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. 48 OF 2016

(G.R. Case No. 352 of 2016) Titabar P.S. Case No. 178 of 2016

Committing Magistrate:-

Sri Chinmoy Barua, Judicial Magistrate 1st class, Titabar Sub-Division, Jorhat District

State of Assam

Versus

Sri Paban Turi, Son of Sri Sambhu Turi, Resident of Gatanga T.E. Gonju Line, P.S. Titabar, District-Jorhat.

.... Accused

APPEARANCES:

For the State : Sri M.R. Barooah,

Learned Senior Advocate-cum-Special P.P., Jorhat

For the Accused: Sri D.P. Goswami, and Sri Prahlad Verma,

Learned Advocate, Jorhat

CHARGE FRAMED UNDER SECTION 8 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Date of Charge : 31-08-2016

Date of prosecution evidence: 27-09-2016; 05-10-2016; 05-11-2016;

& 07-12-2016

Statement of Accused

Recorded on : 06-01-2017

Date of Argument : 29-05-2017 & 13-06-2017

Date of Judgment : 13-06-2017

<u>JUDGMENT</u>

1). The prosecution story, in brief, is that **Titabar P.S. Case No.** 178/2016 under Section 8 of The Protection of Children From Sexual Offences Act, 2012 was registered on the basis of a F.I.R. lodged by Smt. Rudumai Mirdha, mother of the victim girl [hereinafter referred to as 'X'].

In the aforesaid **F.I.R.** dated 20/07/2016 **[Exhibit-2]** the informant Smt. Rudumai Mirdha [PW-2] who is the mother of the victim girl [X] alleged, inter-alia, that on the same day her minor daughter, aged about 10 years, while residing alone in her house, the accused arrived at her house and tore off the cloths of the victim and thereafter sexually assaulted her.

On receipt of the aforesaid F.I.R. by the In-charge, Jalukonibari O.P. under Titabar P.S., the same was entered in General Diary Register vide G.D.E. No. 297 dated 20/07/2016. The ejahar was sent to Titabar P.S. for registration of a case under proper section of law. On receipt of the ejahar by the then Officer-in-charge, Titabar P.S., the same was registered as **Titabar P.S. Case No. 178/2016 under Section 8 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 the learned Magistrate. Police, on completion of investigation, filed charge-sheet in the case against the above named accused Paban Turi @ Mirdha u/S. 8 of The Protection of Children from Sexual Offences Act, 2012 vide Charge-sheet No. 123/2016 dated 16/08/2016.

- **2).** The learned Judicial Magistrate 1st class, Titabar Sub-Division, Jorhat, transmitted the case to this court for trial as it was covered under POCSO Act. Accordingly, on production of accused, copy was furnished to him.
- **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, charge was framed against the accused under Section 8 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 course of trial, **08 [eight]** numbers 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. 8 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 he went to the house of victim and drank water. He then asked the victim to write her name which the victim wrote in Assamese language. He further stated that as the victim wrote her name wrongly so he assaulted her once with scale. Then he came out of the house of victim and went to his work place. The accused has further stated that he has been falsely implicated in the case. The accused pleaded innocence. No witness was adduced by the accused in his defence though he claimed that he will adduce witness in his defence.

- I have heard Sri Mukti Ranjan Barooah, learned Senior Advocate-cum-Special Public Prosecutor for the State as well as Sri Diganta Prakash Goswami being assisted by Sri Prahlad Verma, learned Defence Counsels for the accused who is facing trial for commission of offence u/S. 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 20/07/2016 at Kamarbandha New Ganju Line, Gatanga, Jorhat under Titabar P.S., 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). To decide the above section of law, let us examine, analyze and appreciate the evidence of the witnesses along with the relevant documents.

PW-1 [X] is the victim girl, who during her deposition in Court stated that on the relevant day she was sweeping in her courtyard. At that time accused arrived at her house and requested her to give some tobacco which she gave to him. It is also stated by this witness that at that time her parents were not present inside the house. The accused then instructed her to give him the school copy. Accordingly she gave copy to the accused. Then accused asked her to write her name in English language but she told the accused that she can write in Assamese language. It is further stated by the victim that accused then wrote her name in English language and thereafter requested her to bring a glass of water. She gave accused a glass of water and when she went inside to wash the glass the accused came near her, tore off her clothes, gagged her mouth with his hand, for which, she could not shout for help. The accused also told her not to disclose the fact to her parents. Thereafter accused instructed her to come to his house to fetch some leteku fruits. She thereafter went to the house of her Bordewta and informed the matter to the family members. When her parent returned back home she disclosed the same to her parents. Police produced her before the doctor for medico legal check-up as well as before the learned Magistrate for recording statement under Section 164 Cr.P.C. which she exhibited as Exhibit-1 and her signatures thereon as Exhibit-1 [1] to Exhibit-1 [6].

