CAUSE TITLE PCSO Case No. 9/14

Informant: Smti. Parul Dehingia,

S/o- Sri Chandra Dehingia, R/o- Dinjoy Morisa Gaon,

PS- Chabua,

District- Dibrugarh.

Accused: Sri Romen Gogoi,

S/o- Late Sabeswar Gogoi, R/o- Dinjoy Morisa Gaon,

PS- Chabua,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Smti. K. Bharali, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 9/14 G.R. Case No. 3368/13

> > State of Assam

-Vs-

Sri Romen Gogoi

Charge u/S 8 of Protection of Children from Sexual Offices Act.

Date of evidence on : 31-03-15, 15-06-15, 13-07-15 & 03-08-15.

Date of argument : 10-09-15. Date of Judgment : 10-09-15.

JUDGMENT

- 1) Prosecution case is that on 13-11-13, at around 3:30 pm, the accused person had gone to the house of the prosecutrix to invite them for a religious function, but finding her alone, the accused sexually assaulted the victim. The mother of the prosecutrix lodged the First Information Report on 17-11-13 and Chabua PS Case No. 205/13 under Sections 448/376/511/506 IPC was registered. In course of such investigation, the Investigating Officer examined the witnesses and sent the prosecutrix to Court for recording her statement. The Investigating Officer also prepared Sketch-Map of the place of occurrence and on completion of investigation, he submitted Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 8 of the 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 seven witnesses and on conclusion thereof, the accused person was examined under Section 313 CrPC wherein the accused person/persons took the plea of denial.
- 4) Heard Smti. R Devi, learned PP for the State and Smti. K. Bharali, learned counsel for the defence.

POINTS FOR DETERMINATION

- 1. Whether the prosecutrix was a child below 18 (eighteen) years of age at the time of occurrence?
- 2. Whether the accused committed sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

5) As per medical evidence deposed by PW-5 Dr. Nibedita Shyam, the age of the prosecutrix was above 14 (fourteen) years and below 16 (sixteen) years. Defence declined to cross-examine the medical officer. Hence, it is established that the victim was a child at the time of occurrence within the meaning of Protection of Children from Sexual Offices Act.

Point No. 2:

- 6) The prosecutrix was examined as PW-1. She deposed that on 13-11-13, at 3:30 pm, the accused had gone to her house to invite them for a religious function and gave her tamul pan at the barandah and asked her about whereabouts of her mother and sister. When she replied that they had gone out, and she was going inside the house for keeping the beetle nut, the accused followed her, grabbed her from behind and touched her breast by gagging her mouth. PW-1 further stated that thereafter, the accused went out by threatening her that if she disclosed the incident to anybody, he would kill her and her parents. But two days later, she narrated the whole incident to her mother. During cross-examination, it was put to her by the defence that she had omitted to state before the police that the accused gave tamul pan (betel nut and leaf) on her hand in their barandah and asked her about the whereabout of her mother and sister and she replied that her mother had gone to the market and that her sister had gone a friend's house and that as she was going inside the house for keeping tamul pan, the accused followed her and grabbed her from backside and touched her chest as well as her breast and that he tried to molest her by gagging her mouth. PW-1 denied the aforesaid alleged omission. The Investigating Officer during his crossexamination, confirmed all the aforesaid omissions. The above proved omissions on the part of the prosecutrix are very material one and strikes at the root of the prosecution case. PW-1 therefore cannot be regarded as a wholly reliable witness.
- 7) It would be apt to reproduce her statement recorded before the Magistrate

under Section 164 CrPC on 19-11-13 wherein she had stated as follows:

"On 13-11-13, the alleged incident took place. I was alone in my house. My mother went to the shop and my elder sister went to a nearby house and my father went for his work. At that time, Ramen Gogoi entered silently. He came to invite us to a religious function. When I was going inside to keep the betel nut, Ramen Gogoi grabbed me and wanted to do bad thing with me. When I wanted to shout, he pressed my mouth. At that time, one of my related elder sister-in-law entered and then Ramen Gogoi went out leaving me by asking not to tell anybody. He told me that if I tell anybody, he would kill me as well as my father. Out of fear, I did not tell the incident to anybody. Later on, my elder sister-in-law disclosed the mater to everybody."

