

**IN THE COURT OF THE SESSIONS JUDGE AT DHUBRI**

**Sessions Case No. 91/2011**

**U/s. 366 (A) I.P.C.**

**G.R. Case No. (GKJ) 266/2008**

**State of Assam**

**– Vs –**

**Fazrul Hoque**

Committing Magistrate : Mrs. B. Tripathi, Addl. Chief Judicial Magistrate,  
Dhubri

Present : Sri A. Bhattacharyya, AJS  
Sessions Judge, Dhubri

Sri M. Zaman, Public Prosecutor for the State.  
Sri Abdul Latif, Advocate for the Accused.

Date of Evidence : 09-01-2013, 08-10-2013, 28-11-2013, 17-12-2013,  
28-01-2014, 01-04-2014 and 23-05-2014.

Date of Argument : 31-05-2014

Date of Judgment : 04-06-2014

**J U D G M E N T**

Md. Kuddus Ali vide an ejahar dated 13-06-2008 states before the Golakganj Police Station that on 03-06-2008 at about 8-30 p.m. during his absence, the accused named above kidnapped his daughter namely Mosstt. Kohinur Bibi aged about 18 years and kept confined her in some undisclosed location. After returning to the house both he and his wife did not find their daughter and took search of their missing daughter but they could not trace her out. Thus the occasion of the filing of the instant ejahar.

2. The Golakganj Police Station on registration of a case took up the investigation and at the conclusion of the investigation laid the charge-sheet under Section 366 (A) of I.P.C. against the accused.

3. After commitment and on the appearance of the accused, charge under Section 366 (A) I.P.C. is framed against the accused. The charge so framed is read over, explained and interpreted to the accused to which he pleaded not guilty.

4. During trial the prosecution side after examining 10 (ten) P.Ws closed their side. Statement of the accused is recorded. I heard the arguments of the case from both the parties.

5. Now, the point for determination in this case will be as to:

*Whether the materials surfaced in the testimonies of the P.Ws would be sufficient to attract the ingredients of Section 366 (A) I.P.C. against the accused?*

### **DICISIONS AND REASONS THEREON**

6. P.W-1 Md. Kuddus Ali states during trial and in his examination-in-chief that he knows the accused. Mosstt. Kohinur Bibi is his daughter. His aforesaid daughter was married to Sofior Rahman of their village. After 3/4 months of the marriage, accused came to his house and threatened to kidnap his daughter at least for one day. Thereafter, 15 to 20 days, his daughter came to his house. On the date of incident he went to his work place. His wife was not also present at the house and his daughter Kohinur Bibi was alone in the house. When they (himself and his wife) returned to house, they did not find his daughter at the house at about 9/9:30 p.m. They took search for his daughter for a period of 2 (two) days but could not trace her out. Then he laid ejarah before the Golakganj Police Station vide Ext-1 wherein Ext-1 (1) is his signature. They recovered their daughter from the house of the maternal grandfather of the accused alongwith the accused. He informed the matter to the police station and police recovered his daughter from the aforesaid house.

During cross-examination the P.W-1 states that his village is situated alongside of the Kalahat Balajan PWD road. His house is situated at a distance of ½ k.m. from the aforesaid road and alongside of the Panchayat Road.

Further, it is revealed from the testimonies of the I.O. that the P.W-1 Kuddus Ali during investigation did not tell before the I.O. that after 3/4 months of the marriage accused came to his house and threatened to kidnap his daughter at least for one day. Further, the aforesaid witness did not tell before the I.O. during investigation that they recovered his daughter from the house of the maternal grandfather and he informed the matter to the police and police recovered his daughter alongwith the accused from the aforesaid house.

From a perusal of the testimonies of the P.W, it is revealed that the P.W-1 did not witness the incident. Further, it is seen that the witness has improved the prosecution story during trial from the story what he disclosed during investigation.

7. P.W-2 Dr. Tapan Kumar Bhowmick states during trial that on 17-06-2008 he was posted at Dhubri Civil Hospital in the capacity of Sub-Divisional Medical & Health Officer. On that day he examined one Musstt. Kohinur Bibi and he prepared report regarding his examination. Ext-2 is his report wherein Ext-2(1) is his signature. He recorded following opinions in his report:

1. The radiological age of the woman examined is below 18 (eighteen) years.
2. No opinion could be made as to whether the woman examined was raped or not.
3. No marks of violence are absent.

Ext-3 is the Pathological Report and Ext-4 is the X-Ray Report with plate.

During cross-examination, the aforesaid witness states that the actual age of the victim can be ascertained by adding two years and subtracting two years from radiological examination. Ext-2 was prepared by the Radiologist and at that time he was not present.

