#### **IN THE COURT OF THE SPECIAL JUDGE AT JORHAT**

**Present**: Sri Madhurjya Narayan, AJS

**Special Judge, Jorhat** 

SPECIAL CASE NO. 16 OF 2018 (G.R. Case No. 191 of 2018) Pulibar P.S. Case No. 20 of 2018

**State of Assam** 

-Versus-

Sri Pabitra Bora @ Cheniram, Son of Sri Nalia Bora, Resident of Kalia Gaon, Bheloguri, P.S. Mariani, District-Jorhat.

.... Accused

#### **APPEARANCES:**

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

For the Accused: Sri Binod Nagariya, Learned Defence Counsel, Jorhat

# CHARGE FRAMED UNDER SECTIONS 366 [A]/376 OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

**Date of Charge** : 09-05-2018

Date of prosecution evidence: 01-06-2018; 20-06-2018; 31-10-2018;

17-12-2018 & 27-12-2018

**Statement of Accused** 

Recorded on : 03-05-2019

Date of Argument : 16-05-2019

Date of Judgment : 30-05-2019

#### JUDGMENT

- 1). The prosecution case, in a nutshell, as narrated in the ejahar dated 19/01/2018 lodged by Smt. Riju Rajbor, mother of the victim girl [hereinafter referred as (X) in order to screen her identity], is that on 18/01/2018, around 6.00 P.M., 15 [fifteen] year old daughter of the informant, went missing from their house at Chirotia Gaon under Pulibar P.S. During search, 'X' over phone informed the family members of the informant that accused Sri Cheniram Bora @ Pabitra Bora had induced her to elope with him.
- 1 [i] On receipt of the aforementioned F.I.R., S.I. Sri Hrishikesh Hazarika, the then Officer-in-charge, Pulibar P.S., registered a case being Pulibar P.S. Case No. 20/2018 under Section 366 of IPC, and entrusted the case to S.I. Md. Shamsuddin, for investigation of the case. On completion of the investigation, the investigating officer laid charge-sheet against the accused person under Sections 366 [A]/376 of IPC read with Section 8 of POCSO Act vide Charge-sheet No. 04/2018 dated 31-01-2018 [Exhibit-6].
- 2). On appearance of the accused person, copies of all relevant documents were furnished as required under the statutory provisions. After hearing the submissions of the learned Special P.P. as well as learned State Defence Counsel on the point of charge and going through the relevant documents as furnished by the investigating officer under Section 173 of Cr.P.C., my learned predecessor-in-chair having found a prima-facie case against the accused person under Sections 366 [A]/376 of IPC read with Section 8 of POCSO Act, 2012, framed formal charges there-under and the accusations of the said charges were read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.
- **3).** To bring home the charges against the accused person, the prosecution side examined as many as **07 [seven]** numbers of witnesses including the I.O. as PW-7 and exhibited **06 [six]** numbers of documents.

- **4).** On closure of the evidence of the prosecution side, statements of the accused person were recorded U/S. 313 of Cr.P.C. with respect to the incriminating circumstances which surfaced against him in the evidence on record. His pleas were of total denial. Defence declined to adduce evidence on its behalf.
- I have heard arguments advanced by Sri Muhidhar Dutta, the learned Special Public Prosecutor as well as Sri Binod Nagariya, learned Defence Counsel. I have also scrutinized the entire evidence of the witnesses and the relevant materials on records including the exhibits.
- 6). During arguments, learned Special P.P. submitted that prosecution could fairly able to bring home the guilt of the accused person beyond reasonable doubt for the offences punishable under Sections 366 [A]/376 of IPC read with Section 8 of The POCSO Act, 2012 and as such he be convicted thereof.

On the other hand, learned defence counsel argued that evidence adduced by the prosecution witnesses, including the alleged victim, are not consistent and hence could not be relied upon. As such, accused person deserves acquittal of the charges so levelled against him.

