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. 104 OF 2017

(G.R. Case No. 3589 of 2017) Teok P.S. Case No. 535 of 2017

Committing Magistrate:-

Smt. Rani Boro, Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Sri Ganesh Saikia, Son of Late Phuleswar Saikia, Resident of Kamar Khatowal Gaon, P.S. Teok,

District-Jorhat. Accused

APPEARANCES:

For the State : Sri Muhidhar Dutta, Learned Special P.P., Jorhat For the Accused: Sri Bambeswar Barua, Learned Counsel, Jorhat

CHARGE FRAMED UNDER SECTIONS 4/6/8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 READ WITH SECTION 506 OF INDIAN PENAL CODE

Date of Charge : 05-02-2018

Date of prosecution evidence: 27-02-2018; 03-04-2018; 06-06-2018

& 11-06-2018

Statement of Accused

Recorded on : 09-07-2018

Date of Argument : 03-08-2018 & 03-09-2018

Date of Judgment : 07-09-2018

JUDGMENT

1). The prosecution story, in brief, is that Teok P.S. Case No. 535/2017 under Section 4 of The Protection of Children from Sexual Offences Act, 2012, was registered on the basis of an F.I.R. lodged by Sri Pabitra Saikia, the father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 04/12/2017 [Exhibit-1] the father of the victim girl alleged, *inter-alia*, that on the same day in the afternoon hour his daughter came out of the residence towards the shop of accused Ganesh Saikia located at Kamar Khatowal Gaon under Teok P.S. It is further alleged by the informant that accused being a retired school teacher, in absence of any customer in his shop premise, took his minor daughter forcefully inside the shop premise and thereafter the accused committed rape upon her. He came to know about the incident from his minor daughter when she disclosed the same to him in a sight of fear. Further version of the informant is that his daughter narrated before him that accused threatened her with dire consequence after committing the incident, if she disclose the same to any person.

On receipt of the aforesaid F.I.R. by the In-charge, Lahdoigarh O.P. under Teok P.S., the same was entered in General Diary Register vide G.D. Entry No. 66 dated 04/12/2017. The ejahar was sent to Teok P.S. for registration of a case under proper section of law. The Officer-in-charge, Teok P.S., upon receipt of the ejahar, registered the same vide Teok P.S. Case No. 535/2017 under Section 4 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 police. Police on completion of investigation filed charge-sheet in the case against the above named accused Ganesh Saikia u/S. 376 [1] of IPC as well as u/S. 4 of the Protection of Children From Sexual Offences Act, 2012 vide Charge-sheet No. 339/2017 dated 28-12-2017.

2). The learned Chief Judicial Magistrate, Jorhat, Smt. Rani Boro, transmitted the case to this Court for trial. Copy was furnished to 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 ground for presuming that the accused has committed offences under Section 506 of IPC read with Sections 4/6/8 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, the 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, **07** [seven] witnesses including the victim, her father-cum-informant, her mother, Medical Officer and the I.O. were examined on behalf of the prosecution to prove the charge u/S. 506 of IPC read with Sections 4/6/8 of The Protection of Children From Sexual Offences Act, 2012 against the accused.

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 instant case. On the date of incident he was repairing broken door of his shop alongwith his two sons. They had tea. Thereafter his wife took seat in the shop. He worked with the carpenter. Before that victim came to his shop and sought goods on credit. But he told that goods cannot be given on credit as Rs. 3,000/- [Rupees Three Thousand] was due from her father. Then the victim went back home in insulting mood. Police came and later on he [accused] surrendered before police. 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 Bambeswar Barua, learned Defence Counsel for the accused, who is facing trial for commission of offence u/S. 506 of IPC read with Sections 4/6/8 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 04/12/2017 at about 2.00 P.M., prior to the filing of the ejahar by the informant Sri Pabitra Saikia, the informant instructed his minor daughter to go to the shop of accused Sri

Ganesh Saikia to purchase some household articles, the accused in absence of customers in his shop premise, committed penetrative sexual assault upon the minor daughter of the informant, and thereby committed an offence punishable under Section 4 of The Protection of Children From Sexual Offences Act, 2012?

