IN THE COURT OF SPECIAL JUDGE AT BARPETA.

Present :- Sri Vinod Kumar Chandak, M.A., M.Com., LL.B.,AJS, Special Judge, Barpeta.

JUDGMENT IN SPECIAL CASE NO. 41 OF 2016 (G.R. Case 1638 of 2015) Sarthebari P.S. Case No 59 of 2015

State of Assam

-versus-

Sri Gunajit Dutta S/O Sri Lohit Dutta Resident of Tihu, Dekhata, P.S. Patacharkuchi, District – Barpeta

...... Accused.

APPEARANCES:

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta. For the Accused : Abdus Jinna Ahmed, learned Advocate,

Barpeta.

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

Date of Charge : 21.09.2017,

Date of Prosecution evidence : 04.05.2018, 05.06.2018 & 07.09.2018,

Date of Statement of accused : 02.11.2018,
Date of Argument : 14.02.2019,
Date of Judgment : 01.03.2019

JUDGMENT

1. The prosecution case, in brief, is that Sarthebari P.S. Case No 59 of 2015 under section 366(A) of the Indian Penal Code, 1860 added section 4 of the Protection of Children From Sexual Offences Act, 2012 was registered on the basis of

a F.I.R. lodged by Sri Achyut Kalita, father of the victim (hereinafter referred to as 'X').

In the aforesaid F.I.R. Dated 16.03.2015 **(Exhibit -2)** the informant Sri Achyut Kalita (P.W.2), who is the father of the victim girl, alleged interalia that on 13.03.2015 at about 8:00 PM the accused person kidnapped his minor victim daughter, aged about 15 years, in a maruti vehicle from in front of his house.

On receipt of the aforesaid F.I.R. by the In-charge, Balapara Police Out Post, the same was entered in General Diary Register vide G.D.E. No.287, dated 16.03.2015 and subsequently, the same was registered as Sarthebari P.S. Case No 59 of 2015 under section 366(A) of the Indian Penal Code. Later on, section 4 of the Protection of Children From Sexual Offences Act, 2012 was added as prayed by the I.O. of the case.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under station 164 of CrPC was recorded by the learned Magistrate. Police, on completion of investigation, filed charge sheet in the case against the above named accused Sri Gunajita Dutta under section 366(A) IPC Read with section 4 of the Protection of Children From Sexual Offences Act, 2012 vide charge sheet No.164/2015 dated 30.09.2015.

- **2.** My learned Predecessor-in-office received the case record alongwith the case diary of the case. Accused was summoned. On appearance of accused, copy was furnished to him by my learned Predecessor-in-office.
- **3.** Upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the learned counsel for the accused and the prosecution in this behalf, charges were framed against the accused u/s 366(A) IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012, which was read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.
- **4.** During the court of trial, **07(seven)** number of witnesses including the victim, her parent, the Medical Officer and the I/O were examined on behalf of the prosecution to prove the charge u/s 366(A) IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012.

On completion of prosecution evidence, statement of the above named accused was recorded u/s 313 of CrPC. The accused denied all the alleged incriminating materials against him. He claimed himself to be innocent. He denied to adduce evidence in his defence.

- I have heard Mr. Lalit Ch. Nath, learned Public Prosecutor of Barpeta for the State as well as Mr. Abdus Jinna Ahmed, learned Defence Counsel for the accused, who is facing trial for commission of offence u/s 366(A) IPC R/W section 4 of the Protection of Children From Sexual Offences Act, 2012.
- **6.** Now the point for determination before this court are as follows ---
- (1) Whether on 13.03.2015 at about 8:00 PM at village Barsimla within the jurisdiction of Sarthebari Police Station, the accused kidnapped Sangita Kalita, the minor daughter of Sri Achyut Kalita, with intent that she might be compelled to marry him against her will or knowing to be likely that she might be forced or seduced to illicit intercourse by means of criminal intimidation or by any other method, to go from any place with intent that she might be forced or seduced to illicit intercourse with any other person and committed penetrative sexual assault on her and thereby committed an offence punishable u/s 366(A) of the Indian Penal Code read with section 4 of the Protection of Children From Sexual Offences Act, 2012 ?

