



**IN THE COURT OF SESSIONS JUDGE :::::::::::::::::::::::::::::: BAKSA AT MUSHALPUR**

Present : Shri C. Das,  
Sessions Judge,  
Baksa, Mushalpur

( Committed on 16/5/2017 by learned CJM, Nalbari  
presently Baksa, Mushalpur in GR Case No.266/2016 )

**JUDGMENT IN SESSIONS CASE NO.102/18**

u/s 366 IPC.

State

versus-

Sri Utpal Sutradhar

.... Accused

**Appearance :**

For the State : Mr. R. Chetry, PP. Baksa

For the accused : Mr. K. Ali, S. Islam, Advocate

Date of recording : 14/8/17, 28/8/17, 16/11/17, 11/12/17

Date of argument : 25/7/18

Date of judgment : 9/8/18

**JUDGMENT**

1. The case of the prosecution briefly, is that on 24/4/16 the complainant Sri Ranjit Bhowmik lodged the ejarah before the Officer-in-charge of Tamulpur police station, alleging inter-alias that on 21/4/16 at about 11:30 am., the accused forcibly kidnapped his 15 years old daughter Ms. Madhumita Bhowmik from the front of his house. In the said connection, the family members of the above accused provided necessary help and assistance to him.

2. The police accordingly, registered the Tamulpur PS. Case No.120/16 and took up the due process of the investigation. During the investigation, the I/O

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recovered the victim and recorded her statement and arrested the accused person. At the end of the investigation, the I/O having found a prima-facie case well established solely against the accused, submitted the charge-sheet against the accused person to face trial in the court.

3. The accused when appeared in the court, furnished him with the copy of the case as required u/s 207 CrPC., and since the offence u/s 366(A) IPC., is exclusively triable by the court of sessions, learned Chief Judicial Magistrate, Nalabri, presently, Baksa, Mushalpur committed the case to the Court of Sessions. Hence a separate sessions case was registered and proceeded with its trial.

4. After hearing of both sides as well as, on perusal of material on record, the charge u/s 366 IPC framed against the accused. The charge so framed, was read over and explained to the accused who pleaded not guilty and claimed to be tried.

5. The prosecution during the course of trial, examined as many as, six witnesses to support its case. In the statement recorded u/s 313 CrPC., the accused took the plea of denial to the all incriminating circumstances so appeared in the evidence. The accused however, declined to adduce any evidence in defence. The argument of the parties was heard at length.

**POINT FOR DETERMINATION :**

6. whether on 21/4/16, at about 11: 30 am., at village : Dighilapar under Tamulpur Police station, the accused kidnapped or abducted a girl namely ; Ms. Madhumita Bhowmik with intent that she may be compelled to marry other person against her will or in order that Ms. Madhumita Bhowmik may be forced or seduced to illicit intercourse or knowing it likely that she will be forced or seduced to illicit intercourse ;

**DECISION AND REASON THEREFORE :**

7. it is the argment of learned Public Prosecutor that the prosecution all together examined six witnesses including the I/O and all of them supported the prosecution case that it was none other than the accused who committed the offence of abduction of the victim girl from her lawful guardian and kept her in his custody. Further he submitted that it is clear from the evidence of PW3 that the victim girl was below 18 years of age at the time of occurrence and the evidence on

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record discloses that the accused not only committed the offence of abduction of the victim, but also, committed rape on her as stated by her in her statement recorded u/s 164 CrPC. But the accused did not adduce any evidence to nullify the claim of the witnesses of the prosecution. It is immaterial that the victim refused for her medical examination. He submitted that the prosecution thus is able to prove its case against the accused beyond all reasonable doubt and as such, the accused is liable to be punished as per provision of law.

8. Learned Public Prosecutor relied the decision reported as in **CRL A 1418/11 Shambhu Nath Pandey vs. State of NCT of Delhi from Hon'ble Delhi High Court** wherein, the observation can be reproduced as :- PW-3 has categorically deposed that the accused had made physical relation against her will. In the statement under section 164 CrPC. ExPW12/B, the prosecutrix stated before the Magistrate that on 25.06.2004 she got married to accused in a temple. That said statement almost remained unchallenged. So far so, sexual intercourse with the prosecutrix is concerned, that fact also, remained unchallenged. Considering the age of the prosecutrix and the fact that sexual intercourse was done by the accused with the prosecutrix, as deposed by the prosecutrix, remained unchallenged, the prosecution has proved the case under section 366 IPC against the accused that the accused had kidnapped the minor girl aged below sixteen years without the consent of her natural guardian and kept her for eighteen days and made sexual intercourse with her. The prosecution has also, proved its case under section 376 IPC. The consent of the prosecutrix is immaterial when the prosecutrix, the victim of crime, is below sixteen years of age. Therefore, the defence that it was a love affair and the sexual intercourse has been made with the consent of the prosecutrix is of no consequences.

9. Further reliance was placed on the case of **CRL A 766/2015 Raju Yadav vs. State from the Hon'ble Delhi High Court**, the relevant portion can be read as :- Dr. Niyati Srivastava, SR Obst. Gynae, BJRM Hospital who was examined as PW-13 deposed that the prosecutrix did not allow for internal examination. Dr. Shipra Rampal, Radiologist, BJRM Hospital, PW-14 deposed that after examining the prosecutrix physically, dentally and radiologically, they gave the age estimate of the prosecutrix to be between 16-18 years vide their report Ex.PW-14/A. It is trite law that conviction can be based on the sole testimony of the prosecutrix without any corroboration. Even in the absence of medical evidence, the appellant is liable to be convicted since

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