

GAHC010006322012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./92/2012

GOBINDA MISHRA
S/O YADAOB MISHRA, VIL. F.C.I. TILA KABAITARI, P.S. JOGIGHOPA, DIST.
BONGAIGAON

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : Ms. T. Begum, Id. Adv.

Advocate for the Respondent : Mr. R. R. Kaushik, Id. Addl. PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 05.03.2024

Date of Judgment & Order : 31.05.2024

JUDGMENT & ORDER (CAV)

Heard Ms. T. Begum, learned counsel for the appellant. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State respondent.

2. This appeal filed under Section 374 of the Code of Criminal Procedure challenging the impugned Judgment and Order dated 21.05.2012 passed by the Court of learned Assistant Sessions Judge, Goalpara in Sessions Case No.154/2011 convicting the accused/appellant under Section 366(A) of IPC and sentenced him to undergo rigorous imprisonment for 5(five) years and to pay a fine of Rs.4,000/- and in default of payment to undergo R.I. for 4(four) months.

3. The brief facts of the prosecution case is that, one Hareswar Das lodged an FIR on 23.03.2011 before the Officer-in-Charge, Goalpara Police Station alleging *inter-alia* that his wife Mrs. Rasomoni Das along with his minor daughter have been kidnapped on 20.03.2011 at about 8.30 A.M. After receipt of the FIR, the case was registered as Goalpara P. S. Case No.110/2011 under Section 366 of IPC. During the investigation public recovered the victim and his minor daughter and accordingly, her statement was recorded under Section 164 of Cr.P.C. and on completion of investigation, the police filed the charge-sheet against the present petitioner under Section 366 of IPC. Thereafter, the learned Munsiff Magistrate, No.-1, Goalpara committed the case (G.R. Case No.495/2011) under Section 366 of IPC) before the learned Sessions Judge, Goalpara. The learned Sessions Judge, Goalpara transferred the case record to

the Court of the learned Assistant Sessions Judge, Goalpara for trial. Accordingly, after hearing the matter, the learned Assistant Sessions Judge, Goalpara framed charge against the accused/appellant under Section 366 of IPC which was read over and explained and to which he pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 7(Seven) witnesses and exhibited documents, but, the accused/appellant did not adduced any evidence and he pleaded not guilty while recording his statement under Section 313 of Cr.P.C. Thereafter, hearing the parties at length and considering the evidence on record, the learned Assistant Sessions Judge, Goalpara passed the impugned Judgment and Order dated 21.05.2012, convicting the accused/appellant under Section 366 A of IPC and sentenced him to undergo R.I. for 5(five) years and to pay fine of Rs.4,000/- (Rupees four thousand) only and in default R.I. for another 4(four) months.

5. On being highly aggrieved and dissatisfied with the Judgment and Order dated 21.05.2012 passed by the learned Assistant Sessions Judge, Goalpara in Sessions Case No.154/2011, the present appellant has preferred this appeal.

6. Ms. Begum, learned counsel for the appellant has submitted that the learned Trial Court had failed to appreciate the evidence on record in its true perspective and thus, came to a perverse finding by convicting the accused/appellant under Section 366 A of IPC. The said Court also failed to appreciate the fact that the alleged victim went with the appellant as per her own will and wish and at the relevant time of the incident the victim aged was about 31 years and she stayed with the accused/appellant for about 6/7 days without any objection nor she filed any complaint against the accused/appellant.

Thus, it is seen that the victim was a consenting party who went and stayed with the accused/appellant on her own will and only to save herself from social harassment she lodged the FIR with some false and concocted allegation against the accused/appellant. Accordingly, it is submitted that the judgment and Order dated 21.05.2012 as well as the finding of the learned Trial Court is erroneous and caused injustice to the accused/appellant and hence, the same is liable to be set aside and quashed.

