

**IN THE COURT OF ASSTT. SESSIONS JUDGE**  
**AT GOALPARA.**

**Sessions Case No. 120/2018.**

U/S 457/366A/511 of I.P.C.

STATE

-VS-

**Sopior Rahman**

.... Accused person.

***PRESENT: C. R. Saikia, AJS.***

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

For the Accused : Mr. Anowar Hussain, learned Advocate.

Evidence for the prosecution recorded on : 30/05/19, 02/08/19, 21/10/19 and 26/02/20.

Statement of the accused recorded on : 12-03-2020.

Argument heard on : 23-12-2020. .

Judgment delivered on: 06-01-2021.

**JUDGMENT**

1. The gist of the prosecution case is that on 19/01/2016 at about 8:00 PM Sopior Rahman, S/o Sorhab Ali of Vill. Bhimkhoj under Lakhipur Police Station along with two other unknown persons illegally entered into the dwelling house of Aynal Hoque of the same village and attempted to kidnap Aktara Bhanu, the minor daughter of

Aynal Hoque by gagging her mouth. That then the victim Aktara Bhanu raised hue and cry and hearing her alarm the neighbouring people came and then the miscreants left the place of occurrence. It is further disclosed in the ejahar that at the time of the alleged incident the parents of the minor victim girl were absent from the house.

2. Aynal Hoque, the father of the minor victim girl lodged an ejahar with the In-charge of Jaleswar Out Post disclosing the said facts. The In-charge of Jaleswar Out Post made G.D. Entry vide G.D.E No. 423 dated 25/01/2016 and forwarded the ejahar to the O.C. of Lakhipur P.S. for registering a case. Accordingly the O.C. of Lakhipur P.S. registered Lakhipur P.S. Case No. 34/2016 u/s 457/366A/511/506/34 IPC on the basis of the said ejahar and endorsed S.I. D.Ali Ahmed to investigate the matter.

3. On completion of investigation the O.C. of Lakhipur P.S. submitted the charge sheet against accused Sopior Rahman u/s 457/366A/511 of IPC.

4. The then learned Additional Chief Judicial Magistrate, Goalpara committed this case for trial before Hon'ble Court of Sessions vide its order dated 27/06/2018 after complying with the provisions under section 207/209 Cr.P.C. as the offences under section 457/366A/511 of IPC are exclusively triable by the court of sessions. On 21-10-19 this court received the instant case for disposal from Hon'ble Sessions court on transmission.

5. It is pertinent to mention here that before transmission of this instant case to this court Hon'ble Sessions Judge, Goalpara framed formal charge u/s 457/366A/511 IPC against accused Sopior Rahman vide its order dated 25/01/2019, after hearing learned counsels of both sides and on perusal of materials on record.

6. Prosecution side adduced evidence of altogether five witnesses including I.O. The statement of the accused as recorded u/s 313 Cr.P.C. is of total denial. Defence side declined to adduce 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:**

7. (i) Whether the accused on 19/01/2016 at about 8:00 PM, at village Bhimkhoj, committed lurking house trespass at night by entering into the dwelling house of complainant Aynal Hoque in order to commit the offence of kidnapping of his daughter Aktara Bhanu and thereby committed an offence punishable u/s 457 of Indian Penal Code ?

(ii) Whether the accused on the same, date, time & place, attempted to induce Aktara Bhanu, aged about 15 years, daughter of the complainant, to go from her house with intent that said Aktara Bhanu may be or knowing that it is likely that said Aktara Bhanu will be forced or seduced to illicit intercourse with others and thereby committed an offence punishable u/s 366A/511 of Indian Penal Code?

**DISCUSSION OF EVIDENCE, DECISIONS AND REASONS**

**THEREOF:**

8. To avoid repetition and for the sake of convenience both the points for determination are taken up together for discussion. As per section 102 of the Indian Evidence Act, 1872, the burden of proving both the points for determination is on the prosecution. Due to the cardinal principle of criminal jurisprudence namely the presumption of innocence of the accused, the prosecution has to prove the guilt of the accused beyond reasonable doubt. In order to discharge this burden prosecution has examined five witnesses in this instant case.

