

**IN THE COURT OF ASSISTANT SESSIONS JUDGE:**  
**GOALPARA**

**Sessions case No. 158/2018**

**U/s 366/342 of IPC**

**The State of Assam**

**-Vs-**

**Abdul Baten**

*..... Accused person*

**Present : Smt. C.R. Saikia, A.J.S.**  
**Assistant Sessions Judge, Goalpara**

**For the Prosecution: Mr. N.N. Islam, learned Addl. P. P.**

**For the accused: Mr. A. Hussain, learned Advocate.**

**Evidence for the prosecution recorded on :**

**04/02/19,27/03/19,**

**24/05/19,20/07/19, 04/09/19, 12/02/20, 04/03/20.**

**Statement of the accused recorded: On 28/01/2021.**

**Argument heard on: 28-01-2021.**

**Judgment delivered on: 10-02-2021.**

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

1. The gist of the prosecution case as disclosed in the ejahar is that on 03/10/2017 at about 8:00 p.m. accused Baten Ali kidnapped Miss Chandika Dalu, daughter of

Sudhangshu Dalu from his house and confined her in an unknown place.

2. On the basis of the said ejahar Mornoi P.S. Case No. 111/17 u/s 366A/342 of IPC was registered against the accused. On completion of investigation police laid charge sheet against accused Baten Ali u/s 366/342 of IPC.

3. Learned Judicial Magistrate First Class, Goalpara committed this case for trial before Hon'ble Court of Sessions vide its order dated 18/08/2018 after complying with the provisions under section 207/209 Cr.P.C. On 12/02/2020 this court received the instant case for disposal from Hon'ble Sessions court on transmission.

4. It is pertinent to mention that learned Sessions Judge, Goalpara, framed a formal charge u/s 366/342 of IPC against the accused Baten Ali, vide its order dated 28-09-18 after considering the relevant materials on record. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. Prosecution side adduced evidence of eight witnesses in support of its case. Statement of the accused recorded u/s 313 Cr. P.C. is of total denial. Defence side declined to adduce any evidence in its defence. I have

heard the argument of both sides, considered the contentions raised on behalf of both sides and perused the evidence on record.

**The points for determination in this case are as follows:**

6. (i) Whether the accused on 03/10/2017 at about 8:00 p.m., at village Rakshyasini Pt-II, kidnapped Chandika Dalu, daughter of the informant, from her house with intent that she might be compelled to marry any person against her will or knowing to be likely that she might be forced to illicit intercourse and thereby committed an offence punishable u/s **366** of IPC ?

(ii) Whether the accused after kidnapping wrongfully confined Smt. Chandika Dalu for 12/13 day and thereby committed an offence punishable u/s **342** of IPC ?

**DISCUSSION OF EVIDENCE, DECISIONS AND REASONS THEREOF:**

7. In order to avoid repetition both the points for determination are taken up together for discussion. They will be analysed and determined simultaneously.

8. To constitute an offence punishable u/s 366 of IPC there must be the following ingredients:

1. Kidnapping or abducting of any woman.

2. Such kidnapping or abducting must be -

- 1) with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will, or
- 2) 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 or
- 3) by means of criminal intimidation or otherwise by inducing any woman to go from any place with intent that she may be or knowing that she will be forced or seduced to illicit intercourse.

In case of woman being above eighteen years she could only be abducted. Abduction requires forceful compulsion or inducement by deceitful means done with the object of going of a person from any place.

9. In order to constitute an offence punishable u/s 342 of IPC wrongful restraint of a person to prevent him from proceeding beyond certain limits is to be proved.

10. In view of the said provisions of law, I would like to analyse the evidence on record to find out whether the

offences u/s 366/342 of IPC are made out against the accused as required by law.

11. It is the cardinal principle of criminal jurisprudence that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt. **As per provision of Section 102 of Indian Evidence Act 1872** the burden of proving the guilt of the accused lies on the prosecution. In this instant case prosecution has adduced evidence of eight witnesses in order to discharge its burden.

12. **P.W.1, Sudhangshu Dalu** is the informant and father of the victim. **P.W-2, Chandika Dalu** is the victim in this case. **P.W-3, Bakul Dalu** is the uncle of the victim. **P.W-4, Debashree Dalu** is the sister of the victim. **P.W-5, Rakesh Koch** is the co-villager of the victim. **P.W-6, Bishnu Ram Dalu** is the relative of the informant. **P.W-7, Sri Brindaban Sarkar** is the neighbour of the informant. **P.W-8, Sri Gangadhar Nath**, is the Investigating Officer of this case. The relevant evidence of these witnesses shall be considered at appropriate places to discern the veracity of the prosecution case.

13. P.W-1 testifies that he lodged the ejahar as his daughter Chandika Dalu was missing from home. He proves his ejahar as Exhibit-1 wherein he has admitted

his signature as Exhibit-1(1). In his cross examination P.W-1 stated candidly that he does not know whether his daughter was kidnapped or whether she had gone voluntarily. From this evidence of P.W-1 it transpires that he does not have direct knowledge about the involvement of the accused in the alleged offences. Being so the evidence of P.W-1 is not helpful to bring home the guilt of the accused.

