CAUSE TITLE PCSO Case No. 31/15

Informant: XXXX

Accused: Sri Sanjib Gogoi,

S/o- Sri Girish Gogoi, R/o- Chutiakashi Gaon,

PS- Barbaruah, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. KK Gogoi, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 31/15 G.R. Case No. 364/15

> > State of Assam

-Vs-

Sri Sanjib Gogoi

Charges: under Section 8 PCSO Act.

Date of evidence on : 07-09-15, 09-10-15, 30-11-15, 06-01-16, 05-02-16,

08-03-16, 08-06-16 & 17-09-16.

Date of argument : 01-10-16. Date of Judgment : 01-10-16.

JUDGMENT

- 1) Prosecution case is that on 08-02-15, the accused person had gone to the house of the prosecutrix, a minor girl aged about 12 years and asked for some tobacco and when the victim gave him the tobacco, he caught her hands, touched her chest and also kissed her. An ejahar was lodged on 11-02-15 by the mother of the prosecutrix and accordingly, Barbaruah Police Station Case No. 47/15 was registered and investigation commenced. In course of such investigation, the Investigating Officer visited the place of occurrence, recorded the statement of the injured as well as the statement of the prosecutrix, sent her for medical examination as well as to the Court for recording her statement by the Magistrate under Section 164 CrPC, drew up Sketch-Map, arrested the accused, collected the Medico-legal Report of the prosecutrix as well as the injured persons and on completion of investigation, she submitted the Case Diary.
- 2) Upon committal, this Court framed charge under Section 8 PCSO 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 eleven 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 Mr. 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 committed sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) The Prosecutrix as PW-1 recorded her age as 12 (twelve) years and the Medical Officer in her evidence opined on the basis of physical and radiological examination that the age of the prosecutrix was found to be above 12 (twelve) years and below 14 (fourteen) years, which is not disputed by the defence.
- 6) From the above, it is established that the prosecutrix was a child at the time of occurrence.

Point No. 2:

7) The informant and mother of the prosecutrix was examined as PW-2. She deposed that on the day of occurrence, while she was in her house, there were guests in her house, i.e., her elder sister Smti Khogeswari Sonowal, her friend Smti. Bobita Garlong, one brother Sri Raja Garlong, one Nepali person Sri Nil Kamal Newar and neighbor Smti. Papori Sonowal. At that time, Sri Nil Kamal Newar and Sri Raja Garlong were watching TV in the drawing room whereas she was cooking food along with her elder sister in the kitchen room. At that time, the accused came to her house and asked for sada/tobacco from her daughter. When her daughter gave sada, the accused caught her hands, touched her chest and also kissed her. Then her daughter started to cry and went to her and told her about the act of the accused and then PW-2 came out and found the accused inside the room in front of the door and slapped him. She pushed the accused and asked him to leave their house. The accused threatened to kill her. Thereafter, the accused left her house. At the time of occurrence, her husband was working in the house of another person and she called him and thereafter, both of them went to the

house of the accused and told his parents and his wife about his act whereafter they returned to their house. At about 4:00 pm, when her son came back home from the Than (a religious place), she told him about the act of the accused. At that time, the accused was in a shop in front of their house. When her son went to the accused and asked him about the incident, the accused gave him a fist blow on his face as a result of which one of his tooth was broken. Seeing the incident, she went to them and somehow managed to save her son from the accused and brought him to their house. After some time, she along with her son and husband went to the house of the accused and found him in his house. The accused assaulted her husband on his head for which he fell down on the ground, whereafter she took her husband to Barbaruah Police Station and police sent them to Barbaruarh Dispensary. As the injury of her husband was found grievous, so he was referred to AMCH, Dibrugarh. After the incident, the accused used to threaten them with an axe in his hands and used to loiter near her house. As she was busy with the treatment of her husband, so after three days of the alleged incident, she lodged the ejahar.

8) During cross-examination, PW-2 stated that she did not see the accused catching her hands, touching her chest and kissing her. She denied the suggestion that at the time of occurrence, she was having illicit relationship with one Sri Nil Kamal Newar and that while the accused had seen her having illicit relation with the said person, he told her daughter that such types work should not be done and that while her daughter reported the same to PW-2, she slapped her daughter. She further denied the suggestion that while the accused reported the mater to her daughter, she told him if he wanted to have a relation, such relation he may have with PW-2. She also denied the suggestion that when her son came to her house, she falsely informed him that the accused had caught her hands, touched her chest and also kissed. PW-2 stated that during the course of the cross-examination that she had given a proposal to withdraw the case if the accused pays her Rs. 10,000/but the accused did not pay the same to her. She denied the suggestion that she had filed the case for demand of money from the accused and that she had demanded money from the accused that is why it was delay in lodging the ejahar and that to screen her illicit relation with Sri Nil Kamal Newar and for getting money from the accused, she had lodged the instant false case.