DISCUSSION, DECISIONS AND REASONS THEREOF

- **7.** To decide the above point and sections of law, let us examine, analyze and appreciate the evidence of the witnesses alongwith the relevant documents.
 - **PW-1**, **Sri Sangita Kalita**, who is the victim of this case, deposed in her evidence before the court that she was having love affairs with the accused Gunajit Dutta. The accused proposed to go with him after her Matriculation examination. Though she was reluctant to go with him, the accused told her that if she don't go with him, then he will die and her parents will be harassed. The

accused also told that he has arranged one room also. Then the victim went with him out of fear.

She deposed that she stayed with him at Guwahati for 9 days. By this time her parents approached the parents of the accused. The accused brought her back to his house as the father of the victim lodged case against him. She also deposed that the parents of the accused brought her to police station.

She further stated that out of fear from the accused, she told before the police that she went with the accused voluntarily. Police got her examined by a doctor and also got her statement recorded by learned Magistrate. She exhibited her statement given before the learned Magistrate as **Ext.1** wherein **Ext.1(1) & 1(2)** are her signatures.

During cross examination, PW1 stated that she had love affairs with the accused for two months prior to the incident. She also told that she went with the accused from her house.

PW1 further stated that she did not state before the police that she went with the accused out of fear; that the accused forced her to go with him; that the accused wept over telephone and told that he will die for which she went with him out of fear.

She admitted that she deposed before the learned magistrate as tutored by someone. She denied the other suggestions given to her by the defence side. She also denied that she has deposed as told by her father.

PW-2, Sri Achyut Kalita, is the father of the victim, who deposed that the incident took place in the month of March, 2015. The accused took the victim with him in a vehicle at about 8:00 PM, in his absence. After coming to know that the accused Gunajit Dutta took his daughter, he lodged the FIR before Balapara Police Out Post. The family members of the accused brought the the victim to the said Police Out Post after 3 days of the incident. PW2 exhibited the FIR of the case as **Ext.2** wherein **Ext.2(1)** is his signature.

He deposed that he victim was aged 15 years at the ime of incident. She appeared in her matriculation examination. He also stated that though he gave copy of birth certificate of the victim to the police, but he has not seen the same in the case record. He exhibited the school certificate of the victim vide Ext.3.

During cross examination, PW2 has stated that he lodged the FIR

after 2/3 days of the incident. He stated that he did not write the cause of delay in

lodging the FIR.

He has denied that he did not state before the police that the accused

took the victim at about 8:00 PM on the date of incident in his absence; he also

denied that the accused did not take the victim with him. He denied the other

suggestions given to him by the defence side.

PW3-Ratneswar Kalita deposed that the victim is his niece. He

deposed that the father of the victim lodged the case before the police and

thereafter, parents of the accused handed over the victim to the police station. He

also deposed that the age of the victim was 15 years 3 months at the time of

incident.

During cross examination, he told that he was not present at the

time of incident and also stated that he heard the incident, later on.

PW4- Dr. Bharati Das is the M.O., who was working at FAAMCH,

Barpeta on 23.03.2015 as Medical & Health Officer. She deposed that on the same

she examined the victim and found as follows--

History:- She eloped with Gunajit Dutta on 13.03.15 at around 7:00 PM. Her parents

has filed the case.

Physical Examination:

Identification marks:- A mole on right of nose.

Height: - 155 CM. Weight: - 43 Kg.

Chest girth at nipple level: - 78 Cm. Abdominal girth at navel level: - 64 Cm.

General built & appearance: - Average

Voice:- Female

Teeth: Total: - 28

Permanent: - 28

Hairs: Axillary/Body :- Present,

Breasts:- Developing,

Menstruation (as told by the individual): Regular,

LMP(as told by the individual): 22 Feb, 2015.

Mental Condition: - Sound

Gait:- Normal

Intelligence: Average

Wearing garments & any suspected stains present:- No.

Bodily injuries:- None.

Pubic hairs: Present.

Vulva(Labia majora & minora):-Healthy,

Hymen:- Torn out at 6 O'clock position,

Vagina:- Admits 1 finger.

Fourchette & Perineum: Healthy, No injury,

Vaginal swab collected.

Result of vaginal swab smear examination:-Spermatozoa not seen in the vaginal swab after microscopical examination.

Result of X-Investigation: Plate No. R 01 MLC Dated-24-03-2015

Wrist Joint: Epiphyseal union around wrist not completed.

