## **IN THE COURT OF THE SPECIAL JUDGE AT JORHAT**

Present:- Sri Vinod Kumar Chandak, M.A., M.Com, LL.B., AJS Special Judge, Jorhat

# JUDGMENT IN SPECIAL CASE NO. 74 OF 2016 (G.R. Case No. 764 of 2016) Pulibar P.S. Case No. 79 of 2016

## **Committing Magistrate:-**

Smt. Bobidita Gogoi, The then Judicial Magistrate 1<sup>st</sup> class, Jorhat District

State of Assam

-Versus-

Md. Yakin Ali,
Son of Late Amjad Ali,
Resident of Negheriting, Dergaon,
P.S. Dergaon,
District-Golaghat.

.... Accused

# **APPEARANCES**:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat

For the Accused: Sri J.D. Sarma, Learned Advocate, Jorhat

# CHARGE FRAMED UNDER SECTION 366 [A] OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 18-08-2016 & 18-11-2016

Date of prosecution evidence: 06-01-2017; 07-08-2017; 20-12-2017

& 09-02-2018

Statement of Accused

Recorded on : 08-03-2018
Date of Argument : 25-05-2018

Date of Judgment : 07-06-2018

#### JUDGMENT

**1).** The prosecution story, in brief, is that **Pulibar P.S. Case No. 79/2016 under Section 366 [A] of IPC** was registered on the basis of a F.I.R. lodged by Sri Dhan Bahadur Chetri, father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 16/03/2016 [Exhibit-2] the informant Sri Dhan Bahadur Chetri [PW-3] who is the father of the victim girl alleged, *inter-alia*, that on 14/03/2016 at about 6.30 P.M. his daughter was found missing from the house. He searched for his daughter and in that process there was delay in lodging the ejahar before police. Later on, the informant received secret information that accused Md. Yakin Ali who is a resident of Negheriting, P.S. Dergaon, District-Golaghat had kidnapped his minor daughter [X]. It is further stated by the informant that his daughter had a mobile phone bearing No. 7086890645 which was switched off after her missing from the house.

On receipt of the ejahar by the Officer-in-charge, Pulibar P.S, the same was registered as Pulibar P.S. Case No. 79/2016 under Section 366 [A] of IPC.

During the course of investigation, the statement of the victim girl was recorded by the I.O. of the case. The victim girl was medically examined by the doctor, her statement under Section 164 of Cr.P.C. was recorded. Police, on completion of investigation, filed charge-sheet in the case against the above named accused Md. Yakin Ali u/S. 366 [A] of IPC vide Charge-sheet No. 41/2016 dated 31-03-2016.

- **2).** The learned Judicial Magistrate 1<sup>st</sup> class, Jorhat after furnishing copies of the relevant documents to the accused u/S. 207 of Cr.P.C., transmitted the case to this Court for trial.
- **3).** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf and on finding grounds for presuming that the accused has committed offences under Section 366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, the charges were framed,

read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

**4).** During the course of trial, **07 [seven]** numbers of witnesses including the victim, her father-cum-informant, Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge against accused.

On completion of prosecution evidence, statement of above named accused was recorded u/S. 313 of Cr.P.C. The accused stated that he did not kidnap the victim girl; that the victim girl had love affairs with him and she on her own volition eloped with him. It is further version of the accused that he has been falsely implicated in the case. He further stated that the instant case was lodged by the father of victim due to misunderstanding of fact. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Jayanta Deva Sarmah, learned Counsel for the accused who is facing trial for commission of offence u/S. 366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012.
- **6).** Now the points for determination before this Court are as follows:-
  - 1) Whether on or about 14/03/2016 at about 6.30 P.M. at Saguri Gaon under Pulibar P.S., the accused, induced the minor victim to leave her parent house or to do any act with intent that she will be forced or seduced to illicit intercourse against her will and consent and thereby committed an offence punishable under Section 366 [A] of IPC?
  - 2) Whether on the date of occurrence the accused named above committed penetrative sexual assault upon the victim girl and thereby committed an offence punishable under Section 4 of The Protection of Children From Sexual Offences Act, 2012?

#### **DISCUSSION, DECISIONS AND REASONS THEREOF:**

**7).** First of all, let us see the definition of relevant provisions of law to the charged sections against accused. These sections read as follows:

Section-366 [A]—Procuration 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.

#### THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Section-4 — Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

**8).** To decide the above points and sections of law against accused in this case, let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

The victim [PW-1] divulged during her testimony that about one year back prior to the date of incident she knew the accused. On the date of incident the accused visited her house and thereafter took her in a vehicle which was driven by the accused. It is her further version that she alongwith the accused reached to a house after about one hour where both of them stayed for the night. Further version of the victim is that her father lodged ejahar before police as she did not inform them before leaving the house. Police produced her before the learned Magistrate where she gave statement before the learned Magistrate under Section 164 Cr.P.C. Exhibit-1 is her statement wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures.

