

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
BHUBANESWAR.

Present:-

Shri M. K. Mishra, LL. B,
Addl. Sessions Judge, Bhubaneswar.

CRIMINAL TRIAL NO. 46/92 OF 2013-A

(Arising out of Mahila PS Case No. 111/2012, corresponding
to G.R case No.732 of 2012, committed by the SDJM,
Bhubaneswar)

Date of argument- 25.8.2014
Date of Judgment- 26.8.2014

S t a t e -

- V e r s u s -

- 1) Gangu @ Goutam Bhoi, aged about 22 years, S/o: Sanatan
Bhoi of village: Basuaghai, Durgapur Patna, P.S.
Saheednagar, Dist: Khurda.

....Accused

Advocate for the prosecution :Shri R.R. Brahma, Addl. P. P

Advocate for Accused :Shri R.K.Khuntia and assts.

Offence Under Sections :363/366/366-A/376/368/342 of I.P.C..

J U D G M E N T

The aforesaid accused namely: Gangu @ Goutam
Bhoi stands charged U/s. 363/366/366-A/376/368/342 of Indian Penal

Code (hereinafter referred as 'I.P.C.').

2. The case of the prosecution as per the FIR may be summarized as follows: the complainant Jagannath Bhoi who happens to be the father of the victim lady had lodged a written report before the IIC, Mahila P.S., Bhubaneswar on dtd.8.3.12 informing that he had left the victim girl in the house of his own father-in-law in village: Basuaghai. The victim lady had failed in her 10th class examination and thereafter she was residing in that village. The age of the girl was about 15 years. On 3rd March, 2012 the informant was informed by his father-in-law that the victim lady had left the house. The informant and his wife went to village: Basuaghai, searched for the victim girl but unable to trace her out. They returned back to Bhubaneswar, and lodged the written report. Prior to that on dtd. 8.3.2012 i.e. on the date of the lodging of the FIR, he came to know that the victim girl was kidnapped by accused Gangu Bhoi of Basuaghai village who kept her in his own maternal uncle's house at Pandasahi under Baliana P.S. Basing on the FIR Mahila P.S. Bhubaneswar case No-111 dtd.8.3.12 was registered, and the investigation was taken up. During course of investigation, the IO had visited the spot, examined the witnesses, rescued the victim girl and sent her to medical for her medical examination. But the victim girl denied for her medical examination. Thereafter, accused Gangu @ Goutam Bhoi was arrested, and he was forwarded to the court. The wearing apparels of the victim lady and accused Gangu @ Goutam Bhoi was seized. The seized exhibits were sent to SFSL, Rasulgarh on the strength of the order of the Court for chemical examination. The other accused persons were arrested and forwarded to the Court by

the IO who seized the school admission register of Antaryami High School Bankual, and left the same in the zima of School Headmaster, and on completion of investigation, he submitted chargesheet against the accused Gangu @ Goutam Bhoi U/s.363/366/366-A/376/368/342/212/109/34 of I.P.C.

The case was split up as against the present accused vide order dtd. 25.8.2014, hence, he is facing trial alone in this case.

3. The plea of the defence is that of complete denial of prosecution story.

4. Points for determination in this case are:

i) Whether on dtd.3.3.2012 in village: Basuaghai the present accused had kidnapped the victim girl without her consent by removing her from out of her lawful guardianship ?

ii) Whether on the above date, time and place, the present accused had kidnapped the victim girl with an intention to compel her to marry and to force her for illicit intercourse with him ?

iii) Whether on the above noted date, time and place the present accused had induced the victim lady who was a minor to have illicit intercourse with him?

iv) Whether after three days since 3.3.2012 at village: Bhingarpur, Panda Sahi the present accused committed rape on the victim girl?

v) Whether on 3.3.2012 at village: Bhingarpur, Panda Sahi the accused had wrongfully confined the victim girl having knowledge that she has been kidnapped or abducted?

5. In order to prove its case prosecution has examined as many as 10 witnesses. Out of whom, P.W.1 is the mother of the victim girl, the P.W.2, the P.W.3, the P.W.4, the P.W.5 are the persons who belong to village Basuaghai. The P.W.6 is the victim girl, the P.W.7, the P.W.8, the P.W.9 are the police constables, the P.W.10 is the Investigating Officer of this case.

