

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,  
UDALGURI, ASSAM.**

**G.R. CASE NO. 249 of 2019  
(U/S 363 IPC)**

**STATE**

**-VS-**

**SRI RAJIB @ PINKU KAKOTI**

**-----Accused person.**

**Present: Smti. Nilakshi Lahkar, A.J.S.**

**Advocate for the Prosecution : Mrs. N. Narzari**

**Advocate for the Defence : Mr. T. C Boro**

**Charge framed and explained on : 20.06.2019**

**Evidence recorded on : 11.07.2019, and 22.07.19**

**Argument heard on : 08.08.2019**

**Judgment delivered on : 08.08.2019**

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

- 1.** The prosecution case, in brief is that, informant Sri Baburam Boro had lodged an FIR before Orang PS by stating inter-alia that on 15.03.2019 at about 10:30 AM his daughter namely Dikhita Boro, who was a student of HS 1<sup>st</sup> year in Orang Kalaguru Bishnu Rabha College was going towards her college. But till the evening when his daughter did not return home then he made search. After that he came to know that the accused person had kidnapped his daughter from Orang chariali. Hence this case.
- 2.** After receiving the aforesaid FIR the O/C of Orang PS had registered a case vide PS case no. 22/2019, u/S 365 IPC. Investigating Officer investigated the case, recorded the statement of witnesses, made the seizure list and after completing the investigation, IO submitted the charge sheet against the accused person u/S 363 IPC vide CS No. 22 of 2019 dated 31.03.2019.

3. On the basis of the charge sheet, cognizance of offence was taken under Section **190 (1)(b)** of the Cr.PC. Necessary processes were issued for causing appearance of the accused person before the court. Accordingly the accused person appeared. The copies of relevant documents were furnished to the accused person. Considering the materials on record, charge u/S 363 IPC has been framed against the accused person. Thereafter the ingredients of charge u/S 363 IPC was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
4. During trial the prosecution has examined as many as five (5) witnesses. The examination of the accused person u/S 313 of Cr.P.C has been recorded. The defence case is of total denial. No witness been examined by the defence. Argument had been heard from both sides.
5. I have considered the evidence on record, statement u/S 313 CrPC and the argument advanced. For the purpose of clarity, the following points for determination is hereby framed:

**6. POINTS FOR DETERMINATION OF THE CASE:**

Whether the accused person on 16.03.2019 at about 10:30 AM had kidnapped the daughter of the informant from his lawful guardianship and thereby committed the offence punishable u/S 363 IPC ?

**7. DISCUSSION, DECISION AND REASONS THEREOF:** The prosecution has examined as many as five (5) witnesses:

PW 1 Baburam Boro (informant),  
PW 2 Dikhita Boro (victim)  
PW 3 Phuleswari Boro  
PW 4 Govinda Das and  
PW 5 Aniram Boro

8. PW1 Baburam Boro, the informant herein this case has deposed in his evidence that he knows the accused person. About 4 months ago the incident was occurred. At the time of occurrence his

daughter Dikhita Boro was studying in HS 1<sup>st</sup> year. About 4 months ago when his daughter was going towards college then the accused person had kidnapped his daughter from the road. When his daughter was not returning home till evening then he had made search and then he came to know that accused person had taken away his daughter. After 10 days of the incident he recovered his daughter and at present his daughter is staying with him. Police had recovered his daughter and handed over to him. He has identified the FIR as Exhibit 1 and Exhibit 1 (1) is his signature.

**9.** During cross-examination he has stated that he had not seen as to who had taken his daughter. He did not know from where police had recovered his daughter. On the next day of the incident he had lodged the FIR.

**10.** PW2 Dikhita Boro, the victim herein this case has deposed in her evidence that the informant is her father. She knows the accused person. On 16.03.2019 the incident was occurred. She knew the accused person about 2 years before from the day of the incident. She has a love affair with him. They got separate after 1 year of their relationship. But they had talked each other. On the day of the incident accused person had asked her to go to Guwahati and accordingly she went to Guwahati with him. The accused person had not kidnapped her. She was staying at the house of his uncle for 10 days and they had stayed together at there. Afterwards they came to know that her father lodged the FIR, so they came to Orang PS and her father took her away from police station. He was staying willingly with the accused person for 10 days. Police had sent her to the Court for recording her 161 statement and accordingly she had deposed before the Magistrate. He has identified the statement recorded u/S 161 Cr. PC as Exhibit 2 and Exhibit 2 (1) is her signature.

**11.** During cross-examination he has stated that she willingly went to Guwahati with the accused person.

**12.** PW3 Phuleswari Boro, the wife of the informant has stated in her

evidence that she knows the accused person. About 3 months ago her daughter Dikhita Boro went to her college, but till evening she did not return home. After that they had made search and came to know from her friend that accused person had taken away her daughter. Afterwards the case had been lodged as they did not find their daughter. After 10 days of the incident the family members of the accused person had handed over their daughter to police station and police had handed over the victim to them.

