CAUSE TITLE PCSO Case No. 59/15

Informant: XXXX

Sri Roka Kanda @ Manuj Kanda, Accused:

S/o- Sri Raju Kanda, R/o- Suratonibam Punachuk,

PS- Tingkhong, 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.

> Sessions Case No. 59/15 G.R. Case No. 1537/15

> > State of Assam

-Vs-

Sri Roka Kanda @ Manuj Kanda

Charges: under Section 366 IPC & Section 6 read with Section 5(I) of PCSO Act.

Date of evidence on : 09-03-16, 13-06-16 & 06-09-16.

Date of argument : 20-09-16. Date of Judgment : 20-09-16.

JUDGMENT

- 1) Prosecution case is that the accused Sri Roka Kanda @ Manuj Kanda kidnapped the prosecutrix on 08-06-15 from Chowatanibam Punachuk Gaon under Tingkhong Police Station and took her to different places, and during this period, the accused committed penetrative sexual assault upon her repeatedly. The elder brother of the prosecutrix lodged an Ejahar on 11-06-15 and Tingkhong Police Station Case No. 67/15 was registered and investigation commenced. The prosecutrix was recovered at Naharpukhuri Gaon along with the accused. The Investigating Officer visited the place of occurrence, drew up Sketch-Map, recorded the statement of witnesses and on completion of investigation, submitted the Charge-Sheet.
- 2) Upon committal, this Court framed charges under Section 366 IPC & Section 6 read with Section 5(I) of PCSO Act (hereinafter the 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 seven 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?
- 2. Whether the accused abducted/kidnapped the prosecutrix?
- 3. Whether the accused committed aggravated penetrative sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

5) The prosecutrix recorded her age as fourteen years at the time of deposition at the trial, while PW-2, her elder sister, who also recorded her age as 14 years, deposed that the prosecutrix was fifteen years old. PW-3, father of the prosecutrix did not state her age and PW-4, the mother stated the same to be fourteen years. But no medical evidence is available as the prosecutrix refused medical examination. Although she is a school going girl, the Investigating Officer did not collect any documentary proof of age, either from her school or from any other source. Age of the victim is a vital ingredient of an offence under the Act, which contains stringent penal provisions and therefore, proper proof of such vital ingredients of offences thereunder must be insisted upon. But the prosecution has failed to lead the best evidence in this regard, and accordingly, adverse presumption follows. The age of the prosecutrix cannot be said to have been established merely on the verbal statements of her minor sister and mother, when better evidence was obtainable. Hence, it is not established that the prosecutrix was child as defined under Section 2(d) of the Act at the time of occurrence.

Point No. 2 & 3:

- 6) PW-4, mother of the prosecutrix deposed that the prosecutrix reported to her that the accused took her forcefully. PW-4 & 5 are hearsay witnesses who did not implicate the accused. PW-3, father of the prosecutrix deposed that four days after the occurrence, police recovered her daughter from the house of the elder brother-in-law of the accused person and upon asking, her daughter told PW-3 that the accused induced her and kept her in the house of his elder brother-in-law.
- 7) PW-2, elder sister of the prosecutrix deposed that on 08-04-15, at about 10:00 am, his related sister-in-law informed him over phone that his sister Junaki was not found in the house whereas the accused was also not present

- in his house. On getting information, when he arrived his house on the next day of occurrence, he did not find her in the house. Upon asking, his sister told him that the accused had forcefully took her with the accused.
- 8) During cross-examination, PW-2 stated that the ejahar was written by one Subhash Singh, but he did not put his signature on the same as its writer which he had lodged on 10.6.2015. He did not see as to with whom his sister went. He lodged the ejahar stating that his sister was missing and that he could not say if his sister had gone with the accused at her own will.
- 9) PW-1, the prosecutrix deposed that on the day of occurrence, at about 9:00 am, while she went to her school, she met the accused who asked her to go with him on a vehicle whereafter he took her to the house of his brother-in-law and kept her there. She requested the accused to let her go to her parental house which he disallowed. At that time, she did not have money to go to her parental house and accordingly, she slept in the house of the elder brother of the accused with one Sumi Chowra. After four days, police recovered her from the house of one Roko Kondo, the elder brother-in-law of the accused. PW-1 further stated that her statement was recorded by the Magistrate vide Ext. 1 wherein Ext. 1(1) to Ext. 1(3) are her signatures.
- 10) During cross-examination, PW-1 stated that the accused is her uncle whereas Bipin is the elder brother-in-law of Roko Kondo. She voluntarily went with the accused and that the accused did not commit bad deed with her.
- 11) From the above, what transpires is that the prosecution voluntarily went with the accused which does not constitute kidnapping or abduction. None of the PWs have made any statement alleging commission of any sexual act by the accused upon the prosecutrix.
- 12) Hence, it is not established that the accused kidnapped/abducted the prosecutrix and or committed aggravated penetrative sexual assault upon her.
- 13) 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 366 IPC & Section 6 read with Section 5(I) of PCSO Act and he be set at liberty forthwith.
- 14) Issue Release Order.
- 15) Accused shall be released on execution of a personal bond of Rs. 20,000/-under Section 437-A IPC.

Given under my hand and seal of this Court on this the 20th day of

September, 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: XXXX

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Sketch-Map;
- 4. Ext. 4 Medico-legal Report; 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.