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. 23 OF 2018 (G.R. Case No. 41 of 2018) Garamur P.S. Case No. 16 of 2018

Transmitting Magistrate:-

Sri Lakhi Nandan Pegu, Learned Sub-Divisional Judicial Magistrate, Majuli, Jorhat

State of Assam

-Versus-

Sri Sachin Sarkar, Son of Late Rahul Sarkar, Resident of Kakorikota Gaon, P.S. Garamur, District-Majuli, Assam.

.... Accused

APPEARANCES:

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

For the Accused: Sri Bhaba Goswami, Senior Advocate

& Sri Siddhartha Mouzamdar, Learned Counsel, Jorhat

CHARGE FRAMED UNDER SECTION 354 [A] OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 19-06-2018

Date of prosecution evidence: 13-07-2018; 04-08-2018; 04-10-2018;

& 20-12-2018

Statement of Accused

 Recorded on
 : 02-01-2019

 Date of Argument
 : 19-01-2019

 Date of Judgment
 : 28-01-2019

J U D G M E N T

1). The prosecution story, in brief, is that **Garamur P.S. Case No.** 16/2018 under Section 354 [A] of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of F.I.R. lodged by the victim [hereinafter referred to as 'X'] who happened to be the minor daughter of Sri Ranjan Sarkar.

In the aforesaid **F.I.R.** dated 02/04/2018 **[Exhibit-1]** the victim-cum-informant [PW-1] alleged, *inter-alia*, that on 01/04/2018 at about 11.00 A.M., while she was residing alone in her residence, accused Sachin Sarkar being her neighbour, arrived at her house, grabbed her from back side, gagged her mouth with cloth and thereafter attempted to commit rape upon her. It is further alleged by the victim that she somehow freed from the clutches of accused and thereafter cried for help and came out of the residence.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Garamur P.S., the same was registered by the Officer-in-charge, Garamur P.S. as Garamur P.S. Case No. 16/2018 under Section 354 [A] of IPC read with Section 8 of The Protection of Children from Sexual Offences Act, 2012.

During the course of investigation, the victim girl was medically examined by the doctor, statement of victim under Section 164 of Cr.P.C. was recorded by the learned Magistrate. Police, on completion of investigation, filed charge-sheet in the case against the above named accused Sachin Sarkar u/S. 354 [A] of IPC read with Section 8 of The Protection of Children from Sexual Offences Act, 2012 vide Charge-sheet No. 12/2018 dated 06/04/2018.

- **2).** The learned Sub-Divisional Judicial Magistrate, Majuli, Jorhat, transmitted the case to this court for trial as it was covered under POCSO Act. Copy to the accused was furnished in due course.
- **3).** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, the undersigned found grounds to frame charges against the accused. Accordingly, charges were framed against the present accused under Section 354 [A] of IPC read with Section 8 of The

Protection of Children From Sexual Offences Act, 2012. Charges were 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, **06** [six] numbers of witnesses including the victim-cum-informant of the case, her father, Medical Officer and the I.O. were examined, on behalf of the prosecution, to prove the charge u/S. 354 [A] of IPC read with Section 8 of The Protection of Children from Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of above named accused was recorded u/S. 313 of Cr.P.C. The accused stated that he has been falsely implicated in the case. It is further version of accused that father of victim namely Sri Ranjan Sarkar [PW-2] brought Rs. 30,000/- from Smt. Puspa Payung to give it to him. But PW-2 did not give the amount to him. On being asked, Sri Ranjan Sarkar [PW-2] quarreled with him and lodged false case against him through his daughter [PW-1]. The accused pleaded innocence. No witness was adduced by the accused in defence.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Bhaba Goswami, Senior Advocate being accompanied by Sri Siddhartha Mouzamdar, learned Defence Counsel for the accused who is facing trial for commission of offence u/S. 354 [A] of IPC read with Section 8 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 01/04/2018 at about 11.00 A.M., the accused touched the body of victim from back side after gagging her mouth and throwing her on the floor of the house [or used criminal force to a minor girl, intending to outrage] [or knowing it to be likely that the accused would thereby outrage] the modesty of the victim-cum-informant of the case, and thereby committed an offence punishable under Section 354 [A] of IPC?

