



GAHC010004332012

Page No.# 1/12



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

Case No. : CrI.A./50/2012

PARAG SAIKIA AND ANR
S/O SRI DILIP SAIKIA, PODUMONI JAPIJIA GAON UNDER TEOK, P.S. DIST.
JORHAT

2: KRISHNA SAIKIA

S/O LATE ANIL SAIKIA
PODUMONI JAPISOJIA GAON
P.S. TEOK
DIST. JORHAT

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP, ASSAM.

2: BIDYUT BIKASH BORA
S/O- LATE NOREN BORA

R/O- VILL. BORNAGOIA GAON
POLICE STATION- TEOK
DISTRICT- JORHAT

Advocate for the Petitioner : DR.R SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY



For the Appellants : Mr. NNB Choudhury, Advocate
For the Respondents : Mr. KK Parasar, Additional PP, Assam
Mr. MJ Baruah, Advocate
Date of Hearing : 14.08.2023
Date of Judgement : 14.08.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. NNB Choudhury, learned counsel for the appellants. Also heard Mr. KK Parasar, learned Additional Public Prosecutor, Assam.
2. The present appeal is directed against the judgment and sentence dated 22.02.2012 passed by the learned Assistant Sessions Judge, Jorhat in Sessions Case No. 125 (JJ)/2010 corresponding to GR case No. 548/2010 whereby the appellants were convicted under Sections 366/34 IPC and sentenced them to undergo for 7 years of rigorous imprisonment and pay fine of the Rs. 5,000/-each and in default to undergo rigorous imprisonment for six months.
3. The prosecution was launched on the basis of an FIR lodged by one Bidyut Bikash Bora, PW3 before the Teok PS, inter-alia, alleging that on 20.05.2010, at about 8.45 in the morning while her sister was going to computer centre at Amguri, the accused Parag Saikia and few others hailing from Padumani Japijia Gaon forcibly took away his sister in Maruti Van and her whereabouts is not known till then. On receipt of the aforesaid FIR, a case being Teok Police Station case No. 96/2010 under Section 366 IPC corresponding to GR 548/2010 was registered.
4. The Investigating Authority investigated the matter and subsequently



after completion of the investigation, filed charge-sheet being Charge-sheet No. 114/2010 against the appellants under Section 366 IPC. The learned court below framed formal charges under Section 366 IPC and when the appellants claimed to be not guilty and trial commenced.

5. To bring home the charges against the appellants, the prosecution examined as many as 6 witnesses including the victim as PW1. The accused was examined under the provision of Section 313 Cr.P.C. and thereafter the accused led evidence in support of defence by examining two witnesses as DW1 and DW2.
6. Thereafter, the learned court below placing reliance upon the statement of the victim as well as the informant PW1 concluded that the appellants are guilty of commission of an offence under Section 366 IPC and that the prosecution has been able to prove the case against the appellants beyond all reasonable doubt. Accordingly, the impugned judgment was passed.
7. Before considering the legality and validity of the judgment impugned, let this court first examine the depositions of the PWs.
8. According to the PW1 (victim), she and the accused were having a long love relationship and the family members also started discussion on solemnizing their marriage. However, the family members of accused did not agree with their marriage. Though, the accused Parag Saikia promised to marry her, however, because of the reason that the family members of the accused had not agreed, the victim started minimizing her mix up with the accused. However, she continued her weakness for the accused in her heart. According to her, on 20.05.2010 when she was going to computer



institute by riding her bicycle at about 8.45 a.m., one Maruti Van coming from behind, stopped her and accused Parag Saikia came out and forcefully caught her by hand and forced her to get inside the Maruti Van. At that point of time, the other accused, Krishna Saikia with some other persons were also there with the accused Parag Saikia. According to her, the accused Krishna snatched her bag and mobile phone and thereafter, they took her to their house at Rajabari, Teok by Van. According to the victim, she was crying and prayed the accused to leave her alone but the accused refused and she was kept in the house of one aunt at village Rajabari. Thereafter, she was taken to another place in a vehicle by Parag Saikia with a promise to her that she will be dropped at her house. According to her, she was kept in the house of one Dhanti Bora who is accused Parag's friend and she was kept confined for three days there. She further deposed that at the place of Dhanti Bora, she was allowed to sleep with girl. Thereafter, she was pressurized by Parag Saikia and his friend Dhanti Bora to solemnize marriage with Parag. According to her, on the next date, Parag Saikia informed the brother of the victim over phone regarding her abduction. Thereafter, on 24.05.2010, the police recovered her from the house of Dhanti Bora located at Merapani. According to her, seeing the police, accused, Parag Saikia fled away.

During her cross-examination, she reiterated that she had love affairs with Parag Saikia for the last 7/8 years, they were exchanging letters between them. She also gave an Aircel SIM card to Parag and they often talked over the mobile and sometimes they used to go for stall. She denied the suggestion that her relation with Parag was not approved by her family members. She in her cross-examination stated that even if Parag wants to

marry her she will not marry because of the embarrassment of she being dragged on the street. She denied the suggestion that her marriage was formally solemnized with the accused at Merapani Adars Gaon.

