IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

SESSIONS CASE NO. 357 OF 2017

(Under Section 363/370 of the IPC, arising

out of GR Case No 4128 of 2017)

Present Sri Ashok Kumar Borah, AJS :-

> Sessions Judge, Sonitpur, Tezpur.

State of Assam Prosecutor

-Vs-

1. Sri Rahul Kurmi, **Accused**

S/o Lt Bikash Kurmi, Vill- Kachubil, PS – Paneri, Dist- Udalguri(Assam)

Date of framing charge 06-12-2017.

Date of Recording Evidence 14-12-2017, 18-12-2017.

Date of examination of accused u/s:-18-12-2017.

313 of Cr.P.C.

Date of Argument :-18-12-2017.

Date of Judgment 18-12-2017. :-

Counsel of the Prosecution :-Mr Munin Chandra Baruah,

Public Proecutor,

Sonitpur.

Counsel for Accused Mr A Das, Advocate.

JUDGMENT

- 1. In this case accused Sri Rahul Kurmi is put for trial for the allegation of charge under Section 363/370 of the IPC.
- 2. The factual matrix according to the FIR in brief is that on 19-10-2017, the informant's minor daughter was kidnapped by the accused by a telephonic communication with her and since then he took her here and there. Thereafter, on 24-10-2017 at about 3.00 PM, the minor daughter of informant took the accused along with her to her house and on 25-10-2017 the minor daughter of the informant along with the accused were handed over to Sootea Police Station. Hence, this prosecution case.
- 3. The ejahar was filed by one Sonatan Nath before OC, Sootea Police Station on 25-10-2017. On receipt of ejahar, OC, Sootea Police Station registered the case vide Sootea Police Station Case No 151/17 under Section 363 of the IPC, r/w Section 4 of POCSO Act. After completion of investigation, O/C, Sootea Police Station sent up the case against the accused person under Section 363/370 of IPC for trial.
- 4. On being appeared the accused before this Court, after hearing both the parties, charge framed under Section 363/370 of IPC. Particulars of the charges were read over, explained to the accused to which he pleads not guilty and claimed to be tried.
- 5. To substantiate the case, prosecution examined as many as four PWs including the informant, victim and other most material witnesses. Learned Counsel for the accused submitted to close the prosecution evidence on the ground that statement of complainant and victim no way reveals any material against the accused. So, it would be futile to examine the other witnesses. I have also heard the learned PP.
- 6. I have thoroughly perused the whole case record as well as the statement of PWs recorded so far. On close scrutiny of the statement of the complainant and victim, it appears that neither the complainant nor the victim reveals any incriminating material against the accused as to the alleged offence.

Therefore, prosecution case would not develop, even if examine the other prosecution witnesses. Speedy trial is the right of the accused. Considering this all, and to secure ends of justice, prosecution evidence is closed.

- 7. After completion of prosecution evidence, accused persons were examined under Section 313 CrPC. All the evidence appears against the accused persons and the allegations made against the accused are put before him for their explanation where he denied the allegations and declined to give defence evidence.
- 8. I have also heard argument put forward by the learned Counsel for both the sides.
- 9. The point for decision in this case is that
 - (1) Whether on 19-10-2017 at Joypur, Joysidhi under Sootea Police Station, accused attempted to kidnap a minor girl namely Smti Ritamoni Devi and thereby committed an offence punishable under Section 363 of the IPC?
 - (2) Whether on the same date, time and place mentioned above, accused attempted to import, export, remove a minor girl namely Smti Ritamoni Devi against her will as a slave and thereby committed an offence punishable under Section 370 of the IPC?

Reasons, Decisions and reason for decision:

- 10. To arrive at the judicial decision, let me appreciate the evidences on record.
- 11. PW1-Sri Sonatan Nath, who is the victim of this case stated that he knows accused Rahul Kurmi and the victim Smti Ritamoni Devi is his daughter. At the time of incident, she was 16 years old. The incident took place about two months ago. His daughter was missing from his house. After three days, accused Rahul took her to his home. He has seen accused Rahul and his daughter while accused took his daughter to his house. After reaching the victim girl, he has filed the ejahar. Ext.1 is the ejahar and Ext.1(1) is his signature. She was examined medically and her

statement was recorded by Magistrate and then she was given to his custody.

In cross-examination, he stated that at present he does not has any complaint against accused as he got his daughter. He does not have any objection, even if accused is enlarged on acquittal.

- 12. PW2-Sri Moniram Nath deposed that the complainant is his own brother and he knows accused Rahul. After 2/3 days of missing of his niece, accused Rahul took his niece to their home. Then his brother filed this case against the accused. The name of his niece is Ritamoni Devi. At the time of incident, she was about 16/17 years old. After instituting the case, police took Rahul from the house of his brother.
- 13. PW3-Sri Madan Nath deposed that he knows victim Ritamoni Devi. The incident took place about two months ago. At the time of incident Ritamoni was 16/17 years old. On the day of incident at about 11 AM, Ritamoni was missing from their house. They have searched her vigorously, but, did not find her. In the next day, the father of the victim ring the victim as the mother of the victim was serious. So, victim along with accused came to the house of complainant after one day. Then, he informed the matter to police Station. Ejahar was filed by the complainant Sonatan Nath. When the victim disclosed that she does not like to go with the accused, then accused was handed over to police. After recording the statement of victim, the victim was handed over to her father.