2) Whether on the date of occurrence the accused named above committed sexual assault upon the victim girl of the case, and thereby committed an offence punishable under Section 8 of The Protection of Children From Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). To decide the above points, let me examine, analyze and appreciate the evidence of the witnesses along with the relevant documents.

PW-1 [X] is the victim girl-cum-informant of the case, who during her deposition in Court stated in the same tune as that of her ejahar. It is further stated by the victim that the accused entered her residence, grabbed her from behind and tried to open her cloth but when she raised hue and cry the later could not succeed in his act. Hearing her cries, her Borta namely Sri Jintu Sarkar, arrived at her residence but the accused fled away from her house before arrival of her Borta. She then narrated the incident before her Borta. When her mother arrived in the house in the evening hour she disclosed the incident before her also who, in turn, told the incident before neighbouring people. On the next day, she lodged ejahar before police vide Exhibit-1 wherein Exhibit-1 [1] is her signature. Police took her before a doctor for medico legal check-up. Thereafter she was produced before the court where learned Magistrate recorded her statement vide Exhibit-2 wherein Exhibit-2 [1] to Exhibit-2 [3] are her signatures.

During cross-examination, she stated that the accused is her paternal uncle; that he used to visit their house and a relative prior to the incident. Accused also have cultivable land and gives portion of rice to them. It is further version of the victim that accused also goes to catch fish with her father Sri Ranjan Sarkar and both of them had fish business together. She also used to visit the house of accused. Further version of victim is that she had love affair with one boy named Rajkumar Das but she did not go with him on 03/07/2018. She confirmed that residence of her Bortha namely Mukul Sarkar is adjacent to her house; that she did not state before police that upon shout being raised from her side her Borta came to her house. She denied all the defence suggestions put to her during cross-examination.

8). PW-2 is Sri Ranjan Sarkar who is father of victim of the case. It is his version that, on the date of incident, he was at his work place. When he returned back home at about 8.00 P.M., he noticed VPD personnel in his residence and came to know that the accused entered his house from backside and grabbed the victim who is his daughter from behind and tried to open her cloth. On the next day of incident his daughter [PW-1] lodged ejahar before police. It is further version of this witness that police during investigation seized the birth certificate of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is his signature. His daughter was sent to the court for recording statement by the Magistrate.

During his cross-examination, this witness stated that when he returned back home he found his daughter, wife and his son present inside the house. Later on, VDP personnel namely Sri Biren Sarkar and Sri Sadhan Sarkar arrived at his residence. He did not state before police that he came to know about the incident on the way back home. This witness knew Rajkumar Das who had love affair with his daughter. Accused assaulted aforesaid Rajkumar Das for keeping relationship with his daughter. His daughter did not flee with said Rajkumar Das. This witness confirmed that no meeting took place for the aforesaid incident. He came to know about the incident from his daughter [PW-1].

9). Dr. Gayatri Senapati [PW-3] examined the victim on 02/04/2018, when she was posted as Deputy Superintendent, Kamalabari CHC, Majuli, Jorhat. To her opinion, no violation mark was seen on the private part of victim. She exhibited her report as Exhibit-4 and her signature thereon as Exhibit-4 [1].

The doctor stated that she did not mention the age of victim in her medical report. Victim did not reveal before her the history and hence she did not mention the same in her report.

10). The evidence of **Sri Nitul Sarkar** [**PW-4**] and **Sri Jintu Sarkar** [**PW-5**] who are neighbours of victim stated that on the next day both of them came to know about the incident. Both of these witnesses have further stated

that the accused as well as father of victim indulged in fish business and there was monetary transaction in between both of them.

Sri Nitul Sarkar [PW-4] was declared hostile by prosecution side and during cross-examination by prosecution this witness denied to have stated before police that "on the date of incident he heard cries of the victim; that he proceeded immediately towards the house of victim and noticed the accused fleeing away from the residence of victim; that victim stated before him that while she was offering Puja at that time accused entered into her residence and grabbed her from back side and thereafter attempted to commit rape upon her".

This witness during cross-examination by defence side stated that his house is just adjacent to the house of victim and he did not hear anything on the date of incident nor did he hear shout/cries of help of the victim. it is further stated by this witness that father of victim namely Sri Ranjan Sarkar was witnessed by him in his residence on the relevant day. Prior to the date of incident he witnessed altercation in between accused as well as father of victim due to some monetary transaction in between them. He confirmed that police did not ask him anything regarding the incident.

