CAUSE TITLE PCSO Case No. 28/15

Informant: XXXXX

Sri Budheswar Bhumiz, Accused:

S/o- Sri Bishnu Bhumij, R/o- Natun Nagar, Phatikachua,

PS- Moran,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Miss. A Ahmed, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 28/15 G.R. Case No. 433/16

> > State of Assam

-Vs-

Sri Budheswar Bhumij

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

Date of evidence on : 29-07-15, 27-08-15, 28-09-15 & 16-11-15.

Date of argument : 01-08-16 Date of Judgment : 01-08-16.

JUDGMENT

- 1) Prosecution case is that on 13-02-16, the accused person had abducted the prosecutrix by deceitful means with a view to marry her and took her to Jorhat and kept her there for five days whereafter she was recovered. A First Information Report was lodged on 13-02-16 at Moran Police Station whereupon a police case was registered and investigation commenced. In course of such investigation, the Investigating Officer recorded the statement of witnesses and after completion of investigation, submitted the Charge-Sheet.
- 2) Upon committal, this Court framed charges under Sections 366 IPC read with Section 4 Protection of Children from Sexual Offices 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 eight 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 Miss. Ahmed, 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 person abducted the prosecutrix, a minor, by deceitful means in order that she may be forced or seduced to illicit intercourse or knowing the same to be likely to happen?
- 3. Whether the accused person committed penetrative sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) Although the prosecutrix recorded her age as 14 years at the time of her deposition before the Court, she admitted that she had stated her age as 17 years before the Magistrate at the time of recording her age under Section 164 CrPC. The prosecutrix refused medical examination because of which there is no medical evidence regarding her age. Although the prosecutrix stated that she had studied up to Class-VIII, no documentary evidence in the form of any school certificate had been provided by the prosecution to establish the age of the prosecutrix.
- 6) The defence during cross-examination suggested to the prosecutrix that she refused consent for medical examination since it would have reveal that her age was 18 years which the prosecutrix denied. But having regard to the fact that the prosecution has withheld the best evidence in the form of school certificate coupled with the fact that the prosecutrix refused medical examination which would reveal her age, adverse inference must be drawn against the prosecution in this regard. Consequently, it is not established that the prosecutrix was a child within the meaning of Section 2(d) of the PCSO Act.

Point No. 2 & 3:

7) PW-1, the alleged victim stated that on the day of occurrence, at about 10:00 am, when she along with her friend went to enjoy Saraswati Puja, she met the accused at Moran town who told him that he would go to the house of his friend and asked her to go with him. Accordingly, she along with the accused went to Jorhat in a bus whereafter, they went to the house of his friend. Upon reaching at Jorhat, the accused proposed to marry her, which she

refused and on the same night, her brother made phone call to the accused to inquire about her. The accused replied her brother that he was going to marry her and hence refused to send her back. She stayed there for five days. Since she did not go back to her house, her brother lodged the instant case against the accused. PW-1 further stated that during her stay in the house of the friend of the accused, the mother of the said friend of the accused was also present in the house and during her stay there, she stayed with the accused as his sister and did not indulge any sexual intercourse or any other activities with the accused. After five days, her elder brother falsely informed the accused that the case against him had been withdrawn and asked him to come back. Accordingly, both the accused and the victim went to the house of the accused at Moran whereafter police recovered her and arrested the accused. PW-1 further stated that her statement was recorded by the Magistrate under Section 164 CrPC. She was also taken to the hospital for medical examination which she refused as nothing had happened between them.

- 8) During cross-examination, she stated that she had stated before police that she was in love with the accused since last two years and that she called the accused to Moran town and that she would come there to meet him later. She had stated in her statement before the Magistrate recorded under Section 164 CrPC that the accused asked him to go with him to see Puja to which she consented. She had stated before the Magistrate that she was in love with the accused. PW-1 denied the defence suggestion that since her parents were not willing to give her in marriage to the accused person and that why they lodged the instant case against the accused person and that she herself compelled the accused to take her. She further denied the defence suggestion that she did not state before police that the accused had stated that he would go to the house of his friend and accordingly he took her to the house of his friend.
- 9) PW-2, the informant and mother of the prosecutrix deposed that on the day of occurrence, when she went out for her work, her daughter went to enjoy Saraswati Puja along with her friend and upon her return from her work, she did not find her daughter in the house. Upon asking the friend of her daughter, she told PW-2 that her daughter along with the accused went to one of his friends whereafter her son made a phone call to the accused who

told her son that he had taken her daughter and would marry her later.

- 10) From the deposition of PW-2, it is apparent that she has no direct knowledge as to how the occurrence took place. She stated that her daughter told her that the accused took her away with false promise, but nothing is indicated as to what such promise was.
- 11) Similar is the case of PW-3, the elder brother the prosecutrix as well as PW-4. None of them have any direct knowledge about the occurrence. In fact, PWs-3 & 4 did not even state that the prosecutrix, after recovery, reported anything to them.
- 12) From the evidence of prosecutrix herself, it is more than apparent that no sexual intercourse took place between her and the accused. What further appears from her deposition that she had willingly gone out with the accused on the day of Saraswati Puja and ultimately landed up in Jorhat. It is also admitted by the prosecutrix that she was having an affair with the accused. There is nothing discernible from the evidence on record that the accused used any deceitful means to take away the prosecutrix who had attained majority or was on the verge of it. Such type of occurrence cannot be brought within the meaning of the word 'taking' to constitute the offence of kidnapping either [Ref: Shyam and another vs. State of Maharashtra [1995 CrLJ 397 (SC)].
- 13) From the above, it is not established that the accused either kidnapped or abducted the prosecutrix or committed sexual intercourse with her and therefore, the points are answered accordingly.
- 14) Issue Release Order.
- 15) 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 1st day of August, 2016.

Sessions Judge, Dibrugarh

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

APPENDIX

List of witnesses:

1. XXXXX

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Medico-legal Report;
- 3. Ext. 3 Statement of the victim recorded under Section 164 CrPC & Seizure-List;
- 4. Ext. 4 Seizure-List;
- 5. Ext. 5 Sketch-Map;
- 6. Ext. 6 FSL Report; and
- 7. Ext. 7 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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