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. 92 OF 2017

(G.R. Case No. 1392 of 2017) Teok P.S. Case No. 197 of 2017

Committing Magistrate:-

Md. Abdus Sattar, Additional Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Sri Sunu Munda @ Ashik, Son of Sri Mothuwa Munda, Resident of Meleng Changchuwa Basti Line No-20, P.S. Teok,

District-Jorhat. Accused

APPEARANCES:

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

For the Accused: Sri Shekhar Jyoti Barthakur,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTIONS 366 [A]/376 OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 01-11-2017

Date of prosecution evidence: 01-02-2018; 04-04-2018; 31-05-2018

03-08-2018; 30-10-2018 & 03-12-2018

Statement of Accused

Recorded on : 17-12-2018

Date of Argument : 26-12-2018

Date of Judgment : 09-01-2019

<u>JUDGMENT</u>

1). The prosecution story, in brief, is that Teok P.S. Case No. 197/2017 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Sri Krishna Tanti, the father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 14/05/2017 **[Exhibit-2]**, the father of the victim girl [herein referred to as 'X'], alleged, *inter-alia*, that on 29/04/2017 at about 11.00 A.M., his daughter went missing from his residence. Later on, when he searched for his daughter he came to know that accused Sunu Munda @ Ashik has kidnapped his daughter. It is further alleged by the informant in his ejahar that due to search of his daughter he could not lodge ejahar before police in time hence there is delay in lodging ejahar before police.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Teok P.S., the same was registered as Teok P.S. Case No. 197/2017 under Section 366 [A] of IPC.

During the course of investigation, the victim girl was recovered from the possession of accused, medically examined by the doctor, her statement under Section 164 of Cr.P.C. was recorded. Police on completion of investigation filed charge-sheet, in the case, against the above named accused Sunu Munda @ Ashik u/Ss. 366/376 of IPC vide Charge-sheet No. 115/2017 dated 31-05-2017.

- **2).** The learned Additional Chief Judicial Magistrate, Jorhat, committed the case to this Court for trial after furnishing the copies under Section 207 Cr.P.C.
- 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 sufficient ground for presuming that the accused has committed offences under Sections 366 [A]/376 of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, charges were framed by me, 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, **11 [eleven]** numbers of witnesses including the victim, her parent, Medical Officer and the I.O. were examined, on behalf of the prosecution, to prove the charge u/Ss. 366 [A]/376 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. The accused stated that he had been falsely implicated in the case. The accused further stated that victim girl had love affair with him and she was a major girl at the time of incident. Further, the accused stated that on the date of incident the victim came out of her house on her free will and consent and thereafter met him on the road and insisted him to take her away. Finding no other alternative, he took the victim to his sister's house. Thereafter, both of them surrendered before police. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Shekhar Jyoti Barthakur, learned Defence Counsel for the accused, who is facing trial for commission of offence u/Ss. 366 [A]/376 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 29/04/2017 at about 1100 A.M. at Meleng Changchuwa Basti Line No-20 under Teok P.S., while the victim was present inside the house of informant, the accused namedabove, induced the minor 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 him and thereby committed an offence punishable under Section 366 [A] of IPC?
 - 2) Whether on or about the same day, time and place, the accused named above committed rape on the victim girl aged about fourteen years and below eighteen years and thereby committed an offence punishable under Section 376 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). First of all, let us see what the relevant provisions of law states to the alleged charges framed against accused.

Section-366 [A] — Procuration of minor girl-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section-375—Rape — A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First-Against her will.

Secondly—Without her consent.

<u>Thirdly</u>—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

<u>Fourthly</u>—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

<u>Fifthly</u>—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

<u>Sixthly</u>—With or without her consent, when she is under sixteen years of age.

<u>Explanation</u>—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

<u>Exception</u>—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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Section-4 — Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

8). To decide the above points vis-à-vis alleged sections of law against accused, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

PW-1 is the victim girl who during her deposition in Court stated that she knew the accused prior to the date of incident. Incident took place in the month of last April 2017. It is stated by the victim that on the date of incident she came out of her house and met the accused on the road. Thereafter both of them accompanied towards Lakowa to the house of accused's sister where both of them stayed for about four days. She slept with the accused for the said four days. It is further version of the victim that she did not inform her mother before going with the accused. Later on, her father lodged ejahar before police. She was recovered by police from the possession of accused. Police recorded her statement, took her before a doctor for medico legal check-up and then she was produced before the 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 by defence side, she stated that she had love affair with the accused prior to the incident and on the date of incident she voluntarily accompanied the accused.