During cross-examination, he stated that he did not witness the incident; he did not find accused as well as victim at the place of incident and further that he did not talk with the accused or victim on the date of incident.

11). Sri Jintu Sarkar [PW-5] was also declared <u>hostile</u> by prosecution side. This witness during cross-examination by prosecution side denied to have stated before police that "on the date of incident he heard cries of the victim; that he proceeded immediately towards the house of victim and noticed accused fleeing away from the residence of victim; that victim stated before him that while she was offering Puja at that time the accused entered into her residence and grabbed her from back side and thereafter attempted to commit rape upon her, for which, she cried for help".

This witness during cross-examination by defence side stated that his house is just adjacent to the house of victim and he did not hear anything on

the date of incident nor did he heard shouts/cries of help of victim. Prior to the incident he heard from nearby people that there was altercation in between accused as well as father of victim due to some monetary transaction in between them.

Sri Nilutpal Doley [PW-6] is the investigating officer of the instant case who deposed about the routine steps taken by him during investigation. During investigation, he seized the birth certificate of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [2] is his signature. He also arrested the accused in connection with the case. After collecting the medicolegal report of victim he submitted charge-sheet against accused vide Exhibit-5 wherein Exhibit-5 [1] is his signature.

The I.O. confirmed that witness **Sri Nitul Sarkar [PW-4]** during his statement under Section 164 Cr.P.C. stated before him that **"on the date of incident he heard cries of the victim; that he proceeded immediately towards the house of victim and noticed the accused fleeing away from the residence of victim; that victim stated before him that while she was offering Puja at that time accused entered into her residence and grabbed her from back side and thereafter attempted to commit rape upon her".**

Witness Sri Jintu Sarkar [PW-5] during his statement under Section 161 Cr.P.C. divulged before him that "on the date of incident he heard cries of the victim; that he proceeded immediately towards the house of victim and noticed accused fleeing away from the residence of victim; that victim stated before him that while she was offering Puja at that time the accused entered into her residence and grabbed her from back side and thereafter attempted to commit rape upon her, for which, she cried for help".

This witness during cross-examination by defence side stated that he seized the birth certificate of the victim from the victim herself.

Victim [PW-1] during her statement under Section 161 Cr.P.C. did not state before him that "accused entered into her house from back side and that accused tried to open her cloth at the time of incident".

The I.O. confirmed that accused as well as father of victim were doing fish business.

- **13).** The accused during his examination under Section 313 Cr.P.C. stated that he has been falsely implicated in the case and he is innocent. It is further version of accused that father of victim namely Sri Ranjan Sarkar [PW-2] brought Rs. 30,000/- from Smt. Puspa Payung to give it to him. But PW-2 did not give the amount to him. On being asked, Sri Ranjan Sarkar [PW-2] quarreled with him and lodged false case against him through his daughter [PW-1].
- 14). From a close perusal of the evidence on record it is seen that the victim [PW-1] who is the star witness of the instant case has stated that accused entered her residence, grabbed her from behind and tried to open her cloth but when she raised hue and cry the later could not succeed in his act. Hearing her cries, her Borta namely Sri Jintu Sarkar, arrived at her residence and then the accused fled away from her house before arrival of her Borta. She then narrated the incident before her said Borta. When her mother arrived in the house in the evening hour she disclosed the incident before her also who in turn told the incident before neighbouring people. On the next day, she lodged ejahar before police vide Exhibit-1 wherein Exhibit-1 [1] is her signature. Police took her before a doctor for medico legal check-up. Thereafter she was produced before the court where learned Magistrate recorded her statement vide Exhibit-2 wherein Exhibit-2 [1] to Exhibit-2 [3] are her signatures.

During cross-examination, the victim stated that accused is her paternal uncle; that he used to visit their house and a relative prior to the incident. Accused also have cultivable land and gives portion of rice to them. It is further version of the victim that accused also goes to catch fish with her father Sri Ranjan Sarkar and both of them had fish business together. She also used to visit the house of accused. Further version of victim is that she had love affair with one boy named Rajkumar Das but she did not go with him on 03/07/2018. She confirmed that residence of her Bortha namely Mukul Sarkar is adjacent to her house; that she did not state before police that upon shout being raised from

her side her Borta came to her house. She denied all the defence suggestions put to her during cross-examination.

