IN THE COURT OF THE SESSIONS JUDGE, KARIMGANJ AT KARIMGANJ

Present: Utpal Prasad. AJS

Sessions Judge

Karimganj at Karimganj.

SPECIAL SESSIONS CASE NO. 21 OF 2016 u/s. 366(A) of the Indian Penal Code, 1860

State of Assam

-Vs-

Faruk Ahmed S/o late Azir Uddin R/o Village Khagail P. S. & District Karimganj

Date of framing of charge : 07.03.2017

Dates of recording of

Prosecution's evidence : 18.05.2017, 24.08.2017, 10.11.2017,

12.01.2018, 05.04.2018.

Date of examination of the

accused u/s 313 of Cr. P. C. : 07.06.2018.

Date of hearing of argument : 23.07.2018.

Date of judgement : 06.08.2018.

LEARNED ADVOCATES WHO APPEARED FOR THE PARTIES

For the State : Mr. B. Deb, Additional Public Prosecutor

For the accused : Mr. A. Igbal, Advocate.

JUDGEMENT

1. The accused Faruk Ahmed is facing trial in this case on the charge of having committed an offence under section 366(A) of the Indian Penal Code with the allegation that when the informant's daughter, aged between 14-16 years,

had gone out of her house, he had abducted her forcibly with an intention that she would be forced or seduced to illicit intercourse. On institution of 1st information by the mother of the victim, Karimganj Police Station case number 671 of 2015 was registered under sections 341/366(A) of the Indian Penal Code, and after investigation, charge sheet was submitted alleging commission of the aforesaid offences and an offence under section 14 of the Protection of Children from Sexual Offences Act, 2012 by the accused. During trial, the prosecution examined all the 6 witnesses listed in the charge sheet and they were cross-examined. The stand of the defence during crossexamination of the prosecution witnesses and in his examination under section 313 of the Code of Criminal Procedure, 1973 is of denial and of false implication. Defence has not led any evidence. In the course of arguments, learned Public Prosecutor has submitted that the evidence of the prosecution witnesses show that the victim was induced by the accused to go with him and that the accused intended to have illicit intercourse with the victim and therefore, his liable to be convicted under section 366 of the Indian Penal Code. On the other hand, learned Counsel for the accused has submitted that there are striking contradictions in the testimonies of the victim and other prosecution witnesses and the stand taken during the investigation by the victim and the prosecution witnesses shake the trustworthiness of their testimony before the Court.

2. Based on the materials on record, the following points for determination arise for a decision by this court:

"Whether the aforesaid accused had abducted the victim forcibly with the intention to have illicit intercourse with her or to compel her to marry him?"

3. The victim was examined as prosecution witness number 2. She has stated that she had gone to a nearby grocery shop for purchasing pulse and when she was returning from the shop, suddenly a vehicle had stopped near her, 2 men had alighted from the said vehicle and had dragged her inside the

vehicle after closing her mouth and had sped away from the said place. She has stated that there were 5 persons in the vehicle and that they had taken her to some distant place and had stopped the vehicle inside jungle where they had dragged her out of the vehicle and had tried to disrobe her. She has stated that she resisted and tried to scream but fell unconscious and when she regained her consciousness on the same night, she found herself lying on the ground with her clothes torn but not removed completely. She has further alleged that after the dawn, four of the culprits had left the place on the motor vehicle and the remaining one, that is, the present accused, the fact of whose name being Faruk Ahmed could be known to her only later, took her to houses of his different relatives and kept her in captivity in those houses for about 7 days and then had brought her to Karimganj Court for marrying her. She has also stated that in the Court, while the accused had left her alone to fetch some papers, taking advantage of his absence, she had taken a mobile phone from the person standing there and had informed her parents as, according to her, she remembered her father's phone number whereafter her parents had rescued her and had apprehended the accused and had handed the accused over to the police. She has stated that she was then medically examined at the instance of the police and her statement was also recorded by a Magistrate. During cross-examination, the stand of the defence that the victim had stated to the police that she was acquainted with the accused since prior to the incident and that as he had offered to marry her, she had eloped with him without informing her parents; that she was acquainted with the accused since prior to the incident and that the accused used to work with her father and brother in the state of Mizoram has been confirmed by the investigating officer during his cross-examination. Due to typographical error, in cross-examination, it is shown that the investigating officer denied that the victim had made such a statement but perusal of case diary shows that the same is a typographical mistake. The investigating officer has also confirmed, at the instance of the defence, that the victim had stated to him that after she came to know that her mother had lodged a

police case against the accused, she and the accused had appeared at Karimganj police station. The victim has denied having narrated the incident to the Doctor and has stated that she could not say if the persons accompanying her there had narrated the incident to the concerned Doctor. She has admitted to have not stated to the police and to the concerned Magistrate that the said accused had brought her to Court for marrying her and that while the accused had left her alone for some time for fetching some paper, taking mobile phone from someone, she had informed she parents. She has not denied that she had stated to the concerned judicial Magistrate that Atik, and two others had brought her to the Karimganj police station at 9 AM.

