CAUSE TITLE PCSO Case No. 7/14

Informant: Smti. Ratna Rai,

W/o- Sri Kamal Rai, R/o- Nogajan, PS- Duliajan,

District- Dibrugarh.

Accused: Sri Nipen Bora,

S/o- Late Dhareswar Bora,

R/o- Moran Lengrai,

PS- Moran,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Sri S. Seal, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 7/14 G.R. Case No. 780/14

> > State of Assam

-Vs-

Sri Nipen Bora

Charge u/S 8 PCSO Act.

Date of evidence on : 08-05-15, 08-07-15 & 25-04-16.

Date of argument : 11-06-15. Date of Judgment : 25-05-16.

JUDGMENT

- 1) Prosecution case is that the accused Sri Nipen Borah, who is a Home Guard personnel, on 26-03-14 committed sexual assault upon the prosecutrix who is a child of 7 (seven) years. The mother of the prosecutrix lodged the Ext. FIR on 26-03-14 and upon registration of a police case, investigation commenced. In course of such investigation, the Investigating Officer recorded the statement of witnesses, visited the place of occurrence and arrested the accused person, got the prosecutrix medically examined and on completion of investigation, submitted Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 8 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 six 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 Sri S. Seal, learned counsel for the defence.

POINT FOR DETERMINATION

1. Whether the accused person sexually assault or sexually molest her or harass her in any manner?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) The prosecutrix was examined as PW-1. She stated her age to be 7 (seven) years, which is not disputed by the defence and therefore, she is a child within the meaning of the PCSO Act. Before her examination, certain questions were put to her to test her intelligence and understanding and on being satisfied that she could give rational answers, her evidence was recorded.
- 6) PW-1 deposed that she knew the accused person and identified him by his photograph. She deposed that at the time of occurrence, she was playing in her house, her mother being present. The accused came towards her and called her from a nearby distance and displayed his penis by opening his pant. She started to cry out of fear and ran towards her mother and told her about it. Thereafter, the accused left towards the road. During crossexamination, PW-1 deposed that at the time of occurrence, her mother, her younger sister and her aunt were present in the house. She denied the defence suggestion that she deposed falsely against the accused as tutored by her mother. She further deposed that many other persons are residing near her house, but she cannot say their names, but she knows the names of her school teacher. In her statement recorded under Section 164 CrPC before the learned Magistrate, she had stated that an old man 'Dodo' came to their house while she was with her mother and called her to the backside of her house and after that he pulled down his pant and showed her his penis. However, during cross-examination, she stated that the date on which she came to the Court with her mother and others, they tutored her as to what she would have to say before the Magistrate. She also stated that her parents have accompanied her to the Court (on the date of recording her evidence at the trial) and they had tutored her what she has to say before the Court and she has deposed accordingly. On clarification sought by the Court, the child witness appeared to be confused.
- 7) In view of the fact that the PW-1 has admitted in her cross-examination, regarding having been tutored what to say before the Magistrate as well as before the Court, some difficulties have arisen in accepting her version at face value.
- 8) PW-2, the mother of the prosecutrix deposed that on the day of occurrence,

at about 2/3 pm, while she was in her house, her younger daughter was crying due to her ailment and then the accused came to their house and asked whether there is any person in their house and also asked for Sada. PW-2 further deposed that she gave him a stool to sit and also gave him sada. Her victim daughter was playing in the house and PW-2 was busy with my younger daughter as she was crying. PW-2 further deposed that after some time, her elder daughter (prosecutrix) raised hue and cry and she rushed to her and saw that the accused was holding her shoulder with his two hands from her backside and seeing PW-2 the accused left her daughter and fled from the place of occurrence. PW-2 further deposed that on being asked, prosecutrix told her grandmother that the accused showed his penis by opening his pant in front of her. She further stated that the village people found the accused in the house of Sri Bipul Gogoi and policed arrived and took him under their custody. During cross-examination, she stated that she can read the Assamese language. It was then put to her by the defence that it was written in the ejahar as follows: (Translated)

"On the day of occurrence, at about 2/3 pm, in the afternoon, while I was in my house, my younger daughter was crying due to her ailment. Then the accused came to our house and asked as to whether or not there is any person in our house. He also asked for Sada. Then I gave him a stool to sit. I also gave him sada. My victim daughter after coming from her school, was playing in the house. I was busy with my younger daughter as she was crying. After some time, my elder daughter prosecutrix raised hue and cry and then I rushed to her and saw that the accused was holding on her shoulder with his two hands from her backside. Seeing me, the accused left my daughter and fled from the place of occurrence."

