#### **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. 66 OF 2016** 

(G.R. Case No. 3165 of 2016) Jorhat P.S. Case No. 2280 of 2016

#### **Transmitting Magistrate:-**

Smt. Rani Boro, In-charge, Chief Judicial Magistrate, Jorhat District

State of Assam

**Versus** 

Sri Hemanta Kumar Das, Son of Late Mohan Das, Resident of Itakhuli, Garmur, P.S. Jorhat, District-Jorhat.

.... Accused

#### **APPEARANCES:**

For the State : Sri M.R. Barooah,

Senior Advocate-cum-Special Public Prosecutor,

**Jorhat** 

For the Accused: Smt. Rupali Rai Baruah,

**Learned State Defence Advocate, Jorhat** 

# CHARGE FRAMED UNDER SECTION 376 [1] OF INDIAN PENAL CODE READ WITH SECTION 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 07-01-2017

Date of prosecution evidence: 27-01-2017; 28-02-2017; 15-03-2017;

24-03-2017; 05-04-2017 & 18-04-2017

**Statement of Accused** 

Recorded on : 04-05-2017

Date of Argument : 08-05-2017 <u>Date of Judgment</u> : 19-05-2017

#### J U D G M E N T

**1).** The prosecution story, in brief, is that Jorhat P.S. Case No. 2280/2016 under Section 376 [i] of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 21/10/2016 [Exhibit-2] the victim girl alleged, inter-alia, that in the month of August, 2016 when her mother was not present in the house, her father, i.e., the accused, committed rape upon her. It is further stated by the informant in her ejahar that in the event she cried "Ma-Ma' out of pain. It is further alleged by the informant that the accused threatened her with dire consequence if she divulge the fact to anybody. Further, it is stated in the ejahar by the informant that the accused also quarreled with her mother on different occasion and thereafter chasing her mother out of the residence, the accused tried to commit rape upon her, for which, she somehow fled away from the house.

On receipt of the aforesaid F.I.R. by the In-charge, Garmur O.P. under Jorhat P.S. the same was entered in General Diary Register vide No. 321 dated 21/10/2016. The ejahar was sent to Officer-in-charge, Jorhat P.S. for registration of a case. The Officer-in-charge, Jorhat P.S., registered Jorhat P.S. Case No. 2280/2016 under Section 376 [i] of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, 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 Hemanta Kumar Das u/S. 376 [i] of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 937/2013 dated 11-11-2016.

**2).** The learned In-charge, Chief Judicial Magistrate, Jorhat, transmitted the case to this Court for trial. Copy was furnished to the accused in due course.

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, charges were accordingly framed under Section 376 [1] of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012. The charges were read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

Prior to the framing of charge learned counsel Smt. Rupali Rai Baruah was appointed as Defence Counsel on state expenses as accused was too poor to engage a counsel for him for his defence.

**4).** During the course of trial, **10 [ten]** numbers of witnesses including the victim, her mother, Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge u/Ss. 376 [1] of IPC read with Section 6 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. and the accused stated that he had been falsely implicated in the case. He did not commit rape upon his daughter. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor for the State as well as Smt. Rupali Rai Baruah, learned counsel for the accused, who is facing trial for commission of offence u/Ss. 376 [1] of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012.
- **6).** Now the points for determination before this Court are as follows:-
  - 1) Whether in the month of August 2016 the accused named above committed rape on the victim girl, i.e., his daughter, aged about eleven years and below eighteen years and thereby committed an offence punishable under Section 376 [1] of IPC?
  - 2) Whether during the same period and time the accused named above committed aggravated penetrative sexual assault upon

the victim girl aged above eleven years but below eighteen years and thereby committed an offence punishable under Section 6 of The Protection of Children From Sexual Offences Act, 2012?

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

**7).** To decide the above charged sections of law against accused let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

**PW-1** is the victim girl who during her deposition in Court stated that about three months ago the accused quarreled with her and her mother after consuming alcohol. It is her further version that she alongwith her mother and villagers went to the police station to inform about the matter. Further version of the victim is that one Smt. Chaya Sil tutored her to give false evidence against the accused and also instigated her to lodge ejahar against the accused who is her own father. 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] to Exhibit-1 [3] are her signatures. She also exhibited the ejahar as Exhibit-2 and her signature thereon as Exhibit-2 [1]. She did not state that accused committed rape upon her.

During cross-examination, she stated that at the police station aforesaid Smt. Saya Sil was present alongwith her who instructed her to write the ejahar as per her version. She admitted that the accused who is her father used to create nuisance in the locality as well as in their house after consuming liquor.

