

PREFACE**Form A****IN THE COURT OF JUDICIAL MAGISTRATE (1ST CLASS), 2ND COURT,
DINHATA, COOCH BEHAR****Present: Dr. Sourav Subba, W.B.J.S.**Judicial Magistrate, 2nd Court,

Dinhata, Cooch Behar

JO Code (UID No)-WB01041

Date of the Judgment: 06.09.2023

G.R Case No. (I) 270 of 2022

[Sahebganj P. S. Case No. 220 of 2022 dated 18.06.2022 punishable u/s 363/365/109/34 of the *Indian Penal Code, 1860 (Act No. 45 of 1860)*]

COMPLAINANT	STATE OF WEST BENGAL
REPRESENTED BY	SMT. SHUKLA BASAK, LD. A.P.P.-IN-CHARGE
ACCUSED	
REPRESENTED BY	

FORM B

Date of Offence	
Date of FIR	
Date of Chargesheet	
Date of Framing of Charges	
Date of commencement of Evidence	
Date on which Judgment is reserved	
Date of the Judgment	
Date of the Sentencing Order, if any	

Accused details: -

Rank of Accused	Name of the 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 Sec. 428, Cr.P.C.

Form C**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution Witnesses: -**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)

B. Defense Witnesses, if any: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW 1		
DW 2		

C. Court Witnesses, if any: -

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW 1		
CW 2		

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1.	Exhibit P-1 /PW-1	
2,	Exhibit P-2/PW-2	

B. Defense:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1 /DW1	
2	Exhibit D-2 / DW2	

C. Court Exhibits: -

Sr. No.	Exhibit Number	Description
1	Exhibit C-1 /CW1	
2	Exhibit C-2 / CW2	

D. Material Objects: -

Sr. No.	Material Object Number	Description
1	MO 1	
2	MO 2	

IN THE COURT OF JUDICIAL MAGISTRATE (1st CLASS),
2ND COURT, DINHATA, COOCH BEHAR

Present: Dr. Sourav Subba, W.B.J.S.

Judicial Magistrate, 2nd Court,
Dinhata, Cooch Behar
JO Code (UID No.)-WB01041

G. R Case No. (I) 270 of 2022

T. R No. 118 of 2023

CNR No. WBCB 07-000837 -2022

State of West Bengal

.....Prosecution

Vs.

Jaynal Seikh & Another

.....Accd. persons

Under Sec. 363/365/109/34 of the Indian Penal Code, 1860

Delivery of judgment dated: 06.09.2023

JUDGMENT

BRIEF FACTS OF THE CASE: -

1. Facts of the prosecution case in brief is that on 18.06.2022 at about 23:07 hrs. one Rejjak Seikh, S/O Lt. Ajimuddin Seikh of Kalmati, P. S. Sahebganj, Dist. Coochbehar came to Sahebganj police station and thereby lodged a written F.I.R. against accused persons namely, 1) Jaynal Seikh, S/O Karim Seikh, Male,

Age- Years; and 2) Jamila Bibi, W/O Karim Seikh, Female, Age- Years, both are the residents of Khochabari, P. S. Sahebganj, Dist. Coochbehar to the effect that on 16.06.2022 at about 12:00 hrs. his minor daughter namely, Riya Parveen (14 Years) had gone to her school but she did not return home. Later on he also came to know that the accused persons in collusion with others some persons had kidnapped her for their unlawful purpose. Hence, all the accused persons have committed an offence of kidnapping for which they are liable for the same.

REGISTRATION OF CASE & INVESTIGATION: -

2. On the basis of said F.I.R., Sahebganj P. S. Case No. 220 of 2022 dated 18.06.2022 punishable u/s 363/365/109/34 of the *Indian Penal Code, 1860 (Act No. 45 of 1860)* was registered/started. Accordingly, the then I/C of said P.S. also endorsed Mr. Souvik Mitra, A.S. I. of West Bengal police and posted in said P. S. as an Investigation Officer (I.O.) of this case and he took up the investigation.

