## **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. 28 OF 2015**

(G.R. Case No. 3104 of 2014) Teok P.S. Case No. 407 of 2014

## **Committing Magistrate:-**

Sri N.J. Sarma, Sub-Divisional Judicial Magistrate [S], Jorhat District

**State of Assam** 

Versus

Md. Firoj Ali, Son of Md. Rahmat Ali, Resident of Hindubari Tea Estate, P.S. Teok, District-Jorhat.

hat. .... <u>Accused</u>

## **APPEARANCES**:

For the State : Sri M.R. Barooah,

Senior Advocate-cum-Special P.P., Jorhat

For the Accused: Sri R.P. Rai, Learned Advocate, Jorhat

# CHARGE FRAMED UNDER SECTIONS 376 [1]/417 OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 04-08-2015

Date of prosecution evidence: 19-10-2015; 03-08-2016; 11-11-2016

& 29-03-2017

Statement of Accused

Recorded on : 03-06-2017

Date of Argument : 08-06-2017 & 23-06-2017

Date of Judgment : 23-06-2017

#### JUDGMENT

1). The prosecution story, in brief, is that Teok P.S. Case No. 407/2014 under Sections 417/376 [i] 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 mother of the victim girl [name not disclosed for the sake of the victim girl].

In the aforesaid F.I.R. dated 11/12/2014 [Exhibit-3] the mother of victim girl alleged, inter-alia, that accused Md. Firoz Ali was in love with his daughter [victim] for about three years. On the false pretext of marriage, the accused co-habited with her daughter as a result of which she became five months pregnant. When her daughter stated the fact to the accused, from that day onwards the accused fled away from his house.

On receipt of the aforesaid F.I.R. by the then In-charge, Lahdoigarh O.P. under Teok P.S., the same was entered in General Diary Register being No. 209 dated 11/12/2014 and the same was forwarded to Teok P.S. for registration of a case. The then Officer-in-charge, Teok, registered Teok P.S. Case No. 407/2014 under Sections 417/376 [i] 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 medically examined by the doctor and her statement 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 Md. Firoz Ali u/Ss. 417/376 [i] of IPC as well as u/S. 4 of the Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 64/2014 dated 31-03-2015.

- 2). The learned Magistrate 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, finding ground for presuming that the accused has committed offences under Sections 417/376 [1] of IPC read with Section 4 of

The Protection of Children From Sexual Offences Act, 2012, the charges were framed by my learned predecessor-in-office and 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, **08 [eight]** witnesses including the victim, her mother, Medical officer and investigating officer were examined on behalf of the prosecution to prove the charge u/Ss. 417/376 [1] 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 had love affair with the victim girl. It is further stated by him that he stayed at Golaghat for three years where he came to know that victim became pregnant. He denied that he is father of the child of victim. He further stated that he asked her for DNA test but the victim refused for such test. It is further stated by the accused that he has been falsely implicated in the case. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor for the State as well as Sri R.P. Rai, learned counsel for the accused, who is facing trial for commission of offence u/Ss. 417/376 [1] 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 three years before filing of ejahar by the informant Smt. Sukda Garh, the accused cheated the daughter of informant, i.e., the victim, on the false pretext of marriage and thereafter did sexual intercourse with her and thereby committed an offence punishable under Section 417 of IPC?
  - 2) Whether the accused named above committed rape on the victim girl aged about sixteen years and below eighteen years and thereby committed an offence punishable under Section 376 [1] of IPC?

3) Whether during the same period and time the accused named above committed penetrative sexual assault upon the victim girl aged above sixteen years but below eighteen years 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 me examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

**PW-1** is the victim girl who during her deposition in Court stated that she knew the accused from before. On the way to school the accused used to meet her and also had telephonic conversation with her. The victim further stated that on the false pretext of marriage accused had performed sexual intercourse with her for several times. She protested the act of accused, but in turn, accused disclosed to her that he will accept her as his wife. The accused had sexual intercourse with her at the tea estate several times. It is her further version that when she became five months pregnant she disclosed the matter before her mother. Her mother [PW-2] then called accused over mobile but the accused did not pay any heed to her request. Further version of the victim is that accused divulged before her that he will give her money to terminate her pregnancy but she did not accept the advice of accused. It is further stated by the victim that from the time of calling the accused to her house from that day onwards the accused stopped visiting her.

