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. 45 OF 2018
(G.R. Case No. 3216 of 2015)
Jorhat P.S. Case No. 2328 of 2015

Committing Magistrate:-

Smt. Rani Boro, Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Sri Sankar Rajak @ Sony,
Son of Sri Suren Rajak,
Resident of Dhobi Line Gatanga Tea Estate,
P.S. Jorhat,

District-Jorhat. Accused

APPEARANCES:

For the State : Sri Juban Mohan Das, Learned Special P.P., Jorhat

For the Accused: Sri Sudipta Nayan Goswami,

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 : 22-05-2018

Date of prosecution evidence: 01-06-2018; 20-06-2018; 21-06-2018;

& 17-07-2018

Statement of Accused

Recorded on : 26-07-2018 Date of Argument : 06-08-2018

Date of Judgment : 08-08-2018

JUDGMENT

1). The prosecution story, in brief, is that **Jorhat P.S. Case No.** 2328/2015 under Section 363 of IPC was registered on the basis of an F.I.R. lodged by Sri Maju Karmakar, father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 24/10/2015 [Exhibit-2], the informant Sri Maju Karmakar [PW-3] who is the father of the victim girl alleged, *inter-alia*, that on 22/10/2014 at Gatanga Tea Estate under Jorhat P.S., while his minor daughter came out of the house to witness cinema in the tea estate during Puja, she went missing from the said place. The informant searched for the victim but she could not be found out.

On receipt of the ejahar by the then In-charge, Rawriah O.P. under Jorhat P.S., the same was entered in General Diary Register vide No. 513 dated 24/10/2015. The ejahar was sent to Jorhat P.S. for registration of a case under proper section of law. The then Officer-in-charge, Jorhat P.S, upon receipt of the ejahar, the same was registered as Jorhat P.S. Case No. 2328/2015 under Section 363 of IPC.

During the course of investigation, the victim girl was recovered from the possession of accused. Her statement 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 also recorded by the learned Magistrate. Police on completion of investigation filed charge-sheet in the case against the above named accused Sri Sankar Rajak @ Sony u/S. 366-A of IPC vide Charge-sheet No. 126/2016 dated 29-02-2016.

- **2).** The learned Chief Judicial Magistrate, Jorhat after furnishing copies of the relevant documents to the accused u/S. 207 of Cr.P.C., 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 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, **08 [eight]** numbers of witnesses including the victim, her mother and father-cum-informant together with the Medical Officer as well as investigating officer 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 at present the victim is staying in his house as his wife and they have a female daughter who is aged about five months. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Juban Mohan Das, learned Special Public Prosecutor for the State as well as Sri Sudipta Nayan Goswami, 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 22/10/2015 at Gatanga Tea Estate 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 sections 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.

The **victim [PW-1]** divulged during her testimony that she knew the accused from before. On the date of incident, i.e., on 22/10/2015 at about 7.00 P.M., she went to witness Durga Puja fair at Gatanga Chari-Al where she met the accused and accompanied him towards Doriya Bagaan in a Magic vehicle and stayed for one day in the house of accused's maternal uncle. Thereafter, she accompanied the accused towards Khomtai under Golaghat district where she stayed for about five days in the house of accused's another maternal uncle. The victim categorically stated that during that period the accused had physical relationship with her on her consent. Further version of the victim is that after five days she came to Borjuri with her parent and from there police recovered her. She was medically examined by a doctor, 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].

During cross-examination, she admitted that at present, the accused is her husband and they have got a baby of nine months old. She categorically stated that she is residing with the accused peacefully in his house.

9). PW-2 is **Smt. Bohagi Karmakar** who is the mother of victim girl. It is stated by this witness that on the date of incident her daughter came out of the house towards Gatanga Chari-Ali to witness Durja Puja fair and thereafter went missing. She then searched for her daughter but could not find her whereabout. Later on, her husband lodged ejahar before police regarding missing of their daughter. It is her further version that, later on, victim girl was recovered from Borjuri after seven days of incident. This witness further stated that her daughter accompanied the accused voluntarily.

This witness categorically stated in her cross-examination by defence side that victim is residing in the house of accused as his wife and they have got a child.

10). Sri Maju Karmakar [PW-3] is father of victim-cum-informant of the case. This witness during his deposition stated alike as that of his wife Smt. Bohagi Karmakar [PW-2]. He exhibited the ejahar lodged by him as Exhibit-2 wherein Exhibit-2 [1] is his signature. His daughter was sent to the court for recording statement by the learned Magistrate under Section 164 Cr.P.C.

This witness during cross-examination by defence side testified that he had lodged the instant case against the accused due to misunderstanding of fact. At present, his daughter is staying with the accused in his house.

uncle of victim [PW-1] testified during his evidence that on the date of incident he was present at his work place. When he returned back home in the evening police called him to the house of informant [PW-3] and took his signature in a sheet of paper. Later on, he came to know from the villagers that victim [PW-1] had been taken away by the accused. It is his further version that after about three days police recovered the victim from the possession of accused.

Defence side cross-examined this witness. During cross-examination, he stated that accused is his brother-in-law and at present victim is staying peacefully in the house of accused.

12). Same sort of evidence is tendered by Sri Shiva Karmakar [PW-5]. This witness during his evidence stated that at present victim is staying in the house of accused.

Defence side declined to cross-examine this witness.

