CAUSE TITLE PCSO Case No. 2/14

Informant: Mrs. Mofida Begum,

W/o- Md. Mohibul Khan,

R/o- Amulapatty, PS- Dibrugarh, District- Dibrugarh.

Accused: Sri Madhab Koch,

S/o- Late Deben Chandra Koch,

R/o- Bokolia, PS- Bokolia

District- Karbi Anglong.

ADVOCATES:-

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

For the Defence: Mr. A. Rob, learned legal aid counsel.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 2/14 G.R. Case No.

> > State of Assam

-Vs-

Sri Madhab Koch

Charge u/S 8 PCSO Act.

Date of evidence on : 19-05-14, 17-06-14, 28-06-14, 04-06-15 & 21-07-15.

Date of argument : 09-09-15. Date of Judgment : 19-09-15.

JUDGMENT

- 1) Prosecution case is that on 11-01-14, at around 5:15 pm, when the two alleged victims, namely, X aged 8 (eight) years and Y aged 5 (five) years were returning from their tuition class, the accused who was the Chawkider of a nursing home, lured them inside his room and committed sexual assault upon them. Amulapatty Police Outpost received telephonic information of a disturbing situation taking place at Drishti Netralaya, Amulapatty and accordingly, Amulapatty Police Outpost GDE being No. 2432 dtd. 11-01-14 was made and police arrived at the hospital and apprehended the accused person. An ejahar was lodged by the mother of the alleged victims. The Investigating Officer investigated the case and on completion thereof, submitted Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 8 of 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 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 Mr. A. Rob, learned legal aid

counsel for the defence.

POINTS FOR DETERMINATION

- Whether the aged victim was 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 committed sexual assault upon the victims?

DECISION AND REASONS THEREOF

Point No. 1:

5) As per medical evidence, the age of the victim 'X' was between 7 to 8 years at the time of examination and that the age of the victim 'Y' was between 3 to 8 years, which is not challenged during cross-examination. Hence, it is established that the victim comes within the definition of child.

Point No. 2:

6) PW-1 Smti Phatima Begum deposed that on the day of occurrence, while she was returning from tuition at about 5:30 pm with her younger sister, the accused took her to his house and forcefully undressed her. She further stated that before the arrival of her mother, the accused showed her his penis and asked her to hold it, but she refused and the accused also touched her vagina with his hands, because of which she got pain and was taken to hospital. During cross-examination, she stated that the occurrence took place at night/evening in a large building, but she could identify the accused person who is present in the Court. She denied the defence suggestion that nothing was done to her. Therefore, the evidence of the prosecutrix stayed unshaken during cross-examination. In her statement recorded before the Magistrate, PW-1 had stated as follows:

"When I had gone to tuition that night with my younger sister- Sahnaz and it was drizzling, then that old man called us and took us to his house. We met him when we were returning home from the tuition. That old man stays near that place where the eye-doctor stays in that room.

That old man took us to his house. He gave us roti to eat. Not tea. Then one more boy came, like my little sister. The old man gave one roti to that boy- Jadav also.

After Jadav left, the old man asked me to hold his

'lengta' (penis). He asked me to suck his 'lengta'. He also asked me to kiss his 'susu'. I did not put his 'lengta' inside my mouth. I only had to hold it with my hand and keep it closed in my hand. Then he saw my 'lengta' (my private parts). He held my 'lengta' (vagina) with his hands and kept on rubbing it with his finger by spreading my legs. That old man had also asked my sister to hold the 'gooti' of his 'susu'. So Sahnaz was holding that 'gooti' (part of male's genitals).

Then she rubbed the 'goopha' (hole) of my 'susu'(private parts) so much that it caused 'ghao' (rashes/injury) on the 'phoota'(vagina). I told him that I want some 'taazi hawa'(fresh air) in order to go out of his house, as the old man would ask me again to suck his lengta (aaiou taar lengta tu susibo dibo).

Then the old man, my sister and I came out of his house. I saw my mother come running towards my side. I called out to her. We went home with my mother. Sahnaz told my mother about all that happened. My mother told everyone that the old man had given his 'susu' to be sucked by her 'bachhas'(her small children).

My mother wanted to beat that old man with her chappals (slippers). One person phoned the police. Police came after a long time. Me, Sahnaz and my mother went to the police station. my mother told the police that the old man had given his 'susu' to be sucked by both of us."

Therefore, the evidence of the prosecutrix 'X' is also corroborated her statement before the Magistrate.

- 7) PW-5 Dr. Nibedita Shyam deposed that on 2-01-14, she examined Miss. 'X' at AMCH, Dibrugarh and on genital examination, she found the following:
 - (1) Vulva- A scratch abrasion red in colour and tender the present on right side of labia minora;
 - (2) Hymen is intact and admits just tip of little finger.

As per medical opinion, age of the victim was between 7 (seven) to 8 (eight) years at the time of examination and the age of the injury was approximately 12-24 hours. During cross-examination, the medical officer denied that no such injury was detected by her. Therefore, the medical evidence regarding the injury on the private part of the victim 'X' also corroborated her evidence

before the Court.

