
(1998) 08 GAU CK 0015

Gauhati High Court

Case No: Criminal Appeal No. 104 and 75 of 1993

Bhagya Hazarika and
Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Aug. 27, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 34, 366

Citation: (1998) 3 GLT 513

Hon'ble Judges: P.C. Phukan, J

Bench: Single Bench

Advocate: B.K Ghosh and S. Mitra, in Cr. Appeal No. 104/93 and J.M. Choudhury, S.E. Alam and P. Katak, in Criminal Appeal No. 75/93, for the Appellant; Noor Mohammad, for the Respondent

Judgement

P.C. Phukan, J.

By the judgment and order dated 30.3.93 passed in Sessions Case No. 1 (s)/89, learned Addl. Sessions Judge, Sonitpur, at Tezpur convicted the accused Bhagya Hazarika and Sadhan Debnath u/s 366 IPC and sentenced them thereunder to 3 years R.I. and also to pay a fine of Rs. 300/- each, in default to further 3 months R.I.

2. Being aggrieved, the accused Bhagya preferred Criminal Appeal No. 104 of 1993 and accused Sadhan Criminal Appeal No. 75 of 1993. By an order dated 26.7.93 passed in Criminal Appeal No. 104/93, this Court directed that both the appeals be heard analogously by the same Bench.

3. I. therefore, propose to dispose of both the appeals by this common judgment.

4. I have considered the record of the case and have heard Mr. J.M. Choudhury, learned senior counsel for the accused Appellant Sadhan Debnath and Mr. S. Mitra, learned

Counsel for the accused Appellant Bhagya Hazarika, as well as Mr. Noor Mohammad, learned Addl. Public Prosecutor appearing for the Respondent- State of Assam.

5. The prosecution case in brief is that on 9.2.87 at about 1.30 P.M. at No. 2 Dolabari under Tezpur Police Station, P.W. 2 Smti. Jyoti Debnath, a student of 1st year T.D.C. (Arts) was returning home from the College and as she reached near the house of P.W.3, Bhola Shah, accused Sadhan and accused absconder Siddique appeared there in a car driven by accused Bhagya. They forcibly took P.W.2 into the car up-to a canal at Bahbera under Missamari Police Station. From there accused Bhagya and accused absconder Siddique returned with the car, and the accused Sadhan took P.W. 2 to the house of one Jobbar and then to the house of P.W.8 Madhan Singh. The accused Sadhan intended to marry P.W. 2 by force, P.W. 2 was however rescued by police from the house of P.W. 8 Madhan Singh within six hours of her abduction. Next day she was examined by Government Doctor, P.W. 7 who opined that her age was above 19 years; she herself stated in cross-examination that she was then 19 years old.

6. The prosecution case as stated above has been amply proved by the prosecution evidence and has not been disputed by the defence except on the point of taking P.W. 2 in the car by force with intent to compel her to marry accused Sadhan against her will. In his statement u/s 313 Code of Criminal Procedure the accused Sadhan told the court that he and P.W. 2 had been in love since their crulhood, that on the date of occurrence in the morning, they met and she expressed her willingness to come with him as her father would not allow her to marry him, and that she asked him to come with a car at about 1 P.M. , and accordingly he came and took her to the house of P.W. 8 Madan Singh, an acquaintance of her father (neither Madan Singh nor his father P.W. 1 in their evidence stated that they knew each other before the occurrence). The other accused Bhagya stated in his statement u/s 313 Code of Criminal Procedure that P.W. 2 got into the car on her own and that this car was hiered by the accused Sadhan.

7. Mr. J.M. Choudhury learned senior counsel for the accused Appellant Sadhan Debnath, submits that Sadhan and P.W. 2 had been in love and since at the relevant time P.W.2 was above 18 years of age, her consent has taken the act of the accused out of Section 366 IPC. It is true that at the time of occurrence P.W.2 was above 18 years of age. It may also be true that she had been in love with accused Sadhan; but for that reason she could not be abducted by him. She had a right to refuse to go with him at a particular point of time and the act of the accused taking her away inspite of her refusal to compel her to marry him against her will definitely attracts Section 366 IPC.

