CAUSE TITLE PCSO Case No. 23/14

Informant: Smti. Mino Baisnab,

W/o- Sri Dina Baisnab, R/o- No. 2 Dillighat,

PS- Namrup,

District- Dibrugarh.

Accused: Sri Dam Tanti,

S/o- Sri Mohendra Tanti,

R/o- No. 2 Dillighat Garah Line,

PS- Namrup,

District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. A Rob, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 23/14 G.R. Case No. 525/14

> > State of Assam

-Vs-

Sri Dam Tanti

Charges: under Sections 8/4/18 PCSO Act.

Date of evidence on : 03-10-15 & 05-05-16.

Date of argument : 02-06-16. Date of Judgment : 16-06-16.

JUDGMENT

- 1) Prosecution case is that on 01-03-14, the accused person went to the house of the prosecutrix, a minor aged about 12 years and took her out to a nearby structure whereafter he took off her undergarment with a view to do a sexual act, but on hue and cry being raised by the prosecutrix, the accused fled from the place of occurrence.
- 2) The mother of the prosecutrix lodged an ejahar on 02-03-14 at Namrup Police Station and accordingly, Namrup Police Station Case No. 21/14 was registered and investigation commenced. In course of the investigation, the Investigating Officer visited the place of occurrence, prepared Sketch-Map, recorded the statement of witnesses, got the statement of the prosecutrix recorded by the Magistrate under Section 164 CrPC and on completion of investigation, he filed the Charge-Sheet.
- 3) Upon committal, my learned predecessor framed charges under Sections 8/4/18 Protection of Children from Sexual Offices 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.
- 4) In course of trial, prosecution examined five witnesses and one Court witness was also examined and on conclusion thereof, the accused person was examined under Section 313 CrPC.

5) Heard Smti. R Devi, learned PP for the State and Mr. Rob, 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 assaulted the prosecutrix or attempted to commit penetrative sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

6) The prosecutrix recorded her age as 12 years and questions were also put to her during her deposition at the trial to test her intelligence and understanding. The defence did not challenge the age of the prosecutrix in any way. Therefore, although the prosecutrix was not medically examined, there is no difficulty in holding that the prosecutrix was a child at the time of occurrence.

Point No. 2:

- 7) The prosecutrix was examined as PW-2 and she deposed that on the day of occurrence, at about 8:00 pm, when she was with her grandmother Sima in her house, the accused came to her house and asked for sada (tobacco). The accused also asked about her grandmother Sima and thereafter he took her to the nearby broken house. The accused by gagging her mouth opened her panty. The accused also told that he would give Rs. 20/30. PW-2 tried to save herself. She could shout and seeing her shouting, the accused ran away from the said broken house. PW-2 further stated that thereafter, she came out from the said broken house. Hearing her shout, her grandmother Sima came out and PW-2 told her about the incident. She told PW-2 to report the matter to her mother when she would return home. After some time, her mother arrived at her house and she reported the matter to her. Her grandmother Sima also told her the incident. PW-2 further stated that thereafter, her mother went to the house of the accused, but upon arrival, her mother found the accused vomiting and he asked her to come on the next day morning. When her mother went to the house of the accused on the next day morning, he tried to assault her mother.
- 8) During cross-examination, PW-2 stated that at the time of occurrence, Lakhi,

Santi and Sima were in her house. She further stated that Santi is her grandmother. On the day of occurrence, Santi after having liquor was lying at a nearby place and the accused picked her up and took her to PW-2's house. At the time of taking Santi to PW-2's house, all the above mentioned ladies were present in their house. Thereafter, the accused left her house and went to his house. Thereafter, her mother arrived at her house from the shop.

- 9) In her examination-in-chief, PW-2 had stated that she was with her grandmother Sima in her house when the accused came and asked for Sada and also asked about her grandmother Sima whereas in cross-examination, she stated that her grandmother Santi was lying drunk at the nearby place and the accused picked her up and took her to the house of PW-2 at which time other ladies, namely, Lakhi and Sima were also present in her house. This is a very material and significant contradiction which makes the version of the PW-2 very much suspect and unreliable. It is quite improbable that the accused would attempt such an act as alleged when all of them were present in the house.
- 10) Of the said ladies, Sima was examined as PW-3. She recorded her age as 30 years and therefore, she could not have been the grandmother of the twelve-year-old prosecutrix PW-2. She deposed that at the time of occurrence, at about 7:00 pm, she was inside the house of the informant. Then the informant told her that she would go to the shop for purchasing some items. Thereafter, the accused went to the house of the informant by taking the grandmother of the victim in drunken condition and laid her down on the bed in the house of the informant. PW-3 further stated that the accused called the victim and asked her to give him some sada. PW-3 asked the victim as to why the accused had come to their house. The victim told that the accused was her brother. PW-3 further stated that the victim gave the accused sada and he went out of the house and called the victim to the outside of the house. PW-3 saw the accused calling the victim to the outside of the house. When the victim went out from inside the house, the accused took her somewhere.
- 11) During cross-examination, PW-3 stated that when the accused came to the house, there was no electric light, but kerosene lamp was available. On the day of occurrence, she was in a separate room and the accused as well as the victim was in the other room. PW-3 stated that she did not see the accused coming to the house of the informant and that she did not know

anything more about the occurrence.

- 12) PW-3 stated that if PW-3 did not see the accused going to the house of the informant as stated in her cross-examination, she would have no occasion to ask the prosecutrix as to why the accused had come to their house. If the accused had gone to the house of the informant bringing the grandmother of the prosecutrix in a drunken condition, laying her down on the bed, why would PW-3 asked the prosecutrix as to why the accused had come to their house? The evidence of PW-3 therefore does not make much sense and cannot be at all relied upon. PW-1, the informant and mother of the prosecutrix is a reported witness who deposed that the prosecutrix told her that the accused informed the prosecutrix that her grandmother was lying near the embankment situated near their house in a drunken state and the accused asked the prosecutrix to go with him to take her grandmother whereafter the accused took her a nearby broken house and after gagging her mouth, tried to commit bad deed with her by opening her panty. This version of the PW-1 is totally contradicted by the version of PW-2 in crossexamination as well as by that of PW-3 in her examination-in-chief that the accused had brought the grandmother of the prosecutrix, who was in drunken condition, to the house of the informant.
- 13) From the above, it is seen that none of the principal prosecution witnesses can be regarded as credible ones and the contradictory nature of their evidence is mutually destructive of each other. Such being the quality of evidence, it would hardly be safe to return a finding of guilt against the accused person. The point is therefore 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 8/4/18 PCSO Act and he be set at liberty forthwith.
- 15) Accused shall be released on execution of a personal bond of Rs. 20,000/-under Section 433-A IPC.

Given under my hand and seal of this Court on this the 16th day of June, 2016.

to my dictation and corrected by me and each page bears my signature.

Sessions Judge, Dibrugarh

APPENDIX

List of witnesses:

- 1. PW-1 Smti. Minu Baisnab;
- 2. PW-2 Smti. Pukili Baisnab;
- 3. PW-3 Smti. Sima Dhubi;
- 4. PW-4 Sri Sanjay Orang;
- 5. PW-5 SI Cheniram Pagag; and
- 6. CW-1 Smti. Kalpana Baruah.

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Sketch-Map;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Charge-Sheet; and
- 5. Ext. 5 Statement of the victim recorded under Section 164 CrPC.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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