

**IN THE COURT OF THE SESSIONS JUDGE, DHEMAJI.**

**Present:** **Shri S. Das, A.J.S.,**  
Sessions Judge,  
Dhemaji,

**JUDGMENT IN SESSIONS CASE NO. 117(DH) of 2015.**

(G.R. Case No.785/2015; Silapathar P.S. Case No.233/2015 Under Sections-366(A) of the Indian Penal Code)

The State of Assam

- Versus -

**Shri Krishna Bahadur Rai, .... Accused Person**  
S/O Lt. Agom Bahadur Rai,  
R/O Vill- No. 2 Phulbari  
P.S. Silapather  
Dist.- Dhemaji.

**Committing Magistrate:- N Kuri,**  
Addl. Chief Judicial Magistrate,  
Dhemaji.

**Appearance:**

**Shri P.C. Boruah,**  
Public Prosecutor ..... For the State

**Shri K.C. Sonowal, Advocate , .... For the Accused**

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<b>Date of prosecution evidence</b>	<b>: 16-03-2016, 18-04-2016,</b>
	<b>16-05-2016, 13-06-2016</b>
	<b>04-08-2016, 20-08-2016</b>
	<b>20-12-2016, 08-03-2017 and</b>
	<b>19-05-2017</b>
<b>Date of defence evidence</b>	<b>: Nil.</b>
<b>Date of arguments</b>	<b>: 04-12-2017</b>
<b>Date of Judgment</b>	<b>: 18-12-2017.</b>

### **JUDGMENT**

1. The prosecution case in brief is that on 07-09-2015 complainant-Smti. Pakhili Lalung lodged an ejahar with Sialpather Police Station alleging inter alia that the accused Krishna Bahadur Roy married her eldest daughter about 16 years ago and they were blessed with 2 (two) daughters and one son. It is alleged in the ejahar that the accused married her second daughter Smt. Junmoni Lalung and blessed with one female child. It is also alleged in the ejahar that the accused had driven out his first wife-Gunamai Lalung about one year back (from the date of filing the ejahar). Further, it is alleged in the ejahar that on 4-9-2015 her (complainant) 2<sup>nd</sup> daughter-Junmoni came to their house and took her youngest daughter-Pinki (Real name concealed) to their house inducing her that they would buy some clothes for her ( Pinki- real name concealed) at Silapathar as such, the accused took away her (Complainants) daughter –Pinki. Hence, the case.

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2. On receipt of the ejahar police registered a case vide Silapathar P.S. Case No.233/2015 u/s 366(A) of I.P.C. Police started investigation and on completion of investigation submitted Charge-sheet against the accused-Krishna Bahadur Rai u/s 366(A) of I.P.C. read with Sec. 4 of POCSO Act.
3. The case came up before the learned Addl. Chief Judicial Magistrate, Dhemaji and the Ld. Magistrate issued process for appearance of the accused and on appearance furnished necessary copies to the accused and committed the case to this Court.
4. On receipt of the case record and on production of the accused, this Court considered the materials on record and upon hearing both the sides, framed charge u/s 366(A) of IPC read with sec. 4 of POCSO Act, 2012 and read-over and explained to him to which he pleaded not guilty. The prosecution, in order to prove its case, examined 11 witnesses including the Medical Officer and the Investigating Officer. At the closure of the prosecution evidence, statement of the accused was recorded u/s 313 of Cr.P.C. Defence plea is of denial. Defence adduced no evidence.

**Points for determination :**

5. That you, on 6-9-2015 at Village-Phulbari Pathar kidnapped Smti Pinki, a minor girl below the age of 18 years with intent to marry her against her will or in order that she will be forced or seduced to illicit intercourse with you and thereby committed an offence punishable u/s 366 of IPC.  
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Smti Pinki  
Dhemaji Judge  
-Dhemaji*
6. That you, on the same date and thereafter, committed rape on Smti Pinki against her will and consent and thereby committed an offence punishable u/s 376 of IPC.

7. That you, on the same date and thereafter, committed penetrative sexual assault on Pinki, a minor girl below 18 years of age, and thereby committed an offence punishable u/s 4 of POCSO Act.
8. I have gone through the evidence on record and heard arguments of both sides.

