IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SESSIONS CASE NO. :- 46 of 2018

(Under Section 366(A) of the IPC, arising

of G.R. Case No. 725 of 2018)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur

Tezpur

Prosecutor State of Assam

VS-

Accused :- 1. Sri Bipul Dey,

Son of Sri Narayan Dey, Resident of Patidoi Bherela Police Station – Missamari Dist:- Sonitpur, Assam.

Date of framing Charge :- 15/03/2018

Date of Recording Evidence :- 29/03/2018 , 21/04/2018

& 20/08/2018

Date of Argument :- 15/12/2018

Date of Judgment :- 21/12/2018

Counsel for the Prosecution :- Mr. Munin Chandra Baruah

Public prosecutor

Sonitpur.

Counsel for Accused :- Smti S. Das, Advocate.

JUDGMENT

- **1.** In this case accused Sri Bipul Dey is put for trial for allegation of charge u/s 366(A) of the IPC.
- 2. The facts leading to institution of this case, according to the FIR in brief is that on or about 5 p.m. of 22-02-2018 informant Swapan Chaki was informed by the Thelamara police station stating that his 16 years old niece was kept at their police station. In the mean time while he reached the Thelamara Police station came to know that on or about 4.30 p.m. accused took her in a bike near Kali Mandir of Lakupara forcefully by threatening her. To safe her from the clutches of the accused near the centre bridge of Thelamara at about 4.30 p.m. she jumped. Thereafter, nearby people caught accused and hand over to the police. Hence, this prosecution case. The ejahar was filed by informant Sri Swapan Chaki on 22-02-2018 before the O/C of Missamari Police Station.
- **3.** On receipt of the aforementioned FIR, the O/C Missamari police station registered a case vide Missamari P.S. Case No. 30/18 u/s 366 (A) of IPC read with section 18 of POCSO Act. After completion of usual investigation, the O/C of Missamari Police Station filed charge sheet u/s 366(A) of IPC against the accused Sri Bipul Dey.
- 4. On being appeared the accused person before this Court, after commitment of the record, after hearing both parties, framed charge u/s 366(A) of the IPC against the accused Sri Bipul Dey. Particulars of the charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined 7 numbers of witnesses in this case. After completion of prosecution witnesses, statement of the accused is recorded u/s 313 Cr.P.C. All the allegations and evidence appears against the accused are put before him for his

explanation where he denied the allegation and declined to adduce defence evidence.

- **6.** I have also heard the argument put forward by the learned counsels of both sides.
- **7.** The point for decision in this case is that -
 - (1) "Whether the accused person on or about 4 p.m. 22-02-2018 at Lakhupara near Kalimondir under Missamari PS induced the victim, a minor girl under the age of 18 years to go from her house or to do any act or acts with the intent that she may be (or knowing that it is likely that said victim will be) forced (or seduced) to illicit intercourse with him and thereby committed an offence punishable under section 366(A) of the IPC?"

Reasons, Decisions and reason for decision.

- **8.** To arrive at the judicial decision, let me appreciate the evidence on record.
- that the occurrence took place on 22-02-2018. On that day, at about 4 p.m. victim who is his niece, aged about 16 years, informed him over phone that one boy namely Bipul Dey kidnapped her. Then he went to Thelamara police station. There he met his niece/victim and accused. She told him that when accused called her to school then she came out. Accused took her in a bike with intent to take her to her school but without dropping her at the school forcefully took her towards village. While the victim raised alarm asking accused to drop her but as there were no other persons so none has come to help her. At Thelamara at last she jumped from the bike and she sustained injury. People gathered there and handed over them to police of Thelamara. In the Thelamara police station in his presence and many persons accused confessed that he loved the girl so he took the girl. Then he lodged the ejahar before

the O/C Missamari PS. Ext. 1 is the said ejahar and Ext. 1(1) is his signature. The ejahar was written by one scribe Shyamanta Das as per his dictation. Next day, victim was examined medically and she was brought to the court for recording her statement u/s 164 Cr.P.C. Thereafter, the victim was handed over to them.

