

(2004) 01 GAU CK 0028
In the Gauhati High Court
Case No : Criminal Revision No. 290 of 1995

Golapi Bibi and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 366A

Citation : (2004) CriLJ 2209 : (2004) 2 GLR 338 : (2004) 1 GLT 607

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : A.B. Choudhury, J.C. Sarkar, M. Chanda, A. Rashid, R.N. Purakayastha and A. Dasgupta, for the Appellant; F.H. Laskar, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—Heard Mr. A.B. Choudhury, learned counsel for the petitioners. Also heard Mr. F.H. Laskar, learned Public Prosecutor, Assam.

2. This revision has been directed against the Judgment and Order dated 6.6.1995 passed by the learned Sessions Judge, Dhubri in Cri. Appeal No. 3(2)/95 dismissing the appeal preferred by the petitioners and confirming the conviction and sentence awarded by the learned Assistant Sessions Judge, Dhubri by Judgment and Order dated 20.4.1995 in Sessions Case No. 105/92 u/s 366A IPC.

3. Both the petitioners are convicted u/s 366A IPC and sentenced to undergo rigorous imprisonment for seven years and also to pay an amount of Rs. 1,000 each to the victim girl as compensation in default to suffer further S.I. for one year each.

4. The prosecution case in brief is that on 4.9.1990 one Musstt. Kesema Khatun, minor daughter of informant, Md. Abul Kasem, PW 2, was kidnapped by the petitioner No. 2, Md. Afzur Rahman who was assisted by the petitioner No. 1, his sister Musstt. Golapi Begum @ Golapi Bibi from the house of PW 2 at Gauripur in

the district of Gauripur. At the time of her kidnapping, as alleged, the victim girl was aged about 13 years. PW 2 informing the above factual position lodged an ejahar with the police at Gauripur Police Station. Accordingly investigation ensued and police after completion of the investigation submitted charge-sheet against both the appellants to face trial u/s 366/368/376 IPC.

5. During the trial as many as seven witnesses were examined on behalf of the prosecution when accused pleaded not guilty and denied all the allegations in their statement u/s 313 Cr.PC. On consideration of the evidence on records, the learned trial court convicted and sentenced the petitioners as above mentioned.

6. Feeling aggrieved by the initial conviction and sentence passed by the learned Assistant Sessions Judge, Dhubri the petitioners preferred an appeal before the learned Sessions Judge, Dhubri which was dismissed on 6.6.1995 upholding the conviction and sentence so passed by the learned trial court.

7. Challenging the impugned conviction and sentence Mr. Choudhury, learned counsel for the petitioners has forcefully submitted that the courts below committed grave error of law in its basic stage by not considering the essential ingredients of Section 366A IPC in order to arrive at the finding of impugned conviction. According to him, it is manifestly clear in the evidence that basic ingredients of 366A IPC has been totally absent in the instant case inasmuch as there was no inducement as such to rope in the petitioner under the above mentioned section.

8. For better appreciation of the issue raised, it is necessary to have a look in the Section 366A IPC, which reads as follows :

"366A. Procurement of minor girl. -- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

9. From a bare perusal of the section, it appears that there are three essential ingredients to constitute the offence of procurement of a minor girl u/s 366A IPC. Those are : (1) the victim girl must be induced by the accused ; (2) she must be a minor under the age of 18 years and (3) she must be induced by the accused person to go from a place or to do any act with intent that such girl may be or knowing that it is likely that, she will be, forced or seduced to illicit intercourse by another person. Amongst those, "inducement" is the basic requirement of law in a case or an offence u/s 366A IPC. But the word "inducement" has not been defined anywhere in the Penal Code.

10. In the ordinary dictionary meaning, i.e., as per "Oxford Advanced Learner's Dictionary", the words "induce" and "inducement" mean as under :

In "The Law Lexicon, the Encyclopaedic Law Dictionary", the words "induce" and

"inducement" are defined as under :

Keeping in view the legal provision and definition of the words "induce" and "inducement" aforementioned, now let us appreciate the deposition of the witnesses to see as to whether those three ingredients of Section 366A IPC as well as the meaning of the words, "induce" and "inducement" have primarily been fulfilled and satisfied in the case in hand.

11. PW 5, the victim girl in her deposition, stated that the petitioner No. 2 was a tenant on her father's house and petitioner No. 1 being a sister of PW 2, used to visit frequently her brother's rented house which was adjacent to their house (victim girl's house). On the relevant time her father was away at Mancachar in the course of his employment as a driver. Her mother was also absent in the house. On the day of occurrence the petitioner No. 1 took her during noon time to see Mela (a village fete) and thereafter she was taken to Kochbihar by bus. On way to Kochbihar by bus, she alongwith petitioner No. 1 alighted from the bus at a place where petitioner No. 2 was present. Thereafter petitioner No. 1 left her at the said bus stop and petitioner No. 2 took her to Phulsholing (Bhutan).

12. In her cross-examination she deposed that Musstt. Golapi Bibi, petitioner No. 1 took her to Agamani at first and at Agamani after meeting petitioner No. 2, Afazur, Golapi asked Afajur to take her home. But instead of taking her to Gauripur, he took her to Boxirhat side by boarding a bus.

13. From her evidence it is seen that there was no inducement either on the part of petitioner No. 1 or petitioner No. 2 to take her from her house. In other words, she was never enticed or persuaded to go to Mela. Nor did the petitioners induce her to go from any place or to do any act with the intent or knowledge contemplated by this section. As such, the primary ingredient of Section 366A IPC appears to be absent in the present case.

14. That apart, the mother of the victim girl, Musstt. Kasema Khatun, PW 1 in her evidence clearly stated that the petitioner No. 1 was known to them and on the date of occurrence she was in the resident and the petitioner No. 1 after taking lunch with them, left with her daughter to see the Mela. Therefore, it appears that the victim girl simply accompanied the petitioner No. 1 without being enticed or influenced. Mere accompanying a person without being induced does not commit an offence u/s 366A IPC.

15. After hearing the learned counsel for the parties at length and also on close inspection of the materials available on record including the impugned judgment, this Court is of the view that the learned Courts below failed to construe and consider the essential ingredients of Section 366A of IPC in order to convict the petitioners under such offence. Neither petitioner No. 1 nor petitioner No. 2 can be said to have induced the victim girl in order to take her from her house to do the act as mentioned in the section. Since the inducement as envisaged in 366A IPC is found to be absent on the basis of testimony of the witnesses, this Court is constrained to hold that the petitioners cannot be convicted u/s 366A IPC.

16. That being so, this Court is of the firm view that conviction and sentence of the petitioners u/s 366A IPC cannot be sustained in law and accordingly impugned conviction and sentence of the petitioners u/s 366A IPC stands quashed and set aside.

17. It is stated at the bar that the petitioner have already been on bail. Hence bail bonds so furnished by the petitioner No. 1 and petitioner No. 2 shall also stand discharged.

18. In the result, the revision succeeds and stands allowed.