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. 64 OF 2017 (G.R. Case No. 2209 of 2017) Jorhat P.S. Case No. 1572 of 2017

Transmitting Magistrate:-

Smt. Rani Boro, Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Sri Ashok Mahato, Son of Late Ram Prakash Mahato, Resident of Rupahi Ali, P.S. Jorhat,

District-Jorhat <u>Accused</u>

APPEARANCES:

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

For the Accused: Smt. Purnima Borgohain,

Learned Defence Counsel, Jorhat

CHARGE FRAMED UNDER SECTIONS 376/417 OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 05-09-2017

Date of prosecution evidence: 21-06-2018 & 09-08-2018

Statement of Accused

Recorded on : 17-11-2018

Date of Argument : 17-11-2018

Date of Judgment : 20-11-2018

JUDGMENT

1). The prosecution story, in brief, is that **Jorhat P.S. Case No. 1572/2017 under Section 376 of IPC** read with Section 4 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of an F.I.R. lodged by the victim girl **[hereinafter to be referred as [X]**.

In the aforesaid **F.I.R.** dated 24/07/2017 the informant [X] who the victim of the instant case alleged, *inter-alia*, that she was residing in the house of Dr. Hasan as maid-servant. The accused Ashok Mahato also worked in a different house located near the house of Dr. Hasan. Further allegation of the informant is that the accused disclosed before her that he will convert himself to Muslim religion. Thereafter, on false pretext of marriage, the accused co-habited with her, for which, she became pregnant for about seven months. Lastly, the informant, in her ejahar, disclosed that as she belongs to a poor family, the accused did not marry her.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Jorhat P.S., registered **Jorhat P.S. Case No. 1572/2017 under Section 376 of IPC** read with **Section 4 of The Protection of Children From Sexual Offences Act, 2012**.

During the course of investigation, the victim girl was sent to the court for recording her statement under Section 164 of Cr.P.C. Police on completion of investigation filed charge-sheet in the case against the above named accused Sri Ashok Mahato u/S. 4 of The Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 531/2017 dated 17/08/2017.

- **2).** The learned 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, I found ground for presuming that the accused has committed offences under Sections 376/417 of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, 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, **03 [three]** numbers of witnesses were examined on behalf of the prosecution to prove the charge u/Ss. 376/417 of IPC read with Section 4 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 has been falsely implicated in the case. The accused pleaded innocence. The accused did not adduce defence evidence on his behalf.

- **5).** I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Smt. Purnima Borgohain, learned Defence Counsel for the accused.
- **6).** Now the points for determination before this Court are as follows:-
 - 1) Whether on or about seven months prior to the filing of the ejahar by the informant [X] on 24/07/2017, the accused on the false pretext of marriage co-habited with the informant [X], for which, she became pregnant for seven months and thereby committed an offence punishable under Section 376 of IPC?
 - 2) Whether on the same day, time and place the accused cheated the informant [X] by deceiving her fraudulently (or dishonestly induced the informant) that she will be married by the accused and had sexual intercourse with her, for which, she would not have allowed if the informant [X] were not deceived by the accused and which act caused damage to the body, mind, reputation and property of the informant and thereby committed an offence punishable under Section 417 of IPC?
 - 3) Whether on the date of occurrence the accused named above committed penetrative sexual assault upon the informant [X]

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). To decide the above sections of law, let us examine, analyze and appreciate the evidence of the witnesses along with the relevant documents.

that victim [X] used to reside in his residence as maid-servant since 2015. The victim stayed in his house for some months and thereafter went to her parental home at Nagaon for the purpose of taking "AADHAR CARD". It is further version of this witness that the victim returned back to his home for some days. Thereafter, her brother-in-law Babul came to his residence and took back the victim to Nagaon. This witness knows the accused as the later worked in the house of one Dr. Prabin Gogoi whose house is located near his house. About 2/3 months police arrived at the house of Dr. Prabin Gogoi. This fact was informed to him by the wife of Dr. Prabin Gogoi who stated that police had arrived at their residence alongwith the victim who disclosed before police that the accused had committed rape upon her.

During cross-examination by defence side, this witness divulged that he does not know anything about the relationship of accused with the victim.

8). The evidence of **Dr. Prabin Gogoi** [**PW-2**] is to the effect that accused Ashok Mahato used to work in his house as a helper. Police visited his premise at night hour alongwith the victim who disclosed before police that the accused used to work in his residence. To the reply of the victim [X] this witness divulged before police that the accused had left his work place after he entered marriage with a girl of his [accused's] locality.

This witness was not cross-examined by defence side.

9). Prosecution side examined **Syeda Mumtaz Rahman** as **[PW-3]** in connection with the case. This witness during her evidence testified that victim

used to work in her residence as a helper about three years back. This witness knows the accused as he [accused] worked in the house of Dr. Prabin Gogoi as helper from morning till evening. Police visited her residence and asked her about the incident.

Defence side declined to cross-examine this witness on all material particulars.

- **10).** It is interesting to note herein that the prosecution side was given sufficient and ample chance to examine the victim of the case on different dates. But the learned Special P.P., Jorhat, could not bring and adduce evidence of victim inspite of his best effort which is fatal to the prosecution case. At the submission of prosecution side its evidence was closed.
- 11). On appreciation of the evidence on record as well as other facts and circumstances of the case, it is found that no case has been made out against accused Sri Ashok Mahato to warrant his conviction under Sections 376/417 IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012, as victim could not be examined by prosecution side inspite of giving many dates to produce the victim before the court for recording her statement. Prosecution has not been able to make out a case against the accused Sri Ashok Mahato 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.

Bail bond of accused is extended for the next **06** [six] months under Section 437-A Cr.P.C.

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

Special Judge, Jorhat.

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Dr. Syed Safiqur Rahman, Retired Senior Medical &
	Health Officer.
PW-2	Dr. Prabin Gogoi, Retired medical practitioner.
PW-3	Syed Mumtaz Rahman, housewife.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:- NIL

DEFENCE WITNESSES:- NIL

Special Judge, Jorhat.

Typed & transcribed by:

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