Elbow Joint:-Epiphyseal union around elbow it is completed

Shoulder Joint :- Epiphyseal union around shoulder not completed

Pelvis:-Epiphyseal union around iliac crest and around ischial tuberosity not completed.

Opinion:-

- (1) There is no sign of recent sexual intercourse however hymen it torn out at 6 O'clock position.
- (2) There is no mark of violence on her body parts.
- (3) Age is above 14 (Fourteen) and below 16 (Sixteen) years.

PW4 exhibited her report vide **Ext.4** wherein **Ex.4(1)** is her signature and Ext.4(2) is the signature of Dr. Manoj Kr. Sinha, Associate Professor, Department of Forensic Medicine which is known to her.

Defence declined to cross examine PW4.

PW5- Khanin Roy is not helpful to the case of the prosecution as he deposed is his cross-examination that he cannot say as to who kidnapped the victim. He was not even present when women folk handed over the victim at the police station.

PW6- Ashok Barman, the I.O. of the case, deposed that on the relevant date he received the ejahar from Achyut Kalita. He made GD Entry of the same vide GD Entry No.287, dtd 16.03.2015 and proceeded towards the place of incident. He also sent the FIR to Sarthebari Police Station. Accordingly Sarthebari PS case No. 59/2015 u/s 366(A) IPC was registered. He also stated that he drew sketch map and examined the witnesses.

He contradicted the evidence of other witnesses by deposing that he recovered the victim girl from the house of the accused on 23.03.2015. He also stated that he seized the birth certificate of the victim. He further deposed that he took routine steps during the investigation of the case.

He exhibited the sketch map as $\mathsf{Ext.5}$ wherein $\mathsf{Ext.5}(1)$ is his signature.

During cross examination he stated that there was no house of any person near the place of incident. He also stated that he did not investigate anything regarding the maruti car as mentioned in the FIR.

He confirmed that he received the ejahar on 16.03.2015 whereas incident of this case took place on 13.03.2015; that no reason for delay in lodging the FIR has been written in the FIR. He also stated that he did not examine any person near the house of the accused.

He confirmed that the victim did not state before him that she went with the accused out of fear; that the accused telephoned her and wept and told that he will die for which she went with him out of fear. He also deposed that the victim did not state before him that the mother of the victim kept calling her by telephoning her.

He also deposed that the informant Achyut Kalita(PW2) did not state before him that the accused took the victim at about 8:00 PM from her house in the absence of the informant. He also stated that he did not investigate anything regarding the school certificate of the victim.

PW7-Rahul Deuri, is the S.I. of police, who deposed that he submitted the charge sheet by showing the accused as absconder under section 366(A) IPC R/W section 4 of POCSO Act. He exhibited the charge sheet vide **Ext.6** and **Ext.6(1)** as his signature.

During cross examination he stated that he has not submitted the extract copy of GD Entry alongwith the charge sheet.

- **8.** From the perused of the evidence on record it is seen that the victim knew the accused prior to the incident. It is categorically stated by the victim that she was having love affairs with the accused two months prior to the incident. It is further stated by the victim in her statement u/s 164 CrPC that she voluntarily eloped with the accused to Guwahati and stayed with him at his quarter for long 9(nine) days.
- **9.** The accused has been charged under section 366(A) of IPC read with section 4 of POCSO Act. As per section 366(A) IPC, 'inducement' is the basic requirement of law in a case or to constitute an offence u/s 366(A) of IPC. However, the word 'inducement' has not been defined anywhere in the Penal Code.
- **10.** In the ordinary dictionary meaning, i.e., as per "Oxford Advanced Learner's Dictionary", the words 'induce' and 'inducement' mean as under :

"Induce : to persuade or influence sb to do sth".

"Inducement : a thing that persuades sb to do sth".

Again in "Black's Law Dictionary" the word 'inducement' is defined as under :

"Inducement : the act or process of enticing or persuading another person to take certain course of action."

In "The Law Lexicon, the Encyclopaedic Law Dictionary", the words 'induce' and 'inducement' are:

"Induce : prevail on; to bring about to pursuable. An "inducement may amount to a Bargain".

"Inducement: Allurement. It is not easy to give an exhaustive definition, within reasonable terms, of exactly what is meant by the words, 'allurement or inducement' that legally operate to constitute an invitation to enter the premises of another. Mere temptation does not form such an inducement."

