

**IN THE COURT OF ASSTT. SESSIONS JUDGE, BAKSA****Present: H.T Buragohain, Asstt. Sessions Judge, Baksa**4<sup>th</sup> Day of May 2022

(Sessions Case No.278/18)

(Goreswar P.S case no.40/16)

Complainant:

STATE OF ASSAM

Represented by

Mr. Dipmoni Boro, Ld. Addl P.P

Accused

Sri Bhriugu Kr. Kalita

REPRESENTED BY

Mst. Chaminara Begum

|                                    |            |
|------------------------------------|------------|
| Date of Offence                    | 08-04-2016 |
| Date of FIR                        | 13-04-2016 |
| Date of Charge-sheet               | 30-04-2016 |
| Date of Framing Charges            | 03-07-2018 |
| Date of commencement of evidence   | 07-01-2020 |
| Date of which Judgment is reserved | 04-05-2022 |
| Date of Judgment                   | 04-05-2022 |
| Date of Sentencing Order, if any   | -Nil-      |

### Accused Details:

| <b>R<br/>a<br/>n<br/>k<br/>o<br/>f<br/>t<br/>h<br/>e<br/>a<br/>c<br/>c<br/>u<br/>s<br/>e<br/>d</b> | <b>Name of accused</b> | <b>Date of arrest</b> | <b>Date release on bail</b> | <b>Offences charged with</b> | <b>Whether acquitted or convicted</b> | <b>Sentence imposed</b> | <b>Period of detention undergone during trial for purpose of sec. 428 Cr.P.C.</b> |
|--|------------------------|-----------------------|-----------------------------|------------------------------|---------------------------------------|-------------------------|---|
| 1  | Sri Bhrigu Kr. Kalita  | 14-04-16              | 26-04-16                    | u/s 366(A) IPC               | Acquitted                             | -Nil-                   | 13 days   |

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

1. The gist of the prosecution case in brief is that one Kalpa Das lodged an ejahar before the O/C Goreswar P.S alleging interalia that on the day of lodging the ejahar at 7.00 p.m his daughter namely Banashri Das aged about 16 years went missing while no one is present in the house. Hence this case.

2. On receipt of the ejahar police registered a case as Goreswar PS Case No.40/16, u/s 366(A) IPC and started investigation. After completion of investigation the I/O submitted charge sheet against accused Sri Bhrigu Kr. Kalita, u/s 366(A) IPC. Since the offence u/s 366(A) is exclusively triable by the Court of Sessions, the Ld. CJM, Baksa committed this case to the court of Hon'ble Sessions Judge, Baksa. On receipt of the committal paper and GR Case Record, Hon'ble Sessions Judge, Baksa transferred this case to this court for disposal.

3. After hearing the learned counsels of both sides and on perusal of the case diary, charge was framed against the accused u/s 366(A) IPC. The charge so framed was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

4. During trial, prosecution side examined as many as 8(eight) witnesses to prove the charge against the accused. Accused was examined u/s 313 CrPC. The statement of defence is recorded in a separate sheet. The defence plea was of complete denial and the defence side has not adduced any evidence.

5. **POINT FOR DETERMINATION**

i) Whether the accused on or about 08-04-2016 at village Gurmou, under Goreswar police station, induced Ms. Banashri Das, a minor girl under the age of 18 years, to go from her home, with the intent that such girl may be seduced to forced to illicit intercourse with another person and thereby committed an offence punishable under section 366(A) IPC?

**DISCUSSION DECISION AND REASONS THEREOF**

6. I have heard learned counsel for both the parties and have gone through the evidence on record. Learned counsel for the prosecution has submitted that all the witnesses have supported the prosecution story and this is a fit case to convict the accused u/s 366(A) IPC.

7. On the other hand, learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence adduced before the court and the statements of the witnesses recorded u/s 161 CrPC. Learned defence counsel has further submitted that the witnesses has nullified the prosecution case and from the evidence of PWs no ingredients of offence is made out against the accused.

8. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

9. To start with our discussion let us go through the evidence of PW1, Kalpa Das who is the informant of the case. PW1 stated that in the year 2016 one day at about 7.00 p.m the victim girl was alone in the house. Taking advantage of that the accused came to his house and took away the victim girl from the house. PW1 stated that when he returned to his house from work his wife was in search of the girl. But she could not be traced out. According to PW1 on the previous day also the accused came to his house to take away the victim but she refused to go with him and thereafter she reported PW1 about the same. PW1 further stated that he informed the local villagers about the

missing of the girl and filed ejahar before the police. After 5 days police recovered the victim from Guwahati.

