## **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. 30 OF 2018 (G.R. Case No. 46 of 2018) Jengraimukh P.S. Case No. 13 of 2018

## **Transmitting Magistrate:-**

Sri Lakhi Nandan Pegu, Sub-Divisional Judicial Magistrate [M], Majuli, Jorhat

State of Assam

-Versus-

Sri Firoj Pegu, Son of Sri Sankarlal Pegu, Resident of Namoni Cherapai, P.S. Jengraimukh, District-Jorhat.

.... Accused

# **APPEARANCES**:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Sri Bambeswar Barua, Learned Advocate, Jorhat

# CHARGE FRAMED UNDER SECTION 376 [2] [i] OF INDIAN PENAL CODE READ WITH SECTIONS 4/8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

**Date of Charge** : 12-06-2018

Date of prosecution evidence: 04-07-2018; 27-09-2018; 17-12-2018;

& 26-12-2018

Statement of Accused

Recorded on : 03-01-2019
Date of Argument : 11-01-2019

Date of Judgment : 18-01-2019

#### <u>JUDGMENT</u>

1). The prosecution story, in brief, is that Jengraimukh P.S. Case No. 13/2018 under Section 376 [2] [i] of IPC read with Section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Sri Bolin Pegu, elder brother of the victim [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 21/04/2018 **[Exhibit-2]** the informant Sri Bolin Pegu [PW-3] who is the elder brother of the victim [PW-2] alleged, *inter-alia*, that on 19/04/2018 while his younger sister came out of the house towards the shop located at Namoni Cherapai village under Jengraimukh P.S., the accused Firoj Pegu committed rape upon his younger sister. It is further alleged by the informant that prior to the date of incident the accused committed rape upon his younger sister.

On receipt of the ejahar by the then Officer-in- charge, Jengraimukh P.S. the same was registered vide Jengraimukh P.S. Case No. 13/2018 under Section 376 [2] [i] of IPC as well as under Section 4 of the Protection of Children From Sexual Offences Act, 2012.

During the course of investigation, the statement of the victim girl was recorded by the I.O. of the case. The victim's 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 Firoj Pegu u/S. 376 [2] [i] of IPC as well as under Section 4 of the Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 14/2018 dated 30-04-2018.

- **2).** The learned Sub-Divisional Judicial Magistrate [M], Majuli, 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 and on finding ground for presuming that the accused has committed offences under Section 376 [2] [i] of IPC read with Sections 4/8

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, **10 [ten]** numbers of witnesses including the victim girl, her elder brother-cum-informant, Sub-Divisional Judicial Magistrate [M], Majuli, doctor and the I.O. 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 has been falsely implicated in the case. The accused pleaded innocence.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Bambeswar Barua, learned Counsel for the accused who is facing trial for commission of offence u/S. 376 [e] [i] of IPC read with Sections 4/8 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 or about 19/04/2018 the accused committed rape upon the minor sister of the informant Sri Balin Pegu while she went to fetch some articles from a nearby shop, and thereby committed an offence punishable under Section 376 [2] [i] of IPC?
  - 2) Whether on the date of occurrence the accused named above committed penetrative sexual assault upon the victim boy and thereby committed an offence punishable under Sections 4/8 of The Protection of Children From Sexual Offences Act, 2012?

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

**7).** To decide the above points against accused in this case, let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

**8). Smt. Gayatri Senapati [PW-1]** who was Deputy Superintendent of CSC, Majuli, on 23/04/2018 examined the victim on police requisition and opined that no semen was seen; no any injury mark on the private part of victim and the age of victim as per radiological report is between 10 to 11 years. She exhibited her report as Exhibit-1 and her signature thereon vide Exhibit-1 [1].

The doctor during cross-examination stated that she did not find any injury on the person of victim and further that she has not submitted any report whether hymen was ruptured or not.

9). In the instant case the **victim** has deposed her evidence as **PW-2**. In her testimony, she divulged that on the date of incident she went to cut wood at about 7.00 A.M. with two other persons namely Sri Jaanmoni Pegu and Smt. Deepsikha Pegu. She went to different places to cut wood. At that time the accused arrived at the said place and grabbed her from back side and gagged her mouth with cloth and tried to commit rape upon her. She then called her companions and when they came the later fled away from the place of occurrence. It is further version of the victim that she returned back home and narrated the incident before her elder sister Smt. Manisha Pegu. Then her elder brother lodged ejahar before police against the accused. 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. Further version of this witness is to the effect that she put her thumb impression in the aforesaid statement recorded by the learned Magistrate.