7. She also submitted that the FIR was lodged only after 3 days of the occurrence. Also from the statement made by the victim, it is seen that she herself went to the Kabaitari Market to meet the accused/appellant and thus, it is not the case that she along with her younger daughter were kidnapped from the house, rather, it is seen that she went to Kabaitari Market where she met the accused/appellant and they had tea and sweets and thereafter, they went to Bengal by bus and stayed in the house of the appellant's relative which was about 4/5 KM far from the bus stand where they reached by foot and stayed for 6/7 days. The victim was talking with the family members of the accused/appellant while she was in Bengal in the house of the appellant's relative.

8. Ms. Begum, learned counsel for the accused/appellant has submitted that the question of kidnapping does not arise as the victim along with her minor daughter accompanied the accused on her own will and also at the relevant time of the incident she was more than 30 years of age and thus, the Section 366 A does not attract against the accused/appellant. She further submitted that the victim stayed in the house of the appellant's relative where she met a woman who used to served her with food and cloths, and also she had a good

talking terms with her, but she did not report anything in regards to kidnapping to the said woman where she alleged to have been kept for 6/7 days. Accordingly, she submits that there is no material in the evidence of PWs specially the evidence of the victim to warrant conviction against the accused/appellant under Section 366 of IPC.

9. In support of her submission, she relied on the following Judgments, which are as follows;-

- (i). **2010 (3) GLT 758 [Sanjiv Baidya vs. State of Arunachal Pradesh];**
- (ii). **2010 (1) GLT 731 [Diganta Mazumdar vs. State of Assam] and**
- (iii). **2010 (3) GLT 731 [Ikbai Hussain Saharia Alias Iqbal Rahman vs. State of Assam].**

10. Citing the above referred judgments, the learned counsel for the appellant has submitted that in the instant case also the evidence of the victim does not inspire confidence. The victim's family considered the accused/appellant as guru who used to visit their house and on the day of the incident also the victim herself went to meet the accused/appellant at Kabaitari Market and from there they went to Bengal by bus. And during her entire journey nor in the place of stay, she had not raised any alarm nor made any complaint against the accused/appellant. More so, there is no medical evidence of any recent forceful sexual intercourse with the victim rather she was a consenting party who had stayed with the accused/appellant for 6/7 days without raising any objection.

11. Accordingly, it is submitted that the prosecution has failed to establish the case against the present appellant under Section 366 A of I.P.C. and the learned

Trial Court had passed the impugned judgment and order dated 21.05.2012 without going into the merits of the case and also without appreciating the evidence on record which is illegal and liable to be set aside and quashed. Hence, the interference of this Court is necessary in the judgment passed by the learned Assistant Sessions Judge, Goalpara.

12. Mr. Kaushik, learned Additional Public Prosecutor has submitted that though in the order portion of the judgment and order dated 21.05.2012, the accused/appellant was convicted under Section 366 A of IPC, but the learned Court below hold that the prosecution side able to established the charges under Section 366 of IPC against the accused/appellant beyond all reasonable doubt in paragraph No-35 of the said judgment. However, inadvertently the conviction sentence was passed under Section 366 A of IPC. Accordingly, he submits that it is not case that minor was kidnapped by the accused/appellant, rather, it was a case where a married woman was kidnapped along with her minor daughter by the accused/appellant from the Kabaitari Market. Further, he submitted that the accused/appellant obtained consent from the victim only with the pretext of giving stone to her and accordingly he called her to meet him at Kabaitari Market and thereafter, he kidnapped the woman and her minor child. Thus, the consent was taken only under the misconception of fact and thereafter she was kidnapped and confined in a house and also had sexual intercourse with her. He submits that it is not at all a case for acquittal of the accused/appellant and the learned Court below had rightly passed the order of conviction against the accused/appellant. Hence, the interference of this Court is not at all necessary in the judgment and order passed by the learned Trial Court and he accordingly, prays for dismissal of the same.

