

IN THE COURT OF THE SESSIONS JUDGE :: :: TINSUKIA

Present: **Sri C. Das,**
Sessions Judge,
Tinsukia

Date of Judgment :- 20.05.2022

The case was committed on 20.07.2019 by learned Chief Judicial Magistrate, Tinsukia in G.R. Case No.1195/2019)

Sessions Case No. 97 (T) of 2019

U/s.366/376 I.P.C.

(FIR No.23/19 of Barekuri P.S.)

COMPLAINANT:	STATE OF ASSAM
REPRESENTED BY	A.K. CHOUBEY, Ld. P.P., TINSUKIA
ACCUSED	SRI JANTU DOHUTIA, S/o Sri Gogon Dohutia, R/o No.1 Kordoiguri Gaon, P.S. Baghjan, Dist. Tinsukia (Assam)
REPRESENTED BY	ADVOCATE, SRI S. SARMA

Date of Offence	23.05.2019
Date of FIR	26.05.2019
Date of Charge Sheet	09.07.2019

Date of Framing of Charges	14.11.2019
Date of commencement of evidence	15.11.2021 & 22.03.2022
Date on which judgment is reserved	NA
Date of Judgment	20.05.2022
Date of its Sentencing Order, if any	NA

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Sec. 428 Cr.PC
1	Sri Jantu Dohutia	27.05.2019	10.06.2019	366/376 of IPC	—		15 days

J U D G M E N T

1. The case of the prosecution briefly, is that on

23.05.2019, the complainant Sri Jatin Chutia lodged an ejahar before Barekuri police station, alleging *inter-alias* that his victim/daughter(name withheld) was kidnapped by the accused Jantu Dohutia and after that the accused committed rape upon her. The accused also, took his daughter to different places with him. They tried to apprehend the accused, but could not succeed.

2. On the basis of filing of the above ejahar, the police registered the Barekuri P.S. Case No.23/2019 and started the investigation. During the investigation, I.O. visited the place of occurrence, examined the witnesses u/s.161 CrPC and then, arrested the accused. Thereafter, I.O. on completion of the investigation, filed the charge-sheet against the accused to face trial in the court.

3. The accused when appeared in the Court, learned Chief Judicial Magistrate, Tinsukia furnished the copy of the case as required u/s. 207 CrPC. Since the offence is exclusively triable by the Sessions Judge, learned court below forwarded the case to this court for trial. Accordingly, a separate Sessions case was registered and was taken up for trial.

4. After hearing both the parties and on perusing the materials on record, the charges u/s. 366/376 IPC were framed against the accused. The charges so framed were

read over and explained to the accused, who pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined as many as, 3(Three) witnesses including the victim girl and the informant to get support of its case. Learned Public Prosecutor declined to examine further witnesses of the case, for which the prosecution was closed. In the statement recorded u/s 313 CrPC, the plea of the accused was total denial to the circumstances appeared against him in the evidence on record. But the accused did not adduce any defence witness. The argument of the parties was heard at length and the evidence on record perused.

POINTS FOR DETERMINATION:

6. (I) Whether on 23.05.2019, at Purani Motapung Gaon, the accused kidnapped the victim girl with the intention that she will be compelled to marry the accused against her will or to have illicit sexual intercourse with him and thereby committed an offence u/s. 366 of IPC?
- (II) Whether in between 23.05.2019 to 26.05.2019, the accused committed rape upon the victim girl and thereby committed an offence u/s.376 I.P.C.?

DECISION AND REASONS THEREOF :

7. PW1 is the complainant Jatin Chutia. He deposed in his evidence that the victim girl is his daughter. He knows the accused. On the fateful day, the victim eloped with the accused. After seven days of her elopement, he found the victim girl and brought her to home. Police apprehended the accused and brought him to the police station. He filed the ejahar, wherein he put his thumb impression. Later on, he came to know that the accused was already a married man and as such, the victim girl could not able to stay in his house. Now, the victim girl is married to another boy. She gave birth to a male child.

8. In his cross-examination, PW1 stated that he is not a literate person and as such, he cannot say the contention of his ejahar. Out of love affairs, the victim girl eloped with the accused. He denied the suggestion that he did not state before police earlier that the accused was a married man, for which the victim girl could not stay in his house.

9. PW2 is the victim girl(name withheld). She deposed that the informant is her father. She knows the accused. She used to have telephonic conversations with the accused, but the accused did not tell her that he was a married person. At that time, she was 17 years old.

Thereafter, the accused proposed her to marry. On the fateful day, she came out of her house on the pretext of visiting her uncle's house, but actually, she went with the accused. The accused kept her one night at Rupai. At that time, the wife of the accused informed her over phone that the accused was a married person and she should not come with him. In the mean time, she met her two brothers on the road, who took her back to her house. She spent three days with the accused. Thereafter, the Child Line personnel came to her house and took her to Doomdooma. Thereafter, police came and took her to the police station and sent for her medical examination and also, to the court for recording her statement. Ext.1 is her statement recorded before the Magistrate and Ext.1(1) to 1(5) are her signatures. At present, she got married to a person of Baghjan and she has a girl child also.