8). **PW-2** is **Smt. Sumi Das** who is the mother of the victim girl during her deposition categorically stated that she came to know about the incident from her daughter only at the police station. It is her further version that her daughter [PW-1] disclosed before her at the police station that her father, i.e., the accused, used to commit rape upon her. Further version of this witness is that she went to the police station for lodging ejahar against her husband as he used to create disturbance in the house after consuming alcohol. This witness was declared **hostile** by the prosecution and during cross-examination by the

prosecution she admitted that her daughter stated before her that while she returned back home from her school on 5<sup>th</sup> day of the month of August, 2016 the accused who is her father committed rape upon her; that she found the case to be true and hence came to Garmur O.P. to lodge case against her husband but returned back home without lodging the ejahar; that she requested her husband not to commit rape upon the victim and, in turn, the accused stated to her that he will do such type of acts upon his daughter [PW-1]. Police took her daughter before the learned Magistrate for recording statement under Section 164 Cr.P.C. This witness further stated that police seized the school transfer certificate of her daughter on being produced by her which was returned to her vide Zimmanama [Exhibit-3] wherein she put her signature as Exhibit-3 [1]. She exhibited the said certificate as Material Exhibit-1.

During cross-examination, she divulged that Smt. Saya Sil instructed her daughter to lodge ejahar before police and aforesaid Saya Sil also tutored her to give evidence. She specifically stated that the instant case lodged by her daughter is complete false case.

**9). Dr. Ritu Saikia [PW-3]** who was the then Medical Officer on duty, Jorhat Medical College & Hospital examined the victim girl on 22/10/2016 and opined that the victim is above fourteen years but below eighteen years; evidence of recent sexual intercourse was not detected on her person and there was no evidence of any injury on the body of victim. She further stated that old tear at 6 o' clock was found in the hymen of victim. This witness exhibited her medical report [Exhibit-4] and her signatures thereon as Exhibit-4 [1] to Exhibit-4 [3].

The doctor was not cross-examined by the prosecution.

**10).** The evidence of **Smt. Abonti Neog [PW-4]** is to the effect that around 2/3 months ago she went to Garmur O.P. in connection with an accident of her son. She witnessed one girl at the O.P. She was told by police that father of the aforesaid girl had done bad act with her.

During cross-examination, she stated that she witnessed many people at the O.P. alongwith women.

11). PW-5 is Smt. Rani Boro who was In-charge Chief Judicial Magistrate, Jorhat on 24/10/2016. During her testimony, she divulged that on 24/10/2016 she recorded statement of victim [PW-1] and thereafter read over the contents to the victim and finding it to be correct the victim put her signatures before her. She exhibited the statement of victim as Exhibit-1 and signatures of victim as Exhibit-1 [1] to Exhibit-1 [3]. She also put her signature as Exhibit-1 [4]. It is her further version that victim gave her statement voluntarily without any pressure from any end.

During cross-examination, she stated that she did not record in the statement of victim that victim gave her statement voluntarily. She denied that she did not read over the statement to the victim before obtaining her signatures in the said statement.

- **Smt. Bitumoni Das [PW-6]** is sister-in-law of accused Hemanta Kumar Das. It is stated by this witness that she does not know anything about the incident. When police arrived at the house of accused then only she came to know about the incident. Further version of this witness is that she met the victim who stated before her that accused who is her father committed rape upon her. The mother of the victim also disclosed the same fact as stated by the victim before her.
- 13). The evidence of **Smt. Saya Sil [PW-7]** is to the effect that on the date of incident the victim came to her residence and stated before her that the accused who is her father had committed rape upon her. It is her further version that victim also stated to her that when she returned back home from her school the accused was present inside the house and committed rape upon her after undressing her forcefully. The victim further stated to her that at that time her mother was not present inside the house.

During cross-examination, she categorically stated that she did not accompany victim to the police station and further that she did not tutor the victim to state falsely against the accused. She stated that she instructed the wife and daughter of accused to lodge ejahar before police regarding the atrocities meted upon them on previous occasion by the accused.

**Smt. Labanya Saikia [PW-8]** stated that on 20/10/2016 she was serving as Women Home Guard at Garmur O.P. under Jorhat P.S. As per instruction of the In-charge, Garmur O.P. she escorted the victim to the court for getting her statement recorded by the learned Magistrate under Section 164 Cr.P.C. She also put her signature before the learned Magistrate on the statement of the victim [Exhibit-1] which she exhibited as Exhibit-1 [5].

During cross-examination, she stated that I.O. of the case did not record her statement under Section 161 Cr.P.C.