3. During investigation the concerned I.O. also visited the P.O (Place of occurrence) and prepared an index and rough sketch map, collected other relevant materials, recorded the statement of available witnesses and FIR named accused persons. During investigation it was also found that the above named accused persons are behind the said incident and accordingly a *prima facie* case u/s 363/365/109/34 of the *Indian Penal Code, 1860 (Act No. 45 of 1860)* has also been well established against the accused persons. Accordingly, Charge Sheet has also been filed against the accused persons by the concerned I. O. of Sahebganj P. S. vide Charge Sheet No. 296/2022 dated 31.07.2022 before the court of Ld. Additional Chief Judicial Magistrate-II, Dinhata.

4. In the meantime, the accused persons were enlarged on bail from the Court of the Ld. Additional Chief Judicial Magistrate-II, Dinhata. Accordingly, cognizance was also taken by the Ld. Court and the case record was transferred to this court for disposal.

SUPPLY OF COPY OF POLICE REPORT & OTHER DOCUMENTS: -

5. The copies of police report along with other relevant documents or relevant extract thereof forwarded to the Magistrate with the police report under section 173 of the *Code of Criminal Procedure, 1973 (Act No. II of 1974)* were furnished to the accused persons, free of cost in compliance with the provision of Sec. 207 of the Code of Criminal Procedure.

FRAMING OF CHARGE: -

6. That on 30.06.2023 the charge was framed against the accused persons u/s 363/365/109/34 of the *Indian Penal Code, 1860*. The contents of charge were read over and explained to the accused persons in *Bengali* language to which they each pleaded not guilty by saying “*Aami Nirdosh*” and claimed to be tried. Hence, the trial initiated.

EVIDENCE: -

7. During course of trial the prosecution adduced in total 3 witnesses, who were examined-in-chief and cross examined. The prosecution also produced 1 documentary evidence.

(A) THE ORAL EVIDENCE: -

8. The oral evidence adduced by the prosecution in the instant case are as follows: -

1. Rejjak Seikh (*De-facto* complainant) as PW-1;
2. Riya Parveen (Victim) as PW-2; &
3. Achhma Bibi (Wife) as PW-3.

(B) THE DOCUMENTARY EVIDENCE: -

9. The prosecution also produced 1 documentary evidence before the court which are as follows: -

1. Sign. of PW-1 on written F.I.R. Exhibit No. P1/PW1.

EXAMINATION OF ACCUSED PERSONS U/S 313 OF THE CODE OF CRIMINAL PROCEDURE: -

10. On closure of prosecution evidence, the accused persons were also examined by the court on 06.09.2023 u/s 313 of the Cr. P. C. The questions were read over and explained to them in the language convenient for them to understand to which they pleaded innocence throughout and declined to give any evidence on their behalf.

DEFENSE CASE: -

11. The defense case is simply denial of the case of prosecution. Thus, it is the specific defense of the accused persons that they never committed any offence as alleged by the prosecution.

ARGUMENT: -

12. Accordingly, heard argument from both the Ld. Advocate for defense and Ld. Assistant Public Prosecutor for the state of West Bengal on 06.09.2023.

13. According to my above-mentioned discussion the following points have been raised for determination: -

POINTS FOR DETERMINATION: -

1. Whether the accused persons have committed any offence in this case punishable under Sec. 363/365/109/34 of the *Indian Penal Code, 1860* as alleged by the prosecution or not?
2. Whether the prosecution has been able to prove its case beyond a reasonable doubt or not as a standard of proof lay down by the Hon'ble Apex Court in the case of ***Babu Singh v. State of Punjab, 1964(1) Cri. L.J. 566?***

DECISION WITH REASON: -

14. Both the points are taken together for the sake of brevity and convenience of discussion.

15. Before discussing the instant case on merit and its fate with the appreciation of appropriate evidences I here feel necessary to mention the relevant and substantial provisions of penal law as contained in the *Indian Penal Code, 1860* wherein the present accused persons in the instant case are booked into by the prosecution. These punitive provisions are as follows: -

Sec. 363. Punishment for kidnapping. -

Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec. 365. Kidnapping or abducting with intent secretly and wrongfully to confine person. -

Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sec. 109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.-

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Sec. 34. Acts done by several persons in furtherance of common intention. -

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

16. Now, I would like to discuss and determine in detail the above mentioned two points or merit of the instant case on the basis of the oral and documentary evidence as adduced and produced by the prosecution.