10. In her cross-examination, PW2 stated that on the fateful day, she eloped with the accused on her own will. She denied the suggestion that she did not state before the police earlier that she had telephonic conversations with the accused, but he did not tell her that he was a married person and thereafter, the accused proposed her to marry and on the fateful day, she came out of her house on the pretext of visiting her uncle's house, but actually, she went with the accused and the accused kept her one night at

Rupai and at that time, the wife of the accused informed her over phone that the accused was a married man and she should not come with him.

11. PW3 Smti Pronoti Chutia is the wife of the informant. She deposed that the victim girl is her daughter. She knows the accused Jantu Dohutia. On the fateful day, her victim daughter eloped with the accused. The victim was missing from the house for about two days. Thereafter, she was under impression that her victim daughter is staying in her friend's house. Since she could not find out her daughter, she started searching for her daughter. Accordingly, her daughter was recovered from Makum. In the mean time, her husband filed the ejahar before the police. Her daughter is now, married to one Rajib Moran and her daughter gave birth to a girl child.

12. During cross-examination, PW3 stated that her victim daughter left her house without informing her. Out of love affairs, the victim girl eloped with the accused.

13. From the above evidence of the witnesses of the prosecution, it appears that all of them belong to same family. It is not disputed that the victim girl is aged above 18 years. Thus, she is matured person to understand the consequences of leaving her house without informing to her

parents/guardian. It is also not in controversy that the victim(PW2) was in love affairs with the accused prior to the incident. However, it is alleged that the accused concealed the fact that he was a married person, having his previous wife. The evidence of PW1 and 3 discloses that out of love affairs, PW2 left with the accused by means of elopement.

14. In **Habil Mia vs. State of Tripura (1996) 3 GLR 352**, it was held that the age of the victim girl at the time of occurrence was not relevant for the purpose of deciding a case under section 366 inasmuch as the offence of kidnapping under section 366 relates to kidnapping or abducting of any "woman". The age of Hasina, however, would have been material if the two appellants had been charged under section 363, read with section 361 for the offence of kidnapping a female under 18 years of age from lawful guardianship.

15. Further, in **Md. Asanaque Ali vs. State of Assam (2004) 1 GLR 551**; it was held that No eye-witnesses – Statement of the girl recorded under section 164 CrPC- Girl not examined as witness at that time- Father's evidence held to be hearsay evidence- Statement of the girl under section 164 CrPC was only a previous statement and could not have been treated as substantive evidence against the accused- Trial court relied on the previous statement of the girl for the purpose of conviction of the accused –

Statement of the girl not treated as substantive evidence-
No evidence on record to fasten the accused appellant with the offence of kidnapping.

16. Having regards to the above decisions of the relevant offence, it would be proper to narrate the ingredients of offence u/s 366 IPC as:-

For the first part of the section-

(1) The accused kidnapped or abducted a woman;

(2) The accused intended or knew it likely that-

a] the woman abducted or kidnapped would be compelled to marry any person against her own will, or

b] she would be forced or seduced to illicit intercourse.

For the second part of the section-

(1) Accused induced any woman to go from certain place;

(2) Accused did it by criminally intimidating her;

(3) He did so by abuse of his authority, or

(4) He did so by any method of compulsion;

(5) Accused intended or knew it likely that such woman would be forced or seduced to illicit intercourse.

17. From the evidence of PW2, it does not appear that the accused kidnapped her. She clearly discloses that under pretext of visiting the house of her relative, she came with the accused out of her love affairs with the accused. Hence,

it cannot be said that the accused kidnapped or abducted PW2 from her parents. PW2 never stated that the accused forced or seduced her to any illicit intercourse although she admitted that the accused kept her one night at a place. In absence of any evidence, it cannot be held that the accused had any intention to take PW2 out of her house with a view to force or seduced her to any illicit intercourse. Thus, no offence u/s 366 IPC is made against the accused on the basis of evidence on record.

18. Further, on the count of charge of rape upon PW2, it does not appear from the evidence of PW2 that the accused committed sexual intercourse with her out of will or consent. Hence, the accused cannot be implicated u/s 376 IPC.

19. Under the above facts and circumstances of the case, the prosecution has failed to prove its case against the accused beyond all reasonable doubt. Accordingly, the accused is held not guilty u/s 366/376 IPC. The accused is acquitted and set at liberty. His bail bond is extended u/s 437A CrPC for a period of another six months from the date of order. Forward a copy of judgment to the District Magistrate, Tinsukia u/s 365 CrPC. The court recommends payment of compensation to the victim of crime u/s 357 CrPC r/w Assam Victims Compensation Scheme by DLSA,

Tinsukia after due inquiry.

20. Given under the hand and seal of this court on this the 20th day of May, 2022.

Dictated & corrected by:

Sessions Judge
Tinsukia

(C. Das)
Sessions Judge
Tinsukia

A P P E N D I X

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Sri Jatin Chutia	Father of the victim - Indirect
PW2	Name withheld	Victim – Direct
PW3	Smti Pronoti Chutia	Mother of the victim - Indirect

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NA	NA	NA

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Statement of the victim

		u/s.164 Cr.P.C.
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B. Defence:

Sr. No.	Exhibit Number	Description
NA	NA	NA

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
NA	NA	NA

D. Material Objects:

Sr. No.	Exhibit Number	Description
NA	NA	NA

Sessions Judge
Tinsukia