

GAHC010180992011



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

Case No. : CrI.A./134/2011

SATYA NARAYAN BHARALI
S/O SRIHIRESWAR BHARALI, R/O VILL. SATAI CHINATOLI GAON, P.S.
TEOK, DIST. JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.B SINHA

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 19-01-2023

Heard Ms. D. Saikia, learned Amicus Curiae appearing on behalf of the appellant. Also heard Mr. B. Sarma, learned Addl. P.P. for the State of Assam.

2. This appeal is directed against the Judgment & Order dated 14.07.2011 passed by the Sessions Judge, Jorhat in Sessions Case No. 62(JJ) of 2007 convicting and sentencing the accused/appellant Sri Satya Narayan Bharali (hereinafter referred to as the appellant) under

Section 366 of the Indian Penal Code (IPC for short) to undergo Rigorous Imprisonment for 3 months and to pay a fine of Rs. 1,000/- with default stipulation.

BRIEF FACTS

3. First Information Report (FIR) bearing No. 74/2007 of Teok P.S. dated 14.06.2007 was got registered by 'Y' (hereinafter referred to as the informant) that on 14.06.2007, at about 9:30 a.m. while he proceeded towards Chelenghat Primary Health Centre along with his wife 'X' (name withheld) for dropping her at the said Health Centre, on the way near Chelenghat Boisamari Tini-Ali, he was way laid and accosted by the appellant who was accompanied by two other miscreants. All the three miscreants forcibly mounted the victim 'X' in a vehicle of Indica make. The informant was assaulted by the miscreants and the people who assembled at the place of occurrence were threatened by them. A Teok P.S. Case No. 74/2007 under Sections 366/506/323/34 of the IPC was registered and the Investigating Officer (I/O in short) embarked upon the investigation. On completion of investigation charge-sheet was laid against the appellant under Sections 366/323 IPC.

4. At the commencement of trial, a formal charge under Section 366 of IPC was framed and read over and explained to the appellant, to which he pleaded not guilty and claimed to be tried. The corresponding G.R. Case is 679/2007.

5. With a view to connect the appellant with the crime, the prosecution examined 12 witnesses, including the formal witnesses, i.e. the Investigating Officer and the Medical Officer. Various documents were exhibited and the witnesses were cross-examined. When the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C. for short) he stated that he had a love relationship with the victim 'X' and when her

father had passed away, he bore all the expenses of her studies and her maintenance. On 16.01.2007 his marriage was solemnized with 'X' according to local customary rites (*Nam Kirtan*). On 12.07.2007 he found the informant 'Y' in the victim's residence at Numaligarh and a quarrel erupted between them and he brought his wife back to his house. On 13.02.2007, the victim, in the pretext of pursuing her duties at Numaligarh deserted him and never returned. The appellant also stated that he did not know if the victim 'X' was married to 'Y'.

6. The Trial Court decided the case on the following point:

i) Whether the appellant kidnapped the victim 'X' with intention to marry her or to seduce her to illicit intercourse.

7. The only question that falls for consideration in this case is; whether the learned Trial court erred in convicting the appellant under Section 366 IPC.

8. To decide this case in its proper perspective it is necessary to advert to the evidence. The informant 'Y', PW-3 deposed that on 20.04.2007 his marriage with 'X' was solemnized. He stated that he regularly used to drop 'X' at her place of work and on 14.06.2007, as usual he took 'X' to her place of work at about 9:20 AM. When they reached Chelenghat, the appellant accompanied by two youths, stopped his motorcycle and dragged 'X' alone by grabbing a tuft of her hair. All the miscreants assaulted 'Y' when he tried to save his wife. The two persons accompanying the appellant stopped him and then all the miscreants forced his wife into a vehicle and left the place. 'Y' immediately informed Rameswar Bora about the incident and thereafter he informed his brother Narayan Gogoi. As per advice of his uncle, he lodged an FIR with the police. The police brought him to the Teok FRU for treatment. He sustained injuries on his head and abdomen. His wife was recovered by the police on the next day i.e.

on 16.06.2007.

