



GR. 23/2020
CIS No. 16/2021
CNR No. WBDJ05-000056-2021

Form A

IN THE COURT OF THE LD. ADDITIONAL CHIEF JUDICIAL MAGISTRATE, KURSEONG, DARJEELING	
Present : TANMOY ROY (ACJM, KURSEONG)	
Date of the Judgment : 01.08.2026	
Case No. GR. 23/2020 CIS No. 16/2021 CNR No. WBDJ05-000056-2021	
(Details of FIR /Crime and Police Station) Kurseong PS Case No. 15/2020, dated 10.02.2020	
Complainant	Smt. Pranita Ghatraj
REPRESENTED	Ld. APP Saroj Sinha
ACCUSED	1. Hamant Tamang 2. Binoy Chettri
REPRESENTED BY	Ld. Adv. Rajen Thapa

FORM B

Date of Offence	10.02.2020
Date of FIR	10.02.2020
Date of Charge-sheet	30.04.2020
Date of Framing of Charges/Plea	22.09.2023
Date of commencement of Evidence	08.11.2023
Date on which Judgment is reserved	N.A.
Date of the Judgment	01.08.2026
Date of the Sentencing Order, if any	Acquitted



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, Cr.P.C.
No. 1	Hamant Tamang	28.02.20	28.02.20	363/365 of IPC	Filed for the present	N.A.	N.A.
No. 2	Binoy Chettri	28.02.20	28.02.20	363/365 of IPC	Acquitted	N.A.	N.A.

Form C

LIST OF PROSECUTION / DEFENCE/ COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Pranita Ghatraj	Complainant
PW 2	Simran Ghatraj	Victim
PW 3	Bikash Diyali	CS witness/Scribe
PW 4	Dinesh Diyali	CS Witness
PW 5	Bina Diyali	CS Witness
PW 6	Sandip Diyali	CS Witness
PW 7	Bhumika Diyali	CS Witness
PW 8	Dipesh Diyali	CS Witness
PW 9	Dr. Soma Mondal	Medical Officer
PW 10	Rohita Lama	Police Witness
PW 11	Bidya Sagar Sinha	IO

B. Defence witnesses, if any: None.

C. Defence witnesses, if any: None.



LIST OF PROSECUTION /DEFENCE /COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1	Exhibit P1/PW1	Signature of PW 1 on Medical Certificate being no. 71/2020 dt. 11.02.2020
2	Exhibit P2/PW1	Signature of PW 1 on Seizure List dt. 11.02.2020
3	Exhibit P3/PW1	Signature of PW 1 on Seizure List dt. 10.02.2020
4	Exhibit P4 Series/PW2	Signature of PW 2 on statement u/s 164 Cr.P.C.
5	Exhibit P5/PW3	Complaint
6	Exhibit P6/PW9	Potency Test Certificate dt. 13.02.2020
7	Exhibit P7/PW10	Endorsement on the statement u/s 161 Cr.P.C.
8	Exbt. P-8/PW11	Formal FIR
9	Exbt. P-9/PW11(in series)	Rough Sketch Map and index
10	Exbt. P-10/PW11 in series	Seizure List dt. 10.02.2020
11	Exbt. P-11/PW11	Seizure List dt. 11.02.2020

B. Defence: None.

C. Court Exhibits: None.

D. Material objects: None.

Factual back drop of the case:

1. The prosecution case, in brief, is that on the night of 09.02.2020 at about 9.00–10.00 p.m., the minor victim, Miss Simran Ghatraj, aged about 13 years, daughter of Late Sanjoy Ghatraj and Smt. Pranita Ghatraj of Rohini, Ratney Dang, P.S. Kurseong, District Darjeeling, went missing from her residence. Despite an extensive search conducted by her family members and neighbours throughout the night, she could not be traced. On the following morning, i.e., 10.02.2020, during a renewed search, the complainant allegedly came to know that accused Binoy Chettri, owner



of "Ur's Desire Hotel", and accused Hemant Tamang, an employee of the said hotel, had kept the minor victim inside a room of the hotel. The complainant, accompanied by local residents, proceeded to the hotel where the victim was found lying unconscious on the floor inside one of the rooms. It was alleged that the accused persons had wrongfully restrained and confined the minor girl inside the hotel room by deceitful means with an unlawful and ill intention, giving rise to the suspicion that they intended to establish physical relations with the minor against her will. On seeing her mother, the victim became frightened and started crying.