During cross-examination, she flatly denied defence suggestions that she did not state before police that accused tried to commit bad work with her but he did not succeed.

**10). Sri Bolin Pegu [PW-3]** is the elder brother of victim-cuminformant of the case. During his testimony, he deposed that on 19/04/2018 the incident took place. On the date of incident he was present inside the house. At that time the accused entered into the house under influence of liquor. At that time the victim went to relieve herself and the later teased her. Thereafter, he

lodged ejahar before police as narrated by his younger sister [PW-2]. This witness exhibited the ejahar vide Exhibit-2 wherein Exhibit-2 [1] is his signature.

This witness during cross-examination divulged that he has not explained the cause of delay in lodging the ejahar before police. The instant case was lodged by him for the conduct of the accused who came to his house under influence of liquor. He confirmed that accused did not touch his younger sister though the later used slang language but the accused did not cause any harm to them.

**11). Smt. Julie Pegu [PW-4]** who is the related sister of victim testified during her evidence that on the date of incident she was speaking to someone on her mobile phone at her courtyard. At that time the sister-in-law of victim was calling the victim but the later replied lately. She noticed the accused alongwith the victim near the bamboo fencing of the house of victim. Seeing her, the later fled away from the place of occurrence. This witness further stated that it was about 7.00 P.M. She witnessed the accused as well as victim in indecent situation but on that day the victim did not state her anything.

This witness during cross-examination from defence side stated that at the time of incident it was dark but she noticed the accused while fleeing away from the place of incident. She denied defence suggestion that she did not state before police that she witnessed the accused in the light while he was fleeing away from the house of victim and that while she was speaking on her phone at that time the sister-in-law of the victim was calling her.

**12). Miss Dipanjali Pegu [PW-5]** during her evidence stated that on the date of incident she went with the victim towards the field where the victim stated before her that the accused dragged her towards the backside of her residence.

This witness was declared <u>hostile</u> by **prosecution** and during crossexamination by prosecution side, this witness denied to have stated before police that "on the next day of incident when victim went with her to the field she told her that on the previous night the accused entered into their house campus and dragged her to the back side of the house and took her near a tree where he opened her pants and did bad work with her".

During cross-examination by defence side, this witness stated that she did not state anything before police as told by the prosecution side today before her.

**13). Smt. Monalisha Pegu [PW-6]** who is the cousin sister of victim stated that on the date of incident at about 7.30 P.M. she called the victim for three times but she replied at the last call of her. It is further version of this witness that Miss Julie Pegu [PW-5] divulged before her that she had witnessed the victim and the accused in indecent situation. Further, she divulged that victim did not tell her anything at night but she kept on weeping.

This witness during cross-examination by defence side denied to have stated before police that accused did bad work with the victim. She clarified that victim did not tell her anything about the incident.

**14). Sri Amiya Pegu [PW-7]** deposed that on the date of incident he heard hue and cry in the house of victim. He did not ask anything to the victim regarding the incident.

This witness was declared <u>hostile</u> by prosecution side and during cross-examination this witness denied to have stated before police that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

During cross-examination by defence side, this witness stated that he did not meet the victim and she did not tell before him anything about the incident.

**15).** The evidence of **Sri Riten Pegu [PW-8]** is to the effect that on the next day of incident he went towards the house of victim. Police did not record his statement in connection with the case.

This witness was also declared <u>hostile</u> by **prosecution** and during cross-examination by prosecution side, he denied to have stated before police that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

During cross-examination by defence side, this witness stated that he did not meet the victim and she did not tell before him anything about the incident.

16). Sri Hema Kanta Nath, I.O. of the case [PW-9] deposed about the routine steps taken by him during investigation of the case. He visited the place of occurrence and drew Sketch Map of the site of occurrence with index vide Exhibit-3 wherein Exhibit-3 [1] is his signature. He also recorded statement of witnesses who were acquainted with the fact & circumstance of the case. Further, the I.O. stated that Officer-in-charge, Jengraimukh P.S. submitted charge-sheet against the accused vide Exhibit-4 wherein Exhibit-4 [1] is the signature of Smt. Indreswari Pegu, the then Officer-in-charge, Jengraimukh P.S. which he knows.