On the other hand, no witnesses is examined on behalf of the accused persons. Similarly, Ext.1 to Ext.12 series are marked which include the formal FIR, seizure list, the medical examination report etc. On the other hand, no documentary evidence is adduced on behalf of the defence. No MO is marked in this case.

6. P.W. 1 who is the mother of the victim girl has stated to have no knowledge about the case. The P.W.2 has stated that police has not examined her although she knows the informant and accused persons. The P.W.3 has not at all supported the case of the prosecution in any manner as she has not stated anything against the accused persons. The P.W.4, and the P.W.5 have expressed their ignorance about the facts of this case. The P.W.6 who is the victim girl has stated to have no knowledge about the case nor she was examined by the IO. Some leading questions were asked to her on behalf of the prosecution U/s.154 of Indian Evidence Act. But she has not stated anything in support of the prosecution case during her entire evidence. The cross-examination of the victim girl indicates that the accused persons have never kidnapped her at any point of time nor the accused Gangu @ Goutam Bhoi cohabited with her. Although she had identified her signature on the seizure list, but she has stated that while the signature was obtained, the paper was completely blank. The P.W.7 and the P.W.8 are the accompanying police constables, who had taken the accused Goutam Bhoi to Capital Hospital where accused Goutam Bhoi

was medically examined, and the sample pubic hair and semen was obtained. The P.W.9 is a seizure witness who has stated that the wearing apparels of accused Goutam Bhoi was seized by the IO. P.W.10, the IO of this case who has stated regarding the investigation of the case. He has stated that during course of investigation he had examined the witnesses including the mother of the victim girl, conducted raid and apprehended the accused persons, examined the victim girl and sent the accused Gangu @ Goutam Bhoi and the victim girl for their medical examination, seized the wearing apparels of the victim girl on production by the complainant, prepared the seizure list, seized the sample pubic hair, and semen of the accused Goutam Bhoi, seized the wearing apparels of the accused Goutam Bhoi, arrested the accused persons and forwarded them to the court, and on completion of investigation, submitted chargesheet against the accused persons.

7. The accused persons have denied the incriminating circumstances that appeared in the evidence U/s.313 of Cr.P.C. The oral evidence of the P.W.1 to P.W.5, and the evidence of the P.W.6 who is the victim girl indicate that none of them has stated anything incriminating against the accused persons. They are completely silent regarding the overt act of the accused persons or regarding the commission of any offence. They have neither supported the case of the prosecution nor corroborated the prosecution story. In other words, the oral evidence of the victim girl and other independent witnesses is silent regarding the involvement of the accused persons in the alleged offence or regarding the commission of the alleged offence or the role of the accused persons or if at any time the victim girl was abducted by the accused persons, or if the offence of rape had taken place in respect of the victim girl. Moreover, the evidence relating to the basic ingredients of offence alleged against the accused

persons has not been attracted in the mouth of any of the witnesses including that of the victim girl. So, the case of the prosecution appears to be extremely weak and vulnerable for which there is no merit in the prosecution case.

8. Accordingly, in view of the aforesaid discussion and after taking into consideration the available oral and documentary evidence on record and taking into consideration the testimony of the victim girl, I am of the opinion that prosecution has miserably failed to prove its case against the present accused U/s. 363/366/366-A/376/368/342 of I.P.C. beyond all reasonable doubt and the accused is found not guilty thereunder and he is acquitted U/s.235(1) of Cr.P.C and set at liberty.

The seized article be destroyed and zimanama be cancelled after four months of the appeal period is over in case of no appeal, in case of appeal the same be dealt with as per the decision of the appellate court.

Addl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 26th day of August, 2014 given under my signature and seal of this Court.

