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. 72 OF 2017 (G.R. Case No. 404 of 2017) Mariani P.S. Case No. 168 of 2017

Transmitting Magistrate:-

Sri C. Barua, The then In-charge Sub-Divisional Judicial Magistrate, Titabar Sub-Division, Jorhat District

State of Assam

-Versus-

Sri Suresh Karmakar, Son of Sri Biren Karmakar, Resident of Mashkhuwa Misti Gaon, P.S. Mariani, District-Jorhat.

.... Accused

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Sri Siddhartha Bora, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTIONS 354-A/341 OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 22-11-2017

Date of prosecution evidence: 03-01-2018; 17-01-2018; 07-02-2018;

22-02-2018; 08-03-2018; 11-06-2018

& 21-07-2018

Statement of Accused

Recorded on : 13-08-2018

Date of Argument : 03-10-2018

Date of Judgment : 12-10-2018

JUDGMENT

1). The prosecution story, in brief, is that **Mariani P.S. Case No. 168/2017 under Sections 341/354/427 of IPC** was registered on the basis of a F.I.R. lodged by Sri Saru Ghatowar, father of the victim girls [hereinafter referred to as 'X' and 'Y'].

In the aforesaid **F.I.R.** dated 31/07/2017 **[Exhibit-3],** the informant Sri Saru Ghatowar [PW-4] who is the father of the victim girls namely [X] and [Y] alleged, *inter-alia*, that on 30/07/2017 at about 6.00 P.M. his two minor victim daughters went to the shop located in their village named Machkhuwa Misti Gaon under Mariani P.S. It is further stated by the informant that when his two daughters were returning back home from the shop, on the way, the accused Suresh Karmakar met his two daughters, intercepted them on the road and thereafter put his hands over their respective bodies. It is further alleged by the informant that the accused also tried to outrage the modesty of his two minor daughters, for which, they cried for help, and in that event, the accused fled away from the said place.

On receipt of the aforesaid F.I.R. by the then In-charge, Deberapar O.P. under Mariani P.S., the same was entered in General Diary Register vide No. 672 dated 31/07/2017. The ejahar was sent to Mariani P.S. for registration of a case under proper section of law. The Officer-in-charge, Mariani P.S., upon receipt of the ejahar, registered the same vide **Mariani P.S. Case No. 168/2017 under Sections 341/354/427 of IPC**. S.I. of police Sri Deba Jyoti Phukan was entrusted with the charge of investigation by the Officer-in-charge, Mariani P.S.

During the course of investigation, the victim girls were medically examined by the doctor, their respective statements 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 Suresh Karmakar u/Ss. 341/354/427 of IPC as well as under Section 8 of The Protection of Children from Sexual Offences Act, 2012 vide Charge-sheet No. 132/2017 dated 30/09/2017.

- **2).** The then learned In-charge Sub-Divisional Judicial Magistrate, Titabar Sub-Division, District-Jorhat, transmitted the case to this court for trial as it was covered under POCSO Act. Accordingly, on production of accused, copy was furnished to him.
- 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, charges were framed against the accused under Sections 354-A/341 of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012, which 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, **10 [ten]** numbers of witnesses including the victims, her father-cum-informant of the case, the Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge u/S. 354-A/341 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 somebody has tutored the victims to lodge false case against him with the help of their father. The accused has further stated that he has been falsely implicated in the case. The accused pleaded innocence. The accused did not adduce defence evidence on his behalf.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Siddhartha Bora, learned Defence Counsel for the accused who is facing trial for commission of offence u/Ss. 341/354-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 30/07/2017 at about 6.00 P.M. when the minor daughters of the informant were proceeding towards a shop located in their village, the accused wrongfuly restrained them