PW-2 however denied that the same was written in the ejahar.

9) A perusal of the FIR shows that what is actually written therein is that on 26-03-14, at around 2:30 pm, the accused Sri Nipen Borah pulled and pushed the prosecutrix behind her house in an attempt to commit sexual assault and at that time, the prosecutrix raised hue and cry and her mother, i.e., PW-2 intervened and village people gathered there whereafter one Sri Babul Gogoi, a co-villager gave shelter to the accused and threatened the village people with a dao.

- 10) The most specific and vital allegation against the accused person is that he displayed his penis before the prosecutrix, but the said fact find no mention in the FIR which, according to PW-2 was read over and explained to her whereafter she put her signature therein. It is trite to mention here that an FIR is not an encyclopedia of all the facts of a case, but it is equally true that the FIR is the foundation of the criminal case and omission to mention the most vital fact of a case therein by one who claims to have knowledge of the facts gives rise to ample suspicion regarding the truthfulness of the contents of the FIR. Consequently, the claim made by the PW-2 that the prosecutrix told her or her mother-in-law that the accused showed his penis by opening his pant in front of her, cannot be believed without corroboration.
- 11) During further cross-examination, PW-2 denied having admitted to state before the police that while she was busy with her younger daughter, her elder daughter, i.e., the prosecutrix raised hue and cry and then PW-2 rushed towards her and saw that the accused was holding her shoulder with his two hands from her backside and seeing her, the accused left her daughter and fled from the place of occurrence. Therefore, even in her alleged statement before the police, there is no illusion about the accused having showed his penis to the prosecutrix. Moreover, although the PW-2 mentioned one Sri Babul Gogoi as having sheltered the accused, he was neither made an accused nor a prosecution witness. The Investigating Officer during cross-examination confirmed the aforesaid omission and therefore, PW-2 cannot be regarded as a reliable witness.
- 12) PW-4 Smti. Alina Ekka deposed that the alleged incident took place about one year back and at the time of occurrence, she was sitting in the garden, basking in the sun and at that time, her sister-in-law, i.e., the mother of the prosecutrix raised hue and cry and she went to her, but did not know anything regarding the incident. It is quite surprising to find that the mother of the prosecutrix did not narrate anything about the occurrence to her sister-in-law, i.e., PW-4 although she allegedly appeared at the place of occurrence immediately after the alleged occurrence.
- 13) PW-3 Sri Indra Bahadur Rai, the grandfather of the prosecutrix and PW-5 Smti. Manisha Tamang did not see the occurrence and nor did they hear anything from the prosecutrix and their evidence must be treated as hearsay.
- 14) PW-6 Bishwajyoti Sharma, Sub Inspector of Police deposed that on getting

the information, he rushed to the place of occurrence with his staff and saw that the accused person was being assaulted by a crowd whereafter police recovered and rescued the accused person, who had suffered grievous injuries and accordingly, was sent to hospital. During cross-examination, the Investigating Officer stated that he recovered the accused from the house of Sri Bipul Gogoi outside which the people were assaulting the accused, but he did not record the statement of said Sri Bipul Gogoi and his family members. He further stated that he lodged an ejahar against the persons, who had assaulted the accused person and on the basis of the same, Duliajan Police Station Case No. 105/14 was registered.

15) Mr. S Seal, learned defence counsel, apart from pointing out many infirmities and contradictions in the prosecution case as indicated above, has drawn attention of the Court to the deposition of the Investigating Officer during cross-examination wherein he has stated that there are OIL Pipe Lines near the place of occurrence and to control the incident of theft, a Security Camp was set up near the place of occurrence. The security personnel of the said camp used to apprehend the oil thieves and hand them over to police. It may be noted that the accused person was the In-Charge of the said Security Camp, as it appears from the deposition of the Investigating Officer during cross-examination. Furthermore, the PW-3 also stated during crossexamination that lots of occurrences of theft of material belonging to Oil India Limited used to take place in the locality and police often used to arrest local persons in this regard. During cross-examination of PW-2, it was put to her that at the time of occurrence, Sri Bhupen Baruah, Sri Dhruba Konwar, Sri Santu Gogoi, Sri Pranjal Saikia and Sri Arup Bora were arrested by police from her house, which she denied. She also denied the defence suggestion that her husband was involved with the act of cutting pipe lines belonging to Oil India Limited and that being sought by the police in the aforesaid pipeline cutting case, they have falsely implicated the accused in the present case. She also denied that her husband was involved with the theft of oil pipes and that he was evading arrest by the police. The Investigating Officer stated that on 26-03-14, a case being Duliajan Police Station Case No. 103/14 under Section 379 IPC was registered, but he did not know whether the husband of the complainant and his other family members were involved with the said case. The Investigating Officer further denied the suggestion that he could

