



S.C. 24 of 2016

**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 24 of 2016

ST 11 (7) 2016

CNR No. WBJP050006942017

**ARISING OUT OF FALAKATA POLICE STATION CASE NO. 750/2013 DATED 28.09.2013
UNDER SECTION 363/366/376 of IPC**

**STATE OF WEST BENGAL V/S. ASISH SARKAR @ASISH CHANDRA
SARKAR, PINU @ ASHOK SARKAR**

UNDER SECTION 363/366/376 of IPC

DATE OF DELIVERY OF JUDGMENT : 10.03.2026

JUDGMENT

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



Prosecution case:

Prosecution case as alleged against the accused is as follows:

On 28.09.2013, Saraswati Das wife of Ranjit Das of Chhotsalkumar, 6th Mile, Falakata Alipurduar District lodged a complaint before IC of Falakata PS to the effect that on 18.09.2013 the accused Asish Chandra Sarkar informed her that her husband met with an accident and took her to his house and put her inside a room and gave her water to drink. Saraswati Das lost her sense after drinking the water. Thereafter the accused Asish Chandra Sarkar and accused Pinu Sarkar committed rape of Saraswati Das one after another. The accused Asish Chandra Sarkar threatened to cause death of Saraswati Das with a knife. It is submitted that the accused persons took Saraswati Das to Coochbehar Railway station and boarded her in a train with the accused Asish Chandra Sarkar. She was taken to Jaipur Rajasthan by the accused Asish Chandra Sarkar and kept in a house and committed her rape and intended to traffic her.

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. 750/2013 dated 28.09.2013 by IC Falakata PS, SI Dhruva Pradhan against the accused Asish Chandra Sarkar son Pinu Sarkar and Pinu Sarkar son of Suresh Sarkar both of Talukertari, Falakata PS, Alipurduar District under Section 363/366/376 IPC. The investigation of the complaint was made over to PSI Partha Barman of Falakata PS.

Investigation:

PSI Partha Barman 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 sent the accused Asish Sarkar @ Asish Chandra Sarkar for capability test to Alipurduar SD hospital.

The investigation culminated into filing charge-sheet bearing No 956/2014 dated 29.12.2014 under Section 363/366/376 IPC against accused namely Asish Sarkar @ Asish Chandra Sarkar, Pinu @ Ashok Sarkar.



Framing of charge:

Charge has been framed against the accused namely Asish Sarkar @ Asish Chandra Sarkar, Pinu @ Ashok Sarkar. under Section 363/366/376 IPC on 26.07.2016.

Examination of accused under Section 313 Cr.PC:

At the conclusion of trial, accused Asish Sarkar @ Asish Chandra Sarkar, Pinu @ Ashok Sarkar were examined under Section 313 Cr.PC. Questions were put to the accused to explain the circumstances appearing in evidence against them. The accused pleaded innocence and denied their involvement in the alleged incident.

Prosecution Witness

PW 1	Dhananjoy @ Dhana Barman	Neighbour of the victim woman.
PW 2	Saraswati Das	Lodger of FIR and victim woman.
PW 3	Ranjit Das	Husband of the victim woman
PW 4	Sabita Mondal	Acquaintance of the victim woman.
PW 5	Supai Munda	Acquaintance of the victim woman.
PW 6	Dr. Sourav Roy	Medical officer of Falakata Rural hospital

Documents exhibited

Serial number	Exhibit number	Description of the exhibit
1.	Exhibit 1/1	Signature of PW 2 on the written complaint.
2.	Exhibit 2/1	Signature of PW 2 on the medical examination report.
3.	Exhibit 3	Injury report prepared by PW 6.
4.	Exhibit 3/1	Signature of PW 6 on the injury report

Prosecution Evidence:

1. **Dhananjoy @ Dhana Barman** as PW 1 stated that he knew the victim



Saraswati Das but he did not know why she lodged complaint.

2. **Saraswati Das** as PW 2 stated that on 28.09.2013 she was working in the field and Asish and his father came to her and assaulted her on trivial issue. PW 2 further stated that she returned home and narrated the matter to her husband and her husband advised her to file this case. In cross examination PW 2 stated that she has no allegation against the accused persons.

3. **Ranjit Das** as PW 3 stated that his wife Saraswati Das lodged complaint against Asish Sarkar and Pinu Sarkar since a scuffling had occurred.

4. **Sabita Mondal** as PW 4 stated that she knew Saraswati Das lodged an complaint against Asish Sarkar and Pinu Sarkar. PW 4 further stated that she heard that a dispute happened.

5. **Supai Munda** as PW 5 stated that he knew that Saraswati Das had lodged complaint against Asish Sarkar and Pinu Sarkar. PW 5 further stated that he was not present at the time of incident.

6. **Dr. Sourav Roy** as PW 6 stated that he examined Saraswati Das on 30.09.2013 at Falakata Rural Hospital and prepared injury report. In cross examination PW 6 stated that there is inconsistency between the history of injury stated by the victim and his findings on examination of the victim.

Points for determination

1. Whether the accused had kidnapped the victim woman?
2. Whether the accused had induced victim woman to go with the intention to force her to illicit intercourse with another person?
3. Whether the accused had committed rape of the victim woman?

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 accused Asish Chandra Sarkar informed the victim woman about the accident of her husband and took her to his house on 18.09.2013.
2. The victim woman was kept in a room and she drank the water given by the accused and she lost her sense.
3. The accused persons committed rape of the victim woman one after another on 18.09.2013.
4. The accused Asish Chandra Sarkar took the victim woman to Jaipur Rajasthan by train.
5. The victim woman was kept in a house in Rajasthan and the accused Asish Chandra Sarkar committed her rape.