- 8) Let us now examine the evidence of the remaining witnesses. PW-2 Smti. Almina Begum stated that on the day of occurrence, when she was returning from school with her sister, PW-1, the accused took both of them to his house and showed his susu to PW-1 and asked her to hold it. PW-2 further deposed that the accused also pulled the underwear of Phatima and touched her vagina. During cross-examination, PW-2 stated that she did not know the name of the accused, but she saw him in the Court on the day of deposition. No other suggestions have been put to PW-2 to the effect that no such occurrence took place. Therefore, the evidence of PW-1.
- 9) PW-3 Smti. Mofida Begum deposed that on the day of occurrence, when she rushed to the tuition home at about 5:30 pm, she was informed that her daughters had left for home and on returning home, she did not find them and therefore, returned to the tuition house and at that time, she saw the accused coming out with her two daughters. PW-3 further deposed that on being asked, the accused said- "Your daughters came and so I kept them and also offered them tea." PW-3 further stated that while returning, her daughters told her that the accused forced her to touch his penis and the accused also touched her vagina. She further stated that her daughters reported her as above. PW-3 further deposed that she returned and asked the accused, who denied the occurrence and then she slapped the accused. During cross-examination, she stated that she wrote the ejahar herself. But later on, she stated that it was written by a neighbour as told by her children. She denied the suggestion that she had lodged a false case.
- 10) Since PW-3 has also corroborated that her two daughters, i.e., the victims were in the hose of the accused and that they reported to her about the occurrence immediately. Since PW-3 was immediately reported about the occurrence by the victim, such act of reportage constitutes a part of the same transactive and therefore, PW-3 can be treated as res gestae witness whose evidence can be taken into account to corroborate the version of the victims.
- 11) PW-4 Dr. Ramesh Agarwalla, the Managing Director of Drishti Netralaya, Amulapatty stated that the accused was working as Gate Keeper at his hospital, who was allotted a room inside the campus of the clinic. Therefore, the prosecution version regarding the place of occurrence is also

- corroborated by PW-4.
- 12) PW-7 Sri Narayan Sharma deposed that he knew the accused person and used to reside in a rented house situated near Drishti Netralaya, Amulapatty. He further stated that on the day of occurrence, he saw the mother of the victim giving the accused fist blow in front of Distri Netralaya, Amulapatty and on being asked, she reported that the accused misbehaved with her daughter inside the Chowkider room. PW-7 also stated that the daughter aged about 7/8years, on being asked also told him that the accused misbehaved with her inside the Chowkider room after calling inside by giving her a morton. During cross-examination, PW-7 stated that he did not know the name of the lady from whom he came to know about the occurrence, but he knew her.
- 13) The accused person during his examination under Section 313 CrPC denied the entire occurrence and claimed that he has been falsely implicated by some other person as they wanted to get him out the job as he is paralised on his left side. But he did not name any such person, who would be so interested in getting rid of a Chawkider by making up such a story. The accused was working in a private nursing home and if the nursing home authority had felt that the accused was unable to discharge his duties because of his alleged ailment, it would have been quite simple for them to terminate his services summarily. I find no credibility in the exculpatory version of the accused.
- 14) As is apparent from the evidence discussed above, the version of the victims who are eye-witness have stood firm and have been amply corroborated by the victim's previous statement before the Magistrate as well as by the evidence of the remaining witnesses including the medical evidence. Defence could not succeed in extracting any material omission or contradictions in their previous statements. Therefore, I find that the victims as well as the other witnesses to be wholly reliable witness whose testimony have corroborated each other and it is, therefore, established that the accused person had committed sexual assault upon the victim 'X'. However, there is no such evidence in respect of the prosecutrix 'Y'.
- 15) In view of what has been discussed above, I hold that the prosecution has established its case beyond reasonable doubt and accordingly, I hold that the accused person guilty under Section 8 of the Protection of Children from

Sexual Offices Act and he is accordingly convicted.

Sentence

Heard the accused persons, the learned defence counsel as well as the learned Special Public Prosecutor on the question of sentence.

The accused person submits that he is ailing and unable to do any work as one side of his body has partly paralyzed. Besides his wife, his three minor children to take care of, who are suffering greatly due to his incarceration.

Considering the fact that the accused has been convicted with an sexual offence against a minor child, I am not inclined to apply the provisions of Probation of Offenders Act in the present case. Considering the submissions of the accused as well as the prosecution, I am of the considered opinion that the ends of justice would be met by imposing the minimum sentence provided by law. Accordingly, the accused person is sentenced to undergo RI for 3 (three) years and to pay a fine of Rs. 5,000/-, in default, SI for 15 (fifteen) days. The fine amount, if realized, shall be paid to the guardian of the victim.

Furnish a free copy of this judgment immediately to the convict.

Also communicate copies of the judgment to the Secretary, DLSA, Dibrugarh and to the District Magistrate, Dibrugarh.

Given under my hand and seal of this Court on this the 19^{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.

> Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 Smti. 'X';
- 2. PW-2 Smti. 'Y';
- 3. PW-3 Smti. Mofida Begum;
- 4. PW-4 Dr. Ramesh Agarwalla;
- 5. PW-5 Dr. Nibedita Shyam;
- 6. PW-6 Sri Kapil Gogoi;
- 7. PW-7 Sri Narayan Sharma; and
- 8. PW-8 SI John Pathari.

List of Exhibits:

- (3) Ext. 1 Statement of the prosecutrix recorded under Section 164 CrPC;
- (4) Ext. 2 Ejahar;
- (5) Ext. 3 Medical Report;
- (6) Ext. 4 Medical Report;
- (7) Ext. 5 Sketch-Map;
- (8) Ext. 6 Extract copy of GDE; and
- (9) Ext. 7 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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