Further version of this witness is that her mother lodged ejahar before police. It is further divulged by the victim that she delivered a male child who is aged about six months. Police recorded her statement, took her before a doctor for medico legal check-up. She was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] and Exhibit-1 [2].

During cross-examination, she admitted that she cannot say the exact date of her birth; that she cannot exactly say in which year she took admission in the school and further asserted that she had love affair with the accused for about three years. She denied defence suggestion that accused on

the false pretext of marriage performed sexual intercourse with her; that the accused did not state before her that he will accept her as his wife and also that her mother did not lodge ejahar before police after knowing the facts through him.

The evidence of victim that on false pretext of marriage the accused performed sexual intercourse with her for several times in the tea estate and also that she delivered a male child could not be dislodge by the defence which remained unshaked during cross-examination. Defence side even did not put any suggestion to deny the evidence of victim in this regard.

8). PW-2 is Smt. Sukhada Garh who is the mother of the victim girl-cum-informant of the case. This witness during her deposition categorically stated that the accused was in love with her daughter for about three years. It is further stated by this witness that on false pretext of marriage accused had sexual act with her daughter for which she became pregnant. Her daughter telephoned the accused but accused did not pay any heed to her request. It is further version of this witness that uncle of accused arrived at her house and instructed them to terminate the pregnancy. She then lodged ejahar before police. It is also stated by this witness that her daughter was produced before a doctor for medical check-up and thereafter before a Magistrate for recording her statement.

During cross-examination, she divulged that she does not know the date of birth of her daughter and the scribe of the ejahar did not read over the content to her after writing the same.

**9). Sri Jan Mahili [PW-3]** who is the neighbour of victim stated that after filing of the ejahar by the informant, police arrived at their tea estate and met him on the road. Police requested him to show the house of victim and he accordingly showed police the house of victim. He also went to the house of victim alongwith police and there only he came to know that victim was made pregnant through the accused. He further stated that he was present when police recorded statement of the victim.

This witness was not cross-examined by the defence. Hence his version that victim became pregnant through the accused remained unshaked.

10). Sri Ramu Garh [PW-4] who is the elder brother of victim stated that after five months of pregnancy he came to know about the incident when his younger sister divulged the fact before their mother. It is his further version that victim stated before them that she became pregnant through the accused Md. Firoz Ali. Further version of this witness is that accused offered money to terminate the pregnancy but they did not accept the request of accused. Then his mother lodged ejahar before police. Lastly, this witness stated that victim is staying alongwith them with her minor male child.

Defence declined to cross-examine this witness of all material particular. Hence, the evidence of this witness that he came to know about the incident through his younger sister divulging the same before their mother and further that accused made her pregnant remained unshaked during cross-examination for not cross-examining this witness by the learned counsel for the accused.

**11). Dr. Runjun Doley [PW-5]** who was the then Assistant Professor, Department of Obstetrics & Gynecology, Jorhat Medical College & Hospital examined the victim girl on 15/12/2014 and opined that the victim is pregnant; there is no evidence of injury detected on the person of victim and evidence of recent sexual intercourse not detected on her person. She further stated that age of victim could not be determined as she was pregnant at that time and X-ray Report could not be performed over her body for the sake of the child in her womb. This witness exhibited her medical report [Exhibit-2] and her signatures thereon as Exhibit-2 [1] to Exhibit-2 [3].

The doctor during her cross-examination divulged that to ascertain the actual age of victim no examination was conducted over the victim.

