

**BEFORE THE SESSIONS JUDGE, GOALPARA**

**Sessions Case No. 204/ 2014**

**U/s: 364 (A) of the I.P.C.**

State of Assam

**-VS-**

- 1. Motiur Rahman**
- 2. Saiful Islam**                    **..... Accused persons.**

Present: **Shri T.K.Bhattacharjee, A.J.S.**  
Sessions Judge, Goalpara

Dates of Evidence: 19.7.16; 5.9.16; 22.12.16; 21.3.18.

Date of argument: 30.05.19

**Date of Judgment: 19.06.2019**

**Appearance:**

For the Prosecution: Mr. B.K. Das, Ld. P.P.

For the Defence: Mr. S. Ali and Mr. A. Hoque, Ld. Advocates.

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

1. The brief facts of the prosecution case, as unfurled from the ejahar is that on 16/12/2013 at about 4:00 p.m. at Milan Nagar, Santipur under Goalpara P.S. Dist. Goalpara the accused Motiur Rahman and Saiful Islam kidnapped the minor son of the informant with the help of some others and a white colored Tata Sumo vehicle and hence this case was filed.

2. On receipt of information to that effect the police registered a case vide Goalpara P.S. Case no. 554/2013 u/s 364(A)/34 of the IPC and after the investigations were completed the police submitted a charge-sheet against the above-named accused persons u/s 364(A)/34 of the IPC sending them up for the purpose of trial.

3. Thereafter, on appearance of the said accused persons before the learned Committal Court the relevant copies were furnished to them and the case was committed and subsequently this Court was pleased to frame charges u/s 364(A)/34 of the IPC against the accused persons Motiur Rahman and Saiful Islam on 18-05-2015 and the contents of the said charges were also read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly, the trial of this case commenced.

4. In the course of the trial, 6(six) witnesses were examined in support of the prosecution case which included the informant, the victim and also the Investigating officer of this case and on conclusion of the prosecution evidence, the examination of the accused persons u/s 313 Cr.P.C. was conducted and their statements were recorded during which they declined to adduce evidence in their defence.

5. Thereafter, the arguments of the Ld. respective counsels of both the sides were heard and the entire evidence in the case record was duly perused in order to determine the matter at hand.

**POINTS FOR DETERMINATION:**

6. Whether on or about the 16/12/2013 at about 4:00 p.m. at Milan Nagar, Santipur under Goalpara P.S. & Dist. Goalpara the accused persons in furtherance of common intention kidnapped or abducted the minor son of the informant or kept him on detention and threatened to cause death or hurt to him or by conduct gave rise to a reasonable apprehension that the victim may be put to death or hurt or caused hurt or death to the victim in order to compel any person to pay a ransom, as alleged ?

**DISCUSSION, REASONS AND DECISION:**

7. The P.W-1 was the informant who had filed the ejahar i.e., Ext.-1 and from his testimony, it is found that the victim Arif Sheikh was his son. According to P.W-1, the occurrence took place when his son was 11 years old and one day his son went for tuition at about 4:40 p.m. But did not return and at about 7:00 p.m. he came back home all alone and he disclosed to P.W-1 that after tuition he was taken away by the accused Saiful Islam in a vehicle and on the road he was left behind by Saiful.

His cross examination shows that at that time he disclosure of the occurrence by his son, 4 persons including one Robiul were present.

8. P.W-2 was the victim (Arif Sheikh) and from his testimony, it is found that according to him the occurrence took place at about 5:00 p.m. when he was 11 years old. He deposed that when he was coming home from tuition, he met Saiful Islam who requested him to go with him and so he went with him and after going a while, they boarded a Tata Sumo vehicle and P.W-2 realized that he had been kidnapped and he started crying and shouted and at that time the passengers of the said Tata Sumo allowed him to go away and thereafter, he went home with Saiful Islam and disclosed the matter to his father. He also deposed that his bicycle was brought to his house by the accused Motior Rahman.

From his cross examination, it is found that the accused Saiful was in another house prior to the occurrence and the place from where he was taken by the Tata Sumo vehicle was a busy point and there were 1/12 persons in the Tata Sumo.

His cross examination also shows that he took another road from his tuition place though there is a short-cut road to his house from there. This witness also did not say to anyone about being kidnapped.

9. P.W-3 was one Minarul Islam and from his testimony, it is found that on the day of occurrence, the victim Arif Sheikh went for tuition but did not return home and later he came back and reported that he was taken away by Saiful Islam who brought him to his house. P.W-3 also stated that Saiful Islam was handed over to the police by the public.

10. P.W-4 was Robiul Islam and according to him Arif Sheikh did not return home from tuition but subsequently he came back and reported that he was taken away by accused Saiful and Saiful also confessed that he had taken away the victim Arif Sheikh and so he was handed over to police.