2. On the basis of the complaint Kurseong P.S. case no.-15/2020 dated 10.02.2020 investigation commenced. After completion of investigation, the I/O of this case filed charge-sheet against the accused persons u/s 363/365 of IPC.
3. After charge-sheet being filed, the Ld. ACJM, Kurseong took cognizance of the same and the case record was transferred to this court for trial and disposal.

4. Charge

After the case record being transferred to this court, this court examined the accused person u/s 240 of Cr.P.C. he pleaded not guilty and claimed to be tried. After considering the prima-facie materials on record, this court framed plea u/s 363/365 of IPC against the accused person.

Commencement of trial and examination of the accused person u/s

313 of Cr.P.C.

5. After charge is framed, the trial commenced by taking evidence of prosecution witnesses. After completion of evidence, the accused person was examined u/s 313 of Cr.P.C. and he pleaded innocence for the second



time and claimed that he is not guilty. But he stated he is not going to give any evidences from his side.

Evidences Adduced:

6. Following evidences/witnesses has been from the prosecution side:-

PW 1	Pranita Ghatraj	Complainant
PW 2	Simran Ghatraj	Victim
PW 3	Bikash Diyali	CS witness/Scribe
PW 4	Dinesh Diyali	CS Witness
PW 5	Bina Diyali	CS Witness
PW 6	Sandip Diyali	CS Witness
PW 7	Bhumika Diyali	CS Witness
PW 8	Dipesh Diyali	CS Witness
PW 9	Dr. Soma Mondal	Medical Officer
PW 10	Rohita Lama	Police Witness
PW 11	Bidya Sagar Sinha	IO

7. **Points For Consideration**

- Whether the accused person has committed the offense u/s 363/365 of IPC ?.
- Whether the prosecution has proved the guilt of the accused person beyond reasonable shadow of doubt?

Submissions made by Ld. APP

8. Ld. APP at the time of argument verbally submitted before this Court that in this case total eleven prosecution witnesses have been tendered before this Court and several documents have been marked exhibit during the trial. Ld. APP further submitted that the minor victim girl has been allegedly kidnapped by the accused persons with an ill motive on the date of incident and later on the victim girl has been recovered from one of the room of the hotel of accused Binoy Chhetri. Accused to that aspect of recovery had not been able to give any satisfactory explanation. The victim has been recovered from the place of accused and that itself



establish the allegations against the accused persons. One of accused person has already died during the trial and marked as filed forever in this case. Ld. APP further mentioned that the guilt of the accused person Binoy Chettri has been well established on the evidence on record and accordingly, Ld. APP has prayed for conviction of the accused under the relevant Sections of law.

Submissions made by Ld. Advocate of the defense

9. Ld. Counsel of defense in reply of Ld. APP at the time of argument stated that there are several inconsistencies have been found in the statement of the witnesses on record. Ld. Advocate further draw the attention of this court to the effect that PW 1 i.e. DC in her examination in chief stated that the VG has been kidnapped at 9 PM on the date of alleged incident. But in her cross examination in contradiction of such statement she stated that her daughter went to wash room at around 11.00 to 11.30 PM. PW 2 i.e. VG of this case, at the time of her evidence, stated that the alleged incident took place at 10 PM and she further mentioned that such has taken place on 10.02.2020. In her cross examination PW 2 clearly stated that accused has not done anything to her and such fact also corroborated from the statement of the victim given before the Ld. Magistrate u/s 164 Cr.P.C. Ld. Advocate further stated that if the accused would have kidnapped the VG for certain illegal purpose then he would have committed the alleged offense in between the time of alleged kidnapping and recovery. With this submission Ld. Advocate has prayed for acquittal of the accused person from all charges.

Evidence on record

10. Prosecution has to established the guilt of the accused person by dint of corroborating evidence. It is very much important to evaluate the evidence on record.



