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 2018 (G.R. Case No. 1267 of 2018) Jorhat P.S. Case No. 951 of 2018

Committing Magistrate:-

Sri Angaz Baruah, Judicial Magistrate 1st class, Jorhat District

State of Assam

-Versus-

Sri Dipak Bora, Son of Sri Bhadreswar Bora, Resident of Charaibahi Gohain Gaon, P.S. Jorhat,

District-Jorhat. Accused

APPEARANCES:

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

For the Accused: Sri Deep Ranjan Chetia & Sri Santanu Sharma,

Learned 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 : 31-07-2018

Date of prosecution evidence: 01-11-2018; 29-11-2018 & 21-01-2019

Statement of Accused

Recorded on : 22-01-2019

Date of Argument : 22-01-2019

Date of Argument : 22-01-2019
Date of Judgment : 25-01-2019

<u>JUDGMENT</u>

1). The prosecution story, in brief, is that Jorhat P.S. Case No. 951/2018 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Smt. Priyanka Das, mother of the victim girl [hereinafter to be referred as [X].

In the aforesaid **F.I.R.** dated 28/04/2018 **[Exhibit-2],** the informant Smt. Priyanka Das [PW-2] who is the mother of the victim girl [X] alleged, *inter-alia*, that on the same day at about 09.00 P.M. her minor daughter became traceless from her residence. It is further stated by the informant in her ejahar that later on she received one message from mobile phone number 7896552474.

On receipt of the aforesaid F.I.R. by the then In-charge, Rawriah O.P. under Jorhat P.S., he entrusted the same vide G.D. Entry No. 556 dated 28/04/2018 and forwarded the same to the Jorhat P.S. and the same was registered as **Jorhat P.S. Case No. 951/2018 under Section 366 [A] of IPC**.

During the course of investigation, the victim girl was sent for her medico-legal examination as well as 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 Dipak Bora u/S. 366 [A] of IPC, vide Charge-sheet No. 328/2018 dated 31/05/2018.

- **2).** The Judicial Magistrate 1st class, 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, 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, **06** [six] witnesses including the victim, her parent and the I.O. 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.

On completion of prosecution evidence, statement of above named accused was recorded u/S. 313 of Cr.P.C. The accused has taken the following pleas:

- i. That the victim came to him voluntarily as she was in love with him;
- ii. That on the relevant day the victim on her own volition accompanied him;
- iii. Victim told him that if he does not go there then she will die;
- iv. The accused pleaded innocence.
- **5).** I have heard Sri Muhidhar Dutta, learned Special Public Prosecutor for the State as well as Sri Deep Ranjan Chetia being assisted by Sri Santanu Sarmah, learned Defence Counsel for the accused.
- **6).** Now the points for determination before this Court are as follows:-
 - 1) Whether on or about 28/04/2018 at about 9.00 P.M. at Kuhiarbari Pathakar Chuk under Jorhat P.S., the accused namedabove took or enticed the victim out of keeping of the lawful guardianship without her consent and thereby committed an offence punishable under Section 363 of IPC?
 - 2) Whether the accused o the same day, time and place induced the victim girl to go with him or 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 another person 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 points, let us examine, analyze and appreciate the evidence of the witnesses along with the relevant documents.

[PW-1] is the victim of the instant case. This witness during her testimony divulged that the accused had love affair with her. It is further version of the victim that, on the date of incident, at about 9.00 P.M., the accused telephoned her and called her outside the house. Accordingly, she met the accused on the road and thereafter, the later, took her to the house of his friend where the accused put vermillion over her forehead. She stayed in the house of accused's friend for about two days and slept with the mother of the friend of accused. She stated that the accused did not enter into physical relationship with her. Both of them surrendered before police after being called by police. She gave statement before the learned Magistrate which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] to Exhibit-1 [3].

This witness during cross-examination by defence side stated that she stated before police that she was having love affair with the accused for the last one year and on the date of incident she first telephoned the accused but she did not call him.

8). The evidence of **Smt. Priyanka Das [PW-2]** who is the mother of victim-cum-informant of the case during her testimony stated that on the date of incident she went inside the room of her daughter to call her for dinner but she did not find her in the room. She searched for her daughter [PW-1] but could not find her. Then she lodged ejahar before police at about 11.00 P.M. She exhibited the ejahar as Exhibit-2 and her signature as Exhibit-2 [1]. She further stated that her daughter disclosed before her that she proceeded alongwith the accused on the date of incident in his scooty. Police seized the birth certificate of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is her signature. The aforesaid certificate was given in zimma to her vide Exhibit-4 wherein Exhibit-4 [1] is her signature.

During cross-examination, she stated that she cannot say whether victim telephoned the accused from her phone. This witness categorically stated that her daughter went **voluntarily** with the accused on the date of incident.

9). Sri Rajib Das [PW-3] who is the father of victim deposed alike as that of his wife [PW-2]. He further stated that after some days police recovered his daughter alongwith the accused. On being asked the victim stated before him that the accused took her. It is further version of this witness that his daughter is seventeen years at present.

Defence side cross-examined this witness and during cross-examination, he stated that he came to know, later on, that his daughter was having love affair with the accused and before police he gave statement that he suspected that his daughter had gone with the accused. He could not say whether his daughter went with the accused voluntarily or not?

