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. 12 OF 2016 (G.R. Case No. 337 of 2016) Teok P.S. Case No. 49 of 2016

Committing Magistrate:-

Smt. Sharmila Bhuyan, Chief Judicial Magistrate, Jorhat District

State of Assam

Versus

Sri Mridul Bora, Son of Sri Bokul Bora, Resident of Dhekiani Bhorolowa Gaon, P.S. Teok,

District-Jorhat. Accused

APPEARANCES:

For the State : Sri M.R. Barooah, Special Public Prosecutor, Jorhat

For the Accused: Sri Pulin Barthakur, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTIONS 376/511 OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 25-04-2016

Date of prosecution evidence: 18-05-2016; 31-05-2016; 27-07-2016;

15-09-2016; and 10-01-2017

Statement of Accused

Recorded on : 30-05-2017

Date of Argument : 14-06-2017

Date of Judgment : 21-06-2017

JUDGMENT

1). The prosecution story, in brief, is that **Teok P.S. Case No.** 49/2016 under Section 8 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of an F.I.R. lodged by informant Smt. Madhabi Saikia, mother of the victim girl [hereinafter referred to as 'X'].

In the aforesaid **F.I.R.** dated 03/02/2016 **[Exhibit-2]** the informant Smt. Madhabi Saikia [PW-2] who is the mother of the victim girl, alleged, inter-alia, that on 02/02/2016 at about 10.30 A.M. while she was not present in her house at that time accused arrived at her house and thereafter tore off the cloths of her minor daughter who was a student of Class-X and thereafter attempted to commit rape upon her. It is further stated in the ejahar by the informant that the accused touched the whole body and private parts of victim.

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. 49/2016 under Section 8 of The Protection of Children From Sexual Offences Act, 2012**.

During the course of investigation the victim girl was medically examined by the doctor, her statement under Section 164 of Cr.P.C. was recorded by the learned Magistrate. The police on completion of investigation filed charge-sheet in the case against the above named accused Mridul Bora u/S. 448 of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 27/2016 dated 27/02/2016.

- **2).** The learned Chief Judicial Magistrate, Jorhat, after furnishing copies of the relevant documents to the accused forwarded the case to this Court for trial as the offence were found under POCSO Act apart from offence under IPC.
- 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 376/511 of IPC read with Section 8 of The Protection of Children From Sexual Offences Act, 2012.

Accordingly, 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, **7 [seven]** witnesses including the victim, her parents, the Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge u/Ss. 376/511 of IPC read with Section 8 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 has been falsely implicated in the case. The accused stated that parent of the victim had previous enmity/grudge with him and hence they lodged false ejahar against him. The accused pleaded innocence. However, no witness was adduced by the accused in his defence to substantiate his claim.

- I have heard Sri Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor for the State as well as Sri Pulin Borthakur, learned Counsel for the accused, who is facing trial for commission of offence u/Ss. 376/511 of IPC read with Section 8 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 02/02/2016 at about 10.30 A.M. morning in absence of the informant in her house the accused attempted to commit rape on the minor daughter of the informant and thereby committed an offence punishable under Sections 376/511 of IPC?
 - 2) Whether on the date of occurrence the accused, named above, committed sexual assault upon the minor victim girl as defined under Section 7 of The Protection of Children From Sexual Offences Act, 2012 and thereby committed an offence punishable under Section 8 of the Act?

DISCUSSION, DECISIONS AND REASONS THEREOF:

- **7).** First of all, let me examine, analyze and appreciate the evidence of the witnesses along with the relevant documents.
- 8). **PW-1** is the victim [X] who divulged during her testimony that on the relevant day she was studying in her room. At that time her parents were not present in the house. The accused arrived at her house at about 10/30 A.M. It is further version of the victim that her grandmother, who is an old lady being physically impaired having weak eyesight, was present in the residence. The accused called her grandmother for sometime. When her grandmother heard the voice of accused she requested accused to sit in the room and not to disturb her as she had to appear in the Matriculation Examination. But the accused did not pay any heed to the request made by her grandmother. It is her further version that accused entered into her room, wanted to tear off her clothes, put his hand in her private part and also touched her chest and breast. At that time she was wearing a salwar pant. She somehow pushed the accused and thereafter ran outside the house. Further version of the victim is that she called the wife of accused and disclosed the incident before her. When her mother returned back home from the Panchavat office she narrated the incident before her mother. It is also stated by the victim that when she narrated the fact to the wife of accused, she in turn alongwith the mother of victim requested her not to speak the fact before her father. Her mother lodged ejahar before police. She also deposed that she gave statement before the Magistrate and she marked Exhibit-1 to be her statement and her signature thereon as Exhibit-1 [1] to Exhibit-1 [4]. It is her further version that police also produced her before a doctor for medicolegal check-up.

