

**IN THE COURT OF ASSISTANT SESSIONS JUDGE No. 1,
CACHAR, SILCHAR :: ASSAM.**

Present: Smti K. R. Deka, AJS.
Asstt. Sessions Judge, No.1,
Cachar, Silchar.

FRIDAY, THE 24th DAY OF MARCH, 2023

Sessions Case No. 196/2022.

(u/s. 366, IPC)

***[Arising out of G.R. Case No. 78/2020 &
PRC No.21/2021 committed by learned
JMFC (F.Y. Loi), Lakhipur, Cachar.]***

COMPLAINANT:	STATE OF ASSAM.
Represented by	Smti Susmita Purkayastha, Learned Addl. P.P.
Accused person	Sri Dilip Bhumiz (A1) S/o. Late Nishikanta Bhumiz, R/o. Hatikuri Grant, W/No.1, P.S. Lakhipur, Dist.: Cachar.
Represented by	Mr. B. I. Choudhury, Learned defence counsel.

Date of Offence	16-02-2020.
Date of FIR	17-02-2020.
Date of Charge-sheet	29-02-2020.
Date of Framing of Charges	23-12-2022.
Date of commencement of evidence	24-03-2023.
Date on which judgment is reserved	N/A.
Date of judgment	24-03-2023.
Date of sentencing Order, if any	N/A.

J U D G M E N T

- 1.** This instant criminal case was set in motion through a written *ejahar* lodged by one Moyna Goala before the Officer-in-Charge, Lakhipur Police Station on 17.02.2020 alleging *inter-alia* that, on 16.02.2020 like other days, the informant and her husband went for their daily works keeping the victim and other minor children in the house but in the evening after returning from work, they did not find the victim at home and accordingly they made search for the victim and during search they came to know that the accused persons namely, Dilip Bhumiz and others had kidnapped the victim forcefully and kept her confined somewhere. Hence, the case.
- 2.** On the basis of said *ejahar* Lakhipur P.S. Case No.54/2020 got registered u/s.366 IPC. The police, after usual investigation filed charge-sheet as against accused person namely, Dilip Bhumiz u/s.366 IPC.
- 3.** Learned JMFC (Smti F. Y. Loi), Lakhipur, Cachar, Silchar, as per mandate of Section 209 CrPC, after complying with the provision of Section 207 CrPC, committed the case to Hon'ble Sessions Court as the offence u/s. 366 IPC is exclusively triable by Sessions Court. At the time of committing the case record, the accused person was in judicial custody.

4. On receipt of the case record, Hon'ble Sessions Judge vide order dated 17.12.2022 transferred the case record to this Court, for disposal.
5. On receipt of the case record by this Court, the accused person was enlarged on Court bail vide order dated 17.12.2022. Thereafter, the prosecutor opened up her case and also stated by what evidence she proposes to prove the guilt of the accused. Both sides were heard on point of charge. Having found *prima-facie* case u/s. 366 IPC, I have framed formal charge against accused person u/s. 366 of IPC and also explained the charge to him, to which accused person pleaded not guilty and claimed for trial.
6. The prosecution during the course of trial, has examined only two witnesses, who are the informant and victim. Prosecution verbally prayed for closure of prosecution evidence on the ground that the vital witnesses have not supported the case. In light of evidence so far adduced and the submission from prosecution side, this Court being satisfied that there is no scope for enhancement of prosecution case by adducing further witnesses, the evidence from the prosecution side stood closed.
7. On closure of the prosecution evidence, accused person has been examined u/s. 313 of Cr.P.C. Accused person's pleas are of total denial. He also declined to adduce any evidence in his defence.

8. I have heard argument advanced by learned counsels on behalf of both the sides. I have carefully perused the materials on record.

9. **POINT FOR DETERMINATION :-**

Whether the accused person on 16.02.2020 (time not mentioned) at Hatikuri Grant under Lakhipur P.S., kidnapped the informant's daughter namely, Smti Sonali Goala, with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry against her will or that she would be forced or seduced to sexual intercourse, and as such, whether the accused is guilty under section-366 of IPC?

DISCUSSION, DECISION & REASONS THEREOF:

PROSECUTION EVIDENCE:

10. Let us now go through the evidence on record. In this case the prosecution-side, in order to bring home the alleged charge against the accused person, examined two witnesses.
11. **PW-1**, Smti Moyna Goala, the informant of this case, has deposed that the occurrence took place about three years back one day in the morning hours. That, her daughter was having a love relationship with the accused person. That, she came to know about the love affair of her daughter and accused person and then they reprimanded her and asked her to break all relations with the accused person. That, as they did not approve of the relationship, they had an altercation with her daughter. She also deposed that then on the day of occurrence, her

daughter left their house. They did not find her daughter and then out of anger and misunderstanding, she filed an FIR against the accused person, wherein she put her thumb impression.

In her cross-examination, PW-1 has confirmed that she has no grievance against the accused person. She has also confirmed that her daughter was not kidnapped by the accused person forcefully. She deposed that her daughter is recovered and now she is staying with them. She has confirmed that she has no objection if the accused person is acquitted from the liability of this case.