Addl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 : Smt. Tanuja Bhoi
P.W.2 : Smt. Nayani Bhoi
P.W.3 : Lokanath Bhoi
P.W.4 : Pahali Bhoi
P.W.5 : Kanhu Bhoi

P.W.6 : Smt. Sasmita Bhoi
P.W.7 : Dillip Kumar Behera
P.W.8 : Kalpana Singh
P.W.9 : Lily Panda
P.W.10 : Smt. Sunimala Nayak

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1 : Seizure list
Ext.1/1 : Signature of P.W.6 in Ext.1
Ext.2 : Medical examination report
Ext.2/1 : Signature of P.W.7 on Ext.2
Ext.2/2 : Signature of P.W.Kalpana Singh
Ext.2/3 : Signature of accused Goutam Bhoi
Ext.3 : Seizure list
Ext.3/1 : Signature of P.W.7
Ext.3/2 : Signature of Kalpana Singh
Ext.4 : Seizure list
Ext.4/1 : Signature of P.W.7 on seizure list
Ext.4/2 : Signature of Kalpana Singh
Ext.4/3 : Signature of accused Goutam Bhoi
Ext.5 : FIR
Ext.5/1 : Signature of of the complainant
Ext.5/2 : Endorsement and signature of IIC, Smt. Iti Das
Ext.5/3 : Formal FIR
Ext.6 : Spot map
Ext.6/1 : Signature of P.W.10

Ext.1/2 : Signature of P.W.10 on Ext.1
Ext.1/3 : Signature of the complainant on Ext.1
Ext.3/3 : Signature of P.W.10 on Ext.3 Ext.3
Ext.4/4 : Signature of P.W.10 on Ext.4
Ext.7 : Prayer made before the SDJM, BBSR
Ext.7/1 : Signature of P.W.10 on Ext.7
Ext.8 : Forwarding letter
Ext.8/1 : Signature of P.W.10 on Ext.8
Ext.9 : Connecting receipt obtained from the SFSL
Ext.10 : Seizure list
Ext.10/1 : Signature of P.W.10 on Ext.10
Ext.10/2 : Signature of Bhagyadhar Sahoo on Ext.10
Ext.10/3 : Signature of Birendra Moharana on Ext.10
Ext.10/4 : Signature of Pitabas Mohapatra on Ext.10
Ext.11 : School Admission register attested true copy
Ext.11/1 : Signature of Head Master on Ext.11
Ext.12 : Zimanama
Ext.12/1 : Signature of P.W.10 on Ext.12
Ext.12/2 : Signature of Head Master on Ext.12.

Lisst of Exts. Marked on behalf of the defence

Nil.

Addl. Sessions Judge, Bhubaneswar.

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Present:-

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Date of argument- 25.8.2014

Date of Judgment- 25.8.2014

S t a t e -

- V e r s u s -

- 2) Mina Bhoi, aged about 65 years, W/o: Sanatan Bhoi of
village: Basuaghai, Durgapur Patna, P.S. Saheednagar,
Dist: Khurda.
- 3) Chhabiprasad Behera, aged about 56 years, S/o: Baidhara
Behera of village: Bhingarpur, Panda Sahi, P.S. Baliana,
Dist: Khurda.

....Accused

Advocate for the prosecution :Shri R.R. Brahma, Addl. P. P

Advocate for Accused :Shri R.K.Khuntia and assts.

Offence Under Sections :363/366/368-A/376/368/342/212/109/34of
I.P.C..

J U D G M E N T

The aforesaid accused persons of this case have faced their trial in charge U/s.363/109/34 of Indian Penal Code, 366 / 109/34 of Indian Penal Code, 366-A /109/34 of Indian Penal Code, 376 / 109/34 of Indian Penal Code, 368 /109/34 of Indian Penal Code, 342 / 109/34 of Indian Penal Code and 212 /109/34 of Indian Penal Code (hereinafter referred as 'I.P.C.').