**12).** Evidence of **Miss Faguni Nayak [PW-6]** is to the effect that one day mother of victim requested her to give the mobile to them. She told the mother of victim that her mobile is not recharged. In turn, the victim stated to

her that she will give her SIM Card to call the accused with her mobile and accordingly the victim gave the SIM Card to her and thereafter she telephoned the accused to come to their house but the accused did not pay any heed to their request. It is her further version that when accused did not arrive at the house of victim, then mother of victim lodged ejahar before police.

During cross-examination, she divulged that she does not know how much old will be the victim from her.

**13). Md. Sarifuddin Ahmed [PW-7]** who was the then Attached Officer, Lahdoigarh O.P. deposed that on 11/12/2014 the then In-charge received one F.I.R. from the mother of victim. The same was entered in G.D. Entry Register and thereafter forwarded to Teok P.S. for registration of a case under proper section of law. The then Officer-in-charge, Teok P.S. registered Teok P.S. Case No. 407/2014 u/Ss. 417/376 [1] IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. The Officer-in-charge entrusted the case to him for investigation. He marked the ejahar as Exhibit-3.

During investigation, he examined the victim as well as informant of the case. The victim was medically examined by a doctor. She was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. It is further deposed by him that he visited the place of incident, seized the school certificate of the victim on being produced by her in presence of witnesses vide seizure-list [Exhibit-5]. He also drew Sketch Map of the site of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his relevant signature. Thereafter, finding sufficient materials against the accused under Sections 417/376 [i] IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, he filed charge-sheet against the accused.

During cross-examination, he admitted that the attested copy of school certificate is available with the case diary. He further stated that actual name of victim is Sapna Garh but in the school certificate her name is reflected as Miss Ranjita Garh. He confirmed that victim had two names, i.e., Sapna and Ranjita Garh.

- **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 affairs with him, for which, physical relationship grew between them and out of the said relationship she gave birth to a male child who was aged about six months at the time of deposition by the victim before the court. She further deposed that the accused did not marry her. It is further stated by the victim that when she became pregnant she informed the matter to the accused and requested him to accept her as his wife but the accused did not pay any heed to her request.
- **15).** The accused during his statement under Section 313 Cr.P.C. had denied physical contact with the victim. He instead questioned the chastity of the victim. Specific questions were put to the accused regarding sending of his uncle to the house of victim to negotiate the matter and to give them some money to terminate the pregnancy, to which, he denied. But the accused did not adduce defence evidence to support his contention. He also did not examine his uncle to substantiate his claim that he did not send his uncle to the house of victim to give them some money to terminate the pregnancy.
- **16).** The investigating officer of the instant case has seized the birth certificate of the victim from the victim vide seizure-list [Exhibit-5] and the same was returned back to the victim after its seizure. But prosecution failed to exhibit the same to show that the victim is a child/minor less than 18 [eighteen] years as on the date of commission of offence.
- 17). In the present case, since date of birth certificate or matriculation certificate from the school or birth certificate are not available, the prosecution has relied upon Exhibit-2, the report of doctor Runjun Doley [PW-5], according to which, the age of the victim could not be determined for the sake of the child in her womb. Hence, in view of the above deposition by the doctor, I find it hard to believe that victim was a minor girl at the time of incident.
- **18).** In this connection ruling submitted by the learned defence counsel of our own Hon'ble Gauhati High Court reported in **2016 [4] GLJ 87**, it has been

held that "Criminal proceeding-Age of victim-Radiological report mention that age of victim girl below 18 years-Margin of two years on either side, it will be hazardous to hold that victim was below 18 years-Cannot be said with certainty that victim was below 18 years" [Para 20]

19). The Hon'ble Supreme Court in the case of *Assistant Collector of Central Excise, Calicut—versus- V.P. Sayed Mohammad,* reported in *AIR* 1983 SC 163 held as follows:

"It is true that the onus of proving the facts essential to the establishment of discharge against an accused lies upon the prosecution and the evidence must be such as to exclude every reasonable doubt about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicions. If reasonable doubt arises in the mind of the court after taking into consideration the entire material before it regarding the complicity of the accused the benefit of such doubt should be given to the accused but the reasonable doubt should be a real and substantial one and a well founded actual doubt arising out of the evidence existing after consideration of all the evidence".

