

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

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

JUDGMENT IN SESSIONS CASE NO. 25/2018
U/S 366A/342 IPC

[Arose out of G.R. Case No. 2031/17]
[Committed by learned CJM, Morigaon]

State of Assam

- Vs -

1. Ruhit Das @ Luhit Ch. Das,
S/O Shri Manbar Das,
Vill. Pub Jaluguti,
P.S. Mikirbheta,
District – Morigaon (Assam).

...Accused person.

A P P E A R A N C E :

Advocate for the State : **Mr. P. Hazarika, Addl P.P.**
- And -
Advocate for the accused : **Mr. R. Mahanta.**

Date of framing charge : 30.06.2018.

Date of recording Evidence on : 27.09.18, 4.02.19, 26.02.19,
1.03.19, 2.05.19 & 23.05.19.

Date of hearing Argument on :30.05.2019.

Date of delivering the Judgment on : 11.06.2019.

J U D G M E N T

FACTS & GENESIS OF TRIAL:

1. Prosecution case in nut shell is that informant Shri Brajen Daslodged a written ejahar stating inter-alia, that on 4.08.17 at about 8.45AM, while his 17 years old daughter(victim) was going to Jaluguti High School on foot, on her way, accused person, a married man,induced her and kidnapped with a Swift vehicle.Hence, this case.

2. Said ejahar, registered as Mikirbheta P.S. Case No. 285/17, U/S 363A IPC vide Jaluguti P.P. made GDE No.81 dated 5.08.17 and investigation geared up. On

completion of investigation, the Investigating Officer(hereinafter as I.O) submitted charge-sheet against accused person Ruhit Das @ Luhit Ch. Das **U/S 363A/342IPC.**

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 Cr.P.C as per mandate of Section-209 Cr.P.C. 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 Ruhit Das @ Luhit Ch. Das appeared before this Court.

5. The prosecution during the course of trial, examined altogether 9 (nine) witnesses including the victim, Investigating Officer and Medical Officer. After closure of the prosecution evidence, at the instance of prosecution, the accused person is 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.

6. I have heard **Mr. P. Hazarika**, learned Addl. P.P. and **Mr. R. Mahanta**, learned counsel for the accused person. Also carefully perused the materials on record.

7. POINT FOR DETERMINATION:

- i. Whether accused person on 4.08.17 at about 8.45 AM induced informant's minor daughter/victim 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 him and whether accused person thereby committed an offence punishable **U/S 366A IPC ?**
- ii. Whether accused person after taking away the said minor daughter of informant by way of inducement, wrongly confined her and whether accused person thereby committed an offence punishable **U/S 342 IPC ?**

THE DECISION & THE REASONS THEREOF :

8. PW-1, Shri Brajen Das, identified accused person in Court in his evidence. He deposed that on 4.08.17 his daughter (prosecutrix) was of 16 years of age and she was going to school. He deposed that after recovery of prosecutrix, she told him that on the day of the incident while she was going to school, accused person came near her in a vehicle and forced her into the vehicle. He sprayed something on her nose, making her unconscious and took her to Dimapur. After regaining sense when she asked him about her where about, she was told that she was in Dimapur. The prosecutrix cried and asked him to take her back to home. She deposed that accused person punched her on her face telling her that her parents would not be able to rescue her from there and that she would have to follow his instruction. PW-1 identified Exhibit-1, the ejahar and her signature Exhibit-1(1) while deposing that prosecutrix told PW-1 subsequently, that accused person took her to the house of one Jintu Ali.. In cross-examination, PW-1 deposed that no date is mentioned in the ejahar lodged.

9. P.W-2, Smti. Parinita Das, identified accused person in Court in her evidence. She deposed that about one year ago while she along with her friends Risha Hazarika and prosecutrix went to school at about 9.00 AM, they saw one white ALTO car parked near the road side. Prosecutrix went herself and boarded the said car and did not attend school. They informed the matter to their Principal and Principal informed police. She deposed that later on, victim recovered. In cross-examination, she deposed that as victim failed in one class and she may be more than 18 years of age on that time but pleaded ignorance if victim failed for more than one instance.

10. PW-3, Smti. Risha Hazarika supported PW-2 in her evidence. She deposed in her cross-examination that she had heard about victim's love affair with accused person Luhit Das.

11. P.W-4, Shri Rajib Das deposed that about one year ago, he heard from village people that prosecutrix had love affairs with accused person. Also heard that on the relevant day both were eloped and was recovered later on.