In his cross examination, he stated that the accused Saiful did not confessed about abduction of the victim before him.

11. P.W-5 was one Mustakim Ahmed and according to him, the victim Arif went missing later he came back home with a person and disclosed that he was taken in a vehicle but allowed to come back home on his request.

12. P.W-6 was the police officer who took up the preliminary investigation of the case and from his testimony, it is found that he had arrested the accused persons from their respective houses.

His cross examination, also shows that the victim Arif Sheikh did not state before him that the accused caught him to that house and accused Motin bringing his bicycle to his house.

13. The prosecution side did not examine any other witnesses and from the entire evidence in the case record it is found that the P.W.-2 was the victim of this case who is apparently the most vital witness of this case. During the arguments the Ld. P.P. submitted that the testimony of the victim should be carefully scrutinized and thereafter appropriate orders may be passed. On the other hand, the Ld. Counsel for the accused persons submitted that the testimony of the victim and the informant are not at all reliable and further the evidence on record clearly shows that the prosecution case is full of loopholes and as such the accused persons deserve to be acquitted in this case which was filed on false and fabricated materials. The Ld. Counsel for the accused persons also submitted the decisions reported in **(2001) 9 Supreme Court Cases 704** in support of his contentions and further submitted that the non examination of any outsider witness or any passenger of the Tata Sumo vehicle allegedly used in the occurrence is fatal to the prosecution case.

14. Upon a careful scrutiny of the evidence on record, the connected documents, the case law etc. that was submitted it is found that the P.W.-2, the victim of this case stated that on the way home from tuition the accused Saiful Islam requested him to go with him and so he went and after a while the said accused took him in a Tata Sumo and the persons in the Tata Sumo allowed him to go away as he started crying and shouting. His testimony shows that the said accused namely Saiful Islam brought him to his house which fact was however not stated by the victim to the investigating officer which is evident from the testimony of the PW.-6 (I.O.). The victim also did not state to the IO that his cycle was brought to his house by the accused Motior. Apart

from that, the Tata Sumo vehicle or the cycle of the victim were not seized by the IO and moreover, there is absolutely no evidence to indicate that any ransom was demanded or that there was any threat to cause death or hurt to the victim and from the above facts and circumstances it is apparent that the ingredients of section 364(A) of the IPC is very much lacking in the instant case. However, even though the prosecution could not establish the fact that any kidnapping for ransom had taken place but nevertheless, it is necessary to examine whether any offence of kidnapping i.e. u/s 361/363 of the IPC was committed by the accused persons or not. From the testimony of the PW-1 the father of the victim it is found that the victim was left on the road by the accused Saiful, who used to work in the house of the informant prior to the occurrence but as per the version of the victim (P.W.-2) he had gone back to his house with the accused Saiful Islam which fact was however not stated by the victim to the IO (P.W.-6). On the other hand, the PW-3 stated that the accused Saiful was handed over to the police by the public and according to the P.W.-4 the victim came back to his house and at that time the accused Saiful was handed over to the police by them but the P.W.-6 (IO) stated that he had apprehended the accused persons from their house and in view of the above facts and circumstances the reliability of the prosecution witnesses is apparently under thick clouds and the prosecution story appears to be rather far-fetched.

Further, the prosecution did not made any attempt to examine any of the persons or passengers who were there in the tata sumo vehicle that was used and in view of the discrepancies in the prosecution evidence it would not be wise to rely on the testimony of the victim to convict the accused persons and therefore, taking into consideration all the above facts and circumstances it is apparent that the prosecution case suffers from serious infirmities, inherent inconsistencies and numerous flaws and as such it can safely be concluded that the prosecution has failed to establish the charges leveled against the accused persons beyond reasonable doubt.

15. In the result, the accused persons named above are not found guilty u/s 364(A)/34 of the IPC beyond reasonable doubt and as such they are acquitted

of the said charges and set at liberty forthwith. Their bail bonds shall however remain in force for the next six months.

16. A copy of this judgment shall be forwarded to Ld. District Magistrate, Goalpara and also the Superintendent of Police, Goalpara for their information and necessary action.

Given under my hand and the seal of this court on this the 19<sup>th</sup> day of June/2019.

**(T. K. Bhattacharjee)**  
Sessions Judge,  
Goalpara.

Dictated & corrected by me:

Sessions Judge,  
Goalpara.

**Appendix:**

**Prosecution Witnesses:**

PW1:- Chandu SK,  
PW2:- Arif SK,  
PW3:- Minarul Islam,  
PW4:- Rabiul Islam,  
PW5:- Mustakim Ahmed,  
PW6:- Jafor Ali Mondal (IO).

**Prosecution Exhibits:**

Ext.1:- Ejahar,  
Ext.2:- Sketch Map

**Court witnesses:-Nil.**    **Defence Witness:** Nil.

*Sessions Judge  
Goalpara*