8. The most important witness in a case of abduction, u/s 366 IPC is the abducted woman herself. In the instant case P.W. 2 gives details as to how she was abducted. According to her, on her way back home from the College when she reached near the house of P.W. 3, Bhola Shah one taxi stopped near her, accused Sadhan and Anr. (accused absconder Siddique) got down, took her into the car kept in starting condition with the accused Bhagya in the driving seat and forced her down to the car floor. She started

crying and shouting for help when accused Sadhan gagged her mouth and threatened her with a spring knife (later seized by seizure list, exhibit-3).

9. At that time two boys (P.Ws 5 and 6) arrived and the driver (accused Bhagya) drove away the car. When she could guess that the car was passing near her house, she cried loudly and accused Sadhan again gagged her mouth. The car stopped near a canal. From there accused Sadhan took her first to the house of one Jabbar and then to the house of P.W. 8 Madan Singh where from police rescued her. She told both Jabbar and P.W.8 Madan Singh that she had been taken by force. Mr. Choudhury, learned senior counsel for the accused Appellant Sadhan, submits that P.W. 2, Shortly before she was rescued by police told D.W.1 that she voluntarily and wilfully came with the accused Sadhan and hence no offence u/s 366 IPC was committed. But the evidence of D.W.1 that P.W.2 told him that she had come with the accused on her own does not merit acceptance in view of the clear and categorical evidence of P.W.2 herself. P.W. 2 has been corroborated by two independent eye witnesses, P.Ws 5 and 6, her father P.W. 1 who heard cries when the taxi passed his house P.W. 3 who came out of his house hearing cries and saw an ambassador car with the accused Sadhan and others passing his house and was told by P.Ws 5 and 6 that promode Master's daughter (P.W.2) had been taken away by some people in a taxi, and P.W.2 was also corroborated by P.W. 8 from whose house she was rescued by police and who found her crying after accused Sadhan took her to his house. The Investigating Police officer, P.W. 9 stated that he seized the spring knife (vide seizure list, Exhibit-3) handed over to him by V.D.P. Secretary who claimed to have recovered the same from the possession of the accused Sadhan. This statement of P.W.9 has not been challenged by the defence in his cross-examination. The evidence on record leaves no room for doubt that the accused Sadhan Debnath abducted P.W.2 Smti. Jyoti Debnath, a young girl of marriagable age, with intent to compel her to marry him against her will. Once the charge u/s 366 IPC is found to have been squarely brought home to the accused Sadhan, the next question that falls for consideration is whether the evidence on record is sufficient to sustain conviction of the other accused Bhagya Hazarika u/s 366 IPC read with Section 34 IPC. It is true that in the instant case the accused persons were charged u/s 366 IPC and not u/s 366/34 IPC. It is however been held in [Garib Singh and Others Vs. State of Punjab](#), that Section 34 IPC can be applied even though no charge is framed if the evidence on record establishes it and no prejudice is caused to the accused. That in the instant case, the evidence on record established it and no prejudice was caused to the accused persons is absolutely clear from the tell-tale circumstances. The accused Bhagya drove the car used for abducting P.W.2. He stopped the car near her, kept the engine in starting condition, saw the accused Sadhan and accused absconder Siddique dragging her into the car and forcing her down to the car floor, when she shouted and started crying for help till accused Sadhan gagged her mouth and threatened her with a spring knife, and accused Bhagya drove the car as soon as other two accused taking P.W. 2 forcibly with them got into the car. From such proved circumstances, conclusion is irresistible that the accused Bhagya along with other two accused committed the offence pursuant to a prearrange

plan.

10. In view of the above, I could not persuade myself to accept the submission of Mr. S. Mitra, learned Counsel for the accused Appellant Bhagya Hazarika that he was a mere taxi driver whose taxi was hired by the accused Appellant Sadhan Debnath and hence he committed no offence.

11. In the result both the appeals fail and are dismissed.

12. The conviction and the sentence awarded by the impugned judgment and order are upheld with the modification that the conviction shall be under Sections 366/34 IPC instead of u/s 366 IPC.

13. The accused Appellants are now on bail. Their bails stand cancelled. They shall surrender before the learned trial Court within 15 days from the date of this order to serve out the sentence and to pay the fine, failing which, the learned trial Court shall proceed against them according to law.

14. Send down the lower Court records along with a copy of the judgment and order of this Court.