

IN THE COURT OF SPECIAL JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS,
Special Judge,Barpeta.**

**JUDGMENT IN SESSIONS CASE NO. 114 OF 2019
(G.R.No.- 4682/2013)
Tarabari P.S. Case No. 172 of 2013**

Committing Magistrate :-

***Smti Tripti Ari,
The then learned CJM, Barpeta.***

State of Assam

-versus-

(1) Khenta Begum,
W/O Lt. Hasen Ali,
(2) Sukurjan Begum,
W/O Abdul Ali,
(3) Md. Safiqul Islam,
S/O Md. Ayub Ali,
All are Resident of Sonertari,
P.S. Tarabari,
District – Barpeta, Assam

..... Accused.

APPEARANCES :

**For the State : Sri Lalit Ch. Nath, learned
Public Prosecutor, Barpeta.**

**For the Accused : (i) Mr. Talebar Rahman, learned
Counsel, Barpeta.**

**(ii) Mr. Sohraf Ali Khan, learned
legal Aid Counsel for accused
Sukurjan Begum.**

CHARGE FRAMED UNDER SECTIONS 366A/370/34 IPC

Date of Charge : 19.06.2019,
***Date of Prosecution evidence : 14.08.2019; 16.08.2019;
17.08.2019 & 13.09.2019,***
***Date of Statement recorded
under Section 313 CrPC : 03.12.2019,***
***Date of Argument : 12.12.2019; 23.12.2019;
24.01.2020 & 13.02.2020,***

Date of Judgment

: 13.02.2020.

J U D G M E N T

1). The prosecution case, in brief, is that Tarabari P.S. Case No.172 of 2013 under Sections 366(A) of IPC was registered on the basis of a F.I.R. lodged by Sultan Ali, father of the victim.

In the aforesaid **F.I.R.** dated 16.08.2013 (Ext-1), the informant Sultan Ali (P.W.1), who is the father of the victim girl, alleged, *interalia*, that on 13.08.2013 at about 03:00 PM, accused Khanta Begum took his daughter from his house and handed over the victim to Mamtaj Begum, Shafiqul Islam and Ayub Ali. After that, Khanta Begum returned home. It was alleged in the FIR that accused Mamtaj Begum and Shafiqul Islam might have sold his victim daughter. It was stated that there was delay in lodging FIR due to search of victim girl.

On receipt of F.I.R., the Officer-in-charge, Tarabari Police Station, registered a case being **Tarabari P.S. Case No 172/2013 under Sections 366(A) of the Indian Penal Code.**

During the course of investigation, the victim girl was recovered, her statement under section 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet, in the case, against the accused persons namely **Khanta Begum, Musstt. Mamtaj Begum, Sukurjan Begum, Md. Safiqul Islam and Musstt. Saniyara Begum under Sections 366(A)/370(4)/34 of IPC** vide charge sheet **No.158/2014**, dated **08.12.2014**.

2). In due course, learned CJM, Barpeta summoned the accused. Copy was furnished to them by learned CJM, Barpeta, who, thereafter, committed the case to this court, the same being exclusively triable by the court of Sessions. However, as accused Musstt. Mamtaj Begum and Musstt. Saniyara Begum did not appear so P/A was issued against them and case was filed by learned CJM as per her order dated 01.06.2019.

3). Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed by undersigned

against the accused under **Sections 366A/370/34 of IPC**, which were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

4). During the course of trial, **05 [five]** number of witnesses including the informant and victim were examined on behalf of the prosecution to prove the charge under Sections 366A/370/34 IPC.

On closing of prosecution evidence, statement of the above named accused was recorded under Section 313 of CrPC. The accused denied all the alleged incriminating materials against them. They claimed themselves to be innocent. They did not adduce evidence in their defence.

5). I have heard **Mr. Lalit Ch. Nath**, learned Public Prosecutor of Barpeta, for the State as well as **Mr. Talebar Rahman**, learned Defence Counsel for the accused, who is facing trial for commission of offence under **Sections 366A/370/34 IPC**.