9). PW-2 is **Smt. Sandhya Tanti** who is the mother of the victim girl. This witness during her deposition stated alike as that of her daughter [PW-1]. She went to the house of accused after receiving information that her daughter had been kept by the accused in his house. But the family members of accused started quarreling with her. Finding no other alternative her husband lodged ejahar before police.

During cross-examination, she stated that she came to know that her victim daughter fled away with the accused on the next day of incident.

10). Sri Krishna Tanti [PW-3] who is father of victim-cum-informant of the case deposed in the same tune as that of his ejahar and the version of his wife [PW-2]. His daughter was revered by police after 10/11 days of incident. It is further version of this witness that when they came to know that his daughter was kept at the house of accused they went there to bring her back but the family members of accused started quarrelling with them. Hence, he lodged ejahar before police vide Exhibit-2 wherein Exhibit-2 [1] is his signature.

During cross-examination, he stated that he does not remember the date of birth of his daughter [PW-1]. He categorically stated that he did not go to the police station soon after the incident but he informed the matter before police after fifteen days of incident.

11). The evidence of **Sri Binod Nayak** [**PW-4**] who is the brother-in-law of victim [PW-1] is that on the date of incident his father-in-law [PW-3] called him over telephone stating that there was disturbance in his residence. When he arrived at the house of informant, the informant stated before him that victim had been taken away by the accused. Further version of this witness is that by this time they came to know that victim as well as the accused had arrived at the police station.

This witness during cross-examination by defence side stated that he heard that victim had love affair with the accused prior to the date of incident.

Same sort of evidence is also tendered by **Smt. Jonali Nayak [PW-5]** who is the elder sister of victim.

This witness during cross-examination by defence side denied that her sister was aged below eighteen years at the time of incident.

- **12). Dr. Ritu Saikia** [**PW-6**] who was the then Lady Medical Officer on duty, Jorhat Medical College & Hospital examined the victim girl on 15/05/2017 as per police requisition and opined that the victim is above eighteen years and below twenty years; evidence of recent sexual intercourse was not detected on her person and there was no violence mark on her body at the time of examination. This witness exhibited her medical report [Exhibit-3] and her signatures thereon as Exhibit-3 [1] to Exhibit-3 [3].
- are the elder sisters of the victim stated that on the date of incident both of them were present at their work place. Their parent were not present in the residence at that time. When both of them returned back home they did not find the victim present inside the house. Later on both of them came to know from nearby people that accused visited the house in absence of family members and took away the victim on a motorcycle. Further version of this witness is that they searched for the victim but she was found untraceable. Hence, their father lodged ejahar before police. After sixteen days of incident the accused alongwith the victim returned back home. Thereafter, police recovered the victim from the residence of accused. When she asked the victim [PW-1] about the incident she divulged before them that the accused took her on the relevant day.

Miss Mitali Tanti [PW-7] during cross-examination denied defence suggestion that on the date of incident the accused took away the victim when she was residing alone in the house.

Smt. Mamoni Tanti [PW-9] during cross-examination denied defence suggestion that on the date of incident her father disclosed before her that accused had taken away the victim.

14). Smt. Anjel Tanti [PW-8] who is the sister-in-law of victim [PW-1] divulged during her testimony that on the date of incident she was not present inside the house. At about 11.00 A.M. while she returned back home she

witnessed her mother-in-law sitting outside the house and to her query her mother-in-law divulged that victim was taking bath inside the bathroom but from there she went missing. Thereafter, they searched for the victim but she was found untraceable. She came to know from nearby people that the accused visited the house in absence of family members and took away the victim on a motorcycle. Further version of this witness is that they searched for the victim but she was found untraceable. Hence her father lodged ejahar before police. After sixteen days of incident you alongwith the victim returned back home. Thereafter, police recovered the victim from accused's residence. When she asked the victim [PW-1] about the incident she divulged before her that the accused took her on the relevant day.