15). The evidence of Sri Ranjan Sarkar [PW-2] who is father of victim of the case is to the effect that on the date of incident, he was at his work place. When he returned back home at about 8.00 P.M., he noticed VPD personnel in his residence and came to know that the accused entered his house from backside and grabbed the victim who is his daughter from behind and tried to open her cloth.

During his cross-examination, this witness stated that when he returned back home he found his daughter, wife and his son present inside the house. Later on, VDP personnel namely Sri Biren Sarkar and Sri Sadhan Sarkar arrived at his residence. He did not state before police that he came to know about the incident on the way back home. This witness knew Rajkumar Das who had love affair with his daughter. Accused assaulted aforesaid Rajkumar Das for keeping relationship with his daughter. His daughter did not flee with said Rajkumar Das. This witness confirmed that no meeting took place for the aforesaid incident. He came to know about the incident from his daughter [PW-1].

- 16). The I.O. [PW-6] during cross-examination stated that victim [PW-1] during her statement under Section 161 Cr.P.C. did not state before him that "accused entered into her house from back side and that accused tried to open her cloth at the time of incident".
- 17). But when the victim was produced before the court to record her statement by the learned Magistrate under Section 164 Cr.P.C., the victim categorically deposed that "on the date of incident she was offering Puja inside the house; that accused entered into her residence and grabbed her from behind; that he put gagged her mouth with cloth and made her fell on the ground and attempted to commit rape upon her; that at that time she cried for help and when neighbouring people arrived at her house the accused fled away from her residence; that when her parent returned back home from the paddy

field she disclosed the incident before them". She did not utter any word that Borta namely Mukul Sarkar who resided near her residence immediately arrived at her residence.

- 18). The I.O. after collecting the statement of the victim recorded by the learned Magistrate under Section 164 Cr.P.C. did not record statement of the aforesaid "Borta" who reportedly arrived at her residence. The I.O. ought to have examine this important witness. Furthermore, it is seen from the evidence of Sri Ranjan Sarkar [PW-2] who is the father of victim that when he returned back home he witnessed his daughter, his wife and son present inside the house. But the I.O. of the case did not examine his wife and son for the reasons best known to him.
- 19). The Hon'ble Supreme Court in the case of *Assistant Collector of Central Excise, Calicut—versus- V.P. Sayed Mohammad,* reported in *AIR* 1983 SC 163 held as follows:

"It is true that the onus of proving the facts essential to the establishment of discharge against an accused lies upon the prosecution and the evidence must be such as to exclude every reasonable doubt about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicions. If reasonable doubt arises in the mind of the court after taking into consideration the entire material before it regarding the complicity of the accused the benefit of such doubt should be given to the accused but the reasonable doubt should be a real and substantial one and a well founded actual doubt arising out of the evidence existing after consideration of all the evidence".

20). Keeping in mind the above rationale as laid down by the Hon'ble Apex Court, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion.

The prosecution side has failed to prove beyond reasonable doubt that the accused tried to outrage the modesty of the victim-cum-informant of the case. From the facts and circumstance of the case it is seen that victim had improved her version when she was produced before the court for recording statement by the Magistrate under Section 164 Cr.P.C. as well as before this court. As stated above, prosecution side has failed to adduce evidence of "Borta namely Mukul Sarkar" who according to the victim arrived at her residence after hearing her cries for help.

21). Consequently the charge under Section 354 [A] of IPC as well as under Section 8 of The Protection of Children from Sexual Offences Act, 2012 is held to be not proved against accused Sri Sachin Sarkar beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Sri Sachin Sarkar is <u>acquitted</u> on benefit of doubt under Section 354 [A] IPC as well as under Section 8 of The Protection of Children from Sexual Offences Act, 2012.

22). 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.

Given under my hand and seal of this Court on this **28th** day of **January 2019**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl-cum-informant of the case.
PW-2	Sri Ranjan Sarkar, father of victim.
PW-3	Dr. Gayatri Senapati, who examined the victim.
PW-4	Sri Nitul Sarkar, businessman.
PW-5	Sri Jintu Sarkar, another businessman.
PW-6	Sri Nilutpal Doley, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

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

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)