#### **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. 70 OF 2017 (G.R. Case No. 252 of 2017) Titabar P.S. Case No. 122 of 2017

## **Committing Magistrate:-**

Md. S.A. Pathan,
Sub-Divisional Judicial Magistrate [M],
Titabar Sub-Division,
Jorhat District

**State of Assam** 

-Versus-

1]. Sri Bakul Das, Son of Sri Gunai Das,

2]. Sri Uddhab Das, Son of Sri Khagen Das, [Both are resident of Bandar Chaliha Bahbari, P.S. Titabar,

District-Jorhat. .... Accused

## **APPEARANCES**:

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

For the Accused: Sri P.P. Goswami, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 366 [A]/34 OF INDIAN PENAL CODE;

SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT,

2012 AS WELL AS UNDER SECTION 34 OF IPC

**Date of Charge** : 19-08-2017

Date of prosecution evidence: 31-10-2017; 06-12-2017; 06-01-2018;

22-02-2018; 06-04-2018; 28-06-2018;

& 04-09-2018

**Statement of Accused** 

Recorded on : 03-01-2019 Date of Argument : 09-01-2019

Date of Judgment : 21-01-2019

## JUDGMENT

1). The prosecution story, in brief, is that **Titabar P.S. Case No.** 122/2017 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Smt. Bhanu Das, mother of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 22/05/2017 **[Exhibit-2]** the informant Smt. Bhanu Das [PW-2] who is the mother of the victim girl alleged, *inter-alia*, that on 21/05/2017 the accused Bakul Das kidnapped her minor daughter after inducing her while she came out of her house towards the road for the purpose of travelling.

On receipt of the ejahar by the In-charge, Madhapur O.P. under Titabar P.S. the same was entered vide G.D. Entry No. 316 dated 22/05/2017. The ejahar was sent to Titabar P.S. for registration of a case under proper section of law. The Officer-in-charge, Titabar P.S., upon receipt of the ejahar, registered the same vide Titabar P.S. Case No. 122/2017 under Section 366 [A] of IPC.

During the course of investigation, the statement of the victim girl was recorded by the I.O. of the case. The victim girl was 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 persons namely Sri Bakul Das and Sri Uddhab Das u/S. 366 [A] of IPC vide Charge-sheet No. 60/2017 dated 31-05-2017.

- **2).** The learned Sub-Divisional Judicial Magistrate, Titabar Sub-Division, District-Jorhat 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 and on finding ground for presuming that the accused has committed offences under Section 366 [A]/34 of IPC as well as Section 4 of The Protection of Children From Sexual Offences Act, 2012 read with Section 34

of IPC, the 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, **11 [eleven]** numbers of witnesses including the victim, her mother-cum-informant and I.O. were examined on behalf of the prosecution to prove the charge against accused.

On completion of prosecution evidence, statement of above named accused was recorded u/S. 313 of Cr.P.C. The accused stated that they did not kidnap the victim girl. As per their version, at the time of incident, the victim was a major girl. The mother of victim had lodged false case against him due to misunderstanding of fact. The accused persons 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 P.P. Goswami, learned Counsel for the accused who is facing trial for commission of offence u/S. 366 [A] of IPC as well as Section 4 of The Protection of Children From Sexual Offences Act, 2012 read with Section 34 of IPC.
- **6).** Now the points for determination before this Court are as follows:-
  - 1) Whether on 21/05/2017 on the way, the accused Sri Bakul Das alongwith co-accused Sri Uddhab Das, induced the minor victim to leave her parent house or to do any act with intent that she will be forced or seduced to illicit intercourse against her will and consent and thereby committed an offence punishable under Section 366 [A] of IPC read with Section 34 of IPC?
  - 2) Whether on the date of occurrence the accused persons 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 read with Section 34 of IPC?

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

**7).** First of all, let us see the definition of relevant provisions of law to the charged sections against accused. The section reads as follows:

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.

## THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

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 and sections of law against accused in this case, let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

In the instant case the **victim** has deposed her evidence as **PW-1**. In her testimony, she divulged that occurrence took place around six months back. She started to like accused Bakul Das. On the date of incident accused Bakul Das came to take her but she refused. At that time, accused Bakul Das forcibly took her on his motorcycle. It was about 2.00 P.M. It is further version of the victim that accused Bakul Das took her to the house of his family member and thereafter the later disappeared after keeping her there. Further version of this witness is that the accused Bakul Das was accompanied by co-accused Uddhab Das in the motorcycle. She obstructed accused Bakul Das from taking her but the later did not pay any heed to her request. On the next day morning she was offered one glass of water by one lady and soon after consuming it she became unconscious. Then she went to sleep. When she woke up the family members told her to go to the police station. Police recorded her statement, took

her before a doctor for medico legal check-up. She was also 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 stated that she did not call accused Bakul Das to the field. She stayed in the house of her maternal grandmother. The victim further stated that when she left her home at that time her aunt, her mother and her elder brother were present inside the house. She [victim] categorically stated that on the date of incident she voluntarily accompanied the accused. She stated her age to be more than eighteen years. She told that Magistrate did not ask her regarding her date of birth.

**9). Smt. Bhanu Das [PW-2]** is the mother of victim-cum-informant of the case. During her testimony, she deposed in the same tune as that of her ejahar. She exhibited her ejahar as Exhibit-2 and her signature thereon as Exhibit-2 [1]. It is further stated by this witness that police recovered her daughter after three days of lodging of the ejahar from the house of one Jodumoni. Later on, victim narrated the incident before her.

This witness during cross-examination divulged that she cannot say whether there was love affair between her daughter and accused Bakul Das. She searched for her daughter when she went missing but nobody told her that they have witnessed accused Bakul Das taking the victim forcibly.

10). The evidence of **Sri Paramananda Das @ Dudu [PW-3]** is to the effect that on the date of incident accused Bakul Das came near him and requested him to hand over his motorcycle to him as he had to visit a doctor for treatment of his mother. In the evening hour, the accused Bakul Das returned back the motorcycle. Thereafter, he heard hullah in the locality. He came to know from the villagers that accused Bakul Das had brought one girl in his residence.

This witness was declared <u>hostile</u> by the **prosecution** and during cross-examination by prosecution side he denied to have stated before police that "accused Bakul Das stated before him over mobile phone that he had gone to Bandar Chaliha to bring one Magic vehicle; that co-accused

Uddhab Das had taken away the motorcycle towards Bandar Chaliha and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he question accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith co-accused Uddhab Das had kidnapped the victim from Tipomia and that accused Bakul Das told lie that his mother was ill, instead he had taken the motorcycle for the purpose of kidnapping the victim girl from Tipomia".

This witness during cross-examination confirmed that he did not state before police that "accused Bakul Das stated before him over mobile phone that he had gone to Bandar Chaliha to bring one Magic vehicle; that co-accused Uddhab Das had taken away the motorcycle towards Bandar Chaliha and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he question accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith co-accused Uddhab Das had kidnapped the victim from Tipomia and that accused Bakul Das told lie that his mother was ill, inspite he had taken the motorcycle for the purpose of kidnapping the victim girl from Tipomia".

11). The evidence of **Sri Narayan Das [PW-4]** is to the effect that on the relevant day accused Bakul Das took the motorcycle of one Sri Paramanda Das @ Dudu, who also worked as a mason alongwith him. Accused Bakul Das disclosed before the owner of the motorcycle that his mother is ill and hence he had to visit a doctor for the aforesaid purpose. On the same day, at about 8.00 P.M., he heard shout in the village and came to know from the villagers that accused Bakul Das had brought one girl to his house. He witnessed the victim in the residence of accused Bakul Das.

This witness was also declared <u>hostile</u> by the **prosecution** side. During cross-examination by prosecution side this witness denied to have stated before police that "accused Bakul Das stated before him to go to Bandar Chaliha to bring one Magic vehicle; that co-accused Uddhab Das had taken away the motorcycle towards Bandar Chaliha; that he went to

Bandar Chaliha area and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he questioned accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith other co-accused Uddhab Das had kidnapped the victim from Tipomia".