14. The evidence of P.W-3, P.W-4, P.W-5, P.W-6 and P.W-7 regarding the alleged offences is hearsay. It is in the evidence of P.W-3 that the victim told him that the accused had taken her away. In his cross examination P.W-3 stated that he did not know how and where the victim had gone. P.W-4 also testifies that the victim had told her that the accused had taken her away. In her cross examination P.W-4 stated that she did not know how and where the victim had gone. P.W-5 testifies that he came to know that Chandika Dalu was missing. In his cross examination P.W-5 stated that he did not know where the victim had gone. It is in the evidence of P.W-6 that he came to know that one boy had taken away the victim. P.W-7 also deposed that he had heard from the villagers that Chandika Dalu was kidnapped by the accused. As apparent the evidence of all these witnesses is not helpful for the prosecution being hearsay.

15. The evidence of P.W-8 is mostly formal in character. He did all the formalities of investigation such as visiting the place of occurrence, recording the statements of witnesses, preparing the sketch map of the place of occurrence etc..

16. In this instant case, the evidence of the victim is material as there is no eye witness of the alleged incident. It is in the evidence of the victim/P.W-2 that she knows the accused prior to the incident. According to her the accused had a book stall at Dhoptola Bazar and she used to visit that shop to recharge her mobile. She testifies that the accused kept her mobile number and he used to call her over phone. The fact that the victim used to visit the shop of the accused is corroborated by the evidence of P.W-4 who testifies that she came to know from her friends that the victim used to visit the shop of the accused from time to time. Such corroborated evidence regarding the fact of the victim visiting the book stall of the accused of and on leads to the inference that there was a good relation between the accused and the victim.

17. Amid such inherently probable fact of having a good relation between the accused and the victim, I would like to analyse the other evidence of P.W-2 to find out the truth of the prosecution story. P.W-2 goes on to depose that on the day of the occurrence the accused

had asked her to come to the bazar and she had gone with him out of fear.

18. The evidence of P.W-2 that she went with the accused out of fear is not believable because she stated clearly in her cross examination that she had not informed her parents or the police about the accused threatening her. If P.W-2 were threatened by the accused, she would have informed her parents about such threatening. But instead of doing so, she came out to go with the accused. Such behaviour of P.W-2 speaks a volume about herself being a consenting party.

19. It is in her evidence that on the day of the incident she along with the accused had gone to Barpeta and their marriage was solemnized at Barpeta Court. That on the very night they performed Nikah and they stayed at the maternal uncle's house of the accused at Barpeta for about a week. The sequence of events as deposed by P.W-2 shows quite normal flow of activities done with full consent. Nothing can be gathered from the evidence of P.W-2 to hold that she was forcefully compelled to do all these things. The fact that she stayed for about an week with the accused without making any complaint to any one leads to a very clear inference of having her consent in the said activities. In one place of her cross examination P.W-2 stated that she got married to the accused after changing her religion. But she has not

deposed anything about the accused forcefully compelling her or deceitfully inducing her to do so. Such evidence of P.W-2 throws serious doubt about the involvement of the accused in the alleged offences.

20. There is other evidence on record which tends to corrode the prosecution case. In the beginning of her cross examination P.W-2 asserts that she was 18 years old at the time of the incident. In his cross examination P.W-8 stated that the victim was 19 years old at the time of the incident as per the certificate seized from the father of the victim during investigation. So such evidence makes it clear that the victim was a major girl at the time of the incident. As P.W-2 was a major girl at the time of the incident and as there is no evidence regarding forceful compulsion or inducement by deceitful means, the alleged offence u/s 366 IPC cannot be foisted upon the accused.

21. From the forgoing discussion of evidence it comes out that the evidence on record does not make out alleged offences u/s 366/342 of IPC against the accused. The prosecution has totally failed to lead cogent and convincing evidence to bring home the charges under section 366/342 of I.P.C. against the accused person. Therefore, accused Abdul Baten is acquitted of the alleged offences u/s 366/342 of IPC. He is set at liberty forthwith. His bail bond is extended for six months under

section 437A Cr.P.C.

22. Forward a copy of this judgment to the District Magistrate in compliance of section 365 of Cr. P.C.

**Given under my hand and the seal of this Court on this 10<sup>th</sup> day of February, 2021.**

**Dictated and corrected by me:**

**(C.R.Saikia, A.J.S.)  
Asstt. Sessions Judge, Goalpara**

**Asstt. Sessions Judge, Goalpara**

**A P P E N D I X.**

(Sessions Case No. 158/2018).

**Prosecution witness :**

- P.W.-1 ..... Sudhangshu Dalu (informant),  
P.W.-2 ..... Chandika Dalu (victim),  
P.W.-3 ..... Bokul Dalu (brother of informant)  
P.W.-4 ..... Debashree Dalu (daughter of informant),  
P.W.-5 ..... Rakesh Koch,  
P.W.-6 ..... Bishnu Ram Dalu,  
P.W.-7 ..... Sri Brindaban Sarkar,  
P.W.-8 ..... Sri Gangadhar Nath (I/O).

**Defencewitness :**..... Nil.

**Prosecution Document :**

- Exhibit-1 .... F.I.R.  
Exhibit-2 .... Statement of victim u/s 164 Cr.P.C.  
Exhibit-3 .... Seizure List.  
Exhibit-4 .... Charge Sheet.

**DefenceDocument :**..... Nil.

**Court's witness :**... .. Nil.

**Court's Document :**... .. Nil.

**(C. R. Saikia, A.J.S.)  
Asstt. Sessions Judge,  
Goalpara, Assam.**