9. In his cross-examination he admitted that he did not describe the vehicle in the FIR. On 20.04.2007, he visited Lahdoigorh police outpost along with 'X'. The appellant lodged a complaint at the outpost. He had admitted that at that time when the complaint was lodged against him by the appellant, he was not married to 'X'. He also admitted that mother of 'X' returned back Rs. 25,000/- along with a gold ring which the appellant had gifted to 'X'. He denied that he had a relationship with 'X' even after being wary of the fact that the appellant was married to 'X'.

10. PW-1, Rameswar Bora testified that 'X' is the wife of 'Y'. On 14.06.2007, while he was in his house with 'Y's brother, Narayan Gogoi, at that moment 'Y' rushed to his house looking for his brother and informed them about this incident. He described how his wife 'X' was kidnapped by the appellant and two other miscreants in a Maruti Car. 'Y' was also assaulted by the miscreants. Then they advised 'Y' to inform the matter to the police. The informant's evidence that Rameswar Bora (PW-1) was in his house with Narayan at the time of the incident is not substantiated by PW-1's evidence. The I/O Sri Phani Jadav Saikia, PW-10 affirmed that PW-1 failed to mention in his earlier statement under Section 161 Cr.P.C. that elder brother of 'Y' Narayan was in his house at the time of the incident.

11. The informant's wife 'X' testified as PW-2 that on 20.04.2007, her marriage was solemnized with 'Y' and after her marriage, she joined her service and as usual her husband used to take her on his motorcycle to her office. On the day of the incident, the appellant along with two other persons waylaid them by a car and then they tried to assault her husband ('Y') with twigs, and the bike which her husband was riding toppled down the

roadside. They also used their fists and hands to assault her husband. She also toppled down along with the motorcycle and when she tried to get up, the appellant grabbed a tuft of her hair and dragged her and tried to push her inside the car. At that moment, a 407 vehicle reached the place of occurrence. Her husband tried to board the 407 vehicle and she too tried to get into the vehicle, but she tripped over her saree and toppled down. At that time the appellant along with his two associates pushed her into the car and drove along with her for about half a kilometer. The appellant kept her in his uncle's (mama's) house. As she raised alarm the appellant's maternal uncle kept her in a separate room and she informed the appellant's uncle about the incident, and the people gathered there. Then the appellant's uncle called the Gaonbura and then she informed about the incident to the Gaonbura. The Gaonbura (village headman) informed the police about the incident and she was finally recovered by the police. Her statement was recorded by the Magistrate. She proved her statement before the Magistrate as Ext.-1 and her signatures on her statement as Ext.-1(1), 1(2) and 1(3). Her evidence also depicts that she was taken for medical examination. She admitted that she had

a love relationship with the appellant at the time when she was a student of Dibrugah University.

12. She was cross-examined at length. She admitted that in the year 2003, while she was a student pursuing Masters in Humanities, she had a love relationship with the appellant. She was also pursuing a Nursing course at that time and in the month of August, 2006 she joined as a Nurse at Numaligarh Refinery and the appellant also used to reside at Numaligarh, in his relative's house. She denied the suggestion that her marriage was solemnized with the appellant at Rubul Bora's house on 15.01.2007 as per Hindu rites. She denied the suggestion

that as an LICI agent, she had mentioned her marital status as the appellant's wife. She had also denied that she stayed in the appellant's house for a few days since 12.04.2007. She denied that on 13.04.2007 i.e. on the following day, she came from the appellant's house in the pretext to attend her duty and on 15.04.2007 the appellant set out searching for her. She had denied any knowledge regarding any missing entry made by her husband on 17.04.2007 in the police station. She however admitted that on 20.04.2007 she went to Lahdoigarh police station as the police had summoned her and interrogated her. She admitted that the golden ring gifted to her was handed back to the police by her mother along with an amount of Rs. 25,000/- which was given by the appellant. She denied that she was earlier married to the appellant. She had admitted in her cross-examination that as no customary rites were performed, the police had interrogated her on 20.04.2007 regarding her marriage to 'Y'. She admitted that on the same night her marriage was solemnized with 'Y'. She also admitted that she was brought to Advocate Hemen Bora's chamber and she also affixed her signature on one paper in the chamber. She admitted that her Advocate had appeared in a case of restitution of conjugal rights being T.S. No. 25/2007 which was filed against her by the appellant. She denied that while she was still married to the appellant, she indulged in an illicit relationship with the informant i.e. 'Y'. She admitted that in her diary marked as Exhibit-A, she had revealed about her relationship with the appellant.

