#### **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. 32 OF 2018 (G.R. Case No. 27 of 2018) Garamur P.S. Case No. 11 of 2018

# **Committing Magistrate:-**

Sri L.N. Pegu, Sub-Divisional Judicial Magistrate, Majuli District

State of Assam

-Versus-

Sri Hemen Das @ Titou, Son of Sri Putu Das, Resident of Borguli No-1 Morang Gaon, P.S. Titabar, District-Jorhat.

.... Accused

#### **APPEARANCES:**

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

For the Accused: Sri Bhumidhar Hazarika,

**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** : 24-04-2018

Date of prosecution evidence: 17-05-2018; 05-06-2018 & 12-11-2018

**Statement of Accused** 

Recorded on : 07-01-2019
Date of Argument : 11-01-2019
Date of Judgment : 11-01-2019

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

1). The prosecution story, in brief, is that **Garamur P.S. Case No.** 11/2018 under Section 366-A of IPC was registered on the basis of F.I.R. lodged by Sri Thageswar Hazarika, father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 09/03/2018 [Exhibit-2], the informant Sri Thageswar Hazarika [PW-3] who is the father of the victim girl alleged, *inter-alia*, that on 08/03/2018 while his minor daughter came out of the house towards the school to attend her H.S. Examination. After completing her examination while his minor daughter was about to return back home at about 12.30 P.M., the accused induced his minor daughter and thereafter kidnapped her in his motorcycle and took her to his house. Later on, the informant came to know that the accused had kept his minor daughter as his wife in his residence.

On receipt of the ejahar by the then Officer-in-charge, Garamur P.S., the same was registered as Garamur P.S. Case No. 11/2018 under Section 366-A 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 as well as 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 Hemen Das @ Titou u/S. 366 of IPC vide Charge-sheet No. 06/2018 dated 29-03-2018.

- **2).** The learned Sub-Divisional Judicial Magistrate, Majuli, 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, **06** [six] numbers of witnesses including the victim, her 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 the house of her father. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Bhumidhar Hazarika, 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 08/03/2018, 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 prior to the date of incident she got acquaintance with the accused as the later constructed a pandal near her house. In the month of February/March, her family members came to know about her relationship and did not allow her to contact the accused over phone. It is stated by the victim that one day while she was having conversation with the accused over mobile phone her elder sister witnessed her and thereafter she was restrained and abused not to do so in near future. On 05/03/2018, she sent message to the accused for taking her. Further version of the victim is that on 08/03/2018, when her examination was over, on that day, she met the accused behind her school and the later took her in his motorcycle towards his house. She accompanied the accused towards Mariani where both of them stayed for about two days as husband and wife. She came to know from her elder sister on the next day that her father had not lodged any

case against you. Later on, she came to know that a case has been registered against the accused. Further version of the victim is that on the next day both of them surrendered before police at Mariani P.S. She was produced before the Magistrate who recorded statement vide Exhibit-1 wherein Exhibit-1 [1] to Exhibit-1 [3] are her signatures. It is further version of the victim that she was produced before a doctor by police for medico-legal examination.

During cross-examination, she admitted that she called the accused to take her with him after her examination was over and that accused did not force her to accompany him and she voluntarily went with the accused.

**9). PW-2** is **Smt. Junu Hazarika** who is the mother of victim girl. It is stated by this witness that on the relevant day her minor daughter [PW-1] went to appear for her examination but she did not return back home. She came to know from one girl that the accused took the victim. Thereafter, she searched for the victim but she was found untraceable. Her husband lodged ejahar before police. Police recovered her victim daughter after five days of incident.

This witness denied in her cross-examination by defence side that she did not state before police that one girl called her elder daughter and informed her that victim had gone with the accused. It is admitted by this witness that the date of birth of victim is 12/02/2003.