- 2) Whether during the same period and time, the accused named above committed aggravated penetrative sexual assault upon the victim girl who was minor at the time of incident and thereby committed an offence punishable under Section 6 of The Protection of Children From Sexual Offences Act, 2012?
- 3) Whether during the same period and time, the accused named above, committed sexual assault upon the victim girl who was minor at the time of incident and thereby committed an offence punishable under Section 8 of The Protection of Children From Sexual Offences Act, 2012?
- 4) Whether during the same period and time, the accused named above, committed criminal intimidation by threatening the minor daughter of the informant after commission of the above crime by him and thereby committed an offence punishable under Section 506 of IPC?

DISCUSSION, DECISIONS AND REASONS THEREOF:

PW-1 is the victim girl-cum-star witness of the case who during her deposition in Court stated that on the date of incident she went to the shop of accused which is located in her village in order to bring haldhi and vim bar as instructed by her mother. The accused was present inside the shop being the owner of the same. It is stated by the victim that the floor of the shop was cleaned/washed by the accused. She told accused that she will not go inside the shop as her mother had instructed her to come back early. It is further version of the victim that accused stated before her that it will take no time if she enters inside the shop. It is further stated by the victim that accused inserted his penis

inside her vagina. The accused also bite/kissed her left side chest which victim showed before the court. At this point of time the victim showed the part where the accused kissed on her chest. Further version of the victim is that the accused removed her panty after lifting her wearing garment. Out of fear she could not shout for help. But she felt pain in her private part when the accused inserted his penis. It is stated by the victim that she resisted the accused but he did not pay any heed to her request. At the time of incident she pushed the accused and somehow came out of his shop premise. Thereafter, the accused gave her chana and morton in her hand and did not take money for the aforesaid articles. The accused also directed her not to speak the truth before her parent. She came back running to her house and narrated the incident before her mother. Thereafter, both of them went to paddy field where her father was working but met him on the road and her mother disclosed the fact to her father, who in turn, disclosed to them to go to accused's shop and ask about the incident. Her mother went to the shop premise of accused and called the accused. Thereafter altercation took place in between her mother and accused. The accused took out a dao from inside his shop premise. Her Nobow who was also present alongwith them asked the accused why he was holding the dao in his hand. In turn, the accused disclosed before her that he will cut her [victim] for telling lie. Her mother came into rescue and thereafter all of them returned back home. She was medically examined by a doctor, produced before a Magistrate for recording her statement under Section 164 Cr.P.C. which she identified during evidence.

During cross-examination, she stated that she took the articles from the shop of accused by staying outside his shop. She did not notice the wife of accused as well as two persons engaged by the accused near his shop. She further stated that she cannot say if her maternal uncle had to pay Rs. 3,000/- or more to the accused for buying articles from his shop on credit. She denied defence suggestion that the accused did not give her articles as her maternal uncle had to repay money to him, for which, she returned back home in crying condition; that she had deposed falsely in the court today; that accused did not show her the inside of his shop premise; that the accused showed her the bed in which he used to sleep in the night hour; that accused lifted her garment and removed her panty and thereafter inserted his penis into her private part; that

she did not push the accused and thereafter came out of his shop premise and that the accused did not offer her morton and chana and not to speak the incident before her parent. The victim further denied defence suggestion that her mother tutored her to give false evidence against the accused. She admitted that police did not seize her garment worn by her on the date of incident.

The victim further denied defence suggestion that she did not state before police that when she alongwith her mother and Nobow went to the shop premise of the accused, at that time, accused came outside the shop holding a dao in his hand and thereafter when her Nobow asked the accused why he had taken a dao in his hand, to her query, the accused stated that he will kill/cut her for telling lie.