This witness during cross-examination by defence side stated that victim disclosed before her after her recovery from the house of accused that on the date of incident she voluntarily accompanied the accused.

15). The evidence of **Sri Simson Tanti [PW-10]** who is the elder brother of victim divulged in the same tune as that of his sisters [PW-7 & PW-9].

This witness denied defence suggestion that accused and his family members did not assault them when they went to bring back the victim from the house of accused.

Sri Khagen Laskar [PW-11] is the investigating officer of the case who deposed about the routine steps taken by him during investigation of the case. It is stated by the I.O. that he visited the place of occurrence and drew Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his signature. The I.O. stated that both accused as well as victim surrendered before police. Thereafter, he recorded statement of the victim alongwith other witnesses who were acquainted with the fact and circumstance of the case. He arrested the accused and sent him to the court. The victim was produced before a doctor for medical check-up and thereafter before the learned Magistrate who recorded her statement under Section 164 Cr.P.C. On completion of investigation he submitted charge-sheet against the accused vide Exhibit-5 wherein Exhibit-5 [1] is his signature.

The I.O. during cross-examination by defence side categorically stated that he did not seize any article from the victim as well as her parent.

17). From a close perusal of the evidence on record it is seen that the victim [PW-1] knew the accused before the incident. It is nowhere stated by the victim during her evidence before court that the accused had physical contact with her after she eloped with the accused. Furthermore, on a close perusal of the statement of the victim recorded by the learned Magistrate under Section 164 Cr.P.C., it is seen that victim had love affair with the accused and on her own consent she eloped with the accused and went to his house and resided there alongwith the accused as his wife for the aforesaid days till both of them surrendered before police.

Smt. Anjel Tanti [PW-8] who is the sister-in-law of victim [PW-1] divulged during her cross-examination that victim disclosed before her after her recovery from the house of accused that on the date of incident she voluntarily accompanied the accused.

- **18).** It is interesting to note herein that the I.O. [PW-11] did not seize any school certificate/birth certificate of the victim from her parent.
- **19).** The accused during his statement under Section 313 Cr.P.C. had denied that he had physical contact with the victim but he admitted that the victim came to him voluntarily and she stayed at his house.
- **20).** It is an admitted fact that the investigating officer of the instant case has not seized any birth certificate or school certificate of the victim from her parent to show that the victim is a child/minor less than 18 [eighteen] years as on the date of commission of offence.
- **21).** 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-3, the report of Doctor Ritu Saikia [PW-6], according to which, the age of the victim is above eighteen years and below twenty years.

There is nothing placed on record to create a doubt about the medical age of the victim child as determined by the Medical Officer.

From the examination of the doctor it is seen that the age of the victim given by her in her report is based on radiological report. In the instant case, the victim was a major girl at the time of incident.

- **22).** It is a cardinal principle of criminal law that the prosecution has to prove its case beyond reasonable doubt and that the prosecution case has to stand on its own leg.
- On scrutinizing the evidence on record, considering the entire aspect of the matter and the evidence, produced by the prosecution, I am of the considered opinion that the prosecution failed to establish that the accused kidnapped the victim or committed rape on the victim. Hence, accused is entitled to acquittal under benefit of doubt which I accordingly do.
- 24). In the result, accused **Sri Sunu Munda @ Ashik** is <u>acquitted</u> of the charges under Sections 366 [A]/376 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him on benefit of doubt and he is set at liberty forthwith.

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.

25). Given under my hand and seal of this Court on this **09**th day of **January 2019**.

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Sandhya Tanti, mother of the victim.
PW-3	Sri Krishna Tanti, father of victim-cum-informant of the case.
DW 4	
PW-4	Sri Binod Nayak, brother-in-law of victim.
PW-5	Smt. Junali Nayak, elder sister of victim.
PW-6	Dr. Ritu Saikia, who examined the victim.
PW-7	Miss Mitali Tanti, elder sister of victim.
PW-8	Smt. Anjel Tanti, sister-in-law of victim.
PW-9	Smt. Mamoni Tanti, elder sister of victim.
PW-10	Sri Simson Tanti, elder brother of victim.
PW-11	Sri Khagen Laskar, In-charge, of J.M.C.H. Out Post
	under Jorhat P.S.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

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

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)