During cross-examination, she divulged that prior to the date of incident there was enmity between their families. She admitted that on the date of incident her grandmother was present alongwith her whose eyesight and hearing is weak. She denied defence suggestion that due to enmity between their families her mother had lodged false case against the accused. She also denied all the defence suggestions put to her during cross-examination.

9). Smt. Madhabi Saikia [PW-2] is the mother of victim. During her testimony she stated that on the date of incident she was not present in the house as she went to Panchayat office alongwith the mother of accused. When she returned back home, her daughter [PW-1] disclosed the incident to her. It is her further version that the accused arrived near the table of her daughter, took her mathematics book for sometime. The grandmother of the victim requested the accused to come out of the room but accused did not pay any heed to the request of her grandmother. After knowing the incident, she arrived at the house of accused and questioned the wife of accused about the incident, to which, accused's wife gave positive reply. Then she lodged ejahar before police which she exhibited as Exhibit-2 and her signature as Exhibit-2 [1].

Police arrived at her house, took her daughter before a doctor for medico legal check-up. Her daughter was also produced before the Magistrate for recording statement under Section 164 Cr.P.C. It is her version that police also seized the birth certificate of her daughter on being produced by her vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is her signature. She further stated that wearing apparels of the victim were also seized by police vide seizure-list [Exhibit-3].

This witness during cross-examination stated that prior to the date of incident there was no enmity between the families but after the incident the relationship between both families became strained. She further stated that she asked her mother-in-law about the incident and her mother-in-law disclosed before her that accused arrived at their house on the relevant day, she requested the accused to come out of the room of the victim but he did not pay any heed to the request made by her mother-in-law. She denied all the defence suggestion put to her including the suggestion that no such type of incident occurred on the relevant day.

10). Sri Tipeswar Saikia [PW-3] who is the father of victim divulged during his testimony that on the date of incident he was not present in the house as he went to his office. When he returned back home he came to know about the incident from his wife. He then suggested his wife to lodge ejahar before police. It is his further version that police recorded statement of his daughter,

took her before a doctor for her medico legal check-up as well as before the learned Magistrate for recording statement. Police also seized the birth certificate of his daughter vide seizure-list [Exhibit-3] wherein Exhibit-3 [2] is his signature. He categorically stated during his testimony that date of birth of his daughter was 01/04/2000.

This witness during cross-examination denied the defence suggestion that no such type of incident occurred on the relevant day. He admitted that accused is a married person having his wife and school going son.

11). PW-4 is **Sri Badan Saikia**. He stated that he knows accused as well as the victim. On the next day the mother of victim arrived at his residence and disclosed to him that on the previous day accused arrived at her house in her absence and thereafter grabbed her daughter. He came out of his house as his mother and sisters were present inside the house. He categorically stated that he does not know what victim had stated before police.

During cross-examination, he stated that he has not witnessed the incident. He came to know about the incident from the mother of victim.

12). Sri Miraj Doley [PW-5] is the investigating officer of the case. During his testimony he divulged that on the date of incident the informant arrived at Teok P.S. and lodged ejahar before police. He was entrusted with the charge of investigation. He exhibited the ejahar of informant as Exhibit-2 wherein Exhibit-2 [2] was the endorsement with signature of Sri Amrit Singh, the then Officer-incharge, Teok P.S.

During investigation he examined the informant as well as victim. The victim was taken before a doctor for medico legal examination. It is further stated by him that the victim was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. He further divulged that one birth certificate of the victim alongwith her salwar kurta being torn by left side was seized by him on being produced by the informant as well as victim of the instant case. He also arrested the accused in connection with the case. It is further stated by him that he examined witnesses who were acquainted with the fact and circumstance of the case. Further version of this witness is that he also drew

Sketch Map of the place of occurrence vide Exhibit-4 wherein Exhibit-4 [1] is his signature. After collecting medico legal report of the victim from the concerned doctor together with the statement from the court, he submitted charge-sheet against the accused.