- 12. PW-2,** Miss Sonali Goala, the victim of the case, has deposed that the informant is her mother. She also deposed that the occurrence took place about three years back one day in the morning hours. She was having a love relationship with the accused person. Her mother came to know about her love affair with the accused person and then they reprimanded her and asked her to break all relations with the accused person. That, as my mother did not approve of the relationship, there was an altercation between her and her mother. She deposed that then on the day of occurrence, she left their house. That, as her parents did not find her anywhere after search and then out of anger and misunderstanding, her mother filed an FIR against the accused person. She also deposed that police caused her

statement to be recorded by learned Magistrate vide Exhibit-P1/PW-2 bearing her signature there as Exhibit-P1(1)/PW-2.

In her cross-examination, PW-2 has confirmed that she has no grievance against the accused person and that she was not kidnapped by the accused person forcefully. She deposed that presently she is staying with her parents. She has also confirmed that she has no objection if the accused person is acquitted from the liability of this case.

ANALYSIS

- 13.** To sustain conviction under Section-366 IPC prosecution must prove that accused person forcibly took away the victim with intention specified in the Section-366 IPC, that is:

Kidnapping, abducting or inducing woman to compel her marriage etc.:

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

- 14.** Having gone through the evidence on record coupled with the ingredients of Section 366 IPC, it is seen that the witnesses so examined by the prosecution who are vital in nature, being the informant and the victim, have not implicated the accused A1

with any criminal act as alleged in the FIR. The case arose only out of anger and misunderstanding. As per the victim, she was having love affair with the accused person and when her mother came to know about her love affair with the accused person and they reprimanded her and asked her to break all relations with the accused person and that as her mother did not approve of the relationship, there was an altercation between her and her mother and then on the day of occurrence, she left their house and that as her parents did not find her anywhere after search, then out of anger and misunderstanding, her mother filed an FIR against the accused person. The PW-1, who is the informant and mother of victim, has also supported the fact that she lodged the case out of anger and misunderstanding. Both the witnesses in their respective evidence categorically deposed that the accused person did not kidnap the victim ever and that they have no grievance against the accused person and also they have no objection if the accused person is acquitted from the liability of the case. Besides, the cross-examination of PW-2/victim reveals that she clearly stated that the accused person did not kidnap her.

- 15.** From the aforesaid analysis of evidence on record it has become apparent that there is no element of inducement, criminal intimidation, abuse of authority or any sort of compulsion, that accused person forced or seduced the victim for illicit intercourse. Besides this, there is total dearth of evidence

that victim was kidnapped by the accused person at any point of time with the intention that she might be compelled or knowing it to be likely that she would be compelled to marry against her will or that she would be forced or seduced to sexual intercourse. In fact, the ingredients to prove the charge u/s. 366 IPC is totally lacking in this case.

- 16.** Considering all these aforesaid aspects, I am of opinion that the prosecution has failed to prove the case by any cogent and convincing evidence against the accused person. As such, the accused person is held not guilty of the offence u/s.366 IPC.

ORDER

- 17.** In the result, the accused person namely, Sri Dilip Bhumiz stands acquitted from the charge u/s.366, IPC. He is set at liberty forthwith.
- 18.** The bail bond furnished on behalf of the accused A1 shall remain in force for a period of another six months as per Section 437A Cr.P.C. The seized articles, if any, be disposed of as per law.
- 19.** GIVEN under my hand and seal of this Court on this **24th** day of **March, 2023** at Cachar, Silchar, Assam.

(Smti K. R. Deka)
Asstt. Sessions Judge No.1,
Cachar, Silchar.

Transcribed by,
M. A. Mazumder,
Stenographer Grade-I.

APPENDIX-14

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
P.W.1	Smti Moyna Goala	Informant
P.W.2	Miss Sonali Goala	Victim

B. Defence Witness, if any.

RANK	NAME	NATURE OF EVIDENCE
NONE		

C. Court Witness, if any.

RANK	NAME	NATURE OF EVIDENCE
NONE		

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. PROSECUTION EXHIBIT:

Sl. No.	Exhibit No.	Description
1	Exhibit-P1/PW-2	Statement u/s.164 Cr.P.C.

B. DEFENCE EXHIBIT:

Sl. No.	Exhibit No.	Description
NONE		

C. COURT EXHIBIT:

Sl. No.	Exhibit No.	Description
NONE		

D. MATERIAL OBJECTS:

Sl. No.	Exhibit No.	Description
NONE		

ACCUSED DETAILS

Rank of 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 or the purpose of Section 428 Cr.P.C.
A1	Sri Dilip Bhumiz	Firstly arrested 19.02.2020 & Secondly arrested on 07.09.2022	Firstly released on bail on 21.04.2022 0& Secondly on 17.12.2022	366 IPC	Acquitted	N/A	N/A

(Smti K. R. Deka)
Asstt. Sessions Judge No.1,
Cachar, Silchar.

*Typed by,
M. A. Mazumder,
Stenogrpaher Grade-I.*