**Discussion, Decision and Reasons thereof :**

9. PW1 the victim Smti Pinki stated that the accused is her brother-in-law. Complainant is her mother. The occurrence took place about 1 year ago (from the date of her recording evidence). On the day of occurrence, her sister-Junmoni Lalung took her to their house. After staying a night in their house, the accused assured her that he would take her back home after purchasing clothes for her. But, the accused did not purchase clothes for her and also did not take her back home. He took her to Pasighat in a 'Winger Vehicle' and kept her there in the house of a friend of the accused. He also told her that he would marry her. He kept her there for 15 days at Pasighat. Thereafter, she told the accused to take back her home. She also assured him that she would tell that she is coming with him (accused) of her own. Then accused took her to his own house from Pasighat. She informed her brothers over phone. Her family members informed the Police. Police brought her and the accused to the Police Station. Police recorded her statement. Magistrate also recorded her statement. At the time of occurrence, her age was 15 years. Exhibit- 1 is her statement before Magistrate and Ext-1(1) and Ext-1(2) are her signatures.

In cross-examination PW1 stated that her brother-in-law's house is at Phulbari of Silapathar. They came to Silapathar Town on foot. Her brother-in-law (accused) took her from Silapathar to Pasighat in a Winger Vehicle. He did not purchase clothes for her. She denied that the accused did not take her to Pasi-

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ghat. She denied that she has filed this false case as the accused did not purchase clothes for her. It is also denied that she has given false evidence.

10. PW2 Shri Siba Lalung stated that accused-Krishna Bahadur Rai is his brother-in-law. Complainant is his mother and the victim is his younger sister. Occurrence took place about 8 months ago (from the date of his evidence). Accused took away his sister to Pasi-ghat with intent to marry her. He also committed rape on her. At that time, age of the victim was 15 years. His mother filed the case. During investigation Police seized the Birth Certificate of his sister vise Ext-2, seizure list. Exhibit-2(1) is his signature. Paper Ext-1 is the Birth Certificate (proved in original),

In cross PW2 denied that at the time of occurrence, the age of his sister (victim) was above 18 years. It is denied that the accused did not take away the victim by inducement. He denied that he has given false evidence. He also denied that the accused did not rape her. He admitted that he had not seen the occurrence. He heard it from the victim only.

11. PW3 Smt. Pakhili Lalung stated that the occurrence took place about 8 months back (from the date of her deposition). Her daughter-Pinki went to the house of her sister-Junmoni. The accused is her (Junmoni) husband and her (PW3) son-in-law. On 6-9-2015 the accused induced her daughter-Pinki to buy some clothes for her and took her to a different place. Knowing the fact, she filed the case at police station. After knowing about filing the case, the accused informed them over phone that he would take back her to their house. Police recovered Pinki. On being asked to Pinki, she told that the accused induced her to go to Pasighat and there he committed rape on her. At the time of occurrence, Pinki was aged 15 years.

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In cross-examination PW3 stated that they came to know about the victim and accused going to Pasi-ghat after Pinki informed them over phone only.

Before 2 days of the occurrence, Junmoni asked Animaka to go to their house for 2 days. After 2 days, they came to know that accused took Pinki to a difference place. She denied that at the time of occurrence the victim Pinki was above 18 years. She denied that Pinki went out with the accused on her own accord. It is also denied that the victim did not state before her that the accused committed rape on her. She further stated that she cannot remember the date of birth and year of Pinki (victim).

12. PW4 Shri Jagat Hazarika stated that he knows the accused. He has land at Phulbari Pathar and he kept the accused there as keeper of his house, cow etc. One day, he (PW4) came to know from Likabali Police that the accused had done something and for which a case was filed against him. But they did not disclose the fact what the accused actually did. So, he has no knowledge about the case.

13. PW5 Gyan Bahadur Limbu stated that the accused is his relative. Accused is the sister-in-law (wife's sister) of the accused. One day police came to the house of accused and arrested him. He did not know why police arrested the accused. Police only asked about his name and address. He does not know actually what was happened.

14. PW6 Smt. Junmoni Rai stated in her evidence that accused is her husband and the victim Pinki is her younger sister. Occurrence took place in the last year. Her sister was coming to her house along with her husband (accused) on foot, but they did not come to their house and went away to different place. She knew about this from her mother. Police arrested his husband (accused) on the basis of the ejahar filed by her mother. Police took her statement.