2. The case of the prosecution as per the FIR may be summarized as follows: the complainant Jagannath Bhoi who happens to be the father of the victim lady had lodged a written report before the IIC, Mahila P.S., Bhubaneswar on dtd.8.3.12 informing that he had left the victim girl in the house of his own father-in-law in village: Basuaghai. The victim lady had failed in her 10th class examination and thereafter she was residing in that village. The age of the girl was about 15 years. On 3rd March, 2012 the informant was informed by his father-in-law that the victim lady had left the house. The informant and his wife went to village: Basuaghai, searched for the victim girl but unable to trace her out. They returned back to Bhubaneswar, and lodged the written report. Prior to that on dtd. 8.3.2012 i.e. on the date of the lodging of the FIR, he came to know that the victim girl was kidnapped by accused Gangu Bhoi of Basuaghai village who kept her in his own maternal uncle's house at Pandasahi under Baliana P.S. Basing on the FIR Mahila P.S. Bhubaneswar case No-111 dtd.8.3.12 was registered, and the investigation was taken up. During course of investigation, the IO had visited the spot, examined the witnesses, rescued the victim girl and sent her to medical for her medical examination. But the victim girl denied for her medical examination. Thereafter, accused Gangu @ Goutam Bhoi was arrested, and he was forwarded to the court. The wearing apparels of the

victim lady and accused Gangu @ Goutam Bhoi was seized. The seized exhibits were sent to SFSL, Rasulgarh on the strength of the order of the Court for chemical examination. The other accused persons were arrested and forwarded to the Court by the IO who seized the school admission register of Antaryami High School Bankual, and left the same in the zima of School Headmaster, and on completion of investigation, he submitted chargesheet against the accused Gangu @ Goutam Bhoi U/s.363/366/366-A/376/368/342/212/109/34 of I.P.C and against the present two accused persons U/s.363/36-A/109/34 of I.P.C. Hence, this case.

3. The plea of the defence is that of complete denial of prosecution story.

4. Points for determination in this case are:

iii) Whether on dtd.3.3.2012 in village: Basuaghai the present accused persons in furtherance of their common intention have abetted the act of kidnapping of the victim girl by the accused Gangu @ Goutam Bhoi by removing her from her lawful guardianship?

ii) Whether on the above date, time and place, the present accused persons in furtherance of their common intention had abetted in the kidnapping of the victim girl with an intention to compel her to marry accused Gangu @ Goutam Bhoi knowing that she might be forced to illicit intercourse with accused Gangu @ Goutam Bhoi?

ivi) Whether on the above noted date, time and place the present accused persons in furtherance of their common intention had abetted the act of inducing the victim girl who was a minor and forced her to sexual intercourse with accused Gangu @ Goutam Bhoi ?

iv) Whether after three days after 3.3.2012 at village: Bhingarpur, Panda Sahi the accused persons in furtherance of their common intention had abetted the commission of rape of the victim girl by accused Gangu @ Goutam Bhoi?

v) Whether on 3.3.2012 at village: Bhingarpur, Panda Sahi the accused persons in furtherance of their common intention had abetted the act of confinement and the concealment of the victim girl by accused Gangu @ Goutam Bhoi knowing that she had been kidnapped?

vi) Whether on 3.3.2012 at village: Bhingarpur, Panda Sahi the accused persons in furtherance of their common intention had abetted the act of wrongful confinement of victim girl by accused Gangu @ Goutam Bhoi?

Vii) Whether on 3.3.2012 at village: Bhingarpur, Panda Sahi the accused persons in furtherance of their common intention had abetted an act of harbouring by the accused Gangu @ Goutam Bhoi to keep illicit relationship with the victim girl?

5. In order to prove its case prosecution has examined as many as 10 witnesses. Out of whom, P.W.1 is the mother of the victim girl, the P.W.2, the P.W.3, the P.W.4, the P.W.5 are the persons who belong to village Basuaghai. The P.W.6 is the victim girl, the P.W.7, the P.W.8, the P.W.9 are the police constables, the P.W.10 is the Investigating Officer of this case.