- on the road located at Machkowa Misti Gaon under Mariani P.S. and thereby committed an offence punishable under Section 341 of IPC?
- 2) Whether the accused persons on the same day, time and place after wrongfully restraining the minor daughters of the informant, grabbed both the victims on the road and thereafter tore their cloths or used criminal force intending to outrage her modesty and thereby committed an offence punishable under Section 354-A of IPC?
- 3) Whether on the date of occurrence the accused named above committed sexual assault upon the victim girl 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).** First of all, let me see what are the relevant provisions of law with reference to the charged sections against accused.
- Section-354 [A] Sexual harassment and punishment for sexual harassment —
- [1] A man committing any of the following acts -
 - Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. A demand or request for sexual favours; or
- iii. Showing pornography against the will of a woman; or
- iv. Making sexual coloured remarks, shall be guilty of the offence of sexual harassment.
- [2]. Any man who commits the offence specified in clause (i) or clause
- (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

[3]. Any man who commits the offence specified in clause (iv) of subsection (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 341 – Punishment for wrongful restraint – Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Section-8 — Whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

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

PW-1 [X] is one of the victim girl, who during her deposition in Court stated that on the date of incident she went to the shop located in their village alongwith her elder sister [Y] at around 5.00 P.M. She noticed the accused standing in the shop. When they returned from the shop the accused was hiding behind a tree. She called the accused but, the later, did not reply to her and instead caught her from backside. Further version of the victim is to the effect that the accused also touched her breast. It is further version of the victim that she resisted the accused and in the process the accused tore her frock. Thereafter, the accused caught her elder sister [Y]. However, the accused fled away from the scene after hearing sound of two women who were coming from back side. Both of them returned back home and narrated the incident before the two women who told the same before her father. Further version of the victim is that she also narrated the incident before her father who, in turn, told the VDP Secretary and also before police. Police sent her before a doctor for medico legal check-up and thereafter she was produced before the Magistrate who recorded

her statement vide Exhibit-1 wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures.

During cross-examination, she denied defence suggestion that she did not state before police as well as learned Magistrate that at the time of incident two women were coming from back side and that she raised hue and cry at the time of incident. She confirmed that she narrated the incident before the VDP Secretary also.

9). [PW-2] is the another victim girl **[Y]** who is elder sister of victim [X]. This witness during her testimony divulged alike as that of her younger sister [PW-1]. This witness further stated that she raised hue and cry. Thereafter, accused also touched her breast and tore her cloths from back side. She gave statement before the learned Magistrate vide Exhibit-2 wherein Exhibit-2 [1] is her signature.

During cross-examination, she denied defence suggestion that she did not state before police that she noticed the accused in the shop before the incident; that accused went ahead of them and was hiding behind a tree and caught both of them and that two women were coming from back side. The victim further stated that initially she could not recognize the accused but when the later came in front of them then only she could recognize the accused.

The evidence of **Smt. Malati Ghatowar [PW-3]** who is the mother of the victims [X & Y] divulged during her testimony that on the date of incident she was present inside the house. Both her daughters including the victim [PW-1] went to the shop located in their village. On their return back home from the shop they arrived at the house in weeping condition alongwith two other women. On being asked, her two daughters divulged before her that the accused caught both of them and touched their breasts. Both her two minor daughters also informed her that the accused also tore off their cloth. She then informed the matter before her husband who, in turn, stated the facts before the VDP Secretary. It is her further version that police seized the wearing apparels of her daughters together with the school certificates of the victims where she put her signature.

During cross-examination, this witness stated that she did not witness the incident but came to know about the same through the mouth of her daughters as well as two women who were coming back side at the time of incident. She denied defence suggestion that she did not state before police that accused touched the breast of her minor daughters [X and Y].

11). Sri Saru Ghatowar [PW-4] who is the father of victim-cuminformant of the case deposed in the same tune as that of his wife [PW-3]. It is further stated by him that both his two minor daughters divulged that the accused was waiting on the road by which they were returning back home. Thereafter, the accused caught the younger daughter of the informant and tore her cloths. In that event, the accused also caught his elder daughter. Further version of this witness is that at that time two women were coming behind his daughters and hearing their sound the accused fled away from the spot. After receipt of information he reported the matter before the VDP Secretary and thereafter lodged ejahar before police regarding the incident against the accused vide Exhibit-3 wherein Exhibit-3 [1] is his signature. This witness further stated that police seized the wearing apparels of Matu Ghatowar and victim vide seizure-list [Exhibit-4 & 5] wherein he put his signatures vide Exhibit-4 [1] and Exhibit-5 [1].