9. P.W.1, Aynal Hoque, is the informant and father of the minor victim girl. P.W-2 Aktara Bhanu is the victim of the alleged offence. P.W-3 Sundari Bibi is the wife of P.W-1 and mother of P.W-2. P.W-4 Sahidul Hoque is the neighbour of the informant. P.W-5 is the Investigating Officer of this case. The relevant evidence of these witnesses shall be considered at appropriate place to assess the veracity of the prosecution case. It is pertinent to mention that there is no dispute regarding the acquaintance of the accused with the unofficial P.Ws in this case as they hail from the same village.

10. P.W-2, the victim, is the vital witness of this case. P.W-2 testifies that at the relevant time of the occurrence her parents were absent from home. According to her, at that time the accused along with two unknown persons came to their home and tried to take her away by gagging her mouth. That as she raised hue and cry neighbouring people came and then the accused fled away from the place of occurrence. In her cross examination P.W-2 stated that Habibar came first and rescued her. She also stated in her cross

examination that at the time of the alleged incident her 12 years old sister Rabia and her two younger brothers were also present at home.

11. It transpires from the evidence of P.W-2 that her neighbour Habibar and her sister Rabia were the eye witnesses of the incident. Their evidence would have thrown much light in the prosecution case. But surprisingly enough the prosecution has not examined these witnesses. Non- examination of these vital witnesses leads to adverse presumption as incorporated in section 114 illustration (g) of the Indian Evidence Act 1872. Section 114 illustration (g) of the Indian Evidence Act provides :

**“ the court may presume that the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”**

12. In view of this provision of law non-examination of the eye witnesses as disclose by the victim adversely affects the prosecution case.

13. P.W-1 and P.W-3, the parents of the victim, were not at home at the time of the incident. It is in the evidence of P.W-1 that at the time of the alleged incident he was not at home. According to him, he heard from his daughter Aktara that at the relevant time of incident the accused came to their home and tried to take away his daughter Aktara by gagging her mouth. That the accused fled away from the place of occurrence as the neighbouring people came hearing hue and cry of his daughter. In his cross examination P.W-1 stated candidly that he had not see the occurrence. Being hearsay the evidence of P.W-1 does not have much probative value to prove the prosecution case.

14. P.W-3 testifies that at the relevant time of the incident she had gone to her neighbour's house and hearing hulla when she came home her daughter told her that the accused had slapped her and put a cloth on her mouth. P.W-3 has deposed clearly that she had not seen the occurrence. As the evidence of P.W-3 is also hearsay, this is not helpful to bring forth the prosecution case.

15. P.W-4 has deposed that he did not know anything about the incident. So, his evidence is also not helpful to establish the prosecution case.

16. P.W-5 is the Investigating Officer who did all the formalities of investigation like visiting the place of occurrence, preparing sketch map and recording the statement of the witnesses. On completion of the investigation he filed charge sheet against accused Sopior Rahman u/s 457/366A/511 IPC. The evidence of P.W-5 is mostly formal in nature. In absence of any cogent evidence on record to establish the prosecution case, the evidence of P.W-5 is not much helpful to the prosecution.

17. It is seen from the foregoing discussions of evidence that the victim is the vital witness of this case. The evidence of the victim is not corroborated by any cogent evidence on record. This court does not find it safe, just and prudent to rely on the uncorroborated evidence of the victim to hold the accused guilty of the alleged offences.

18. Therefore, it is seen that the evidence adduced on behalf of the prosecution has failed to establish the guilt of the accused u/s 457/366A/511 of IPC. Hence, accused Sopior Rahman is acquitted

of the alleged offences u/s 457/366A/511 of IPC. He is set at liberty forthwith. His bail bond is extended for six months under section 437A Cr.P.C.

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

**Given under my hand and the seal of this Court on this 06<sup>th</sup> day of January, 2021.**

**(C.R.Saikia, A.J.S.)**

**Asstt. Sessions Judge, Goalpara**

**Dictated and corrected by me:**

**Asstt. Sessions Judge, Goalpara**

**APPENDIX.** (Sessions Case No. 120/2018).

**Prosecution witness :**

P.W.1 ..... Aynal Hoque (informant),

P.W.2 ..... Aktara Bhanu (victim),

P.W.3 ..... Sundari Bibi,

P.W.4 ..... Sohidul Islam and

P.W.5 ..... Darbesh Ali Ahmed (I/O).

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

**Prosecution Document :**

Ext.-1 ..... Ejahar.

Ext.-2 ..... Charge Sheet.

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

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

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

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