# CAUSE TITLE PCSO Case No. 19/14

Informant: Sri Gajen Gogoi,

S/o- Late Durga Gogoi,

R/o- TD Plus OIL Housing Coloney, Duliajan,

PS- Duliajan,

District- Dibrugarh.

Accused: (1) Sri Bibek Rai,

S/o- Sri Sajan Rai, R/o- Borpathr Tiniali,

PS- Duliajan,

District- Dibrugarh.

(2) Sri Babul Chamua,

S/o- Sri Keshadhar Chamua,

R/o- Nokhongia Gaon,

PS- Tengakhat, District- Dibrugarh.

(3) Sri Probin Kohar,

S/o- Sri Ram Pyari Kohar,

R/o- DX Turning No. 2, Duliajan,

PS- Duliajan,

District- Dibrugarh.

## **ADVOCATES:-**

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

For the Defence: Mr. MP Todi, learned Advocate.

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

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

PCSO Case No. 19/14 G.R. Case No. 1135/14

State of Assam

-Vs-

Sri Bibek Rai & others

Charge u/S 4/17/6/18 r/w S. 5(g) PCSO Act.

Date of evidence on : 09-06-15. Date of argument : 09-06-15. Date of Judgment : 09-06-15.

## **JUDGMENT**

- 1) Prosecution case is that on 03-05-14, at around 9:30 pm, the prosecutrix had gone to buy Magge from a nearby shop along with one of her neighbours. At that time, suddenly, the accused Sri Vishal Gogoi came on a bike with another boy, who pulled her and made her sit on the bike and gagged her mouth with his hands and took her to Tipling, where they kept her in a bamboo house and accused Sri Vishal Gogoi committed sexual intercourse with her forcefully against her will. Four other boys were also present, who also tried to rape her, but by fighting hard, the prosecutrix managed to escape and returned home and reported the matter to her parents. The father of the prosecutrix lodged an ejahar on 04-05-14 and on registration of a police case, the investigation was commenced. In course of such investigation, the IO recorded the statement of the witnesses and got the statement of the prosecutrix recorded under Section 164 CrPC and also got her medically examined. On completion of investigation, the Investigating Officer filed Charge-Sheet.
- 2) However, before framing of charge, accused Sri Bibek Gogoi was forwarded to JJB, Dibrugarh as he was shown as a juvenile and as per report of the JJB, Dibrugarh the said accused was acquitted by the JJB, Dibrugarh.
- 3) Charges were framed against the remaining three accused persons, namely, Sri Bibek Rai, Sri Babul Chamua and Sri Probin Kohar under Sections

4/17/6/18 r/w S. 5(g) PCSO Act.

#### **POINTS FOR DETERMINATION**

- 1. Whether the prosecutrix was a child below 18 (eighteen) years of age at the time of occurrence?
- 2. Whether the accused persons abetted the commission of penetrative sexual assault by Sri Vishal Gogoi upon the prosecutrix?
- 3. Whether the accused persons attempted to commit aggravated penetrative sexual assault upon the prosecutrix?

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

#### Point No. 1:

4) Although the MO was not examined in this case, as per Medical Report, the prosecutrix was above 16 years and below 18 years of age. The Medical Report is not disputed by either side and hence, it is marked as Ext. X and read in evidence under the provisions of Section 294 CrPC. The prosecutrix also stated her age to be 13 years before the Magistrate while recording her statement under Section 164 CrPC. From the above, it is established that the prosecutrix was a child at the time of occurrence.

### Point No. 2 & 3:

5) The prosecutrix was examined as PW-1. She deposed that she knew the accused Sri Vishal Gogoi, but she do not know the other accused persons. On the day of occurrence, when she went to a shop with her younger brother at about 9:00 pm for purchasing Magge, the accused Sri Vishal Gogoi came with a bike along with another boy and asked her if she would go for a visit and when she refused to go with them, the accused Sri Vishal Gogoi picked her up on the middle of his bike and took her towards Tipling to a house made of bamboo. Keeping her inside the said house, accused Sri Vishal Gogoi along with others started to drink liquor. Accused Sri Vishal Gogoi wanted to do bad thing with her and also touched her, but she did not allow and then he left her and started to drink liquor with his three friends. While they became busy drinking liquor, she left the place by taking a rickshaw and reached home and informed the matter to her parents. Her father lodged an ejahar regarding the incident.

The victim was shown the photographs of the accused persons taken on mobile camera. Thereafter, she was allowed to see the three accused persons from a distance, but she stated that the accused persons are not involved.

- Defence decliened to cross-examine this witness.
- 6) The father of the prosecutrix deposed as PW-2. He stated that on the day of occurrence, while his daughter was going to the nearby shop in the evening, the accused Sri Vishal Gogoi along with other boys came there and picked her up on their bike and took her to some other place. On the next day morning, when his daughter came back to his house, he asked her as to where she had gone. She reported that the accused Sri Vishal Gogoi took her to a house made of bamboo. She also told PW-2 that the accused were drinking liquor and gossiping in the said house. When the accused persons were busy in drinking, she fled from the place of occurrence. PW-2 stated that his daughter only uttered the name of accused Sri Vishal Gogoi, but she did not utter the name of any other accused persons. After the alleged incident, he lodged an ejahar at the police station. Defence declined to cross-examine this witness.
- 7) From the above, it appears that the accused persons present in the Court were not the persons, who were involved with the occurrence. Since no identification parade was held and the prosecutrix failed or refused to identify the accused persons, there is no evidence against the present accused persons. Even if the present accused persons were present at the place of occurrence, the prosecutrix has not imputed any act of abetment of penetrative sexual assault or attempt to commit aggravated penetrative sexual assault.
- 8) The father of the prosecutrix was also examined as PW-2 and it is clear from his deposition that he is not an eye-witness to the occurrence. Even in her statement recorded under section 164 CrPC, the prosecutrix has implicated the accused Sri Vishal Gogoi by name, but did not name any of the other accused persons.
- 9) Considering the evidence brought on record by the prosecution, there is no difficulty in holding that the prosecution has failed to establish the involvement of the present accused persons in the commission of offences they had been charged with.
- 10) In the result, I hold that the prosecution has miserably failed to establish its case and consequently, the accused persons are acquitted of the offence under Sections 4/17/6/18 r/w S. 5(g) PCSO Act and they be set at liberty forthwith.

11) 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  $9^{\text{th}}$  day of June, 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) P.W. 1 The prosecutrix; and
- (2) P.W. 2 Sri Gojen Gogoi.

## List of Exhibits:

- 1) Ext. 1 Statement of the prosecutrix recorded under Section 164 CrPC;
- 2) Ext. 2 Ejahar.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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