**13.** During cross-examination she has deposed that she had not seen with whom her daughter was going. She did not know from where her daughter was recovered.

**14.** PW4 Govinda Das has deposed in his evidence that he knows both the parties. About 4 months ago he had heard that accused person had taken away the daughter of the informant when she went to college. Besides that he did not know anything about the incident. After 11 days of the incident the daughter of the informant was recovered and handed over her to the informant.

**15.** During cross-examination he has deposed that he did not know with whom the daughter of the informant was going and where she stayed.

**16.** PW5 Aniram Boro, the IO herein this case has deposed in his evidence that on 21.03.2019 he was posted at Orang PS as ASI. That day Baburam Boro had lodged an FIR before O/C of Orang PS and accordingly O/C of Orang PS registered the case and endorsed him for investigation. Afterwards he went to the place of occurrence, drawn the sketch map and collected the medical report of the victim. Accused person had appeared before the police station and accordingly he had arrested the accused person and sent him to the Court. He had also sent the victim to the Court for recording her 161 statement. After completion of investigation he had submitted the charge sheet against the accused person u/S 363 IPC. He has identified the sketch map as Exhibit 3 and Exhibit 3 (1) is his signature. He has also identified the charge sheet as Exhibit 4 and Exhibit 4 (1) is his signature.

- 17.** During cross-examination he has deposed that as per the FIR the victim girl was missing on 16.03.2019. but on 21.03.2019 the FIR was lodged. Prior to filling this FIR there was not made any missing entry. The victim had stated in her 161 statement that she willingly went with the accused person.
- 18.** Learned counsel of defence submitted that the victim girl had not supported the prosecution case at hand and she had not implicated the accused person for the alleged crime. The learned counsel of defence submitted there is no incriminating materials against the accused and hence he prayed to acquit the accused person from the case forthwith.
- 19.** Let the case be decided on the basis of the evidence available in this case record. PW1 Baburam Boro, the informant herein this case while deposing his evidence has deposed that on the day of the incident on the way of going his daughter to college she was kidnapped by the accused person. After recover by the police, he found his daughter after 10 days of the incident. During cross-examination he has deposed that from where his daughter was recovered he did not know. PW2 Dikhita Boro, the victim herein this case has deposed in her evidence that on 16.03.2019 she eloped with the accused person due to have loving affair with him. After that she went to Guwahati with him and stayed in the house of his uncle for 10 days. She willingly went with the accused person. PW3 Phuleswari Boro, the mother of the victim as well as the wife of the informant has narrated the same fact as deposed by her husband. During cross-examination she also has deposed that she did not know from where her daughter was recovered. PW4 Gobinda Das only had heard about the incident and he did not know with whom the daughter of the informant had gone and where she stayed. PW5, the IO herein this case also did not depose anything that the victim was recovered from the hands of the accused person.
- 20.** To attract the offence of kidnapping u/S 359 IPC, the person kidnapped must be kidnapped from India or from lawful

guardianship. It is pertinent to be mentioned here that to attract of offence u/S 361 IPC i.e kidnapping from “lawful guardianship” the person kidnapped must be taken or enticed out of the keeping of the “lawful guardianship” of the minor.

- 21.** Having gone through the evidence of the PWs in this case, it is found that no one of the prosecution witnesses have deposed in their evidence that the victim Dikhita Boro was taken or enticed by the accused person on the day of alleged incident. Furthermore, no one prosecution witnesses also have deposed in their evidence that the victim was recovered from the hands of the accused person. Thus, in my view, the ingredients u/S 361 IPC has not been fulfilled with and hence, I hold that the prosecution has failed to prove its case u/S 363 IPC against the accused person beyond all reasonable doubt.

**ORDER**

The accused person Rajib @ Pinku Kakoti is hereby acquitted from the Section 363 IPC beyond all reasonable doubt and set at liberty forthwith.

The bail bond of the accused person is extended for a further period of 6 months from today as per provisions of Section 437-A Cr.P.C as amended up to date.

*The judgment is given under the hand and seal of this Court on this 08<sup>th</sup> day of August, 2019.*

**(N. Lahkar)**  
Addl. Chief Judicial Magistrate.  
**Udalguri, Assam.**

**Dictated and corrected by me:**

**(N. Lahkar)**  
Addl. Chief Judicial Magistrate  
**Udalguri, Assam.**

**APPENDIX**

- A. Prosecution witnesses : PW 1 Baburam Boro (informant),  
PW 2 Dikhita Boro (victim)  
PW 3 Phuleswari Boro  
PW 4 Govinda Das and  
PW 5 Aniram Boro
- B. Defence witness : Nil.
- C. Documents exhibited : Exhibit -1 is the FIR  
Exhibit -2 if the statement recorded  
u/S 161 Cr. PC.

Addl. Chief Judicial Magistrate  
Udalguri, Assam.

Typed by Rupam Das/Stenographer.