12. PW-5, Md.Jintu Ali, identified both accused and victim in his evidence. He deposed that about two years ago at about 9.00 PM while he was at Dimapur, accused person called him over phone that he already reached Dimapur Railway Station along with his wife. PW-5 received both of them from railway station. He deposed that accused person's wife was wearing college uniform and both of them stayed at Dimapur purana bazaar at residence of P.W5, but accused person did not allow prosecutrix to talk with PW-5 and they stayed there for one day. He deposed that police recovered victim/ prosecutrix from there. In cross-examination, PW-5 affirmed that on asking about accused person's wife, he introduced her to his wife who was wearing college uniform. PW-5 pleaded ignorance if there was love affairs between accused person and victim and that during their stay at PW-5's room, victim did not raise any alarm to attract attention of nearby people.

13. PW-6, Prosecutrix identified accused person in Court in her evidence. She deposed that on 4.08.16 while she was coming to college accompanied by her friends Parinita Das and Risha Hazarika, she saw one vehicle on road kept parked. When she bypassed said vehicle, accused person dragged her into said vehicle and sprayed something at her mouth and she became senseless. When she regained her sense, he dropped her down from the vehicle. When PW-6 asked him, where she was at that time, accused person replied that at that time they were in Dimapur and he also told her that he was going to sell her off. PW-6 also deposed that later on accused person reported that he will marry her. He confined her at one place in the room of Jintu Ali for one day. PW-6, identified her statement before learned Magistrate Exhibit-2, bearing her signatures. She deposed that at that time she was about 16 years 2 months. In cross-examination, PW-6 deposed that she was picked up to Dimapur on train and in train there were many passengers.

14. PW-7, Md. Imran Ali, his evidence did not aid prosecution case at all.

15. PW-8, Shri Madan Ch. Kalita (I/O) deposed that on 5.08.17 he was posted at i/c, Jaluguti PP, under Mikirbheta police station. On that day informant Brajen Das filed one ejahar at Jaluguti PP and on receipt of said ejahar vide GDE No.81 dated 5.08.17, he forwarded the same to Mikirbheta police station for registration, which was registered vide Mikirbheta Mikirbheta P.S. Case No.285/17 U/S 363-A IPC. O/C

concerned of Mikirbheta police station entrusted him to investigate the case. He identified ejahar Exhibit-1, bearing his signature. Sketch map Exhibit-3, bearing his signature. Ultimately he identified Exhibit-4, charge-sheet U/S 363-A/342 IPC against the accused person, bearing his signature. In cross-examination PW-8 (I/O) deposed that informant (PW-1) did not state before him that in the next morning one Jintu Ali telephoned him from Dimapur stating that some one had kidnapped his daughter (prosecutrix) and that she was at Dimapur. PW-8 deposed that victim (PW-6) did not state before him that accused person was going to sell her at Dimapur. PW-8 also deposed that it appears on perusal of charge-sheet, no age prove document of victim enclosed.

16. PW-9, Dr. (Mrs) Rekha Bhuyan (M.O), deposed that on 6.08.17 she was in duty as Sr. Medical and Health Officer, at Morigaon Civil Hospital and on that day she examined prosecutrix in connection with Mikirbheta P.S. Case No.285/17. She identified medico legal report Exhibit-5 under her hand and seal and deposed that Radiological age of victim was found in between 20 to 25 years.

17. 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.

17.A. The word "inducement" even though not defined under the Code, it is the basic requirement of the law **U/S 366A IPC**. As per "Oxford Advanced Learner's Dictionary" the word ' inducement' means .

" - 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.

18. Section **342** IPC provide for punishment for wrongful confinement. The gist of offence is that accused person confined victim preventing her from proceeding beyond certain circumscribed limits beyond which she has a right to proceed.

19. Function of Court of law is to sift the grain from the shaft. From victim's evidence accused Rohit Das dragged her into the vehicle and sprayed something in her mouth rendering her senseless and when she regained sense accused person dropped her down from the vehicle and vide enquiry she came to know that they were in Dimapur. She deposed that accused person did not sleep with her there. But surprisingly, in her cross examination she deposed that she was picked up in train to Dimapur. This inconsistency has given doubt in mind of this Court if she is deliberately lying! It finds support from her evidence that P.Ws Parineeta Hazarika(P.W2) and Richa Hazarika(P.W3), her friends ,accompanied her at the relevant time. Surprisingly, both these P.Ws deposed that victim herself boarded one ALTO car on that relevant day. P.W5 Jintu Ali again specifically deposed in his cross examination that victim during their stay at Dimapur in their house did not raise any alarm to attract attention of nearby people. P.W8(I.O) affirmed that victim neither in her statement before police nor before learned magistrate stated that accused person was going to sell her at Dimapur. Again P.W8 affirmed that accused person and victim resided separately at his place in Dimapur. To prove thae case u/s 366A I.P.C prosecution must prove all the necessary ingredients.

