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. 14 OF 2013

(G.R. Case No. 207 of 2013) Garmur P.S. Case No. 57 of 2013

Committing Magistrate:-

Sri Dipu Barman,
Sub-Divisional Judicial Magistrate,
Majuli Sub-Division,
Jorhat District

State of Assam

Versus

Sri Dilip Taid, Son of Late Molong Taid, Resident of Naldowar Gaon, P.S. Garmur, District-Jorhat.

.... Accused

APPEARANCES:

For the State : Sri M.R. Barooah,

Senior Advocate-cum-Special Public Prosecutor,

Jorhat

For the Accused: Sri Powal Chandra Hazarika,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTIONS 376 [2] [f] OF INDIAN PENAL CODE READ WITH SECTION 4 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 06-02-2014

Date of prosecution evidence: 16-05-2014; 12-05-2016; 29-06-2016;

02-08-2016; 15-09-2016; 19-11-2016

& 22-12-2016

Statement of Accused

Recorded on : 21-02-2017

Date of Argument : 29-03-2017 and 10-04-2017

Date of Judgment : 10-04-2017

JUDGMENT

1). The prosecution story, in brief, is that Garmur P.S. Case No. 57/2013 under Sections 376 [F]/506 of IPC read with 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 Bhimlal Bori, the father of the victim girl.

In the aforesaid F.I.R. dated 16/09/2013 [Exhibit-1] the father of the victim girl [herein referred to as [X]], alleged, inter-alia, that his daughter who was a student of Class-VI used to come to and fro from her school. In the month of May 2013, the accused Dilip Taid in absence of family members in his house committed rape upon his daughter, for which, she became five months pregnant. It is further stated by the informant that the accused threatened his daughter with dire consequence not to divulge the fact to anybody or else she would be murdered.

On receipt of the aforesaid F.I.R. by the Officer-in-charge, Garmur P.S., the same was registered as Garmur P.S. Case No. 57/2013 under Sections 376 [F]/506 of IPC read with Section 4 of The Protection of Children from Sexual Offences Act, 2012.

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 by police through the learned Magistrate. Police on completion of investigation filed charge-sheet, in the case, against the above named accused Dilip Taid u/Ss. 376 [F]/506 of IPC read with Section 4 of The Protection of Children from Sexual Offences Act, 2012 vide Charge-sheet No. 33/2013 dated 31-10-2013.

2). The learned Sub-Divisional Judicial Magistrate, Majuli Sub-Division, District-Jorhat, committed 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, my learned predecessor-in-office found ground for presuming that the accused has committed offences under Section 376 [2] [F] of IPC read with Section 4 of The Protection of Children From Sexual Offences Act, 2012. Accordingly, the charges were framed by my learned predecessor-in-office, 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, **09** [nine] witnesses including the victim, her parent, Medical Officer and the I.O. were examined, on behalf of the prosecution, to prove the charge u/S. 376 [2] [F] 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 victim girl deposed truly in her evidence before court that she was made pregnant through one Hari Prasad who was a cowboy of her house hailing from Bihar. The accused pleaded innocence. No witness was adduced by the accused in his defence.

- I have heard Mr. Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor for the State as well as Sri Powal Chandra Hazarika, learned counsel for the accused, who is facing trial for commission of offence u/S. 376 [2] [F] 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 the month of May 2013 and at subsequent days at day hours at Naldowar Gaon under Garmur P.S., the accused named-above, committed rape on the victim girl aged about fourteen years and below eighteen years and thereby committed an offence punishable under Section 376 [2] [F] 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-375—Rape — A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First-Against her will.

Secondly-Without her consent.

<u>Thirdly</u>—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

<u>Fourthly</u>—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

<u>Fifthly</u>—With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

<u>Sixthly</u>—With or without her consent, when she is under sixteen years of age.

<u>Explanation</u>—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

<u>Exception</u>—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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.

