IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SESSIONS CASE NO. :- <u>255 of 2017</u>

(Under Section 366 of the IPC, arising out of G.R. Case No. 1118

of 2015)

Present :- Sri Ashok Kumar Borah, AJS

Sessions Judge, Sonitpur

Tezpur

Prosecutor :- State of Assam

-vs-

Accused :- 1. Sri Pinku Tanti

Son of Sri Tena Tanti, Resident of Milanpur Police Station – Tezpur Dist:- Sonitpur, Assam.

Date of framing Charge :- 21-08-2017

Date of Recording Evidence :- 28-08-2017, Date of examination of accused u/s :- 28-08-2017

313 Cr.P.C

Date of Argument :- 28-08-2017

Date of Judgment :- 28-08-2017

Counsel for the Prosecution :- Mr. Munin Chandra Borah

Public prosecutor

Sonitpur.

Counsel for Accused :- Mr. S. K. Roy, Advocate.

J U D G M E N T

- 1. In this case accused Sri Pinku Tanti is put for trial for allegation of charge u/s 366 of the IPC.
- 2. The prosecution case according to the FIR in brief is that on or about 5:30 AM, in the evening, on 13-05-2015 the informant's minor sister Miss "X" aged about 15 years of old was missing from their home. On the said day of

occurrence at about 8 AM, they came to know from regarding secret source that the accused induced his minor sister and kidnapped her and also took her to some unknown place. Hence, the prosecution case. The FIR was filed by the informant Sri Dipeswar Kandha before the Office-In-charge of Dhekiajuli PS on 15.05.2015.

- **3.** On receipt the ejahar, the O/C of Dhekiajuli PS, registered the same as Dhekiajuli P.S. Case No. 273/15 u/s 366(A)/370 of IPC r/w 4 of POCSO Act. After completion of usual investigation, the O/C Dhekiajuli Police Station sent up the case for trial against the accused, Sri Pinku Tanti u/s 366 of IPC.
- **4.** On being appeared the accused person before this Court, after commitment of the record, after hearing both parties, I framed charge u/s 366 of the IPC against the accused Sri Pinku Tanti. Particular of the charge was read over, explained to the accused to which he pleaded not guilty and claimed to be tried.
- **5.** To substantiate the case prosecution examined only two witnesses including the informant and the victim of this case. After examination of the aforesaid witnesses including the victim, learned counsel for the accused submitted to close the evidence on the ground that neither the complainant nor the victim in their statements implicated anything against the accused person. Despite that both the witnesses stated that the victim was in love affair with the accused person, so she eloped with the accused person and ultimately married with the accused and at present they lived together as husband and wife peacefully. Ld. Public Prosecutor also conceded the same fact. So, praying for closing the evidence on the ground that even if examined the other witnesses, prosecution could not be developed.
- **6.** Speedy trial is the right of the accused person. Considering all these aspects, prosecution evidence is closed. After completion of prosecution witnesses, the statement of the accused is recorded u/s 313 Cr.P.C. All the allegations made against the accused and the evidence appears against the

accused are put before him for his explanation where he denied the allegation and declined to adduce defence evidence.

- **7.** I have also heard the argument put forward by the learned counsels of both sides.
- **8.** The point for decision in this case is that -

(1) "Whether on or about 5:30 PM of 13.05.2015, at Tulip Tea Estate under Dhekiajuli Police station, the accused induced/kidnapped "X", with intent that said "X" may be compelled or knowing that it is likely that she will be forced or seduced to illicit intercourse or compelled to marry with the accused or any person and thereby committed an offence punishable under section 366 of the IPC?

Reasons, Decisions and reason for decision.

