#### 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. 75 OF 2016 (G.R. Case No. 606 of 2016) Borholla P.S. Case No. 99 of 2016

## **Transmitting Magistrate:-**

Sri Nayan Jyoti Sarma, The then Sub-Divisional Judicial Magistrate, Titabar Sub-Division, Jorhat District

State of Assam

-Versus-

Sri Nripen Chutia, Son of Late Maneswar Chutia, Resident of Simple Grant, P.S. Borholla, District-Jorhat.

.... Accused

#### **APPEARANCES:**

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Sri Rintu Goswami, Learned Advocate, Jorhat

# CHARGE FRAMED UNDER SECTIONS 376 [1] OF INDIAN PENAL CODE READ WITH SECTION 6 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 10-01-2017

Date of prosecution evidence: 09-02-2017; 22-02-2017; 07-03-2017;

04-05-2017; 14-06-2017; 18-08-2017;

20-09-2017 & 09-04-2018

**Statement of Accused** 

 Recorded on
 : 23-04-2018

 Date of Argument
 : 09-07-2018

 Date of Judgment
 : 20-07-2018

#### JUDGMENT

1). The prosecution story, in brief, is that Borholla P.S. Case No. 99/2016 under Section 376 of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by the victim-cum-informant of the case [hereinafter referred to as 'X'].

In the aforesaid **F.I.R.** dated 21/11/2016 **[Exhibit-2]**, the informant-cum-victim girl, alleged, *inter-alia*, that she is a student of Class-VII of Kakadonga Habigaon Madhya Engraji Vidyalaya and the accused was the chowkidar of the aforesaid school. On 16 & 17<sup>th</sup> November 2016, accused committed rape upon her by grabbing her and taking her inside the latrine of the school. It is further stated by the informant that at the time of incident she was sweeping the school premise.

On receipt of the aforesaid F.I.R. by the then Officer-in-charge, Borholla P.S., the same was registered vide **Borholla P.S. Case No. 99/2016** under Section 376 IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012.

During the course of investigation the victim girl-cum-informant of the case [hereinafter referred to as 'X'] 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 Nripen Chutia u/S. 376 of IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 73/2016 dated 13/12/2016.

- **2).** The then learned Sub-Divisional Judicial Magistrate, Titabar Sub-Division, District-Jorhat, transmitted the case to this Court for trial as the offence were found under POCSO Act apart from offence under IPC. Copy was furnished to the accused in due course.
- **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 Section 376 [1] of IPC read with Section 6 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, **13 [thirteen]** witnesses including the victim, her parent, independent witnesses, Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge u/S. 376 [1] of IPC read with Section 6 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. Further version of the accused is that victim is like his daughter. No such type of incident took place, as alleged by the victim in her ejahar. The accused pleaded innocence. However, no witness was adduced by the accused in his defence to substantiate his claim.

- I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Rintu Goswami, learned Counsel for the accused, who is facing trial for commission of offence u/S. 376 [1] of IPC read with Section 6 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 16/11/2016 & 17/11/2016, the accused committed rape upon the victim-cum-informant of the case aged below 18 years in the school latrine while she was cleaning the school premise, and thereby committed an offence punishable under Section 376 [1] of IPC?
  - 2) Whether on the date of occurrence the accused, named above, committed aggravated sexual assault upon the minor victim girlcum-informant as defined under The Protection of Children From Sexual Offences Act, 2012 and thereby committed an offence punishable under Section 6 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 exhibited documents.
- 8). **PW-1** is the victim [X] who divulged during her testimony that she knows the accused from before as accused was the chowkidar of Kakodonga Habi Gaon Madhya Engraji Vidyalaya. At the time of incident she was student of Class-VII. She was sweeping the room of the school as per instruction of the chowkidar. The accused called her towards the bathroom but she did not go there. It is further stated by the victim-cum-informant that for the second time the accused called her towards the latrine. Thereafter, the accused came near her and gave her Rs. 10/- in her pocket. But she did not take the money from the accused. Instead she put the same on the table of her school room. Further version of the victim is that after sometime she went to the latrine where the accused arrived and pressed her breast with his hand. Then the accused inserted his male organ inside her private part. The accused also asked her not to shout for help. It is stated by the victim that the accused also instructed her not to disclose the fact to her parent. She returned back home from school and informed the matter to her maternal aunt Smt. Chinumai Gogoi as she resided in her house. She was produced before the learned Magistrate who recorded her statement under Section 164 Cr.P.C. vide Exhibit-1 wherein Exhibit-1 [1] and Exhivbit-1 [2] are her signatures. She was also produced before a doctor for medico legal check-up. It is also stated by the victim that she lodged ejahar before police regarding the incident vide Exhibit-2 wherein Exhibit-2 [1] is her signature.