13. After hearing the submissions made by the learned counsels of both sides, I have perused the case record along with the impugned Judgment and Order dated 21.05.2012 passed by the learned Trial Court. To arrive at just conclusion, let me scrutinize the evidences of the prosecution witnesses which are as follows:-

I. PW-1 is the informant/husband of the victim who lodged the FIR. At the relevant time of the incident he was not at home and on his return he asked about his wife to his elder daughter and she replied that the accused/appellant had taken away his wife saying that he would give her some stones. Thereafter, he searched for his wife in every probable area and after 7 days, the younger brother of his wife received a phone call and then, they went to Kabaitari area. When he reached Salantapara, he came to know that public had apprehended his wife and the accused. From there he rescued his wife and his minor daughter and handed over the accused to the police.

From his cross evidence, it reveals that on the day of the incident the accused/appellant visited his house to sell some stones to the victim. He also stated that the accused was known to his parents-in-law as he was their guru, he also used to visit his house occasionally. He further deposed that the accused took away his wife by saying that he would give her stones.

II. PW-2 is the victim and as per her, the accused/appellant came to her house at Beltola and gave her some stones for her better future. After, some days, the accused called her to meet him at Kabaitari Market and she went there alone. Then, he offered her some sweets and pan and then, she forgot about her husband and daughters. Thereafter, the accused took her to Bengal by bus and she was kept in his relative's house for 7 days. The accused forcibly

had sexual intercourse with her for 6/7 times and thereafter, he brought her back by bus. While coming by bus, she called to her younger brother and accordingly at Salantapara, the public apprehended her and the accused, and then she was rescued by her husband and her family members.

She stated in her cross examination that she has four daughters. The eldest daughter's age is 15 years and other three daughters are aged about 13, 10 and 6 years old respectively. The accused called her over phone to meet him and asked her to come to Kabaitari Market. She went to meet him without informing her husband and as he was not at home. However, her daughters knew that she was going to Kabaitari market as she informed them about it and she took her younger daughter with her. She further stated that the market was fully crowded and there, they had tea, sweets and pan; thereafter, they went to Bongaigaon and then to Bengal by bus. She also stated that they got down from the bus and went on foot to the house of the accused relatives which was about 4/5 KMs away from the bus stand. The accused kept her in his relative house for 7 days and during those days she had conversation with the relative of the accused specially the women who used to serve her with meal and cloths. The accused had sexual intercourse with her for 6/7 times during those seven days. But, she did not inform about the incident to his family members.

III. PWs-3 and 4 are the daughters of the victim, as per them, victim was called by the accused/appellant over phone to come to met him at Kabaitari area and thereafter, their mother was missing and thereafter, their father lodged the FIR after 7(seven) days from the date of missing.

IV. PW-5 is the sister-in-law of the victim and as per her also the accused/appellant was on visiting terms with the informant's family and she

came to know that the accused/appellant had taken her sister-in-law on the pretext of giving her some stones and subsequently, she was recovered after 7 days of the incident.

V. PW-6 is the IO of the case, who investigated the case and recorded the statement of the victim under Section 164 of Cr. P.C. and he also recorded the statement of the other witnesses during the investigation of the case. Accordingly, the charge-sheet was filed under Section 366 of IPC.

In his cross examination, the PWs Nos. 3 and 4 did not stated that she went with the accused/appellant as he was supposed to give her some stones.

VI. PW-7 is the medical officer who examined the victim on 30.03.2011 and on his examination it was found that there was no sign of recent sexual intercourse or injury marks on her private part.

14. So, from the discussion made above, it is seen that there is no witnesses to the prosecution case except the victim and the other witnesses supported the prosecution version only to the extent that the accused called the victim over her mobile phone to come to Kabaitari Market to take stone. However, as per the informant/PW-1 when he came back to his house and inquired about his wife, his elder daughter informed him that the accused/appellant had visited their house and took his wife along with his minor daughter. Thus, informant made a contradictory statement with that of the PW Nos. 3 and 4. From the evidence of PW-1, the accused/appellant was known to their family who used to visit their house occasionally and earlier also he gave some stones to the victim and that apart he is also considered as the guru in their family. Thus, it is not a case that the accused/appellant suddenly came and kidnapped the victim

woman from the Kabaitari Market, rather it is a case that the appellant is known to the victim's family members who also used to visit the house of the informant occasionally.

