## IN THE COURT OF THE SESSIONS JUDGE, AT DIBRUGARH ::

Present: Mrs. S.P. Khaund, Sessions Judge, Dibrugarh.

### PCSO Case No.36 of 2016

Under Section 4 of the PCSO Act. State

-Versus-

Sri Akhirut Jamal.....Accused person.

Appearance:

For the State : Smti. S. Akhtar, Ld. Addl. P.P.

For the accused : Ld. Defence Counsel.

Date of evidence recorded : 8.9.2016, 2.2.2017, 18.4.2017.

Date of argument heard : 18.4.2017. Date of judgment : 18.4.2017.

#### **JUDGMENT**

- 1. The case of the prosecution in a nutshell is that on 21.04.16, at about 6 p.m Akhirut Jamal (hereinafter called accused) kidnapped the minor victim 'X' from her house and ejahar regarding this incident lodged by Phulmati Baishanab which was registered as Joypur P.S Case No.36/16,under Section 376 of IPC read with Section 4 of PCSO Act. The I.O embarked upon the investigation. After recovery of the victim she was forwarded for medical examination and for recording her statement u/S 164 of Cr.P.C. The I.O visited the place of occurrence prepared the sketch map and recorded the statements of the witnesses. On finding prima-faice materials against the accused person the I.O submitted charge sheet against him u/S 354 of IPC and Section 8 PCSO Act.
- 2. On appearance of the accused copies were furnished. After hearing both sides a formal charge u/S 4 of the PCSO Act was framed read over and explained to the accused to which the accused pleaded not guilty and claimed to be tried.

3. The prosecution adduced the evidence of five witnesses including the M.O and the I.O.

#### 4. **Points for determination**

(i) Whether on 21.04.16, the accused committed penetrative sexual assault upon the victim 'X'?

## 5. **Decision and reasons for decision**

The victim testified as P.W.1 and stated that she met the accused when he was working at Naharkatia College situated near their house. The incident took place in month of Bohag,2016. On the day of the incident at about 5 p.m she was returning from her grandfather's house. At that time she met the accused person who was standing in front of the Naharkatia College and the accused requested her to accompany her to the top floor of the building. When she refused to go,the accused forcibly took her to the top floor of the building. While standing on the roof of the building the accused proposed to her and he expressed his love for her. At that time, she noticed that her mother and her brother were searching for her and then she shouted and her mother and her brother reached the top floor of the building and saved her. At that time the accused tried to flee. Her mother and her brother along with other persons caught the accused and handed him over to the police. Her mother lodged the FIR.

- 6. During investigation she was forwarded for medical examination but she refused medical examination as the accused did not commit any physical harassment. She gave her statement before the Magistrate, exhibit 1 is her statement and exhibit1(1) and 1(2) are her signatures.
- 7. The victim's evidence does not at all implicate that the accused committed penetrative sexual assault on her. Moreover, her evidence does not depict that she needed to be protected by anybody from the accused person. Her testimony belies her evidence. It is not possible for

the accused to take the victim to the top floor of the building against her wishes. The veracity of her evidence is not reliable. The accused deserves a benefit of doubt. Moreover, Exhibit 1 is the statement of the victim before the Magistrate. Her statement clearly depicts that she had a love relationship with the accused. Her statement depicts that on the day of the incident while she was chatting with the accused they were held captive by her brother in the college premises which culminated into this case.

- 8. The victim's mother's evidence also does not implicate that the accused is complicit. Phulmati Baishnab testifies as P.W.2 and stated that her daughter 'X' was 17 years at the time of the incident which took place about 5 months ago. On that day at about 6 P.M. her daughter went to her grand mother's house but did not return. So, they went out in search of her daughter and saw her standing with the accused on the roof of the Naharkatia College building. She went towards the building along with her son and brought back her daughter to her house when the accused fled. Her daughter informed her that the accused forcibly took her to the roof top while she was returning from the house of her grandmother. She lodged the ejahar which was written by the scribe according to her narration. Thus, the evidence of P.W2 does not implicate that the accused forcibly committed penetrative sexual assault to the victim or committed any other offence.
- 9. The victim's younger brother Sri Santu Baishnab testifies as P.W.3 and stated that he does not know anything about the incident. He was declared as hostile but his evidence does not at all support the prosecution's case. The victim's uncle Sunil Baishanab also denied any knowledge about the incident as P.W.4.
- 10. The I.O is a formal witness. The I.O Sri Mukul Hazarika testified as P.W.5 and stated that on 21.4.2016 he was working in Joypur Police Station as S.I. On that day an FIR was received by the O.C., Joypur P.S. from Smti. Phulmoti Baishnab and after receiving the FIR a Joypur P.S. Case No.36/16 was registered u/s.376 IPC read with Section 4 of the PCSO Act and directed him to conduct the investigation. Ext.2 is the said FIR and Ext.2(1) is the signature of O.C., Tukheswar Baruah, the

O.C. of Joypur P.S. directed him to conduct the investigation. He recorded the statement of the complainant and the victim who were present in the Police Station. On the next day victim was forwarded to the Assam Medical College Hospital, Dibrugarh for medical examination and to the court for recording her statement u/s.164 Cr.P.C. He visited the place of occurrence and drew the sketch map of the place of occurrence. Ext.3 is the sketch map and Ext.3(1) is his signature. He recorded the statement of the witnesses present in the place of occurrence. He arrested the accused person after interrogation and forwarded him to the judicial custody. Then he collected the medical report of the victim girl Smti. Rupa Baishnab. Ext.4 is the Medical report of the victim Smti. Rupa Baishnab collected by him. After completing the investigation he filed charge sheet against the accused Akhirut Jamal u/s.354 IPC r/w Section 4 of the PCSO Act. Ext.5 is the charge sheet and Ext.5(1) is his signature.

- 11. In view of my foregoing discussions, it is thereby held that the complaint and the victim do not at all implicate that the accused forcibly committed penetrative sexual assault on the victim or any other offence. Therefore, the accused is acquitted from the charge u/S 4 of the PCSO Act and set at liberty forthwith.
- 12. Judgment is signed, sealed and delivered in the open court on this 18<sup>th</sup> day of April, 2017.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.

# **APPENDIX**

# **Prosecution witnesses**

PW-1 :-Smti.Sumirup @ Rupa Baishnab,

PW-2 :- Smti. Phulmati Baishanab,

PW-3: - Sri Santu Baishnab,

PW-4:- Sri Sunil Baishnab,

PW-5:- Sri Mukul Hazarika.

# **Defence witnesses**

Nil.

# **Court witnesses**

Nil.

#### **Exhibits**

Ext-1 :- Statement of the victim before the Magistrate.

Ext-2 :- Ejahar,

Ext-3 :- Sketch map,

Ext-4 :- Medical report,

Ext-5 :- Charge sheet.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.