10. Coming to the evidence of PW2, Banashri Das we find her stating that about three years back from today one day at about 7.00 p.m the accused came to her house and took her out of the house on the pretext of strolling around. Thereafter the accused took her in a taxi to Beltola Guwahati and kept her in his relatives house. On the next day at noon the father of the accused took her back and handed her over to the police. After that police informed her father and also enquired about the incident from her.

11. PW3, Samin Kalita stated in his evidence that about 3 years back one day at about 7.00-7.30 p.m he came to know that the victim was missing from her house and he searched for the girl. According to PW3 he heard that there was love affair between the accused and the victim girl. Hence he went to the house of the accused but the relatives of the accused drove him out of the house. Thereafter the informant lodged the ejahar at night. On the next day at about 2.00 p.m police informed PW3 about the recovery of the victim girl with the accused and called them to the police station. PW3

further stated that on enquiring, the victim told him that the accused compelled her to go with him or else he would take his life, for which she went with the accused.

12. If we go through the evidence of PW1 we find him alleging that on the day of occurrence the accused came to his house and took away the victim from the house. It is also alleged by PW1 that on the previous day of the occurrence also the accused came to his house to take away the victim but she refused to go with him. According to PW1 victim reported him about that.

13. Now if we go through the FIR marked as Exhibit-1 we find that the informant did not even name the accused in his ejahar. We also notice that the informant has simply mentioned in the ejahar that the victim is missing. He did not even mention that the victim might have been kidnapped by someone.

14. Now coming to the evidence of PW2, the victim we find her stating that on the day of occurrence at 7.00 p.m the accused came to her house and took her out the house on the pretext of strolling around. Thereafter she was taken to

Beltola, Guwahati where she was kept in his relative's house.

15. At this point if we go through the statement of the victim recorded u/s 164 CrPC marked as exhibit-4, we find her stating that she was in love with Bhrigu Kr. Kalita for last three months and he gave her a mobile phone. According to the victim one Friday evening while she was studying the accused called her over mobile telling her that he has some talks with her. Here we find contradictions with her deposition as in her examination in chief PW1 stated that the accused came to her house and took her out.

16. Again in Exhibit-4 we find her stating that at about 6.30 p.m she came out of her house without informing her parents. Then they met in a nearby road and the accused took her in a tempo to the house of his elder sister at Beltola. It is revealed from the cross examination of PW2 that the accused is her brother in relation. Here I fail to understand the point in meeting the accused outside the house without informing her parents, if he is her relative. Apart from that the victim has nowhere alleged that the accused forcefully made her sit inside the vehicle and took her to Beltola, Guwahati. Again another point to be noted is that according to PW2



the accused took her to his relative's house. If the accused is her brother definitely his relative will also be the relative of the victim and therefore the accused will never dare to kidnap the victim and confine her in the house of their relative.

17. It appears from the evidence of PW3 that his evidence is hearsay. He has not seen the accused taking away the victim but he has only heard that the victim girl is missing from her house . It appears that PW3 went to the house of the accused as he heard that there was love affair between the accused and the victim. According to PW3 the relatives of the accused drove him out. There is no mention anywhere in the evidence of PW3 that he saw the victim girl in the house of the accused at that time.

18. It is also stated by PW3 that on enquiry the victim said that the accused compelled her to go with him otherwise he will take his life. But PW2, the victim did not state any such thing in her evidence.

19. PW4, PW5 and PW6 also did not see the incident. PW4, Gautam Kalita stated in his evidence that about 3 years back one day at about 7.00 p.m the informant told him that the victim girl was

missing from the house and searched for her. Later on PW4 came to know that the accused took away the victim girl. PW5, Sanjay Das stated in his evidence that he heard that the accused made the victim girl elope with him in the evening. PW6, Praneswar Das stated in his evidence that about 3 ½ years back one evening he came to know that the accused made the victim elope with him from her house.

20. According to PW8, the I.O, the victim was found in the house of the accused by him on 14-04-2016. But PW1, the informant, stated in his evidence that police recovered the victim from Guwahati. Again, PW2, the victim stated that the father of the accused took her back from Guwahati and handed her in the police station. In Exhibit-4 i.e her statement, the victim, on the other, hand stated that on the next day of the occurrence three uncles of the accused came and handed her to Goreswar P.S. Hence, we find contradictions in the evidence of the PWs regarding the recovery of the victim.

