

GAHC010008312011



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Crl.Rev.P. 362/2011**

1:RAJU DAS @ BISWAS  
S/O LT. DHARANI DAS VILL- NABHEI, WARD NO.5 P.O. and P.S. MORIGAON,  
DIST. MORIGAON, ASSAM.

VERSUS

1:THE STATE OF ASSAM

**Advocate for the Petitioner** : MS.L N CHOUDHURY

**Advocate for the Respondent** :

**BEFORE**  
**HONOURABLE MR. JUSTICE MIR ALFAZ ALI**

**ORDER**

**Date : 29-05-2020**

Heard Md. M.H. Choudhury, learned counsel for the revision petitioner and Mr. D. Das, learned Addl. Public Prosecutor for the State/respondent No.1.

2. The propriety, legality and correctness of the judgment passed by the learned Sessions Judge, Morigaon in Crl. Appeal No. 36/2010 has been put to challenge in this revision petition, whereby the learned Sessions Judge confirmed and upheld the conviction and sentence of the revision petitioner.

3. The revision petitioner stood convicted u/s 365 IPC and sentenced to rigorous imprisonment for 2 (two) years and fine of Rs. 500/- (Rupees five hundred) with default

stipulation. The conviction recorded and sentence awarded by the learned Magistrate was challenged in appeal and the learned Sessions Judge confirmed and upheld the conviction and sentence by the impugned judgment.

4. Learned counsel for the petitioner submits that the ingredients and constituent of the charge u/s 365 IPC was not established in the instant case, and as such, the conviction of the revision petitioner and his sentence in absence of the necessary ingredients to constitute the charge has resulted in miscarriage of justice.

5. Section 365 IPC provides punishment for kidnapping or abduction of any person with intent to cause that person to be secretly and wrongfully confined. Abduction has been defined in Section 362 IPC which provides that “whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

6. Kidnapping is defined in Section 359, 360 & 361 IPC as under :

“359 IPC Kidnapping is of two kinds : Kidnapping from [India] and kidnapping from lawful guardianship.

360 IPC Kidnapping from India.—Whoever conveys any person beyond the limits of 1[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from 1[India].

361 IPC Kidnapping from lawful guardianship.—Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

7. The basic ingredients of the offence u/s 362 IPC are – (i) compelling a person to go from one place to another either by force or by inducement. Kidnapping as defined in Section 359 and 366 IPC are of two kinds, i.e., kidnapping from India without consent and kidnapping of a minor or a person of unsound mind from a lawful guardianship.

8. Admitted position in the present case is that the alleged victim, was a major girl and as such, there was no question of removal or kidnapping of the victim from India, or kidnapping from lawful guardianship. Only question is whether the constituent of the

offence of abduction is available or not ?

9. The victim examined as PW-3 was the sole witness, on the basis of whose evidence petitioner was convicted. It is in her evidence, that when she was taken by the petitioner from the road, she went home to bring her clothes, keeping the petitioner waiting on the road and then she accompanied the petitioner. It is also in her evidence, that she reached the house of the sister of the petitioner after passing through four villages and such evidence has also been reflected in paragraph 9 of the judgment of the learned Sessions Judge. There is no evidence on record to show that the petitioner induced the victim by any deceitful means or applied any force to compel the victim to accompany him. Rather, the clear and unambiguous evidence and materials on record, that the informant having left the petitioner on the road, went to fetch clothes and then went with the accused, clearly indicated that she voluntarily accompanied the petitioner. However, the learned Sessions Judge in paragraph 10 of the impugned judgment, referring to the above evidence of PW-3 held, that the victim was perplexed. The learned Sessions Judge also presumed that there was an inducement by the accused. I am afraid, the above observation of the learned Sessions Judge made in paragraph 10 of the impugned judgment appears to be contrary to the narration of evidence in the judgment, which clearly demonstrated that the alleged victim (PW-3) accompanied the petitioner out of her own will, and as such, the findings of the learned Sessions Judge that the victim was perplexed and that the victim was induced by the petitioner does not appear to have borne out of any evidence or material on record and the same can only be attributed to surmise and conjectures. What therefore, emerges from the evidence is that the victim went with the petitioner out of her own volition and there was neither any inducement by the petitioner, nor he applied any force, and as such, the basic ingredients of the offence u/s 365 IPC was absent.

10. In view of the above, it is abundantly clearly that both the learned courts below fell in grave error by not taking into consideration the evidence on record, while holding the petitioner guilty of offence u/s 365 IPC, and as such, the findings of the learned trial court as well as the appellate court suffered from the vice of perversity and illegality.

11. Thus, having regard to the evidence and materials brought on record, I am of the

considered opinion, that the conviction and sentence of the petitioner was illegal and improper and deserves to be interfered. Accordingly, the conviction and sentence of the petitioner in Crl. Appeal No. 36/2010 is hereby set aside.

12. Accordingly, the revision petition stands allowed. Bail bond if any stands discharged.

13. Send back the record along with a copy of this order.

**JUDGE**

**Comparing Assistant**