She has admitted during cross-examination that she had not stated to the police that she had gone to a nearby grocery shop for purchasing pulse and while she was coming back from the shop, suddenly a vehicle had stopped near her startling her and that two men had alighted from the said vehicle and had dragged her inside the vehicle; that she had tried to raise alarm by screaming but the culprits had closed her mouth and that the said motor vehicle had 5 persons in it and that the said miscreants had taken her inside jungle; had dragged her out of the vehicle and had tried to disrobe her and that she had resisted and tried to scream but had fallen unconscious; that on the same night she had regained consciousness and had found herself lying on the ground with her clothes torn but not completely removed; that after the dawn, four of them had left the place of occurrence on the said motor vehicle. She has not denied that she had stated to the Magistrate that became acquainted with the accused, Ali and Atik in a marriage ceremony prior to the incident.

During her cross examination, this witness was looking nervous and shaky.

It is seen that the testimony of the victim is full of contradictions. While she has implicated the accused in her examination in chief, she had not taken the similar stand during investigation and it has been confirmed by the

- investigating officer that she had not implicated the accused in the said manner.
- 4. The prosecution witness no. 2, informant in this case and the mother of the victim, has stated that she was not in a residence when the incident had taken place and had come back on the following day and had heard that someone had taken her daughter away and that as she was not able to find the victim despite searches, she had lodged the 1st information. She has stated in her cross-examination that she had lodged the 1st information only once after the victim had gone missing and that at the time of lodgement of the 1st information, she was not aware who had abducted her daughter. She has exhibited the 1st information lodged by her as Exhibit 3 which mentions the name of the present accused. Even though she has stated that she did not know the name of the accused at the time she had lodged the 1st information, the certified copy of the General Diary Entry number 505 of Kaliganj Watch Post, exhibited by the investigating officer as Exhibit 7, shows that the said General Diary Entry was made on 31.07.2015 and contains the name of the accused. It is seen that the 1st information was lodged on 03.08.2015. The said General Diary Entry shows that at the time the said information was given by the prosecution witness number 3, she knew that the victim was staying with the accused in the house of the accused's maternal uncle. The printed 1st information report exhibited as Exhibit 4 shows that the 1st information was received on 03.08.2015 at 2 PM. However, the testimony of the investigating officer states that on receipt of written 1st information lodged by the prosecution witness number 3, the in-charge of the said watch post had made the aforesaid general diary entry and then had forwarded the victim 1st information to the Officer-in-charge of Karimganj Police Station leading to registration of Karimganj Police Station case number 671 of 2015 under sections 341/366(A) of the Indian Penal Code and that, thereafter, the investigating officer was given the responsibility to investigate into the case. The investigating officer has stated that the victim was recovered on 03.08.2015 when she and the accused had surrendered at

Karimganj Police Station. This witness has admitted to have stated to the investigating officer that she did not know if the victim had love affair with the accused and has also admitted that she had stated in the said statement that the accused used to work as a helper of her husband and her brother in the State of Mizoram. This shows that the statement of the victim that she could know the accused only after the incident is not correct. The statement, as mentioned above, of the investigating officer also, belies the statements of the victim and the informant that the victim had informed her parents through a mobile phone that she was in Karimganj Court whereafter, the informant and her other family members had gone to the Karimganj Court and had found them there and thereafter, had informed the police about the same leading to recovery of the victim and arrest of the accused.

5. The prosecution witness number 5 claims to be an eye witness to the incident. He has stated that on the day of the incident, at 5 PM, when the victim had come to the shop of his father, where he was also present, to purchase pulse, and immediately after she had gone back, he had heard her scream and had seen that 3 persons including the present accused had come in a car and had forcibly abducted the said victim by the said car. He has stated further that after hearing the scream he had come out of the shop and had seen the incident. He states that, thereafter, he had raised alarm and many persons had gathered there. In his cross-examination, he has stated that at that time, the informant had also come and that he had narrated the incident to her. However, this goes against the testimony of the informant that she was not in a residence and had come back only on the following day of the incident and that at the time of the incident, she did not know the name of the accused. Lending probability to the defence that the victim was acquainted with the accused even prior to the incident, the prosecution witness number 5 has admitted that he had stated to the police that he had seen the accused frequenting the house of the victim even prior to the incident. At the instance of the defence, the investigating officer has confirmed that this witness had not made the statement to him that the victim had come to his father's shop to purchase pulse and while she was going back, she was abducted by the accused and 2 more persons and that he had witnessed the incident and had then raised alarm leading to gathering of persons there. In his cross-examination this witness has also stated that his statement was recorded by the police after a gap of one day excluding the day of the incident. This does not sound credible as the 1st information was submitted before the Kaliganj Police Watch Post on 31.07.2015 and the date of the incident is alleged to be 26.07.2015.

