test of cross examination. Her cross examination corroborated by her statement u/s 164 Cr.P.C(Exhibit-2) shows total absence of force/ inducement by accused person. What transpires is that she herself accompanied accused person. There is total dearth in victim's evidence that she was forced or

seduced to illicit intercourse at the instance of accused person. Otherwise also it appears victim voluntarily abandoned the protection of her parents/guardians.

18B. PW-3 (mother) deposed that accused person holding victim's hand, took her away when PW-3 was absent at home. Her evidence is based on report from victim. But surprisingly enough, victim (PW-2) did not state about reporting said fact to her mother. PW-4 (aunt of victim) deposed that she saw accused and victim going on road nearby and when she asked her niece (victim), (both accused and victim) escaped. PW-4 then reported the matter to victim's mother. This evidence from PW-4 remained uncontroverted and shows that as victim escaped along with accused person without raising her voice for any help; it shows that there was no force on part of accused person upon victim to accompany him. PW-5 also testified that victim eloped with accused person. However, as her testimony is of hearsay nature, she could not be acted upon.

19. From evidence of PW-1 to PW-5, it appears that victim was of under age of consent at the relevant time. Perusal of case record shows that vide MR No.30/17 original birth certificate of victim was seized by I.O. (referred to Exhibit-4), however, same testified by PW-7 (I.O.) also. But she (I.O.) herself deposed that vide Zimma Nama No.22/17 same was given Zimma. Now, position is that original birth certificate is not before the Court for perusal. However, PW-8's (M.O.) evidence shows that vide Exhibit-6 also victim's age is below 18 years. It appears, prosecution could prove by ocular and opinion evidence which corroborate each other that victim at the relevant time was under age of consent.

20. Entire evidence in case record particularly vide para No. 18 shows that it is not that accused induced victim to go from place to place with him. The very gist of section 366A IPC is that accused person knowing or that it would be likely that victim would be forced or seduced to illicit intercourse with another person, induced her to accompany him. But it appears this is totally absent in victim's evidence. Even if we consider entire evidence in case record, safe conclusion arises that victim went with accused person, as a result of her love affair with him. She also deposed same before learned Magistrate (referred to Exhibit-2). Thereafter, while she deposed before this Court, she made a lot of improvement in her version and incriminated accused. However, analysis of evidence goes on to reveal that her two version, one before learned Magistrate and one before this

Court were made under oath. Victim's two versions, one before learned Magistrate and one before this Court, made her unworthy of credence, even though vide cross the real facts got unfolded. Moreover, her aunti (PW-4) also did not support her testimony in Court. The sole proof that victim was under age of consent at the relevant time would not make the accused person guilty U/S 366A IPC.

21. With due respect to Hon'ble High Court, I am bound to say that the citation referred to by defence side is in connection of a case u/s 366/417 IPC, hence, can not be placed into application in this case. However, it appears, prosecution failed to prove the rest part of section-366A IPC, while it is the bounden duty of prosecution to prove each and every element of charge beyond reasonable doubt. I found on the basis of above analysis that victim was not worthy of credence.

22. From the above discussion and the analysis of evidence on record goes on to show that prosecution has failed to prove the case **U/S 366A IPC** against the accused person beyond all reasonable doubt.

RESULT / O R D E R

The accused person Rajib Bangthai stands acquitted **U/S 366A of IPC**.

His bail bond stands extended to six months w.e.f today.

Let the record of G.R. Case No. 500/2017 be sent back along with a copy of this judgment and order.

Judgment pronounced in open Court and given under my hand and seal of this Court on 25th day of November, 2019 at Morigaon.

Typed to my dictation and corrected by me.

Asstt. Sessions Judge, Morigaon.

Asstt. Sessions Judge, Morigaon.

APPENDIX

1. The prosecution has examined the following witnesses :-

PW – 1 = is Shri Moneswar Deori (informant).
PW – 2 = is Miss. Sainakia Deori (victim)
PW – 3 = is Smti. Pinku Deori (mother of victim)
PW – 4 = is Smti. Bhabani Bangthai.
PW – 5 = is Smti. Manju Dewri.
PW – 6 = is Shri Moon Bordoloi.
PW – 7 = is Mrs. Sunmoni Begum (I.O.)
PW – 8 = is Dr.(Mrs) Nasreen Ahmed. (M.O.).

2. The prosecution side Exhibits :

Exhibit-1= is the ejahar.
Exhibit-2 =is the statement of victim recorded u/s 164 Cr.P.C.
Exhibit-3 = is the sketch map of place of occurrence.
Exhibit-4 = is the seizure list vide MR No. 30/17 & Zimma No.22/17.
Exhibit-5 = is the Charge-sheet.

3. Defence side has examined witness..

Nil.

4. Defence side Exhibits :

Nil.

5. Court witness & Exhibits.

Nil.

Asstt.Sessions Judge, Morigaon