During cross-examination by defence side, she denied that she did not state before police as well as Magistrate that the accused called her at first to the bathroom but she did not go there and that the accused put Rs. 10/- inside her pocket and requested her to come towards the latrine. She admitted that her classroom is situated near Class-VII and on the relevant day her friends were present inside the school. The victim further admitted that she did not state anything before the teachers as well as the Headmaster of her school after the

incident. She categorically stated that the scribe of the ejahar did not read over the content to her and as per instruction of the scribe of the ejahar named Niren she put her signature in the ejahar.

**9). Smt. Rekha Bora [PW-2]** is the mother of victim [PW-1]. During her testimony, she stated that accused Nripen Chutia was the Chowkidar of Kakodonga Habi Gaon Madhya Engraji Vidyalaya. This witness stated that on the date of incident while her daughter [PW-1] returned back home she disclosed that the accused took her to the latrine by pulling her and thereafter in the aforesaid latrine the accused inserted his male organ in her private part. This witness further stated that when victim disclosed the fact before her at that time her sister-in-law was also present. She then took the victim to the police station where the victim lodged ejahar before police. Her daughter was taken before a doctor for medico legal check-up and thereafter she was produced before the court where learned Magistrate recorded statement under Section 164 Cr.P.C.

This witness during cross-examination by defence side, denied that her daughter did not state before her that on the date of incident the accused pulled her towards the latrine and committed rape upon her. She categorically stated that she did not give any written complaint before the school authority regarding the incident.

**10). Dr. Amrita Nath** has been examined by prosecution side as **PW-3.** The doctor during her evidence testified that on 22/11/2016 while she was working at Jorhat Medical College & hospital as Lady Medical Officer [R] she examined the victim on police requisition. In her opinion, the age of victim was above 14 years and below 16 years; there was no evidence of recent sexual intercourse and violence mark detected on the person of victim. She exhibited her report as Exhibit-3 and her signatures thereon vide Exhibit-3 [1] to Exhibit-3 [3].

During cross-examination by defence side, the doctor stated that as per laboratory report no sperm was found and the hymen of victim was found intact. There was no sign of rupture or inflammation inside the vagina of the victim during her medical examination.

11). PW-4 is Sri Bipin Baruah who was the Science teacher at Kakodonga Habigaon Madhya Engraji Vidyalaya. This witness during his evidence disclosed that on 21/11/2016 the maternal uncle of victim came to the school and showed him one ejahar wherein it was stated that the accused had done bad work with the victim. He accordingly questioned the maternal uncle of victim who stated before him that on 17/11/2016 the incident took place. This witness further stated that he asked the maternal uncle of victim why they did not inform them immediately after the incident, for which, the former kept mum and did not tell them anything.

During cross-examination by defence side, this witness stated that on 21/11/2016 the victim did not come to the school but on that day the maternal uncle of the victim as well as one Sri Niren Gayan came to their school. Further, he does not have any personal knowledge regarding the incident.

was the Chowkidar and the victim was the student at the relevant point of time. This witness during her testimony stated that alleged incident took place on 17/11/2016 and the same came to her knowledge through the maternal uncle of victim named Sri Malaka Chutia who was accompanied by one person who entered into her chamber and asked her whether she knew about the incident. In reply, she stated that she does not know anything about the incident.

This witness during cross-examination by defence side stated that incident occurred on 17/11/2016 but she came to know about the incident only on 21/11/2016. But on 21/11/2016 the maternal aunt of the victim visited her house on Monday but she did not stated anything before her. This witness specifically stated that no complaint was lodged before her by the victim or any of her family members regarding the incident.

**13). Smt. Sunumai Gogoi [PW-6]** who is the aunt of victim [PW-1] divulged during her testimony that as victim was threatened by the accused, hence the victim did not divulge the fact before her on the date of incident but on the next day she reported about the matter. She then accompanied the victim as well as her mother to the police station.

During cross-examination by defence side, this witness stated that they did not lodge any complaint to the school authority regarding the incident out of fear. She denied all the defence suggestions put to her during cross-examination.

**14).** Evidence of **Sri Mineswar Chutia** [**PW-7**] who was the Chowkidar of Kakodonga High School is to the effect that came to know about the incident only after police arrested the accused in connection with the case. He came to know that accused got arrested for kidnapping a girl from the school.

The defence side cross-examined this witness. During cross-examination, this witness stated that he does not know anything about the incident.

