

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 30th Day of November, 2023.
Case No.: S. T. NO. 35 OF 2023.**

CIS No. ST 35 OF 2023

**Arising out of Bhagwanpur P.S. Case no. 311 of 2020 dated 19.12.2020 under
sections 363/366/34 of the Indian Penal Code.**

COMPLAINANT	:	STATE OF WEST BENGAL
REPRESENTED BY	:	Sandip Maity, Ld. P.P. in charge, Contai
ACCUSED	:	1. Palash Sheet [A1] 2. Arabinda Sheet [A2] 3. Mangal Sheet [A3]
REPRESENTED BY	:	Nigam Shankar Mishra , Ld. Advocate

FORM-B

Date of Offence	:	17.12.2020
Date of FIR	:	19.12.2020
Date of Charge sheet	:	25.12.2020
Date of Framing of Charges	:	29.03.2023
Date of commencement of Evidence	:	15.05.2023
Date on which Judgment is reserved	:	30.11.2023
Date of the Judgment	:	30.11.2023
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 Sheet	23.12.2020	23.12.2020	Under Sec. 363/366/34 of the Indian Penal Code	Acquitted	NA	NA
A2	Arabinda Sheet	N.A	24.12.2020	Under Sec. 363/366/34 of the Indian Penal Code	Acquitted	NA	NA
A3	Mangal Sheet	N.A	24.12.2020	Under Sec. 363/366/34 of the Indian Penal Code	Acquitted	NA	NA

Form No (M) 36

Form C WITNESS

2. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW 1	Nirmal Kr. Sardar	The de facto Complainant
PW2	Papiya Mondal Sardar	The victim girl
PW 3	Prabhas Sardar	The brother of the complainant
PW 4	Dharma Gopal Sardar	The independent witness
PW 5	Apurba Sardar	The independent witness

EXHIBITS

A. Prosecution:

Sl.No.	Exhibit Number	Description
1	Exhibit -1 / PW1	The written complaint
2	Exhibit- 2/ PW 1	The signature of PW 2 on the seizure list dated 23.12.2020
3	Exhibit- 3 / PW 1	The signature of PW 2 on the zimmanama dated 23.12.2020
4	Exhibit- 4/ PW 2	The statement of victim girl u/s. 164 CrPC
5	Exhibit- 5/ PW 5	The zimmanama bond dated 11.11.2021.

Date of delivery of Judgment on 30.11.2023.

(This case was committed by the Learned Additional Chief Judicial Magistrate, Contai vide his order no. 07 dated 18.12.2021 passed in connection with G.R(E). case no. 1262 of 2020 arising out of Bhagwanpur P.S. case no. 311 of 2020 dated 19.12.2020).

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 **Nirmal Kumar Sardar** before the O.C. Bhagwanpur P.S. on 19.12.2020 to the effect that on 17.12.2020 at about 5.00 p.m. in the evening, the minor daughter of the defacto complainant had left the house and had gone to the nearby Kalaberia market for purchasing some articles and thereafter did not return home till 08:00 p.m. at night and in spite of searching for her at all possible places, the daughter of the complainant could not be traced out. The complainant has further stated that subsequently, he came to learn from reliable sources that the accused person namely, Palash Shit in collusion with the other accused persons had enticed and kidnapped the minor daughter of the complainant. It has also been stated by the complainant that he had been to the house of Palash Shit but his family members stated that they were not aware of his whereabouts though the local people asserted that they had seen the accused Palash Shit taking away the daughter of the complainant on his motorbike. Hence, the instant written complaint was filed by the defacto complainant with a prayer for tracing out his minor daughter and punishing the accused persons involved in the alleged act of kidnapping his daughter , as per the existing provisions of law.

After the instant complaint was lodged before the concerned **Bhagwanpur P.S.** by the complainant, **Nirmal Kumar Sardar** on 19.12.2021, the **Bhagwanpur**

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P.S. case no. 311 of 2020 dated 19.12.2020 was started against three accused persons, namely, **Palash Shit, Mangal Shit and Arabinda Shit** under **section 363/366/34 of the Indian Penal Code**. During the course of investigation, the victim girl namely, **Papiya Sardar** was recovered by the concerned Investigating Officer and produced before this Court for recording her statement before the Learned Magistrate under section 164 of Cr.P.C.

Thereafter, on completion of investigation, the I.O. submitted Charge Sheet against the three accused persons namely, **Palash Shit, Mangal Shit and Arabinda Shit 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 18.12.2021 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 Shit, Mangal Shit and Arabinda Shit** appeared before this Court and after receiving the case record, charge was framed against them 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 the 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.

EVIDENCE ON RECORD :

In order to prove the case of the Prosecution, the State examined five witnesses in its favour. The de facto complainant namely **Nirmal Kr. Sardar** has been examined as **PW-1**, the victim girl namely **Papiya Mondal (Sardar)** has been examined as **PW-2**, one **Prabhas Sardar** has been examined as **PW-3**, one **Dharma Gopal Sardar** has been examined as **PW-4** and one **Apurba Sardar** has been examined as **PW-5**. During the examination of the above five witnesses, some documents were marked as Exhibits which is stated as hereunder :

1. **The written complaint lodged by the de facto complainant at Bhagwanpur P.S. has been marked as Exhibit-1.**
2. **The signature of the de facto complainant on the seizure list dated 23.12.2020 has been marked as Exhibit 2.**
3. **The signature of the de facto complainant on the zimmanama bond dated 23.12.2020 has been marked as Exhibit 3.**
4. **The statement of the victim girl recorded under section 164 of Criminal Procedure Code by the Learned Magistrate has been marked as Exhibit-4.**

After adducing the evidence of the five 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 Criminal Procedure Code by putting specific and separate questions to them in Bengali and they 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

Criminal Procedure Code is that they are innocent and that they have been falsely implicated in this case. It also appears that no witnesses have been examined on behalf of the accused persons.

POINTS FOR DETERMINATION

1. Whether the accused persons namely Palash Shit, Arabinda Shit and Mangal Shit had enticed and kidnapped the minor daughter of the complainant, namely **Papiya Sardar** from her lawful guardianship on 17.12.2020 ?
2. Whether the above accused persons kidnapped or abducted the victim girl namely **Papiya Sardar** on the date of the incident with the intent that she may be compelled to marry the accused Palash Shit against her own will ?

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 Learned Defence Counsel and have duly considered the same.

At the time of argument, it was the specific candid submission of the Learned A.P.P. in charge that the Prosecution in this case has produced five witnesses in support of the allegations made against all the three accused persons that they had kidnapped the minor daughter of the complainant, namely **Papiya Sardar** from her lawful guardianship with the intent that she may be compelled to marry the accused Palash Shit against her own will but all the five Prosecution witnesses who were examined have failed to deliver any satisfactory evidence in support of the case of the Prosecution. Moreover, Learned P. P. in charge also argued that on careful scrutiny of the statement as given by the victim girl before the Learned Magistrate under section 164 of Criminal Procedure Code, it appears

that the same could not duly corroborate any of the allegations as made against the accused persons.

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 five 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 and the State Prosecution has examined five witnesses in their favour. The written complaint lodged by the defacto complainant before the concerned Bhagwanpur P.S. has been marked as **Exhibit-1** and the statement of the victim girl 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 provisions 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 **Papiya Sardar** has been allegedly kidnapped from her lawful guardianship by the accused persons on the date of the alleged incident. 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 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, **Papiya Sardar** was under the age of eighteen years.

