

SC. 87/16 (CIS 216/17)

IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS FAST TRACK 1ST  
COURT, ALIPURDUAR

PRESENT :SRI PROTYAI CHOWDHURY  
ADDITIONAL DISTRICT & SESSIONS JUDGE, FAST TRACK, 1ST COURT,  
ALIPURDUAR

JO CODE : WB 01009

SC 87 of 2016  
ST 12 (11) 2016  
CIS No. 216/2017

ARISING OUT OF FALAKATA POLICE STATION CASE NO. 703/2013 DATED  
11.09.2013 UNDER SECTION 363/366 A of IPC

STATE OF WEST BENGAL V/S. MD AINUL HAQUE  
UNDER SECTION 363/366 A of IPC

DATE OF DELIVERY OF JUDGMENT : 06.03.2026

JUDGMENT

This is a case where sole accused is set on trial for the offense allegedly committed by him which fall under the category of “kidnapping from lawful guardianship”, “procurement of a minor girl to seduce her to illicit intercourse”.

Prosecution case:

Prosecution case as alleged against the accused is as follows:

On 11.09.2013,Rabi Oraon son of Khuttu Oraon of Chhoto Salkumar, Falakata PS, Alipurduar District lodged a complaint before IC of Falakata PS to the effect that his daughter Mamoni Oraon has been missing from 02.09.2013. Rabi Oraon could not find her daughter after searching for her. Rabi Oraon received phone call on 05.09.2013 from his daughter Mamoni Oraon who said that Ainul Haque had kidnapped her. Rabi Oraon informed Hossain Ali, the father of the accused Ainul Haque about the incident but Hossain Ali issued threat upon Rabi Oraon.

Hence this complaint.

F I R:

On the basis of the above mentioned police complaint, FIR was drawn up at Falakata Police Station bearing No. 703/2013 dated 11.09.2013 by IC Falakata PS, SI Niren Ray against the accused Md Ainul Haque son of Md Hossain Ali of Umacharanpur, Falakata PS, Alipurduar District under Section 363/366A IPC. The investigation of the complaint was made over to ASI Mdan Gurung of Falakata PS.

**Investigation:**

SI Madan Gurung of Falakata PS conducted investigation of this case and visited the PO and prepared rough sketch map with index and examined the available witnesses and recorded their statement under section 161 Cr PC and recovered the victim girl during investigation and got the victim girl medically examined.

The investigation culminated into filing charge-sheet bearing No 390/2015 dated 31.05.2015 under Section 363/366 A IPC against sole accused namely Ainul Haque.

**Framing of charge:**

Charge has been framed against the accused namely Ainul Haque under Section 363/366A IPC on 30.11.2016.

**Examination of accused under Section 313 Cr.PC:**

At the conclusion of trial, accused Ainul Haque was examined under Section 313 Cr.PC. Questions were put to the accused to explain the circumstances appearing in evidence against him. The accused pleaded innocence and denied his involvement in the alleged incident.

**Prosecution Witness**

PW 1

Rabi Oraon

Lodger of FIR, father of the victim girl

PW 2

SI Nirmal Barman

Investigation officer of Falakata PS

**Documents exhibited**

Serial number

Exhibit number

Description of the exhibit

1.

Exhibit 1/1

Signature of PW 1 on the written FIR.

**Prosecution Evidence:**

1. Rabi Oraon as PW 1 stated that his daughter Mamoni Oraon was missing and he searched for her, here and there but could not find her. PW 1 further stated that someone told him that the accused had taken away his daughter, so he lodged the complaint. PW 1 further stated that one Gita Das, the friend of his daughter had brought back his daughter to his house. PW 1 also

stated that his daughter told him that she had gone to her friend's house. In cross examination PW 1 stated that his daughter did not make any allegation against the accused. In cross examination PW 1 further stated that he lodged complaint against the accused since his co-villager told him to lodge this complaint.

2. SI Nirmal Barman as PW 2 stated that on 11.09.2013 he was posted as SI of Falakata PS and he was endorsed investigation of this case by Inspector Dhruva Pradhan.

Points for determination

1. Whether the accused had kidnapped the victim girl?
2. Whether the accused had induced victim girl to go with the intention to force her to illicit intercourse with another person?

Constituents of the FIR.