In cross-examination, he admitted that the father of the victim is still alive. She stays with her parents. The victim boarded the bike of the accused to drop her at school. He does not know whether in the FIR he has written that accused took his niece on his bike with intent to drop her at school. The distance between Lakhupara i.e. the place of occurrence and Thelamara is about 12 km. In between Lakhupara and Thelamara there are about two villages. There were about 1200 families reside in both the village. In between Lakhupara and Thelamara there are only one centre namely Bashbera. There was a shop owned by Phukan Chaki in the place of occurrence.

10. PW 2 Sri Phukan Chaki who turned hostile. The unhostile portion of his evidence is that the occurrence took place on 22-02-2018 at about 4 p.m. On 21-02-2018 accused Bipul Dey came to his shop along with four note books and 2/3 numbers of keys and gave him it to hand over the same to the victim girl. According to the direction of accused, he has handed over the note books and keys to the victim girl. On 22-02-2018 at about 4 p.m. when victimi went to school then accused arrived there and asked her to board his bike. He (PW 2) told the victim to seat in the motor cycle as he is going towards her school. Thereafter, he came to know that accused Bipul did not stop his bike in the school but he proceed towards Thelamara. So the victim girl jumped from the bike. Victim told him that she loved the accused.

In cross-examination by defence, he stated that victim accepted the note books and keys offered by accused Bipul Dey. He has not heard any scolding made by Bipul Dey to victim. He has not seen in

which side accused took victim in his bike. He does not have any personal knowledge about the happenings in their way side.

11. PW 3 Kartik Debnath stated that the occurrence took place on 22-02-2018 at about 3/4 p.m. During that time he was at his shop. He saw accused taking the victim in his bike throughout the road opposite his shop. Victim belongs to his village. She was about 16 years. Then he heard that when the accused took victim she was jumped from running bike of the accused Bipul Dey. Nearby people handed over the victim and accused to the police. Then he rushed to the police station and saw the accused and the victim there.

In cross-examination, he has not heard anything from victim girl. He has no any personal knowledge about the happenings in their way side.

12. PW 4 Sri Subudh Sarkar, stated that occurrence took place on 22-02-2018. On that day, at about 8.30 p.m., he came to know from one neighbor that one girl namely, Miss X was taken away by Bipul Dey. Then he rushed to the house of the victim and met the victim there. There he came to know from the victim that she has been taken to a place under Thelamara PS by accused Bipul Dey in a bike and out of fear victim jumped from the bike as a result, she sustained injury on her knee. Then neighbouring people caught the accused and victim and handed over them to Thelamara PS. The victim is a student of Missamari High School at the time of incident.

In cross-examination, he admitted that Swapan Chaki is the elder uncle of victim. They are co-villagers. Today, victim, Swapan Chaki and he himself came to the court together by Bus. He came to know that Swapan Chaki deposed before the court earlier. He does not know from where and in what condition accused Bipul Dey taken the victim girl and does not know how and where victim sustained injury on her knee.

