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. 05 OF 2018 (G.R. Case No. 348 of 2014) Jorhat P.S. Case No. 227 of 2014

Committing Magistrate:-

Smt. Rani Boro, Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Sri Abinash Changmai, Son of Sri Bhaben Changmai, Resident of Lahdoigarh Gohain Gaon, P.S. Teok, District-Jorhat.

.... Accused

APPEARANCES:

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

Jorhat

For the Accused: Smt. Swapna Jyoti Dutta, 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 : 06-01-2018

Date of prosecution evidence: 18-01-2018; 22-02-2018; 07-04-

2018

& 28-05-2018

Statement of Accused

Recorded on : 09-07-2018 Date of Argument : 11-07-2018

Date of Judgment : 11-07-2018

1

JUDGMENT

1). The prosecution story, in brief, is that **Jorhat P.S. Case No.** 227/2014 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Sri Ashim Dutta, brother-in-law of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 16/02/2014 **[Exhibit-3]** the informant Sri Ashim Dutta [PW-5] who is the brother-in-law of the victim girl alleged, *inter-alia*, that on 15/02/2014 at about 1.00 P.M. afternoon, his sister-in-law, i.e., the victim, went missing from his residence. He searched for the victim but could not find her location. Hence, he lodged ejahar before police.

On receipt of the ejahar by the then In-charge, Rawriah O.P., the same was entered in its General Diary Register bearing No. 341 dated 16/02/2014 and the same was sent to Jorhat P.S. for registration of a case. The then Officer-in-charge, Jorhat P.S., received and registered Jorhat P.S. Case No. 227/2014 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 Abinash Changmai showing him absconder u/S. 366 [A] of IPC vide Charge-sheet No. 330/2014 dated 31-05-2014.

- **2).** The learned Chief Judicial Magistrate, Jorhat after furnishing copies of the relevant documents to the accused u/S. 207 of Cr.P.C., on 15/12/2017, committed 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 ground

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, **05 [five]** numbers of witnesses including the victim, her brother-in-law-cum-informant and her mother were examined on behalf of the prosecution to prove the charge against accused.

Learned Special Public Prosecutor, Jorhat prayed for closure of evidence after recording evidence of parent of the victim which was accepted.

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 at present the victim is staying in his house. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- Prosecutor for the State as well as Smt. Swapna Jyoti Dutta, 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:-
 - Whether on 15/02/2014 near Pokamora Kothalbari Gaon, Jorhat under Jorhat 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. The section reads 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.

In the instant case the **victim** has deposed her evidence as **PW-1**. In her testimony, she divulged that she had love affair with the accused prior to the date of incident. She left the house voluntarily with the accused after having long standing love affair. She did not inform her mother before leaving the house. Police arrived at accused's

house and recovered her. She was brought to the police station. It is her further version that police sent her before a doctor for medico legal check-up, produced before a Magistrate for recording her statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] and Exhibit-1 [2]. Lastly, she stated that at present she is residing with the accused as his wife.

During cross-examination, she admitted that she went voluntarily with the accused and accused did not force her to go with him. It is further stated by the victim that she has a child aged about two years.

9). Smt. Purnima Kachari [PW-2] is the mother of victim. During her testimony, she stated that on the date of incident her daughter came out of the house and thereafter went missing. It is further version of this witness that the accused had love affair with her daughter. She searched for her daughter but could not find trace of her whereabout. Hence, she lodged ejahar before police through her son-in-law. Victim was recovered from accused's house. After that, she got her daughter [PW-1] married with the accused and at present the victim, i.e., her daughter, is residing in the house of accused as his wife.

This witness during cross-examination divulged that as victim did not inform her before leaving her house so her son-in-law lodged ejahar before police as per her direction.

10). The same evidence is tendered by **Sri Luhit Saikia [PW-3]** who is neighbour of victim. This witness further stated that after recovery of the victim from the house of accused by police after three days of incident, the victim again fled away from the house of PW-2 with the accused and since then they have been living as husband and wife.

This witness during cross-examination testified that as per his knowledge victim went with the accused voluntarily.

- 11). Dr. Runjun Doley [PW-4] examined the victim as per police requisition on 19/02/2014. In her opinion, the victim was above 14 years and below 16 years; evidence of recent sexual intercourse and injury mark not detected over the person of victim and victim was not pregnant at the time of her examination. She exhibited her report as Exhibit-2 and her signatures thereon as Exhibit-2 [1] to Exhibit-2 [3].
- **12). PW-5** is **Sri Ashim Dutta**, brother-in-law of the victim-cum-informant of the case. This witness during his testimony divulged that on the date of incident he was residing at his house. His mother-in-law informed him over telephone about the incident. Accordingly, he lodged ejahar before police as per information received through his mother-in-law vide Exhibit-3 wherein Exhibit-3 [1] is his signature. It is further version of the informant that police recovered the victim from accused's house at Kakajan after 2/3 days of incident. Thereafter, 1 & months she was given in marriage to the accused. At present, the victim is residing in the house of accused as his wife.

During cross-examination this witness testified that later on he came to know that victim voluntarily went with the accused. At present, they are having two children out of their wedlock.

- 13). 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 and after the incident she was given in marriage with the accused by her mother [PW-2] which has been corroborated by the informant [PW-5] who happened to be the brother-in-law of the victim.
- **14).** The accused during his statement under Section 313 Cr.P.C. stated that victim came to him voluntarily and at present she is staying with him as his wife. The statement of accused gets full corroboration from the side of mother of victim [PW-2] & brother-in-law [PW-5].
- **15).** 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.

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-2 and PW-5.

16). 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 mother of the victim [PW-2] and brother-in-law [PW-5] divulged that on the date of incident their daughter-cum-sister-in-law went on missing from the house. Later on, victim was recovered with the help of police from the house of accused. After about one & half months of the incident the victim was socially married by the accused.

Similarly, the victim girl [PW-1] has narrated the fact during examination that as on the relevant day she accompanied the accused on her own volition. Victim categorically deposed in her evidence under Section 164 Cr.P.C. that she stayed with accused in his house as wife and husband after her elopement. She did not specifically depose that accused induced her to leave the house of her parent.

- **17).** In the instant case, it is seen that the victim girl went out voluntarily with the accused. The victim stated her age as 24 years which seems that she was a major girl at the time of incident.
- 18). On scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Abinash Changmai 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 Sri Abinash Changmai 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.

19). In the result, the accused Sri Abinash Changmai is acquitted of 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.

20). Given under my hand and seal of this Court on this **11th** day of **July 2018**.

Special Judge, Jorhat

Continued to Page No:-8

ANNEXURES:-

PROSECUTION WITNESSES:-

D14.5	120.00
PW-1	Victim girl.
PW-2	Smt. Purnima Kachari, mother of victim.
PW-3	Sri Luhit Saikia, unemployed youth.
PW-4	Dr. Runjun Doley, M.O. of the case.
PW-5	Sri Ashim Dutta, informant-cum-brother-
	in-law of victim.

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	Medico-legal report of victim
Exhibit-3	Ejahar

MATERIAL EXHIBIT NO-1:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)