CAUSE TITLE PCSO Case No. 5/16

Informant: XXXXX

Accused: Sri Petu Majhi,

S/o- Late Atua Majhi, R/o- Tipam Gaon,

PS- Joypur,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. A Rob, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 5/16 G.R. Case No. 2996/15

> > State of Assam

-Vs-

Sri Petu Majhi

Charge: u/S 4 PCSO Act.

Date of evidence on : 09-03-16. Date of argument : 09-03-16. Date of Judgment : 09-03-16.

JUDGMENT

- 1) Prosecution case is that since about one month prior to 22-10-15 at Tipam Gaon under Joypur Police Station, the accused person committed penetrative sexual assault upon the prosecutrix, a minor. The prosecutrix lodged First Information Report on 25-10-15 before Joypur Police Station and a case was registered being Joypur PS Case No. 85/15 and investigation commenced. In course of the investigation, the Investigating Officer recorded the statement of witnesses, prepared Sketch-Map and got the prosecutrix medically examined and on completion of investigation, filed Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 4
 Protection of Children From Sexual Offences Act (hereinafter PCSO Act)
 against the accused person and the charge was 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 Mr. Rob, learned counsel for the defence.

POINTS FOR DETERMINATION

1. 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 attempted to commit penetrative sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) In this case, the Medical Officer was not examined. But the medical report was not disputed. Duly it was exhibited as Ext. A as per provision of Section 294 CrPC. As per the medical report, the prosecutrix was above 12 (twelve) years and below 14 (fourteen) years. Hence it is established that the prosecutrix was a child at the time of occurrence.
- 6) PW-1 Sri Remesh Kawar deposed that the prosecutrix is his niece. About six months ago, some persons from Child Home went to their village with his niece. As his younger brother Ruku Kawar was not available in their locality, he kept the prosecutrix in their house as his own children. After staying in his house for a few months, she left his house. Later on, he came to know that some police personnel kept the prosecutrix in the police station. Now, he does not know the whereabouts of the prosecutrix. He tried to trace her out after leaving from his house, but could not find her. He does now know if the prosecutrix filed a case. Defence declined to cross-examine this witness.
- 7) PW-2 Sri Rabindra Murah deposed that he know the accused person. He also know the prosecutrix who stayed in the house of his uncle Ramesh Kawar. The prosecutrix left the house without informing his uncle. After a few days, Ramesh Kawar came to know that the prosecutrix was staying in the Child Welfare Committee, Dibrugarh and Ramesh Kawar took her from Child Welfare Committee, Dibrugarh. PW-2 accompanied Ramesh Kawar at the time of taking her from Children Home. After one month again, the prosecutrix left the house of Ramesh Kawar. PW-2 does not know if the prosecutrix had lodged any case in the police station and he also do not know her whereabouts. Defence declined to cross-examine this witness
- 8) Unfortunately in this case, the prosecutrix could not be examined as she had become untraceable. The remaining witnesses whose statements were recorded are not material ones.
- 9) In view of the above, there is no substantive evidence to establish the charge against the accused.

- 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 4 PCSO Act and he be set at liberty forthwith.
- 11) Issue release order.

Given under my hand and seal of this Court on this the 9^{th} day of March, 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 Sri Remesh Kawar; and
- 2. PW-2 Sri Rabindra Murah.

List of Exhibits:

1. Ext. A Medico-legal Report.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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