#### 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. 03 OF 2018**

(G.R. Case No. 1622 of 2017) Pulibar P.S. Case No. 179 of 2017

# **Committing Magistrate:-**

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

State of Assam

**Versus** 

Sri Raju Bhuyan @ Barun, Son of Sri Pranjal Bhuyan, Resident of Sarucharai T.E. Parbatia Line, P.S. Pulibar,

**District-Jorhat.** 

.... Accused

# **APPEARANCES**:

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

For the Accused: Sri M. Kalita & Sri Parag Jyoti Bora,

**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** : **03-01-2018** 

Date of prosecution evidence: 28-03-2018; 31-05-2018; 26-07-2018;

And 08-10-2018

**Statement of Accused** 

Recorded on : 21-12-2018

Date of Argument : 10-01-2019

Date of Judgment : 18-01-2019

#### JUDGMENT

1). The prosecution story, in brief, is that Pulibar P.S. Case No. 179/2017 under Section 366-A of IPC was registered on the basis of a F.I.R. lodged by Sri Sanjib Kurmi, the informant-cum-elder brother of the victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 05/06/2017 [Exhibit-3] the informant-cum-elder brother of the victim girl alleged, *inter-alia*, that on 05/06/2017 at about 1.00 A.M. night his younger sister [X] went missing from the residence. It is further alleged by the informant in his ejahar that, later on, he came to know from the villagers and surrounding people that accused Raju Bhuyan @ Barun had kidnapped his minor younger sister on the previous night at about 1.00 A.M. who was residing in the house of her elder brother Sri Sanjib Kurmi, the informant.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Pulibar P.S., same was registered as Pulibar P.S. Case No. 179/2017 under Section 366 (A) of IPC.

During the course of investigation, the victim girl and accused surrendered before police. The victim was medically examined by the doctor. Her statement under Section 164 of Cr.P.C. was recorded by the Magistrate. Police on completion of investigation filed charge-sheet, in the case, against the above named accused Raju Bhuyan @ Barun u/S. 366 [A] of IPC vide Charge-sheet No. 101/2017 dated 29-06-2017.

- **2).** Upon production of accused, the learned Additional Chief Judicial Magistrate, Jorhat, committed the case to this Court for trial after furnishing the copies to the accused 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, I found ground for presuming that the accused has committed offences under Section 366 [A] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, I framed

charge against the accused, 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] numbers of witnesses including the victim, her elder brother-cum-informant of the case, Medical Officer and the I.O. were examined, on behalf of the prosecution, to prove the charge u/S. 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 on the relevant day the victim came to him voluntarily. It is his further version that he had been falsely implicated in the case. 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 M. Kalita being assisted by Sri Parag Jyoti Bora, 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 04/06/2017 at about 1.00 A.M. might, 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.

#### THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

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 of the case. During her deposition in Court she stated that prior to the incident the accused told her that she should go to his house which is located at a little distance from her residence. At midnight, she went to the house of accused. At that time, the accused was standing on the doorstep of his residence. She resided alongwith the accused in his house till 4.00 A.M. Thereafter, the accused took her to his maternal uncle's house at Elengmora in an Ape vehicle where she stayed alongwith him for about 3/5 days. It is further version of the victim that she slept alongwith the accused and entered physical relationship on being resisted by her side. Accused co-habited with her twice. Further version of the victim is that she moved to his elder sister's house situated at Teok where also both of them stayed for about 5/6 days. At that time father of accused arrived and directed them to go to the police station. She gave statement before the learned Magistrate which she exhibited as

Exhibit-1 and her signatures thereon as Exhibit-1 [1] and Exhibit-1 [2]. She was also produced before a doctor for medico legal check-up. At present, she is staying at her parental home.

During cross-examination, she admitted that on her free will and consent she accompanied the accused to his house on the relevant day. Further, the accused did not threat or induce her to accompany him to his house. It is her further version that she did not has any love affair with the accused prior to the incident.

**9). PW-2** is **Sri Mohan Kurmi** who is the father of victim. This witness during his testimony stated that at the time of incident he was present inside his residence. At that time victim was sleeping in his residence with her younger sister but he did not found the victim on the next day morning. He searched for his daughter but could not locate her whereabout. Thereafter, his son lodged ejahar before police regarding missing of his minor daughter [PW-1]. He received information from police that both of them surrendered at the police station. Police sent his daughter before a doctor for medical check-up and thereafter she was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C.

During cross-examination by defence side, this witness stated that he does not know how his victim daughter went out from his house to the house of accused and he does not know about the relationship regarding any love affair between them.

10). The evidence of **Sri Sanjib Kurmi** [PW-3] who is the elder brother of victim-cum-informant of the case is to the effect that on the next day morning he did not find his minor sister at his residence. He then searched for the victim alongwith his father but they could not locate her whereabout. Then he lodged ejahar before police vide Exhibit-2 wherein Exhibit-2 [1] is his signature. It is further version of this witness that police recovered the victim alongwith the accused. During course of investigation police seized one HSLC Admit Card of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [2] is his signature.

This witness during cross-examination by defence side stated that he cannot say under what circumstance victim stayed with the accused or at which place. Further, he did not hear any love affair between the accused and the victim prior to the incident.

