

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE
AT MORIGAON

GR CASE No.2343/2018
PRC No.1298/2018)

U/S 363 of I.P.C.

STATE

-Vs-

Shri Shiva Das

.... Accused person.

PRESENT: A.K. Basfor., A.J.S.

For the Prosecution :	Mrs. A. Kakati, learned Addl. P.P.
For the Accused :	Mr. U.C. Roy, Miss T. Das, learned Advocates
Evidence recorded on :	15/11/2019 and 30/01/2020
Argument heard on :	30/01/2020
Judgment delivered on:	30/01/2020

JUDGMENT

1. The case of the prosecution case as unfolded the ejahar may, in brief, be stated as follows:

2. On 02/09/2018 at about 5:00 p.m. Miss Renu Dev Nath, who is younger sister of the informant namely Shri Dayal Dev Nath went out of her house; but she did not return home. After several search, the missing victim sister of the informant could not be traced out. Hence the F.I.R for taking necessary action.

3. On the basis of the aforesaid FIR, a case being Jagiroad P.S. Case No. 356/2018 u/s 363 of IPC came to be registered and investigation was also conducted. During investigation, the I.O. visited the place of occurrence (P.O.) and drew sketch map of the P.O. The available witnesses were examined and the accused Shri Shiva Das was also arrested and forwarded to custody. Finally, the investigation culminated into the submission of the charge-sheet against the present accused person u/s 436 of I.P.C.

4. On appearance of the accused, copies of relevant documents were furnished to the accused person in compliance of the provision of section 207 of Cr.P.C. Having heard both sides and considering the materials on record, charge u/s 363 of I.P.C. had been formally framed against the accused person and the contents of said charge had been read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined as many as 2 (two) witnesses including the informant and alleged victim of the case. Defence adduced no evidence and stood the plea of total denial. On closure of the prosecution evidence, examination of the accused person under section 313 CrPC was dispensed with due to lack of incriminating materials. I have heard the argument advanced by learned counsels for both sides.

6. POINT FOR DETERMINATION:

Whether the accused person on 2-9-2018 at about 5.00 p.m., from the village 1 No. Dungabori under Jagiroad police station of Morigaon district, kidnapped Renu Dev Nath from her lawful guardianship and thereby committed an offence punishable under section 363 of the Indian Penal Code?

DISCUSSIONS, DECISIONS AND REASONS THEREOF:

7. **P.W.1, Shri Dayal Dev Nath**, who is informant of the case, deposed that the accused is known to him and he is his neighbour. According to him, the

occurrence took place one year prior to his deposition. He deposed that the matter has already been amicably settled at the intervention of the local villagers. He further deposed that the F.I.R. was filed due to misunderstanding and as such, he no longer wants to proceed with the case. Exhibit-1 is the ejahar/F.I.R. lodged by him wherein he confirmed his signature as Exhibit-1(1).

8. His cross-examination was declined by the learned defence counsel.

9. P.W.2, Smti Renu Dev Nath, who is the alleged victim of the case has deposed that the informant Shri Dayal Debnath is her elder brother. She knows the accused for a long time and she had love affair with the accused. She deposed that she eloped with the accused without informing her family members and as such, her elder brother lodged the ejahar. She clearly deposed that accused did not kidnap her and also did not ask her to go to her house. After lodging of the ejahar she came back to her house and informed about her elopement. P.W.2 further stated that accused did not commit any offence and the case was lodged due to misunderstanding. P.W.2 further stated that she appeared at the police station and gave her statement and her statement was also recorded under section 164 CrPC by the learned Magistrate. Exhibit-2 is her statement recorded under section 164 CrPC and Exhibit-2(1) and 2(2) are her signatures.

10. Her cross-examination was declined by the learned defence counsel.

11. These are the evidence on record.

12. On perusal of the evidence of P.Ws., it reveals that both P.W.-1 and P.W.-2 are most materials witnesses of this case being informant and the alleged victim of the case. But, neither P.W.-1 nor P.W.-2 in their evidence has implicated the accused persons under the charge brought against him. From the evidence of alleged victim, it is clear that out of love affairs, she eloped with the accused at her own will. P.W.-2, who is the alleged victim of the case in her

evidence nowhere, stated that the accused kidnapped her or committed any offence on her. The victim in her statement recorded under section 164 CrPC also stated that she eloped with the accused at her own will. It is worth relevant to note here that neither P.W.-1 nor P.W.-2 in their evidence has stated that the alleged victim at the time of alleged incident was below the age of 18 years. In view of the evidence of the material witnesses, it cannot be held that the accused committed the offence punishable under section 363 of IPC.

13. In the light of aforesaid discussions, I am of the view that the prosecution has totally failed to bring home the charge u/s 363 of IPC against the accused person. The case of the prosecution is therefore held to have failed. Accused person is found not guilty of the offence as charged and as such, acquitted of the same on benefit of doubt and set him at liberty forthwith.

14. The accused person is directed to furnish a fresh bail bond as required u/s 437-A of Cr. P.C. and till then he is allowed to remain on his previous bail.

15. The case stands disposed of on contest.

Given under my hand and the seal of this Court on this 30th day of January, 2020.

Dictated and corrected by me:

**(A. K. Basfor, A.J.S.)
Chief Judicial Magistrate
Morigaon, Assam**

Chief Judicial Magistrate, Morigaon

APPENDIX

Prosecution witness :

P.W.1 Shri Dayal Dev Nath (informant)
P.W.2 Smti. Renu Dev Nath (victim)

Defence witness : Nil.

Prosecution Document :

Ext.1.Ejahaar.
Ext.2 Statement of the victim u/s 164 CrPC

Defence Document : Nil

Court's witness : Nil

Court's Document : Nil

**(A. K. Basfor, A.J.S.)
Chief Judicial Magistrate
Morigaon, Assam**