13). Smt. Sumitra Karmakar [PW-6] stated that on the date of incident she came to know from nearby people that the accused took away the victim. She was present when police seized the transfer certificate of victim from her parent vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is her signature.

This witness during cross-examination by defence side stated that he did not witness any document which was seized by police from the hand of parent of victim in connection with the case.

Smt. Abonti Karmakar [PW-7] deposed during her testimony that on the date of incident she came to know from nearby people that victim eloped with the accused. She accompanied the mother of victim to the police station where police directed her to put signature on a sheet of paper vide Exhibit-3 wherein Exhibit-3 [2] is her signature. She categorically stated that she does not know what police had seized from the mother of victim.

This witness during cross-examination by defence side stated that she did not witness any document which was seized by police from the hand of parent of victim in connection with the case.

15). PW-8 is **Sri Abhijit Sarma** who is the investigating officer of the instant case. It is his version that on 24/10/2015 while he was working as Incharge, Rawriah O.P. under Jorhat P.S., he received ejahar from the informant Sri Maju Karmakar [PW-3] which was entered in General Diary Register vide No. 513 dated 24/10/2015. Thereafter, he sent the ejahar to Jorhat P.S. for registration of a case under proper section of law. The then Officer-in-charge,

Jorhat P.S. registered Jorhat P.S. Case No. 2328/2015 under Section 363 of IPC. He was entrusted with the charge of investigation.

During investigation, he examined the informant at the police station itself. Thereafter, he visited the place of occurrence and examined the victim as well as other witnesses who were acquainted with the fact and circumstance of the case. He also prepared Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his signature. On 26/10/2015 the victim girl arrived at the police station and her statement was recorded in connection with the case. Thereafter, the victim was sent before a doctor for medico legal check-up. The victim was also produced before a Magistrate who recorded statement of the victim as per provision of Section 164 Cr.P.C. The I.O. further stated that during investigation he seized the school certificate of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [3] is his signature. On completion of investigation, he submitted charge-sheet against the accused vide C.S. No. 126/2016 dated 29/02/2016 which he exhibited during trial as Exhibit-6 wherein Exhibit-6 [1] is his signature.

During cross-examination by defence side, the I.O. stated that he did not examine any witness from the place of occurrence as none said about the place of incident. He further deposed that victim was also not seen with the accused after her recovery. The I.O. testified that he did not examine any person who verified the authenticity of Exhibit-5 [school certificate of victim]. He did not receive any birth certificate of the victim from her parent.

- **16).** 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. Furthermore, on the date of incident the victim [PW-1] on her own accompanied the accused to different places and resided with him as husband and wife.
- **17).** 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.

- **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-3], the doctor has opined the age of victim to be above eighteen years and below twenty years at the time of incident.
- **19).** The parent of victim namely Smt. Bohagi Karmakar [PW-2] and Sri Maju Karmakar [PW-3] during their cross-examination categorically stated that the victim is staying in the house of accused as his wife. The accused during his statement under Section 313 of Cr.P.C. also revealed the same fact.
- 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 parent of the victim [PW-2 & PW-3] divulged that on the date of incident their daughter went on missing from the house after she came out of the house towards Gatanga Tea Estate to witness cinema. Later on, she came to know that the accused had taken away her daughter to his house and married her. At present, both of them are residing happily as husband and wife in the house of accused and, at present, the victim girl has given birth to five months baby.

Similarly, the victim girl has narrated the fact during examination that as on the relevant day she accompanied the accused to his house from the road after the accused met her. Victim categorically deposed in her evidence under Section 164 Cr.P.C. that she stayed with accused in his house as wife and husband for about 07 days. She did not specifically depose that accused induced her to leave the house of her parent.

21). On scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Sankar Rajak @ Sony 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 that she is residing in the house of accused as his wife and there is a female daughter out of their aforesaid wedlock. This piece of evidence adduced by the victim is well supported by her parent [PW-2 & PW-3] and well corroborated by Sri Dipen

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Karmakar [PW-4] who is brother-in-law of accused and Sri Shiva Karmakar, paternal uncle of victim [PW-5]. Furthermore, the victim [PW-1] during her evidence before the Court stated her age as 21 years. There is no medical evidence to prove that the victim was minor at the time of incident. Be that as it may, it will be fatal if the accused is convicted in the instant case as the victim [PW-1] alongwith her parent [PW-2 & PW-3] have categorically stated victim is residing in the house of accused as his wife and they have a five months old daughter.

Prosecution has not been able to make out a case against the accused Sri Sankar Rajak @ Sony 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.

- **22).** UTP/accused Sankar Rajak @ Sony is in jail. He may be released forthwith if not required to be detained in any other case.
- **23).** Given under my hand and seal of this Court on this **08th** day of **August 2018**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Bohagi Karmakar, mother of victim of the case.
PW-3	Sri Maju Karmakar, father of victim-cum-informant of the case.
PW-4	Sri Dipen Karmakar, brother-in-law of accused.
PW-5	Sri Shiva Karmakar, tea garden labour.
PW-6	Smt. Sumitra Karmakar, neighbour of victim.
PW-7	Smt. Abonti Karmakar, Helper, Gatanga T.E. Hospital.
PW-8	Sri Abhijit Sarma, 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	F.I.R.
Exhibit-3	Seizure-list
Exhibit-4	Sketch Map of the place of occurrence with index
Exhibit-5	School certificate of victim.
Exhibit-6	Charge-sheet

MATERIAL EXHIBIT NO-1:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)