15. As per the victim, she was with the accused/appellant in Kabaitari Market wherein, they initially had tea, sweets and pan and thereafter, on her own will she went with the accused/appellant to Bongaigaon by bus and then to Bengal. But, during the entire period of journey she never informed or reported the matter to the other co-passengers or to the bus conductor that she has been forcibly taken by the accused/appellant. She did not raise any hue and cry while she was traveling along with her minor child. Rather, it is evident that she went with the accused/appellant to his relative's house on foot which was about 4/5 KMs from the bus stand. And that apart she stayed in the house of the appellant's relative for about 6/7 days and during that period the accused/appellant had sexually intercourse with the victim for 6/7 times. But, surprisingly she never informed to the woman who used to served her with food and cloths nor to the other family members or relatives of the accused/appellant. Thus, it cannot be a case that the victim under the influence of toxic substance and was intoxicated for 6/7 days. Even if it is considered that she went with the accused/appellant under intoxication, then why she did not inform about the said incident to the appellant's relatives where she had stayed for 6/7 days.

16. More so, the Doctor/PW-7 did not find any mark of violence on the private part of the victim though, she had stated that the accused/appellant had forcibly committed sexual intercourse with her. In the case of the ***State of Punjab vs. Gurmit Singh & Ors., reported in 996 SCC (2) 384***, wherein, it has been

held that "If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations".

17. It is a settled law that the victim of sexual assault is not treated as an accomplice and as such her evidence does not require corroboration of any other evidence if her sole testimony inspires confidence and appears to be trustworthy. But, here in the instant case, it is seen that the testimony of the prosecution does inspire confidence to affirm the conviction against the accused/appellant without having any other corroborating evidence. It is a fact that the PW Nos. 3 and 4 supported the prosecution version to the extent that their mother went to meet the accused/appellant to Kabaitari Market to take some stones, but, there is no evidence as to what had happened after she went to meet the accused. Rather, from the evidence of the victim itself, it is seen that she went with the accused/appellant to Bengal by bus and went to his relative's house on foot where she stayed for 6/7 days. The victim further alleged that the accused/appellant had kidnapped her and took her to Bengal by bus, but she did not raise any hue and cry nor made any protest while she was taken by the accused/appellant by bus to Bengal. More so, she did not inform any co-passengers, though there were 40/50 numbers of passengers were present in the bus and even in the house of the appellant's relative, she did not raise any objection where the accused had committed sexual intercourse with

her.

18. From the discussion made above, it is seen that testimony of the prosecution is believable and trustworthy to warrant conviction against the accused/appellant without other corroborating evidence. Thus, I find that the learned Trial Court had convicted the accused/appellant solely on the basis of the evidence of the prosecutrix which does not inspire confidence to record the conviction that the accused/appellant had kidnapped the victim woman and forcibly had sexual intercourse with her. Accordingly, I find that interference of this Court is necessary in the impugned Judgment and Order dated 21.05.2012 passed by the Court of learned Assistant Sessions Judge, Goalpara in Sessions Case No.154/2011 and accordingly, the impugned Judgment and Order dated 21.05.2012 passed by the Court of learned Assistant Sessions Judge, Goalpara in Sessions Case No.154/2011 stands set aside and the accused/appellant is hereby acquitted and set at liberty.

19. The Appeal is allowed accordingly. Further, if the accused/appellant is on bail in connection with this case, then his bail bond stands cancelled.

20. With above observation, this Criminal Appeal stands disposed of.

JUDGE

Comparing Assistant