During cross-examination, she stated that she cannot say whether she stated before police and Magistrate that accused took her in a vehicle to a distant place. She categorically stated that she went with the accused without informing her parent and resided with the accused for a week.

9). PW-2 is Smt. Jogomaya Chetri who is the mother of victim girl. It is stated by this witness that on the date of incident she came back home in the evening at about 5.00 P.M. and did not find her daughter in the house. Then she alongwith her husband searched for the victim but she was found untraceable. Hence, her husband lodged ejahar before police. Later on, they came to know that the accused had taken her daughter to Nagaon wherefrom police recovered her. Police recorded her statement, took her before a doctor for medico legal check-up. Her daughter was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. This witness also stated that police seized the Admit Card of her daughter.

This witness during cross-examination testified that they lodged case before police as her daughter did not inform them before leaving the house.

10). Sri Dhan Bahadur Chetri [PW-3] who is the father of victim-cum-informant of the case stated in his evidence that he came to know about the incident through his wife [PW-2]. Accordingly, he lodged ejahar before police. His daughter was recovered from accused' house after 5/6 days of her missing, her statement was recorded by police. Police also took his daughter before a doctor for medico legal check-up. She was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. It is further stated by this witness that police seized the photocopy of Admit Card of HSLC Examination of her daughter vide Exhibit-3 wherein Exhibit-3 [1] is his signature. Police gave zimma of the original certificate to him vide Zimmanama [Exhibit-4] wherein he put his signature as Exhibit-4 [1]. He also exhibited the birth certificate of the victim as Material Exhibit-1 as well as Admit Card of HSLC Examination as Material Exhibit-2.

During cross-examination by defence, this witness stated that his daughter resided with the accused for about one week and he cannot say for what purpose his daughter went with the accused.

**11). PW-4** is **Sri Santabir Chetri** who is the younger brother of informant. His elder brother Sri Dhan Bahadur Chetri [PW-3] gave information to him regarding missing of the victim. Accordingly, he visited the house of his elder brother and came to know that the victim who is his niece had fled away with a boy from Negheriting area.

This witness was declared **hostile** by **prosecution** and during cross-examination by prosecution, this witness denied to have stated before police that victim fled away with a young boy named 'Yakin' belonging to Muslim community.

During cross-examination by defence side, he stated that he did not state before police that victim fled away with a young boy named 'Yakin' belonging to Muslim community.

**12). Dr. Amrita Nath [PW-5]** during her evidence stated that on 21/03/2016 the victim was produced before her for medico-legal examination. On examination of the victim, she found the victim to be above 16 years and below 18 years; no evidence of injury mark detected on the body of victim; no evidence of recent sexual intercourse detected on her body and evidence of pregnancy was not detected on the person of victim during medical examination. She further stated in her report that hymen of victim was ruptured at 6 o' clock position with tenderness and redness present. The doctor exhibited her report as Exhibit-5 and her signatures thereon as Exhibit-5 [1] to Exhibit-5 [3].

The doctor during cross-examination denied the fact that her report is not a conclusive report.

13). Smt. Indira Chetri [PW-6] who is the aunt of victim testified that her brother-in-law who gave information to her husband Sri Uday Chetri. Accordingly, she visited the house of the informant and thereafter went to the police station where she came to know from the victim that she went with the accused for the purpose of travelling without informing her parent. It is her further version that police seized the birth certificate of the victim in her presence vide seizure-list [Exhibit-3] wherein she put her signature as Exhibit-3 [1].

14). Md. Sarif Hussain [PW-7] is the I.O. of the case. The I.O. stated that on 16/03/2016 he was posted at Pulibar P.S. as A.S.I. of police. On that day the then Officer-in-charge, Pulibar P.S. received ejahar from the informant and thereafter a case was registered and he was directed to investigate the case. Accordingly, he proceeded towards the house of informant, recorded statement of witnesses who were acquainted with the fact and circumstance of the case. He also drew Sketch Map of the place of occurrence with index vide Exhibit-6 wherein Exhibit-6 [1] is his signature. He also visited the house of accused but could not find him present in the house. However, he came to know from the mother of accused that her son had fled away with a girl belonging to another religion. On 20/03/2016, he recovered the victim from the possession of accused from his house. Accused was arrested in connection with the case. He submitted charge-sheet against the accused under Section 366-A IPC vide C.S. No. 41/2016 dated 31/03/2016. Exhibit-7 is the charge-sheet wherein Exhibit-7 [1] is his signature.