6). Now the point for determination before this court are as follows ---

(i) Whether the accused persons on or about 13-08-2013 at about 3.00 PM within the jurisdiction of Tarabari P.S., District Barpeta, Kidnapped Maina Ahmed, daughter of informant Sultan Ali, aged about 12 years, from her house by inducing her, with intent that she might be compelled to marry against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person, in furtherance of your common intention and thereby committed an offence punishable under Section 366A/34 IPC ?

(ii) Whether the accused persons thereafter at Delhi exported, removed, brought, sold or disposed of aforesaid minor victim as a slave or accepted, received or detained her against her will as a slave, in furtherance of your

common intention and thereby committed an offence punishable under Section 370 of IPC ?

DISCUSSION, DECISIONS AND REASONS THEREOF :

7). To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

Sultan Ali [P.W.1] who is the informant of this case has deposed that he Knows the accused persons of this case. Incident took place before 5 years ago at about 4.30PM and he was at Guwahati, at that time.

P.W.1 stated that he got information that his daughter Maina Ahmed was missing from his house. He came to his home on next day. Then he lodged case before O.C. Tarabari. He came to know that accused Khenta Begum called his victim girl at about 4.00PM on the previous day. Many persons told him regarding this fact including Mazam Ali, Jamal etc. P.W.1 exhibited the FIR vide Ext. 1 and Ext. 1(1) is his signature.

P.W.1 further stated that he came to know that Kehnta Begum handed over his victim girl to accused Sukurjan and his daughter Merry at Bharalumukh Guwahati where they were staying as tenant. He also came to know that Merry and her mother took the victim girl at about 3.00AM from their house. He tried to contact accused Sukurjan and her daughter but they did not receive his call.

After 20 days of the incident, he saw accused Safiquil in their village. Police caught him on his information. He told that all the 3 accused persons went to Haryana alongwith his victim daughter. They sold victim girl there.

Later on, he came to know that his victim daughter has been taken to Bombay. Then, he somehow brought the victim and produced her before Tarabari PS.

Victim was produced before learned Magistrate. Victim told him that she got married with one Bittu Singh. At present, his daughter is staying with him at Bombay.

In his cross-examination for Khenta Begum and Safiquil Islam, P.W.1 stated that he gave age of his victim daughter in Ext. 1.

P.W.1 denied that he did not give her age at Ext. 1; that he did not state before police that victim was taken to Haryana and Bombay.

As per his knowledge his victim daughter got married without her consent. At present, she is mother of two children and she is staying with her husband for last 4 years.

P.W.1 denied that he did not state before police that he came to know that Kehnta Begum handed over his victim girl to accused Sukurjan and his daughter Merry at Bharalumukh Guwahati where they were staying as tenant. He also came to know that Merry and her mother took the victim girl at about 3.00 A.M. from their house; that he had lodged false case against the accused persons.

In his cross-examination for Sukurjan Nessa, P.W.1 stated he did not give the name of accused Sukurjan as he did not know her name at the time of lodging FIR. He do not know anything that accused Sukurjan is mentally ill. She is not a beggar and he know it very well. She was staying as tenant at Fatashil Guwahati. She knows his house but she did not come to his house.

P.W.1 denied that he did not state before police that Kehnta Begum handed over his victim girl to accused Sukurjan and his daughter Merry at Bharalumukh Guwahati where they were staying as tenant. He also came to know that Merry and her mother took the victim girl at about 3.00AM from their house; that Sukurjan Nessa never took his victim daughter with her to Haryana; that she is not involved in this case anyway.

8). Kad Bhanu [P.W.2] has stated that she knows the informant and victim of this case. She Knows all the accused persons except Sukurjan Nessa. Incident took place more than 4 years ago. Informant is son of sister of her husband.

She stated that accused Khenta Begum came to their house on the day of missing of victim girl. She had break fast at her house and inquired about the victim. Thereafter, she went to house of other person at her village. After sometime, when she returned to her home, she did not find Khenta Begum as well as victim. Her father was informed about the incident.