**15). Smt. Parishmita Das [PW-8]** who is another school teacher of Kakodonga Habi Gaon M.E. School during her deposition in court stated that on 21/11/2016 she came to know about the incident.

During cross-examination by defence side, she admitted to have stated before police that nobody informed her about the incident till two people went to their school for informing the matter to the Principal.

**16). [PW-9]** is **Miss Kabita Kachari** who is the friend of victim [PW-1]. This witness during her testimony divulged that she came to know about the incident, later on.

This witness during cross-examination by defence side divulged that she does not have any personal knowledge about the incident.

**17). Sri Niren Gayan [PW-10]** is the scribe of the ejahar who wrote the same as per version of the maternal uncle of victim. He exhibited the ejahar as Exhibit-2 wherein Exhibit-2 [2] is his signature.

Defence side cross-examined this witness. This witness stated that he does not have any personal knowledge about the incident. He only heard it from the uncle of victim.

**18). Sri Bhaskar Sonowal [PW-11]** who is a student stated that the victim was his classmate. He does not know anything about the incident.

Defence side declined to cross-examine this witness.

**19). Miss Sewali Kachari [PW-12]** stated that on the date of incident she did not go to the school. She went to the school on the next day of incident. She came to know about the incident through Smt. Junaki baidew and Sri Bipin sir. Later on, she came to know about the incident from one Anamika.

Defence side cross-examined this witness who stated that she does not know anything about the incident.

**20). Sri Hari Kanta Tamuli [PW-13]** who is the investigating officer of the instant case deposed about the routine steps taken by him during investigation of the case. 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. This witness further stated that he arrested the accused on 22/11/2016. After completion of investigation he submitted charge-sheet against the accused vide Exhibit-5 wherein Exhibit-5 [1] is his signature.

This witness during cross-examination from defence side admitted that witness [PW-1] who is the victim of the instant case did not state before him that accused gave Rs. 10/- and requested her to go to the latrine. The I.O. further confirmed that Smt. Rekha Borah [PW-2] who is the mother of victim did not state before him that she came to know about the incident from her daughter [PW-1]. It is further version of the I.O. that witness Sri Bipin Baruah [PW-4] did not state before him under Section 161 Cr.P.C. that maternal uncle and one Niren Gayan came before them and showed them the ejahar. Witness Smt. Sunumai Gogoi [PW-6] during her statement under Section 161 Cr.P.C. did not state before him that victim did not report the incident to her as accused threatened the victim that she will be assaulted if she would say anything about the incident to anyone and further that victim informed her about the incident on the next day of incident.

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 divulged before court that at the time of incident she was student of Class-VII. She was sweeping the room of the school as per instruction of the chowkidar. The accused called her towards the bathroom but she did not go there. It is further stated by the victim-cum-informant that for the second time the accused called her towards the latrine. Thereafter, the accused came near her and gave her Rs. 10/- in her pocket. But she did not take the money from the accused. Instead she put the same on the table of her school room. Further version of the victim is that after sometime she went to the latrine where the accused arrived and pressed her breast with his hand. Then the accused inserted his male organ inside her private part. The accused also asked her not to shout for help. It is stated by the victim that the accused also instructed her not to disclose the fact to her parent. She returned back home from school and informed the matter to her maternal aunt Smt. Chinumai Gogoi as she resided in her house. She was produced before the learned Magistrate who recorded her statement under Section 164 Cr.P.C. vide Exhibit-1 wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures. She was also produced before a doctor for medico legal check-up. It is also stated by the victim that she lodged ejahar before police regarding the incident vide Exhibit-2 wherein Exhibit-2 [1] is her signature.

During cross-examination by defence side, she denied that she did not state before police as well as Magistrate that the accused called her at first to the bathroom but she did not go there and that the accused put Rs. 10/- inside her pocket and requested her to come towards the latrine. She admitted that her classroom is situated near Class-VII and on the relevant day her friends were present inside the school. The victim further admitted that she did not state anything before the teachers as well as the Headmaster of her school after the incident. She categorically stated that the scribe of the ejahar did not read over the content to her and as per instruction of the scribe of the ejahar named Niren she put her signature in the ejahar.

**22).** On a close perusal of the ejahar lodged by the informant-cum-victim [PW-1] it is seen that she lodged ejahar before police alleging inter-alia that on

16 & 17<sup>th</sup> November 2016 the accused who was the chowkidar of her school committed rape upon her by grabbing her and taking her inside the latrine of the school. It is further stated by the informant that at the time of incident she was sweeping the school premise.