17. As mentioned above the prosecution in the instant case in total adduced 3 oral evidence who was examined in chief and cross examined and also produced 1 documentary evidence.

18. I also heard the arguments as submitted by both the Ld. Advocates for defense and Ld. Assistant Public Prosecutor for the state. The Ld. A.P.P argued and submitted before the court that it is ostensibly clear and conclusively proved from the content of both the oral and documentary evidences as adduced and produced by the prosecution that the accused persons have committed offences as alleged by the prosecution in the case. Therefore, here the accused persons at

this stage cannot escape from their criminal liability in the instant case for the offence committed by them. So, this is the fit case to be convicted u/s 363/365/109/34 of the *Indian Penal Code, 1860*.

19. During the course of argument, the Ld. advocate for the defense also argued and submitted before the court that in the instant case the accused persons have been falsely implicated in the Charge u/s 363/365/109/34 of the *Indian Penal Code, 1860*, by the prosecution. He furthermore submitted before the court that in the instant case same being a criminal case, the total and absolute manner of burden of proving the *factum* of offence during whole judicial proceeding lies upon the prosecution. Besides then these, here the independent witnesses were though adduced by the prosecution but did not support the case of the prosecution. So, here the case of the prosecution fails in this respect. Hence, the criminal liability of the accused persons here does not arise in this case. Lastly, he submitted and prayed before the court for the acquittal of the accused persons in the instant case from the allegation as alleged by the prosecution and he furthermore submitted before the court to consider this matter as the court may deem it fit and proper.

20. Thus, I heard the arguments as submitted by both the Ld. Advocate for the defense and Ld. A.P.P for the prosecution at length and also perused the oral and documentary evidences as adduced and produced by the prosecution. Here, the defense did not adduce their witnesses nor produced any documentary evidence. So, whatever the fate of the case would be on the basis of the oral and documentary evidences as adduced and produced from the side of the prosecution. However, here I would like to draw a lineal differentiation or defer from the submission as made by the Ld. defense counsel regarding the burden of proving a criminal case or *onus probandi* in absolute manner lies upon the prosecution. At present, there is a gradual decrease/change over the theory of proving a criminal case in absolute manner by the prosecution. Therefore, in modern times, such a theory no longer exists and proving of a criminal case by the prosecution beyond a reasonable doubt also depends upon the facts and

circumstances of each of the cases as per the observation made by our Hon'ble Supreme Court in several cases. In this regard at this stage, I recall a beautiful and landmark judgment pronounced by the Hon'ble Apex Court which was duly reported in the case of ***State of West Bengal Vs. Orilal Jaiswal and Anr. (1994) 1 SCC 73: (AIR 1994 SC 1418)***. In the said solemn judgment the Hon'ble Court has observed as under:

"We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in the civil proceedings. In a criminal trial however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered..... Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bater v. Bater (1950) 2 All ER 458, 459 has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject- matter." (Para 14)

21. Thus, to determine the fate of the case or to prove the case I hereby would like to visit the oral and documentary evidence as adduced and produced by the prosecution.

22. In this respect I perused the deposition made by the prosecution witnesses. Perusing the deposition, it appears to me here that out of total 8 charge sheeted

prosecution witnesses only 3 were adduced. Here, PW-1 is the *de-facto* complainant and PW-2 is the victim and PW-3 is wife of de-facto complainant in the case. However, all of them did not support the case of prosecution. Furthermore, here all of them deposed before the court that at present matter has been amicably settled in between them and they have no objection if the accused persons are acquitted in this case. Hence, considering the amicably settle between the parties and also for the speedy disposal of unsurmountable numbers of backlog of cases pending before the subordinate judiciary in the state of West Bengal and as per submission made by the Ld. A.P.P, the prosecution evidence was closed.