In cross-examination PW6 stated that she had not seen the occurrence.

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15. PW7 Smt. Konbhani Bora stated that she knows the accused as well as the victim-Pinki. She heard from the village people that the accused took away Pinki and kept her at other place. Police came for investigation and they took her statement.

In cross-examination PW7 stated that she cannot remember actually who told her that accused has kept the victim Pinki in other place.

16. PW8 Shri Girish Sarma stated in his evidence that he knows the accused-Krishna Bahadur Rai. He (accused) was living near his house by constructing a house in the land of Jagat Hazarika. Occurrence took place in the last year. Police came in search of the accused. Then he came to know that the accused kept his sister-in-law (wife's sister) with him. Police recorded his statement.

In cross-examination PW8 stated that he does not know who told him about the occurrence.

17. PW9 Dr. Chandrajit Doley stated that on 25-09-2015 he examined Pinki at Model Hospital, Silapathar on police requisition on being escorted and identified by Janaki Barman. On examination, he found no recent evidence of recent forceful intercourse or any violent marks on her body or private parts and her age according to birth certificate is 15 years. Exhibit-4 is the Medical Examination Report and Ext-4(1) is his signature. Ext-5 is the Vaginal Swab Examination Report.

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18. PW-10 Shri Dharmeswar Lalung stated that he knows the accused Krishna Bahadur Rai as well as complainant-Pakhili Lalung. Gunamai Lalung is the sister-in-law of Pokhili Lalung. Occurrence took place in the last year, 2015. Pokhili's middle daughter was sent to the house of Subha Lalung so that she could stay as the accused was to go to Arunachal. Then Pokhili and her husband went to the house of the accused but did not find their daughter there. They came and told him (PW-10).then accused-Krishna said he will come and drop her back home.

But he did not come and so the case was filed. Then police went and found her in the house of Krishna (accused) only. Now, she (victim) is with her parents only. He did not ask her anything.

In cross-examination PW-10 denied that the accused did not kidnap the victim.

19. **PW-11** Shri Jugal Sonowal, I/O, stated that on 7-9-2015 he was at Likabali Police Station. On that day one Pakhili Lalung filed an FIR and O/C Abdul Hannan registered the FIR as Silapathar P.S. Case No.233/2015 u/s 366(A) IPC and he (Abdul Hannan) entrusted him with the investigation of the case. During investigation, he visited the P.O., drew sketch map of the P.O., recorded statements of witnesses, arrested the accused-Krishna Bahadur Rai and forwarded him to the Court. Victim was recovered and her medical was done. Her 164 statement was also recorded. He seized the birth certificate of the victim Pinki from Pakhili Lalung (complainant) and was given in zima to Pakhili Lalung. He collected the medical examination report and the 164 statement of the victim. On completion of investigation, he submitted charge-sheet against the accused u/s 366(A) IPC read with Sec.4 of POCSO Act.

#### Appreciation of evidence

20. From the discussion of the evidence on record it appears that the victim, pw1 is the sister in law of the accused. The victim in her evidence in chief has categorically stated that while she was in the house of her sister (wife of the accused), the accused, on the pretext of buying her clothes took her to silapathar and from silapathar he took her to Pasighat and kept there for 15 days. It is also in the evidence of pw1 that when she requested him to take her to her home then he took her the house of her another brother in law and the she informed her mother and she lodged complaint before police. PW3 is the complaint. According to her the accused induced her daughter to go with him and took her to Silapather

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and to other place and when they came to know about the act of the accused she informed police and her daughter was recovered. She also stated that her daughter told her that the accused had sexual intercourse with her.

21. So far as evidence of other pws is concerned we find that pw 2 is the brother of the victim and he has deposed in similar manner as pw3. Other non-official pws have spoken that they heard about the incident.

22. Now let me see whether the evidence on record constitutes the charges against the accused.

23. On careful scrutiny of the evidence of PWs we find that there is clear evidence regarding taking away of the victim by the accused and it is also quite clear from evidence of pw1 and other PWs that the accused kept the victim out of keeping of the her legal guardian for about 15 days .

24. Regarding rape on the victim we find that the victim in her statement u/s 164 Cr.PC. stated that the accused had sexual inter course with her every day for about 15 days in the house of his friend at pasighat. It is also in the evidence of victim that she got scared and cried and then the accused took out dagger and put her in fear of injury /hurt.