- Magistrate as per provision of Section 164 Cr.P.C. on 23/11/2016 wherein she stated that on 17/11/2016 while she was sweeping alone in her classroom, the accused dragged her towards the bathroom and thereafter bolted the door. Then the accused undressed her frock, removed her panty. She protested the said act of accused but the accused did not pay any heed to her protest. Inspite of that, he opened his chain/zip of the pant, took out his penis, inserted the same in her private part, for which, she felt pain and tried to shout for help, but the accused gagged her mouth. It is further stated by the victim that at that time Bipin sir came to the school in his motorcycle and hearing the sound of motorcycle the accused left the bathroom. But how victim could come to know the sound of motorcycle belonged to Bipin Sir or why she did not narrate the incident to said witness [PW-4] creates doubt in the story of prosecution.
- 24). Smt. Rekha Bora [PW-2] who is the mother of victim stated that she came to know about the incident when her daughter [PW-1] returned back home on the relevant day and narrated her about the incident. But the victim in her evidence categorically stated that she informed the matter to her Mami Smt. Chinumai Gogoi as she used to reside in her house.
- **25).** From the evidence of Smt. Jonaki Borah [PW-5] who was the then Headmistress of Kakodonga Habigaon Madhya Engraji Vidyalaya it is seen that she came to know that the maternal uncle of victim named Sri Malaka Chutia and one person named Niren Gayan had lodged complaint before police against the accused. Furthermore, the scribe of the ejahar namely Sri Niren Gayan [PW-10] during his evidence stated that uncle of victim called and told him that accused did bad work with the victim in the school compound.

- 26). The I.O. [PW-13] during course of cross-examination by defence side admitted that witness [PW-1] who is the victim of the instant case did not state before him that accused gave Rs. 10/- and requested her to go to the latrine. The I.O. further confirmed that Smt. Rekha Borah [PW-2] who is the mother of victim did not state before him that she came to know about the incident from her daughter [PW-1]. It is further version of the I.O. that witness Sri Bipin Baruah [PW-4] did not state before him under Section 161 Cr.P.C. that maternal uncle and one Niren Gayan came before them and showed them the ejahar. Witness Smt. Sunumai Gogoi [PW-6] during her statement under Section 161 Cr.P.C. did not state before him that victim did not report the incident to her as accused threatened the victim that she will be assaulted if she would say anything about the incident to anyone and further that victim informed her about the incident on the next day of incident.
- **27).** 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. Further, he stated that victim is like his daughter.
- **28).** Flip-flop evidence has been tendered by victim [PW-1] which gets no corroboration from her ejahar as well as her statement under Section 164 Cr.P.C. recorded by the learned Magistrate after the incident. Furthermore, the witnesses adduced by the prosecution side did not corroborate with each other on all material particulars to connect the accused with the alleged crime.
- **29).** 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 committed rape on the victim or committed aggravated sexual assault upon the victim, as alleged by her. Hence, accused is entitled to acquittal which I accordingly do.

**30).** In the result, accused **Sri Nripen Chutia** is <u>acquitted</u> of the charges under Sections 376 [1] IPC read with Section 6 of The Protection of Children From Sexual Offences Act, 2012, levelled against him 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.

**31).** Given under my hand and seal of this Court on this **20th** day of **July 2018**.

**Special Judge, Jorhat** 

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## **ANNEXURES:-**

## **PROSECUTION WITNESSES:-**

PW-1	Victim girl ['X'].
PW-2	Smt. Rekha Bora, mother of victim ['X'].
PW-3	Dr. Amrita Nath who examined the victim.
PW-4	Sri Bipin Baruah, school teacher.
PW-5	Smt. Jonaki Borah, Headmistress of Kakodonga Habigaon Madhya Engraji Vidyalaya.
PW-6	Smt. Sunumai Gogoi, housewife.
PW-7	Sri Mineswar Chutia, Chowkidar, Kakodonga High School.
PW-8	Smt. Parishmita Das, school teacher.
PW-9	Miss Kabita Kachari, schoolmate of victim.
PW-10	Sri Niren Gayan, cultivator.
PW-11	Sri Bhaskar Sonowal, student.
PW-12	Miss Sewali Kachari, student.
PW-13	Sri Hari Kanta Tamuli, I.O. of the case.

# **COURT WITNESS:- NIL**

## **EXHIBITS FOR THE PROSECUTION:-**

Exhibit-1	Statement of the victim [PW-1] under Section 164
	Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Medico-legal report of victim [PW-1]
Exhibit-4	Sketch map of the place of occurrence with index
Exhibit-5	Charge-sheet

**DEFENCE WITNESSES:- NONE** 

Special Judge, Jorhat.

## **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)