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. 80 OF 2017 (G.R. Case No. 329 of 2016) Jorhat P.S. Case No. 225 of 2016

Transmitting Magistrate:-

Smt. Rani Boro, Chief Judicial Magistrate, Jorhat District

State of Assam

-Versus-

Md. Sahidul Ali, Son of Late Aledul Ali, Resident of Negheriting Bor Line, P.S. Dergaon, District-Golaghat. Accused

APPEARANCES:

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

Jorhat

For the Accused: Smt. Ruby Ara Begum, Learned Advocate,

Jorhat

CHARGE FRAMED UNDER SECTIONS 366-A/376 OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 22-09-2017

Date of prosecution evidence: 30-11-2017; 09-01-2018; 23-

02-2018

& 02-07-2018

Statement of Accused

Recorded on : 03-08-2018

Date of Argument : 03-08-2018

dgment : 06-08-2018

ASE NO. 80 OF 2017

J U D G M E N T

1). The prosecution story, in brief, is that **Jorhat P.S. Case No.** 225/2016 under Section 366-A of IPC was registered on the basis of a F.I.R. lodged by Md. Abdul Basir @ Basiruddin, the father of victim girl [hereinafter referred to as 'X'].

In the aforesaid F.I.R. dated 01/02/2016 [Exhibit-4] the father of victim girl alleged, inter-alia, that on 30/01/2016 the accused kidnapped his minor daughter from his house. It is further alleged by the informant that accused was a married person.

On receipt of the aforesaid F.I.R. by the then In-charge, Bhogdoi O.P. under Jorhat P.S. the same was entered in General Diary Register vide No. 3 dated 01/02/2016. The ejahar was sent to Officer-in-charge, Jorhat P.S. for registration of a case. The Officer-in-charge, Jorhat P.S., registered Jorhat P.S. Case No. 225/2016 under Section 366-A of IPC.

During the course of investigation, the victim girl was medically examined by the doctor, her statement under Section 164 of Cr.P.C. was recorded. Police, on completion of investigation, filed charge-sheet, in the case, against the above named accused Md. Sahidul Ali u/Ss. 366/376 of IPC vide Charge-sheet No. 510/2017 dated 31-07-2017.

- **2).** The learned Chief Judicial Magistrate, Jorhat, transmitted the case to this Court for trial. Copy was furnished to the accused in due course.
- **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, charges were accordingly framed under Sections 366-A/376 of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. The charges 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, **08 [eight]** numbers of 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/376 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. and the accused stated that he had been falsely implicated in the case. He stated that victim was in love with him and on the date of incident she, on her own volition, went with him. At present, the victim is staying with him alongwith his son aged one year & 2 months. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- Prosecutor for the State as well as Smt. Ruby Ara Begum, learned counsel for the accused, who is facing trial for commission of offence u/Ss. 366-A/376 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 30/01/2016 before the date of filing of the ejahar by the informant Md. Abdul Basir @ Basirudding on 01/02/2016, the accused named above kidnapped the minor daughter of the informant from his house with intent that she may be or knowing that it is likely that she will be forced (or seduced) to illicit intercourse with another person and thereby committed an offence punishable under Section 366-A of IPC?
 - 2) Whether the accused named above committed rape on the minor victim girl of the informant and thereby committed an offence punishable under Section 376 of IPC?

3) Whether during the same period and time the accused named above committed penetrative sexual assault upon the victim girl aged above eleven 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). To decide the above charged sections of law against accused let us examine, analyze and appreciate the evidence of the witnesses alongwith the documents.

PW-1 is the victim girl who during her deposition in Court stated that she had love affair with the accused. On the date of incident she was present inside her residence. The victim further stated that due to torture meted upon her by her stepmother she decided to elope with the accused and thereafter she called the accused to her house and eloped with him [accused]. Thereafter, both of them resided at Nazira in the district of Sivasagar. After some days her father called both of them to his residence where Nikah was performed. At present, she is residing in the house of her father as the accused is lodged in jail hajot. It is further version of the victim that out of wedlock with the accused she bore a male child who is at present eight months old. When she went missing from the house her father lodged ejahar before police. The accused was arrested by police after four months back. She was called to the police station wherefrom she was produced before a doctor for medico legal check-up. She was also brought to the court where Magistrate recorded her statement under Section 164 Cr.P.C. vide Exhibit-1 wherein Exhibit-1 [1] and Exhibit-1 [2] are her signatures.

During cross-examination, she stated that she was a major girl at the time of incident and on the date of incident she on her own

eloped with the accused. She categorically stated that accused did not force her to accompany him to Nazira in the district of Sivasagar.

8). PW-2 is Md. Abdul Basir @ Basiruddin who is the father of the victim-cum-informant of the case. This witness during his deposition stated that on the date of incident her daughter went missing from the house. He searched for his daughter [PW-1] but could not find her whereabout. After fifteen days of incident his daughter returned back home alongwith the accused. Thereafter, Nikah was performed in between his daughter and the accused. The accused was arrested by police as he had lodged ejahar against him after the incident. It is further version of this witness that police seized the birth certificate of his daughter on being produced by him.