25. It may be noted that the victim in her evidence on oath at trial did not specifically stated that the accused committed rape on her. I shall discuss later regarding the efficacy of the evidence of victim. Now the most important aspect to be considered is the age of the victim. The victim in her statement u/s 164 Cr.PC as well as in her evidence during trial stated that she is aged 15 years at the time of incident. Then coming to the evidence of M.O we find that he mentioned the age as 15 years on the basis of birth certificate. Pw3 the mother of the victim also in her evidence stated that her daughter was aged 15 years at the time of the incident.

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26. Looking at the statement of pw 1 in cross examination we find that though defence put suggestion to pw3 that at the time of occurrence the victim was aged more than 18 years it was denied by pw3 . That apart we find that the defence except the suggestion in this regard has not been able to elicit anything concrete to show that the victim was aged about 18 years at the time of occurrence. From the evidence of the I.O it reveals that the IO seized the birth certificate of the victim and he also mentioned the date of birth as 04-10- 1999. On scrutiny prosecution evidence is found to be convincing in regard to the age of the victim. In my opinion the victim is aged less than 16 years.

27. I may at this stage look in to the provision of sec 366 IPC. Thereafter I shall come to consider the as to whether there was rape on the victim.

28. Ingredients of offence.—The essential ingredients of the offence u/s 366 are as follows:

For the first part of the section—

- (1) The accused kidnapped or abducted a woman;
- (2) The accused intended or knew it likely that—
  - (a) the woman abducted or kidnapped would be compelled to marry any person against her own will , or
  - (b) she would be forced or seduced to illicit intercourse.

29. The intention of the accused is the basis and the gravamen of an offence under this section. The volition, the intention and the conduct of the accused determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established the offence is complete, whether or not the accused

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succeeded in effecting his purpose, and whether or not in the event the woman consented to the marriage or the illicit intercourse.

30. In the case in hand we find that there is convincing evidence on record to show that the accused by way of deceitful means took the victim, minor to silapathar and pasighat and kept her there in a house for about 15 days . It is also quite palpable from the evidence of the victim that the accused abducted /kidnapped the victim with intent that she might be compelled to marry him or would be forced to have sexual inter course with him.

31. So far as the allegation of rape is concerned it is found that the victim has not clearly stated in her evidence during trial that she was raped by the accused , nor the doctor who examined her found any sign of rape or mark of injury on any part of her body . Amended section 375 IPC (punishable u/s 376 IPC) and section 3 of POCSO Act (punishable u/s 4 of POCSO Act) speak of penetrative sexual intercourse/assault.

32. It is well settle that in a case of sexual assault conviction can be based solely on the testimony of the prosecutrix if her evidence inspires confidence. In the case in hand we find that the victim in her evidence stated that the accused took her with intent to marry. However as mentioned above there is no convincing evidence regarding forcible sexual intercourse.

33. This being the position, I find it difficult to conclude that the accused committed rape on the victim. Consequently the ingredients of sec 4 of POCSO Act are not established in this case.

34. In view of what has been discussed above I find that prosecution has been able to prove the charge u/s 366 IPC beyond all reasonable doubt. However I find that prosecution has failed to prove the charge u/s 376 and 4 of POCSO Act beyond all reasonable doubt.

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**ORDER**

35. I find the accused guilty u/s 366 of I.P.C. Accordingly, he is convicted. However, I find the accused not guilty u/s 376 of I.P.C. and u/s Section 4 of POCSO Act. Accordingly, the accused is acquitted of the said charges.
36. Heard the accused on the point of sentence. He has pleaded for mercy and submitted that he has been in jail hajot for 2 ½ years and he prays for leniency in respect of sentence.
37. Considering the facts and circumstances, the accused is sentenced to undergo Rigorous Imprisonment for 3 (three) years and to pay a fine of **Rs.1,000/-** ( Rupees one thousand) i/d to suffer R.I. for another 2 (two) months u/s 366 of I.P.C.
38. Set off the period of detention.
39. Let a copy of the judgment, free of cost, be furnished to the accused/convict.
40. Detail judgment is typed out in separate sheets and tagged with the case record.
41. Judgement is pronounced in open court.
42. Given under my hand and seal this 18<sup>th</sup> day of December 2017.

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( S. Das )

Sessions Judge,  
Dhemaji.