13. PW-4 Mina Phukan testified that she has a shop on the crossroads (Tiniali). The incident occurred at about 9:30 AM. She heard from the police that a girl was being abducted by some men.

14. Narayan Gogoi is the informant's brother. He testified as PW-5 that the incident occurred in the month of June in the previous year (i.e. 2006). At that time he was sitting in

Rameswar's house, at about 9:30/10 AM when his brother 'Y' came and informed them that, three persons came and assaulted him at the Tinali, and kidnapped his wife and took her away in a vehicle. His brother 'Y' then informed the police about the incident. During cross-examination PW-5 admitted that none of his brothers attended the marriage between 'X' and 'Y' which was held in the Assamese month of Bohag (April).

15. Smti. Noni Gogoi testified as PW-6 that she did not witness the incident, but she heard from the people that a person was abducted. This witness was declared as hostile on prayer by the prosecution who was allowed to cross-examine its own witness. She denied that she had stated before the police that while she was in front of the PCO near her house, she heard a commotion at Boisahabi Tiniali. A woman who was attired in a black dress was being pulled by a man. After sometime, the man forced the woman into a silver coloured car and drove away and while driving away the man shouted that "she is my woman". In cross-examination she stated that the appellant is not known to her.

16. Gobin Kalita testified as PW-7 that the appellant is his nephew. About one and half years ago the appellant brought one woman to his house. The woman stayed overnight in his house. The appellant identified the woman as his wife. In the following morning he (PW-7) handed over the woman to the Gaonbura as he brought the woman without consulting her parents. PW-7 further testified that on being queried, the woman replied that she came with the appellant on her own volition. This witness was also declared as hostile by the prosecution and the prosecution was allowed to cross-examine its own witness. In his cross-examination by the defence, he stated that the appellant introduced the victim as his (PW-7's) daughter-in-law. PW-7 further stated that the victim stayed in his house overnight but she did not mention anything about the incident. The following day he informed the

Gaonbura about the victim.

17. Jagyaram Kalita testified as PW-8 that about one and half years back, Gobin Kalita, PW-7, informed him that the appellant brought one girl with him and the appellant informed him that his marriage with the girl was solemnized about few days back, but the girl went away along with some articles in his absence. When he (PW-8) confronted the girl 'X', the girl informed him that she had a relationship with the appellant earlier but she severed off all ties with the appellant and the appellant brought her in a vehicle. PW-8 further testified that the victim did not state that she willingly came with the appellant. He informed the police over his mobile phone and the police came from Gourisagar and took away the victim 'X' along with the appellant. He denied the suggestion that he had not stated before the police that the victim told him that the appellant brought her in a vehicle. He also denied that he had not stated before the police that the victim earlier had a relationship with the appellant, but she severed off all ties with the appellant. This omission had been affirmed by the Investigating Officer, (PW-10). The Investigating Officer stated in his cross-examination that PW-8 did not mention under Section 161 Cr.P.C. that the appellant brought 'X' in a vehicle and 'X' mentioned about her earlier relationship with appellant and also that at present she has no relationship with the appellant. He, PW-8 admitted in his cross-examination that he was not aware if the victim was married to the appellant. He had admitted that he knew that the appellant was married but he did not know that he was married to victim 'X'.

18. The Investigating Officer Shri Phani Madhab Saikia testified as PW-10 that on 14.06.2007, the Officer Incharge (OC in short) received an FIR and endorsed him to investigate this case. He identified the signature of the O.C. as Exhibit-2(2) as he is acquainted with the signature of the O.C. Shri A.C. Pathak. The PW-10 recorded the

statements of the witnesses and forwarded the victim for medical examination. He arrested the appellant and he forwarded the victim to the Magistrate who recorded her statement under Section 164 Cr.P.C. He prepared the sketch map of the place of occurrence. He proved the sketch map as Ext.-3 and his signature on the sketch map as Ext.-3(1). On completion of investigation he submitted chargesheet against the appellant. In his cross-examination by the defence, he admitted that he received an FIR on 14.06.2007 and thereafter he embarked upon the investigation. He found the victim 'X' on 15.06.2007 in Gobin Kalita's house at Kalita Gaon. PW-10 further testified that he was not aware of any missing report being entered in the General Diary regarding information by the appellant relating to disappearance of 'X'. He admitted in his cross-examination that he did not conduct investigation regarding the other men who were present with the appellant when the victim was allegedly abducted. He admitted in his cross-examination that PW-1 Rameswar Bora had not stated under Section 161 Cr.P.C. that he was sitting with the appellant's elder brother, in his house, at the time of the incident.