10). Sri Thogeswar Hazarika [PW-3] is father of victim-cuminformant of the case. This witness during his deposition deposed in the same tune as that of his ejahar. He exhibited his ejahar vide Exhibit-2 wherein Exhibit-2 [1] is his signature. Police recovered his daughter after five days of lodging of the ejahar by him. His minor daughter was recovered from the possession of accused. It is further version of this witness that when he asked about the incident to his minor daughter, to his query, his daughter divulged that she voluntarily went with the accused.

This witness during cross-examination by defence side denied to have stated before police that one girl from their village told them that accused took the victim alongwith him.

11). Evidence of **Smt. Gayatri Senapati [PW-4]** who is the Medical Officer of the instant case is to the effect that on 13/03/2018 she was posted as Deputy Superintendent of Kamalabari CSC. On that day as per police requisition she examined the victim [PW-1] and opined that victim was aged 18-19 years at the time of examination. She exhibited her report vide Exhibit-3 wherein Exhibit-3 [1] is her relevant signature.

Defence side did not cross-examine this witness.

12). The evidence of **Smt. Shapna Hazarika** [**PW-5**] who is the elder sister of victim [PW-1] is to the effect that on the date of incident her younger sister went towards school for her HSLC examination but she did not return back home. She then telephoned the friend of victim who disclosed before her that she witnessed the victim in the school but she did not return back with them. After sometime another friend of victim telephoned this witness and disclosed that she witnessed the victim going alongwith the accused but she could not tell the details. Then she informed the matter to her parent. Her father lodged ejahar before police regarding the incident.

This witness was cross-examined by defence side and during cross-examination she denied to have stated before police that one of the friend of her sister told her over telephone that the victim went with a boy from Jorhat. This witness admitted that after recovery the victim [PW-1] divulged before her that she voluntarily accompanied the accused on the date of incident.

- **13). Sri Nilutpal Doley [PW-6]** who is the investigating officer of the instant case depose about the routine steps taken by him during investigation of the case. On completion of investigation he submitted charge-sheet against the accused vide Exhibit-4 wherein Exhibit-4 [1] is his signature.
- **14).** 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.

- **15).** The accused during his statement under Section 313 Cr.P.C. stated that victim came to him voluntarily and at present she is staying at her parental home.
- **16).** 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-4], the doctor has opined the age of victim to be above eighteen years and below twenty years at the time of incident.
- 17). The parent of victim namely Smt. Junu Hazarika [PW-2] and Sri Thogeswar Hazarika [PW-3] alongwith the elder sister namely Smt. Shapna Hazarika [PW-5] during their cross-examination categorically stated that when they asked the victim about the incident, to their query, the victim divulged before them that on the date of incident she voluntarily accompanied the accused. The accused during his statement under Section 313 of Cr.P.C. also revealed the same fact.
- **18).** 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] alongwith the elder sister [PW-6] divulged that on the date of incident their daughter as well as younger sister went on missing from the way back home from school. Later on, all of them came to know that the accused had taken away the victim to his house where both of them are staying as husband and wife.

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 02 days. She did not specifically depose that accused induced her to leave the house of her parent.

Does not scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Hemen Das @ Titou 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 evidence. 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] and her elder sister [PW-6] have categorically stated on the date of incident the victim voluntarily accompanied the accused.

Prosecution has not been able to make out a case against the accused Sri Hemen Das @ Titou 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.

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 **January 2019**.

**Special Judge, Jorhat** 

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# **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Victim girl.
PW-2	Smt. Junu Hazarika, mother of victim of the case.
PW-3	Sri Thogeswar Hazarika, father of victim-cum- informant of the case.
PW-4	Dr. Gayatri Senapati who examined the victim.
PW-5	Smt. Shapna Hazarika, elder sister of victim.
PW-6	Sri Nilutpal Doley, 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	Medico-legal report of victim
Exhibit-4	Charge-sheet

# MATERIAL EXHIBIT NO-1: Photocopy of birth certificate of victim

**DEFENCE WITNESSES:- NONE** 

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)