21. So far as the age of the victim is concerned, we find PW7, Bangshidhar Das stating in his evidence that in the year 2016 he had issued a school certificate in the name of the victim Banashri Das and there he mentioned her date of birth to be

01-01-2001. But in his cross-examination PW7 stated that he had guessed the date of birth of the victim in the admission register. Hence in the absence of any proof regarding the date of birth it can not be held that the victim was a minor at the time of occurrence.

22. Considering the evidence and the materials available on record it can be inferred that the victim voluntarily eloped with accused Sri Bhrigu Kr. Kalita. The victim in her statement u/s 164 CrPC had stated about love affairs between them which she did not disclose in her evidence at the time of trial. There being no other proper supporting evidence as discussed above, the evidence of the victim cannot be relied upon as the same suffers from so many infirmities .

23. Therefore it is found and hold that the victim eloped with the accused on her own accord for which she made no resistance. There is no evidence to prove the minority of the victim and no specific evidence about the involvement of the accused in the whole affair. In view of the above discussion it is held that the prosecution has not been able to prove the charge against the accused Sri Bhrigu Kr. Kalita. Hence, it appears that the

ingredients of Section 366(A) IPC is not attracted against the accused.

**O R D E R**

24. From the discussion made above, I find that the prosecution has miserably failed to prove the offence u/s 366(A) IPC against the accused.

Hence, accused Sri Bhrigu Kr. Kalita is found not guilty and is acquitted from the charge of offence u/s 366(A) IPC.

The accused person is set free at his liberty forthwith.

Bail bond furnished by the accused persons shall stand cancelled after a period of 6 months.

Given under my hand and seal of this court on this the 4<sup>th</sup> Day of May 2022

Asstt. Sessions Judge,  
Baksa, Mushalpur

Dictated & corrected by me

Asstt. Sessions Judge,

Baksa, Mushalpur

**LIST OF PROSECUTION/ DEFENCE/ COURT  
WITNESSES**

**A. Prosecution:**

| RANK | NAME                     | NATURE OF EVIDENCE |
|------|--------------------------|--------------------|
| PW1  | Sri Kalpa Das            |                    |
| PW2  | Miss Banashri Das        |                    |
| PW3  | Sri Samin Kalita         |                    |
| PW4  | Sri Gautam Kalita        |                    |
| PW5  | Sri Sanjay Das           |                    |
| PW6  | Sri Praneswar Das        |                    |
| PW7  | Sri Bangshidhar Das      |                    |
| PW8  | Sri Phanidhar Basumatary |                    |

**B. Defence Witnesses, if any:**

| RANK | NAME | NATURE OF EVIDENCE |
|------|------|--------------------|
| DW1  |      |                    |
| DW2  |      |                    |

**C. Court Witnesses, if any:**

| RANK | NAME | NATURE OF EVIDENCE |
|------|------|--------------------|
|      |      |                    |

|     |  |  |
|-----|--|--|
| CW1 |  |  |
| CW2 |  |  |
| CW3 |  |  |

### **LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

#### **A. Prosecution:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description</b>           |
|----------------|-----------------------|------------------------------|
| 1              | Exhibit-1             | Ejahaar                      |
| 2              | Exhibit-1(1)          | Signature of PW1             |
| 3              | Exhibit-2             | Seizure list                 |
| 4              | Exhibit-2(1)          | Signature of PW1             |
| 5              | Exhibit-3             | Medical report               |
| 6              | Exhibit-3(1)          | Signature of victim          |
| 7              | Exhibit-4             | Statement of the victim girl |
| 8              | Exhibit-4(1)          | Signature of the victim girl |
| 9              | Exhibit-5             | School certificate           |
| 10             | Exhibit-5(1)          | Signature of PW7             |
| 11             | Exhibit-6             | Sketch map                   |
| 12             | Exhibit-6(1)          | Signature of PW8             |
| 13             | Exhibit-7             | Charge-sheet                 |
| 14             | Exhibit-7(1)          | Signature of PW8             |

#### **B. Defence:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description</b> |
|----------------|-----------------------|--------------------|
| 1              | Exhibit D-1/DW1       |                    |

|   |                 |  |
|---|-----------------|--|
| 2 | Exhibit D-2/DW2 |  |
| 3 | Exhibit D-3/DW3 |  |

**C. Court Exhibits:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description</b> |
|----------------|-----------------------|--------------------|
| 1              | Exhibit C-1/CW1       |                    |
| 2              | Exhibit C-2/CW2       |                    |

**D. Materials Objects:**

| <b>Sr. No.</b> | <b>Exhibit Number</b> | <b>Description</b>            |
|----------------|-----------------------|-------------------------------|
| 1              | MO1                   | School Certificate of victim. |
| 2              | MO2                   |                               |