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. 34 OF 2016 (G.R. Case No. 1231 of 2016) Teok P.S. Case No. 177 of 2016

Transmitting Magistrate:-

Smt. Sharmila Bhuyan, The then Chief Judicial Magistrate, Jorhat District

State of Assam

Versus

Sri Sanjib Satnami, Son of Sri Rebo Satnami, Resident of Hatighuli Santipara, P.S. Gaurisagar, District-Sivasagar.

.... Accused

APPEARANCES:

For the State : Sri Juban Mohan Das, Learned Special P.P., Jorhat

For the Accused: Sri Rantu Bora, Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 366 [A] OF INDIAN PENAL CODE READ WITH SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 27-07-2016

Date of prosecution evidence: 04-10-2016; 13-12-2016; 17-02-2017;

18-04-2017 & 13-06-2017

Statement of Accused

Recorded on : 27-07-2017

Date of Argument : 06-11-2017

Date of Judgment : 14-11-2017

JUDGMENT

1). The prosecution story, in brief, is that **Teok P.S. Case No.** 177/2016 under Section 366 [A] of IPC was registered on the basis of an F.I.R. lodged by Sri Suren Gosai, father of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 06/05/2016 the informant Sri Suren Gosai [PW-3] who is the father of the victim girl alleged, inter-alia, that on 18/04/2016 while his daughter was returning back from school, she kept her bicycle alongwith her school bag in the house of one Mantu Bora and thereafter she went missing. They searched for the victim and received information that the accused Sri Sanjib Satnami who hails from Gaurisagar Hatighuli under Sivasagar district has kidnapped his daughter. It is further stated in the ejahar by the informant that at the time of kidnapping of his daughter by the aforesaid accused, his daughter's age was 16 years & 1 month only.

On receipt of the ejahar by the In-charge, Lahdoigarh O.P., the same was entered in G.D. Entry Register, being No. 114 dated 06/05/2016. The ejahar was sent to the Officer-in-charge, Teok P.S, who, in turn, registered the ejahar vide Teok P.S. Case No. 177/2016 under Section 366 [A] of IPC.

During the course of investigation, the victim girl was recovered from the possession of accused from his house. The statement of the victim girl was recorded by the I.O. of the case. The victim girl was taken before a doctor for medico legal check-up where she refused to enter medico legal examinataion. Thereafter, the victim girl was produced before the learned Magistrate for recording statement under Section 164 of Cr.P.C. Police on completion of investigation filed charge-sheet in the case against the above named accused Sri Sanjib Satnami u/Ss. 366 [A]/376 of IPC as well as 8 of The Protection of Children From Sexual Offences Act, 2012, vide Charge-sheet No. 104/2016 dated 31-05-2016.

2). The then learned Chief Judicial Magistrate, Jorhat transmitted the case to this Court for trial as alleged offence are triable by this court only. 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 submission of the accused and the prosecution in this behalf and on finding grounds for presuming that the accused has committed offences under Section 366 [A] of IPC read with Section 8 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, **09** [nine] numbers of witnesses including the victim, her mother and father-cum-informant as well as investigating officer 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 had love affairs with him and she on her own volition eloped with him. It is further version of the accused that he has been falsely implicated in the case. He further stated that at the time of incident the victim was a major girl. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Sri Juban Mohan Das, learned Special Public Prosecutor for the State as well as Sri Rantu Bora, learned Counsel for the accused who is facing trial for commission of offence u/S. 366 [A] of IPC read with Section 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 or about 18/04/2016 at Meleng T.E. Tinikunia Division under Teok P.S., the accused, induced the minor victim while she was returning back home from school 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 sexual assault upon the victim girl and thereby committed an offence punishable under Section 8 of The Protection of Children From Sexual Offences Act, 2012?

DISCUSSION, DECISIONS AND REASONS THEREOF:

7). First of all, let us see the definition of relevant provisions of law to the charged sections against accused. The sections reads as follows:

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.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Section-8 — Whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

8). 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 she knew the accused from before. On the relevant day while she was returning back from school she called the accused and when accused arrived near her, she voluntarily went to the house of accused located at Gaurisagar, Sivasagar district and resided with him as husband and wife. She categorically stated that she stayed in the house of accused for about one month. It is further stated by the victim that she went with the accused on the relevant day without informing her parent. Her father lodged ejahar before police regarding her missing from the way towards

her house. It is her further version that police recovered her from the house of accused, took her before a doctor for medico legal check-up and thereafter she was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her relevant signatures thereon as Exhibit-1 [1] and Exhibit-1 [2].

During cross-examination, she admitted that accused did not call her on the relevant day. She denied defence suggestion that she did not stay in the house of accused as husband and wife. She also denied that she is not 16 years of age, as told by her in her deposition.