- **15).** The evidence of **Smt. Dulumoni Das [PW-9]** is to the effect that police seized one certificate from the victim in her presence vide seizure-list [Exhibit-5] wherein Exhibit-5 [1] is her signature. She exhibited the said certificate as Material Exhibit-1.
- 16). **Sri Prakash Sarmah [PW-10]** who was the then In-charge, Garmur O.P. under Jorhat P.S. stated that on 21/10/2016 at about 10.00 P.M. the victim alongwith her mother arrived at the O.P. where the victim stated before him that her father attempted to commit rape upon her. The information was entered in G.D. Entry Register being No. 280. Victim also lodged ejahar before police regarding the incident. Exhibit-2 is the ejahar wherein Exhibit-2 [2] is his endorsement with signature. It is further stated by him that 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. entrusted the case to him for investigation. He examined the victim as well as her mother at the police station itself. He also visited the place of occurrence, examined witnesses who were acquainted with the fact and circumstance of the case. He also took the victim before a doctor for medico legal check-up and thereafter the victim was produced before the court for recording statement under Section 164 Cr.P.C. by the learned Magistrate. He also drew Sketch Map of the place of occurrence vide Exhibit-6 wherein Exhibit-6 [1] is his signature.

He confirmed the statement of witness Smt. Sumi Das [PW-2] recorded by him under Section 161 Cr.P.C.

During cross-examination, he stated that house of uncle of accused is located in the front side whereas the accused resides in the back side but in the same compound.

17). From a close perusal of the evidence on record it is seen that the accused is the father of victim [PW-1]. It is further stated by the victim that one Smt. Chaya Sil [PW-7] tutored her to give false evidence against the accused and also instigated her to lodge ejahar against the accused who is her own father. During cross-examination, she stated that at the police station aforesaid Smt. Saya Sil was present alongwith her who instructed her to write the ejahar as per her version. She admitted that the accused who is her father used to create nuisance in the locality as well as in their house after consuming liquor.

Smt. Sumi Das [PW-2] during cross-examination, divulged that Smt. Saya Sil [PW-7] instructed her daughter to lodge ejahar before police and aforesaid Saya Sil also tutored her to give evidence. She specifically stated in her cross-examination that the instant case lodged by her daughter is complete false case.

- **18).** The accused during his statement under Section 313 Cr.P.C. had denied that he had physical contact with the victim who is his own daughter.
- **19).** The investigating officer of the instant case has seized school certificate of the victim from her parent to show that the victim is a child/minor less than 18 [eighteen] years as on the date of commission of offence vide Material Exhibit-1.
- **20).** The prosecution has also relied upon Exhibit-1, the report of doctor Ritu Saikia [PW-3], according to which, the age of the victim is above fourteen years but below eighteen years. However, as victim has not supported the case of prosecution and has deposed clearly that she was tutored by PW-7 to file F.I.R. against the accused, who is her father, so accused cannot be implicated on the alleged charges against him.

**21).** On scrutinizing the evidence on record, considering the entire aspect of the matter and the evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused committed rape on the victim. Hence, accused is entitled to acquittal under benefit of doubt against charged sections, i.e., 376 of IPC as well as under Section 6 of The Protection of Children from Sexual Offences Act, 2012, which I accordingly do.

**22).** In the result, accused **Sri Hemanta Kumar Das** 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 376 of IPC read with Section 6 of The Protection of Children from Sexual Offences Act, 2012.

UTP/accused may be released forthwith if not required in connection with any other case.

23). Given under my hand and seal of this Court on this 19<sup>th</sup> day of May2017.

Special Judge, Jorhat

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# **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Victim girl-cum-informant of the case.
PW-2	Smt. Sumi Das, mother of victim.
PW-3	Dr. Ritu Saikia who examined the victim.
PW-4	Smt. Abonti Neog, B.S.N.L. employee.
PW-5	Smt. Rani Boro, Chief Judicial Magistrate, who
	recorded statement of the victim under Section 164
	Cr.P.C.
PW-6	Smt. Bitumoni Das, housewife.
PW-7	Smt. Saya Sil, housewife.
PW-8	Smt. Labanya Saikia, Women Homeguard.
PW-9	Smt. Dulumoni Das, housewife.
PW-10	Sri Prakash Sarmah, I.O. of the case.

# **COURT WITNESS:- NIL**

# **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Statement of victim recorded by the learned Magistrate under Section 164 Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Zimmanama
Exhibit-4	Medico legal report of victim
Exhibit-5	Order in connection with G.R. Case No. 3165/2016
Exhibit-6	Sketch Map of the place of occurrence with index

**MATERIAL EXHIBIT:- NIL** 

**DEFENCE WITNESSES:-** NONE

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)