# CAUSE TITLE PCSO Case No. 43/15

Informant: The Prosecutrix.

Accused: Sri Bikash Munda,

S/o- Late Dimu Munda, R/o- Pithaguti Tea Estate,

PS- Tingkhong, District- Dibrugarh.

# ADVOCATES:-

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

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

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

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 43/15 G.R. Case No. 1449/15

> > State of Assam

-Vs-

Sri Bikash Munda

Charge u/S 4 PCSO Act, r/w S. 420 IPC.

Date of evidence on : 14-10-15 & 27-11-15.

Date of argument : 27-11-15. Date of Judgment : 27-11-15.

### **JUDGMENT**

- 1) Prosecution case is that the accused person induced the prosecutrix to have sexual intercourse with him by promising to marry her and subsequently, the prosecutrix became pregnant and ultimately delivered a child. Subsequently, the family members of the accused refused to accept her. The prosecutrix lodged the ejahar before the police and investigation commenced in course of which the Investigating Officer got the prosecutrix medically examined and also got her statement recorded by the Magistrate. After completion of investigation, Charge-Sheet was submitted.
- 2) Upon committal, my learned predecessor framed charges under Sections 4 of Protection of Children From Sexual Offences Act (hereinafter PCSO Act) r/w S. 420 IPC 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 four 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**

- 1. Whether the accused committed penetrative sexual assault upon the prosecutrix?
- 2. Whether the accused person cheated the prosecutrix by falsely promising to marry her and thereafter causing her to have sexual intercourse with him?

## **DECISION AND REASONS THEREOF**

## Point No. 1 & 2:

- 5) All the points are discussed simultaneously for the sake of convenience.
- 6) Dr. Nibedita Shyam was examined as PW-4 and she deposed on the basis of radiological investigation, the age of the prosecutrix who was above 16 (sixteen) years and below 18 (eighteen) years which is not challenged during cross-examination. Therefore, the prosecutrix was a child at the time of occurrence as defined in the Act. However, the prosecutrix was examined as PW-1 did not support the prosecution case. She merely stated that she had love affair with the accused and had promised to marry her, but as he refused to accept her, she lodged the ejahar at the instance of her family members. She did mention anything about the sexual intercourse by the accused. She was declared hostile on the prayer of the prosecution. During further cross-examination, she also denied her alleged previous statement before the police which was put to her as follows:

"Prior to six months from today, I used to stay in the house of my maternal uncle near the house of Bikash and I used to meet him near the field of my maternal uncle at night and physical relation took place between us for many times as a result of which, I became pregnant. I informed the matter to Bikash. My mother also came to know about my pregnancy and I stated before my mother about my relationship with the accused person. My mother informed the matter to the family members of Bikash, but they refused to accept me. So, I informed the matter to police".

During cross-examination, she stated that she is now staying in the house of the accused as his wife and she has been accepted as their daughter-in-law. She further stated that as elder brother and sister of the accused had objected to their marriage, that is why she had lodged the ejahar. She further stated that at present, her age is 18 (eighteen) years and the accused has

promised to marry her.

- 7) From the above, it is clear that the principal prosecution witness, i.e., the alleged victim herself has failed to support the prosecution case. Therefore, although PW-2, mother of the prosecutrix deposed that the prosecutrix had told her that she became pregnant through the accused, the same is not of much evidentiary value in the face of the failure of the prosecutrix to state so before the Court. Other prosecution witnesses, namely, PW-3 Smti. Putoli Charua is also a reported witness. Although she deposed that the victim became pregnant due to the physical relation between the accused, there is no substantive evidence to prove the same.
- 8) Therefore, although it has come in the evidence that the prosecutrix had told the family members, there is nothing to directly link the accused with the child except some circumstantial evidence from the conduct of the parties subsequent to the occurrence, i.e., that the victim is presently staying with the accused and she has been accepted by the family of the accused. But here too, it may be noted that that the PW-2, the mother of the prosecutrix stated that at present, the victim is staying with her. In any case, the above circumstance can at best provide some inference or conjecture, but not satisfactorily prove that the accused person committed penetrative sexual assault upon the prosecutrix. There is also no evidence to establish that the accused person had sexual intercourse with the prosecutrix upon a false promise of marriage so as to amount to the offence of cheat under Section 420 IPC.
- 9) In view of what has been discussed above, I hold that the prosecution has failed to prove its case beyond reasonable doubt and consequently, the accused person is acquitted of the offence under Sections 4 of PCSO Act, r/w S. 420 IPC and he be set at liberty forthwith.
- 10) 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 27<sup>th</sup> day of November, 2015.

and each page bears my signature.

Sessions Judge, Dibrugarh

# **APPENDIX**

# List of witnesses:

- 1. PW-1 The prosecutrix;
- 2. PW-2 Smti. Bijuli Charua;
- 3. PW-3 Smti. Putoli Charua;
- 4. PW-4 Dr. Nibedita Shyam.

# List of Exhibits:

1. Ext. 1 Medical Report.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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