During cross-examination, he stated that as per statement of the victim recorded by the learned Magistrate under Section 164 Cr.P.C. coupled with her statement under Section 161 Cr.P.C. he has submitted charge-sheet against the accused under the aforesaid provision of law.

13). Dr. Amrita Nath [PW-6] examined the victim on 04/02/2016 as per police requisition and on examination she did not find any injury on the person of the victim [X]; there was no recent sexual intercourse detected on the person of victim and the age of victim was above 18 years and below 20 years. She exhibited her report as Exhibit-5 and her signature thereon as Exhibit-5 [1] to Exhibit-5 [3].

Defence side declined to cross-examine the doctor.

- **14). Sri Manash Mishra [PW-7]** is a businessman whose evidence is of no help to the prosecution as he stated that he does not know anything regarding the incident.
- nowhere in the statement of the victim [PW-1] who is the star witness of the instant case has stated that the accused had committed rape upon her. Rather, the victim has divulged that on the relevant day she was studying in her room. At that time her parents were not present in the house. The accused arrived at her house at about 10/30 A.M. It is further version of the victim that her grandmother who is an old lady being physically impaired having weak eyesight was present in the residence. The accused called her grandmother for sometime. When her grandmother heard the voice of accused she requested accused to sit in the room and not to disturb her as she had to appear in the Matriculation Examination. But the accused did not pay any heed to the request made by her grandmother. It is her further version that accused entered into her room,

wanted to tear off her clothes, put his hand in her private part and also touched her chest and breast. At that time she was wearing a salwar pant. She somehow pushed the accused and thereafter ran outside the house. Further version of the victim is that she called the wife of accused and disclosed the incident before her. When her mother returned back home from the Panchayat office she narrated the incident before her mother. It is also stated by the victim that when she narrated the fact to the wife of accused, she in turn alongwith the mother of accused requested her not to speak the fact before her father. Her mother lodged ejahar before police.

- **16).** Learned counsel for the accused has argued that victim stated in her evidence that there was previous enmity with the family of accused, hence she must have lodged the instant case on being tutored by her parent. It is also submitted that the mother of the victim namely Smt. Madhabi Saikia [PW-2], Sri Tipeswar Saikia [PW-3], father of the victim and Sri Badan Saikia were reported witnesses.
- **17).** The accused during his statement under Section 313 Cr.P.C. had taken the plea that he had been falsely implicated by the informant for the crime which he has not committed.
- 18). It is an admitted fact that the investigating officer of the instant case has seized birth certificate of the victim from her parents to prove that the victim is a child/minor less than 18 [eighteen] years as on the date of commission of offence vide seizure-list [Exhibit-3] but the aforesaid birth certificate is not available with the record. In the seizure list [Exhibit-3] the I.O. has written the date of birth of victim as 01/04/2000, but wherefrom the I.O. got the aforesaid date is not specifically mentioned in his seizure-list. Moreover, if I.O. had seized any document regarding date of birth of victim the prosecution ought to have materially exhibited it. But prosecution failed to do so for not any known reason.

The Medical Officer [PW-6] categorically stated in her evidence that victim was above 18 years and below 20 years of age at the time of her medico

legal examination. From the above piece of evidence it cannot be held that victim girl was not major at the time of incident.

19). In the present case, the victim girl [PW-1] has stated that after the incident she called the wife of accused and disclosed the incident before her. The same piece of evidence is also tendered by Smt. Madhabi Saikia, the informant-cum-mother of victim [PW-2]. However, the investigating officer [PW-5] did not record statement of the grandmother of victim as well as wife of accused to whom the victim girl narrated the incident immediately was also not examined for the reasons best known to him.

20). 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 leq.

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 committed rape on the victim or committed sexual assault upon her. Hence, accused is entitled to acquittal under benefit of doubt which I accordingly do.

21). In the result, accused **Sri Mridul Bora** is <u>acquitted</u> of the charges under Sections 376/511 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.

His bail bond stands discharged.

22). Given under my hand and seal of this Court on this <u>21st</u> day of **June**2017.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Madhabi Saikia, mother of victim girl-cum-
	informant of the case.
PW-3	Sri Tipeswar Saikia, father of the victim.
PW-4	Sri Badan Saikia, neighbour of the victim.
PW-5	Sri Miraj Doley, I.O. of the case.
PW-6	Dr. Amrita Nath, Medical Officer.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

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

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)