20. Ocular evidence shows victim was wearing college uniform at Dimapur when P.W5 found duo at Dimapur Railway station. P.W3, a student of H.S final Year, deposed that the occurrence took place about one year ago and that victim failed once in a class. Victim's evidence lends credence that P.w3 was her friend. Obviously, P.W3 `s evidence could not be thrown out as I found no reason why would she lie! Father P.W1 deposed that the prosecutrix was of 16 years at the relevant time. P.W9 (M.O) deposed that on 06.8.17 she examined prosecutrix and found her age vide radiological and laboratory examination at 20 to 25 years. The medical evidence does not itself establish the guilt or innocence of the accused. It provides expert opinions based upon objective, indisputable facts, which help to evaluate the reliability and creditability of other witnesses. The medical evidence does not itself establish the guilt or innocence of the accused. It provides expert opinions based upon objective, indisputable facts, which help to evaluate the

reliability and creditability of other witnesses the court held that, expert opinion is not conclusive nature, it is not mandatory to abide by the court state of H.P Vs jai lal **AIR 1999 SC 3318** . On face of such divergent ocular and opinion evidence, when primacy given to ocular evidence victim is found to a minor at the relevant time.

21. Victim (P.W6) and P.W5 in whose shelter duo the accused and victim stayed in Dimapur ,unanimously deposed that accused person and victim did not sleep together at the night. There is total dearth of evidence from victim that she was at any point of time subjected to physical relationship by accused person at any point of time. This means there was no seduction for illegal intercourse at the instance of accused person.

22. Now coming to the last decisive factor *whether accused person induced victim to go with him*.Let me evaluate the evidence in record. Victim PW-6 deposed that she was picked up to Dimapur on train and in train there were many passengers. She was not illiterate per-se evidence. What stifled her not to shout to attract the attention of fellow passengers obviously can be fathom out. There is inconsistency in her evidence as she failed to stand the test of cross examination whether she was taken by the accused person in train or in car. Had she been subjected to some sort of obnoxious spray by accused person, just to make her senseless; she would have definitely had made attempt to attract attention of any one whom she had come across in her journey.P.w2 her friend and one eye witness to the occurrence deposed that she saw one white ALTO car parked near the road side and that Prosecutrix voluntarily boarded the said car and did not attend school. P.W3 deposed having heard about love affair between accused person and prosecutrix .Even though being a hearsay evidence same is outside my consideration; evidence of P.W2 coupled with prosecutrix not raising alarm at opportunate moment leads me to believe that victim voluntarily accompanied accused person and there was no inducement from him. For same reason I disbelieve the version of prosecutrx that accused person used some sort of spray just after picking her up in the vehicle.

RESULT / O R D E R

The accused person Ruhit Das @ Luht Chandra Das stands acquitted **U/S 366A/342** of IPC.

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

Let the record of G.R. Case No. 2031/2017, 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 11th day of June, 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 Brajen Das (informant)
- PW – 2 = is Smti. Pranita Das.
- PW – 3 = is Smti. Risha Hazarika.
- PW – 4 = is Shri Rajib Das.
- PW – 5 = is Md. Jintu Ali.
- PW – 6 = is Prosecutirx (name with-held).
- PW – 7 = is Md. Imran Ali.
- PW – 8 = is Shri Madan Ch. Kalita (I.O.).
- PW – 9 = is Dr.(Mrs) Rekha Bhuyan (M.O.).

2. The prosecution side Exhibits :

- Exhibit-1 = is the ejahar
- Exhibit-2 = is the statement before learned magistrate u/s 164 Cr.P.C.
- Exhibit-3 = is the sketch map of place of occurrence.
- Exhibit-4 = is the Charge-sheet.
- Exhibit-5 = is the Medico Legal report.

3. Defence side has examined witness..

Nil.

4. Defence side Exhibits :

Nil.

5. Court witness & Exhibits.

Nil.

Asstt.Sessions Judge, Morigaon