9. PW2 is the brother of the victim. Though he has also deposed regarding the abduction/ kidnapping of his sister victim girl, however, he also deposed that the accused Parag Saikia informed him regarding the incident through telephone and he informed the elder brother and thereafter the younger brother Bikash Bora, PW3 was apprised and an ejahar was filed by the younger brother. He deposed that that the victim was medically examined by doctor.

During cross-examination, he deposed that he is aware of the love relationship between the victim and the accused. During cross-examination, he admitted that he did not state before the police that accused Krishna co-operated with the accused Parag Saikia in abducting the victim.

10. PW3 is the informant as well as brother of the victim. According to him, he was informed over phone from his house that his sister while going to her work place, was forcefully picked up by the accused persons in a vehicle from the road with an intention to marry. Accordingly, he lodged the FIR on the next day. He further deposed in examination-in-chief that on the next date with the help of police they recovered the girl from the house of one unknown person at Merapani. According to them, though they came to know accused was there, however, seeing the police he escaped. The custody of the victim was given to their mother and according to him the victim informed that she was forcefully taken in a Maruti Van by the accused persons.



During cross-examination, he deposed that he did not witness the incident and further deposed that if the victim wants to marry accused, he has no objection. During cross-examination, he further deposed that his mother went to the house of the accused with a proposal to meet the father of the accused to give the victim in marriage with the accused.

11. PW4's evidence is not very vital inasmuch as according to him he accompanied the informant to the police station and according to him, he learnt that victim was kidnapped by some body. He further deposed that the informant did not inform him who abducted the victim.
12. PW5's evidence is also not relevant. He just deposed that he knows the accused and he witnesses that accused used to travel by the road in front of his house. He also knows the informant and he knows nothing about the incident.
13. PW6 is the I/O of the case. He in his examination-in-chief described how he conducted the investigation and got recorded statement of the victim under Section 164 Cr.P.C. and also recorded the statement of the witnesses under Section 161 Cr.P.C. During the cross-examination, he deposed that he arrested the accused from Merapani. He also examined witness Ramen Bora and Rajani Bora.
14. From the depositions of the aforesaid witnesses and their cross-examination, certain important and vital facts are recorded in the following way:
 - I. It is established beyond reasonable doubt that the victim and the accused Parag Saikia were having an existing love affair since 7/8 years till the date of alleged abduction.



- II. Two families i.e. the family of accused and the victim were also aware of such love affair.
- III. The victim and the accused used to go to some places for strolling during their affairs.
- IV. A dispute arose as regard the proposed marriage between the two families.
- V. From the evidence of the PWs more particularly the PW1 and the two brothers of the victim, PW2 and PW3, it is seen that the family of the accused as not ready to get the marriage solemnized at that point of time.
- VI. There is contradiction in this regard. It was described by the PW1 that the family members of the accused came to the house of the victim however, they refused to solemnize the marriage at that point of time and they misbehaved the mother of the victim and therefore, the victim started avoiding the accused. However, the brother deposed that their mother went to the house of accused for discussion regarding the marriage.
- VII. From the deposition of the PW1, she was consistent in saying that she was kidnapped from middle of a road at around 9 am in the morning while she was going to her office (computer institute). From her evidence, it also seen that she was brought to the house of Ramen Bora @ Dhanti Bora.
- VIII. From the other PWs, it is also established beyond reasonable doubt that she was recovered from the house of the aforesaid Ramen Bora.



- IX. PW1 also admits that she was kept at the place of Ramen Bora and she was allowed to sleep with a girl.
- X. The accused in his 313 statement took a specific stand that it is the victim who went to the place of Ramen Bora to get married with the accused and Ramen Boara called him that victim had reached the place of Dhanti and therefore he reached the place of Ramen Bora at around 3pm whereas the victim reached the place of Ramen Bora at 9 am.
- XI. The accused in support of his contention also examined two witnesses. It is interesting to note here that these two witnesses according to this court were very vital witnesses for the prosecution case or to arrive at a just decision inasmuch as these witnesses were listed as witnesses in the charge-sheet. The very vital witness, who was examined as DW1, Ramen Bora is the person to whose residence according to the PW1 (victim), she was taken. According to PW1, it is his place, where she was allowed to sleep with a girl. According to the other prosecution witnesses, it was the said Ramen Bora from whose house the victim was recovered. The I/O also deposed that he recorded statement of Ramen Bora. Therefore, this witness was very vital so as to ascertain whether the victim was kidnapped by the accused or actually the victim on his own went to the place of aforesaid person as projected by the accused Parag Saikia.
- XII. If we consider the evidence of DW1, he deposed that he knows both accused and the victim and he was also aware of the love relationship between the accused and the victim. According to him,