11. PW-1, Pranita Ghatraj, the de-facto complainant and mother of the victim, deposed that she lodged a written complaint before Garidhura Outpost under Kurseong Police Station on 09.02.2020 alleging that accused Binay Chettri and another person had kidnapped her thirteen-year-old daughter, Simran Ghatraj. She stated that on the night of 09.02.2020, at about 9.00 p.m., her daughter went missing and despite searching throughout the night they could not trace her, compelling her to lodge the FIR. According to her, another accused informed her that the victim had gone in a vehicle. She further stated that accused Binay Chettri was running a hotel at Rohini and that after police apprehended the other accused, he disclosed that the victim was confined in the godown of Binay Chettri. She, along with the police, proceeded to the godown where the victim was found in an unconscious condition. Thereafter, the victim was taken to North Bengal Medical College and Hospital, Siliguri, for treatment. She also proved her written consent for the medical examination of the victim and identified her signatures on the medical certificate as well as on the seizure lists by which the victim's undergarments, birth certificate and school certificate were seized. The medical certificate was marked as Exhibit P-1/PW-1, the seizure list relating to the undergarments as Exhibit P-2/PW-1 and the seizure list relating to the birth and school certificates as Exhibit P-3/PW-1. She identified accused Binay Chettri in Court. During further examination she stated that she had no further documents to produce.
12. In her cross-examination, she admitted that she was illiterate and that the complaint had been written by her nephew and read over to her before she signed it. She admitted that she had not personally witnessed the accused kidnapping her daughter or keeping her in the hotel. She stated that the hotel was situated on the main road, about two to three minutes'



walking distance from her residence, and that her daughter had gone to the washroom between 11.00 and 11.30 p.m. on the night of the occurrence. She admitted that the victim did not sustain any injury and that except on the date of the incident she was not interrogated again by the police. She further stated that although she could not say whether it was mentioned in the complaint that the other accused had informed her that the victim went in a vehicle, she had disclosed this fact to the police.

13. PW-2, Simran Ghatraj, the victim, stated that on the night of 10.02.2020, after returning from the washroom situated outside her house, she drank water kept in a jug and immediately lost consciousness. She regained consciousness after three days in the staff room of Binay Chettri's hotel. She stated that thereafter the police interrogated her, that nothing wrong had happened to her, and that she had earlier made a statement before the Court. She identified accused Binay Chettri in Court and proved her signature on her statement recorded under Section 164 CrPC, which was marked as Exhibit P-4 series/PW-2.

14. During cross-examination, she stated that she did not know accused Binay prior to the institution of the case, though his hotel was situated near her house. She categorically stated that accused Binay had not done anything to her. She further stated that she voluntarily drank the water believing it had been kept by her maternal uncle, Dinesh Diwali. She admitted that the police had interrogated her and that she had made a statement before the Magistrate. She stated that there was no washroom inside her house and that her residence was situated on Rohini Road where vehicles frequently plied and passengers often stopped for food. She further stated that there were two to three houses near her residence and that her maternal uncle and grandparents also resided nearby. She denied the defence suggestion that no such incident had taken place.



15. PW-3, Bikash Diyali, deposed that he knew the de facto complainant, who was his aunt. About four years prior to his evidence, while proceeding to attend a marriage ceremony at about 8-9 AM, he noticed a gathering at the house of DC Pranita Ghatraj, so he went there and DC informed her that her daughter is missing since night. He accompanied other villagers to Garidhura Outpost and, upon returning, found that the missing girl had already been recovered. He stated that he had written the complaint as per the instructions of Pranita Ghatraj and identified her signature thereon. The complaint was marked as Exhibit P-5/PW-3.
16. In cross-examination, he stated that he could not remember the contents of the complaint and admitted that the police had never examined him during investigation.
17. PW-4, Dinesh Diyali, the brother of the de facto complainant, stated that his niece Simran had gone missing from the washroom during February 2020 and was recovered the following day. He further stated that they had gone to Garidhura Outpost at about 10.00 a.m. on the next day.
18. In cross-examination, he admitted that the police had never examined him and that he had no knowledge regarding the detailed facts of the case.
19. PW-5, Bina Diyali, deposed that she knew the de facto complainant and had gone to her house where she heard that Simran was missing. She stated that she had no knowledge of the details of the incident and failed to identify accused Binay Chettri when he was shown to her in Court.
20. During cross-examination, she reiterated that apart from hearing that Simran was missing she knew nothing about the occurrence and admitted that the police had never interrogated her.
21. PW-6, Sandip Diyali, stated that the de facto complainant was his paternal aunt and that he knew she had lodged an FIR alleging that his



cousin Simran had been kidnapped. He stated that he had heard that Simran was kidnapped from her residence during the night and that they searched for her. On the following day, one of his relatives informed him over the telephone that Simran had been recovered from the hotel of the accused. When he reached the place, police personnel, Pranita Ghatraj and other persons were already present. He stated that he had heard that Binay and another person were involved in the incident.

22. In cross-examination, he admitted that he could not recollect who had informed him over the telephone, that he had not personally seen Simran inside the hotel, that he could not say from whom he had heard about the involvement of the accused and that the police had never examined him. He further admitted that he knew accused No. 2 prior to the institution of the case but could not say who had actually kidnapped Simran.