8). **PW-2** is **Smt. Dipika Saikia** who is the mother of the victim. This witness during her testimony divulged that on the date of incident her daughter returned back home from the shop premise of accused in shivering condition. She asked her daughter as to what had happened. In turn, her daughter [PW-1] disclosed before her that the accused took her inside the shop, removed her garments and panty, thereafter inserted his penis in her private part, for which, she felt pain but she could not shout for help. The accused also bite her on the left side chest. This witness further stated that her husband returned back home from the paddy field. She disclosed the facts before her husband who instructed them to go alongwith Nobow to the shop of accused. Accordingly, she alongwith her daughter and Nobow went towards accused's shop and asked the accused about the incident. To their query, the accused directed them to come outside the shop. She witnessed the accused coming out of his shop holding a dao in his hand. When her Nobow asked the accused why he had carried the dao, in turn, the accused disclosed that he will cut her daughter for telling lie against him. Her husband lodged ejahar before police regarding the incident.

During cross-examination, she admitted that they used to take articles on credit from the shop of accused and they had to repay only Rs. 300/-to the accused for purchasing articles from his shop on credit. This witness further stated that she noticed redness of the left side chest of her daughter. She denied all the defence suggestions put to her during cross-examination.

9). Sri Pabitra Saikia [**PW-3**] is the father of victim-cum-informant of the case. This witness deposed alike as that of his wife [PW-2]. It is further stated by this witness that he lodged ejahar before police vide Exhibit-1 wherein Exhibit-1 [1] is his signature. His daughter was sent to the court for recording statement by the learned Magistrate under Section 164 Cr.P.C.

During cross-examination, he denied defence suggestion that due to previous enmity with the accused he had lodged false case against the accused and that he used to take articles from the shop of accused on credit and that for the outstanding amount of Rs. 3,000/- he had lodged false case against the accused through his minor daughter.

Smt. Jonali Saikia [PW-4] stated that on the date of incident she came to know about the incident from the mother of victim. She was directed by the father of victim to go to the shop premise of accused. Accordingly, she visited the shop premise of accused where mother of victim asked the accused about the incident. The accused denied the same and told before them that he [accused] just wanted to love the victim out of affection. There was altercation between the accused and the mother of victim. Thereafter, the accused went inside the shop and brought out one dao. When she asked the accused why he had brought out the dao, in turn, the accused disclosed before this witness that he will cut the victim and her mother.

During cross-examination, she stated that the victim did not narrate her about the incident but she was weeping all the time. It is further stated by this witness that wife of accused is a Muslim woman. She denied defence suggestion that she did not accompany the victim and her mother to the shop of accused and did not meet the accused on that relevant day.

11). Smt. Rajumoni Saikia [PW-5] stated that on the date of incident she came to know about the incident from the mouth of victim. It is her further version that victim told her that the accused threatened her not to divulge the fact to anybody. This witness was declared **hostile** by **prosecution** and during cross-examination by prosecution side, she denied to have stated before police

that "victim told her that accused raped her after taking her inside his shop premise".

During cross-examination from the side of defence, she admitted that she stated before police that accused took the victim inside his shop and misbehaved with her.

12). Sri Khagen Laskar [PW-6] is the investigating officer of the instant case. He stated about the routine steps taken by him during investigation of the case. He recorded statement of the informant at the O.P. itself. Thereafter, he visited the place of occurrence, examined the victim of the case and examined other witnesses who were acquainted with the fact and circumstances of the case. The victim was sent before a doctor for medico legal check-up. She was also produced before the learned Magistrate for recording her statement under Section 164 Cr.P.C. It is further deposed by him that he drew Sketch Map of the place of occurrence with index vide Exhibit-2 wherein Exhibit-2 [1] is his signature. Thereafter, finding sufficient materials against the accused under Section 376 IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, he filed charge-sheet against the accused vide Exhibit-3 wherein Exhibit-3 [1] is his signature.

During cross-examination, he admitted that he did not collect the school certificate of the victim; that he did not seize any article in the case like the bed-sheet from the shop premise of accused as well as wearing apparel of victim.