13. PW 5, victim Miss X, who stated that the occurrence took place on 22-02-2018. On that day, at about 3 p.m., when she was sitting in the house of her uncle, her uncle asked her to go to Dighaldol LP school to meet Tarun Nath for some lessons to be taught there. At that time accused Bipul Dey was standing near their gate. As per suggestion of her uncle, she went near the accused whether there will be class at Digholdol LP School or not. Then she confirmed from accused Bipul Dey that class will be started at Digholdol LP school. Thereafter, as per direction of the accused she took her Identity Card and became ready to go to Digholdol LP school to attend the class. Thereafter, she went to Digholdol LP school. On the way near Kalimandir accused stopped his bike near her and asked her to board in his bike as he will also go to same school. She told him that she is able to go on foot. Then accused forcefully got up her in his bike. On the way, the accused did not stop his bike near the school and rode his bike in high speed towards garden which she did not know. When the bike reached near Thelamara she could know about the location of Thelamara and out of fear she jumped from the bike and sustained injury on her knee. When she reached Thelamara she repeatedly told him to stop his bike and got her down but he did not do so. Then she cried but it was no effect so she jumped from the bike. On hearing of her crying nearby people gathered there and caught the accused and the accused along with her handed over to Thelamara Police station. There she informed about the incident to her parents over a mobile phone which is taken from one boy. Thelamara Police took her to nearby hospital for medical examination. Thereafter her parents took her to the house. Police brought her to the court for recording statement u/s 164 Cr.P.C. Ext. 2 is her statement recorded u/s 164 Cr.P.C. and Ext. 2(1) and 2(2) are her signatures. During investigation police has also collected photo copies of her Birth certificate and Admit Card of Board of Secondary. Her date of birth is 18-11-2000.

In cross-examination, she admitted that she does not know the registration number of the bike where accused took her at the relevant time. She knows that Bipul Dey is by profession carpenter. There are no houses on the side of the road by which Bipul Dey took her in his bike. Accused took her near the Kalimandir and near the Kalimandir there is a house of Basanta Das. In the eastern side of Kalimandir there is a grocery shop of her uncle Phukan Chaki. There is no any person namely Abir Chaki resides. She has not made statement before the learned Magistrate and also before the I.O. about the speed of the bike when accused took her.

PW 6 Sri Upen Sarmah, the Investigating Officer of this case, 14. stated that on 22-02-2018 he was posted as 2nd Officer at Missamari Police station. On that day, he was incharge of the Missamari Police station. On that day one Swapan Chaki lodged an ejahar before the police station. On receipt of the ejahar, he himself as incharge of the Missamari Police station registered a case being Missamari PS case No. 30/18 u/s 366 (A) of the IPC read with section 18 of the POCSO Act and himself taken the charge of investigation of the case. Ext. 1 is the ejahar and Ext. 1(3) is his signature. On 23-02-2018 he visited the place of occurrence and prepared the sketch map of the place of occurrence. Ext. 3 is the sketch map and Ext. 3(1) is his signature. He has also recorded the statement of witnesses, namely, Subudh Sarkar, Phukan Chaki and Kartik Debnath. On that day also he has recorded the statement of the victim and statement of the accused. On 22-02-2018 he has also seized one motor cycle being Registration No. AS 12 S 9260 from the accused Bipul Dey in presence of witnesses. Ext. 4 is the seizurelist and Ext. 4(1) is his signature. Thereafter, the seized motor cycle was given zimma to one Narayan Dey. He has sent the victim girl to the learned Magistrate for recording her statement u/s 164 CR.P.C. One birth certificate and one Admit Card of victim were given by the victim to him during investigation where the date of the birth of the victim is on 18-11-2000 and after completion of usual investigation, finding sufficient materials against the accused, I have filed chargesheet against the accused Bipul Dey u/s 366(A) of IPC. Ext. 6 is the chargesheet vide chargesheet No. 13/18 dated 28-02-2018 and Ext. 6(1) is his signature.

In cross-examination, he admitted that though he sent the victim for medical examination but the victim and her parents refused to examine private parts of the victim so, the victim was not examined by doctor to ascertain her age. During investigation, the victim and her guardian submitted him photocopies of age certificate and Admit Card on the basis of which he has filed chargesheet against the accused u/s 366(A) of the IPC. The distance between the Kalimondir and Thelamara bridge i.e. the place of occurrence is about 15 km. There are villages of 3/ 4 in between Kalimondir and Thelamara bridge i.e. the place of occurrence.