The I.O. stated that witness Sri Santabir Chetri [PW-4] during his statement under Section 161 Cr.P.C. stated that accused fled away with a girl of Muslim community.

Defence declined to cross-examine the I.O. on all material particulars.

- 15). From a close perusal of the evidence on record it is seen that the victim knew the accused from before as she had love affair with him. From the evidence of victim [PW-1] it is seen that she stayed alongwith the accused for about one week which is fully corroborated by her father-cum-informant of the case [PW-3] who during cross-examination stated that victim resided with the accused for about one week but he cannot say for what purpose she went with the accused.
- **16).** It is seen from the evidence of Smt. Indira Chetri [PW-6] who is the aunt of victim that when she met the victim at the police station alongwith the accused, she questioned the victim about the incident, and to her query the victim disclosed before her that she went with the accused for the purpose of

travelling without informing her parent. She stated that victim's date of birth as per Admit Card of HSLC Examination was 02/02/1999. The incident in question took place on 14/03/2016. In that view of the matter, the victim was aged 17 [seventeen] years at the time of accident and she was at the verge of her majority.

- **17).** The accused during his statement under Section 313 Cr.P.C. stated that victim came to him voluntarily and the instant case was lodged by the father of victim due to misunderstanding.
- **18).** It is seen that medico legal report of the victim is found available with the record. On close scrutiny of the medico legal report of the victim conducted by the doctor [PW-5], the doctor has opined the age of victim to be above sixteen years and below eighteen years at the time of incident.
- **19).** It is a well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the case of *Datttu Ramrao Sakhare-versus-State of Maharashtra*, reported in [1997] 5 SCC 341, the Hon'ble Apex Court has held that — "A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered under Section 118 of Indian Evidence Act, provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored".

**20).** The ratio as laid down in the above case is that the testimony of a child witness is attributed the same kind of credibility that it attached to the statement of any other witness if the testimony is consistent.

However, in the present case, the victim has not been found consistent on the material particulars with regard to the incident which is not even supported by her family members, i.e., PW-5 [her aunt].

**21).** On appreciation of the evidence on record as well as other facts and circumstances of the case, it is found that there is no any allegation of forceful abduction of the victim girl by the accused. The father of the victim [PW-3] divulged that on the date of incident his daughter went on missing from the school. Later on, he came to know that the accused had taken away his daughter to his house.

Similarly, the victim girl has narrated the fact during examination that as on the relevant day she accompanied the accused after the accused visited her house in a vehicle. Victim categorically deposed in her evidence under Section 164 Cr.P.C. that she stayed with accused for about one week which is fully supported by her father-cum-informant of the case [PW-3]. She did not specifically depose that accused induced her to leave the house of her parent.

- **22).** In the instant case, it is seen that the victim girl went out voluntarily with the accused though she was a minor at the time of occurrence, which has been duly proved by the prosecution.
- 23). On scrutinizing the evidence on record it is seen that no full proof case has been made out against accused Md. Yakin Ali to warrant his conviction under Section 366 [A] IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012, as victim stated nothing in her statement under Section 164 Cr.P.C. [Exhibit-1] that accused had physical relation with her during her stay in the house of the accused. Prosecution has not been able to make out a case against the accused Md. Yakin Ali under the aforesaid sections of law beyond reasonable doubt, for which, I am of the opinion that the accused is entitled to acquittal under benefit of doubt which I accordingly do.

**24).** In the result, accused **Md. Yakin Ali** is <u>acquitted</u> of the charges levelled against him on benefit of doubt and he is set at liberty forthwith from the charges under Section 366-A of IPC read with Section 4 of The Protection of Children from Sexual Offences Act, 2012.

Accused is on bail. The bail bond of accused is extended for another **06** [six] months from today as per provision of Section 437-A Cr.P.C.

**25).** Given under my hand and seal of this Court on this **07th** day of **June 2018**.

**Special Judge, Jorhat** 

## **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Victim girl.
PW-2	Smt. Jogomaya Chetri, mother of victim.
PW-3	Sri Dhan Bahadur Chetri, father of victim-cum-
	informant of the case.
PW-4	Sri Santabir Chetri, younger brother of informant.
PW-5	Dr. Amrita Nath who examined the victim.
PW-6	Smt. Indira Chetri, aunt of victim.
PW-7	Md. Sarif Hussain, I.O. of the case.

# **COURT WITNESS:- NIL**

## **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Statement of the victim recorded by the Magistrate under Section 164 Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Seizure-list
Exhibit-4	Zimmanama
Exhibit-5	Medico-legal report
Exhibit-6	Sketch Map of the place of occurrence with index
Exhibit-7	Charge-sheet

**MATERIAL EXHIBIT NO-1:- NIL** 

**DEFENCE WITNESSES:- NONE** 

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)