- 9) PW-3, the father of the prosecutrix deposed that at about 4:00 pm, after coming back to his house, he heard from his wife that on the day of occurrence, the accused came to his house and misbehaved with his daughter. Thereafter, he alone went to the house of the accused to inquire about the matter. The accused assaulted him on his head. Thereafter, he along with his wife went to Barbaruah Police Station and thereafter, they went to Barbaruah Dispensary and as his injury was grievous, so he was referred to AMCH, Dibrugarh for better treatment. He heard from his son that the accused gave a fist blow on his face as a result of which one teeth of his son had broken. The treatment of his son was conducted at Barbarurh Dispensary. Regarding the alleged incident, his wife lodged an ejahar. During cross-examination, PW-3 stated that he did not have objection if the accused was released from the offence he has been charged with. He further stated that while he was working, his wife did not inform him about the incident and that he did not go to the house of the accused along with his wife and he did not see the occurrence. He further stated that he did not have personal knowledge about the occurrence and that he did not know whether the accused had committed bad act with his daughter or not. He did not know whether the incident of the case was true or false. He could not say whether his daughter or his wife had spoken the truth or not.
- 10) The prosecutrix herself was examined as PW-1. She deposed that on the day of occurrence, while she was in her house, her mother as well as her uncle (borta) and aunt (borma) were also inside the house. At about 11:00 am, the accused came to her house and asked for sada and while she was about to give him sada, the accused caught her and kissed on her lips. The accused also touched her chest and sat her on the chair. When she raised hue and cry, her mother came from inside the house whereafter she narrated the conduct of the accused and thereafter, her mother slapped the accused. When her mother went inside the house for bringing a dao, the accused fled from her house. Thereafter, her elder brother came to her house and she narrated the incident to him whereafter, her elder brother went to the accused who was standing on the road after the occurrence. When her elder brother reached near him and confronted with him, the accused assaulted him whereafter her elder brother immediately came back to her house. She saw blood stain on his face. Her brother told him that the accused had

- assaulted him. Thereafter, her father also went to the accused and when he asked the accused as to why he had assaulted her elder brother, the accused also assaulted him as a result of which her father sustained injury on his left side head and blood was oozing from his head.
- 11) During cross-examination, PW-1 stated that the accused is her related brother who used to address her father as Mama (maternal uncle) and also used to reside in another village situated near her village. She further stated that her house is situated by the side of the road and on the day of occurrence, the accused came to her house for asking sada (tobacco) and at that time, there was another person watching TV in a different room of her house. Prior to coming of the accused to her house, there were three other persons, i.e., borta, borma and a friend of Borta who had come to her house. The said borta and borma were the friends of her father. She further stated that when she entered into the room for bringing sada, the accused was watching TV in the room and at that time, her mother was in another room. The accused told her that her mother has been having illicit relationship with the friend of her father and accused also advised her to tell her mother not to do the same. Accordingly, she reported the mater to her mother whereafter her mother slapped her and charged the accused as to why he had told all these things to her. Her mother also asked the accused that if he wanted to have physical relation, why not keep the same with her mother. When the accused left her house, her elder brother came to her house and her mother told him something. Then her elder brother went out in search of the accused and found the accused near a shop and had altercation with the accused and as a result of which quarrel took place between them. Thereafter, her father came and her mother also reported him that the accused had assaulted her elder brother and then her father also went in search of the accused and quarrel took place between the accused and her father. She heard all the above things from her family members. After the incident, the members of the local mahila samiti came to her house and accordingly, a meeting was held in her house.
- 12) From the above deposition of the PW-1 the prosecutrix herself during cross-examination, it is crystal clear that the allegation regarding the sexual assault having been committed upon the prosecutrix is a false and concocted one and that the suggestions given to the PW-2 the informant are more or less

accurate.

- 13) PW-4, the brother of the prosecutrix had deposed that the accused assaulted him as well as his father and PW-10 Sri Gopal Chandra Roy, the Medical Officer who examined the PW-3 & 4 deposed that PW-3 & 4 sustained simple injuries caused by blunt object, but during cross-examination, he stated that such injuries can be caused by falling on hard substance.
- 14) PW-7 Sri Milan Gogoi deposed that on the day of occurrence, at about 6:00 pm, while he was in his shop situated near my house and the accused was standing in front of his shop, the father and the elder brother of the prosecutrix came to his shop. When both of them tried to hit the accused with a stick, the stick hit the tin roof of his shop whereafter they went to the road and assaulted each other. As it was dark, PW-7 could not see the incident properly. During cross-examination, PW-7 stated that the alleged incident took place about 7:00 pm and it was dark. The accused was sitting on a bench in front of his shop. After the alleged incident, the accused told before him that the informant was indulging in illicit physical relationship with some other person which he had seen and then he alerted her and advised her not to do so and the informant out of anger, slapped the accused. PW-7 further stated that he had heard that the informant used to have illicit physical relationship with other persons at her house.
- 15) From the deposition of PW-7, it appears quite possible that PW-3 & 4 may have sustained injuries during a mutual quarrel with the accused. But the accused is not being tried for committing assault upon PW-3 & 4 and in view of the falsity of the main allegation against the accused, the offence of alleged assault upon the PW-3 & 4 are rendered irrelevant in the present case.
- 16) In view of what has been discussed above, it is not established that the accused had committed sexual assault upon the prosecutrix.
- 17) 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.
- 18) 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 1^{st} day of October, 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: XXXX

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medico-legal Report;
- 4. Ext. 4 Medical Report of PW-4 & PW-3;
- 5. Ext. 5 Sketch-Map;
- 6. Ext. 6 Medico-legal Report of PW-3; and
- 7. Ext. 7 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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