- **9.** To arrive at the judicial decision, let me appreciate the evidence on record.
- **10. PW 1, Sri Dipeswar Kandha** stated before this Court that the victim "X" is his sister. The incident took place on or about 3 years back. On the date of alleged incident, his sister loved with the accused and ultimately eloped with the accused. The brother of the accused has married his sister. So, the accused is known to them for long time. As they could not find the accused, so they filed an ejahar against the accused. Ext 1 is the FIR and Ext 1 (1) is his signature. Thereafter, "X" was found with the accused person. They have performed marriage and at present lived as husband and wife peacefully. At present "X" gave birth a child. Since, his sister and the accused lived peacefully as husband and wife so, he does not like to precede the case. Infact, the accused is an innocent person.

- **11.** In his cross examination, he admitted that he has no objection if the accused is acquitted from this case.
- 12. PW 2, Miss "X', the victim of this case stated that the accused is her husband. The incident took place on or about 2 years ago. After love affair with the accused she married with him and living as husband and wife. On filing of the case, police recovered her. Thereafter, she was examined by doctor and also examined through the Learned Magistrate. Ext. 2 is her statement u/s 164 Cr.P.C and Ext. 2(1) and 2(2) are her signatures. At present she lived with the accused as husband and wife. As a result of their marriage, one boy was also born between them. She eloped with the accused on her own will so the accused is innocent and she does not want to proceed with the case.
- **13.** In her cross examination, she admitted that she has no objection if the accused is acquitted from this case.
- **14.** These much is the evidence of the prosecution case. Accused pleaded total denial while his statement was recorded u/s 313 Cr.P.C.
- **15.** Since the case is charged u/s 366 of the IPC, the prosecution must prove that :
 - "(i) kidnapping by the accused or abduction by him;
 - (ii) that the person so kidnapped or abducted is a woman;
 - (iii) that the accused then intended, or knew that it was likely,
 - (a) That such woman might or would be compelled to marry a person against her will, or
 - (b) That she might or would be forced or seduced to illicit intercourse."
- **16.** Law is well settled that by merely finding that the accused abducted the woman, the charge under section 366 of IPC could not be held to have been proved. It is further necessary to find out that they abducted the woman for any of the purposes mentioned in section 366 IPC and in the absence of such a finding, the charge must fail.

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17. The most important witness in an abduction case is generally the

abducted woman herself and where she is not forthcoming and the other

witnesses are not a very reliable type, the prosecution evidence must be carefully

scrutinised and weighed.

18. Here in the instant case as discussed above, the prosecutrix herself gave

goodbye to the prosecution case by stating that she loved with the accused

person so, she eloped with him. Besides that she lives with the accused persons

as husband and wife. She clearly stated that the accused is a innocent person so

even she has no objection if the accused is enlarged on acquitted. Similarly, the

informant/PW 1 himself stated that the victim who is his sister eloped with the

accused and thereafter, married with him. That apart the informant stated that

the accused is a innocent person even he has no objection if the accused is

enlarged on acquitted. Thereafter, no any ingredient of the alleged offence is

reveals by the statements of the victim and the informant of this case.

22. In view of the aforesaid reasons, the alleged charge is failed. Therefore, I

am bound to hold that the prosecution has failed to prove the case against the

accused Sri Pinku Tanti beyond any reasonable doubt. As such, he is acquitted

from the charge u/s 366 of the IPC and set him at liberty forthwith.

23. The liability of the bailor is hereby discharged.

Send back the GR Case record being No. 1118/15 to the learned

committal court along with a copy of this order.

Given under my Hand and Seal of this Court on this the 28th day of

August, 2017.

(A.K. Borah) SESSIONS JUDGE,

SONITPUR: TEZPUR

A P P E N D I X

Prosecution Witness

1. Prosecution Witness No.1 :- Sri Dipeswar Kandha, informant

Prosecution Witness No.2 :- Mrs. "X", victim

EXHIBITS

Exhibit No. 1 : FIR

Exhibit No. 2 : 164 Cr.P.C. statement of the victim.

Exhibit No. 2 (1-2) : Signatures of the victim

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