- not record the statement of said persons as they were absconding and that he had purposefully suppressed the fact in his case diary. The fact, however, remains that the Investigating Officer did not examine the father of the prosecutrix, i.e., husband of the complainant which provides a ring of truth to the defence version that he was on the run.
- 16) The accused stated in his statement recorded under Section 313 CrPC that he was posted at Nagajan Camp. The people of the locality were always involved with the theft of OIL property like oil, steel, etc., and he caught them many times earlier. The father of the alleged victim was also involved with those activities. On 25-03-14, some persons were arrested in connection with Duliajan Police Station Case No. 103/14 for theft of OIL property. Whenever the men folk are arrested, womenfolk would come rushing and surrounded the camp and threaten them. On 26-03-14, i.e., the date of alleged incident, when he was on duty at Nagajan and so moving on the road, Sri Kamal Rai and his wife Smti. Ratna Rai along with some of their associates attacked him on the road and dragged him to their house and caused grievous injury to his person and at last, he became on conscious. He was rescued by police of Bhadoi Police Outpost and he was hospitalized in Duliajan OIL Hospital and thereafter, to AMCH, Dibrugarh. In fact, he recovered consciousness in AMCH, Dibrugarh. He further stated that allegations are false and motivated and he was innocent.
- 17) The accused person also adduced evidence and was examined as DW-1. He deposed that since prior to the alleged incident, he was posted at Nagajan Oil Security Camp under Duliajan Police Station. On the day of occurrence, while he was on duty, he received a phone call from the Duliajan Police Station to the effect that regarding the incident of theft of OIL pipe, he would have to go to the house of one Sri Bipul Gogoi for inquiry. Getting the phone call, he went to the house of Sri Bipul Gogoi and was interrogating Sri Bipul Gogoi. He further stated that on prior occasions also, incident of theft of OIL Pipe, condensate oil, etc., was going on in the said locality and DW-1 and his staff often used to apprehend the local persons regarding the theft. On the day of occurrence, while he was interrogating Sri Bipul Gogoi about the theft incident of OIL properties, the villagers involved with the incident of theft of OIL Pipe and condensate oil, cordoned off the house of Sri Bipul Gogoi and started to assault him badly and as a result, he became unconscious. Due to

the assault made by the villagers, he sustained injuries on various parts of his body including the neck. Later on, police personnel of Duliajan Police Station arrived on the spot and recovered him. At first, he was taken to Duliajan OIL Hospital for check-up and thereafter, he was taken to Assam Medical College & Hospital, Dibrugarh for better treatment as his injuries were found to be grievous where he had to stay for about 20 (twenty) days. He further stated that the documents pertaining to the treatment of his injuries at Assam Medical College & Hospital, Dibrugarh were available with police. Later on, he came to know that police had arrested some of the persons who had assaulted him and cases were registered vide Duliajan PS Case No. 103/14 under Section 379 IPC & Duliajan PS Case No. 105/14 under Sections 147/149/353/325/326/427/34 IPC against them. Ext. A contains certified copies pertaining to Duliajan PS Case No. 103/14 corresponding to GR Case No. 773/14 containing 36 pages. Ext. B is the case record of Duliajan PS Case No. 105/14 containing 19 pages in total. He stated that Sri Bhupen Saikia, Sri Dhruba Konwar, Sri Indra Bahadur Rai, Sri Kamal Rai, Sri Ujjal Saikia, Sri Arup Baruah were among the villagers who had assaulted him in the house of Sri Bipul Gogoi and caused grievous injuries on his person. As cases were filed against the above mentioned persons and others for assaulting him in the house of Sri Bipul Gogoi, so the instant case was filed later on against him implicating him with the offence. During cross-examination, the prosecution only gave suggestion to the DW-1 with a view to discredit his evidence. The above version of the DW-1/accused is consistent with the various suggestions given the PWs to the effect that the informant side falsely implicated the accused person as they were involved with theft of OIL materials.