8. P.W-3 Md. Abdul Samad states during trial and in his examination in chief that the victim Kohinur Bibi is his niece. Kohinur Bibi was married to Sofiar Rahman with whom Kohinur Bibi led conjugal life for a period of 3/4 months. Thereafter, the accused kidnapped her. Thereafter, she was recovered from the village Paglahat-Balasi and from the house of maternal uncle of the accused.

During cross-examination he stated that he cannot say as to when the incident had taken place and he came to know about the incident from one Kurdus. He did not tell before the I.O. during investigation that the victim was recovered from the village Paglahat-Balasi and from the house of the maternal uncle of the accused.

From a perusal of the testimonies of the P.W-3, it is revealed that he is a reported witness of the incident and he did not see the same.

9. P.W-4 Md. Sayed Ali states during trial and in his examination-in-chief that he knows the victim Kohinur Bibi, who is his granddaughter. The victim Kohinur Bibi was married to Sofiar Rahman. After 3 (three) months of the aforesaid marriage, accused kidnapped her and took the victim to the house of his maternal uncle wherefrom, the police recovered the victim. At that time he was not present.

During cross-examination, he stated that he came to know about the incident from the father of the victim also he did not state before the I.O. during investigation that after three months of the aforesaid marriage accused kidnapped the victim and took her to the house of his maternal uncle and wherefrom the police recovered the victim.

From a perusal of the testimonies of the P.W-4 it is revealed that the P.W-4 is also reported witness also he has embellished as to the prosecution story during trial.

10. The P.W-5 Md. Hamidur Rahman is the elder brother of the victim and during trial he has generated a different story and stated that Kohinur Bibi eloped with the accused.

11. P.W-6 Mosstt. Hazara Bibi states during trial that and in her examination-in-chief that the victim Kohinur Bibi is her daughter, she knows the accused. On the date of incident and at the relevant point of time she was absent at his house as she went to deposit *Bidi* and at that time her husband was also absent at the house and during their absence, her daughter Kohinur was alone at house. After returning and at her arrival at the house, she found that her daughter Kohinur Bibi was missing. They took search for their missing daughter and came to know that accused had kidnapped her and took her away somewhere else. Thereafter, her husband lodged the *ejahar*. Subsequently, her daughter alongwith the accused were recovered from Paglahat-Balasi.

During cross-examination she stated that she did not state before the police during investigation that police recovered her daughter alongwith the accused from the village Paglahat-Balasi. After 4/5 days of the incident, accused and his daughter returned to her house and then her husband asked her daughter to stay alongwith accused and also did not allow her to stay at her house and on the aforesaid date, police took away her daughter and the accused from the road. Thereafter, her daughter stayed at her house for a period of 3/4 months. Finally, she was sent to the house of her husband and since then she is living peaceful married life alongwith her husband.

12. P.W-7 Mosstt. Kohinur Bibi being the victim of the incident states during trial and in her examination-in-chief that she knows the accused. 5 (five) years ago the incident had taken place. At that time she was married but she was at his parental home. On the date of incident and at the relevant point of time her father was absent and also her mother went to supply the *Bidi* and then accused Fazrul Hoque came to her house and told her that he love her. Then she replied in negative and thereafter, he dragged her and covered his mouth and eyes and forcefully got her boarded on a bicycle and took

her to his maternal uncle's house at Paglahat-Balasi. Thereafter, the accused forcefully caused sexual intercourse with her. They stayed for a period of 2/3 days at that house. Thereafter, elder brothers of accused Fazar Ali and Bahar Ali went to the house and brought her to her house and handed her over to her house. Her father did not allow her to enter into the house and drove her out. Thereafter, police brought her to the police station and got her medically examined and also got recorded her statement under Section 164 Cr.P.C. Ext-5 is her statement wherein Ext-5 (1) and Ext-5 (2) are her signatures.

During cross-examination she stated that her parental house is situated at thickly populated area and the persons namely Boktar Ali, Aktar, Sattar, Zakir and Jalil are the neighbours of her parental home. But none of the aforesaid persons witnessed her as to when she was carried away by the accused.

Further, she stated during cross-examination that the Paglahat-Balasi is situated at a distance of about 15 k.m. from her parental home. By National Highway, one can reach to the said house. From her house 1<sup>st</sup> they have to reach Balajan market, thereafter, Shebganj market and thereafter, Moterjhar and thereafter, Pratapganj and thereafter Paglahat-Balasi. During the aforesaid distance i.e. from her parental home to Paglahat-Balasi, she did not tell about the incident to anybody. The aforesaid market kept opened upto 9/10 p.m. and she was taken away from her house after sunset and during evening. She stayed 2/3 days at the house of maternal uncle of the accused. After 2/3 days of the incident, she was brought to her parental home. As many as 22 to 25 persons were residing at the house of maternal uncle of the accused and she did not tell about the incident to anybody of the aforesaid persons.