23. PW-7, Bhumika Diyali, stated that she knew both Pranita Ghatraj and Simran Ghatraj and had heard that Simran had gone missing during the night and was recovered the following morning.

24. In cross-examination, she admitted that the police had never interrogated her and that she could not state from whom she had heard about the disappearance and recovery of Simran.

25. PW-8, Dipesh Diyali, deposed that Pranita Ghatraj was his sister and Simran Ghatraj his niece. He stated that Simran was about thirteen years old at the time of the incident and that he himself owned Kaka Hotel. He further stated that he did not know anything about the incident but acknowledged that accused Binay Chettri was also running a hotel at Rohini.

26. In cross-examination, he admitted that he knew accused Binay prior to the incident and that the police had never interrogated him. In reply to questions put by the Court, he stated that although he did not have good



relations with Pranita Ghatraj at the time of the incident, they had since reconciled, and he also informed the Court that Rajesh Gholay had died in January 2024.

27. PW-9, Dr. Soma Mondal, Medical Officer, stated that she was posted at Kurseong Sub-Divisional Hospital on 13.02.2020. She proved the potency test certificate of accused Binay Chettri prepared by her and identified her handwriting and signature thereon. The potency test certificate was marked as Exhibit P-6/PW-9. She opined that after conducting the examination she found the accused capable of performing sexual intercourse.

28. PW-10, Rohita Lama, Sub-Inspector of Police, deposed that on 16.02.2020 she was posted at Kurseong Police Station and was directed by the Officer-in-Charge to record the statement of the victim under Section 161 CrPC in connection with Kurseong Police Station Case No. 15 of 2020 under Sections 363 and 365 IPC. She proved the endorsement authorising her to do so, which was marked as Exhibit P-7/PW-10, and stated that she thereafter visited Garidhura Outpost and recorded the victim's statement at her residence.

29. In cross-examination, she denied the defence suggestions that she had not received any endorsement, had not visited the victim's residence or had not recorded the statement under Section 161 CrPC.

30. PW-11, Bidya Sagar Sinha, the Investigating Officer, deposed that on 10.02.2020 he was posted as Sub-Inspector of Police and took up investigation of the present case. He identified the signature of the Officer-in-Charge on the formal FIR, which was marked as Exhibit P-8/PW-10. He stated that during investigation he visited the place of occurrence, prepared the sketch map and index, which were marked as Exhibit P-9/PW-10 (series), recorded the statements of available



witnesses under Section 161 CrPC, took photographs of the place of occurrence, arranged for recording of the victim's statement under Section 164 CrPC, conducted the medico-legal examination of the victim at Sukna BPHC and thereafter at North Bengal Medical College and Hospital, seized the victim's birth certificate, blanket, bra and panty under seizure lists marked as Exhibits P-10/PW-11 (series) and P-11/PW-11, forwarded the seized articles for forensic examination, arrested both accused persons and, after completion of investigation, submitted charge-sheet against them. He identified accused Binay Chettri in Court and stated that he could also identify the absentee accused if produced.

- 31.** In cross-examination, he denied the defence suggestions that he had never visited the place of occurrence, had not prepared the sketch map or examined witnesses, or had conducted a defective or hasty investigation. He admitted that the seized articles were not produced before the Court, that he had not verified the genuineness of the victim's birth certificate, had not cited any member of Kaka Hotel as a charge-sheet witness, had not seized ownership documents of Yours Desire Hotel, and had not sent the photographs for forensic examination. He, however, denied that he had falsely deposed or wrongly submitted the charge-sheet.

Decisions with reasons

- 32.** After careful perusal of the evidence on record and going through the contents of the depositions of the witnesses on record, certain points cropped up in the mind of this Court, which are needed to be mentioned here categorically for effective disposal of this case. These are as follows :-
- 33.** It is important to note here that on careful perusal of the written complaint it appears to me that DC in the same stated that the VG was allegedly kidnapped on 09.02.2020 and she filed the present complaint on



10.02.2020. On the contrary, PW 2 i.e. VG being the most important witness of this case, at the time of her evidence stated that the incident happened on 10.02.2020. There is clear contradiction in the statement of the above said witnesses regarding the date of alleged kidnapping.

34. PW 1 i.e. DC in her evidence stated that the VG was kidnapped around 9 PM on 09.02.2020 but in her cross examination she contradicted her own statement and stated that her daughter went to washroom around 11 to 11.30 PM on the date of incident and thereafter, they did not find her.