18) It also appears from the Ext. A exhibited by DW-1 which is a bunch of certified copies of GR Case No. 773/14 corresponding to Duliajan PS Case No. 103/14 under Section 379 IPC that a First Information Report was lodged on 25-03-14 at the Duliajan Police Station by the Company Commander (Industrial), CISF Unit, OIL, Duliajan regarding theft of materials belonging to Oil India Limited and as per connected forwarding report, the name of the accused persons in the said case are Bhupen Baruah, Dhruba Konwar, Santu Gogoi, Pranjal Saikia and Arup Bora. Out of them, the names of Dhruba Konwar, Arup Bora are mentioned by DW-1 as the persons who had assaulted him. It may be noted that the First Information Report of the present case

was lodged on the following day, i.e., 26-03-14. But there is no mention of the father of the prosecutrix Kamal Rai in the First Information Report of Duliajan PS Case No. 103/14 or in the Forwarding Report of the said case. Defence Ext. B contains the certified copy of the First Information Report of Duliajan PS Case No. 105/14 lodged on 26-03-14, i.e., the date of alleged occurrence of the present case registered under Sections 147/149/341/353/325/336/427 IPC wherein the assault on the accused person made by the villages is noted by the informant SI Bishwajyoti Sharma, In-Charge of Bhadoi Police Outpost, but no mention of the individual accused has been stated therein. In the said case, subsequent Final Report has been submitted by the Investigating Officer vide Ext. A. In the notice to the informant (Ext. A) certified copy, it is stated that the case is true, but no clue had been found. A series of Injury Reports issued by the OIL Hospital, Duliajan, certified copy of which have been also made part of Ext. A shows that a number of police personnel, namely, JJ Baruah (SI), Mohibul Ali (ABC-347), Prafulla Gogoi (UBC-264), Poli Gogoi (HG), Jyotish Choudhury (CN-188), Podmoram Pasung (NK-527) and the accused Nipen Bora sustained injuries in the said occurrence. The Investigating Officer of the present case PW-6 also corroborated the incident of assault on the accused person and police personnel

- 19) From the materials brought forwarded by the defence and also from the deposition of the Investigating Officer, it thus appear that incident of theft of OIL materials used to take place in the locality and that the accused was In-Charge of the Security Camp which was tasked with the detection and prevention of such theft. It is also established that the accused along with other police personnel were injured in a mob attack that took place on the alleged date of occurrence where it is possible that such attack took place as a reaction to the offence allegedly committed by the accused, it is also not improbable that the same was an act of gratuitous violence by persons involved in theft of OIL materials.
- 20) PW-2 mother of the prosecutrix had deposed that she along with her mother-in-law went to the nearby Home Guard Camp and reported the matter and further, her husband on getting the information over phone went to the Home Guard Camp and reported the matter. But the Investigating Officer did not examine anybody from the said Camp, nor did he examine the husband of

- PW-2. There is no explanation as to why none from the informant side went straight to the police.
- 21) But regardless of the story set up by the defence, the fact remains that the prosecutrix herself cannot be regarded as a credible or reliable witness in view of the fact that her version before the Court as well as before the Magistrate are admittedly tutored ones and PW-2, the mother of the prosecutrix for reasons already discussed cannot be regarded as a reliable witness either. The sister-in-law of PW-2 who immediately came to the place of occurrence deposed that she did not know anything regarding the incident and mother-in-law of PW-2 who also allegedly arrived immediately after the occurrence was never examined by the Investigating Officer and was not made a prosecution witness.
- 22) Considering as a whole, a good number of omissions and contradictions in the prosecution evidence has come to the fore, casting sufficient doubt on the prosecution story and possibility of false implication cannot be ruled out in the present case. In view of the above, it cannot be said that the prosecution has established that the accused person committed sexual assault upon the prosecutrix and the point is answered accordingly.
- 23) 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 PCSO Act and he be set at liberty forthwith.
- 24) 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 25^{th} day of May, 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:

- (1) PW-1 XXXX;
- (2) PW-2 XXXX;
- (3) PW-3 XXXX;
- (4) PW-4 Smti. Alina Ekka;
- (5) PW-5 Smti. Manisha Tamang;
- (6) PW-6 SI Bishwajyoti Sharma;
- (7) DW-1 Sri Nipen Bora.

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.