

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

G.R. CASE NO.1143/2018

(PRC No.7/2019)

State

Vs.

**Sri Krishna Biswas
Son of Late Joydeb Biswas
Resident of village- Chutagarjan
(Bakalibori), P.S.-Mayong
District- Morigaon, Assam**

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the state: Mrs. A. Kakati, Addl. P.P.

For the defense: Md. A. Salam, Md. A. Nasar, Advocates

Charge framed: u/s 363 of IPC on 22-8-2019

Evidence recorded on: 21-01-2020

Argument heard on: 21-01-2020

Judgment delivered on: 21-01-2020

JUDGMENT

1. The prosecution case in brief is that one Sri Ganesh Biswas lodged an ejahar in the Mayong police station against the accused persons namely Sri Krishna Biswas, Sri Sahadeb Biswas, Sri Brojabasi Biswas, Sri Dilip Biswas and Sri Sonabasi Biswas alleging therein that on 1-5-2018, Miss Kabita Biswas, aged about 17 years, who is the daughter of the aforementioned informant, went to the house, situated at Jagiroad, of her maternal uncle in connection with a marriage. On 6-5-2018, while she was returning home, she went missing at about 5.00 p.m. from near the village Chutagarjan. The informant, after conducting an inquiry, came to know that the aforementioned accused persons kidnapped his daughter. At the time of lodging the ejahar it was not known where the accused persons kept his daughter. It is also

stated in the ejahar that there was some delay in lodging the ejahar due to the inquiry conducted by him to locate her.

2. The ejahar was received in the Mayong police station on 9-5-2018 and a Mayong police station case no.195/2018 under section 365 IPC was registered and one sub inspector of police Sri Gopal Borah was assigned to investigate the case by the Officer in charge of the said police station. On completion of investigation, police submitted charge sheet against the accused Sri Krishna Biswas under section 363 of IPC.

3. On appearance before court, copies of all relevant documents were furnished to the accused Sri Krishna Biswas under section 207 CrPC. After hearing both sides, after perusing case record and on prima facie materials of offence under section 363 IPC being found against the above mentioned accused person, formal charge under section 363 IPC was framed, which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. Prosecution in support of its case examined 1 (one) witness namely Sri Ganesh Biswas, as PW-1 and also exhibited the ejahar as exhibit-1. The alleged victim Miss Kabita Biswas, whose evidence was deemed necessary for a just decision of the case, was examined as a court witness (CW-1). For lack of incriminating materials, examination of the accused person under section 313 CrPC was dispensed with. Defense side refused to adduce any evidence.

5. I have heard the argument of Mrs. Alakananda Kakati, learned APP and the argument of Md. Abdus Salam, assisted by Md. Abu Nasar, learned defence counsels. I have also perused the case record and considered the same. The following point for determination is formulated:

i. Whether the accused person, on 6-5-2018 at about 5.00 p.m., at or near Chutagarjan village under Mayong police station of Morigaon district, kidnapped Miss Kabita Biswas and thereby committed an offence punishable under section 363 of IPC?

Discussion of evidence, decision and reasons therefor:

6. The informant Sri Ganesh Biswas deposed before the court as PW-1. His ejahar is proved as exhibit-1 wherein he confirmed his signature as exhibit-1(1). He

has deposed that there has already been an amicable settlement with the accused at the intervention of the local villagers. According to him, as the case was lodged out of misunderstanding, he no longer wants to proceed with the case. His cross-examination was declined.

7. The alleged victim CW-1 Miss Kabita Biswas has supported her father and also stated that there has already been an amicable settlement with the accused and the accused is her relative. She also stated that she no longer wants to proceed with the case and the case was filed due to misunderstanding.

8. It is seen from the deposition of PW-1 and CW-1 that both these two key witnesses have failed to implicate the accused with the alleged offence. There is no indication in their evidence that the accused kidnapped Miss Kabita Biswas. In view of the deposition of the witnesses, the prosecution side did not proceed further to summon and examine the remaining witnesses as their evidence is not likely to improve the prosecution case and closed the prosecution evidence and perhaps rightly so.

9. For the aforesaid reasons and discussion the point for determination is answered in the negative.

10. The prosecution has failed to prove the case against the accused person. As such, the accused person is found not guilty and accordingly acquitted of offence under section 363 IPC alleged against him. He be set at liberty forthwith. His bail bond shall remain in force for six months from today in view of section 437A of CrPC.

11. The judgment is pronounced in open court and given under my hand and seal on this 21st day of January, 2020 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

- (A) PROSECUTION EXHIBITS:**
Ext.-1: Ejahar
Ext.-1(1): Signature of Sri Ganesh Biswas
- (B) DEFENCE EXHIBITS**
None
- (C) EXHIBITS PRODUCED BY WITNESSES**
None
- (D) COURT EXHIBITS**
None
- (E) PROSECUTION WITNESSES**
P.W.-1: Sri Ganesh Biswas
- (F) DEFENCE WITNESSES**
None
- (G) COURT WITNESSES**
C.W.-1: Miss Kabita Biswas

Chief Judicial Magistrate, Morigaon