On careful scrutiny of the evidence of the five witnesses as adduced on behalf of the Prosecution including the de facto complainant and the victim girl, it appears to this court that none of the said two witnesses have stated anything regarding the age of the victim girl on the date of the alleged incident. Further, on going through the evidence on record, it appears to this Court that though the birth Certificate of the victim girl had been seized by the I.O. during investigation by way of a seizure list and the signature of the de facto complainant on the said seizure list as the producer of the said document has been marked as **Exhibit-2** and subsequently the said said Birth Certificate of the victim girl had been given zimma to the de facto complainant and his signature on the zimmanama bond has been marked as **Exhibit-3** but the said original Birth Certificate of the victim girl has not been produced and proved on behalf of the prosecution before this court in

accordance with law in order to substantiate the fact that she had been a minor on the date of the incident.

Moreover, on careful scrutiny of the evidence of the defacto complainant, it appears to this court that he has specifically stated during his deposition that on the date of the incident ,his daughter had gone to purchase some articles from the local Kalaberia market and thereafter did not return home and subsequently, could not be traced out in spite of search. PW-1 further stated that he came to learn that the accused Palash Shit had taken away his daughter and so he had lodged the complainant at the concerned P.S against the accused persons . However, PW-1 admitted in his cross examination that he had not seen the accused Palash Shit taking away his daughter on the date of the incident and that he is also not aware of the contents of the seizure list on which he had put his signature and had signed the same as per the instruction of police.

PW-2, being the victim girl herself categorically stated in her deposition that she had been to the house of her paternal aunt without informing anybody after her parents had scolded her on the date of the alleged incident and when she could not be traced out, the written complaint had been lodged by her father against the accused persons on the suspicion that they had kidnapped her.

The other three prosecution witnesses being PW-3, PW-4 & PW-5 categorically stated that they are not acquainted with the accused persons against whom the written complaint had been lodged or have any knowledge regarding the facts and circumstances of the present case.

Therefore, it is crystal clear that the basic ingredient of section 363/ 34 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 by producing authenticated document and the fact that she had been kidnapped by the accused persons on the date of the alleged incident also could not be proved by the Prosecution beyond all shadow of doubt by adducing cogent and

reliable oral or documentary evidence in this respect.

The second allegation that has been levelled against the accused persons is under **section 366/34 of the Indian Penal Code**. Before considering the fact that whether the accused persons are guilty of the offences punishable under **section 366/ 34 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 the 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 specifically stated that he had lodged the written complaint against the accused persons when he came to learn that the accused Palash Shit had taken away his daughter on the date of the incident. However, PW 1 specifically admitted that he had not witnessed the accused Palash taking away his daughter on the date of the incident.

PW-2, being the victim girl categorically deposed that she had been to the house of her paternal aunt on the date of alleged incident without informing anybody after she had been scolded by her father and when she could not be traced out in spite of search, the written complaint had been lodged by her father out of suspicion that the accused person had kidnapped her on the date of the alleged incident.

The other three prosecution witnesses categorically stated that they have no knowledge regarding the facts of the present case or are acquainted with the accused persons.

Moreover, it also appears to this court on going through the contents of the statement of the victim girl as recorded by the Learned Magistrate under section 164 of the Criminal Procedure Code and marked as **Exhibit-4** that she has specifically stated before the Learned Magistrate that she had been to the house of her paternal aunt on the date of the alleged incident.

Therefore, neither the de facto complainant being the father of the victim girl nor PW-2 being being the victim girl herself during their oral evidence could satisfactorily prove the fact that the accused persons had been allegedly involved in any manner in kidnapping the victim girl from her lawful guardianship with intent that she may be compelled to marry the accused Palash Shit against her will as has been alleged against them by the Prosecution. Hence, there is nothing on record to substantiate the allegation as made against the accused persons that they had kidnapped the victim girl from her lawful guardianship with intent that she may be compelled to marry the accused Palash Shit 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 the accused persons.

Therefore, on careful and meticulous scrutiny of the evidence of record, it clearly transpires to this court 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 the 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 they are entitled to be acquitted of this case.

Hence, it is

O R D E R E D

that all the three accused persons namely **Palash Shit, Mangal Shit and Arabinda Shit** are found not guilty of the offences punishable under section **363/366/34 of the Indian Penal Code** and they are acquitted of 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 bond.

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.