#### 7). POINTS FOR DETERMINATION:-

Whether on or about 18/01/2018 around 06.00 P.M., at Chirotia Gaon under Pulibar P.S., the accused named-above,

- i. Induced victim 'X' to go with him with intent/knowledge that she will be forced/seduced to illicit intercourse with another person?
- ii. Committed rape on 'X', who is the minor daughter of the informant Smt. Riju Rajbor?
- iii. Committed sexual assault upon the victim 'X' who was aged 15 [fifteen] years?

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

- **8).** In the instant case, prosecution examined the informant namely Smt. Riju Rajbor as PW-2 and the alleged victim [X] as PW-1 and her elder brother Sri Ajay Rajbor as PW-4.
- **8** [i] **PW-1** is the **victim** [X]. She testified that the accused person used to be a domestic help near her house, whom she addressed as her elder brother and uncle. That when the accused person told her that he loves her, then initially she thought he was joking, but subsequently, she also fell in love with him. That on the date of the incident, accused person was waiting outside her house and then she went with him and stayed for the night in the jungle. Thereafter, PW-1 went to the house of the accused person at Mariani where she stayed for four days and during night, she slept with his sister-in-law. PW-1 also deposed that the accused person tried to commit bad act with her, but he did not succeed. That police recovered her from the house of the accused person and sent her for medico-legal examination and for recording her statement under Section 164 of Cr.P.C., marked as Exhibit-1.
- **8 [ii]** During cross-examination, PW-1 stated that she knew the accused person one year prior to the occurrence and 3/4 months thereafter, she developed love affairs with him. That she went with the accused person voluntarily and he did not commit any bad act with her.
- **9). PW-2/Smt. Riju Rajbor** is the informant and mother of the victim 'X'. She testified that on the day of incident, on her return home around 5.00 P.M. from her work place, she found 'X' at the house but after sometime, she went missing. So, she made search but did not find her. Then PW-2 lodged the ejahar. According to her, police recovered her victim daughter [X] after four days from the house of the accused person.

- **9** [i] During cross-examination of PW-2, suggestion was given to her that her minor daughter [X] went voluntarily with the accused person, to which, she denied.
- **10). PW-3/Smt. Chitra Das** deposed that at the relevant time, from the mother of the victim [PW-2], she came to know that 'X', i.e., PW-1 went missing from her house. Then both PW-3 & PW-2 searched for the victim but she was not traceable. That the victim was recovered by police after four days from the house of the accused person.
- **10** [i] During cross-examination, PW-3 deposed that she could not say if the victim/PW-1 on her own will and consent, eloped with the accused person on the date of the incident.
- **PW-4/Sri Ajay Rajbor** is the elder brother of the victim/PW-1. He deposed that on the day of the incident, on his return from work, his mother/PW-2 disclosed to him that the victim went missing from the house. That they searched for her [PW-1] but she could not be traced out. That after 2/3 days of the incident, they received information that the victim had been recovered from Mariani area from the house of the accused person.
- **11** [i] During cross-examination, PW-4 deposed that he do not know anything about the incident.
- **12).** The **I.O./Md. Samsuddin** as **PW-7** deposed that he recovered the victim alongwith the accused person in a village under Mariani P.S.
- **13).** On going through the evidence of the witnesses, it is seen that the defence has not denied that on the date of the incident, the victim/PW-1 went away with the accused person. Defence has also not denied that after four days of the incident, the victim was recovered alongwith the accused person from his house under Mariani P.S. However, defence took the plea that the victim/PW-1 willingly went away with the accused person on the date of the incident. This is

evident from the fact that the victim as PW-1 herself stated that she went with the accused person voluntarily and also stated during cross-examination that the accused person did not commit any bad work with her.

