

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,**  
**TINSUKIA, ASSAM**

**Present:-** Ms. Leena Doley, AJS,  
Assistant Sessions Judge,  
Tinsukia, Assam.

**(Date of Judgment:- 24.05.2022)**

**(Case No. : Sessions Case No. 04 (T) of 2020)**

FIR No. : 21/2019      Dated-12.10.2019

U/S 366A of IPC

Tongona P.S. Case No.21/2019



COMPLAINANT:-	STATE OF ASSAM
REPRESENTED BY:-	Mr. B. J. Kakoti, Learned Additional P.P.
ACCUSED:-	<b>Sri Ajoy Kharia,</b> Son of Binod Kharia, Resident of 2 No. Makum Pathar, P.S.- Margherita, District- Tinsukia, Assam.
REPRESENTED BY:-	Mr. R. Sah, Learned Defence Counsel

24/05/22  
Asstt. Sessions Judge  
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Date of Offence:-	11.10.2019
Date of filing of FIR:-	12.10.2019
Date of Charge Sheet:-	26.12.2019
Date of Framing of Charges:-	18.04.2022
Date of commencement of evidence:-	13.05.2022
Date of which Judgment is reserved:-	24.05.2022
Date of Judgment:-	24.05.2022
Date of Sentencing Order, if any:-	NIL



**Accused Details:**

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.P.C.
1.	Sri Ajoy Kharia	13.10.2019	04.02.2020	366A	Acquitted	NIL	NIL

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**APPENDIX**  
**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

**A. Prosecution:**

RANK	NAME	NATURE OF EVIDENCE
PW-1	Sri Sachin Kond	Complainant
PW-2	Smt. Saraswati Kond	Victim

**B. Defence Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE
NIL		

**C. Court Witnesses, if any:**

RANK	NAME	NATURE OF EVIDENCE
NIL		

**LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS**

**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Ext.P-1/P.W.1	Ejhar
2.	Ext.P-2/P.W.2	Statement U/s.164 Cr.P.C.

**B. Defence:**

Sr. No.	Exhibit Number	Description
NIL		

**C. Court Exhibits:**

Sr. No.	Exhibit Number	Description
NIL		

**D. Material Objects:**

Sr. No.	Exhibit Number	Description
NIL		



(Leena Doley, AJS)

Assistant Sessions Judge,  
Tinsukia, Assst. Sessions Judge  
TINSUKIA

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**Before: Ms. Leena Doley, AJS**

**J U D G M E N T**

1. The prosecution case in brief is that one Sri Sachin Kond lodged an F.I.R. in the Tongona Police Station on 12.10.2019 stating that on the day before i.e. on 11.10.2019, his younger sister Miss Saraswati Kond disappeared from home and did not return till the day of filing Ejahar. Sri Sachin Kond mentioned that one boy from Margherita came to the house of his neighbour Sri Pratap Boraik for Karam Puja function and on 11.10.2019 both his sister and this boy were not found. Hence, the case arose.

2. On receipt of the ejahar, the Officer-in-Charge of Tongona P.S. registered a case as Tongona P.S. Case No.21/2019 U/S 366 of the Indian Penal Code and conducted the investigation. On completion of the investigation, the I.O. submitted charge-sheet against the accused Sri Ajay Kharia u/s.366 of the Indian Penal Code.

3. The learned Judicial Magistrate 1<sup>st</sup> Class, Tinsukia vide its Order dated 10.01.2020 passed in P.R.C. Case No.09/2020, U/S 366 IPC committed the case to the Hon'ble Court of Sessions, Tinsukia and the Hon'ble Sessions Court, Tinsukia vide Order dated 25.02.2020 transferred the case to this Court for trial.

4. The accused was on bail and on his appearance charge U/s.366A IPC was framed against the accused and



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when the charge was read over and explained to him, he pleaded not guilty and claimed to stand trial.

5. The prosecution has examined two witnesses. The examination of the accused U/S 313 of Code of Criminal Procedure was dispensed with as there was no incriminating evidence against the accused.

6. I have heard arguments advanced by learned Addl. P.P. and learned defence counsel and after considering all, I have framed the following points for determination.