11). Sri Rantu Ghatowar [PW-4] and Smt. Nirmali Kurmi [PW-5] who are neighbours stated that they came to know that the accused took the victim alongwith him on the date of incident and both of them were found after 15/16 days of missing of the victim. Smt. Nirmali Kurmi further stated that she was present when police seized the Admit Card of victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [3] is her signature.

Both these two witnesses during cross-examination by defence side stated that they do not know anything about the incident and also that they cannot say whether victim went voluntarily with the accused or not?.

- effect that on 05/06/2017 he was entrusted with the charge of investigation by the Officer-in-charge, Pulibar P.S. He deposed about the routine steps taken by him during investigation of the case and thereafter submitted charge-sheet against the accused after arresting him in connection with the instant case. During investigation, he prepared Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his signature. He also seized the Admit Card of the victim vide seizure-list [Exhibit-2] wherein Exhibit-2 [3] is his signature. He exhibited the charge-sheet vide Exhibit-5 wherein Exhibit-5 [1] is his relevant signature.
- **13). Dr. Ritu Saikia [PW-7]** who was the then Lady Medical Officer on Duty, Jorhat Medical College & Hospital examined the victim girl on 19/06/2017 and opined that the victim is above fourteen years and below sixteen years; evidence of recent sexual intercourse was not detected on her person; there was no violence mark on her body at the time of examination and further that no pregnancy was detected over the person of victim. This witness exhibited

her medical report [Exhibit-6] and her signatures thereon as Exhibit-6 [1] to Exhibit-6 [3].

The doctor was not cross-examined by defence side.

14). From a close perusal of the evidence on record it is seen that the victim knew the accused before the incident. Incident occurred on 04/06/2017. At that time victim was aged 16 years which is revealed from her statement recorded by the Magistrate under Section 164 Cr.P.C. on 16/06/2017 after she surrendered before police alongwith the accused.

The evidence of Sri Sanjib Kurmi [PW-3] who is the elder brother of victim-cum-informant of the case is to the effect that on the next day morning he did not find his minor sister at his residence. He then searched for the victim alongwith his father but they could not locate her whereabout. Then he lodged ejahar before police vide Exhibit-2 wherein Exhibit-2 [1] is his signature. It is further version of this witness that police recovered the victim alongwith the accused. During course of investigation police seized one HSLC Admit Card of the victim vide seizure-list [Exhibit-3] wherein Exhibit-3 [2] is his signature.

This witness during cross-examination by defence side stated that he cannot say under what circumstance victim stayed with the accused or at which place. Further, he did not hear any love affair between the accused and the victim prior to the incident.

before the court that prior to the incident the accused told her that she should go to his house which is located at a little distance from her residence. At midnight, she went to the house of accused. At that time, the accused was standing on the doorstep of his residence. She resided alongwith the accused in his house till 4.00 A.M. Thereafter, the accused took her to his maternal uncle's house at Elengmora in an Ape vehicle where she stayed alongwith him for about 3/5 days. It is further version of the victim that she slept alongwith the accused and entered physical relationship on being resisted by her side. Accused co-habited with her twice. Further version of the victim is that she moved to his elder sister's house situated at Teok where also both of them stayed for about 5/6 days. At

that time father of accused arrived and directed them to go to the police station. She gave statement before the learned Magistrate which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] and Exhibit-1 [2]. She was also produced before a doctor for medico legal check-up. At present, she is staying at her parental home.

During cross-examination, she admitted that on her free will and consent she accompanied the accused to his house on the relevant day. Further, the accused did not threat or induce her to accompany him to his house. It is her further version that she did not have any love affair with the accused prior to the incident.

- **16).** The accused during his statement under Section 313 Cr.P.C. had stated that he has been falsely implicated in the case.
- On scrutinizing the evidence on record, more particularly, the evidence of victim [PW-1] and considering the entire aspect of the matter and the evidence, produced by the prosecution, I am of the considered opinion that the prosecution failed to establish that the accused kidnapped the victim. Prosecution side also failed to produce the Admit Card of the victim which was seized by the I.O. vide seizure-list [Exhibit-2] for the reason best known to it to determine the age of victim at the time of evidence. Medical examination report of victim [Exhibit-6] shows her age to be in between 14-16 years. The said age cannot be rigid and can be 18 years also. Hence, accused is entitled to acquittal under benefit of doubt which I accordingly do.

In the result, accused **Sri Raju Bhuyan @ Barun** is **acquitted** of the charges under Section 366 [A] IPC as well as under Section 4 of The Protection of Children From Sexual Offences Act, 2012, levelled against him on benefit of doubt.

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 **18<sup>th</sup>** day of **January 2019**.

Special Judge, Jorhat

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# **ANNEXURES:-**

# **PROSECUTION WITNESSES:-**

PW-1	Victim girl.
PW-2	Sri Mohan Kurmi, father of victim.
PW-3	Sri Sanjib Kurmi, elder brother of victim-cum-
	informant of the case.
PW-4	Sri Rantu Ghatowar, mason.
PW-5	Miss Nirmali Kurmi, Para-medical student.
PW-6	Md. Sorif Hussain, I.O. of the case.
PW-7	Dr. Ritu Saikia, who examined the victim.

# **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	Sketch Map of the place of occurrence with index
Exhibit-5	Charge-sheet
Exhibit-6	Medical report

**MATERIAL EXHIBIT:- NIL** 

**DEFENCE WITNESSES:-** NONE

Special Judge, Jorhat.

# **Typed & transcribed by:**

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)