During cross-examination by defence side this witness denied to have stated before police that "accused Bakul Das stated before him to go to Bandar Chaliha to bring one Magic vehicle; that co-accused Uddhab Das had taken away the motorcycle towards Bandar Chaliha; that he went to Bandar Chaliha area and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he questioned accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith other co-accused Uddhab Das had kidnapped the victim from Tipomia".

**12). Sri Bajen Rajkhowa [PW-5]** who is the owner of Magic vehicle stated that on the date of incident at about 6.00 P.M. one Narayan Das, neighbour came to his residence and told that accused Bakul Das is standing at Titabar and requested him to give his vehicle on rent. Thereafter, he went towards Titabar. He then dropped accused Bakul Das, Sri Paramananda Das and Sri Narayan Das at Bandar Chaliha O.P. under Titabar P.S. When he returned back home he came to know that accused Bakul Das had brought one girl to his house from Titabar.

This witness during cross-examination by defence side stated that all the passengers of the vehicle went normally and they did not make any hue and cry.

**13).** The evidence of **Dr. Biman Chandra Hazarika [PW-6]** is to the effect that on 23/05/2017 he examined the victim on police requisition and opined that no any external injury seen at the time of examination. He exhibited his report vide Exhibit-3 wherein Exhibit-3 [1] is his signature.

This witness during cross-examination admitted that he did not mention the age of the injury in his report but he mentioned in his report

[Exhibit-3] that no external injury was found at the time of examination upon the body of victim.

- **14). Sri Lakhiram Das [PW-7]** during his testimony divulged that on the date of incident he witnessed accused Bakul Das and co-accused Uddhab Das taking a girl in between both of them in a motorcycle.
- **15). Sri Paban Das [PW-8]** during his evidence stated that after the incident he heard from the villagers that one girl from his village fled away with one boy.

Prosecution side declared this witness <u>hostile</u> and during cross-examination by prosecution, this witness denied to have stated before police that "he came to know that accused Uddhab Das and Bakul Das took the victim with them; that accused persons falsely stated that Sri Dudu Das would bring medicine for the mother of Bakul Das and thereafter took his motorcycle and instead used the said motorcycle to take the victim with them".

- **16).** Evidence of **Sri Lakhidhar Das [PW-9]** is to the effect that he does not know anything about the incident.
- **17). Sri Suren Buragohain [PW-10]** who is teacher of Tipomia Bogodia Girl's M.E. School stated that he issued certificate vide Exhibit-5 wherein the date of birth of victim is reflected. He also exhibited his signature in the Exhibit-5 as Exhibit-5 [1].

This witness during cross-examination stated that as per Exhibit-5 the age of victim was above sixteen years. He admitted that victim did not produce any age proof at the time of admission in their school. He clarified that the actual age of the victim might be more than sixteen years.

**18). Sri Birendra Bordoloi [PW-11]** is the investigating officer of the case who deposed about the routine steps taken by him during investigation. After taking charge of investigation he recorded statement of the informant at

the police station itself. Thereafter, he proceeded towards the place of occurrence and searched for both the victim as well as accused at Bandar Chaliha village but he could not find them. While returning back to the police station he recovered the victim girl alongwith accused Bakul Das near SDPO Office at Titabar. During investigation, he seized the motorcycle vide seizure-list [Exhibit-4] wherein Exhibit-4 [2] is his signature which was returned back to the original owner. He also seized the school certificate of the victim girl from Tipomia M.E. School vide seizure-list [Exhibit-5]. The I.O. drew Sketch Map of the place of occurrence with index vide Exhibit-6 wherein Exhibit-6 [1] is his signature. On completion of investigation, he submitted charge-sheet against both the accused persons vide Exhibit-7 wherein Exhibit-7 [1] is his signature.

The I.O. confirmed that witness Sri Paramananda Das @ Dudu [PW-3] during his statement under Section 161 Cr.P.C. stated before him that "accused Bakul Das stated before him over mobile phone that he had gone to Bandar Chaliha to bring one Magic vehicle; that co-accused Uddhab Das had taken away the motorcycle towards Bandar Chaliha and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he question accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith co-accused Uddhab Das had kidnapped the victim from Tipomia and that accused Bakul Das told lie that his mother was ill, inspite he had taken the motorcycle for the purpose of kidnapping the victim girl from Tipomia".

Witness Sri Narayan Das [PW-4] during his statement under Section 161 Cr.P.C. divulged before him that "accused Bakul Das stated before him to go to Bandar Chaliha to bring one Magic vehicle; that co-accused Uddhab Das had taken away the motorcycle towards Bandar Chaliha; that he went to Bandar Chaliha area and hired one Magic vehicle for Rs. 300/-; that he witnessed accused Bakul Das alongwith the victim; that he questioned accused Bakul Das wherefrom the victim hails and to his query accused Bakul Das informed him that he alongwith other co-accused Uddhab Das had kidnapped the victim from Tipomia".

The I.O. further confirmed that witness **Sri Paban Das [PW-8]** stated before him under Section 161 Cr.P.C. that **"he came to know that accused Uddhab Das and Bakul Das took the victim with them; that accused persons falsely stated that Sri Dudu Das would bring medicine for the mother of Bakul Das and thereafter took his motorcycle and instead used the said motorcycle to take the victim with them".** 

The I.O. during cross-examination by defence side stated that the victim disclosed in the ejahar that she went at 4.00 P.M. on the date of incident for travelling purpose and he found the accused as well victim while they were walking on the street. He confirmed that he did not record statement of any witness when he recovered the victim as well as accused. Further, he confirmed that he did not record confessional statement of co-accused Uddhab Das in connection with the case.

**19).** From a close perusal of the evidence on record it is seen that the victim [PW-1] knew the accused prior to the incident.

In her testimony [PW-1] divulged that occurrence took place around six months back. She started to like accused Bakul Das. On the date of incident accused Bakul Das came to take her but she refused. At that time, accused Bakul Das forcibly took her on his motorcycle. It was about 2.00 P.M. It is further version of the victim that accused Bakul Das took her to the house of your family member and thereafter the later disappeared after keeping her there. Further version of this witness is that the accused Bakul Das was accompanied by co-accused Uddhab Das in the motorcycle. She obstructed accused Bakul Das from taking her but the later did not pay any heed to her request. On the next day morning she was offered one glass of water by one lady and soon after consuming it she became unconscious. Then she went to sleep. When she woke up the family members told her to go to the police station. Police recorded her statement, took her before a doctor for medico legal check-up. She was also 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 stated that she did not call accused Bakul Das to the field. She stayed in the house of her maternal grandmother.

The victim further stated that when she left her home at that time her aunt, her mother and her elder brother were present inside the house. categorically stated that on the date of incident she voluntarily accompanied the accused. She stated her age to be more than eighteen years. She admitted that Magistrate did not ask her regarding her date of birth.

**20).** From the evidence of Smt. Bhanu Das [PW-2] who is the mother of victim-cum-informant of the case it is seen that she deposed in the same tune as that of her ejahar. She exhibited her ejahar as Exhibit-2 and her signature thereon as Exhibit-2 [1]. It is further stated by this witness that police recovered her daughter after three days of lodging of the ejahar from the house of one Jodumoni. Later on, victim narrated the incident before her.

This witness during cross-examination divulged that she cannot say whether there was love affair between her daughter and accused Bakul Das. She searched for her daughter when she went missing but nobody told her that they have witnessed accused Bakul Das taking the victim forcibly.