9). PW-2 is Smt. Minu Gosai who is the mother of victim girl. It is stated by this witness that on the date of incident her daughter went to school to attend her classes riding her bicycle but she did not return back home. Later on, the bicycle alongwith the school bag was found in the house of one Sri Mantu Gosai. It is further stated by this witness that the accused sent message to her elder daughter that he [accused] had taken away the victim and she is residing alongwith him. Further version of this witness is that after knowing the fact of elopement of her daughter with the accused, she went to the house of accused alongwith her family members but the family members of accused did not allow them to take away the victim. They came to know that the accused was a married person. Hence, her husband informed police regarding kidnapping of their daughter by the accused. Police recovered the victim from the possession of accused. She was produced before a doctor for medico legal check-up and thereafter before the Magistrate for recording statement under Section 164 Cr.P.C.

This witness was cross-examined by the defence. During cross-examination, she divulged that they lodged ejahar before police after five days of incident as her daughter alongwith the accused had promised to come back. It is further stated by this witness that due to tension she did not state before police that accused gave message to the mobile of her elder daughter. She denied defence suggestion that she did not state before police that herself went to the house of accused at Gaurisagar on the next day of missing of her daughter; that

accused was a married person prior to the date of incident and further that accused did not kidnap her daughter and took her to his house at Gaurisagar.

10). Sri Suren Gosai [PW-3] is the father of victim-cum-informant of the case. This witness during his testimony deposed almost alike as that of his wife Smt. Minu Gosai [PW-2]. He lodged ejahar before police vide Exhibit-2. Police recovered his daughter from the possession of accused, his daughter was medically examined by a doctor and was also produced before the Magistrate for recording statement under Section 164 Cr.P.C.

This witness during cross-examination admitted that he did not state before police that accused gave message to his family; that the accused had married someone else before the incident and that he had conversation with the victim [PW-1] after she came to Jorhat court to give her statement before the learned Magistrate under Section 164 Cr.P.C.

11). The evidence of **Sri Mantu Borah** [PW-4] and **Smt. Moni Borah** [PW-5] who are the parent of victim's friend is to the effect that on the relevant day parent of victim arrived at their house and questioned about their daughter. The victim then left the bicycle in their house. Sri Mantu Borah further deposed that when he returned back home at about 2.30 P.M. at that time the grandfather of victim arrived at their house and took the bicycle from their house by telling that victim is missing from their house.

Both these witnesses during cross-examination stated that they do not know anything regarding the incident.

12). Miss Kalyani Borah [PW-6] is the classmate of the victim [PW-1]. It is deposed by this witness that on the date of incident she was not present in her house. Victim used to keep her bicycle in their house prior to the date of incident. Further version of this witness is that on the next day when she returned back home her mother stated to her that on the previous day victim arrived at their house, kept her bicycle and told before her mother that she is proceeding towards Lahdoigarh but she did not return back to their house to take her bicycle.

During cross-examination, this witness admitted that she did not study with the victim in the L.P. School and further that she does not know anything about the incident.

stated that he wrote the F.I.R. as per version of the informant Sri Suren Gosai [PW-3]. He read over the contents to the informant and thereafter informant put his thumb impression in the ejahar which he proved as Exhibit-2 [1] by putting his endorsement below the thumb impression of the informant. It is further stated by this witness that police seized the school certificate of the victim on being produced by the informant vide seizure-list [Exhibit-3] wherein Exhibit-3 [1] is his signature.

During cross-examination, this witness stated that he accompanied police to Gaurisagar but he does not know wherefrom police recovered the victim girl as he did not enter into the house of accused. He has categorically stated that delay in lodging the ejahar has not been explained to him by the informant [PW-3], for which, he has not written the same in the ejahar.

14). Md. Samsuddin [PW-8] is the I.O. of the case. It is his version that on 06/05/2016 while he was working as Attached Officer at Lahdoigarh O.P. under Teok P.S. on that day the then In-charge, Lahdoigarh O.P. received one ejahar from the informant Sri Rajen Gosai which was entered in G.D. Entry Register vide No. 114 dated 06/05/2016. The F.I.R. was sent to Teok P.S. for registration of a case under proper section of law. The then Officer-in-charge, Teok P.S. registered Teok P.S. Case No. 177/2016 and he was entrusted with the investigation of the case. During investigation, he examined the informant, visited the place of occurrence and searched the victim together with the accused and recovered the victim from the possession of accused from Gaurisagar. Victim was produced before a doctor for medico legal checkup but she refused. Thereafter, the victim was produced before a Magistrate for recording statement under Section 164 Cr.P.C. He also deposed that he seized one school certificate of the victim on being produced by the informant vide seizure-list [Exhibit-3] wherein Exhibit-3 [2] is his signature. He also drew Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his relevant signature. Further version of the I.O. is that he showed the accused as absconder in the charge-sheet.

