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. 01 OF 2018 (G.R. Case No. 2584 of 2017) Pulibar P.S. Case No. 278 of 2017

Committing Magistrate:-

Md. Abdus Sattar,
Additional Chief Judicial Magistrate,
Jorhat District

State of Assam

-Versus-

Sri Anil Gowala @ Gautam Bora, Son of Sri Umaram Gowala, Resident of No-1 Missing Gaon, Kokilamukh P.S. Jorhat,

District-Jorhat. Accused

APPEARANCES:

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

For the Accused: Sri Sudipta Nayan Goswami,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 366 [A] OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 02-01-2018

Date of prosecution evidence: 17-01-2018; 03-03-2018; 29-03-2018;

& 03-05-2018

Statement of Accused

Recorded on : 31-07-2018

Date of Argument : 20-09-2018 & 01-10-2018

Date of Judgment : 08-10-2018

JUDGMENT

1). The prosecution story, in brief, is that **Pulibar P.S. Case No.** 278/2017 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Sri Bubul Hazarika, father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 26/08/2017 [Exhibit-2], the informant Sri Bubul Hazarika [PW-3] who is the father of the victim girl alleged, *inter-alia*, that on 25/08/2017 at about 1.00 P.M. his daughter came out of the house towards Jorhat town and thereafter his daughter went missing. It is also stated by the informant that he alongwith his family members searched for his daughter but she could not be traced out. The informant further stated that he came to know from reliable source that accused Sri Anil Gowala @ Gautam Bora had kidnapped his minor daughter. Finding no other alternative, he had to lodge ejahar before police regarding missing of his daughter. In the aforesaid ejahar the informant has stated that her daughter was aged 17 years at the relevant time.

On receipt of the ejahar by the Officer-in-charge, Pulibar P.S, the same was registered as Pulibar P.S. Case No. 278/2017 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 sent before a doctor for medico-legal check-up but she refused to enter medico legal examination. Her statement under Section 164 of Cr.P.C. was also recorded by the learned Magistrate. Police on completion of investigation, filed charge-sheet in the case, against the above named accused Anil Gowala @ Gautam Bora u/S. 366 [A] of IPC vide Charge-sheet No. 160/2017 dated 30-09-2017.

- **2).** The learned Additional Chief Judicial Magistrate, 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 grounds for presuming that the accused has committed offences under Sections 366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, 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, **07** [seven] numbers of witnesses including the victim, her parent, Medical Officer as well as 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 he did not kidnap the victim girl; that the victim girl on her own volition went with him. It is further version of the accused that he has been falsely implicated in the case. That victim was a major girl at the time of incident. The accused 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 Sudipta Nayan Goswami, learned Counsel for the accused who is facing trial for commission of offence u/S. 366 [A] of IPC read with Section 4 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 25/08/2017 at about 1.0 P.M., the accused, 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?
 - 2) 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 and sections of law against accused in this case, let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

The **victim** [PW-1] divulged during her testimony that on 25/08/2017 at about 1.00 P.M. she came towards Unnayan Super Market, Jorhat town, to attend her computer classes. The accused also arrived at the Super Market and gave proposal to her. She accepted her proposal and thereafter proceeded alongwith the accused towards Dergaon to the house of his elder sister. It is further stated by the victim that both of them could not stay there as her family members were in search of both of them. From Dergaon, both of them proceeded towards Tezpur in a motorcycle and thereafter returned back towards Dergaon to the house of the elder sister of accused. Further version of the victim is that thereafter both of them went towards Chilapathar in a night super bus where she stayed alongwith the accused in the house of his another elder sister as husband and wife. Furthermore, victim stated that there was physical relationship in between both of them. The victim further stated that both of them returned back towards Jorhat and surrendered before Pulibar P.S. She was sent before a doctor for medico legal check-up but she refused to enter medical examination. The victim was produced before a Magistrate for recording her statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] to Exhibit-1 [3]. Lastly, the victim stated that accused initially told his name as Gautam Bora but from his family members she came to know that he is called as Anil Gowala.

During cross-examination, she stated that her date of birth is 10/12/2001. She categorically stated that prior to the date of incident she had love affair with the accused. She further stated that she did not show her educational or any other documents regarding her age. The victim denied all the defence suggestions put to her during cross-examination.

