# **CAUSE TITLE PCSO Case No. 38/16**

Informant:	XXXXXX
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Sri Biswajit Dey, Accused:

S/o- Sri Babul Dey, R/o- No. 2 Bokuloni Chariali,

PS- Duliajan,

District- Dibrugarh.

AD	VO	CA7	ES:-

For the State: Mrs. Runum	i Devi, learned Public Prosecutor
For the Defence:	learned Advocate

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 38/16 G.R. Case No. 1269/16

> > State of Assam

-Vs-

Sri Biswajit Dey

Charges: under Sections 366 IPC read with Section 4 PCSO Act.

Date of evidence on : 24-06-16.

Date of argument : 27-06-16. Date of Judgment : 27-06-16.

#### JUDGMENT

- 1) Prosecution case is that the accused person on 15-05-16 had kidnapped the prosecutrix, a minor, age about 15 years and thereafter took her to Chabua to the house of his relatives and kept her there. While staying there, the accused person also committed sexual intercourse with the prosecutrix. On the next day, the accused and the prosecutrix returned and they appeared at Duliajan Police Station and police arrested the accused. Prior to their arrival, the mother of the prosecutrix lodged an ejahar and a Police Station case was registered. After recovery of the prosecutrix, her statement was recorded under Section 164 CrPC and she was also medically examined. On completion of investigation, the Investigating Officer submitted the Charge-Sheet.
- 2) Upon committal, this Court framed charges under Sections 366 IPC read with Section 4 Protection of Children From Sexual Offences Act (hereinafter PCSO Act) 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 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 person had kidnapped the prosecutrix?
- 3. Whether the accused committed penetrative sexual assault or rape upon the prosecutrix?

#### **DECISION AND REASONS THEREOF**

## Point No. 1:

5) The prosecutrix recorded her age as 15 ½ years which is not disputed by the defence. Therefore, it is established that the prosecutrix was a child at the time of occurrence.

## **Point No. 2 & 3:**

6) PW-1 the prosecutrix deposed that she knew the accused person since about three months prior to the occurrence and she had love affair with the accused. She further stated that they had a plan to go out and accordingly on 15-05-16, she came out of her house in the afternoon and met the accused at OIL Town, Duliajan near DPS. On the said day, the accused had come in a vehicle along with his two friends, i.e., Sujit and Bablu whom she did not know. She got into the car and went out. While talking, they reached Chabua. There was house of brother-in-law of the accused at Chabua and they visited the said house. As it was getting dark, the family members of the accused asked the prosecutrix to stay back and accordingly, she telephoned her mother telling her not to worry. She also told her about her location. But her mother told her to get back home by 12 midnight; otherwise she would lodge case before police. Being afraid, the prosecutrix switched off her mobile phone. By that time, the two friends of the accused had already left with the vehicle in which they had come while the accused stayed back. The prosecutrix stayed back on that night in that house which was the house of the sister-in-law of the accused. She further stated that there were other family members including the brother of the sisterin-law of the accused as well as the said brother's mother, besides some other family members. On that night, she slept with the

mother while the accused slept in another room. In the morning, family members of the sister-in-law of the accused informed that a case had been lodged and thereafter, they went to Tinsukia and arrived at Napukhuri Park. Her family members including her uncle and also the family members of the accused arrived there. Thereafter, they went to their respective houses. At home, her mother scolded her for not coming on the said night. PW-1 further stated that she was taken to the doctor for medical examination and she was also taken to the Magistrate where her statement was recorded. Police also recorded her statement.