Her cross-examination was declined by defence side.

9). **Majam Ali [P.W.3]** deposed in her evidence that she knows the informant and victim of this case. She Knows the accused persons of this case. Accused belongs from her village. Incident took place before 5 years ago.

On the relevant day, at about 3.00 P.M., at Mazdia Bazar, she saw accused Khenta Begum going in the market followed by victim Maina Ahmed. It was Tuesday. After that Maina Ahmed become traceless for which her father lodged this case.

Later on, P.W.3 heard that victim has been sold at Delhi.

During her cross-examination for Khenta Begum and Safiqul Islam, P.W3 stated that he knows the victim closely. His house is located very close to her house. Accused Khenta Begum also saw him when he saw her going at market. Victim did not tell him anything though she saw him.

P.W.3 did not talk to her after she came from Delhi after 20 days of the incident. He do not know anything more than this about the incident of this case.

Her cross-examination was declined for Sukurjan Nessa by defence side.

10). **Dipak Talukdar [P.W.4]** deposed in her evidence that on 16-08-2013, he was working at Tarabari PS as ASI of the said police station. On that day, O.C. Tarabari P.S. received one FIR from one Sultan Ali, which he registered as Tarabari PS 172/2013 u/s 366(A) IPC. He entrusted him to investigate of the case in connection with FIR lodged by informant Sultan Ali. Ext. 1 is the FIR and Ext. 1 (2) is the signature of the then officer in-charge of Tarabari PS, namely SI Rajibur Rahman, along with his endorsement.

Upon taking charges of the investigation, P.W.4 went to the place of occurrence and drew the sketch map of the place of the incident. Ext. 2 is the sketch map and Ext. 2(1) is his signature. He examined the complainant and recorded the statement of the witnesses also.

He arrested accused Khenta Begum on 27-08-2013. She was forwarded to Hon'ble court. He brought two accused from Bharalu PS namely Surkurajan Nessa and Mamtaz Begum. They were also forwarded to Hon'ble court after arresting them on 28-07-2013.

P.W.4 also arrested accused Safiqul Islam on 28-08-2013 and went to Punjab to recover the victim girl but could not find her.

On 21-11-2013, he was transferred to Patacharkuchi PS so he handed over the case diary to the officer in-charge of Tarabari PS. He recovered the statement of witnesses 1. Mazam Ali, 2. Kad Bhanu, 3. Nazma Begum and 4. Sultan Ali.

During his cross-examination, P.W.4 stated that Superintendent of Police did not entrust him power to investigate the case. He produced the accused persons before the court.

P.W.4 denied that he did not apply the provisions of law as he was not authorized by the OC.

Informant did not state before him the delay of lodging FIR. He did not examine any person at Guwahati where victim was allegedly kept. He had not brought the part diary of the Bharalumukh PS.

He did not find any materials to show that victim was sold at Delhi and he did not ascertain the age of victim.

P.W.4 denied that he had not followed the provisions of law and did not investigate the case properly.

11). **The Victim [P.W.5]** deposed in her evidence that informant is her father. She knows the accused persons of this case. Incident took place about 4 years ago. She was at her house.

She (P.W.5) stated that one day, all the accused persons took her with them from her house after calling her. They offered her 'nimki' at Mazdia after which she became unconscious. She regained her sense at Delhi after 3 days. She saw Safiqul, Mamta and Khenta there. They got her married with a person who took her to Bombay. She was married with Bittu Singh Sidhu. She was married by the accused person against her consent.

After seven days of her marriage, her father traced her at Bombay. Her father recovered her at Bombay with the help of police. She narrated the incident to her father. Police also examined her.

Police sent her for her medical examination. Police also got her statement recorded u/s 164 Cr.PC. She put her LTI at her statement.

At present, she had having one child from said Bittu Singh Sidhu. She again went to him after giving her statement recorded u/s 164 Cr.PC. She was below 18 years at the time of incident.

During her cross-examination, stated that she could not say the date and year of her birth. She did not tell anybody at Delhi about the incident after regaining her sense. She went to Bombay by train. She did not tell anybody about her marriage with Bittu Singh Sidhu.