the victim came to his house on 25.02.2010 alone. He further deposed that on being asked the victim told him that she came to his house with a view to get married with accused Parag Saikia. According to DW1, she intimated that she had reported to her parents and came to the house of DW1. According to him, victim reached his place around 9 am and the accused arrived his place around 3 p.m. He further deposed that after arrival of the accused, he asked the accused as to whether he is ready to marry the victim. The accused refused to marry her at that relevant point of time and the victim insisted upon the accused to get her marry. He further deposed that on the very night he asked the victim to sleep with his sister. On the next date, on being informed, the informant came to the house of DW1 along with police and the girl was taken by them. During cross-examination by the prosecution his testimony remained unshaken rather he reiterated regarding the love affairs between the victim and the accused since long.

- XIII. DW2 is another vital witness, who also deposed that he saw victim alone going to the house of DW1. He also further deposed that he went to the house of DW1 and when family of DW1 in his presence enquired the victim for the reason of coming to their house, she replied that she has gone there in search of the accused. According to the DW2, the victim also reported that her parents are putting pressure on her marriage so she came to the house of the DW1 to find out the accused. Such statement also remained unshaken, though was thoroughly cross-examined by prosecution.
- XIV. To a pointed query by this court, DW2 deposed that he does not



know how and who brought the victim from her house and he saw the victim proceeding towards the house of the DW1.

15. Thus, from the aforesaid though certain facts are established as discussed hereinabove, a doubt is created through the DW1 as well as in the 313 statement of the accused whether the victim was kidnapped or she voluntarily went to the place of DW1. In the considered opinion of this court, the witness i.e. aunt of the accused in whose place the victim was first taken was a very vital witness to get examined as the victim herself deposed that initially after being kidnapped, she was taken to the house of aunt of the victim. Name of the said aunt is neither disclosed in the charge-sheet or she was arrayed as an witness nor her statement was recorded under Section 161 Cr.P.C. She could have been a very vital witness, but for reason best known to the prosecution, she was not treated as a witness for the prosecution. The DW1 and DW2 were also very important and vital witnesses for prosecution. Their statements were recorded under Section 161 Cr.P.C. While filing the charge-sheet they were named as witnesses because they are the two persons, who could have deposed to unearth the actual fact more particularly for the reason that the victim PW1 herself has stated that when she was brought to the place of DW1, she was allowed to sleep with a girl. Therefore, DW1 was a vital witness and he was examined as DW1 and his statement that the victim was allowed to sleep with his sister is being corroborated by the PW1 herself and the evidence of DW1 as well as the other important PW including the I/O and the informant, it is established that it was the residence of DW1, from which the victim was recovered and the said DW1's evidence remained unshaken that the victim herself went to the



house of DW1 alone and not brought by any kidnapper. Such evidence remained unshaken and rather corroborated by the witness DW2, who says that he saw the victim proceeding towards the house of DW1 alone.

16. Another aspect of the matter is that the police has neither seized the alleged Maruti Van, which was involved in the incident or could identify to whom the said vehicle belongs to. The alleged kidnapping was committed from a town area at broad day light and at 9 a.m., however, the prosecution is silent about presence of any passersby on the road nor any person from near the place of occurrence was examined inasmuch as it is not a case of the prosecution that the place of occurrence was an isolated place. Such lacuna in the evidence also creates a doubt upon the story whether she was kidnapped or whether she was went on her own to the place of DW1. Further, there is also a contradiction between the prosecution witnesses i.e. brother and the PW1 regarding the negotiation of the marriage. PW1 stated that the family members of the accused Parag Saikia came to their place whereas brother PW3 deposed that it is his mother who went to the place of the accused with the marriage proposal. Therefore, a serious doubt has been created whether this is a case of kidnapping. Therefore, in the considered opinion of this court that the decision of the learned trial court below placing heavy reliance upon the deposition of PW1 cannot be a sole basis of conviction of the accused Parag Saikia. So far relating to the other accused, in the considered opinion of this court except taking the name that Krishna was also waiting, no whisper or any evidence is available against said Krishna.

17. In view of the aforesaid, this court is of the view that the prosecution has been failed to establish the case beyond reasonable doubt



and the learned trial court has committed serious error of law as well as fact in convicting both the accused persons only on the basis of the statement of the victim girl.

18. In view of aforesaid doubt, in the consideration opinion of this court the benefit of doubt should be given to the accused. Accordingly, present appeal stands allowed and the judgment and sentence dated 22.02.2012 passed by the learned Assistant Sessions Judge, Jorhat in Sessions Case No. 125 (JJ)/2010 corresponding to GR case No. 548/2010 is hereby set aside and quashed and the appellants/accused persons are acquitted from the charges.
19. The appellants be set at liberty forthwith, if their custody are not required in connection with any other cases. LCRs be returned back.

JUDGE

Comparing Assistant