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. 57 OF 2018 (G.R. Case No. 1016 of 2017) Jorhat P.S. Case No. 732 of 2017

Committing Magistrate:-

Smt. Jyotishmita Sarmah, Sub-Divisional Judicial Magistrate [Sadar]-cum-Principal Magistrate, Juvenile Justice Board, Jorhat District

State of Assam

-Versus-

Sri Mridul Bora, Son of Sri Jiten Borah, Resident of Raidongia Gaon, P.S. Golaghat, District-Golaghat

.... Accused

APPEARANCES:

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

For the Accused: Sri Indrajit Kakaty,

Learned Defence Counsel, Jorhat

CHARGE FRAMED UNDER SECTIONS 363/366 [A] OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 04-07-2018 Date of prosecution evidence : 04-10-2018

Statement of Accused

Recorded on : 02-01-2019

Date of Argument : 02-01-2019 Date of Judgment : 03-01-2019

J U D G M E N T

1). The prosecution story, in brief, is that Jorhat P.S. Case No. 732/2017 under Sections 366/342 of IPC was registered on the basis of an F.I.R. lodged by Sri Mantu Gogoi, father of the victim girl [hereinafter to be referred as [X].

In the aforesaid **F.I.R.** dated 07/04/2017 **[Exhibit-2]** the informant Sri Mantu Gogoi [PW-2] who is the father of the victim girl [X] alleged, *inter-alia*, that on 20/01/2017 while his minor daughter came out of the house towards the shop for marketing, she went missing from her way back home from the shop. On the next day, the accused Mridul Bora telephoned the informant that he had taken his minor daughter. Thereafter, upon receipt of the information from accused's end, the informant visited the house of accused and took his daughter back home. It is further alleged by the informant in his ejahar that on 01/02/2017, the accused again kidnapped his minor daughter from his house. Thereafter, the informant searched for his daughter but she was found untraceable. Later on, he came to know that the accused had tied his daughter in his house forcefully.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Jorhat P.S., registered **Jorhat P.S. Case No. 732/2017 under Section 366/342 of IPC**.

During the course of investigation the victim girl was recovered from the possession of accused. The victim was sent to the court for recording her statement under Section 164 of Cr.P.C. Police on completion of investigation filed charge-sheet in the case against the above named accused Sri Mridul Bora u/Ss. 366 [A]/342 of IPC vide Charge-sheet No. 243/2017 dated 28/04/2017.

- **2).** The learned Sub-Divisional Judicial Magistrate [Sadar]-cum-Principal Magistrate, Juvenile Justice Board, Jorhat after furnishing copies of the relevant documents to the accused and sent 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, I found ground for presuming that the accused has

committed offences under Sections 363/366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, 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, **03 [three]** witnesses including the victim and her parent were examined on behalf of the prosecution to prove the charge u/Ss. 363/366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. The prosecution evidence was closed on the prayer of learned Special Public Prosecutor, Jorhat.

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. Lastly, he stated that he is living peacefully with the victim in his house alongwith their minor child as husband and wife. The accused pleaded innocence. The accused did not adduce defence evidence on his behalf.

- 5). I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Indrajit Kakaty, learned Defence Counsel for the accused.
- **6).** Now the points for determination before this Court are as follows:-
 - 1) Whether on or about 20/01/2017 as well as on 01/02/2017, the accused kidnapped the victim girl who is the daughter of informant Sri Mantu Gogoi, or took or enticed her out of keeping of the lawful guardianship without her consent and thereby committed an offence punishable under Section 363 of IPC?
 - 2) Whether on the same days the accused induced the victim girl to do any act, or acts with the intent that she may be or knowing that it is likely that she will be forced [or seduced] to illicit intercourse with you and thereby committed an offence punishable under Section 366 [A] of IPC?

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

The **victim [PW-1]** during course of her evidence stated that she knew the accused from before as she had love affair with him. It is further version of victim that initially she went to the house of accused and thereafter returned back home. She stayed in her residence for about two weeks. On the date of incident on the eve of Saraswati Puja she again fled with the accused. Then her father lodged ejahar before police. Police recovered her from the house of accused. She was produced before a doctor and thereafter before the Magistrate who recorded her statement vide Exhibit-1 wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures. At present, she is staying with her parent and the matter has been settled amongst both of them.

The victim during her cross-examination stated that she had love affair with the accused and on the date of incident she voluntarily eloped with the accused. At present, both of them are living together as husband and wife and they have got a son.

8). Sri Mantu Gogoi [PW-2] is the informant-cum-father of the victim and **Smt. Ranju Gogoi [PW-3]** who is the mother of victim, both deposed that the victim had given birth to a male child and the matter has been amicably settled. Further, Sri Mantu Gogoi [PW-2] stated that he lodged ejahar before police vide Exhibit-2 wherein Exhibit-2 [1] is his signature.

During cross-examination, Sri Mantu Gogoi stated that he lodged the ejahar as his daughter went missing. At present, accused used to visit his house off and one and his daughter had delivered a male child.

Smt. Ranju Gogoi during her cross-examination stated that her daughter [PW-1] disclosed before her that she voluntarily accompanied the accused on the date of incident.

- **9).** From a close perusal of the statement of the victim recorded by the learned Magistrate under Section 164 Cr.P.C., on 18/04/2017, after her recovery by police, she stated that she had love affair with the accused. As her parent used to assault her she fled away with the accused and thereafter resided with him as husband and wife. The victim categorically deposed before the Magistrate that she was not kidnapped by the accused and accused had no fault in kidnapping her.
- **10).** 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 case of *Datttu Ramrao Sakhare-versus-State of Maharashtra*, reported in [1997] 5 SCC 341, the Hon'ble Apex Court has held that — "A child witness if found competent to depose to the facts and reliable one, such evidence could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered under Section 118 of Indian Evidence Act, provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstance of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanor must be like any other competent witness and there is no likelihood of being tutored".

11). In another case, i.e., *Pancchi –versus- State of Uttar Pradesh, AIR 1998 SC 2726,* the Hon'ble Apex Court has held that – "It is not the law that if a witness is a child, his/her evidence shall be rejected, even if it is found reliable, The law is that evidence of a child witness must be

evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and this child witness is easy prey to tutoring".

- **12).** The evidence of parent of victim [PW-2 & PW-3] shows that victim voluntarily accompanied the accused on the date of incident and they had a male child out of their relationship and at present both of them are living peacefully as husband and wife.
- **13).** 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.

Similarly, the victim girl did not specifically depose that accused induced her to leave the house of her parent and furthermore, the accused had physical relationship with her on being protest raised from her end.

Does not scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Mridul Bora to warrant his conviction under Sections 363/366 [A] IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012, as victim stated nothing in her statement under Section 164 Cr.P.C. [Exhibit-1] as well as before this court. Prosecution has not been able to make out a case against the accused Sri Mridul Bora 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.

Bail bond of accused is extended for the next **06** [six] months under Section 437-A Cr.P.C.

15). Given under my hand and seal of this Court on this **03rd** day of **January 2019**.

Special Judge, Jorhat.

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim.
PW-2	Sri Mantu Gogoi, father of victim-cum-informant of
	the case.
PW-3	Smt. Ranju Gogoi, mother of victim.

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	Ejahar

DEFENCE WITNESSES:- NIL

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)