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6. P.W. 1 who is the mother of the victim girl has stated to have no knowledge about the case. The P.W.2 has stated that police has not examined her although she knows the informant and accused persons. The P.W.3 has not at all supported the case of the prosecution in any manner as she has not stated anything against the accused persons. The P.W.4, and the P.W.5 have expressed their ignorance about the facts of this case. The P.W.6 who is the victim girl has stated to have no knowledge about the case nor she was examined by the IO. Some leading questions were asked to her on behalf of the prosecution U/s.154 of Indian Evidence Act. But she has not stated anything in support of the prosecution case during her entire evidence. The cross-examination of the victim girl indicates that the accused persons have never kidnapped her at any point of time nor the accused Gangu @ Goutam Bhoi cohabited with her. Although she had identified her signature on the seizure list, but she has stated that while the signature was obtained, the paper was completely blank. The P.W.7 and the P.W.8 are the accompanying police constables, who had taken the accused Goutam Bhoi to Capital Hospital where accused Goutam Bhoi was medically examined, and the sample pubic hair and semen was obtained. The P.W.9 is a seizure witness who has stated that the wearing apparels of accused Goutam Bhoi was seized by the IO. P.W.10, the IO of this case who has stated regarding the investigation of the case. He has stated that during course of investigation he had examined the witnesses including the mother of the victim girl, conducted raid and apprehended the accused persons, examined the victim girl and sent the accused Gangu @ Goutam Bhoi and the victim girl for their medical examination, seized the wearing apparels of the victim girl on production by the complainant, prepared the seizure list, seized the sample pubic hair, and semen of the

accused Goutam Bhoi, seized the wearing apparels of the accused Goutam Bhoi , arrested the accused persons and forwarded them to the court, and on completion of investigation, submitted chargesheet against the accused persons.

7. The accused persons have denied the incriminating circumstances that appeared in the evidence U/s.313 of Cr.P.C. The oral evidence of the P.W.1 to P.W.5, and the evidence of the P.W.6 who is the victim girl indicate that none of them has stated anything incriminating against the accused persons. They are completely silent regarding the overt act of the accused persons or regarding the commission of any offence . They have neither supported the case of the prosecution nor corroborated the prosecution story. In other words, the oral evidence of the victim girl and other independent witnesses is silent regarding the involvement of the accused persons in the alleged offence or regarding the commission of the alleged offence or the role of the accused persons or if at any time the victim girl was abducted by the accused persons, or if the offence of rape had taken place in respect of the victim girl. Moreover, the evidence relating to the basic ingredients of offence alleged against the accused persons has not been attracted in the mouth of any of the witnesses including that of the victim girl. So, the case of the prosecution appears to be extremely weak and vulnerable for which there is no merit in the prosecution case.

8. Accordingly, in view of the aforesaid discussion and after taking into consideration the available oral and documentary evidence on record and taking into consideration the testimony of the victim girl, I am of the opinion that prosecution has miserably failed to prove its case against the present accused persons U/s. U/s.363/109/34 of I.P.C, 366 /109/34 of I.P.C, 366-A /109/34 of I.P.C, 376 /109/34 of I.P.C, 368 /109/34 of I.P.C,

342 /109/34 of I.P.C. And 212 /109/34 of I.P.C. beyond all reasonable doubt and the accused persons are found not guilty thereunder and they are acquitted U/s.235(1) of Cr.P.C and set at liberty.

No order is passed regarding the disposal of the seized article and zimanama since the case is pending against the accused Goutam Bhoi.

Adl. Sessions Judge, Bhubaneswar.

Typed to my dictation, corrected by me and pronounced in the open Court today this the 25th day of August, 2014 given under my signature and seal of this Court.

Adl. Sessions Judge, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1 : Smt. Tanuja Bhoi
P.W.2 : Smt. Nayani Bhoi
P.W.3 : Lokanath Bhoi
P.W.4 : Pahali Bhoi
P.W.5 : Kanhu Bhoi
P.W.6 : Smt. Sasmita Bhoi
P.W.7 : Dillip Kumar Behera
P.W.8 : Kalpana Singh
P.W.9 : Lily Panda
P.W.10 : Smt. Sunimala Nayak

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

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Ext.2/2 : Signature of P.W.Kalpana Singh
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Ext.3 : Seizure list
Ext.3/1 : Signature of P.W.7
Ext.3/2 : Signature of Kalpana Singh
Ext.4 Seizure list
Ext.4/1 Signature of P.W.7 on seizure list
Ext.4/2 : Signature of Kalpana Singh
Ext.4/3 : Signature of accused Goutam Bhoi
Ext.5 : FIR
Ext.5/1 : Signature of of the complainant
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Ext.10 : Seizure list

Ext.10/1 : Signature of P.W.10 on Ext.10
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Ext.12 : Zimanama
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List of Exts. Marked on behalf of the defence

Nil.

Addl. Sessions Judge, Bhubaneswar.