35. PW 2, VG, in her evidence stated that the incident happened on 10.02.2020, around 10 PM, she went to washroom outside her room and after returning from there, she drank water which kept there in a jug and she lost her sense. She further stated that she regained senses after three days at the staff room of accused's hotel. From such statement of VG, it appears that she was remain allegedly captive for three days proceeding from the date of alleged incident. PW 1 in her statement stated that she along with Police went to the godown of the accused and found her daughter in senseless condition therein. It appears that the written complaint was filed on 10.02.2020 and thereafter, the VG has been allegedly recovered on that day itself. If it is so, then the statement of VG to the effect that she regained sense after three days at the staff room of the accused's hotel is how far to be relied upon is a matter to decide.

36. On perusal of Exbt. P4 , the statement of the VG u/s 164 Cr.P.C., It appears that in the same she mentioned that on 10th February she went to toilet due to her upset stomach and at that time she found a jug filled of warm water and she drank it, thinking her mother kept the same for her. Then her eyes closed upon and on the next date she opened her eyes on call of the accused. She further stated that she did not remember anything of the last night. The statement given by the VG before Ld. Magistrate



and her statement at the time of evidence given before this Court appears to have several contradictions. Such as in her evidence she stated that she regained her consciousness after three days at the staff room of accused's hotel but in her 164 statement she stated that she woke up on the next date morning of 10th February, on call of accused.

37. PW 4 Dinesh Diyali being the brother of DC, in his evidence did not mention that his niece was allegedly kidnapped by anyone. He simply stated that his niece was missing from washroom of house in the month of February and was found on the next date. In his evidence he did not mention wherefrom her niece has been recovered or found.

38. PW 5 Bina Diyali in her evidence mentioned that she went to the house of DC and heard that her daughter was missing. She too in her evidence did not mention that she heard that the daughter of the DC has been allegedly kidnapped by anyone.

39. PW 6 Sandip Diyali being the relative of DC in his evidence stated that he heard that VG was kidnapped at around 3-4 AM from complainant's house at Rohini. Here in this case, DC stated that her daughter was kidnapped at 9 PM. VG has stated that the allegedly took place at 10 PM but PW 6 being relative of DC stated that VG was kidnapped at 3-4 AM. Further, he stated that she was kidnapped from her house but VG herself stated that on the date and time of alleged incident she went outside of the house for using washroom and from there after consuming water she does not remember anything. At this juncture, it is important to note here that here also contradiction has been found in the statement of above referred witnesses regarding the time of the alleged incident and the place from where DC was allegedly kidnapped.

40. PW 7 Bhumika Diyali in her evidence also stated that she heard that DC was missing in the night and was recovered in the morning. PW 7 also



did not state from where the DC was allegedly missing and from where she has been recovered and found. PW 8 being the brother of DC in his evidence did not state anything about the alleged incident.

41. Most importantly, PW 2 i.e. VG in her cross examination clearly stated that accused Binay did not do anything to her, also in her statement before Ld. Magistrate she did not state about any alleged untoward behaviour upon her by the accused. From Exbt. P1/PW1 i.e. Medical Examination Report of the victim, it appears that the attending doctor therein noted no fresh injury detected over the body and private part of the VG. In absence of such it can be safely said that Prosecution has failed to establish any ill motive on the part of the accused for allegedly kidnapping the VG of this case.

42. In the light of above discussion and from the above referred contradictions found in the statement of the witnesses on record, I am to rest this case with a conclusion that Prosecution by dint of appropriate evidence has failed to prove the guilt of the accused.

Accordingly, it is,

ORDERED

that the accused person **Binoy Chettri** is found not guilty of the offence under Section 363/365 of IPC.

That the accused person is acquitted in terms of Section 248(1) of Cr.P.C.

The accused person be released from his bail bond.

Surety is discharged from his liability.

Seized articles if any, be disposed of after the expiry of period of appeal.

Seized documents, if any, be returned to the accused person.

Let a copy of this order be sent to District Magistrate, Darjeeling as per direction of Hon'ble Calcutta High Court in the case of Sabitri Bhunya vs The State of WB and Others.



GR. 23/2020
CIS No. 16/2021
CNR No. WBDJ05-000056-2021

Copy of order be also sent to Chairman, SDLSC, Kurseong as per direction of Hon'ble Court in above referred case and also as per direction of Chairman, DLSA, Darjeeling.

The case is disposes off.

Note in register and CIS.

D/C by me

(Tanmoy Roy)
A.C.J. M., Ksg.

(Tanmoy Roy)
A.C.J. M., Ksg.
JO Code WB01288