First let us look into the contents of the FIR lodged by the complainant. The culpability of the accused person can be arrived only if the following allegations are proved :

1. The victim girl was missing from her house on 02.09.2013.
2. The lodger of FIR searched for his daughter but could not find her.
3. The victim girl informed her father on 05.09.2013 over phone that she was taken away by the accused Ainul Haque.
4. The lodger of the FIR informed the father of the accused about the alleged incident but threats were issued to the lodger of the FIR.

Allegation constituting offense:

Let us now first turn to Section 363 IPC, which relate to offense of kidnapping. The Section reads as under:

“Whoever kidnapped any person from Indian 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”.

Finally, Section 366A IPC relates to procurement of a minor girl. The Section reads as under:

“Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

The Hon'ble Apex Court in *Iqbal vs State of Kerala* (2007) 12 SCC 724 held that:

“9. The residual question is of applicability of Section 366-A-IPC. In order to attract Section 366-A IPC, essential ingredients are (1) that the accused induced a girl; (2) that the person induced was a girl under the age of eighteen years; (3) that the accused has induced her with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit

intercourse; (4) such intercourse must be with a person other than the accused; (5) that the inducement caused the girl to go from any place or to do any act”.

Thus, in order to constitute an offense under Section 363/ 366A IPC the following ingredients are required to be fulfilled:

1. The victim kidnapped was in the keeping in the lawful guardian.
2. The accused enticed away the victim from such keeping of the guardian.
3. The accused induced a minor girl to go from any place.
4. The minor girl was induced with a intent to force or seduce her to illicit intercourse.

Intention of the accused, not proved

A study of the prosecution evidence is necessary to prove the culpability of the accused persons. PW-1, the lodger of FIR stated that his daughter Mamoni Oraon was missing from his house and he searched for his daughter but could not find her. His daughter returned back home with her friend Gita Das after 15-20 days and told him that she had gone to her friend's house. PW 1 also stated that his daughter did not make any allegation against the accused. We find from the evidence of PW 1 that the victim girl Mamoni Oraon had gone to her friend's house and stayed there for 15-20 days and there was no incident of kidnap. Thus, we do not find from the evidence of the prosecution witnesses that the accused had the requisite mens rea to kidnap the victim girl and force or seduce her for illicit intercourse.

Age of the victim girl, not proved

In order to sustain a charge under Section 366A IPC, it is necessary for the prosecution to prove that the victim girl was less than 18 years of age. Charge under Section 366A must fail, if the prosecution is unable to prove that the victim girl was less than 18 years of age on the date of the incident. In the present case the prosecution did not produce before the court any documents viz birth certificate, school certificate, identity card, certificate from authority to prove the age of the victim girl. Thus, one of the essential ingredients to constitute an offense under Section 366A IPC fails.

FIR not proved

We also find that the father of the victim girl, lodger of FIR has been examined as PW 1 before this court. PW 1 stated that he filed the FIR since his daughter was missing and he searched his daughter but could not find her. PW 1 further stated that he lodged the FIR against the accused on the behest of his co-villagers. However, his daughter did not make any allegation against the accused. Such a statement by main prosecution witness PW 1 (the lodger of the FIR) raises doubt over the veracity of the facts alleged in the written FIR.

Thus in the light of the categorical statements made by the prosecution witnesses, it appears that there is no evidence which establishes the allegation of kidnap against the accused Ainul Haque. There is no ingredient of compelling the victim girl to go with the accused and have illicit intercourse with another person. Here the testimony of the lodger of the FIR and the associated circumstances leave a mark of doubt to the veracity of the facts alleged in the FIR.

All the essential ingredients of the offence under section 363/366 A IPC have not been established and therefore the charge against the accused under section 363/366 A IPC can not be sustained.

The prosecution case as it unfolds through ocular evidence do not inspire confidence in the mind of this Court to hold the accused guilty of the offence under Section 363/366A IPC. The prosecution failed to prove the motive / mensrea of the accused for committing the alleged offense. Thus, the prosecution failed to prove the culpability of the accused beyond any shadow of reasonable doubt.

Hence, it is

**O R D E R E D**

That the accused namely Ainul Haque is not found guilty of the offence charged punishable under Section 363/366A IPC and accordingly the accused is acquitted under Section 235 Cr.PC.

The bail bond of the accused shall remain in force for a period of 6 months in view of the provision contained in Section 437 A of the Cr PC.

Alamat be disposed of according to the procedure of law after the expiry of the appeal period.

Addl. Dist. & Sessions Judge,  
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,  
1<sup>st</sup> Fast Track Court, Alipurduar.