This witness stated that **witness [PW-1]** did not state before him that when she alongwith her mother and Nobow went to the shop premise of accused at that time accused came outside the shop holding a dao in his hand and thereafter when her Nobow asked the accused why he had taken a dao in his hand, to her query, the accused stated that he will kill her for telling lie.

The I.O. denied that witness **Smt. Dipika Saikia [PW-2]** did not state before him that she noticed redness on the left side chest of her daughter but she stated before him that she noticed some sign.

It is confirmed by the I.O. that **Sri Pabitra Saikia [PW-3]** did not state before him that her daughter told him that there was redness on the left side of her chest.

The I.O. denied defence suggestion that the instant case had been lodged by the informant as he had to pay Rs. 3,000/- and as he [accused] refused to give any further goods on credit so they have lodged false case against the accused.

13). Dr. Amrita Nath [PW-7] stated that on 05/12/2017 she was lady Medical Officer on duty at Jorhat Medical College & Hospital. She examined the victim [PW-1] on police requisition. On examination, she opined that victim was above 10 years and below 12 years; no injury detected on the person of victim and evidence of recent sexual intercourse was not detected on her person at the time of medical examination. She exhibited her report as Exhibit-4 and her signatures thereon as Exhibit-4 [1] to Exhibit-4 [3].

Defence cross-examined this witness. The doctor stated that she did not find any injury mark on the chest of victim. She further stated that if penis is inserted into the vagina then the hymen will be ruptured and there might also be swelling.

- **14).** From a bare perusal of the evidence on record it is seen from the evidence of investigating officer [PW-6] that he did not seize any wearing apparel of the victim nor did he seized the bed-sheet from the shop premise of accused where the alleged occurrence took place. Furthermore, the I.O. during his cross-examination by defence side admitted that he did not collect the school/birth certificate of the victim from her parent.
- **15).** It is also seen from the evidence of Dr. Amrita Nath [PW-7] that she did not find any injury over the person of victim when she was examined on the next day of incident. The victim [PW-1] during evidence stated that the accused inserted his penis inside her vagina, for which, she felt pain in her private part. This piece of evidence finds no support from the testimony of Dr. Amrita Nath [PW-7] who during cross-examination by defence side specifically stated that if

penis is inserted into the vagina then the hymen will be ruptured and there might also be swelling.

16). 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 accused Sri Ganesh Saikia is entitled to acquittal under benefit of doubt against charged sections, i.e., 506 of IPC as well as under Sections 4/6/8 of The Protection of Children from Sexual Offences Act, 2012, which I accordingly do.

17). In the result, accused **Sri Ganesh Saikia** is <u>acquitted</u> of the charges levelled against him on benefit of doubt and he is set at liberty forthwith from the charges under Section 506 of IPC read with Sections 4/6/8 of The Protection of Children from Sexual Offences Act, 2012.

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.

18). Given under my hand and seal of this Court on this **07th** day of **September 2018**.

Special Judge, Jorhat

Continued to Page No:-11

ANNEXURES:-

PROSECUTION WITNESSES:-

| PW-1 | Victim girl of the case. |
|------|---|
| PW-2 | Smt. Dipika Saikia, mother of victim. |
| PW-3 | Sri Pabitra Saikia, father of victim-cum-informant of the case. |
| PW-4 | Smt. Jonali Saikia, Nobow of victim. |
| PW-5 | Smt. Rajumoni Saikia, housewife. |
| PW-6 | Sri Khagen Laskar, I.O. of the case. |
| PW-7 | Dr. Amrita Nath who examined the victim. |

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

| Exhibit-1 | Ejahar |
|-----------|--|
| Exhibit-2 | Sketch Map of the place of occurrence with index |
| Exhibit-3 | Charge-sheet |
| Exhibit-4 | Medico-legal report of victim |

MATERIAL EXHIBIT:- NIL.

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)