Sri Bhimlal Bori [PW-1] is the father of victim. His testimony is to the effect that on the date of incident his daughter was aged 12 years. She did not go to school. He was present in his paddy field. He came to know that his daughter became pregnant. It is further stated by the informant that village Mel was fixed and in the Mel his daughter [victim] disclosed to the villagers that the accused had committed rape on her for which she became pregnant. He also came to know from his daughter that the accused committed rape upon her in a jungle while she was returning back home from school. Further version of this witness is that his daughter also informed to him that when she witnessed television in the house of accused at that time also the accused committed rape on her. It is his further version that his daughter did not disclose the fact to him as the accused had threatened her that he [accused] would kill her. He then lodged ejahar before police which he exhibited as Exhibit-1 and his signature thereon as Exhibit-1 [1]. It is further stated by him that police produced his daughter before a doctor for medico legal check-up. She was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. At last, he stated that his daughter was six months pregnant.

During cross-examination, he stated that his daughter gave birth to a daughter who expired after two months of her birth. However, he could not tell the date of birth of victim girl.

9). The evidence of **Sri Nirmal Taid [PW-2]** is to the effect that he knows accused as well as informant being his neighbours. It is his further version that he came to know about the incident through the mouth of "Asha Karmi" who

disclosed to him that the daughter of Bhimlal Bori [PW-1] had become pregnant through the accused. He was present in the village Mel. In that Mel, the victim disclosed before villagers that the accused had committed rape upon her against her will. The village Mel tried to settle the matter amicably but it could not happen. It is further stated by this witness that some days after he came to know that father of victim had lodged ejahar before police against the accused.

During cross-examination, he specifically stated that the victim did not disclose to him anything about the incident. Further, he stated that the victim had disclosed in the "MEL" that the accused had committed rape upon her due to which she became pregnant.

10). PW-3 is the victim girl who during her deposition in Court stated that in the year 2013 the incident happened. At that time she was a student of Class-VI at Balijan School, Nadowar Gaon. She knows the accused fully well and she calls him as her uncle. It is further stated by the victim that on the date of incident she went to the paddy field for attending nature's call. At that time one Hari Prasad who was a cowboy of her house hailing from Bihar committed rape upon her in the paddy field. After the incident she became pregnant and the same was divulged by her to her parent. Further version of the victim is that out of fear from local people that she alongwith her parent will be ousted from the community, she gave statement before the learned Magistrate under Section 164 Cr.P.C. that the accused had committed rape on her. Exhibit-2 is her statement wherein Exhibit-2 [1] and Exhibit-2 [2] are her signatures. She categorically stated that actually aforesaid Hari Prasad committed rape upon her and fled away from her house when she became pregnant.

During cross-examination, she admitted that aforesaid Hari Prasad hails from Bihar who lived in their residence as a cowboy. She admitted that Hari Prasad committed rape upon her on the relevant day and she became pregnant. When she became pregnant Hari Prasad fled away from her residence. She categorically stated that she has no enmity with the accused and she does not want to proceed with the case any further.

11). PW-4 is Smt. Anima Bori who is the mother of the victim girl. This witness during her deposition that she noticed the stomach of her daughter [PW-3] swelling and thinking that her daughter is suffering from tapeworm, she [her daughter] was taken before a doctor for medico legal check-up. The doctor on examination of the victim found her to be pregnant. In her house she questioned her daughter who had made her pregnant. In turn, her daughter disclosed before her that the accused had committed rape upon her, for which, she became pregnant. Her husband lodged ejahar before police regarding the incident. Her daughter was produced before a Magistrate for recording statement under Section 164 Cr.P.C. Further version of this witness is to the effect that her daughter gave birth to a female child who expired after two months. It is also stated by this witness that in the village Mel the accused requested to arrive at a compromise. She specifically stated that out of fear her daughter had disclosed that the accused had committed rape upon her.

During cross-examination, she stated that Hari Prasad who was a cowboy residing in her residence since his childhood days had actually committed rape upon her daughter.

12). Sri Pradip Mili [PW-5], Sri Khabor Kuli [PW-6] and Sri Krishna Doley [PW-7] stated that in the village Mel villagers asked the victim about the incident. The victim stated before the Mel that she became pregnant through the accused. The villagers could not arrive at any conclusion. Hence they suggested the father of victim to lodge ejahar before police.

During cross-examination, Sri Khabor Kuli [PW-6] and Sri Krishna Doley [PW-7] stated that two meetings were held to discuss the matter but all their attempts went in vain. Hence, they suggested the father of victim to lodge ejahar before police.