Further, it is revealed from the testimony of the I.O. that the P.W-7 did not state before the I.O. that accused covered her eyes and the mouth and forcefully got her boarded in the bicycle nor she stated before the Magistrate that her eyes were covered by the accused. The P.W-7 neither during investigation nor during the statement recorded under Section 164 Cr.P.C. stated that she was kept by the accused at the village Paglahat-Balasi. The aforesaid witness also neither during investigation nor during statement recorded under Section 164 Cr.P.C. stated that she was forcefully caused sexual intercourse by the accused.

From a careful perusal of the testimonies of P.W-6 and P.W-7 being the most material witness of this case, it is revealed that after 4/5 days of the incident, accused and the victim returned to the house of the informant. Further, it is revealed from the victim herself that she has embellished the story during trial and also she has made

a lot of improvement of the prosecution story from that of the story what she narrated during investigation and during the statement recorded under Section 164 Cr.P.C.

13. P.W-8 Md. Nur Mohammad was declared hostile by the prosecution and he was cross-examined by the Prosecution.

14. P.W-9 S.I. Anil Sarma states during trial and in his examination-in-chief that on 13-06-2008 he was posted at Golakganj Police Station in the capacity of S.I. of Police. On that day the then O.C. of the Police Station entrusted him with the investigation of this case. On getting the charge of investigation, he visited the place of occurrence, prepared the sketch map under Ext-6 wherein Ext-6 (1) is his signature. Thereafter, he recorded statement of the complainant and other witnesses and also recovered the victim and the accused. Thereafter, he got medically examined the victim and also got recorded her statement under Section 164 Cr.P.C. Thereafter, in the event of his transfer he handed over the C.D. to the O.C. of the Police Station.

During cross-examination the P.W-9 states that the ejahar was lodged on 13-06-2008 and the incident had taken place on 03-06-2008 and the victim girl was recovered from the road of the village Debattar Hasdaha.

15. P.W-10 S.I. Biren Ch. Barman states during trial and in his examination-in-chief that on 05-04-2009 while he was working as S.I. of Police at Golakganj Police Station, he received the Case Diary of this case from the then O.C. to complete the investigation. On perusal of the Case Diary, he found that his previous I.O. namely S.I. Anil Sarma had investigated into the case and he has completed almost the investigation. Thereafter, he laid the charge-sheet under Ext-7 wherein Ext- 7 (1) is his signature.

So these are all about the evidences on record.

16. I have carefully gone through the entire evidences on records, which are discussed herein above. On a minute perusal, it appears that here in this case, it is alleged that one Mosst. Koninur Bibi was kidnapped from her parental home while she was residing there after her marriage. In order to have the aforesaid allegation prosecution examined a nos of witnesses. From a perusal it is revealed that none of the witnesses among them excepting victim & being material witnesses had witnessed the incident. The own brother of the victim deposed during trial that the victim Kohinur Bibi eloped with the accused. The victim was recovered from the road as per the version of the mother not as alleged by her father in the ejahar so also during trial that the victim was recovered from the house of the maternal uncle of the accused.

17. Under the aforesaid circumstances, it is felt that the evidences of the victim will be very much pertinent to arrive at a just and proper decision of the matter in controversy.

18. From the testimony of the victim, it is vividly clear that she has embellished the prosecution story during trial as revealed from her statement recorded during investigation and under Section 164 Cr.P.C. It is alleged that the accused forcefully got her boarded on a bicycle and she was carried to the maternal uncle's house at Paglahar-Balasi, wherein she was kept for a period of 2/3 days. Further, from her statement, it appears that she was carried on a bicycle through a number of places and she met a number of people but she did not tell about the incident to anybody. This apart, she met as many as 22 to 25 persons at the house of maternal uncle of the accused but she did not tell about the incident to anybody of the aforesaid persons. But during trial it is revealed that the aforesaid allegations of the victim were not corroborated by any eye witness.

19. Considering the aforesaid facts and circumstances in the light of the factum of embellishment of prosecution story by the victim herself during trial, I am not inspired to act upon the story of the victim. Rather, I found force to observe that on the date of incident she herself went alongwith the accused. Inasmuch as the medical examination of the victim shows that the victim was below 18 years at the time of incident which can be ascertained by adding two years and subtracting two years of age. Thus, it can be concluded that here in this case the materials have not generated sufficiently to attract the Section 366 (A) I.P.C.

20. Considering the aforesaid aspect, it is finally concluded that the evidences so far surfaced in the testimonies of the P.Ws are not at all sufficient to bring home the offence alleged of. Therefore, it can be concluded that the accused is entitled to get the benefit of doubt. Accordingly on benefit of doubt he is acquitted and set at liberty forthwith. His bail bond stands discharged. Judgment is delivered in the open Court.

Given under my hand and seal of the Court on this 4<sup>th</sup> day of June, 2014.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri.