

Form No (M) 34 **FORM-A**
**IN THE COURT OF ASSISTANT SESSIONS JUDGE, 1ST COURT,
CONTAI**

**Present: SARMISTHA GANGULY,
ASSISTANT SESSIONS JUDGE, 1ST COURT, CONTAI.
J.O. Code: WB01062.**

**Date of Judgment: On this 27th Day of March, 2023.
Case No.: S. T. NO. 16 OF 2023.**

CIS No. ST 16 OF 2023

**Arising out of Egra PS case No. 226/2020 dated 07.05.2020 under sections
363/366/34 of IPC**

COMPLAINANT : STATE OF WEST BENGAL

**REPRESENTED BY : Sandip Maity, Ld. P.P. in charge,
Contai**

**ACCUSED : 1. Palash Pal [A1]
2. Swapan Pal [A2]
3. Rajkumar Patra [A3]**

**PRESENTED BY : Puranjan Das Mahapatra/ , Ld.
Advocate**

FORM-B

Date of Offence : 05.05.2020

Date of FIR : 07.05.2020

Date of Charge sheet : 30.06.2020

Date of Framing of Charges : 10.02.2023

Date of commencement of Evidence : 22.07.2023

Date on which Judgement is reserved : 27.03.2023

Date of the Judgement : 27.03.2023

Date of the Sentencing Order, if any : NIL

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 Section 428 of Cr.P.C.
A1	Palash Pal	N.A	03.07.2020	Under 363/366/34 of IPC	Acquitted	NA	NA
A2	Swapan Pal	N.A	03.07.2020	Under 363/366/34 of IPC	Acquitted	NA	NA
A3	Rajkumar Patra	N.A	03.07.2020	Under 363/366/34 of IPC	Acquitted	NA	NA

Form No (M) 36

Form C WITNESS

2. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
W 1	Subhas Chandra Shit	De facto Complainant
PW2	Manasa Shit	Wife of the complainant
PW 3	Madhab Chandra Shit	Independent witness
PW 4	Sukriti Shit	Victim Girl

EXHIBITS

A. Prosecution:

Sl.No.	Exhibit Number	Description
1	Exhibit -1/PW1	The written complaint
2	Exhibit -2/PW1	The signature of PW 1 on the seizure list dated 07.05.2020.
3	Exhibit -3/PW2	The signature of PW 3 on the medico legal report dated 07.05.2020
4	Exhibit -3/1 /PW4	The signature of PW 3 on the medico legal report dated 07.05.2020
5	Exhibit -4 /PW4	The statement of the V.G. recorded u/s. 164 Cr.P.C.

Date of delivery of Judgment on 27.03.2023.

(This case was committed by the Learned Additional Chief Judicial Magistrate, Contai vide his order no.07 dated 06.02.2021 passed in connection with G.R(E). case no.401 of 2020 arising out of Egra P.S. Case no.226 of 2020 dated 07.05.2020).

J U D G M E N T

This is a case under section 363/ 366/ 34 of the Indian Penal Code.

The case of the prosecution has its genesis in a written complaint lodged by **Subhas Chandra Shit** before the O.C. Egra P.S. on 07.05.2020 to the effect that his minor daughter namely Sukriti Shit had gone missing from his house since the afternoon of 05.05.2020 and inspite of searching for her at all possible places, she could not be traced out and on 06.05.2020, the de facto complainant came to learn that the accused persons had enticed and kidnapped his minor daughter with the intention of getting her married with the accused Palash Pal. It has further been stated by the complainant that efforts was made to reconcile the dispute with the accused persons but since no positive result could be obtained, the present written complaint has been filed by him for tracing out his daughter and punishing the accused persons as per the existing provisions of law.

After the instant complaint was lodged before the concerned Egra P.S. by the complainant, Subhas Chandra Shit on 07.05.2020, the **Egra P.S. case no.226 of 2020 dated 07-05-2020** was started against four accused persons namely **Palash Pal, Swapan Pal, Mantu Pal and Rajkumar Patra** under **section 363/ 366/34 of the Indian Penal Code**. During the course of investigation, the victim girl namely **Sukriti Shit** was recovered by the concerned Investigating Officer and produced for recording her statement before the Learned Magistrate under section 164 of Cr.P.C.

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Thereafter, on completion of investigation, the I.O. submitted Charge Sheet against the three accused persons namely **Palash Pal, Swapan Pal and Rajkumar Patra under section 363/ 366 /34 of the Indian Penal Code**. On submission of the Charge Sheet by the I.O., the Learned Additional Chief Judicial Magistrate at Contai took cognizance upon the same and after complying all the formalities, the said case was committed for trial before the **Learned Additional Sessions Judge, 1st Court, Contai** vide order no.07 dated 06.02.2021 for further proceeding of the case and the case record was thereafter transmitted to the said Court. On appearance of all the three accused persons before the said Learned Court and after receiving the case record, the Learned Additional Sessions Judge, 1st Court, Contai transferred the present case to this Court for its trial and disposal in accordance of law.

All the three accused persons namely **Palash Pal, Swapan Pal and Rajkumar Patra** appeared before this Court and after receiving the case record, charge was framed against all the three accused persons for the offences punishable under section **363/ 366/34 of the Indian Penal Code** and in accordance with the provisions of section 228 of Code of Criminal Procedure, the contents of the said Charges was read over and explained to all the three accused persons in Bengali to which they pleaded not guilty by individually saying “Ami Nirdosh” and claimed to be tried as per the existing provisions of law.

In order to prove the case of the Prosecution, the State examined four witnesses in its favour. The de facto complainant namely, **Subhas Chandra Shit** has been examined as PW-1, the wife of the de facto complainant namely **Manasa Shit** has been examined as PW-2, one **Madhab Chandra Shit** has been examined as PW-3 and **the victim girl namely Sukriti Shit** has been examined as PW-4. During the examination of the above four witnesses, some documents were marked as Exhibit which is stated as hereunder :

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1. **The written complaint lodged by the de facto complainant at Egra P.S. has been marked as Exhibit-1.**
2. **The signature of the de facto complainant on the seizure list dated 07.05.2020 has been marked as Exhibit-2.**
3. **The signature of PW-2 on the medico legal report dated 07.05.2020 of Egra S.D. Hospital has been marked as Exhibit-3.**
4. **The signature of PW-4 on the medicolegal report dated 07.05.2020 of Egra S.D. Hospital has been marked as Exhibit -3/1.**
5. **The statement of the victim girl recorded under section 164 of Cr.P.C. by the Learned Magistrate at Contai Court has been marked as Exhibit-4.**

After adducing the evidence of the four witnesses, the State Prosecution declined to adduce any further witness in their favour and the evidence on the part of the State Prosecution was closed.

On the basis of the evidence as adduced on behalf of the State Prosecution, all the three accused persons were examined under section 313 of Cr.P.C. by putting specific and separate questions to them in Bengali and all of them pleaded innocence and stated that they have been falsely implicated in the present case and that they also declined to adduce any evidence in their defence.

The defence case as it appears from the trend of cross-examination of the Prosecution witnesses and from the trend of giving answers to the questions put at the time of examination of all the three accused persons under section 313 of Cr.P.C. is that they are innocent and that they have been falsely implicated in this case. It also appears that no witness has been examined on behalf of the accused persons.

POINTS FOR DETERMINATION

1. Whether the accused persons namely **Palash Pal, Swapan Pal and Rajkumar Patra** in furtherance of their common intention had kidnapped

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the victim girl namely Sukriti Shit from her lawful guardianship on 05.05.2020 ?

2. Whether the accused persons in furtherance of their common intention kidnapped or abducted the victim girl, Sukriti Shit with the intent that she may be compelled to marry the accused Palash Pal against her will on the date of the incident on 05.05.2020 ?

DECISION WITH REASONS

To consider the above points I have carefully perused the materials on record and have also heard at length the arguments made on behalf of the State Prosecution as well as the Defence Counsel and have duly considered the same.

At the time of argument, it was the specific candid submission of the Learned P.P. in charge that the Prosecution in this case has produced four witnesses in support of the allegations made against all the three accused persons that in furtherance of their common intention, they had kidnapped the minor girl of the defacto complainant, namely **Sukriti Shit** from her lawful guardianship with the intent that she may be compelled to marry the accused Palash Pal against her will but all the four Prosecution witnesses who were examined have failed to deliver any satisfactory evidence in support of the case of the Prosecution.

On the other hand, the Learned Defence Counsel put forward the argument that all the three accused persons have been falsely implicated in the present case and submitted that though the State Prosecution produced four witnesses in their favour but none of the witnesses could give any authenticated testimony or any reliable evidence to bring home the charges levelled against any of the three accused persons. Hence, the Learned Defence Counsel prayed for acquittal of all the three accused persons.

Therefore, in this environment of argument and counter argument as submitted by the Learned Advocate for the State Prosecution as well as the Defence, it is the duty of this Court to decide as to how the State Prosecution has been able to prove its allegations against all the three accused persons beyond all shadow of reasonable doubt by adducing cogent and reliable evidence in its favour.

In the present case, charges for the offences punishable under section **363/ 366/ 34** of the Indian Penal Code have been framed against all the three accused persons namely **Palash Pal, Swapan Pal and Rajkumar Patra** and the State Prosecution has examined four witnesses in their favour. The written complaint lodged by the de facto complainant before the Egra P.S. has been marked as **Exhibit-1** and the statement of the victim girl Sukriti Shit as recorded by the Learned Magistrate under section 164 of Criminal Procedure Code has been marked as **Exhibit-4**.

Before analyzing the fact as to whether the accused persons are guilty of the charges levelled against them, it is pertinent to go through the provision of section **363 of the Indian Penal Code** which provides for the punishment for kidnapping from India and also from lawful guardianship. According to the facts and circumstances of the present case, the minor victim girl namely **Sukriti Shit** has been allegedly kidnapped from her lawful guardianship by the accused persons in furtherance of their common intention. In this regard, reference may be made to the provisions of **section 361 of the Indian Penal Code** which provides for the definition of kidnapping from lawful guardianship. The section 361 of the Indian Penal Code lays down that "**whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to be kidnap such minor or person from lawful guardianship**".

Hence, the aforementioned legal provision makes it aptly clear that the offence of '*kidnapping from lawful guardianship*' under **section 361 of the Indian Penal Code** is only attracted in case of a female if the said person is under the eighteen years of age. Therefore, in order to attract the offence under section 361 of the Indian Penal Code, it is the logical duty of the Prosecution to prove with authenticated evidence that a female under the eighteen years of age has been kidnapped. In the facts and circumstances of the present case, it was the bounden duty of the State Prosecution to prove that the victim girl namely, **Sukriti Shit** was under the age of eighteen years.

On careful scrutiny of the evidence of the four witnesses as adduced on behalf of the Prosecution, it appears to me that neither the de facto complainant being the father of the victim girl nor his wife nor the victim girl herself has stated anything in their deposition regarding the fact as to whether the victim girl had been a minor on the date of the incident. It also reveals to me that though the I.O. had seized the original birth certificate of the victim girl at the time of investigation by way of a seizure list but the same was not produced and proved before this Court in accordance with law in order to conclusively substantiate the fact that the victim girl had been a minor on the date of the alleged incident. Therefore, it is crystal clear that the basic ingredients of section 363 of the **Indian Penal Code** that the victim girl had been a minor while she was kidnapped from her lawful guardianship could not be proved on behalf of the Prosecution either by oral evidence or by virtue of any authenticated documents produced in this respect. Further it also reveals to me that it has been categorically stated by the de facto complainant that since his daughter had left home without informing anybody after being scolded by him and his wife, he had lodged the complaint before the concerned P.S. against the accused persons out of suspicion. The same fact was also narrated both by PW-2 being the wife of the defacto complainant and PW-4 being the victim girl during their evidence and also by the independent witness who had been examined as

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PW-3. Hence, it clearly reveals that the alleged fact that the victim girl had been kidnapped by the accused persons on the date of the incident also could not be duly proved on behalf of the prosecution.

The second allegation that has been levelled against the accused persons is under **section 366 of the Indian Penal Code**. Before considering the fact as to whether the accused persons are guilty of the offences punishable under section 366 of the Indian Penal Code, the provision of the said section is required to be looked into.

Section 366 of the Indian Penal Code clearly lays down that “**whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse shall be punished**”

For due consideration of the fact as to whether the Prosecution has been able to prove this charge against all the three accused persons under **section 366 of the Indian Penal Code**, careful scrutiny of the evidence of the Prosecution witnesses has to be done by this Court. In this context, it is interesting to note that PW-1 being the de facto complainant and the father of the victim girl, in his deposition clearly stated that he had lodged the complaint against the accused persons after his daughter could not be traced out on the date of the incident. However, in his cross-examination, PW-1 admitted that he is unable to recollect the contents of the written complaint as lodged by him before the concerned P.S. and that he had not been acquainted with the accused persons as the time of lodging of the written complaint against them.

Further, PW-2, being the mother of the victim girl also stated in her deposition that since her daughter had left the house without informing anybody on the date of the incident the complaint had been lodged against the accused persons.

In her cross-examination PW-2 too admitted that she had not been previously acquainted with the accused persons. PW-3 being the only independent witness examined on behalf of the prosecution categorically stated during his evidence that he cannot say the reason for which the complaint had been lodged against the accused persons in the present case and that the daughter of the complainant had been to the house of her maternal uncle on the alleged date of incident.

PW-4 being the victim girl also stated in her deposition that on the date of the incident, she had been to the house of her maternal uncle without informing anybody after being scolded by her mother for not attending her tuition classes. She also admitted during her evidence that she is not aware of the reason for which the complaint had been lodged against the present accused persons.

Therefore, neither the de facto complainant being the father of the victim girl nor his wife nor the independent witness being PW-3 nor the victim girl herself during their oral evidence uttered any word regarding the alleged involvement of the accused persons in any manner in kidnapping the victim girl from her lawful guardianship or forcing her to get married with the accused Palash Pal against her will. Moreover, on careful perusal of the statement as given by the victim girl before the Learned Magistrate under section 164 of Code of Criminal Procedure, it appears to me that she had gone to the house of her maternal uncle on the date of incident. Hence, there is nothing on record to substantiate the allegation as made against any of the three accused persons that in furtherance of their common intention, they had kidnapped the victim girl from her lawful guardianship with the intent that she may be forced to marry the accused Palash Pal against her will and as such the offences under section **363/366/34 of the Indian Penal Code** could not be proved by the State Prosecution beyond all reasonable doubt against any of the three accused persons.

Therefore, on careful and meticulous scrutiny of the evidence of record, it clearly transpires to me that the ingredients of the offences punishable under section

363/366/34 of the Indian Penal Code could not be proved by the Prosecution against any of the three accused persons. So, this Court has no hesitation to hold that the State Prosecution has miserably failed to bring home the charges made against all the three accused persons beyond all shadow of reasonable doubt. Hence, as the State Prosecution has failed to prove the case and guilt of the accused persons, the presumption of innocence goes in their favour and all of them are entitled to be acquitted of this case.

Hence, it is

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that the accused persons namely **Palash Pal, Swapan Pal and Rajkumar Patra** are found not guilty of the offences punishable under section **363/ 366/34 of the Indian Penal Code** and they are all acquitted from this case under section **235 (1)** of the Code of Criminal Procedure.

All the three accused persons be set at liberty at once.

They are also discharged from their respective bail bonds.

Seized alat, if any, be returned to the complainant or destroyed after expiry of appeal period.

Accordingly, the instant case is disposed of on contest.

D/C by me.

Assistant Sessions Judge,
1st Court, Contai,
Purba Medinipur.

Assistant Sessions Judge,
1st Court, Contai,
Purba Medinipur.