

CAUSE TITLE**Sessions Case No.215(N.L.)2018.**

Informant : Sri Atul Kalita.

- Accused : 1) Sri Dipanjal Hazarika @ Subhash.
S/O Sri Madhab Krishna Hazarika.
Vill. Borbali Bhakat Gaon.
P.S. Bihpuria.
Dist. Lakhimpur.
- 2) Sri Hemanta Borah @ Putu.
S/O Sri Suren Borah.
Vill. Borbali Bhakat Gaon.
P.S. Bihpuria.
Dist. Lakhimpur.

ADVOCATES :

For the State: Mr. J. Saikia, learned Public Prosecutor.

For the Defence: Mr. B.M. Das and Mr. D. Borah, learned Advocates.

**IN THE COURT OF THE SESSIONS JUDGE, LAKHIMPUR,
AT NORTH LAKHIMPUR.**

Present: Smt S.P. Khaund, (M.A. Economics, L.L.B.),
Sessions Judge,
Lakhimpur, North Lakhimpur.

Sessions Case No. 215(N.L.)2018
G.R. Case No.2687/2017

State of Assam

Vs

- 1) Sri Dipanjal Hazarika @ Subhash
U/s 366 I.P.C. and
- 2) Sri Hemanta Borah @ Putu.
U/s 366 Part-2 I.P.C.

Date of evidence on : 13/11/2019, 16/11/2019, 29/11/2019, 12/03/2020
and 09/11/2020.

Date of argument : 06/01/2021.

Date of judgment : 06/01/2021.

J U D G M E N T

1) The prosecution case in a nutshell is that on 11/09/2017, at about 9:30 AM, the victim 'X' and her friend Moon Borah were forcefully kidnapped by Dipanjal Hazarika and Hemanta Borah (hereinafter the accused persons). Both the accused persons took the victim and her friend in a car. After proceeding, for a distance, the accused persons

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stopped the vehicle and pushed out Moon Borah from the vehicle and took away the victim 'X' along with them. An ejahar regarding this incident was lodged by Atul Kalita (hereinafter the informant), which was registered as Bihpuria P.S. Case No.817/2017 u/s 120(B)/366/34 I.P.C.

2) The Investigating Officer (I/O in short) embarked upon the investigation. He went to the place of occurrence, recorded the statements of the witnesses. The victim was forwarded to the Magistrate who recorded her statement u/s 164 Cr.P.C. The victim was also forwarded to the Medical Officer (M/O in short) who examined her. On finding prima facie materials, the I/O submitted charge-sheet against the accused persons u/s 120(B)/366/34 I.P.C.

3) On appearance of the accused persons, copies were furnished, and as this case is triable by the Sessions Judge, the case was committed to this court by the learned Addl. Chief Judicial Magistrate, Lakhimpur, North Lakhimpur vide order dated 27/09/2018 in connection with G.R. Case No.2687/2017.

4) After hearing both the sides, a formal charge u/s 366 I.P.C. was framed against the accused Sri Dipanjal Hazarika @ Subhash and Sri Hemanta Borah @ Putu. Both the accused persons abjured their guilt and claimed innocence.

5) To substantiate the stance, the prosecution adduced the evidence of 8 witnesses including the M/O. The I/O was not examined by the prosecution.

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Points For Determination:

i) Whether the accused Dipanjal Hazarika on 11/09/2017, at about 9:30 AM, induced the victim 'X' to go with him in order to compel her to marry against her will or seduce her to illicit intercourse?

ii) Whether the accused Hemanta Borah induced the victim 'X' to go with him, with intent that she might be compelled, or knowing it to be likely that she might be forced or seduced to illicit intercourse with the accused Dipanjal Hazarika?

Decision thereon and the reasons for the decision:

6) The victim 'X' testified as P.W.-1 that on 11/09/2017, at about 9:30 AM, she along with her friend Moon Borah went to her aunt Bibi Borah's house at Bihpuria Town, after her computer class. From her computer class, she along with her friend Moon Borah went to her aunt's house in the car of the accused Hemanta Borah. At that time, the other accused Dipanjal Hazarika was also in the car. Thereafter, she returned to her house at about 7 PM on the same day. She learnt that her mother had already informed her father and an ejarah was lodged against the accused persons as she was missing. Then she informed her mother and father that she went to her aunt's house along with the accused persons on her own volition. The accused persons have not kidnapped her.

7) It is apt to mention at this juncture that the victim 'X' is a major and she proceeded to her aunt's house without informing her parents. Her parents, who suspected that a mishap might have occurred, may

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have taken steps to lodge this case against the accused persons. Her evidence is not consistent to her statement u/s 164 Cr.P.C. Her evidence belies her statement u/s 164 Cr.P.C. The prosecution failed to prove the victim's statement u/s 164 Cr.P.C. Similarly, the evidence of the victim's mother also does not implicate that the accused persons are complicit. The victim's mother 'Y' testified as P.W.-2 that the incident occurred in the year 2017. On the day of the incident, her daughter went to attend computer classes at Bihpuria Town, but did not return till late in the evening. They searched for their daughter, but could not find her. So her husband 'Z' lodged an ejahar with the Bihpuria P.S. After the ejahar was lodged, her daughter returned home and informed them that she had gone to her aunt's house at Bihpuria Town. They learnt that nobody kidnapped their daughter.