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 366 IPC relates to kidnapping, abduction or inducing woman to compel her marriage. The Section reads as under:

“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 with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine, and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be , or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid. ”

Thus, in order to constitute an offense under Section 363/ 366 IPC the following



ingredients are required to be fulfilled:

For the first part of the section-

1. The accused kidnapped or abducted a woman;
2. The accused intended or knew it likely that-
 - (a) the woman abducted or kidnapped would be compelled to marry any person against her own will, or
 - (b) she would be forced or seduced to illicit intercourse.

For the section part of the section-

1. Accused induced any woman to go from certain place;
2. Accused did it by criminally intimidating her;
3. He did so by abuse of his authority ; or
4. He did so by any method of compulsion;
5. Accused intended or knew it likely that such woman would be forced or seduced 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-2, the lodger of FIR also the prosecutrix stated that she was working in the field on 28.09.2013 and Asish Sarkar and Pinu Sarkar came to her and started assaulting her on trivial issue. PW 2 also stated that she had no allegation against the accused. We also find from the evidence of the husband of the victim woman as PW 3, that a scuffling took place between Saraswati Das and Asish Sarkar and Pinu Sarkar. Thus, we do not find from the evidence of the prosecution witnesses that the accused had the requisite *mens rea* to kidnap the victim woman and force or seduce her for illicit intercourse.

Whether the accused committed rape of the victim woman

Rape is a heinous offence that can be committed on a woman and it is for this reason, court heavily lean in favour of such a victim. The Hon'ble Apex Court in **State of Punjab v Gurmit Singh & Ors, (1996) 2 SCC 384** observed that : "If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration



required in the case of an accomplice”. Again, the Hon’ble Apex Court in **Ranjit Hazarika v State of Assam (1998) 8 SCC 635** laid down that: “The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances”.

Now, the prosecutrix is the victim and her statement is not to be viewed with doubt, disbelief or suspicion. While appreciating the prosecutrix, the court may look for some assurance of her statement since she is a witness who is interested in the outcome of the charge leveled by her. It must be borne in mind that the principle is that an injured witness was present at the time when the incident happened and that ordinarily such witness would not tell lie as to the actual assailant, but there is no presumption or any basis for assuming that statement of such a witness is always correct or without any exaggeration. Thus, so far as allegation of rape is concerned, the evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Thus, the veracity of the story projected by the prosecution qua allegation of rape must, thus, be examined.

The questions arising for consideration before us are: Whether the prosecution story, as alleged inspires confidence of the Court on the evidence adduced? Whether the prosecutrix, is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been a victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether the prosecutrix was deprived of her will by show of authority? Whether there was unexplained delay in lodging the FIR?

Let us appreciate the facts of the prosecution’s case. The accused Asish Sarkar took the victim woman to his house and put her in a room and gave her some water to drink. The victim woman lost her sense and she was subjected to sexual assault and the accused Asish Sarkar and Pinu Sarkar committed rape on her.



Thereafter the accused Asish Sarkar took the victim woman to Jaipur Rajasthan and she stayed in a house and the accused Asish Sarkar committed rape on her .

The lodger of FIR as PW 2 stated in her evidence that the accused Asish Sarkar and Pinu Sarkar came to the field where she was working on 28.09.2013 and assaulted her on some trivial issue. Her husband as PW 3 stated that a scuffling took place between his wife and the accused Asish Sarkar and Pinu Sarkar. This version is not in consonance with the report of the incident recorded in the FIR. In the FIR it has been stated that the accused had taken the victim woman to their house and she lost her sense by drinking water, thereafter she was subjected to sexual assault by the accused. But the lodger of FIR, prosecutrix as PW 2 did not submit that the accused took her to their house and committed rape of her. It has been mentioned by PW 2 that the accused assaulted her in the field on some trivial issue. Significantly, the lodger of FIR, prosecutrix in her evidence as PW 2 gave a version of incident which is not in unison with the FIR.

Thus we find that the evidences adduced by the prosecution do not point at the criminal liability of the accused. Such evidences do not suggest that the accused had committed rape of the victim woman. So, on scrutiny of the prosecution evidence we can draw conclusion that the accused is exculpated from the charges of rape.

FIR not proved

We also find that the prosecutrix, lodger of FIR has been examined as PW 2 before this court. PW 2 stated that she filed the FIR on the advice of her husband over the issue that the accused had assaulted her in the field on 28.09.2013. PW 2 further stated that she was not conversant with the contents of the complaint. However, she does not have any allegation against the accused. Such a statement by main prosecution witness PW 2, the prosecutrix (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 to establish the allegation of kidnap against the accused. There is no ingredient of compelling the victim woman to go with the accused and have illicit intercourse with another person. The prosecutrix did not make any statement of sexual assault on her by the accused. Here the testimony of the prosecutrix and the associated circumstances leave a mark of doubt to the veracity of the facts alleged in the FIR. Therefore the charge against the accused



under section 363/366/376 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 offense under Section 363/366/376 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

ORDERED

That the accused namely Asish Sarkar @ Asish Chandra Sarkar, Pinu @ Ashok Sarkar are not found guilty of the offence charged punishable under Section 363/366/376 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, F.T.C. -1,
Alipurduar.
J.O. Code W.B. 01009**

Dictated and corrected by

**Addl. Dist. & Sessions Judge, F.T.C. -1,
Alipurduar.
J.O. Code W.B. 01009**