P.W.5 went to market herself at Bombay and she did not see police there. She did not tell anybody at Bombay about the incident.

Accused did not take her to Punjab. She did not state before police that she was taken to Bombay. Bittu Singh Sidhu came with her father. She did not tell anything to police of Barpeta against her husband regarding her forcible marriage.

P.W.5 denied that she did not state before police that one day all the accused persons took her with them from her house after calling her. They offered her 'nimki' at Mazdia after which she became unconscious. She regained her sense at Delhi after 3 days. She saw Safiqul, Mamta and Khenta there.

P.W.5 also denied that she went with the accused voluntarily. At present, she is living happily with her husband.

12). The accused persons of this case have been charged under Section 366 (A)/370/34 of IPC. For better appreciation of the issue raised, it is necessary to have a look in the Section 366A IPC, which reads as follows :

"366A. Procuration of minor girl.-- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

The 1st criteria to attract Section 366 (A) of IPC is that the girl alleged to have been kidnapped must be under the age of 18 years. Let us see whether Prosecution side has been able to prove the age of victim (P.W.5) to be under 18 years of age.

Informant (P.W.1) deposed in his evidence that he has written the age of the victim girl in F.I.R. (Ext.1) lodged by him. He denied that he did not write age of victim in the F.I.R. lodged by him. I have perused the FIR lodged by P.W.1 on 16.08.2013. In the F.I.R, no where contains that victim was minor or below 18 years of age at the time of the alleged incident of the case.

P.W.2 and P.W.3, who are independent witnesses of the village of the informant did not depose anything regarding the age of victim in their evidence.

The I.O. of the case Sri Dipak Talukdar (P.W.4) also did not depose regarding, any steps, taken by him during investigation to hold that victim was minor at the time of incident. He clearly stated in his cross-examination that he did not ascertain the age of victim.

The victim (P.W.5) in her cross-examination could not say the date and year of her birth. Prosecution side has also not produced medical examination certificate to ascertain the age of victim at the time of incident.

Thus, except mentioning of age by victim in her statement given before learned Magistrate on 07.11.2014, there is no materials to hold that P.W.5 was minor at the time of alleged incident.

13). From a close perusal of the evidence, it is seen from the statement of the victim (P.W.5), who is star witness of this instant case that all the accused persons took her with them from her house after calling her and offered her 'nimki' at Mazdia after which she became unconscious. She regained her sense at Delhi after 3 days. They got her married with Bittu Singh Sidhu who took her to Bombay.

After seven days of her marriage, her father recovered her at Bombay.

She clearly stated in her cross-examination that she did not tell anybody at Delhi, Bombay about the alleged incident. The victim clearly deposed in her cross-connection that she has been staying happily with her husband namely Bittu Singh Sidhu.

The conduct of victim clearly shows that she was a willing party and she voluntarily lived with one Bittu Singh Sidhu and they have happy married life. The conduct of the victim is not found natural had she been abducted or kidnapped by the accused person by force.

14). The informant (P.W.1) who is the father of the victim girl stated in his evidence that accused Safiquil caught by Police after 20 days of the alleged incident and he told him (P.W.1) that his victim daughter went to Haryana alongwith them where she was sold by them. After that, he came to know that his victim daughter had been taken to Bombay. His victim daughter told him that she got married with one Bittu Sing and they are staying at Bombay.

The victim girl also deposed in her statement recorded under Section 164 CrPC that on being asked, accused told her that they took her to Punjab whereas Victim deposed in her cross-examination that accused did not take her to Punjab.

Further, informant (P.W.1) deposed that accused Safiquil told him that he alongwith all the three accused sold the victim at Haryana and later on victim was taken to Bombay. However, nobody supported the version of P.W.1 that he alongwith other accused sold the victim at Haryana. Victim (P.W.5) deposed that she regained her sense at Delhi after three days of her alleged kidnapping and she got married at Delhi and the said person took him to Bombay.