8) Thus, it is clear from the evidence of P.W.-1 and P.W.-2 that the accused persons were entangled in this case on mere suspicion. P.W.-3 'Z' is the informant and he testified that the incident occurred on 11/09/2017. He was not at home. That morning, at about 9:30 AM, his daughter 'X' went to attend the computer classes, but did not return from her classes, which were over at 12 noon. They frantically searched for their daughter and thereafter, lodged an ejahar with the police. When they returned after lodging the ejahar, they found their daughter 'X' in the house, who informed them that after her computer classes, she went to her aunt Bibi Borah's house at Bihpuria Town. No one had kidnapped her. P.W.-3 further testified that he lodged the ejahar against the accused persons on suspicion.

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9) It is apt to mention at this juncture that according to the tenets of criminal jurisprudence, a serious offence of this nature has to be proved in a stricter sense and beyond reasonable doubt. An accused cannot be saddled with an offence on mere suspicion. The evidence of other witnesses also does not at all implicate that the accused persons are complicit. There is no evidence of inducement against the accused persons.

10) Sri Nityananda Kalita testified as P.W.-4 that 'Z' is his elder brother and the victim is his niece. The incident occurred on 11/09/2017. He was at Tezpur at the time of the incident. When he returned home in the evening, his wife informed him that 'X' returned late after her computer classes and so 'Z' lodged an ejahar. But, after the ejahar was lodged, 'X' returned home in the evening. When he went to 'X's' house, she informed him that after her classes, she went to her aunt Bibi Borah's house at Bihpuria Town without informing her family members.

11) Similarly, the evidence of Moon Borah also does not implicate that the accused persons are complicit. She testified as P.W.-5 that the victim 'X' is her friend. On 11/09/2017, she along with 'X' went to Bihpuria Town in a Maruti car. She did not know the driver of the car. They came back from 'X's' aunt's house in the evening. On the following day, when she went to the 'X's' house, she learnt that 'X's' father had lodged an ejahar at Bihpuria P.S., as she did not return home till late in the evening of 11/09/2017.

12) Thus, it can be safely held that the witnesses did not implicate

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that the accused persons induced 'X' or Moon Borah to go with them so that 'X' will be compelled to marry one of the accused persons or seduced to illicit intercourse.

13) Another witness Smt Juriti Saikia testified as P.W.-7 that the incident occurrence in the month of September in the year 2017. On that day, at about 3 PM, her brother-in-law 'Z' called her over phone and asked her whether 'X' had come to her house. On the same night, when she called her brother-in-law 'Z', he informed her that 'X' had returned late in the evening.

14) In sync with that the evidence of P.W.-6, the evidence of Bipul Boruah as P.W.-7 also does not implicate that the accused persons are complicit.

15) The M/O Dr. Mouchumi Saikia testified as P.W.-8 that on 14/09/2017, she examined 'X' and found the following :-

1. Identification Mark : Mole over left cheek and right side of neck.
2. Height and Weight : 5 ft 2 inch, 70 kg.
3. General Configuration : Well built (fatty).
4. Teeth : 30 Nos.
5. Breast : Well developed.
6. (a) Axillary hair : Present.
- (b) Pubic Hair : Present.
7. Private Parts
 - (a) Vulva : Healthy, no obvious injury.
 - (b) Vagina : Healthy, no obvious injury, 1 f loose.
 - (c) Hymen : Absent.
 - (d) Uterus : Normal size.
8. Laboratory Examination for spermatozoa detection: No spermatozoa seen on vaginal smear.

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9. Ossification test for age
determination : Present age is above 22 years.

10. External Injury : No obvious external injury.

Opinion:

No sign of recent sexual intercourse. Present age is above 22 years. No obvious external injury in any body part.

16) In view of my foregoing discussions, it is thereby held that there is no evidence that the accused persons compelled the victim to illicit intercourse. The prosecution failed to prove beyond reasonable doubt that the accused persons kidnapped the victim in order to compel her to marry against her will or force her to illicit intercourse. Thereby, the accused persons are acquitted from the charges u/s 366 I.P.C. on benefit of doubt and is set at liberty forthwith.

Judgment & Order is signed, sealed and delivered in the open Court on the 6th day of January, 2021.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

Certified that the Judgment is typed to my dictation and corrected by me and each page bears my signature.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.

A P P E N D I X
Sessions Case No.215(N.L.)2018..

LIST OF WITNESSES FOR PROSECUTION :

1. PW.1 - 'X'.
2. PW.2 - 'Y'.
3. PW.3 - 'Z'.
4. PW.4 - Sri Nityananda Kalita.
5. PW.5 - Smt Moon Borah.
6. PW.6 - Smt Juriti Saikia.
7. PW.7 - Sri Bipul Boruah.
8. PW.8 - Dr Mouchumi Saikia, M.O. of the case.

LIST OF COURT WITNESS :

Nil

LIST OF EXHIBITS FOR PROSECUTION :

1. Ext.1 - Medical Report.

LIST OF MATERIAL EXHIBITS FOR PROSECUTION :

Nil.

LIST OF WITNESSES FOR DEFENCE :

Nil.

LIST OF EXHIBITS FOR DEFENCE :

Nil.

(S.P. Khaund)
Sessions Judge,
Lakhimpur, North Lakhimpur.