In cross-examination, he stated that the victim and accused themselves introduced over pone and thereafter loved each other and accordingly, victim went with the accused. He also stated that since they got their girl(victim), therefore, they do not have any objection, even if accused is enlarged on acquittal.

PW4- Smti Ritamoni Devi, the victim of this case deposed that she knows accused Rahul Kurmi. The incident took place about one month ago. She introduced accused through mobile phone and called the accused through mobile phone, but, he did not come. Then, on the day of incident, she went to Choibari to meet him at about 3.30 PM. He took her in a Magic vehicle to Nagaon. Thereafter, he took her in train for three days. When a telephone call was come from her house stating that her mother is seriously ill, so, they came back and went to their home. Then, she came to know that the boy is a stupid one. She has narrated the whole

incident to her father. Then her father filed this case. Thereafter, police examined her medically and she was also sent to learned Magistrate for recording her statement under Section 164 CrPC. Ext.2 is her statement recorded under Section 164 CrPC. Ext.2(1), 2(2) and 2(3) are her signatures. Then her father took her custody. She is still at her home. At the relevant time, she was about 16 years old.

In her cross-examination, she stated that she loved accused Rahul Kurmi, so, at his call she willingly, went with him. In Ext.2, she has stated that accused did not commit any misdeed to her. Lateron, they came to know that Rahul Kurmi is a stupid boy. On the day when they, means she and Rahul Kurmi came to their home, Rahul Kurmi stayed in their home for that night. She has proceeded with him out of infatuation. She also stated that she does not have any grievances against accused Rahul Kurmi. In fact She does not have any objection, if the accused is enlarged on acquittal.

- 16. These much is the evidence of prosecution.
- 17. Defence plea is of total denial while his statement is recorded under Section 313 of the CrPC.
- 18. I have heard the argument put forward by the learned Counsel for both the parties.
- 18. The learned Counsel for the accused submitted that the prosecution has failed to prove the case beyond all reasonable doubt. *Firstly*, the victim herself gives good bye to the prosecution case stating that she did not have any grievances against the accused Rahul Kurmi. *Secondly*, the father of the victim i.e. the informant of this case also admitted that he does not have any complaint against the accused as he got his daughter and he does not have any objection even if accused is enlarged on acquittal. Therefore, there is no material against the accused.
- 19. Keeping in mind the rival submission advanced by the learned Counsel for both parties, I am going to dispose of the case.
- 20. Here, in this case, the accused is charge under Section 363/370 of the IPC. Since the case is charge under Section 370/34 of IPC, so, before averting to the

other point, I would like to see what is the ingredients required to prove the charge under Section 363/370 of the IPC. To prove the charge under Section 363 of IPC, prosecution must proved that –

- "(i) the person in question was at the time of offence in India;
- (ii) the accused conveyed that person beyond the limits of India; or
- (ii) he did so without the consent of that person, or of some person legally authorized to consent on that person's behalf.

Again to prove the charge under Section 370 of IPC, prosecution must proved that -

- "(i) the accused imported, exported, etc., the person in question as a slave; or (ii) the accused accepted, received or detained the person in question as a slave.
- 21. Here in this case, the victim is the main witness in this type of case. The victim herself stated that she does not have any grievances against the accused. Besides, according to her she called the accused through mobile phone, but, he did not come. Then, on the day of incident, she went to Choibari to meet him at about 3.30 PM. He took her in Magic vehicle to Nagaon and thereafter, he took her in train. When the telephone call was come from her house stating that her mother is seriously ill, so, they came back and went to their house. At the relevant time, victim girl is aged about 17 years. There is ample opportunity for the accused forcefully took her. But, during those three days, in the train, she never complains to any of the co-passengers about the accused's forceful kidnapping of her. Besides, there appears the essence of her consent as because she herself stated that initially she called the accused on her mobile phone, but, he did not come. During that journey of alleged kidnapping, the victim got many opportunities to flee away from the accused, but, she did not do so, neither she has complained to any of the passengers on the way to Nagaon in those all three days journey at train. Therefore, it implied that it cannot be ruled out about her consent. Hence, the ingredient of Section 363 of the IPC is failed. Secondly, as stated above, the informant and victim both admitted that they do not have any complain against the accused. Even they have no any objection, if the accused is enlarged on acquittal. Besides, there is no

any evidence that she has been sold as servant by the accused at any point of time. Under such circumstances, the allegation of charge under Section 370 of IPC is also failed.

- 22. Considering all these aspects, I am bound to hold that prosecution has failed to prove the charges leveled against the accused person. Hence, accused Rahul Kurmi is acquitted and set him at liberty forthwith.
- 23. The liability of the bailor is hereby discharged.

Send back the GR Case Record being No 4128/17 along with a copy of judgment to the learned committal Court.

Given under my Hand and Seal of this Court on this the 18^{th} day of December, 2017.

(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:

Smt. Pori Das, Steno.

ANNEXURE

Witnesses examined by the prosecution:

- 1.PW1 Sri Sonatan Nath, complainant,
- 2.PW2 Sri Moniram Nath,
- 3.PW3 Sri Madan Nath &
- 4.PW4 Smti Ritamoni Devi, victim.

Documents exhibited by the prosecution:

- 1. Ext. 1 : Ejahar.
- 2. Ext. 2: Statement recorded under Section 164 CrPC

Witnesses examined by defence:

Nil

Documents exhibited by the defence:

Nil

(A. K. Borah) Sessions Judge, Sonitpur,Tezpur.