This witness during cross-examination stated that he did not read over the contents of the ejahar. He admitted that police did not interrogate him in connection with the case but police seized the articles on the next day of incident. It is categorically stated by this witness that he has mentioned in the ejahar about the two women who were present at the time of incident.

12). Smt. Bhadori Nayak [PW-5] during her evidence stated that on the date of incident she met the accused and asked him why there was hue and cry. She also witnessed both the victims alongwith the accused who were weeping at that time. Thereafter, she asked both the victims why they were weeping.

This witness was declared **hostile** by **prosecution** and during cross-examination by prosecution side she denied to have stated before police

that "at the time of incident it was dark; that she found people assembled near a tree and she found that both the victims were crying and when she asked them as to what had happened they told her that accused caught both of them from the back side and torn their cloth and that after sometime the parent of victim came and she left the place".

This witness during cross-examination by defence side stated that she did not witness the incident but denied that she did not state before police that on the date of incident she was coming from her mother's house.

13). PW-6 is **Smt. Pushpa Tanti** who during her evidence stated that on the date of incident she went with her elder sister to see her mother. She was coming with Bhadori Nayak [PW-5]. On the way, she witnessed the accused and cries of victims near the place of occurrence. She found both the victims in weeping condition and asked them as to why they were crying. In turn, both the victims divulged before her that the accused had touched their bodies in a bad manner.

Defence side cross-examined this witness. During cross-examination, she stated that she did not witness the incident and cannot say who caught the victims.

14). Smt. Niva Neog [PW-7] is hearsay witness. This witness divulged during her testimony that on the next day she came to know that accused pulled victim on the previous night.

During cross-examination, she denied defence suggestion that she did not state before police that she heard the incident from the VDP personnel.

15). The evidence of **Sri Suresh Murari** [**PW-8**] is to the effect that he was present when police seized the school certificates of victim on being produced by their father which was seized by police vide seizure-list [Exhibit-6] wherein Exhibit-6 [1] is his signature.

This witness during cross-examination by defence side denied to have stated before police that at the time of incident he was present at Boisahabi T.E.

16). Dr. Amrita Nath [PW-9] stated that on 02/08/2017 she examined the victim [PW-1 & PW-2] on police requisition. On examination on the bodies of victims, she did not notice any injuries and recent sexual intercourse over their person and both the victims were not pregnant at the time of their examination. The doctor further stated that the age of victim [X] is above 14 years and below 16 years and the age of victim [Y] is above 20 years. She exhibited the medico legal reports of victims vide Exhibit-7 & 8 wherein Exhibit-7 [1] to Exhibit-7 [3] and Exhibit-8 [1] to Exhibit-8 [3] are her signatures.

This witness stated during cross-examination that no family members accompanied the victims at the time of examination.

17). Sri Deba Jyoti Phukan [PW-10] is the investigating officer of the case who deposed about the routine steps taken by him after entrustment of the case to him by the then Officer-in-charge, Mariani P.S. He exhibited the ejahar lodged by the informant as Exhibit-3 wherein Exhibit-3 [1] is his signature. He also exhibited the signature of the then Officer-in-charge, Mariani P.S. vide Exhibit-3 [2]. It is further version of the I.O. that he seized the wearing apparel of the victims [X & Y] vide seizure-lists [Exhibit-4 and Exhibit-5] wherein Exhibit-4 [2] and Exhibit-5 [2] are his signatures. He also visited the place of occurrence and drew Sketch Map of the place of occurrence with index vide Exhibit-9 wherein Exhibit-9 [1] is his signature. He also arrested the accused in connection with the case. It is further version of the I.O. that he also seized the school certificates of the victims from their father vide seizure-list [Exhibit-6] wherein Exhibit-6 [2] is his signature. On completion of investigation he submitted charge-sheet against the accused vide Exhibit-10 wherein Exhibit-10 [1] is his signature.

