CAUSE TITLE PCSO Case No. 23/15

Informant: XXXX

Accused: Sri Haren Patnayak,

S/o- Sri Atul Patnayak, R/o- Dinjoy Chapori Gaon,

PS- Chabua,

District- Dibrugarh.

ADVOCATES:-

For the State: Mrs. Runumi Devi, learned Public Prosecutor.

For the Defence: Sri UK Saha, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 23/15 G.R. Case No. 447/15

> > State of Assam

-Vs-

Sri Haren Patnayak

Charge u/S 8 PCSO Act, r/w S. 354 IPC.

Date of evidence on : 19-01-16. Date of argument : 19-01-16. Date of Judgment : 19-01-16.

JUDGMENT

- 1) Prosecution case is that while the victim, a minor, was alone in her house, the accused person came and sexually assaulted her on 11-02-15. The father of the victim lodged an ejahar on 20-02-15 before the Officer-in-charge of Chabua Police Station who registered Chabua PS Case No. 25-15 under Sections 376/511 IPC. In course of investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map and recorded the statement of witnesses. The statement of the victim was also recorded by the Magistrate under Section 164 CrPC and on completion of invesdtigation, the Investigating Officer submitted Charge-Sheet under Sections 376/511 IPC, r/w Section 8 Protection of Children from Sexual Offices Act.
- 2) Upon committal, this Court framed charges under Section 8 Protection of Children from Sexual Offices Act (hereinafter PCSO Act), r/w Section 354 IPC against the accused person and the charges were read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.
- 3) In course of trial, prosecution examined two witnesses and on conclusion thereof, the accused person was examined under Section 313 CrPC wherein the accused person took the plea of denial.
- 4) Heard Smti. R Devi, learned PP for the State and Sri Saha, learned counsel for the defence.

POINTS FOR DETERMINATION

- Whether the prosecutrix was a child within the meaning of Section 2(d) of the Protection of Children From Sexual Offences Act, 2012 (hereinafter 'the Act')?
- 2. Whether the accused committed sexual assault upon the victim or used criminal force upon her with a view to outrage her modesty?

DECISION AND REASONS THEREOF

Point No. 1:

5) The victim in this case was not medically examined. No documentary evidence with regard to her age has been adduced in evidence and none is found on the record either. The victim who was examined asPW-1 recorded her age as 19 (nineteen) years and the father of the victim who was examined as PW-2 also stated that the age of his daughter was 19 (nineteen) years, the occurrence having taken place less than a year ago. Therefore, going by the version of the victim as well as the informant, i.e., father of the victim, it appears that the alleged victim had attained 18 (eighteen) years of age at the time of occurrence. Therefore, the victim was not a child within the meaning of the PCSO Act at the time of alleged occurrence.

Point No. 2:

- 6) The alleged victim as PW-1 deposed that on the day of occurrence, she was alone in her house and at that time, her father was cutting bamboo in the bari. Then the accused came to their house and asked about the location of her father and then she replied that he was in the bari. Her father saw the accused going out from their house from the bari and thereafter, her father and her paternal uncle threatened and beat her. Thereafter, her father lodged an ejahar at the police station against the accused. Her father and mother took her to the police station. She also came to the Court for recording her statement by the Magistrate. Ext. 1 is her statement recorded by the Magistrate wherein Ext. 1(1) and Ext. 1(2) are her signatures. She further stated that she had given her statement before the police as well as the police on being threatened and beaten by her father and paternal uncle. She stated that the said statements were not correct. Defence declined to cross-examined this witness.
- 7) PW-2 the informant and father of the victim deposed that on the day of occurrence, at about 10:30 am, he was cutting bamboo in his bari. At that

time, his daughter was inside the house. Then he heard the call of his daughter and arriving at the courtyard of his house, he saw the accused at the courtyard. Then he asked the accused as to why he had come. PW-2 also asked his daughter about it. His daughter told him that the accused wanted to enter into PW-2's house. As the accused wanted to enter into PW-2's house while his daughter was alone in the house in his absence, so he lodged an ejahar against the accused at the police station.

- 8) There is no other eye-witness to the occurrence and the remaining witnesses are not material ones.
- 9) In view of what has been deposed to by the victim herself as well as the informant, there is no sufficient evidence to establish the ingredients of the offence under Section 8 PCSO Act or Section 354 IPC.
- 10) In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused person is acquitted of the offence under Section 8 PCSO Act, r/w Section 354 IPC and he be set at liberty forthwith.
- 11) Previous bail bond shall remain in force for a further period of 6 (six) months under Section 437-A CrPC.

Given under my hand and seal of this Court on this the 19^{th} day of January, 2016.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

> Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 The victim; and
- 2. PW-2 The father of the victim.

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC; and
- 2. Ext. 2 Ejahar.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

Transcribed and typed by:-Bhaskar Jyoti Bora, Steno.