However, I.O. (P.W.4) of the case clearly deposed that he did not find any materials to show that victim (P.W.5) was sold at Delhi.

Victim also deposed that after 7 days of her marriage, P.W.1 traced her at Bombay. However, there is no evidence on record to show that victim was traced at Bombay. Moreover, I.O. of the case has not examined the husband of victim (P.W.5) namely Bitu Singh Sidhu who allegedly married the victim without her consent.

15). In this case, the conduct of victim is surprising as though she alleged that accused persons kidnapped her and she became senseless after eating 'Nimki' offered to her by accused. She also claimed to have regained her sense after 3 days at Delhi but she did not tell anybody at Delhi about the incident after regarding her sense. She went to Bombay by train as per her cross-examination but she did not tell there also about her marriage with Bitu Singh Sidhu. She even did not tell Police that she was taken to Punjab. Surprisingly the said husband of victim came to Barpeta with her father (P.W.1) but she did not tell anything against her said husband to Police at Barpeta regarding her forcible marriage with him. Victim also deposed that

she is living happily with her husband.

Thus, from the available evidence on record I find it difficult to hold that accused sold or detained the victim to any place as a slave in furtherance of their common intended.

16). In the case of *Utpal Mishra -versus- State of Assam, 2015 [2] GLR 542*, it has been held by the Hon'ble Gauhati High Court in Para No.-22 of its judgment as follows:

PARA NO-22

The principals of criminal jurisprudence are that :

a) There should be legal, reliable and unimpeachable evidence to prove that the prosecution story "must be true" rather than "may be true";

b) It is settled principle of criminal jurisprudence that more serious the offence, stricter is the degree of proof;

c) Standard of proof in a criminal case: burden is always on the prosecution and the same never shifts. Prosecution can never derive any benefit from the weakness of the defence version;

d) Holding a witness "implicitly reliable" leads to denial of judicial consideration of the infirmities in evidence;

e) Defence witnesses can not be disbelieved by relying on conjectures and surmises: they are entitled to equal treatment with those of the prosecution;

f) If two views are possible in a criminal case, the view favourable to the accused should be accepted;

g) The averment/allegation with respect to the commission of rape has

got to be clear and specific for basing a finding of guilt rather than being just inferential. The evidence/averments/allegations must fulfill the ingredients of offence of RAPE as defined under Section 375 of IPC;

h) The prosecution must prove the case in the manner in which they are alleged to have caused. It is elementary where the prosecution has a definite and positive case, it must prove the whole of that case;

i) In a case the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such situation.

17). Since the 'inducement' as envisaged in Section 366A IPC is found to be absent on the basis of testimony of the witnesses, this court is constrained to hold that the accused cannot be convicted under Section 366A IPC. Similarly, I also do not find sufficient evidence against accused persons for holding them charge under Section 370/34 of IPC.

18). On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.

19). In the result, accused **Khenta Begum, Sukurjan Begum and Md. Safiqul Islam are acquitted** of the charge under section 366(A)/370/34 IPC, levelled against them, on benefit of doubt.

The bail bonds of accused **Khenta Begum and Md. Safiqul Islam stand discharged.**

20). Given under my hand and seal of this Court on this **13th day of February, 2020.**

Dictated & corrected by me.

**Sd/-
Sessions Judge, Barpeta.**

A P P E N D I X

(A) Prosecution witnesses:

P.W.1 = Sultan Ali, the informant,
P.W.2 = Kad Bhanu,
P.W.3 = Majam Ali,
P.W.4 = Dipak Talukdar, the I.O.,
P.W.5 = Maina Ahmed, the victim.

(B) Prosecution Exhibits:

Ext.1 = Ejahar,
Ext.1(1) = Signature of Sultan Ali,
Ext.2 = Sketch map,
Ext.2(1) & 2(2) = Signature of I.O.,

(C) Defence witnesses: Nil.

(D) Defence Exhibits: Nil.

(E) Court witnesses: Nil

(F) Court Exhibits: Nil.

Sd/-

Sessions Judge, Barpeta.