15). Sri Biren Chandra Borah [PW-9] is the Headmaster of Meleng Girls' High School. This witness during his testimony stated that he has brought the original Admission register of his school and exhibited the same of the victim vide Exhibit-A wherein Exhibit-A [1] is the relevant entry for the year 2015. He also stated that date of birth of the victim is 30/11/2000 as per admission register which was produced by the father of victim at the time of taking admission in the school. He exhibited the original certificate to be Material Exhibit-1.

During cross-examination, this witness stated that at the time of admission of a new student in his school they take a certificate from the earlier institute and those certificates are maintained in the records of their school which he has not brought. The victim did not complete her matriculation examination from his school. He admitted that Material Exhibit-1 was issued at the request of the guardian of the victim and also that he has used different pens to fill up the different columns in Exhibit-A [1].

- **16).** 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.
- **17).** The accused during his statement under Section 313 Cr.P.C. stated that victim came to him voluntarily and at present the victim is staying in her parental home.
- **18).** The victim [PW-1] admitted in her evidence that she accompanied the accused to his house located at Gaurisagar after calling him and resided there for about one month as husband and wife. She did not reveal in her statement that accused had sexual intercourse with her on her protest or anything. Victim further stated that she went alongwith the accused after

returning back from school. She called the accused and thereafter both of them proceeded towards the house of accused.

- **19).** On close scrutiny of the Students' Admission Register [proved in original] nowhere it is seen that the Headmaster has reflected the date of birth of the victim and other students who took admission in his school at the relevant point of time. Sri Biren Chandra Borah [PW-9], Headmaster of Meleng Girls' High School during his cross-examination stated that Material Exhibit-1 was issued at the request of the guardian of the said student.
- **20).** Now again coming to the evidence of victim [PW-1] it is seen that she was produced before a doctor by police who had examined her. But the I.O. [PW-8] gave statement that victim was produced before a doctor but she refused to enter medico legal examination.
- 21). Learned counsel for the accused submits that there is no explanation as to the delay in lodging of the ejahar by the informant [PW-3]. Cross-examination of Smt. Minu Gosai [PW-2] who is the mother of victim reveals that they informed police about the incident after about five days of incident as accused and her daughter [PW-1] had promised to come back. But the informant-cum-father of victim Sri Suren Gosai [PW-3] did not say anything to this effect. Sri Biswa Rajbor [PW-7] who is the scribe of the ejahar has deposed that he has not written as to the delay in lodging of the ejahar by the informant as informant did not state anything before him.
- **22).** Flip-flop evidence has been tendered by the victim [PW-1]. 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 the house. Later on, they came to know that the accused had taken away their daughter to his house and married her.

Similarly, the victim girl has narrated the fact during examination that as on the relevant day she accompanied the accused to his house from the road after the accused met her on being so called by the victim. Victim categorically deposed in her evidence under Section 164 Cr.P.C. that she stayed with accused in his house as wife and husband for about one month. She did not specifically depose that accused induced her to leave the house of her parent.

Do scrutinizing the evidence on record it is seen that no case has been made out against accused Sri Sanjib Satnami to warrant his conviction under Section 366 [A] IPC as well as under Section 8 of The Protection of Children From Sexual Offences Act, 2012, as victim stated nothing in her statement under Section 164 Cr.P.C. [Exhibit-1] as well as evidence before the Court on 04/10/2016 that accused had physical relation with her during her stay in the house of the accused. Prosecution has not been able to make out a case against the accused Sri Sanjib Satnami 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.

Bail bond of accused is extended for the next **06** [six] months under Section 437-A Cr.P.C.

24). Given under my hand and seal of this Court on this **14th** day of **November 2017**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Minu Gosai, mother of victim of the case.
PW-3	Sri Suren Gosai, father-cum-informant of the case.
PW-4	Sri Mantu Borah, Homeguard.
PW-5	Smt. Moni Borah, housewife.
PW-6	Miss Kalyani Borah, classmate of victim
PW-7	Sri Biswa Rajbor, casual worker-cum-scribe of the ejahar.
PW-8	Md. Samsuddin, I.O. of the case.
PW-9	Sri Biren Chandra Borah, Headmaster, Meleng Girls' High School.

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	Seizure-list
Exhibit-4	Sketch Map of the place of occurrence with index
Exhibit-A	Admission Register of victim

MATERIAL EXHIBIT NO-1:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)