19. The contradictions elicited through the cross-examination of PW-1 and PW-10 as per Section 145 of the Indian Evidence Act, 1872 (the Evidence Act for short), qua Section 162 Cr.P.C. clearly casts a shadow of doubt over the veracity of PW-1's evidence as well as the evidence of PW-3 and the evidence of PW-5.

20. According to Narayan Gogoi, (PW-5), he was sitting in PW-1's house when his brother 'Y' came and informed him about the incident. Even if we consider that PW-1 was sitting with PW-5 in his house at the time of the incident, his cross-examination and the cross-examination of the Investigating Officer, (PW-10) rebuts the evidence, because PW-1 failed to mention in his earlier statement that he and Narayan Gogoi were sitting at the same place

when 'Y' came and informed them about the incident. This contradiction rebuts the evidence of PW-1, 3 and 5 that PW-3 informed PW-1 and 5 about his wife's abduction.

21. The Investigating Officer, (PW-10) had proved the sketch map as Exhibit-3. A closer look at the sketch map reveals that the place of occurrence is a deserted area. Smt. Noni Gogoi's shop and PCO was shown on the sketch map. Noni Gogoi's statement as PW-6 also cannot be relied on as the statement of a witness who was present at the place of occurrence. She also denied that she witnessed the incident.

22. The evidence of Gobin Kalita (PW-7), clearly depicts that the victim stayed overnight in his house without any complaint. The following morning he handed over the victim to the Gaonbura as his nephew i.e. the appellant brought the victim to his house without consulting her parents. His evidence also depicts that the victim told him that she came with the appellant on his own volition. This witness was declared as a hostile witness and he was cross-examined by the prosecution.

The cross-examination by the prosecution was however not affirmed by the cross-examination of the Investigating Officer as per Sections 155 and 157 of the Evidence Act.

23. That part of the evidence-in-chief of a hostile witness can be taken into consideration which substantiates or contradicts the evidence. It is no more *res integra* that the evidence of a hostile witness cannot be effaced or washed off the record. But in the instant case, although PW-7 was declared a hostile witness, his previous statement was not affirmed by examination of the Investigating Officer. The argument that PW-7 being related to the appellant did not incriminate him can be safely brushed aside. It is held that PW-6 and PW-7's evidence does not substantiate the prosecution's evidence.

24. In this case, the evidence of PW-8 that the victim had a relation with the appellant and that the victim deserted him and took some articles along with her was contradicted by the cross-examination of the Investigating Officer, (PW-10). Even on vigorous cross-examination of the Investigating Officer, PW-2 and PW-3 the defence failed to establish that the victim was earlier married to the appellant and she left his abode and chose 'Y' as her husband. However, the victim (PW-3) had admitted that she had a love relationship with the appellant while she was pursuing her Nursing course at Dibrugarh University. She stoutly denied that she was married to the appellant but she admitted that the appellant used to visit her residence while she was posted at Numaligarh prior to her marriage. A relationship between the appellant and the victim cannot be ruled out. In this case, the evidence of the independent witnesses does not substantiate the evidence of PW-2 and PW-3. The evidence of the related witnesses who can also be considered as interested witnesses also does not substantiate the evidence of PW-2 and PW-3.

25. So this case finally hinges on the evidence of PW-2 and PW-3. PW-3's evidence is also not credit worthy. He will definitely support his wife. Truth always surfaces and his evidence was not substantiated by the evidence of PW-1, whose cross-examination clearly reveals his omission to state before the Investigating Officer (PW-10), under Section 161 Cr.P.C. that he was sitting in his house with PW-5 when 'Y' came and informed them that his wife had been taken away by some miscreants. In his cross-examination the Investigating Officer (PW-10) admitted that he did not investigate who the other miscreants were who accompanied 'Y' and helped him to abduct the victim 'X' at the time of the incident. This flaw in investigation also lends a benefit of doubt to the appellant.