8). PW-2 is **Smt. Anjana Hazarika** who is the mother of victim girl divulged during her testimony that on the date of incident her daughter came out of the house towards Unnayan Super Market to attend her computer classes and

thereafter went missing. The mobile phone of her daughter [PW-1] was switched off till 6.00 P.M. At about 6.00 P.M. the accused received the call and stated before her that he [accused] had taken away the victim alongwith the accused. Further version of this witness is that after that her victim daughter [PW-1] did not receive any call from them and her mobile phone was switched off. On the next day, she alongwith her husband informed the matter before police by lodging ejahar. After two days of incident her daughter alongwith the accused returned back and surrendered before police.

This witness during cross-examination stated that she does not know personally about the place wherefrom the victim went with the accused.

9). Sri Bubul Hazarika [PW-3] is father of the victim girl-cum-informant of the case. His deposition is almost alike as that of his wife Smt. Anjana Hazarika [PW-2]. It is further stated by this witness that he lodged ejahar before police regarding the incident vide Exhibit-2 wherein he put his signature as Exhibit-2 [1]. His daughter was sent to the court for recording statement by the learned Magistrate under Section 164 Cr.P.C. Later on, the victim was handed over to him.

During cross-examination, he stated that he did not know that his daughter had gone with the accused but he came to know about the fact from his daughter. This witness further stated that he cannot say whether his daughter went with the accused voluntarily or not.

10). Dr. Ritu Saikia [PW-4] stated that on 12/09/2017 she was posted at Jorhat Medical College & Hospital as Lady Medical Officer [R]. On that day, police took the victim before her for medico legal examination. But victim refused to enter medico legal examination. She exhibited her report as Exhibit-3 and her signature thereon as Exhibit-3 [1]. It is categorically stated by the doctor that victim wrote the same in vernacular language in the police requisition which is exhibited as Exhibit-3.

The doctor was not cross-examined by defence.

11). PW-5 is **Sri Dibya Jyoti Hazarika** who is the related brother of victim. This witness during his testimony stated that on the date of incident in the evening hours when he returned back home he came to know that victim was missing from her way towards home after attending her tuition classes. Family members of the victim searched for the victim but she was untraceable. Thereafter, father of victim lodged ejahar before police. Later on, he came to know that victim alongwith the accused had surrendered before police.

This witness during cross-examination divulged that he cannot say whether victim went with the accused out of love and affection. He denied that he did not meet the victim and slapped her at the police station.

12). PW-6 is **Sri Makhan Saikia** who is the investigating officer of the instant case deposed about the routine steps taken by him during investigation of the case. He further stated that he prepared Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his signature. The victim alongwith accused surrendered at the police station after lodging ejahar by the informant. After finding sufficient materials against the accused he submitted charge-sheet in the case against the accused on 30/09/2017 vide C.S. No. 160/2017 [Exhibit-5] wherein Exhibit-5 [1] is his signature.

During cross-examination this witness divulged that during investigation he came to know that victim had love affair with the accused and eloped with him on the relevant day. Further, during investigation, he came to know that victim willingly eloped with the accused to enter marriage with him. Lastly, he stated that victim was produced before a doctor but she refused to enter medico legal examination.

13). Smt. Tulumoni Hazarika [PW-7] who is the aunt of victim stated that on the next day of incident she came to know that victim is missing from her house. After receipt of information, she visited the house of victim and came to know that the accused had kidnapped the victim from her way towards home after attending her tuition classes. It is her further version that victim was recovered after about one week of incident.

During cross-examination, this witness stated that she does not have any personal knowledge about the incident and she only heard about the incident from others.

- **14).** From a close perusal of the evidence on record it is seen that the victim knew the accused from before as she had love affair with him. Victim during her statement before the learned Magistrate on 11/09/2017 stated her age as 19 years. She categorically stated before the learned Magistrate that on the date of incident she went with the accused with an intention to marry with him.
- 15). Victim [PW-1] during her evidence in court on 17/01/2018 stated that on 25/08/2017 at about 1.00 P.M. she came towards Unnayan Super Market, Jorhat town, to attend her computer classes. The accused also arrived at the Super Market and gave proposal to her. She accepted her proposal and thereafter proceeded alongwith the accused towards Dergaon to the house of his elder sister. It is further stated by the victim that both of them could not stay there as her family members were in search of both of them. From Dergaon, both of them proceeded towards Tezpur in a motorcycle and thereafter returned back towards Dergaon to the house of the elder sister of accused. Further version of the victim is that thereafter both of them went towards Chilapathar in a night super bus where she stayed alongwith the accused in the house of his another elder sister as husband and wife. Furthermore, victim stated that there was physical relationship in between both of them. The victim further stated that both of them returned back towards Jorhat and surrendered before Pulibar P.S. She was sent before a doctor for medico legal check-up but she refused to enter medical examination. The victim was produced before a Magistrate for recording her statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] to Exhibit-1 [3]. Lastly, the victim stated that accused initially told his name as Gautam Bora but from his family members she came to know that he is called as Anil Gowala.

During cross-examination, she stated that her date of birth is 10/12/2001. She categorically stated that prior to the date of incident she had

love affair with the accused. She further stated that she did not show her educational or any other documents regarding her age.

- **16).** The accused during his statement under Section 313 Cr.P.C. stated that victim came to him voluntarily.
- **17).** It is seen that police requisition form is available with the record but she refused to enter medico-legal examination which gets full corroboration from the evidence of doctor Ritu Saikia [PW-4].
- during her deposition stated that on the date of incident her daughter came out of the house towards Unnayan Super Market to attend her computer classes and thereafter went missing. The mobile phone of her daughter [PW-1] was switched off till 6.00 P.M. At about 6.00 P.M. the accused received the call and stated before her that he [accused] had taken away the victim alongwith the accused. Further version of this witness is that after that her victim daughter [PW-1] did not received any call from them and her mobile phone was switched off. On the next day, she alongwith her husband informed the matter before police by lodging ejahar. After two days of incident her daughter alongwith the accused returned back and surrendered before police.

This witness during cross-examination stated that she does not know personally about the place wherefrom the victim went with the accused.

19). The father of victim-cum-informant of the case [PW-3] during his evidence stated that he lodged ejahar before police regarding the incident vide Exhibit-2 wherein he put his signature as Exhibit-2 [1]. His daughter was sent to the court for recording statement by the learned Magistrate under Section 164 Cr.P.C. Later on, the victim was handed over to him.

During cross-examination, he stated that he did not know that his daughter had gone with the accused but he came to know about the fact from his daughter. This witness further stated that he cannot say whether his daughter went with the accused voluntarily or not.

20). 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 by the accused. The parent of the victim [PW-2 & PW-3] divulged that on the date of incident their daughter went on missing from Unnayan Super Market where she went to attend her computer classes. Later on, the informant [PW-3] came to know that the accused had taken away his daughter to his elder sister's house.

Similarly, the victim girl has narrated the fact during examination that as on the relevant day she accompanied the accused to his elder sister's house from Unnayan Super Market after the accused met her. Victim categorically deposed in her evidence before this court that she stayed with accused in his house as wife and husband for about ten days. She did not specifically depose that accused induced her to leave the house of her parent. She also deposed that she entered into physical relation with the accused with her consent. She even refused to undergo medical examination by the doctor.

- **21).** In the instant case, it is seen that the victim girl went out voluntarily with the accused. But there is no documentary evidence to prove that she was minor at the time of incident as victim clearly stated during her cross-examination that her date of birth was 10/12/2001.
- Don scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Anil Gowala @ Gautam Bora to warrant his conviction under Section 366 [A] IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012. Prosecution has not been able to make out a case against the accused Sri Anil Gowala @ Gautam 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.

His bail bond stands extended for another **06** [six] months from today as per provision of Section 437-A Cr.P.C.

23). Given under my hand and seal of this Court on this **08th** day of **October 2018**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Anjana Hazarika, mother of victim.
PW-3	Sri Bubul Hazarika, father of victim-cum-informant of the case.
PW-4	Dr. Ritu Saikia who examined the victim.
PW-5	Sri Dibya Jyoti Hazarika, related brother of victim.
PW-6	Sri Makhan Saikia, I.O. of the case.
PW-7	Smt. Tulumoni Hazarika, housewife.

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	Police requisition form
Exhibit-4	Sketch Map of the place of occurrence with index
Exhibit-5	Charge-sheet

MATERIAL EXHIBIT NO-1:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)