13). Dr. Nila Kanta Pegu [PW-8] who examined the victim on 23/09/2013 found the victim to be pregnant of about 24 weeks. The foetal heart sound was audible. He exhibited his report as Exhibit-3 and his signature thereon as Exhibit-3 [1].

During cross-examination, he admitted that date of examination of the victim is not mentioned in his report. But on police requisition he examined the victim.

14). The evidence of **Sri Bipin Chandra Chutia [PW-9]** who is the I.O. of the case is to the effect that on 16/09/2013 he was working as Officer-incharge, Garmur P.S. On that day he received ejahar from the informant Bhimlal Bori. A case was registered at Garmur P.S. and he started investigation. He went to the place of occurrence and recorded statement of the victim. It is his further version that he examined all the witnesses who were acquainted with the fact and circumstance of the case. Further version of this witness is to the effect that accused surrendered before the learned court. Accused's statement was recorded under Section 161 Cr.P.C. He also drew Sketch Map of the place of occurrence with index vide Exhibit-4 wherein Exhibit-4 [1] is his signature. After completion of investigation he submitted charge-sheet against the accused on 31/10/2013.

During cross-examination, he stated that there is no explanation as to delay in lodging of the ejahar by the informant.

15). From a close perusal of the evidence on record it is seen that the victim [PW-3] who is the star witness of the case specifically stated in her evidence that out of fear from local people that she alongwith her parent will be ousted from the community, she gave statement before the learned Magistrate under Section 164 Cr.P.C. wherein she divulged that the accused had committed rape on her. In her evidence before this court she categorically stated that actually aforesaid Hari Prasad committed rape upon her and fled away from her house when she became pregnant.

Smt. Anima Bori [PW-4] who is the mother of the victim also divulged during her evidence that in the village Mel the accused requested to arrive at a compromise. She specifically stated that out of fear her daughter had disclosed that the accused had committed rape upon her.

During cross-examination, she stated that Hari Prasad who was a cowboy residing in her residence since his childhood days had actually committed rape upon her daughter.

- **16).** It is interesting to note herein that the I.O. [PW-9] did not seize any school certificate/birth certificate of the victim from her parent. From the evidence of doctor [PW-8] it is seen that according to radiological report the age of victim is below 16 years. As per medical jurisprudence the age of a person may be varied by two years on either side. The opinion, given by the Medical officer, regarding age of a person cannot be rigid. Therefore, if two years are added to 16 years, the victim will be eighteen years. In view of the above, the victim was found to be above sixteen years.
- 17). The accused during his statement under Section 313 Cr.P.C. stated that the victim in her evidence had deposed truly that it was the Bihari boy who committed rape on her and made her pregnant. He came to know about the incident in the village Mel. It is his further version that out of fear the victim named him in the Mel.
- 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 failed to establish that the accused committed rape upon the victim. In-fact, the victim girl [PW-3] during her evidence categorically stated that she was made pregnant by the cowboy named Hari Prasad in the paddy field when she went there for attending nature's call. The same evidence is also corroborated by her mother [PW-4]. Hence, accused is entitled to acquittal under benefit of doubt which I accordingly do.
- **19).** In the result, accused **Sri Dilip Taid** is **acquitted** of the charges under Section 376 [2] [F] 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.

His bail bond stands discharged.

20). Given under my hand and seal of this Court on this 10th day of April2017.

Special Judge, Jorhat

ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Sri Bhimlal Bori, father of victim girl-cum-informant
	of the case.
PW-2	Sri Nirmal Taid, neighbour.
PW-3	Victim girl.
PW-4	Smt. Anima Bori, mother of victim girl.
PW-5	Sri Pradip Mili, neighbour.
PW-6	Sri Khabor Kuli, another neighbour.
PW-7	Sri Krishna Doley, another neighbour.
PW-8	Dr. Nila Kanta Pegu, who examined the victim girl.
PW-9	Sri Bipin Chandra Chutia, I.O. of the case.

COURT WITNESS:- NIL

EXHIBITS FOR THE PROSECUTION:-

Exhibit-1	Ejahar
Exhibit-2	Statement of the victim under Section 164 Cr.P.C.
Exhibit-3	Medical report.
Exhibit-4	Sketch Map of the place of occurrence with index

MATERIAL EXHIBIT:- NIL

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)