26. Although PW-2's evidence remained uncontroverted yet her evidence does not inspire

confidence. Her evidence is not entirely substantiated by the evidence of her husband. The non-examination of the miscreants accompanying the appellant also thwarts the evidence. It is apparent from her evidence-in-chief as well as cross-examination that she was not being truthful. Her cross-examination reveals that she had a love relationship with the appellant while she was a student pursuing her studies at Dibrugarh University. She joined as a Nurse at Numaligarh Refinery in the year 2006, in the month of August and she met the appellant also at that time as the appellant was residing with his relative at the Numaligarh Refinery campus. It is clear that around the time of incident the appellant indeed used to visit her. Although she denied of any knowledge if on 17.04.2007, the appellant informed the police about her disappearance, yet she admitted that on 20.04.2007 she went to the Lahdoigarh police outpost, and the police interrogated her. She, PW-2, denied of any knowledge of a criminal case initiated by the appellant, but her husband, PW-3 admitted in his cross-examination that the appellant initiated a criminal case against them, which led them (PW-2 and PW-3) to visit the Lahdoigarh O.P. PW-3 had also admitted that at the time the criminal case was lodged against him by the appellant, he was not married to 'X'. It is also apparent that on the same night i.e. on 20.04.2007, she got married to her husband 'Y'. She admitted in the cross-examination that on 20.04.2007 she got married to her husband 'Y'.

Thus it is clear that within 2 months from 20.04.2007, the alleged incident occurred. The FIR was lodged on 14.06.2007.

27. The cross-examination of the victim 'X' depicts that the victim's answers to the queries were very evasive and prevaricating. She admitted about her relationship with the appellant but she denied of any knowledge regarding T.S.(M) 25/2007 which was a Title Suit initiated allegedly by the appellant for restitution of conjugal rights. However, she admitted that her

Advocate represented her in the same suit.

Thus it is clear that the victim made contradictory statements regarding the Title Suit for restitution of conjugal rights. PW-2's cross-examination reveals that she was evasive and she dodged the questions by the defence. Victim's evidence does not inspire confidence.

28. The informant's brother-in-law, (PW-5) also admitted in his cross-examination that all the brothers did not attend 'Y's marriage with the victim.

29. As the appellant was not charged with offence under Section 323 IPC, the evidence of the Medical Officer, PW-11 is not relevant in this case.

30. Appellant was convicted under Section 366 IPC. So the discussion will be limited to the offence under Section 366 IPC.

31. It is clear from the evidence that the victim was in a relationship with the appellant before her marriage and within two months of her prevailing relationship with the appellant, she got married to 'Y'. She was interrogated by the police on 20.04.2007. There may have been a strained relationship between the appellant and the victim because of their past. A dispassionate scrutiny of the evidence transpires that the prosecution has failed to prove beyond reasonable doubt that the appellant is complicit. The victim's evidence also does not at all depict that the appellant exercised any pressure upon her to marry him. Her evidence also does not implicate that the appellant coerced her or forced her to illicit intercourse. It could not be inferred from the evidence that the appellant had any intention to coerce the victim to marry him or to compel her to illicit intercourse. It is not denied by the witnesses PW-7 and PW-8 that the appellant brought the victim to PW-7's house, but there is no evidence of any inducement or compulsion exercised over the victim. Evidence falls short to

hold the appellant liable of offence under Section 366 IPC.

32. To prove a case under Section 366 IPC, it has to be proved beyond reasonable doubt that –

- i. the woman was abducted with intent;
- ii. that she may be compelled to marry any person against her will or it was likely that she would be compelled to marry any person against her will; or
- iii. that she would be forced or seduced to illicit intercourse or it was likely that she would be forced or seduced to illicit intercourse.

33. In the instant case the victim 'X' was with the appellant for one night. Neither it was in the evidence of PW-1 or PW-3 about any compulsion exercised upon the victim to marry the appellant or of any likelihood of illicit intercourse. The evidence clearly transpires that the victim was taken to the appellant's uncle's house. The appellant's uncle (PW-7) also stated that the victim informed him that she came to his house along with the appellant on her own volition. A strained relationship between the appellant and the victim is fathomable from the evidence. Both PW-2 and PW-3 have admitted that an amount of Rs. 25,000/- and a golden ring gifted by the appellant has already been returned back to the appellant by the victim. At the time of framing charge, the Trial Court framed charge under Section 366 IPC and proceeded against the appellant disbelieving the statements of the victim as well as her husband that the victim's husband 'Y' was assaulted by the appellant. So the question of the appellant assaulting PW-3 ('Y') and thereafter forcefully taking away his wife was not found reliable by the trial Court even to frame charge u/s 323 IPC with Section 366 IPC. It is true that, here in this country, we do not go by the theory of 'falsus in uno, falsus in omnibus'.