- 14). Regarding the age of the victim/PW-1, her mother, i.e., PW-2, in her ejahar stated the age of the victim daughter to be 15 years. But when she testified before the court as PW-2, she stated the age of her victim daughter to be 14 years. The age of the victim, in her deposition, before the court has been noted as 14 years, whereas in her statement under Section 164 of Cr.P.C., her age has been mentioned as 15 years. Vide seizure-list [Exhibit-5], one school certificate of the victim/PW-1 had been seized and in the said seizure-list [Exhibit-5] it has been noted that the date of birth of the victim as per record is 31/03/2005. However, the prosecution failed to bring on record the school certificate of the victim. There is no other evidence on record as regards the date of birth of the victim. Defence during cross-examination of PW-1 & PW-2, did not put any question regarding the age of the victim. However, it is the duty of the prosecution to bring on record the evidence wherefrom the age of the victim can be ascertained, but the prosecution failed to do so. Moreover, victim/PW-1 also refused her medico-legal examination. PW-5/Dr. Amrita Nath stated that on 24/01/2018, when the victim was produced before her on police requisition, for medico-legal examination, she [PW-1] refused.
- **15).** As noted already, evidence of PW-1/victim is most material and vital in the case at hand. Her evidence discloses that during her stay at the house of the accused person, she slept with his sister-in-law at night and though he tried to commit bad act with her, but he did not succeed. From her cross-examination, it is seen that she had love affairs with the accused person since 6/7 months prior to the incident and she went with him voluntarily. She also stated that the accused person did not commit any bad act with her. But in her statement recorded under Section 164 of Cr.P.C. [Exhibit-1], the victim stated that the accused person used to love her but she did not love him and out of fear, she went with him and it was not voluntary. So, it is seen that the victim has been changing her statements from time to time.

- 16). In the case of *Suraj Mal-versus-State (Delhi Administration)* reported in *AIR 1979 SC 1408*, Hon'ble Supreme Court was pleased to hold that "it is well settled that where witnesses make two inconsistent statements in their evidence either on one stage or at two stages, the testimony of such witnesses become unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witnesses".
- **17).** Also, in view of the refusal of the victim/PW-1 to undergo medico-legal examination, adverse inference is drawn against her. Prosecution also failed to prove that the victim left her parental home influenced by any promise, offer or inducement emanating from the accused person so as to bring home the charge of kidnapping also against him. Further, there is also nothing on record to show that the accused person had the intent/knowledge that the victim [X] will be forced/seduced to illicit intercourse with another person.
- **18).** Taking all the evidence in its entirety, this court is constrained to extend benefit of doubt to the accused person as prosecution side failed to prove its case beyond reasonable doubt. Hence, accused Sri Pabitra Bora @ Cheniram is entitled to acquittal.
- 19). In the result, accused **Sri Pabitra Bora @ Cheniram** is <u>acquitted</u> of the charges under Sections 366 [A]/376 of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012, levelled against him on benefit of doubt and he is set at liberty forthwith.
- **20).** Accused is in jail. Accused shall be released forthwith if not required to be detained in connection with any other case.
- 21). Given under my hand and seal of this Court on this **30th** day of **May** 2019.

Special Judge, Jorhat

#### **ANNEXURES:-**

## **PROSECUTION WITNESSES:-**

PW-1	Victim girl [X].
PW-2	Smt. Riju Rajbor, mother of victim-cum-informant
	of the case.
PW-3	Smt. Chitra Das, housewife.
PW-4	Sri Ajay Rajbor, elder brother of victim girl [X].
PW-5	Dr. Amrita Nath, M.O. of the case.
PW-6	Smt. Pompi Das, private service.
PW-7	Md. Shamsuddin, I.O. of the case.

#### **COURT WITNESS:- NIL**

### **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Statement of the victim/PW-1 recorded by the
	learned Magistrate under Section 164 of Cr.P.C.
Exhibit-2	Medico-legal report of doctor
Exhibit-3	Ejahar
Exhibit-4	Sketch Map of the place of occurrence with index.
Exhibit-5	Seizure-list
Exhibit-6	Charge-sheet.

**MATERIAL EXHIBIT:- NIL** 

**DEFENCE WITNESSES:-** NONE

Special Judge, Jorhat.

### **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)