The I.O. confirmed that witness **Sri Amiya Pegu [PW-7]** during his statement under Section 161 Cr.P.C. stated before him that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

Witness **Sri Riten Pegu [PW-8]** during his statement under Section 161 Cr.P.C. disclosed before him that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

The I.O. during cross-examination by defence side stated that ejahar was lodged on 21/04/2018 whereas the incident took place on

19/04/2018 but there is no explanation as to delay in lodging the ejahar before police by the informant. He also confirmed that the informant [PW-3] did not state before him about the reason of delay in lodging the ejahar before police. It is further stated by the I.O. that victim was sent for medico legal examination on 21/04/2018 but she was examined by the doctor on 23/04/2018. He confirmed that he did not seize the wearing apparel of the victim and he did not record the statement of the shop owner where the victim went before the incident.

**17). Sri Lakhi Nandan Pegu, Sub-Divisional Judicial Magistrate [M], Majuli [PW-10]** stated that on 23/04/2018 he examined the victim on police requisition vide Exhbit-5 wherein Exhibit-5 [1] is his signature as Recording Officer. The victim gave voluntary statement before him who was accompanied by WPC 861 Smt. Binapani Kachari.

This witness during cross-examination stated that he has not given any certificate at the time of recording statement of the victim under Section 164 Cr.P.C. He admitted that he did not ask the victim whether she has been tutored by someone else to give her statement under Section 164 Cr.P.C.

18). From a close perusal of the evidence on record it is seen that the victim [PW-2] knew the accused from before as the later was her neighbour. On the date of incident she went to cut wood at about 7.00 A.M. with two other persons namely Sri Jaanmoni Pegu and Smt. Deepsikha Pegu. She went to different places to cut wood. At that time the accused arrived at the said place and grabbed her from back side and gagged her mouth with cloth and tried to commit rape upon her. She then called her companions and when they came the later fled away from the place of occurrence. It is further version of the victim that she returned back home and narrated the incident before her elder sister Smt. Manisha Pegu. Then her elder brother lodged ejahar before police against the accused. 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. Further version of this witness is to the effect that she put her thumb impression in the aforesaid statement recorded by the learned Magistrate.

During cross-examination, she flatly denied defence suggestions that she did not state before police that accused tried to commit bad work with her but he did not succeed.

19). From the evidence of the elder brother-cum-informant of the case Sri Bolin Pegu [PW-3], it is seen that on 19/04/2018 the incident took place. On the date of incident he was present inside the house. At that time the accused entered into the house under influence of liquor. At that time the victim went to relieve herself and the later teased her. Thereafter, he lodged ejahar before police as narrated by his younger sister [PW-2]. This witness exhibited the ejahar vide Exhibit-2 wherein Exhibit-2 [1] is his signature.

This witness during cross-examination divulged that he has not explained the cause of delay in lodging the ejahar before police. The instant case was lodged by him for the conduct of the accused who came to his house under influence of liquor. He confirmed that accused did not touch his younger sister though the later used slang language but the accused did not cause any harm to them. Thus, PW-2 has demolished the case of prosecution and has contradicted the victim.

20). The evidence of **Smt. Julie Pegu [PW-4]** who is the related sister of victim goes to show that on the date of incident she was speaking to someone on her mobile phone at her courtyard. At that time the sister-in-law of victim was calling the victim but the later replied lately. She noticed the accused alongwith the victim near the bamboo fencing of the house of victim. Seeing her, the later fled away from the place of occurrence. This witness further stated that it was about 7.00 P.M. She witnessed the accused as well as victim in indecent situation but on that day the victim did not state her anything.

This witness during cross-examination from defence side stated that at the time of incident it was dark but she noticed the accused while fleeing away from the place of incident. She denied defence suggestion that she did not state before police that she witnessed the accused in the light while he was fleeing away from the house of victim and that while she was speaking on her phone at that time the sister-in-law of the victim was calling her.

**21).** From the evidence of Miss Dipanjali Pegu [PW-5] it is seen that this witness during her evidence stated that on the date of incident she went with the victim towards the field where the victim stated before her that the accused dragged her towards the backside of her residence.

This witness was declared <u>hostile</u> by prosecution and during crossexamination by prosecution side, this witness denied to have stated before police that "on the next day of incident when victim went with her to the field she told her that on the previous night the accused entered into their house campus and dragged her to the back side of the house and took her near a tree where he opened her pants and did bad work with her".

During cross-examination by defence side, this witness stated that she did not state anything before police as told by the prosecution today before her.