This maxim has no application in India. But in this case, the evasive answers of the victim in her cross-examination constrains this Court to hold that credence could not be given to the evidence of the victim. Her statements u/s 161/164 Cr.PC were not given credence when the trial court framed charge under Section 366 IPC and ignored the fact that her husband was allegedly assaulted by the appellant or his companions. In fact this Court holds that the victim cannot be relied upon at all to hold the appellant guilty of such a dastardly act.

34. The other discrepancy in the investigation is that the appellant was solely held responsible and chargesheet was laid solely against the appellant despite the allegation that the appellant was accompanied by two other miscreants when the victim was allegedly abducted. Both PW-2 and PW-3 in an evasive manner were mum about the identity of the other two miscreants who accompanied the appellant at the time of the incident. It is not clear from the evidence, if the other two miscreants were known to PW-2 and PW-3. This again causes a dent in the evidence. The evidence of PW-2 and PW-3 is also silent if the appellant had the intention to compel the victim to marry any person against her will or force her to illicit intercourse. Regarding intention, only inference can be drawn, but in this case at hand no inference could be drawn from the evidence of PW-2 and PW-3 that the appellant had such nefarious intentions.

35. I would like to reiterate that it could be culled out from the evidence that the victim was taken to PW-7's house by the appellant and she stayed overnight in PW-7's house and thereafter she was handed over to the police by PW-7 and PW-8 as her marital status was in the dark as she came with the appellant, without the elders of her house being informed. It has already been held in my foregoing discussions that the victim's allegation that she was abducted by appellant was not found to be reliable, due to the discrepancies in the

investigation and the chinks in the prosecution. Due to the contradictions elicited by the cross-examination of PW-2 and PW-3 as well as due to the differences between the examination-in-chief of PW-2 and PW-3, the appellant gets the benefit of doubt.

36. It has been held by the Hon'ble Supreme Court in *Gabbu vs. State of M.P.*, reported in (2006) 5 SCC 740 that -

“... to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant-woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as a charge under Section 366 is concerned, mere finding that a woman was abducted is not enough; it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse”.

37. In the instant case, it has already been held that the evidence of PW-2 and PW-3 does not prove beyond reasonable doubt that the appellant abducted the victim with the help of his two friends and forcefully took her in a car with such sinister intentions. The car was also not properly identified by the witnesses. PW-3 mentioned the car to be a car of Indica make in his FIR, and PW-1 described the car to be a Maruti car. PW-2 did not mention the model of the car. The other two miscreants were not even arrested or chargesheeted in connection with this alleged offence. PW-3 was not found to be a reliable witness due to her evasive answers during her cross-examination, and also as her cross-examination could elicit contradictory answers to the answers given by her husband who is also the informant in this case. The evidence of PW-7 depicts that PW-3 came with the appellant on her own volition

and stayed for one night in his house without any resistance or struggle. It is thereby held that the prosecution failed to prove beyond a reasonable doubt that the appellant abducted the victim. The prosecution also failed to prove that the appellant abducted the victim with intent that she would be compelled or, knowing it to be likely that she may be compelled to marry another person against her will, or with intent that she would be forced or seduced to illicit intercourse. It is thereby held that the ingredients of offence under Section 366 IPC does remain unfulfilled.

38. Consequently appeal is allowed.

39. The conviction and sentence imposed on the appellant vide the judgment and order of sentence by the learned trial Court is set aside.

40. The appellant is acquitted of offence under Section 366 IPC on benefit of doubt. He is set at liberty if not required to be detained in any other case.

41. Pending application(s), if any, also stands disposed of.

42. Sureties stands discharged.

43. No order as to costs.

44. Ms. D. Saikia, learned Amicus Curiae, who has ably assisted this Court in conducting this appeal, may be paid the honorarium at the rate fixed as per rules.

JUDGE

Comparing Assistant