During cross-examination, he divulged that birth certificate of the victim was obtained by him after she was admitted in the school. At present, the age of her daughter is 19 years. The informant categorically stated that he has no objection if accused is acquitted in the case as he is his son-in-law.

9). The evidence of **Smt. Firoza Begum [PW-3]** who is the mother of victim is to the effect that accused is her son-in-law. This witness further deposed alike as that of her husband [PW-2]. It is further stated by this witness that police seized the birth certificate of the victim from her husband vide seizure-list [Exhibit-2] wherein Exhibit-2 [1] is her signature.

This witness during cross-examination by defence side stated that she does not know why her signature was obtained in a paper. She further stated that she has no objection if accused is acquitted in the instant case.

10). Smt. Marami Dutta [PW-4] is the Women Police Constable who accompanied the victim [PW-1] before the doctor where the victim refused to enter medico legal examination. This witness further stated that she accompanied the victim to the court where

Magistrate recorded her statement. She exhibited the medico legal report of victim as Exhibit-3 and the statement of victim recorded by the Magistrate as Exhibit-1 wherein Exhibit-3 [1] & Exhibit-1 [3] are her respective signature.

Defence side declined to cross-examine this witness.

11). The evidence of **Md. Afazuddin** [**PW-5**] is of no help to the prosecution as he deposed that when he returned back home after his daily work on the date of incident he heard that victim fled away with someone.

This witness was also not cross-examined by defence.

12). Md.Abdul Hussain [PW-6] who is a rickshaw puller deposed that victim is known to him. On the date of incident he heard from nearby people that victim fled away with someone. He was present when police seized the original birth certificate of the victim on being produced by her father vide seizure-list [Exhibit-2] wherein he put his signature as Exhibit-2 [2].

Defence side declined to cross-examine this witness.

13). Sri Gaurab Chetia [PW-7] and Sri Keshab Das [PW-8] are the I.O's of the case who deposed about the routine steps taken by them during investigation of the case.

Sri Gaurab Chetia [PW-7] further deposed that on completion of investigation he submitted charge-sheet against the accused vide C.S. No. 510/2017 which he exhibited during trial as Exhibit-5 and his signature thereon vide Exhibit-5 [1].

This witness during cross-examination by defence side stated that one child aged 4 months was also there which belonged to the accused as well as victim.

14). From a close perusal of the evidence on record it is seen that the accused is the husband of victim [PW-1] which has been

corroborated by the victim during course of evidence as well as her parent [PW-2 & PW-3].

During cross-examination, both the parent of victim stated that they have no objection if the accused is acquitted in the case as he is their son-in-law.

The evidence of victim [PW-1] and her parent [PW-2 & PW-3] gets full corroboration from the testimony of investigating officer [PW-7] who stated during cross-examination that he found one child aged 04 months which belonged to accused as well as victim.

- **15).** The accused during his statement under Section 313 Cr.P.C. had stated that he had been falsely implicated in the case. He stated that victim was in love with him and on the date of incident she on her own volition went with him. At present, the victim is staying with him alongwith his son aged one year & 2 months.
- **16).** 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 vide seizure-list [Exhibit-2] wherein it has been reflected by the I.O. the date of birth of victim as 05/04/2003.
- before a doctor for medico legal report which gets full corroboration from the evidence of Smt. Marami Dutta, WPC No. 322 [PW-4]. This witness stated that she produced the victim before the doctor but the victim refused to enter medico legal examination. She exhibited the prescription of doctor as Exhibit-3 wherein Exhibit-3 [1] is her signature. However, as victim has not supported the case of prosecution and the fact that parent of victim had also corroborated the victim by stating that the accused is their son-in-law, so accused cannot be implicated on the alleged charges against him.

- **18).** On scrutinizing the evidence on record, 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 committed rape on the victim. Hence, accused is entitled to acquittal under benefit of doubt against charged sections, i.e., 366-A/376 of IPC as well as under Section 4 of The Protection of Children from Sexual Offences Act, 2012, which I accordingly do.
- **19).** In the result, accused **Md. Sahidul Ali** is <u>acquitted</u> of the charges levelled against him on benefit of doubt and he is set at liberty forthwith from the charges under Sections 366-A/376 of IPC read with Section 4 of The Protection of Children from Sexual Offences Act. 2012.

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.

20). Given under my hand and seal of this Court on this **06**th day of **August 2018**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl-cum-informant of the case.
PW-2	Md. Abdul Basir @ Basiruddin, father of
	victim-cum-informant of the case.
PW-3	Smt. Firoza Begum, stepmother of victim.
PW-4	Smt. Marami Dutta, WPC No. 322.
PW-5	Md. Afazuddin, daily wage earner.
PW-6	Md. Abdul Hussain, rickshaw puller.
PW-7	Sri Gaurab Chetia, I.O. of the case.
PW-8	Sri Keshab Das, another I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1 Statement of victim recorded by the learned Magistrate under Section 164 Cr.P.C.

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Exhibit-2	Seizure-list
Exhibit-3	Seizure-list
Exhibit-4	Ejahar
Exhibit-5	Charge-sheet
Exhibit-6	Sketch Map of the place of occurrence with index

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

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