

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**:::UDALGURI**

**Present : Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Sessions Case No. 48/2019**

**U/S 366 IPC**

**GR Case No. 878/2018**

**State of Assam**

**-Vs-**

**Harka Bahadur Pradhan.....Accused.**

For the Prosecution : Mr. R. Sarmah, Addl. Public Prosecutor.

For the Accused : Mr. M. C. Narzary, Learned Advocate.

Date of Evidence : 05-08-2019.

Date of Argument : 22-08-2019

Date of Judgment : 22-08-2019

**J U D G M E N T**

1. The prosecution in brief is that on 24-08-18, at about 09 am, the victim girl went to her school but thereafter she did not return back home. On search by her family members they came to know that the accused took the victim away and kept her in an unknown place. Hence, the father of the victim girl lodged an FIR with the Officer-in-Charge of Orang P.S. On the basis of the

FIR, Orang PS Case No. 75/18, U/S 366 IPC was registered. After completion of investigation police submitted charge-sheet U/S 366 IPC against the accused Harka Bahadur Pradhan.

2. Learned Addl. Chief Judicial Magistrate, after having complied with the provision under Section 207 CrPC found that the offences under Section 366 I.P.C., is exclusively triable by the Court of Sessions and accordingly, she committed the case to the Court of Sessions on 14-05-19. Thereafter, the learned Sessions Judge vide Order dated 22-05-19, transferred the case to this court for disposal.
3. In consideration of the submission of the learned counsel for both the parties and the materials on record and having found sufficient grounds for presuming that the accused had committed offence under Section 366 I.P.C., charge was framed there under and the ingredients of charge under Section 366 I.P.C., were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
4. The prosecution in order to prove its case examined the following 3 (three) witnesses.
  - PW1- Regoth Bhandari.
  - PW2- The Victim (A).
  - PW3- Januka Devi.
5. The statement of the accused had been recorded U/S 313 Cr.P.C. The defence plea was of total denial.
6. Situated thus, the point for determination in the instant case are set up as follows:-

(I) Whether the accused kidnapped victim 'A' with the intent that she might be compelled or knowing it to be likely that she would be compelled to marry him against her will or that she might be forced or seduced to illicit intercourse with the accused?

**DISCUSSION, DECISION AND REASON FOR DECISION:**

7. I have heard learned Addl. PP Mr. R. Sarmah for the prosecution and learned defence counsel M.C. Narzary. Learned defence counsel has argued that the ingredients of Section 366 I.P.C., have not been established in the present case.
8. Before appreciating the arguments put forward by learned counsel for both parties I would like to discuss the evidence adduced by the prosecution.
9. PW1 is Regoth Bhandari, informant and father of the victim girl. In his evidence PW1 had deposed that his victim daughter was taking education staying in the house of his elder sister Januka Devi. About one year back, when his daughter victim-A went missing, his elder sister informed him. Then PW1 came to his elder sister's house situated in village Dhansirighat where PW1 learnt that his daughter had eloped with accused Harka Bahadur Pradhan. Then PW1 lodged the FIR. After about four months, his daughter was rescued by the Police. Then he went to Orang PS where he found his daughter along with the accused. His daughter was produced before the learned court for recording her statement U/S 164 Cr.P.C. PW1 took into custody of his daughter from the court. After one and a half months, she again eloped with the accused. Since then she had been living with the accused and continuing her conjugal life. PW1 had deposed that his relationship with his daughter and the accused is cordial. At the time of incident, his daughter was aged about 18 years. Ext-1 is the FIR. Ext-1(1) is

the signature of PW1. Cross-examination of PW1 had been declined by the defence.

10. PW2 is victim-A. In her evidence PW2 had deposed that she had love affairs with the accused. Therefore, about one year ago she eloped with the accused and solemnized marriage at Basista Mandir, Guwahati. After three months, they returned back to the house of the accused. Then as her father had lodged FIR, therefore, the Police of Orang PS took PW2 and the accused to the Police station. Though the Police wanted to examine PW2 through the doctor, she had refused to undergo medical examination. She was produced before the learned Magistrate who recorded her statement U/S 164 Cr.P.C. PW2's custody was given to her father by the court. After three months when the accused was released on bail, she again eloped with the accused. Since then she had been living with the accused as husband and wife. Ext-2 is the statement U/S 164 Cr.P.C. Ext-2(1) is the signature of PW2. In cross-examination, PW2 had stated that she voluntarily eloped with the accused and entered into marriage with him. She had no allegation against the accused.
11. PW3 is Januka Devi, aunt of the victim. In her evidence PW3 had deposed that since her childhood, the victim had been living in her house. About one year back, one day the victim went missing from home. Then she informed her brother about it over phone. Later on they came to know that victim had eloped with the accused. Then her brother lodged the FIR. After about three months, victim and the accused returned back to the house of the accused. Then the Police of Orang PS rescued the victim and arrested the accused. The victim was given in custody of her father from the court but later she again fled away with the accused. Cross-examination of PW3 had been declined by the defence.

12. It appears from the evidence on record that the victim had love affairs with the accused. On the date of occurrence she voluntarily eloped with the accused and solemnized marriage at Basistha Mandir at Guwahati. In his evidence PW1, the father of the victim had specifically deposed that at the time of incident the victim was aged about eighteen years. Thus it appears that on the date of occurrence the victim was a major woman and as such the consent given by the victim to go with the accused and to marry him is a valid consent under the law.
13. In view of above discussion it appears that prosecution has failed to prove that the accused kidnapped the victim and compelled her to marry him against her will or that she was forced or seduced to illicit intercourse with him. Hence, prosecution has failed to prove the charge under Section 366 I.P.C. against the accused Harka Bahadur Pradhan beyond all reasonable doubt.
14. Situated thus the point for determination is decided in the negative and against the prosecution.

### **ORDER**

15. In the result, the accused Harka Bahadur Pradhan is found not guilty under Section 366 I.P.C., and acquitted of charge under Section 366 I.P.C., and set with liberty forthwith.
16. Bail bond executed by the accused Harka Bahadur Pradhan and the surety shall remain in force for another six months under the purview of provision under section 437-A Cr.P.C.

17. Send back the original case record of GR Case No. 878/18 to the court of learned Chief Judicial Magistrate, Udalguri, alongwith a copy of the Judgment, forthwith.
18. Judgment is signed, delivered and pronounced in the open court today the 22<sup>nd</sup> day of August, 2019.

**Dictated and Corrected**

**(N. Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N. Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

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**SESSIONS CASE NO. 48/2019**

**APPENDIX**

(A) Prosecution Exhibits :

Ext.-1 : FIR

Ext.-2 : Statement of Victim-A, U/S 164 Cr.P.C.

(B) Materials Exhibits : Nil.

(C) Defence Exhibits : Nil.

(D) Exhibits produced

by witnesses : Nil.

(E) Court Exhibits : Nil

(F) Prosecution witnesses:

PW1- Regoth Bhandari.

PW2- The Victim (A).

PW3- Januka Devi.

(G) Defence witnesses : Nil.

(H) Court witnesses : Nil.

(N.Talukdar)  
Addl. Sessions Judge.  
Udalguri.