# CAUSE TITLE PCSO Case No. 10/16

Informant: XXXXX

Accused: Sri Mantu Das,

S/o- Sri Robin Das, R/o- Puhari Khania, PS- Barbaruah, District- Dibrugarh.

# ADVOCATES:-

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

For the Defence: Mrs. AS Gogoi, learned Advocate.

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

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 10/16 G.R. Case No. 3335/15

> > State of Assam

-Vs-

Sri Mantu Das

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

Date of evidence on : 28-03-16 & 23-06-16.

Date of argument : 02-08-16. Date of Judgment : 02-08-16.

#### **JUDGMENT**

- 1) Prosecution case is that the accused person kidnapped the prosecutrix on 23-11-15 from Lahoal Bus Stand and took her to Jorhat where he kept her in a house and committed penetrative sexual assault upon her on 4-5 days. The father of the prosecutrix lodged an ejahar at Lahoal Police Station and investigation commenced. In course of such investigation, the Investigating Officer recorded the statement of witnesses and recovered the alleged victim whereafter her statement was recorded under Section 164 CrPC before the Magistrate. On completion of investigation, the Investigating Officer filed Charge-Sheet.
- 2) Upon committal, this Court framed charges under Sections 366 IPC & Section 6 read with Section 5(m) PCSO Act (hereinafter PCSO 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 five 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 Mrs. AS Gogoi, learned counsel for the defence.

#### **POINTS FOR DETERMINATION**

- Whether the prosecutrix was a 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 abducted the prosecutrix by deceitful means in order that she may be forced or seduced to illicit intercourse or knowing the same to be likely to happen?
- 3. Whether the accused person repeatedly committed sexual assault upon the prosecutrix?

#### **DECISION AND REASONS THEREOF**

#### Point No. 1:

5) The prosecutrix refused medical examination because of which there is not medical evidence regarding the age of the prosecutrix. She recorded her age as 18 years at the time of recording her deposition. But no documentary evidence in the form of school certificate, birth certificate has been produced by the prosecution. From the evidence on record, it is not established that the prosecutrix was child at the time of occurrence.

### Point No. 2 & 3:

- 6) Both the points are discussed simultaneously for the sake of convenience.
- 7) The prosecutrix deposed as PW-1 that in the month of November, 2015, at about 7:30 am, she went to the house of her known person situated at Lahoal and changed her clothes whereafter she herself went to Marwarypatty, Dibrugarh wherefrom she along with the accused went to the house of the aunt of the accused and stayed there. On the same day, at about 3:30 pm, her father made phone call to her and due to non-availability of bus, she expressed her inability to return home. She stayed in the house of the uncle of the accused for about seven days and on the 5<sup>th</sup> day of her stay in the said house, the family members of the uncle of the accused solemnized her marriage with the accused by putting vermilion whereafter the accused took her to his house. Police recovered her from the house of the accused. PW-1 further stated that during her stay with the accused, both of them voluntarily had sexual intercourse and stayed as husband and wife.
- 8) During cross-examination, she stated that the accused did not force her to have sexual intercourse with her.
- 9) PW-2, the father of the prosecutrix deposed that he did not have any first

hand knowledge about the occurrence, but stated that the prosecutrix told her friend over phone that she went with the accused and married him. She

also spoke to PW-2 over phone, but did not reveal her address.

10) From the above, it is crystal clear that the prosecutrix who is an adult person voluntarily went with the accused and got married to him whereafter they have consensual sexual intercourse. Therefore, no offence of kidnapping or penetrative sexual assault or rape made out against the accused person. The

points are answered accordingly.

11) 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 366 IPC & Section 6 read with Section 5(m)

PCSO Act and he be set at liberty forthwith.

12) Previous 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 2<sup>nd</sup> day of August, 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. XXXXX

## List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC; and
- 2. Ext. 2 Ejahar.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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