

**IN THE COURT OF THE SESSIONS JUDGE: KAMRUP(M),
AT GUWAHATI**

Sessions Case No. 17/2016

(Under Section 363 (A) IPC)

Present: **Md. M. Ahmed,**
Sessions Judge
Kamrup(M), Guwahati

State of Assam

- Vs -

Sri Ganesh Adhikari.

.....Accused

Appearance for the Parties:

Advocate for the State : Mr. H.K. Deka, Learned Public Prosecutor

Advocate for the accused : Mr. A.H. Mullah, learned Advocate

Date of recording evidence : 03.06.2016, 07.01.2017,

Date of Argument : 20.03.2017

Date of Judgment : 31.03.2017

J U D G M E N T

1. This case has its origin to an FIR lodged by one Sri Kumud Barman of Bagharbori, Panjabari with the then O/C Dispur PS to the effect that on

13.07.2000 at around 6.30 P.M. accused Ganesh Adhikary, took 2^{1/2} (two and half) years old son of the informant namely Sri Abhijit Barman, from his house on a plea that he was taking the said boy for an outing. On the same day, the informant lodged an FIR alleging that the aforementioned accused with an ill intention to employ his son for begging purpose has kidnapped his son, as by that time when he went to the PS, till that hour the victim boy did not return back home. On receipt of this FIR Dispur PS registered a case vide Dispur PS Case No. 611/2000 U/S 363 (A) of IPC, which was taken under investigation. During the course of investigation, the I/O visited the house of the accused and succeeded to recover the victim boy from his house. He also recorded the statement of material witnesses acquainted with the facts of the case. He also attempted to apprehend the accused ; but by that time the accused went into hiding evading arrest. Thereafter, the I/O completed investigation and having found sufficient incriminating materials against the aforementioned accused showing complicity of the accused in the alleged offence submitted charge-sheet U/S 363 (A) of IPC. At the time of submission of the charge-sheet, the accused could not be arrested as such he was shown an absconder in the charge-sheet. Subsequently, he surrendered before the learned court and was remanded to the judicial custody. At later stage, he was let off on court bail.

2. At subsequent stage, the learned court below having complied with the provision of Section 207 of Cr.PC committed the case to this court having found it to be triable herein. On receipt of this case record and upon appearance of the accused, my learned predecessor in court having heard the learned counsel of both the sides and basing upon the materials on record framed charge U/S 363 (A) of IPC and read over and explained the contents therein to the present accused to which he pleaded not guilty and claimed for trial.

Points for determination:

3. In this case it is to be determined, if on 13.07.2000 at about 6.30 P.M. at Bagharbori Panjabari under Dispur PS the aforementioned accused obtained custody of Sri Abhijit Barman then aged about 2^{1/2} (two and half) years old, from his father /informant Sri Kumud Barman, in order that, such minor may

be employed or used for purpose of begging. In this case, prosecution has examined 4 (four) witnesses in all. The most unfortunate part of the trial of this case, is that the prosecution has failed to examine the informant or the victim or any other members of his family. The case record has revealed that the informant was a tenant in that area; and by the time when trial was taken, he along with his family abandoned that place without leaving behind the address where he was intending to take refuge, because of that the prosecution could not trace out those witnesses who were most vital witnesses to prove the charge leveled against the accused and for whose none examination, it cost dearly against the prosecution. Thereafter, evidence so adduced from the side of the prosecution was concluded ; the accused was subjected to examination as warranted U/S 313 of Cr.PC, in respect of incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implications. He rather wondered as to why this criminal case was filed against him. According to him, he was having a very cordial relationship with the informant and both of the families were on visiting terms of each other's house frequently ; the child (victim) also used to come to his house and spend hours together there and sometime he also stayed in his house and he and his family had great love and affection for the said child. The accused in support of such version declined to lead evidence in defense.

4. I have heard the argument so advanced by the learned counsel of both the sides, considering the evidence on record and come to the following decision.

Decisions and reasons thereof.

5. In this case the prosecution has alleged that the 2^{1/2} (two and half) years old son of the informant Sri Kumud Barman, was kidnapped by the aforementioned accused and it was with an ill intention to engage the said boy for the purpose of begging. The accused is charged U/S 363 (A) of IPC. This section reads as under "whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be

punishable with imprisonment of either description for a term which may extend to 10(ten) years, and shall also be liable to fine”.