7) During cross-examination, PW-1 the prosecutrix stated that earlier to the occurrence also, she had gone out with the accused a few times and returned home. On that day, there was no birthday of any of her friend and she had falsely stated before her mother. As per prior arrangement, she had come out of her house covering a distance of about  $1 \frac{1}{2}$  km on feet and met the accused near the said school. When she got into the vehicle, the accused had called her mother and informed her that they were going out for a while and will be back soon and she agreed. From Duliajan, they reached Chabua via Deohal at around 6:30 pm. After reaching Chabua, they again came out for Chabua Bazar and did shopping. From Chabua, they reached Tinsukia at about 8:30 am and therefrom to Duliajan at about 10:30 am. After arriving home, she took bath, changed her cloths and took rest. After dropping them at Duliajan, the accused and his family members went to their respective houses. Her mother also assured them that she would withdraw the case. At about 4:30/5:00 pm, she along with her mother went to Duliajan Police Station to withdraw the case. Police made phone call to the accused and called him to the police station. Police recorded her statement at about 6:30/7:30 pm at the police station. PW-1 further stated that she had stated before the doctor that the date of her menstruation was 11-05-16 and bleeding was going on from her private part. The doctor only examined her teeth and did not go through detailed examination of her body as well as private part. She further stated that whatever she had deposed regarding the sexual intercourse by the accused with her before the doctor, police

- and Magistrate was false as her mother told her to do so. They did not have any sexual intercourse. She had voluntarily gone with the accused person as she herself wanted to go and this was with the knowledge and consent of her mother.
- 8) PW-2 the mother of the prosecutrix deposed that the accused was known to her and the prosecutrix is her daughter. On the day of occurrence, the accused person had called her while she was in a meeting in the afternoon and asked about her daughter and she told him that she was in shooting. Later on, her daughter called PW-2 from Chabua at around 7:30 in the evening and said that she wanted to stay away as it was late. But PW-2 told her to return immediately. After that, her mobile phone was switched off. 2 did not get any information on that night. On the said day, she decided to lodge an ejahar at Duliajan Police Station regarding the incident. Accordingly, she lodged the ejahar on the said night itself. On the next day morning, her daughter came with the accused. Prior to that, there was conversation with the family members of the accused and her uncle. After they come back, they settled the matter and also asked the police not to proceed further, but police told that the case had already been registered.
- 9) During cross-examination, PW-2 stated that the ejahar was written by one person, namely, Sri Troilukya Phukan and she had told everything to the ejahar writer, but he might have not written everything. PW-2 denied the defence suggestion that the accused had told her before that he was taking her daughter to Chabua and would be late. PW-2 stated that the accused only told her that they reached Chabua. PW-2 further stated that on prior occasions also, her daughter had gone with the accused, but returned on time. PW-2 stated that she did not have any allegation against the accused.
- 10) From the undisputed testimonies of the prosecutrix herself who is nearly 16 years old, it is apparent that she voluntarily went with the accused person and the same was also to the knowledge and consent of her mother. She had also done so on earlier occasions, as she was admittedly having a love affair with the accused. Therefore, no ingredients of Section 366 IPC is satisfied. Further, in view of her categorical assertion that no sexual intercourse took

place between her and the accused and in absence of any other witness testifying to the same, it is not possible to hold that the accused person had committed sexual intercourse with the prosecutrix.

- 11) As per the medical report, the evidence of sexual intercourse was found upon examination, but as per deposition of the prosecutrix, the doctor only examined her teeth and did not go through detailed examination of her body as well as her private part. It is not as if the prosecutrix was in a state of confinement and nobody else had access to her prior to the period when she was medically examined. Since she has categorically exonerated the accused of sexual intercourse, even if any sexual intercourse taken place, the act cannot be attributed to the accused. Therefore, it is not established that the accused person had committed penetrative sexual assault upon the prosecutrix. The point is answered accordingly.
- 12) 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 Sections 366 IPC read with Section 4 PCSO Act and he be set at liberty forthwith.
- 13) 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 27<sup>th</sup> day of June, 2016.

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

Sessions Judge,

## **APPENDIX**

List of witnesses:

1. XXXXXX

List of Exhibits: NIL.

List of witnesses and Exhibits for defence- None

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

Sessions Judge,