- 21). The informant [PW-2] had contradicted the version of I.O. [PW-11] who stated that he found the accused as well as victim while they were walking on the street whereas the informant [PW-2] stated that police recovered her daughter [PW-1] from the house of one Jodumoni whom the I.O. has not examined in the instant case for the reasons best known to it.
- On a close perusal of 164 Cr.P.C. statement of the victim who is the star witness of the case [Exhibit-1] recorded by the learned Magistrate on 24/05/2017 it is seen that she met accused Bakul Das in a marriage ceremony about four days ago where the accused gave proposal to marry her. Accordingly, accused Bakul Das took her mobile number. On last Sunday, he called her and invited her to the field near the school. Accordingly, she went to that field at about 3.00 P.M. where accused Bakul Das gave proposal before her to elope with him and thereafter accused Bakul Das took her on his bike alongwith his friend. The victim gave her age before the learned Magistrate as 16 [sixteen] years.

- 23). Incident of the case took place on 21/05/2017. As per version of Sri Suren Buragohain [PW-10] who is the teacher of Tipomia Bogodia Girls' M.E. School, who stated that he mentioned the age of victim in the Exhibit-5 as per Admission Register of school to be 18/09/2001. From the above piece of evidence of this witness it is seen that victim was aged 16 years at the time of incident. It is interesting to note herein that prosecution side as well as the I.O. of the case examined the doctor [PW-6] but the doctor did not state the age of victim for the reasons best known to him.
- **24).** 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.

However, in the present case, the victim has not been found consistent on the material particulars with regard to the incident which is not even supported by her statement given before the learned Magistrate under Section 164 Cr.P.C.

**25).** On appreciation of the evidence on record as well as other facts and circumstances of the case, it is found that there is no proof of forceful abduction of the victim girl by the accused persons namely Sri Bakul Das and Sri Uddhab Das.

Victim categorically deposed in her evidence under Section 164 Cr.P.C. that she voluntarily travelled with the accused Bakul Das in his motorcycle. She did not specifically depose that accused induced her to leave the house of her parent to go with them. She did not state that she was sexually assaulted by either accused of this case.

**26).** On scrutinizing the evidence on record it is seen that no case has been made out against accused persons namely Sri Bakul Das and Sri Uddhab Das to warrant their conviction under Section 366 [A] IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012 read with Section 34 of IPC, as victim stated nothing in her statement under Section 164 Cr.P.C. [Exhibit-1] that accused had physical relation with her during her stay

with the accused Sri Bakul Das in his residence. Prosecution has not been able to make out a case against the accused persons namely Sri Bakul Das and Sri Uddhab Das under the aforesaid sections of law beyond reasonable doubt, for which, I am of the opinion that the accused persons are entitled to **acquittal** under benefit of doubt which I accordingly do.

**27).** In the result, the accused Sri Bakul Das and Sri Uddhab Das are acquitted of the charges under Section 366 [A] of IPC and Section 4 of The Protection of Children From Sexual Offences Act, 2012 read with 34 of IPC.

Accused persons are 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.

**28).** Given under my hand and seal of this Court on this **21st** day of **January 2019**.

**Special Judge, Jorhat** 

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## **ANNEXURES:-**

## **PROSECUTION WITNESSES:-**

PW-1	Victim girl.
PW-2	Smt. Bhanu Das, mother of victim-cum-informant
	of the case.
PW-3	Sri Paramananda Das, mason.
PW-4	Sri Narayan Das, mason.
PW-5	Sri Bajen Rajkhowa, businessman.
PW-6	Sri Biman Chandra Hazarika, M.O. of the case.
PW-7	Sri Lakhiram Das, businessman.
PW-8	Sri Paban Das, another businessman.
PW-9	Sri Lakhidar Das, businessman.
PW-10	Sri Suren Buragohain, Teacher of Tipomia Bagodia
	Girls' M.E. School.
PW-11	Sri Birendra Bordoloi, I.O. of the case.

# **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
Exhibit-3	Medico legal report of victim
Exhibit-4 & 6	Seizure-list
Exhibit-5	Certificate
Exhibit-7	Sketch Map of the place of occurrence with index
Exhibit-8	Charge-sheet

# **MATERIAL EXHIBIT NO-1:- NIL**

**DEFENCE WITNESSES:- NONE** 

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)