8) Although she mentioned that when the accused was pressing her mouth, her elder sister-in-law entered and then the accused left, in her statement before the Court, she did not say any such thing. Rather, it appears from her deposition before the Court that the accused left her house of his own volition after accomplishing his act. During cross-examination, however, she admitted that she had stated before the police that her elder sister-in-law Smti. Bobi Gogoi had gone to their house at the time of occurrence. The said Smti. Bobi Gogoi was examined as PW-4. She deposed that on the day of occurrence, she had gone to the hose of the prosecutrix at around 3:30 pm. As the door of the house was open, she entered the house and saw that the accused was holding the victim, but the prosecutrix did not see her. Seeing the incident, she came back to her house and did not say anything to the accused at that time as she felt embarrassed. This would suggest that the occurrence, if at all it had taken place was between the consenting parties. However, during cross-examination, PW-4 admitted that she did not state before the police that the accused was holding the prosecutrix. The version of PW-4 also appears to be contradictory to the version given by the prosecutrix before the Magistrate to the effect that the accused left upon the arrival of the PW-4, in as much as, the PW-4 stated that the prosecutrix did not see her when she entered the house. Furthermore, a very significant contradiction on the part of the PW-4 vis-à-vis her previous statement before the Investigating Officer, has been proved by the defence. The Investigating Officer confirmed that PW-4 stated before him that when she went to the house of the

prosecutrix on the date of incident, she saw that the accused was sitting there after inviting the father of the prosecutrix and his family and that she saw the accused and the victim conversing and talking with each other in a joyful and cordial manner. The Investigating Officer further confirmed that she stated before him that she did not see the accused holding the prosecutrix or trying to molest her. From the above, it appears that the evidence of PW-4 also appears to be somewhat contradictory and not wholly reliable.

9) PW-2 Smti. Parul Dehingia, the mother of the prosecutrix deposed that she was not present at the time of occurrence and it was after three days of the alleged incident when the village people informed her that the accused person had misbehaved with her daughter and then she asked PW-4 Smti. Bobi Gogoi about the incident and she told her that at the time of occurrence, when she went to their house, she saw that the accused was misbehaving with her daughter and that she saw the whole incident. But the version of PW-2 regarding what PW-4 Smti. Bobi Gogoi told her does not tally with the version of PW-4 Smti. Bobi Gogoi. Thereafter, according to PW-2, she asked her daughter about the incident and she narrated the whole incident before her and also told that she did not disclose the incident earlier as the accused had threatened her that he would kill her if she disclosed the incident to anybody. The question that naturally arises that if the prosecutrix did not disclose the occurrence of sexual assault to anybody for three days, how did PW-2 come to know about it from the village people that the accused person misbehaved with her daughter. It may be noted that what PW-4 Smti. Bobi Gogoi, who had allegedly seen the occurrence, had stated was that the accused was holding the prosecutrix, not that he was forcibly grabbing and pressing her breast from behind and she had stated before the Investigating Officer that the duo were only talking to each other in a joyful manner. Therefore, it is hardly believable that she had told the villagers that the accused person was sexually assaulting or misbehaving with the prosecutrix. During cross-examination, it was put to PW-2 that she omitted to state before the Investigating Officer as aforesaid, which omission she denied. However, the Investigating Officer confirmed that PW-2 Smti. Parul Dehingia did not state before him that after three days of the alleged incident, the village people informed her that the accused misbehaved with her daughter. She

also did not state before him that she asked Smti. Bobi Gogoi/PW-4 about the incident and said Smti. Bobi Gogoi told her that the accused misbehaved with her daughter. Smti. Parul Dehingia did not state before him that the accused threatened her daughter/PW-1 not to disclose about the incident. Therefore, the PW-2/informant appears to be an unreliable witness. No other material witness has been examined by the prosecution.

- 10) The First Information Report itself was lodged after four days of the alleged occurrence. The explanation for the delay, namely, the threat having been issued by the accused has been found to be not reliable or believable as already discussed above and therefore, the delay in lodging the First Information Report remains unexplained.
- 11) As already noticed, the prosecutrix herself has not been found to be wholly reliable witness and similarly, PWs- 2 & 4 have also not been found to be wholly reliable witness. It is trite that one unreliable witness cannot corroborate the evidence of another unreliable witness. Further, the delay in lodging the First Information Report is also left unexplained. In other words, the defence succeeded in introducing serious doubt into the prosecution case because of which the prosecution story cannot be accepted to have been established by cogent and reliable evidence and 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 Section 8 Protection of Children from Sexual Offices Act and he be set at liberty forthwith.
- 13) The 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 10^{th} day of September, 2015.

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. PW-1 Smti. Parishmita Dehingia;
- 2. PW-2 Smti. Parul Dehingia;
- 3. PW-3 Sri Uma Dehingia;
- 4. PW-4 Smti. Bobi Gogoi;
- 5. PW-5 Dr. Nibedita Shyam;
- 6. PW-6 Sri Chandra Dehingia; and
- 7. PW-7 SI Tikendrajit Baruah.

List of Exhibits:

- (1) Ext. 1 Statement of the victim;
- (2) Ext. 2 Ejahar;
- (3) Ext. 3 Medical Report;
- (4) Ext. 4 Sketch-Map; and
- (5) Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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