CAUSE TITLE PCSO Case No. 15/15

Informant: Sri Purna Kanta Deori,

S/o- Late Romai Deori, R/o- Kololoa Deori Gaon,

PS- Khowang, District- Dibrugarh.

Accused: Sri Sonu Deori@ Hunu,

S/o- Late Kalison Deori, R/o- Kololoa Deori Gaon,

PS- Khowang, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: S. Dowarah, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 15/15 G.R. Case No. 632/15

> > State of Assam

-Vs-

Sri Sonu Deori@ Hunu

Charge u/S 6, r/w S. 5(I) PCSO Act.

Date of evidence on : 05-05-15, 08-06-15, 04-07-15, 08-07-15 & 01-08-15.

Date of argument : 09-12-15. Date of Judgment : 09-12-15.

JUDGMENT

- 1) Prosecution case is that the accused Sri Sonu Deori@ Hunu used to molest the alleged victim girls who were three minors aged between 6-9 years. As per the prosecution story, the girls used to go to the house of the accused to play and during this time, the accused used to molest them. On 09-03-15, one Sri Purna Kanta Deori lodged the ejahar and accordingly, Khowang PS Case No. 11/15 was registered. In the course of investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map, recorded the statement of the witnesses, apprehended the accused and sent the victim girls for medical examination. the statement were also recorded by the Magistrate under Section 164 CrPC. On completion of investigation, the Investigating Officer filed Charge-Sheet against the accused.
- 2) Upon committal, this Court framed charges under Sections 6, r/w S. 5(I) of Children From Sexual Offences Act (hereinafter PCSO Act) against the accused person and the charge 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 S. Duwarah, learned counsel for the defence.

POINT FOR DETERMINATION

1. Whether the accused person committed aggravated penetrative sexual assault upon the alleged victims repeatedly?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) There is no dispute that the alleged victims are minors aged between 6-9 years.
- 6) PW-1 whom we shall call 'X' is allegedly one of the victims. She stated her age to be 6 years. Her evidence was recorded after testing her intelligence and understanding and on being satisfied that she can give rational answers to the questions put to her. She deposed that one day, she went to the house of the accused along with her friend Muni and while they were playing, the accused rubbed his penis against her 'pupu' (vagina). He also pinched her cheek, lightly tugged her hair and also gave her morton (tifee). The accused did it inside his house. Thereafter, she went back to her house and reported the matter to her mother. During cross-examination, she deposed that there were other family members of the accused, i.e., his mother, wife and son and there was also a jhulna (Swing) in his house and the children including her used to go there to play swing. While playing, they sometimes used to scream because of which the accused used to scold them and he also used to pinch her cheek. PW-1 further stated that the accused used to love them as granddaughter and used to give them morton, etc. Therefore, much of what 'X' had stated in her examination-in-chief, has been diluted by her version during cross-examination.
- 7) PW-2, another alleged victim aged about 8 years, deposed that the accused resides near their house. He used to invite them to his house and she along with Y' and 'Z' used to go his house, who used to give them morton. When they went to his house, he used to rub his penis against their vagina. He also used to touch their breast and buttock. Thereafter, he let them go after giving morton. When he used to do such things and they wanted to go home, he used to tell them to stay back. He also used to tell them not to report to their parents and threatened to beat them with stick if they told anybody. Thereafter, they reported the matter to their mother. During cross-examination, PW-2 stated that there was jhulna (swing) in the house of the accused. The son of the accused used to beat them with a stick. There were

members in the family of the accused like his mother, his wife and one small son. The accused used to give them motron because of love towards them. During their play in the house of the accused, they used to raise halla and at that time, the son of the accused used to sleep for which the accused used to rebuke them. Out of love, the accused used to pinch their cheek and used to tug their hair. On the day of coming to the Magistrate for deposition (under Section 164 CrPC), PW-2 stated that they came with her mother and father and as tutored by them, she deposed before the Court. At the time of recording her statement, she came with her parents and as tutored by them, she stated before the Magistrate. Although, PW-2 denied the defence suggestion that the accused did not sexually molest her, defence succeeded in introducing a good deal of doubt into the version given by PW-2 during her examination-in-chief, regard being had to the tender age of the witness.

- 8) PW-3, another alleged victim girl aged about nine years deposed that PW-1 & 2 told her that the accused used to tell them to open their panties. During cross-examination, she stated that only PW-2 told her the same. The accused never asked her to open her panty. He used to give them morton out of love. Since PW-3 did not state about the point of time when PW-2 allegedly reported the matter to PW-3, her evidence must be rejected as hearsay and cannot be used to corroboration of the evidence of PW-2. Moreover, she categorically stated that the accused did not ask her to open her panty and she did not make any other allegations against the accused. This itself casts significant doubt on the prosecution story.
- 9) PW-4 Sri Purna Kanta Deori, the informant and father of PW-1 only deposed that when his daughter and PWs-2 & 3 used to go to the house of the accused for playing, the accused used to pinch their chick while giving morton. During cross-examination, he stated that he did not know who wrote the ejahar and he did not read the contents of the same before lodging. He further stated that out of instigation of some other persons, he lodged the ejahar and he has no allegation against the accused. He further stated that the mother of the victim girls did not tell him anything regarding the alleged incident. Therefore, the version of the informant and father of one of the victims, thoroughly demolishes the prosecution story.
- 10) PW-7 Smti. Phunu Deori, mother of PW-1 deposed that her daughter told her that the accused used to touch the private parts of the alleged victims by

opening their panties. But during cross-examination, she categorically stated that her daughter did not tell her any such thing and that the accused used to slap the back of her daughter out of love. She further stated that the accused is in the relationship of grandfather of her daughter and that some persons instigated her to lodge the case against the accused and as per their instruction, her husband lodged the ejahar and that she had no allegation against the accused.

- 11) Similarly, PW-5 Smti. Beauti Deori, mother of the alleged victim PW-3 while supporting the prosecution case during her examination-in-chief, stated during cross-examination that her daughter did not tell her about any sexual act committed by the accused.
- 12) The evidence of PW-6 Smti. Khiroda Deori, mother of the alleged victim PW-3 also meets the same fate. It further appears that the mother of the three girls refused medical examination of their daughters although they were sent for medical examination by the Investigating Officer.
- 13) In view of what has been discussed above, it is not established that the accused person committed aggravated penetrative sexual assault upon the alleged victims and the point is answered accordingly.
- 14) 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 Sections 6, r/w S. 5(I) PCSO Act and he be set at liberty forthwith.
- 15) 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 9th day of December, 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 The alleged victim;
- (2) PW-2 The alleged victim;
- (3) PW-3 The alleged victim;
- (4) PW-4 Sri Purna Kanta Deori;
- (5) PW-5 Smti. Beauti Deori;
- (6) PW-6 Smti. Khiroda Deori;
- (7) PW-7 Smti. Phunu Deori; and
- (8) PW-8 SI Uttam Adhikari.

List of Exhibits:

- (1) Ext. 1 Statement of the victim;
- (2) Ext. 2 Statement of the victim;
- (3) Ext. 3 Statement of the victim;
- (4) Ext. 4 Ejahar;
- (5) Ext. 5 Sketch-Map;
- (6) Ext. 6 Medical Report of the victim;
- (7) Ext. 7 Medical Report of the victim;
- (8) Ext. 8 Medical Report of the victim; and
- (9) Ext. 9 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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