15. PW 7 Smti Sparsita Garg stated that on 23-02-2018 she was posted as Judicial Magistrate, 1st class, Sonitpur, Tezpur and on that day in reference to Special POCSO Case No. 14/18 a minor girl namely, Miss X, aged about 16 years, D/O Sri Shiv Prasad Chaki of village Lakupara under Missamari PS was produced before her for recording her statement. The said victim was escorted and identified by WPC 633 Jonali Gogoi. She has examined the witness in her court Chamber. At the time of recording her statement other than her and the victim none was there. The victim made statement voluntarily. After recording her statement, she has read over the contents of the statement and on acceptance she put signature thereon. Ext 2 is the statement of said victim and Ext. 2(3) is her signature. Ext. 8 is her order dated 23-02-2018 and Ext. 8(1) is her signature.

She admitted in cross-examination that the victim did not state in her statement u/s 164 Cr.P.C. that at that time accused Bipul Dey was

standing near her gate, then she confirmed from accused Bipul Dey that class will be started at Dighaldol LP school.

- **16.** These are the evidence of the prosecution case. Defence plea is total denial while his statement is recorded u/s 313 Cr.P.C.
- **17.** Learned Public Prosecutor for the state submitted that the prosecution has ably proved the case beyond any reasonable doubt.
- On the other hand, learned counsel for the accused submitted 18. that the prosecution has failed to prove the charge against the accused beyond any reasonable doubt. Firstly, other than the victim none is the eye witness of the occurrence. Secondly, the age of the victim is suspicious though victim herself stated in her statement u/s 164 Cr.P.C. that she was about 16 years of age but her parents has failed to submit the original birth certificate of the victim. The I.O. himself admitted that during the investigation he has collected the photo copy of birth certificate but it is not that he after seeing the original, received the photo copy of the birth certificate in the record. Therefore, date of bith as mentioned in the photo copy of the birth certificate cannot be reliable. Besides that, victim was refused to examine through the doctor to ascertain her age. Therefore, the age of the victim as stated by complainant and victim is doubtful. Thirdly, according to Phukan Chaki, PW 2, who is victim's own uncle (as admitted by victim in her cross-examination) he was reported by victim that she loved the accused. Therefore, though the victim stated that she was forcefully taken by the accused in his bike to drop her at school but she willingly boarded in the bike of the accused. Had the victim been forcefully taken by the accused in his bike she could have raised alarm. There are many public and pedestrian in the road from the place where he was alleged to be taken to the place where she jumped from the bike. Had she protested on the way she could have easily safe from the clutches of the accused but she did not do so. Therefore, forcefully taking her by the

accused is not proved. **Lastly,** there is no any iota of evidence that accused took her forcefully or seduced to illicit intercourse. Under such circumstances, the accused is required to be acquitted.

- **19.** Keeping in mind the rival submissions advanced by learned counsel of both the parties, I am going to dispose the case as follows:
- **20.** Since the case is charged u/s 366(A) of IPC against the accused, to brought the charge under section 366(A) of the IPC, prosecution must prove that
 - "(i) that the accused induced a girl;
 - (ii) that the girl was under 18 years of age;
 - (iii) that the girl was induced to go from any place to do any act, and
 - (iv) that the accused did as above with intent that such girl may be, or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person."
- **21.** A close scrutiny of the record, it appears that to substantiate the case has examined 7 numbers of witnesses. Out of 7 numbers of witnesses two i.e. PW 6 and 7 are official witnesses and there remained 5 un official witnesses. Out of the said five numbers of un official witnesses, PW 2 who is the own uncle of the victim turned hostile. It is a fact that other than allegation of forcefully taking the victim by accused there is only eye witness i.e. the victim herself.
- **22.** Let us see the evidence of victim how she proved the prosecution case against the accused.