Apex Court, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently the charge under Sections 376 [1] of IPC as well as under Section 4 of The Protection of Children from Sexual Offences Act, 2012 is held to be not proved against the accused Md. Firoz Ali beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Md. Firoz Ali is acquitted on benefit of doubt under Section 376 [1] IPC as well as under Section 4 of The Protection of Children from Sexual Offences Act, 2012.

**21).** From a close perusal of the evidence on record it is seen that the victim [PW-1] who is the star witness of the instant case has stated that on the false pretext of marriage the accused performed sexual intercourse with her for several times in the tea estate and also that she delivered a male child. This piece of evidence could not be dislodged by the defence side through cross-examination.

From the evidence of victim it can be safely held that she consented to sexual intercourse with the accused on his promise to marry her. Thus accused deceived/induced her fraudulently to have sexual intercourse with her which she would not have allowed had she not been so deceived and induced by the accused. Thus, accused caused damage to her body, mind and reputation. The said act is punishable under Section 417 IPC.

- **22).** In view of the above, the accused is found **guilty under Section 417 of IPC** and accordingly he is convicted under the aforesaid provision of law.
- **23).** Accused Md. Firoz Ali is heard on the point of sentence. The accused has submitted that he has his old ailing 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 face great financial hardship as he is the sole bread earner of his family. Hence, the accused prayed for leniency. He also stated that he has not been convicted earlier in any criminal case.
- **24).** I have heard Sri R.P. Rai, learned counsel for the accused as well as Sri Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor, Jorhat.

Considering the nature of offence the accused **Md. Firoz Ali** is sentenced to undergo **RIGOROUS IMPRISONMENT** for **1** [one] year and to pay fine of **Rs. 25,000/-** [Rupees Twenty-five Thousand], in-default of payment of fine to suffer further **RIGOROUS IMPRISONMENT** for **3** [three] months **under Section 417 of IPC**.

Fine, if paid by accused, shall be given to the victim as compensation.

- 25). Now coming to the aspect of compensation to the victim, the Hon'ble Apex Court has time to time observed that subordinate courts trying the offences of sexual assault have the jurisdiction to award the compensation to the victims being an offence against the basic human right and violative of Article 21 of the Indian Constitution.
- **26).** Therefore, in order to provide restorative and compensatory justice to the victim, I hereby direct the learned **Secretary, District Legal Services Authority, Jorhat,** to grant adequate compensation to the victim. The said compensation amount shall be used by the victim for her welfare and rehabilitation of her minor child.
- 27). Free copy of the judgment be furnished to the accused immediately.

  Another copy of this judgment be sent to the learned District

  Magistrate, Jorhat, as well as to the learned Secretary, D.L.S.A., Jorhat, for information.
- **28).** Given under my hand and seal of this Court on this **23rd** day of **June 2017**.

**Special Judge, Jorhat** 

# **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Victim girl.
PW-2	Smt. Sukhada Garh, mother of victim-cum-
	informant of the case.
PW-3	Sri Jan Mahili, neighbour.
PW-4	Sri Ramu Garh, elder brother of victim.
PW-5	Dr. Runjun Doley who examined the victim.
PW-6	Miss Faguni Nayak, neighbour.
PW-7	Md. Sarifuddin Ahmed, S.I. of Police.
PW-8	Sri Ajay Karmakar, tea garden worker.

**COURT WITNESS:- NIL** 

# **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Statement of the victim under Section 164 Cr.P.C.
Exhibit-2	Medical report.
Exhibit-3	Ejahar.
Exhibit-4	Sketch Map of the site of occurrence with index.
Exhibit-5	Seizure-list.

**MATERIAL EXHIBIT:- NIL** 

**DEFENCE WITNESSES:-** NONE

Special Judge, Jorhat.

**Typed & transcribed by:** 

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)