6. The defence has been able to prove similar contradictions in the testimony of the prosecution witness number 4, who happens to be the brother of the victim. He has stated that the prosecution witness number 5 is his cousin and his shop is near his residence and that the said cousin had told him about the incident at around 6:30 PM that 2 unknown miscreants had abducted the victim in a white Nano car. He has confirmed that her mother came the next morning which shows that the testimony, in this regard, of the prosecution witness number 5, that after he raised alarm, the informant had come to the incident and he had narrated the incident to the informant is false. He states that after 2 days of the incident, after coming to know that the accused was also not seen in his residence from the day of the incident and after some persons had told him that the accused had abducted his sister, his mother had lodged the 1st information with the police. He has also stated that 4-5 days thereafter, one of his uncles had received a phone call from the victim stating that she had been brought to Karimganj Court and had asked him to go there whereafter, his uncle had informed him and his family numbers and all of them, thereafter, had gone to Karimganj Court. He states that in the meantime, he had received information that his victim sister and the accused had been taken to Karimganj Police Station. This again makes dent in the testimony of the victim which states that when the accused had brought her to Karimganj Court for marrying her, she had informed her parents and that then, her parents, with the help of the police, had rescued her and that the accused was arrested. The investigating officer has confirmed that this witness had not stated to him that the prosecution witness number 5 had informed him, at around 6:30 PM, that when the victim was going back to her residence after purchasing pulse from his father's shop, two unknown persons had kidnapped her in a white Nano car. Similarly, the investigating officer has also confirmed that this witness did not state to him that the victim had made a phone call to one of his uncles that she had been brought to Karimganj Court and that, thereafter, with the help of the police, the family members of the victim had rescued her. The investigating officer has also confirmed that this witness had not stated to the investigating officer that the victim had told him that the accused had abducted her and had taken her to an unknown destination in a forest and that had kept her confined a different places for about 4 days.

- 7. The Doctor who conducted medico-legal examination of the victim has assessed the age of the victim to be between 14 years and 16 years on the basis of her radiological examination. She has stated that on medical examination, the victim was not found having any injury mark on the person and on her private parts and that her hymen was torn and that the said tear was old. She has stated that she did not find any sign of recent sexual intercourse or any violence on the person of the victim.
- 8. From the above, it is seen that the testimonies of the prosecution witnesses are not consistent and contradict one another. Testimony of the victim suffers from substantial and material contradictions. The same is the situation with the testimony of the informant. The investigating officer has confirmed that the accused and the victim surrendered at Karimganj Police Station. This lends probability to the stand of the prosecution that on coming to know that the informant had lodged a police case against the accused, the accused and the victim had surrendered before the police. The prosecution witness number 3 and 5 have confirmed that the victim knew the accused since prior to the incident and therefore, the statement, in this regard, by the victim, is incorrect. This adds to the probability of the defence case that both the victim and the accused knew one another since prior to the incident. While

the victim has stated that she was brought by the accused to Karimganj Court for marrying her, in her statement before the Magistrate, made during investigation, she has stated that one Ali and one Atik had brought her and the accused to Karimganj Police Station and that the police had arrested the accused and had sent him to judicial custody. Clearly, testimony of none of the witnesses inspires confidence and those testimonies cannot be considered reliable. As such, it is held that the prosecution has not been able to prove that the accused had abducted the victim forcibly. Rather, the defence has been able to create a reasonable doubt in the case of the prosecution by making the theory that the victim herself had eloped with the accused probable. As such, the charge levelled against the accused does not seem to be worthy of belief. In view of the above, the aforesaid accused is acquitted of the charges under sections 366(A) of the Indian Penal Code and is set at liberty forthwith. However, his bail bond and surety shall remain extended till the next 6 months.

- 9. As the prosecution has not been able to prove that the minor girl is victim of any offence, no case for awarding any compensation to her under the victim compensation scheme of the state of Assam arises.
- 10. The instant case, therefore, stands dismissed on contest.
- 11. Send a copy of this judgment to the learned District Magistrate, Karimganj District and also to the Superintendent of Police, Karimganj District at Karimganj.

Given under my hand and seal of this court in presence of the accused and his learned counsel on this the 06th day of August, 2018.

Sessions Judge Karimganj at Karimganj.

APPENDIX

Prosecution Witnesses:--

P. W. 1: Dr. Shrimati Lipi Deb

P. W. 2 : Victim (name nor disclosed)

P. W. 3 : Shrimati Rukia Begum

P. W. 4 : Shri Jahir Hussain P. W. 5 : Shri Fujel Ahmed

P. W. 6: Shri Rahim Uddin Borbhuiyan

Prosecution Exhibits:-

Exhibit 1 : Medico-legal report of the victim.

Exhibit 2 : Statement of the victim u/s 164 of the Code of Criminal

Procedure, 1973.

Exhibit 3 : First Information.

Exhibit 4 : Printed form of the first information report. Exhibit 5 : Sketch map of the place of occurrence.

Exhibit 6 : Charge-sheet.

Exhibit 7 : Certified copy of the General Diary no. 505 dated 31.07.2015 of

the Kaliganj Watch Post/ Patrol Post.

Material Exhibits:- NIL

Defence Witness:- NIL

Defence Exhibit :- NIL.

Court Witness:- NIL.

Sessions Judge Karimganj at Karimganj.