During cross-examination, she stated that accused has his wife and two years old daughter. The accused did not assault her for not writing her name in English language as directed by him. She denied that accused assaulted her for not writing her name in English language and in that event there was scuffle in between them. She further denied that on the relevant day the accused did not come near her when she was washing glass, grabbed her from behind and thereafter tore off her clothes. All the defence suggestions which were put to her during cross-examination were denied by the victim.

Hence, the evidence of the victim that the accused grabbed her from behind and thereafter tore off her clothes on the date of incident remained unshaked. **8). [PW-2] Smt. Rudumai Mirdha** who is mother of the victim girl-cum-informant of the case divulged during her testimony that on the date of incident she was not present in her residence. When she returned back home she came to know about the incident through her daughter, i.e., the victim [PW-1]. Then she lodged ejahar before police which she exhibited as Exhibit-2 and her signature as Exhibit-2 [1]. Further version is that police examined her daughter, took her before a doctor for medico legal check-up. Then police produced her before a Magistrate for recording statement under Section 164 Cr.P.C.

During cross-examination, she admitted that her daughter did not state before her that accused assaulted her for not writing her name in English language.

She denied all the defence suggestions put to her during crossexamination.

9). The deposition of **Sri Anil Mirdha** [**PW-3**] who is the father of the victim [X], is almost alike as that of his wife [PW-2]. He also stated that after lodging of F.I.R. by his wife police arrived at his house, recorded statement of the victim, took his daughter before a doctor for medico legal check-up as well as before the court for recording her statement under Section 164 Cr.P.C.

During cross-examination, he stated that he came to know about the incident from his daughter as well as his wife. He categorically stated that on suspicion his wife lodged ejahar before police against the accused. He further confirmed that his daughter stated before him that in the scuffle which took place between her and the accused, in that event, her clothes were torn off and out of fear she stated lie to them. He further stated that after giving statement before the learned Magistrate his daughter stated the above facts to him.

10). Sri Chinmoy Baruah [PW-4], Judicial Magistrate 1st class, Titabar Sub-Division, Jorhat stated that on 21/07/2016 as per direction of learned Sub-Divisional Judicial Magistrate, Titabar Sub-Division, District-Jorhat, he recorded statement of the victim in her own language. He exhibited the statement of the victim as Exhibit-1 and his signature thereon as Exhibit-1 [7] as Recording

Officer. After recording statement of the victim he passed an order in G.R. Case No. 352/2016 which he exhibited as Exhibit-3 and his signature as Exhibit-3 [1] as Recording Officer and thereafter the victim as well as the case record were sent back to the learned S.D.J.M., Titabar Sub-Division.

This witness stated that the victim narrated the incident to him in her own language in audible form and thereafter he recorded statement of the victim.

11). Sri Mridul Gond [PW-5] who is a neighbour of the victim as well as accused divulged during his testimony that he came to know about the incident through his niece [PW-1]. Accordingly, he went to the house of his niece where she showed him the place where accused tried to commit rape upon her.

During cross-examination, he stated that he did not state before police that accused grabbed the victim and tried to commit rape on her after making her lie on the ground. He further confirmed that victim did not tell before him that accused assaulted her with scale as she could not write her name in English language properly.

12). The evidence of **Sri Ranjit Mirdha** @ **Gond** [**PW-6**] who is also a neighbour of both victim as well as accused is to the effect that he came to know about the incident through the maternal uncle of the victim. Thereafter he went to the house of the victim. It is his further version that victim narrated the whole incident before him. The mother of the victim also stated the same facts as stated by the victim to him.

During cross-examination, he stated that he did not witness the incident.

13). PW-7 is **Sri Birinchi Konwar,** I.O. of the case, who divulged during his testimony that on 20/08/2016 he was entrusted with the investigation of the case. During investigation he examined the informant as well as victim at the police station itself, produced the victim before a doctor for medico legal check-up. The victim was also produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. He also examined other witnesses

who were acquainted with the fact and circumstances of the case. He drew Sketch Map of the place of occurrence with index vide Exhibit-3 wherein Exhibit-3 [1] is his signature. On completion of investigation he submitted charge-sheet against the accused on 16/09/2016 under Section 8 of The Protection of Children From Sexual Offences Act, 2012.

During cross-examination, he divulged that he did not record statement of Sri Sunil Mirdha who happened to be the elder father of the victim [Bordewta].

- **14). Dr. Amrita Nath [PW-8]** who was posted at Jorhat Medical College & Hospital as Lady Medical Officer [R] examined the victim on 22/07/2016 as per police requisition and on examination she found as follows:
 - a) No sign of rape found.
 - b) Age of the victim is above 09 years and below 14 years.
 - c) No injury detected on her person at the time of examination.

The doctor exhibited her report as Exhibit-3 and her signatures thereon as Exhibit-3 [1] to Exhibit-3 [3].

During cross-examination, the doctor denied that her opinion regarding age of victim cannot deviate.