23. The Hon'ble Apex Court in the case of ***Babu Singh v. State of Punjab, 1964(1) Cri. L.J. 566*** while determining the standard of proof to be proved by the prosecution in any criminal case has laid down some fundamental principles of measurement which is still a guiding factor at present day despite elapse of many years of pronouncement of said landmark judgment. The Hon'ble Court laid down as:

“In a criminal trial, the presumption of innocence is a principle of cardinal importance and so, the guilt of the accused must in every case be proved beyond a reasonable doubt. Probabilities however strong and suspicion however grave can never take the place of proof.” (Para21)

24. Similarly, in an aged old case of ***Saraswati Prasad v. Rex, AIR, 1949 Allahabad 412*** the Hon'ble Allahabad High Court has observed as:

“It is true that the burden of establishing any special issue raised by the accused rests upon him, but there is always the burden of the general issue as to the guilt of accused person which always rests upon the prosecution. When the burden of the issue is on the prosecution the case must be proved beyond a reasonable doubt; when, however, the burden of an issue is upon the accused, he is not in general called on to prove it beyond a reasonable doubt, or in default to incur a verdict of guilty; it is sufficient if he succeeds in proving a prima facie case, for then the

burden of such issue is shifted to the prosecution which has still to discharge its original and major onus that never shifts, that is, that of establishing on the whole case, the guilt of the accused beyond a reasonable doubt: A.I.R.(20) 1933 Cal. 800, Rel. on.”(Para 6)

25. Hence, considering all the aspects and circumstances of the case and also considering aforesaid discussions and judicial decisions it appears that in the instant case the prosecution has miserably been failed to prove its case beyond a reasonable doubt against the accused persons. In result the prosecution case fails and the accused persons are entitled to get an acquittal.

26. Hence it is,

O R D E R E D

That the accused persons namely, 1) Jaynal Seikh, S/O Karim Seikh, Male, Age- Years; and 2) Jamila Bibi, W/O Karim Seikh, Female, Age- Years, both are the residents of Khochabari, P. S. Sahebganj, Dist. Coochbehar are found **not guilty** in this case for the offence punishable u/s 363/365/109/34 of the *Indian Penal Code, 1860* and they are hereby **acquitted** u/s 248(1) of the Code of Criminal Procedure.

27. The accused persons are set free from the charge and they are also released from their bail bonds.

28. The concerned surety/sureties is/are also discharged from his/their liability.

29. The surety amount be exhausted and inform Surety accordingly.

30. The case is disposed of in contested form.

31. Note in the Germane Register/Trial Register.

32. Let the soft copy of this judgment be uploaded in the CIS within 48 hours

from this day as per Rule 186A of the Cr. R. O. of the Hon'ble High Court at Calcutta.

33. The victim/victims in the case is/are in liberty to prefer an appeal before the Ld. Appellate Court as per provision of Sec. 372 of the Cr. P. C. against the order of acquittal of the accused person/persons. If necessary, victim/victims can also avail the free legal aid/assistance through the legal services authorities concerned to prefer and prosecute such appeal.

34. Let, a copy of this judgment be sent to DLSA, Coochbehar and D. M. Coochbehar at once in compliance with the direction of the Hon'ble High Court at Calcutta vide Hon'ble Court's order dated 29.03.2022 in c/w CRA 266 of 2020 with CRAN 1 of 2020.

B.C- II to do needful.

Typed by me

Dr. Sourav Subba
Judicial Magistrate, 2nd Court,
Dinhata, Cooch Behar
JO Code (UID No.)-WB01041

Dr. Sourav Subba
Judicial Magistrate, 2nd Court,
Dinhata, Cooch Behar
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