The I.O. stated that witness **Smt. Bhadori Nayak** [**PW-5**] during her statement under Section 161 Cr.P.C. divulged before him that "at the time of incident it was dark; that she found people assembled near a tree

and she found that both the victims were crying and when she asked them as to what had happened they told her that accused caught both of them from the back side and torn their cloth and that after sometime the parent of victim came and she left the place".

During cross-examination by defence side the I.O. stated that witness Smt. Bhadori Nayak [PW-5] stated before him that it was dark at the time of incident. He confirmed that he seized the wearing apparels of the victims on being produced by them but did not seize the torn cloth of the victims from the place of incident.

The I.O. confirmed that witness 'Y' [PW-2] during her statement under Section 161 Cr.P.C. did not state before him that she noticed the accused in front of a shop; that two women were coming from back side and that accused was hiding behind a tree but she stated that accused came out behind a tree.

'X' [PW-1] during her statement under Section 161 Cr.P.C. did not state before him that at the time of incident two women were coming from the back side.

The I.O. further confirmed that witness Smt. Malati Ghatowar [PW-3] who is mother of the victims did not state before him that accused touched the breast of her daughters.

The I.O. denied all the defence suggestions put to him during cross-examination by defence side.

- **18).** The accused during his examination under Section 313 Cr.P.C. stated that somebody had tutored the victims to depose falsely against him and further that informant of the case had lodged false case against him.
- **19).** From a close perusal of the evidence on record it is seen that the victims [PW-1 & PW-2] are the star witnesses of the instant case.

PW-1 during her testimony stated that on the date of incident she went to the shop located in their village alongwith her elder sister [Y] at around 5.00 P.M. She noticed the accused standing in the shop. When they returned from the shop the accused was hiding behind a tree. She called the accused but

the later did not reply to her and instead caught her from backside. Further version of the victim is to the effect that the accused also touched her breast. It is further version of the victim that she resisted the accused and in the process the accused tore her frock. Thereafter, the accused caught her elder sister [Y]. However, the accused fled away from the scene after hearing sound of two women who were coming from back side. Both of them returned back home and narrated the incident before the two women who told the same before her father. Further version of the victim is that she also narrated the incident before her father who, in turn, told the VDP Secretary and also before police. Police sent her before a doctor for medico legal check-up and thereafter she was produced before the Magistrate who recorded her statement vide Exhibit-1 wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures.

During cross-examination, she denied defence suggestion that she did not state before police as well as learned Magistrate that at the time of incident two women were coming from back side and that she raised hue and cry at the time of incident. She confirmed that she narrated the incident before the VDP Secretary also.

20). The evidence of another victim [PW-2] who is the elder sister of victim [PW-1] divulged alike as that of her younger sister [PW-1]. This witness further stated that she raised hue and cry. Thereafter, accused also touched her breast and tore her cloths from back side. She gave statement before the learned Magistrate vide Exhibit-2 wherein Exhibit-2 [1] is her signature.

During cross-examination, she denied defence suggestion that she did not state before police that she noticed the accused in the shop before the incident; that accused went ahead of them and was hiding behind a tree and caught both of them and that two women were coming from back side. The victim further stated that initially she could not recognize the accused but when the later came in front of them then only she could recognize the accused.

21). During statement made before the learned Magistrate on 31/07/2017 the victim [X] divulged the same fact which gets full corroboration from her elder

sister [Y] who gave also similar statement before the learned Magistrate under Section 164 Cr.P.C. on the same day, i.e., on 31/07/2017.