As stated above, according to the victim on the day of incident, at about 3 p.m., when she was sitting in the house of her uncle, her uncle asked her to go to Dighaldol LP school to meet Tarun Nath for some lessons to be taught there. During that time accused Bipul Dey was standing near their gate. As per suggestion of her uncle, she went near the accused whether there will be class at Digholdol LP School or not. Then she confirmed from accused Bipul Dey that class will be started at Digholdol LP school. Thereafter, as per direction of the

accused she took her Identity Card and became ready to go to Digholdol LP school to attend the class. Thereafter, she went to Digholdol LP school. On the way near Kalimandir accused stopped his bike near her and asked her to board in his bike as he will also go to same school. Though initially she refused to go with the accused but ultimately according to her accused forcefully got up her in his bike. But on the way, the accused did not stop his bike near the school rather rode his bike in high speed towards garden. When the bike reached near Thelamara she could know about the location of Thelamara and out of fear she jumped from the bike as a result she sustained injury on her knee. It is a fact that accused is known to her for a long time. Though she stated that accused forcefully took her in his bike but there is no any other evidence that she was taken by accused forcefully. For argument sake, if it is believe that accused really forcefully taken her in his bike she could refused to accompany with him. It is not that she was forcefully taken in the bike at the point of dagger or such weapon or any threatening even she has not desire to go with the accused, she could have raised alarm on the way to the place of jumping from the place of her boarding near Kali Mondir but she did not do so. There is an ample opportunity to raise protest within 15 km journey but she did not do so. Secondly, if the accused is stranger to victim, she could not receive the note book and keys which were given by the accused to Subudh Sarkar to hand over to her. Thirdly, the evidence of PW 2 who is the own uncle of the victim stated that victim told him that she loved the accused. Therefore, taking forcefully or induced the victim to go from a place or do an act does not arise. Fourthly, according to the victim, accused took her near the Kalimandir and near the Kalimandir there is a house of Basanta Das. In the eastern side of Kalimandir there is a grocery shop of her uncle Phukan Chaki. But the I.O. has failed to examine any of the family members of Basanta Das. However, the I.O. has examined the victim's own uncle Phukan Chaki who has a grocery shop near Kalimondir but said Phukan Chaki has turned hostile. As stated above,

his unhostile portion of evidence is that he was reported by victim that she loved the accused. Therefore, the unhostile portion of evidence of PW who is not also prosecution witness and also own uncle of the victim. There is no any evidence that PW 2 has any enmity with the complainant or with the victim to disbelieve the unhostile portion of evidence of PW 2.

Lastly, the age of the victim cannot be ascertained by way of giving cogent evidence because, the victim was not medically examined to ascertain her age and the I.O. has collect only the photo copy of the birth certificate of the victim. Therefore, the age of the victim as stated by prosecution as under 18 years is also not proved.

- **23.** Under such circumstances, the statement of the victim cannot be found reliable, convincing and trustworthy to convict the accused in the alleged charge. Hence, the prosecution has failed to prove charge levelled against the accused beyond any reasonable doubt. As such, the accused Sri Bipul Dey is acquitted from the charge u/s 366(A) of the IPC and set him at liberty forthwith.
- **24.** The liability of the bailor is hereby discharged.

Send back the GR Case record being No. 725/18 to the learned committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the $21^{\text{st}}\,$ day of December, 2018.

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR: TEZPUR

Dictated and corrected by me

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

(R. Hazarika), Steno.

A-N-N-E-X-U-R-E

1. Witnesses for Prosecution

PW 1 : Sri Swapan Chaki, complainant

PW 2 : Sri Phukan Chaki

PW 3 : Sri Kartik Debnath

PW 4 : Sri Subudh Sarkar,

PW 5 : Victim Miss X

PW 6 : Sri Upen Sharma, I.O.

PW 7 : Sparsita Garg, JMFC, Tezpur.

2. Prosecution Exhibits:

Ext. 1 :- Ejahar.

Ext. 2 :- 164 Cr.P.C. statement of the victim

Ext. 3 :- sketch map

Ext. 4 : seizurelist

Ext. 5 : Prayer.

Ext. 6 : Charge sheet.

Ext. 7 : case diary of Missamari PS No. 13/18.

Ext. 8 : order dt. 23-02-2018 of JMFC, Tezpur.

(A.K. Borah)
SESSIONS JUDGE,
SONITPUR: TEZPUR