22). Smt. Monalisha Pegu [PW-6] who is the cousin sister of victim stated that on the date of incident at about 7.30 P.M. she called the victim for three times but she replied at the last call of her. It is further version of this witness that Miss Julie Pegu [PW-5] divulged before her that she had witnessed the victim and the accused in indecent situation. Further, she divulged that victim did not tell her anything at night but she kept on weeping.

This witness during cross-examination by defence side denied to have stated before police that accused did bad work with the victim. She clarified that victim did not tell her anything about the incident.

**23).** Sri Amiya Pegu [PW-7] deposed that on the date of incident he heard hue and cry in the house of victim. He did not ask anything to the victim regarding the incident.

This witness was declared <u>hostile</u> by prosecution side and during cross-examination this witness denied to have stated before police that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

During cross-examination by defence side, this witness stated that he did not meet the victim and she did not tell before him anything about the incident.

**24).** The evidence of **Sri Riten Pegu [PW-8]** is to the effect that on the next day of incident he went towards the house of victim. Police did not record his statement in connection with the case.

This witness was also declared <u>hostile</u> by prosecution and during cross-examination by prosecution side, he denied to have stated before police that "he heard from the father of victim that her daughter [PW-2] who is ten years of age on 18/04/2018 at about 9.00 P.M. while she was returning from the shop the accused grabbed her and took her to his house and did bad work with her".

During cross-examination by defence side, this witness stated that he did not meet the victim and she did not tell before him anything about the incident.

- 25). The I.O. [PW-9] during his cross-examination stated that ejahar was lodged on 21/04/2018 whereas the incident took place on 19/04/2018 but there is no explanation as to delay in lodging the ejahar before police by the informant. He also confirmed that the informant [PW-3] did not state before him about the reason of delay in lodging the ejahar before police. This fact also gets full corroboration from the evidence of the informant [PW-3]. It is further stated by the I.O. that victim was sent for medico legal examination on 21/04/2018 but she was examined by the doctor on 23/04/2018. He confirmed that he did not seize the wearing apparel of the victim and he did not record the statement of the shop owner where the victim went before the incident.
- **26).** The evidence of Sub-Divisional Judicial Magistrate [M], Majuli, Jorhat [PW-10] clearly establishes the fact that he has not given any certificate at the time of recording statement of the victim under Section 164 Cr.P.C. He admitted that he did not ask the victim whether she has been tutored by someone else to give her statement under Section 164 Cr.P.C

**27).** It is a well settled law that the conviction on the sole evidence of a child witness is permissible, if such witness is found competent to testify and the court, after careful scrutiny of its evidence.

In the present case, the victim [PW-2] has not been found consistent on the material particulars with regard to the incident. Furthermore, the prosecution side did not examine the shopkeeper where the victim went prior to the incident. Flip-flop evidence has been tendered by the victim [PW-2] which gets no support from the evidence of informant [PW-3] and independent witnesses of the case, as mentioned hereinabove.

28). Thus, on appreciation of the evidence on record as well as other facts and circumstances of the case together, it is found that no full proof case has been made out against accused Sri Firoj Pegu to warrant his conviction under Section 376 [2] [i] IPC as well as under Sections 4/8 of The Protection of Children From Sexual Offences Act, 2012. Prosecution has not been able to make out a case against the accused Sri Firoj Pegu 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.

**29).** Given under my hand and seal of this Court on this **18th** day of **January 2019**.

Special Judge, Jorhat

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# **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Dr. Gayatri Senapati who examined the victim.
PW-2	Victim.
PW-3	Sri Bolin Pegu, elder brother of victim-cum-
	informant of the case.
PW-4	Smt. Julie Pegu, teacher.
PW-5	Miss Dipanjali Pegu, cultivator.
PW-6	Smt. Monalisha Pegu, cultivator.
PW-7	Sri Amiya Pegu, cultivator.
PW-8	Sri Riten Pegu, cultivator.
PW-9	Sri Hema Kanta Nath, I.O. of the case.
PW-10	Sri Lakhi Nandan Pegu, S.D.J.M. [M], Majuli who
	recorded statement of the victim [PW-2]

# **COURT WITNESS:- NIL**

# **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Medico-legal report of victim
Exhibit-2	Ejahar
Exhibit-3	Sketch Map of the place of occurrence with index
Exhibit-4	Charge-sheet

**MATERIAL EXHIBIT NO-1:- NIL** 

**DEFENCE WITNESSES:- NIL** 

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)