10). PW-4 is **Sri Dhurba Das** who is the neighbour of victim had stated that on the date of incident, at about 9.30 P.M., while he was standing near his pan shop at that time he heard shouts from the house of victim. Mother of victim called him to their house and asked him if he had witnessed her daughter, to her query, he stated in the negative as he did not witness the victim. Thereafter, all of them searched for the victim but she was not found available in their locality. He did not ask anything about the incident to the victim after she returned back home.

This witness during cross-examination stated that he came to know after the incident that accused and victim were having love affair. He does not have any personal knowledge about the incident.

11). The evidence of **Sri Partha Pratim Hazarika** [**PW-5**], related brother of victim, is to the effect that on the date of incident victim's mother informed him that victim is missing from her residence. Then he went to the house of victim and searched for her but could not find the victim in the locality. Thereafter, mother of victim lodged ejahar before police.

This witness during cross-examination stated that he does not know whether accused had love affair with the victim or not?

12). Sri Ponaram Saikia [PW-6] who is the I.O. of the case deposed about routine steps taken by him during investigation of the case. He examined the informant at the police station itself and came to know from the informant that her daughter was in love with the accused. Accordingly, he made search in the house of accused located at Gohain Gaon but the accused was not found present inside his house. He suspected that accused was involved in kidnapping the daughter of the informant. On 30/04/2018 both accused as well as victim surrendered before police. The I.O. examined the victim and sent her before a doctor for medical examination. Accused was arrested in connection with the case. He also drew Sketch Map of the place of occurrence with index vide Exhibit-5 wherein Exhibit-5 [1] is his signature. The I.O. also seized the birth certificate of the victim from her mother vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is her signature. On completion of investigation, he submitted charge-sheet against the accused vide Exhibit-6 wherein Exhibit-6 [1] is his signature.

The I.O. during cross-examination by defence side stated that victim [PW-1] during her statement under Section 161 Cr.P.C. did not state before him that "accused put vermillion over her forehead and thereafter she stayed at the house of the friend of accused for two days".

- **13).** In the present case, the victim [PW-1] has not been found consistent on the material particulars with regard to the incident which is not even supported by her mother-cum-informant of the case, i.e., PW-2 and her father [PW-3].
- **14).** The victim [PW-2] during her evidence before the court stated that she knew the accused. During cross-examination, the victim stated that she stated before police that she was having love affair with the accused prior to the date of incident and she used to communicate with the accused over telephone.

- 15). Smt. Priyanka Das [PW-2] who is the mother of victim-cum-informant of the case during her testimony stated that on the date of incident she went inside the room of her daughter to call her for dinner but she was found unavailable in the room. She searched for her daughter [PW-1] but could not find her. Then she lodged ejahar before police at about 11.00 P.M. She exhibited the ejahar as Exhibit-2 and her signature as Exhibit-2 [1]. She further stated that her daughter disclosed before her that she proceeded alongwith the accused on the date of incident in his scooty. Police seized the birth certificate of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is her signature. The aforesaid certificate was given in zimma to her vide Exhibit-4 wherein Exhibit-4 [1] is her signature.
- **16).** The evidence of Smt. Priyanka Das [PW-2] gets full corroboration from her husband Sri Rajib Das [PW-3] who during his testimony divulged that after some days police recovered his daughter alongwith the accused. On being asked the victim stated before him that the accused took her. It is further version of this witness that his daughter is seventeen years at present.

Defence side cross-examined this witness and during crossexamination, he stated that he came to know later on that his daughter was having love affair with the accused and before police he gave statement that he suspected that his daughter had gone with the accused.

- **17).** From the Material Exhibit-1, photocopy of the birth certificate of the victim [PW-1], it is seen that date of birth of victim is reflected as 26/10/2000. Incident of this case occurred on 28/04/2018. At that time victim was aged more than 17 [seventeen] years, i.e., she was on the verge of majority.
- **18).** 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 [PW-1] by the accused. Furthermore, victim [PW-1] did not specifically depose that accused induced her to leave the house of her parent.

19). In the instant case, it is seen that the victim girl went out voluntarily with the accused.

20). On scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Dipak 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 before the court that accused had physical relation with her during her stay in the house of the accused or she was enticed/induced by the accused to leave her parent home. Prosecution has not been able to make out a case against the accused Sri Dipak 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.

UTP/accused is in jail. He shall be released forthwith if not required to be detained in jail in connection with any other case.

21). Given under my hand and seal of this Court on this **25th** day of **January 2018**.

Special Judge, Jorhat

Continued to Page No:-9

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Priyanka Das, mother of victim-cum-informant
	of the case.
PW-3	Sri Rajib Das, father of victim.
PW-4	Sri Dhurba Das, businessman.
PW-5	Sri Partha Pratim Hazarika, electrician.
PW-6	Sri Ponaram Saikia, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of victim recorded by the Magistrate under Section 164 Cr.P.C.
Exhibit-2	Ejahar
Exhibit-3	Seizure-list
Exhibit-4	Zimmanama
Exhibit-5	Sketch Map of the site of occurrence with index

DEFENCE WITNESSES:- NIL

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)