CAUSE TITLE PCSO Case No. 25/14

Informant: The prosecutrix.

Accused: Sri Uttam Gogoi,

S/o- Sri Gojen Gogoi, R/o- No. 1 Bortani Gaon,

PS- Tingkhong, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Sri U Bora, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 25/14 G.R. Case No. 2600/13

> > State of Assam

-Vs-

Sri Uttam Gogoi

Charge under Section 8 PCSO Act, r/w Section 354 IPC.

Date of evidence on : 01-12-15. Date of argument : 01-12-15. Date of Judgment : 01-12-15.

JUDGMENT

- 1) Prosecution case is that on 01-09-13, when the prosecutrix was proceeding home after purchasing rice, the accused person accosted her and asked for her phone number. On refusal to provide the same, the accused person molested the prosecutrix. The prosecutrix on the same day, lodged the Ext. 1 First Information Report whereafter Tingkhong PS Case No. 312/13 was registered and investigation commenced. In course of the investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map, recorded the statement of witnesses and on completion of investigation, submitted the Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charges under Sections 8 of 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 two 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 Bora, learned counsel for the defence.

POINTS FOR DETERMINATION

1. Whether the accused person sexually assaulted the prosecutrix?

2. Whether the accused person used criminal force upon the prosecutrix intending to outrage her modesty?

DECISION AND REASONS THEREOF

Point No. 1 & 2:

- 5) All the points are discussed simultaneously for the sake of convenience.
- 6) The prosecutrix recorded her age as 20 (twenty) years on the day of deposition, i.e., 01-12-15, the occurrence having allegedly taken place on 01-09-13. The elder sister of the prosecutrix was examined as PW-2 and she recorded her age as 22 (twenty-two) years on the same day and stated that her sister is one year younger to her. Although the prosecutrix deposed that she had studied at Mohmora ME School and passed Class-VIII, it appears that the Investigating Officer has not collected any documentary proof in the form of School Certificate or otherwise to establish the age of the prosecutrix. Neither was the prosecutrix medically examined to determine her age. Hence, there is no medical evidence regarding her age either. Under such circumstances, there is no reliable evidence to hold that the prosecutrix was below 18 (eighteen) years of age at the time of occurrence and therefore, a child, as defined in the PCSO Act at the time of occurrence.
- 7) The prosecutrix as PW-1 deposed that on the day of occurrence, she went on foot to a shop for bringing rice and on the way, the accused was teasing her and after coming back to her house, she informed the matter to her elder sister. Thereafter, out of anger, PW-1 along with her elder sister went to the police station and got an ejahar written by a person near the police station and lodged the same before the police. During cross-examination, she stated that police sent her to one Sri Krishna Deka for writing an ejahar who used to reside near the police station. She does not know as to what was written in the ejahar. The accused was also studying in the same school where PW-1 used to study at the time of occurrence. The accused did not do anything bad with her except teasing her. Out of anger, PW-1 lodged the ejahar against the accused. But the accused did not have any bad intention and she did not have any allegation against the accused.
- 8) PW-2, the elder sister of the prosecutrix deposed that on the day of occurrence, when her younger sister was coming from the shop, the accused was teasing her and after coming home, she reported the matter to PW-2. Out of anger, PW-2 along with her sister went to the police station and

lodged an ejahar against the accused. During cross-examination, she stated

that her elder brother told her to lodge an ejahar against the accused and

presently, the prosecutrix is married to one person residing in Tinsukia

district.

9) From the above, all that as emerged is that the accused teased the

prosecutrix, but she herself stated that the accused did not have any bad

intention and it was out of anger that she lodged the ejahar. From the above,

neither does the ingredient of the offence of sexual assault as defined under

Section 7 of the PCSO Act nor does the ingredient of use of criminal force in

order to outrage the modesty of a woman under Section 354 IPC have

emerged. Therefore, the charges are under Section 8 PCSO Act, r/w Section

354 IPC cannot be said to have been established and the points are

answered accordingly.

10) 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, r/w Section 354 IPC and he be set

at liberty forthwith.

11) 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 1st day of

December, 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. PW-1 The prosecutrix; and
- 2. PW-2 Smti. Rupina Kashyap.

List of Exhibits:

1. Ext. 1 Ejahar.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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