- **15).** It is seen from the cross-examination of Sri Anil Mirdha [PW-3], i.e., the father of victim [X], that on suspicion his wife lodged ejahar before police and also that his daughter stated before him that in the scuffle which took place between the accused and herself, in that event her clothes were torn off and out of fear she stated lie before them.
- 16). From a close perusal of statement of victim recorded by the learned Magistrate under Section 164 Cr.P.C. it is seen that after the incident the accused threatened her with dire consequence and thereafter fled away from her residence. Thereafter, she deposed the facts to her maternal uncle Sri Mridul Gandha as well as Dewani Gondha. Aforesaid Dewani Gandha was not examined by the investigating officer who was a star witness to the instant case. Furthermore, the victim stated before the learned Magistrate that at the time of

incident the accused tore off her panty as well as here wearing apparel but the same were not seized by the investigating officer for the reasons best known to him.

17). From the above appraisal of evidence on record it is seen that had there been any sexual intent by the accused on the date of incident he [accused] would not have asked the victim to write her name in Assamese language.

The accused during his examination under Section 313 Cr.P.C. stated that on the relevant day he went to the house of victim and drank water. He further stated that he asked the victim to write her name which she wrote in Assamese language. As victim wrote her name wrongly so he assaulted her once with scale. Then he came out of her house and went to his work place.

- do not finds support from the evidence of Sri Mridul Gond [PW-5] and Sri Ranjit Mirdha @ Gond [PW-6] who are independent witnesses of the case. Sri Mridul Gond [PW-5] stated that the victim who happened to be his niece came to his house and informed that accused grabbed her and made her lie on the ground and tried to commit rape on her. Sri Ranjit Mirdha @ Gond also stated that victim stated before him that accused came to her house; asked her to give him a glass of water, accused tried to commit bad work with her forcefully. However, victim in her statement under Section 161 Cr.P.C. did not utter a single word that accused torned out her clothes or attempted to rape her. Hence, I do not find corroboration in the testimony of witnesses as to material particular and fact to the case.
- **19).** Learned counsel for the defence Sri Diganta Prakash Goswami argued that there is no evidence on record to establish the nexus between the offence alleged and the accused. It is further submitted that evidence on record which was brought by the prosecution does not point out to the guilt of the accused. It is further submitted that from the evidence on record it is apparent that there is no direct or circumstantial evidence against the accused to link him with the

commission of the alleged crime. It is also submitted that there is no motive behind the crime and prosecution has miserably failed to prove the motive.

20). The Hon'ble Supreme Court in the case of *Assistant Collector of Central Excise, Calicut—versus- V.P. Sayed Mohammad,* reported in *AIR* 1983 SC 163 held as follows:

"It is true that the onus of proving the facts essential to the establishment of discharge against an accused lies upon the prosecution and the evidence must be such as to exclude every reasonable doubt about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicions. If reasonable doubt arises in the mind of the court after taking into consideration the entire material before it regarding the complicity of the accused the benefit of such doubt should be given to the accused but the reasonable doubt should be a real and substantial one and a well founded actual doubt arising out of the evidence existing after consideration of all the evidence".

- 21). Keeping in mind the above rationale as laid down by the Hon'ble Apex Court, I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently the charge under Section 8 of The Protection of Children From Sexual Offences Act, 2012 is held to be not proved against the accused Sri Paban Turi beyond all reasonable doubt. Accordingly, the accused is found entitled to get benefit of doubt, for which, the accused Sri Paban Turi is acquitted on benefit of doubt.
- **22).** Hence, the accused **Sri Paban Turi** is **acquitted** on **benefit of doubt** from the offence u/S. 8 of The Protection of Children From Sexual Offences Act, 2012 and he is set at liberty forthwith. Bail bond stand discharged.
- **23).** Send a copy of this judgment to the District Magistrate, Jorhat u/S. 365 of The Code of Criminal Procedure, 1973, for information.

24). Given under my hand and seal of this Court on this **13th** day of **June 2017**.

Special Judge, Jorhat

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ANNEXURES:-

PROSECUTION WITNESSES:-

PW-1	Victim girl.
PW-2	Smt. Rudumai Mirdha, mother of victim-cum-
	informant of the case.
PW-3	Sri Anil Mirdha, father of victim.
PW-4	Sri Chinmoy Baruah, Judicial Magistrate 1 st class,
	Titabar Sub-Division who recorded statement of the
	victim girl.
PW-5	Sri Mridul Gond, neighbour.
PW-6	Sri Ranjit Mirdha @ Gond, neighbour.
PW-7	Sri Birinchi Konwar, S.I. of police.
PW-8	Dr. Ritu Saikia, Medical Officer of the case.

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	Sketch Map of the place of occurrence with index.
Exhibit-4	Medico legal report of the victim.

DEFENCE WITNESSES:- NONE

Special Judge, Jorhat.

Typed & transcribed by:

Sri Mrinal Jyoti Bora, (Stenographer Grade-I)