11. The victim girl(PW1) in her statement u/s 164 CrPC categorically stated that she went with the accused voluntarily out of love affairs. In her evidence before the court she told that she went with the accused out of fear as he threatened to die if she don't go with him. However, she did not state this fact before police in her statement u/s 161 CrPC.

The I.O.(PW6) confirmed in his evidence that the victim did not state before him that she went with the accused out of fear.

Hence, the victim is not found consistent in her statement before court, police or in her statement u/s 164 CrPC.

Thus, it can be safely be held that she was never enticed or persuaded to go with the accused to any place. As such, the primary ingredient of section 366(A) IPC appears to be absent in the present case against the accused.

That apart, the victim in her evidence before the court did not uttered a single word that the accused committed penetrative sexual assault on her during her stay with the accused. The victim, however, in her statement u/s 164 CrPC stated that the accused had sexual intercourse with her at his official quarter at Guwahati.

But, again, the M.O.(PW4), who examined the victim on 23.03.2015 deposed that he did not find any sign of recent sexual intercourse, however, hymen was found torn out at 6 O'clock position. However, finding of torn out hymen can't prove that the victim was subjected to sexual assault as it can be torn for variety of reasons.

- **13.** Apart from this, no other witness corroborated the evidence of the victim. Prosecution side even did not examine the mother of the victim namely Pranita Kalita, who was present at the time when the victim fled away with the accused.
- **14.** It is also seen from the evidence of the informant (PW2) that he lodged the FIR(Ext.2) after 2 /3 days of the incident. However, prosecution side has not given any explanation for delay in lodging the F.I.R.

- 15. It is interesting to note herein that the I.O.(PW6) did not seize the birth certificate of the victim. However, PW2 exhibited the school certificate [Ext.3] which shows the date of birth of victim as 27.08.1999. However, the prosecution side has not proved the signature of Head of the 1301 No. Helanapam L.P. School, Rampur, Dekapara, Barpeta alongwith school Admission Register to prove the same.
- **16.** It is cardinal principal of criminal Law that prosecution case has to stand on its own leg and offence has not be proved against the accused beyond reasonable doubt.
- 17. On scrutinizing the evidence on record, considering the entire aspect of the matter and evidence, produced by the prosecution, I am of the considered opinion that the prosecution has failed to establish that the accused kidnapped the victim or committed rape on the victim. Hence, accused is entitled to acquittal under the benefit of doubt, which I accordingly do.
- **18.** In the result, accused **Gunajit Dutta** is **acquitted** of the charge under section 366(A) IPC read with section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him, on benefit of doubt.

Accused is no bail. The bail bond of accused is extended for another 6(six) months from today as per provision of 437-A CrPC.

19. Given under my hand and seal of this Court on this 1st day of March, 2019.

Dictated & corrected by me.

Sd/-Special Judge, Barpeta Sd/-Special Judge, Barpeta.

Typed by me

(Kavery Das, Stenographer)

APPENDIX

(A) Prosecution witnesses:

P.W.1 = Sangita Kalita, the victim, P.W.2 = Achyut Kalita, the informant,

P.W.3 = Ratneswar Kalita,

P.W.4 = Dr. Bharati Das, the M.O.,

P.W.5 = Khanin Roy,

P.W.6 = Ashok Barman, the I.O., P.W.7 = Rahul Deuri, the I.O.,

(B) **Prosecution Exhibits**:

Ext.1 = Statement of the victim u/s 164 CrPC,

Ext.1(1) & 1(2) = Signature of victim,

Ext.2 = Ejahar,

Ext.2(1) = Signature of the victim Sangita Kalita,

Ext.3 = School certificate,

Ext.4 = Medical,

Ext.4(1) = Signature of Dr. Bharati Das,

Ext.4(2) = Signature of Dr. Manoj Kr.Singha, Associate

Professor, Deptt. of Forensic Medicine,

FAAMCH, Barpeta.

Ext.5 = Sketch Map,

Ext.5(1) = Signature of Ashok Barman

Ext.6 = Charge Sheet,

Ext.6(1) = Signature of Rahul Deuri.

(C) **Defence witnesses**:Nil.

(D)	Defence	Exhibits:	Nil.
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- (E) **Court witnesses**:Nil
- (F) **Court Exhibits**: Nil.

Sd/-

Special Judge, Barpeta.