- **22).** Learned counsel for the accused has argued that the parent of the victim had enmity with the accused and hence they lodged false case against him. It is further contended that the victims had been tutored by her parents to depose against the accused. It is also submitted that the parent of the victim were reported witnesses and the evidence of mother of the victim [PW-3] varies with the evidence recorded by the I.O. during 161 Cr.P.C. statement. However, I am unable to find any materials on record which goes to say that false case has been lodged against the accused by the father of victims.
- 23). It was argued on behalf of the accused that he has been falsely implicated in the instant case by the parent of the victim due to previous enmity and the victims had been tutored by someone else to depose falsely against him. But, as said earlier, defence side could not show any incident to establish the previous enmity.
- 24). The accused during his statement under Section 313 Cr.P.C. remained silent as to the version of the victims [PW-1 & PW-2]. He further disclosed that he had been falsely implicated in the instant case by the informant. Further, the victims were tutored by someone else to depose against him. All the mitigating circumstances were put to him [accused] but he could not explain the circumstances but remained mum. False explanation or no explanation by the accused, provides the missing link, if any, in the prosecution case. [Relied on State of Maharashtra-versus-Suresh, reported in (2000) 1 SCC 471 (Para No-27)]
- **25).** In view of the above discussion, I am of the considered view that prosecution has considerably been able to prove the case against accused Sri Suresh Karmakar under Sections 341/354-A of IPC. Hence the accused is convicted there under.

However, on scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Suresh Karmakar to warrant his conviction under Section 8 of The Protection of Children From Sexual Offences Act, 2012, as one of the victim [PW-2] was aged more than 18 years at the time of incident. Prosecution has not been able to make out a case against the accused Sri Suresh Karmakar under the aforesaid section 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. Moreover, prosecution side could not establish the fact that younger victim [X] was below 18 years of age at the time of incident.

- Accused Sri Suresh Karmakar is heard on the point of sentence. The accused has submitted that he resides with his parent and there is none to look after them in his absence. He further submitted that if he is sent to jail hajot, then his family will be destroyed. Hence, the accused prayed for leniency. Further, the accused stated that there is no other criminal case pending against him.
- **27).** I have heard Sri Siddhartha Bora, learned Defence Counsel for the accused as well as Sri Muhidhar Dutta, learned Special Public Prosecutor, Jorhat.

Considering all aspects, accused **Sri Suresh Karmakar** is sentenced to pay fine of **Rs. 500/-** [Rupees Five Hundred], in-default of payment of fine, to suffer **SIMPLE IMPRISONMENT** for **10** [ten] days under **Section 341 of IPC**.

Further, the accused is sentenced to pay fine of Rs. 2,000/[Rupees Two Thousand], in-default of payment of fine, to suffer SIMPLE
IMPRISONMENT for 1 [one] month under Section 354-A of IPC.

The period of detention already undergone by the accused during investigation and trial shall be set off from the period of imprisonment imposed on him under Section 428 Cr.P.C.

The accused is acquitted from the charge under Section 8 of The Protection of Children from Sexual Offences Act, 2012, as said, hereinbefore, under benefit of doubt.

Out of the fine amount, if paid by the accused Suresh Karmakar, Rs. 1,000/- [Rupees One Thousand] <u>each</u> will be paid to the victim girls as compensation and rest of the amount, i.e., Rs. 500/- [Rupees Five Hundred] shall be deposited with the Secretary, District Legal Services Authority, Jorhat.

- **28).** Free copy of the judgment be furnished to the accused immediately. Another copy of this judgment be sent to the learned District Magistrate, Jorhat under Section 365 Cr.P.C.
- **33).** Given under my hand and seal of this Court on this **12th** day of **October 2018**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Victim girl.
PW-3	Smt. Malati Ghatowar, mother of victims [PW-1 & PW-2].
PW-4	Sri Saru Ghatowar, father of victims-cum-informant of the case.
PW-5	Smt. Bhadori Nayak, housewife.
PW-6	Smt. Pushpa Tanti, tea garden worker.
PW-7	Smt. Niva Neog, Anganwadi worker.
PW-8	Sri Suresh Murari, businessman.
PW-9	Dr. Amrita Nath, who examined the victims.
PW-10	Sri Deba Jyoti Phukan, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of the victim [PW-1] recorded by the
	Magistrate under Section 164 Cr.P.C.
Exhibit-1	Statement of the victim [PW-2] recorded by the
	Magistrate under Section 164 Cr.P.C.
Exhibit-3	Ejahar
Exhibit-4, 5 & 6	Seizure-lists
Exhibit-7 & 8	Medico-legal reports of victims
Exhibit-9	Sketch Map of the place of occurrence with index.
Exhibit-10	Charge-sheet

DEFENCE WITNESSES:- NIL

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)