**7. POINT FOR DETERMINATION:-**

Whether on 11.10.2019 at around 5:00 P.M., the accused kidnapped or abducted the victim girl namely, Miss Saraswati Kond below 18 years of age, with intent or knowing that it is likely that she will be forced or seduced to illicit intercourse with the accused or any other person and thereby the accused committed an offence punishable U/S 366A of the Indian Penal Code?

If yes, what punishment does the accused deserve?

**8. DECISIONS THEREON AND THE REASONS FOR THE DECISION:-**

Now, let us discuss the points in the light of the evidences available with the case record.

(i) P.W.1 is the informant in this case and has deposed that the incident took place in the month of

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September, 2019. He has deposed that his sister Saraswati Kond disappeared from home and on search, they could not find her and therefore lodged an FIR in the Tongona police station. He has proved Ext.P-1/P.W.1 is the Ejahar and Ext.P-1(1)/P.W.1 as his signature. He has further deposed that after six months of the incident, he came to know from the villagers of the accused that his sister eloped with the accused and was residing with him at his residence. He has also deposed that after receiving this information both the families and villagers of both the villagers sat together in a meeting and finally they accepted the accused as their Brother-in-law, as the accused and his sister already married each other after they eloped on the day of incident. P.W.1 in his cross-examination has stated that he has no objection against the accused.

(ii) P.W.2 is the victim girl and has narrated the incident in the same manner as that of the informant that she was in a love relationship with the accused and has eloped with her on her own free will and thereafter they both married each other. She has deposed that after around six months of the incident, they informed their parents and family members about their marriage and then they returned to her parental home. She has deposed that she was taken to the police station and from her home and then was taken to Court for recording her statement U/s.164



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Cr.P.C. and has proved Ext.P-2/P.W.2 as her statement and Ext.P-2(1)/P.W.2 and Ext.P-2(2)/P.W.2 as her signatures. P.W.2 in her cross-examination has admitted that the accused did not induce her or used any force upon her to go with him and she went with the accused on her own free will as she was in love with the accused.



**(iii)** The prosecution did not adduce evidence of any further witness other than P.W.1 and P.W.2. The P.W.2 being the victim in this case has in no way incriminated the accused that he induced her or applied force upon her to go with him. P.W.1 being the informant and the brother of the victim though alleged the accused to have kidnapped his sister in the Ejahar, in his testimony in Court, he failed to incriminate the accused of inducing the victim or forcefully taking her away with him.

**(iv)** Furthermore, both P.W.1 and P.W.2 did not utter any word against the accused of inducing the victim to indulge in any sexual activity with him or any other person during their stay at the residence of accused.

**(v)** Since the two basic ingredients of applying force or seducement upon the victim to illicit intercourse is absent in this case and as admitted by the victim that she willfully went with the accused and

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as there is no allegation against the accused of having sexual intercourse with her or with any other person, this Court is of the opinion that the prosecution side has failed to prove the charge U/S 366A IPC against the accused beyond all reasonable doubt and therefore, the point is decided in the negative.

### **ORDER**

**9.** In the result from the facts and circumstances of the case and evidences on record, this Court is of the opinion that the prosecution has failed in proving the charge U/S 366A Indian Penal Code against the accused beyond all reasonable doubt and hence, the accused is acquitted and is set at liberty forthwith and his bail bond is extended to another six months.

**11.** The Judgment is pronounced and delivered in the open Court, written in separate sheets of paper and tagged with the case record on this 24<sup>th</sup> of May, 2022 in Tinsukia under my hand and the seal of this Court.



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**(Leena Doley, AJS)**  
 Assistant Sessions Judge,  
Tinsukia  
 Asstt. Sessions Judge  
 TINSUKIA

Dictated and corrected by me:-

*24/05/22*  
**(Leena Doley, AJS)**  
 Assistant Sessions Judge,  
Tinsukia  
 Asstt. Sessions Judge  
 TINSUKIA



**Annexure****Witnesses:**

PW-1 : Sri Sachin Kond

PW-2 : Smt. Saraswati Kond

**Exhibits:**

Ext.P-1/P.W.1: Ejahar



*[Signature]*  
24/05/22

**(Leena Doley, AJS)**

Assistant Sessions Judge,

TinsukiaAsstt. Sessions Judge  
TINSUKIA