6. Thus we have found that to prove a case under this section it must be shown that (a) the accused was not the lawful guardian of the concerned minor (b) that the accused kidnapped or obtained custody of the minor, (c) that the minor has been employed by the accused for begging. In this case there is no dispute to the fact that the aforementioned accused is not the legal guardian of the victim; allegation against him is that on 13.07.2000, he kidnapped the 2^{1/2} (two and half) years old son of the informant from the house of the informant ; to that effect there is absolutely no evidence at all. There is also no evidence too on the point that the victim 2^{1/2} (two and half) years old son of the informant was employed by the aforementioned accused for the purpose of begging. The only fact that stands established in this case is the recovery of the said boy from the house of the accused; from the evidence of the PW4, this fact stands established.

7. Now let us focus our attention to the evidence of this witness to see under what circumstances and in what conditions the victim was recovered from the house of the accused. Upon attentive evaluation of the evidence of PW4 Md. Kamaluddin Ahmed, S.I. of Police then attached to Dispur PS, it is stands revealed that on 13.07.2000, the then O/C of Dispur PS received an FIR from one Sri Kumud Barman and then he registered a case being Dispur PS Case No. 611/2000, U/S 363 (A) of IPC and PW1, was entrusted by the then O/C of Dispur PS to complete investigation. PW4, has further stated that in course of investigation, he visited the place of occurrence, recorded statement of witnesses at the place of occurrence situated Bagharbori, Panjabari under Dispur PS. He further searched the house of the accused and found the victim boy sleeping inside the said house; this much evidence could be gathered by the prosecution. The evidence of rest of the PWs does not in the least carry forward the prosecution case to any extent. PW4 has further proved exhibit 1, the house search warrant of the accused house. He has further stated that subsequently he arrested the accused; he has also stated that after the recovery of the victim he produced him before the learned Magistrate to record his statement U/S 164 of CR.PC; he proves exhibit 4, the said statement of the victim. Thus from the evidence of the PW4, it has been

simply established that on the eventful day when PW4, raided the house of the accused he found the victim boy sleeping inside the house; this witness has not stated that the victim boy suffers any injury on his person or he was kept in a locked room or hidden from the human access. The accused in his statement recorded U/S 313 of Cr.PC , himself admitted that the victim boy used to come to his house off and on and he used to stay there for a long and he was also in the habit to stay in the house of the accused overnight. He has further claimed that he was having a very good relation with the informant's family and they were on visiting terms to the house of each other. He wondered why this case was filed against him.

8. Coming to the evidence of the rest of the PWs, we have found nothing substantial has emerged from their evidence; PW1 Sri Mahesh Deka washed his hands off of the entire episode. He has simply stated that regarding the missing of the child Police made enquiries and when he was questioned, he claimed his ignorance relating to this matter.

9. PW2 is Mahendra Nath Adhikari, who has flatly denied having any knowledge, if the accused took the victim to his house. He made the picture clear by stating that he with his family and the family of the accused resided in the same campus. According to him, few years back police went to their house, they searched the house of the accused in his presence; but that time he had not spotted any child in that house. However, after a few days of house search, his son-in-law (now deceased), told him that one small boy stayed in their house ; but the accused was not there at that time when the said boy was found.

10. Evidence of PW3 Sri Phul Kr. Adhikari, does not help the prosecution in any way. He is the father of the accused and he has simply stated that he has no knowledge regarding the occurrence. Thus, we are left with solitary evidence of PW4, whose evidence is relevant to the effect that it was he, who recovered the victim boy from the house of the accused; simple recovery of the child from that place, does not prove the charge against the accused. In this case the prosecution must have proved the fact in the first instance that the accused kidnapped the said boy or took him out of the custody of his lawful guardian and also employed him in an act of begging. In this case the

prosecution has failed to examine either the informant or the victim boy; it proves fatal to the prosecution case. In the absence of the evidence of most vital witnesses of the prosecution and in view of the available evidence on record, there is no scope but to hold that the prosecution has failed miserably to establish the guilt of the accused for alleged commission of offence punishable U/S 363 (A) of IPC, beyond all reasonable doubts. In the result, the accused is found not guilty and is acquitted and set at liberty forthwith.

11. The bail bond of the accused stands discharged.

12. Signed, sealed and delivered in the open court on this 31st day of March, 2017 at Guwahati.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

APENDIX

(A) Prosecution Exhibits : Nil

Ext-1 : Search list.

Ext-2 : FIR.

Ext-3 : Printed form of FIR.

Ext-4 : Statement of the victim Sri. Abhijit Barman.

(B) Defense Exhibit : Nil

(C) Court Exhibit : Nil

(E) Prosecution Witnesses:

PW-1 : Sri Mahesh Deka.

PW-2 : Sri Mahendra Nath Adhikari.

PW-3 : Sri Phul Kr. Adhikari.

PW-4 : Md. Kamaluddin Ahmed.

(F) Defense Witnesses : Nil

(G) Court Witnesses : Nil.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati