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. 105 OF 2017

(G.R. Case No. 3132 of 2017) Teok P.S. Case No. 468 of 2017

Committing Magistrate:-

Smt. Jyotismita Sarma, Sub-Divisional Judicial Magistrate [Sadar], Jorhat District

State of Assam

-Versus-

Sri Biswajit Bonia @ Bania, Son of Sri Golap Bania @ Gulap Bonia, Resident of Gorkhawoipar, Jhanjimukh, P.S. Teok,

District-Jorhat. Accused

APPEARANCES:

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

For the Accused: Sri Samir Duttta, Learned Advocate, Jorhat

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

Date of Charge : 19-12-2017

Date of prosecution evidence: 22-03-2018; 20-04-2018 & 29-06-2018

Statement of Accused

 Recorded on
 : 16-08-2018

 Date of Argument
 : 28-09-2018

 Date of Judgment
 : 08-10-2018

JUDGMENT

1). The prosecution story, in brief, is that Teok P.S. Case No. 468/2017 under Section 366 [A] of IPC was registered on the basis of a F.I.R. lodged by Sri Putul Das, the father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 16/10/2017 [Exhibit-3], the father of the victim girl [hereinafter referred to as [X]], alleged, *inter-alia*, that on the same day while his minor daughter was returning back from school she was kidnapped by the accused Biswajit Bonia @ Bania in a motorcycle forcibly. Thereafter, he alongwith his family members searched for his minor daughter but she was found untraceable.

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. 468/2017 under Section 366 [A] of IPC.

During the course of investigation, the victim girl was recovered from the possession of accused, she was medically examined by the doctor, her statement under Section 164 of Cr.P.C. was also recorded. Police, on completion of investigation, filed charge-sheet, in the case, against the above named accused Biswajit Bonia @ Bania u/S. 366 of IPC vide Charge-sheet No. 283/2017 dated 31-10-2017.

- **2).** The Sub-Divisional Judicial Magistrate [Sadar], District-Jorhat, transmitted the case to this Court for trial after furnishing the copies under Section 207 Cr.P.C.
- **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, finding ground 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, 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, **06** [six] witnesses including the victim, her parent, Medical Officer and the I.O. were examined, on behalf of the prosecution, to prove the charge u/Ss. 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 stated that he had been falsely implicated in the case. The accused further stated that he did not threaten or induce the victim girl to go with him leaving her lawful guardian/parent. It is further stated by the accused that at present victim is staying in her parental home. 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 Samir Dutta, learned Defence Counsel for the accused, who is facing trial for commission of offence u/Ss. 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 16/10/2017 at Aowguri Gohain Gaon, Jhanjimukh under Teok P.S., the accused named-above, induced the victim girl who was minor at the time of incident, 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 him and thereby committed an offence punishable under Section 366 [A] of IPC?
 - 2) Whether during the same period and time the accused named above committed penetrative sexual assault upon the victim girl aged above fifteen years but below eighteen years 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). First of all, let us see what the relevant provisions of law states to the charges framed against accused.

Section-366 [A] — Procuration of minor girl-Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

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Section-4 — Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

8). To decide the above points vis-à-vis alleged sections of law let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.

PW-1 is the victim girl who during her deposition in Court stated that she got introduced with the accused over telephone before six months of the incident. The accused proposed her. At first, she rejected the proposal of accused but thereafter she accepted to his proposal. It is further version of the victim that she used to go for her tuition at Teok Tini-Ali. She met the accused on the way for the first time and thereafter used to communicated with each other over message. Further version of the victim is that on 16/10/2017 she attended her school for her pre test and met the accused after attending the examination. Thereafter, she accompanied with her friend Krishnamoni Bora. It is further version of the victim that the accused instructed her to sit on his motorcycle. At that time it was evening. The accused then telephoned his friend and took her to Rongdoi where both of them resided for about one day. Later on, the accused took her to Majuli where both of them stayed for 5/6 days in the house of accused's relative. On 25/10/2017, the accused took her to the house of

one of his relative and from there police recovered her and brought her back to police station. This witness further stated that during the period she stayed with the accused as his wife but she did not sleep alongwith him [accused]. Her statement was recorded by police, she was produced before doctor for medico legal check-up and thereafter before the learned Magistrate for recording statement under Section 164 Cr.P.C. vide Exhibit-1 wherein Exhibit-1 [1] to Exhibit-1 [3] are her signatures.

During cross-examination, she stated that she had love affair with the accused prior to the date of incident and she met the accused for the same reason. The victim categorically stated that accused did not force her to go with him. She voluntarily went with the accused.

9). PW-2 is **Smt. Anima Das** who is the mother of the victim girl [PW-1]. This witness during her deposition stated that on the relevant day her daughter came out of the house to attend pre-test in her school but she did not return back home till 4.00 P.M. She then informed her husband Sri Putul Das to telephone the friend of her daughter but did not have any reply from them. One of the friend of her daughter later on informed them that one boy had taken her daughter in his motorcycle. She alongwith her husband went to police station where her husband lodged ejahar before police regarding missing of their daughter. Victim was recovered by police after ten days of incident. Police took her daughter before a doctor for medico legal examination. She further stated that her daughter was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C.

During cross-examination, she denied to have stated before police that her husband was informed by the friend of the victim that one boy had taken her minor daughter in his motorcycle.

10). Sri Putul Das [PW-3] who is the father of victim [PW-1]-cuminformant of the case deposed in the same tune as that of his ejahar. He then lodged ejahar before police vide Exhibit-3 wherein Exhibit-3 [1] is his signature. Police recovered his daughter, recorded her statement and took her before the learned Magistrate for recording statement under Section 164 Cr.P.C. It is further

version of this witness that police seized the birth certificate of his daughter vide seizure-list [Exhibit-2] wherein Exhibit-2 [1] is his signature. He exhibited the birth certificate of his daughter vide Material Exhibit-1.

During cross-examination, he denied to have stated before police that friend of victim told him that one boy had taken his minor daughter in his motorcycle.

11). Dr. Amrita Nath [PW-4] who was working as Lady Medical Officer on Duty, Jorhat Medical College & Hospital examined the victim girl on 25/10/2017 and opined that the victim is above fourteen years and below sixteen years; no evidence or recent sexual intercourse detected on the person of victim and further the victim was not pregnant at the time of her medico-legal examination. This witness exhibited her medical report [Exhibit-4] and her signatures thereon as Exhibit-4 [1] to Exhibit-4 [3].

Defence side declined to cross-examine the doctor.

12). The evidence of **Miss Trishnamoni Das [PW-5]** who is the friend of victim is to the effect that on the date of incident she witnessed the accused with the victim [PW-1] on his motorcycle near the school. Thereafter, the accused took away the victim alongwith him. Thereafter, she did not meet the victim after the incident.

During cross-examination by defence side, she stated that she saw the victim [PW-1] sitting voluntarily in the motorcycle of the accused.

13). Sri Amar Jyoti Gogoi [PW-6] is the investigating officer of the instant case who 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-5 wherein Exhibit-5 [1] is his signature. During investigation, he came to know that accused and the victim are proceeding towards Jhanjimukh from Mudoijan. Thereafter, he rushed to the place and recovered the victim but the accused fled away from the spot. On 30/06/2018 the accused surrendered at the police station. Statement of victim as well as accused was recorded in connection with the case. Victim was sent before

a doctor for medico legal check-up and thereafter she was produced before the Magistrate who recorded statement of the victim as per provision of Section 164 Cr.P.C. On completion of investigation, he submitted charge-sheet against the accused vide C.S. No. 283/2017 dated 31-10-2017 which has been exhibited vide Exhibit-6 wherein Exhibit-6 [1] is his signature.

During cross-examination by defence side, this witness testified that he did not record statement of Sri Lahon Borah and Sri Maniram Borah as they were unaware of the incident.

14). From a close perusal of the evidence on record it is seen that the victim knew the accused before the incident as she had love affair with him. It is not stated by the victim that the accused had physical contact with her after she eloped with the accused. Rather, she stated that she voluntarily went with the accused and resided with him as his wife but did not enter physical relationship with him [accused]. The Medical Officer [PW-4] did not find any evidence of recent sexual intercourse on the person of victim.

Smt. Anima Das [PW-2] the mother of the victim as well as Sri Putul Das [PW-3], father of victim-cum-informant of the case nowhere in their evidence stated that after recovery of the victim by police they asked anything to the victim regarding the incident.

Miss Trishnamoni Das [PW-5] who is the friend of victim stated that on the date of incident she witnessed the accused with the victim [PW-1] on his motorcycle near the school. Thereafter, the accused took away the victim alongwith him. Thereafter, she did not meet the victim after the incident.

During cross-examination by defence side, she stated that she saw the victim [PW-1] sitting voluntarily in the motorcycle of the accused.

15). From a close perusal of ejahar filed by the informant [PW-3] who is the father of victim, it is stated therein that victim went missing from the road while she was returning back home from school. It is further disclosed by the informant that the accused forcibly kidnapped his minor daughter in his motorcycle. During evidence, the informant did not utter any word as stated in his ejahar. Furthermore, the informant [PW-3] denied to have stated before

police that he was informed by the friend of his minor daughter that one boy had taken his daughter in his motorcycle.

- **16).** The I.O. of the case did not examine any witnesses where the victim as well as accused resided after the date of incident till the recovery of victim by police.
- **17).** The accused during his statement under Section 313 Cr.P.C. had denied that he had physical contact with the victim but he admitted that the victim came to him voluntarily.
- **18).** It is an admitted fact that the investigating officer of the instant case has seized school certificate of the victim from her parent to show that the victim is a child/minor less than 18 [eighteen] years as on the date of commission of offence.
- **19).** However, on scrutinizing the evidence on record, particularly the evidence of victim and her parent including her father-cum-informant of the case [PW-3], considering the entire aspect of the matter and the evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim. Hence, accused is entitled to acquittal under benefit of doubt which I accordingly do.
- **20).** In the result, accused **Sri Biswajit Bonia** @ **Bania** is <u>acquitted</u> of the charges under Sections 366 [A] IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him on benefit of doubt 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.

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

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Anima Das, mother of the victim.
PW-3	Sri Putul Das, father of victim-cum-informant of the case.
PW-4	Dr. Amrita Nath who examined the victim.
PW-5	Miss Trishnamoni Borah, friend of victim.
PW-6	Sri Amar Jyoti Gogoi, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Statement of the victim under Section 164 Cr.P.C.
Exhibit-2	Seizure-list
Exhibit-3	Ejahar
Exhibit-4	Medico-legal report of victim
Exhibit-5	Sketch Map of the place of occurrence with index
Exhibit-6	Charge-sheet

MATERIAL EXHIBIT:-

Material Exhibit-1	Birth certificate of victim

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)