CAUSE TITLE PCSO Case No. 54/15

In	forr	nant:	XXXXX

Sri Amul Karmakar, Accused:

S/o- Sri Mohan Karmakar, R/o- Radha Grant (Halmari Bagan),

PS- Khowang,
District- Dibrugarh.

ADVO	CATES:-
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For the State: Mrs.	Runumi Devi,	learned Public Prosecutor.
For the Defence:		learned Advocate

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 54/15 G.R. Case No. 2249/15

> > State of Assam

-Vs-

Sri Amul Karmakar

Charges: under Sections 366 IPC read with Section 4 PCSO Act.

Date of evidence on : 17-10-15, 08-12-15, 05-01-16, 21-01-16, 10-03-16,

28-06-16.

Date of argument : 28-07-16. Date of Judgment : 10-08-16.

JUDGMENT

- 1) Prosecution case is that on the night of 15-08-15, when the victim had gone outside her house for bringing water from the tube well, the accused caught and dragged her away by gagging her mouth and thereafter committed forcible rape upon her. An ejahar was lodged by the sister of the victim whereupon, a police case was registered and investigation commenced. In Court of such investigation, the Investigating Officer visited the place of occurrence, got the victim medially examined, recorded the statement of witnesses, prepared Sketch-Map, got the statement of the victim recorded under Section 164 CrPC and on completion of investigation, filed the Charge-Sheet.
- 2) This Court framed charges under Sections 366 IPC read with Section 4 PCSO 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.
- 3) In course of trial, prosecution examined eight 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 the learned counsel for the

defence.

POINTS FOR DETERMINATION

- 1. 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 abducted the victim, a minor, by deceitful means in order that she may be forced or seduced to illicit intercourse or knowing the same to be likely to happen?
- 3. Whether the accused person committed penetrative sexual assault upon the victim?

DECISION AND REASONS THEREOF

Point No. 1:

5) PW-5 Dr. Mohsina Ahmed stated that on 17-08-15, she examined Smti. Radhika Munda on police requisition in connection with Khowang PS Case No. 33/15 under Section 376(2)(f) IPC and r/w Section 4 PCSO Act. On the basis of Physical examination, Radiological & Laboratory Investigation done on Smti. Radhika Munda, PW-5 was of the opinion that the actual age of the victim was above 12 years and below 14 years at the time of her examination. From the medical evidence, it is established that the victim was a child at the time of alleged occurrence.

Point No. 2 & 3:

- 6) PW-1 who is elder sister of the victim stated that on the date of occurrence, her younger sister, i.e., the victim was staying in her house situated at Radha Grant, Halmari Bagan. At about 8:00 pm, she went out to the backside of the house of PW-1 for taking water from the tube well. When she did not return to the house for a long time, PW-1 went out in search of her outside the house, but could not find her. After half an hour, she returned to the house and was weeping. She did not speak anything and on being interrogated by PW-1, she informed that the accused committed rape on her by taking her forcefully while she was going towards the tube well. Thereafter, PW-1 went to the house of the accused, being the neighbour, but he denied the incident.
- 7) During cross-examination, PW-1 stated that she and others did not inform the matter to anyone and on the day of occurrence, there was a guest in her house. Other houses were adjacent to her house and there was no electric facility in her house. At night, her victim sister went to the tube well and half

an hour thereafter, the victim came back and took meal and slept with PW-1. Till then, the victim did not state anything to PW-1 and others. Thereafter, the victim stated the incident before PW-1 as well as other persons, namely, Pramila Munda and Ranjit Munda. PW-1 further stated that she did not see the incident and she had good relation with the accused. She denied the defence suggestion that the accused person had committed rape on her sister.

- 8) PW-2 Sri Ranjit Pujari stated that upon asking the victim told that she went to latrine, but he as well as others did not see mud and blood stain on her cloths. At last she told PW-2 and others that the accused dragged her to the backside of the house and committed rape on her. As she got injury on her private parts, PW-2 and others took her to the hospital of Halmari Tea Estate.
- 9) During cross-examination, PW-2 reiterated what he stated in his examination-in-chief and denied the defence suggestion.
- 10) PW-5 Dr. Mohsina Ahmed stated that on 17-08-15, she examined Smti. Radhika Munda on police requisition in connection with Khowang PS Case No. 33/15 under Section 376(2)(f) IPC and r/w Section 4 PCSO Act. Upon examination of genital organs, she found as follows:

"Genital organs are developed. Vulva: One tear at midline of posterior perineal wall of size 5 ml x 3 ml x 2ml. Hymen: Three tears present at hymen at 3, 8 & 9 O' Clock position. Tenderness present. Margins of tears, swollen and congested. Vagina and cervix is healthy. Uterus not palpable clinically."

PW-5 further stated that on the basis of Physical examination, Radiological & Laboratory Investigation done on Smti. Radhika Munda, she was of the opinion that-

- (1) Genital findings are suggestive of forceful recent vaginal penetration;
- (2) Injuries are present on private parte as described on form No. 2, 20(b)(c);
- 11) PW-6 Smti. Radhika Munda @ Mura stated that she knew the accused being the neighbour of her elder sister, i.e., PW-1 situated at Halmari Tea Estate. She also identified the accused in the Court on the day of her deposition. PW-6 further stated that on the day of occurrence, she went to the house of her elder sister and on that day, at about 8:00 pm, she as well as her elder

sister and elder brother-in-law took food and thereafter, she went to the tube well for taking drinking water situated at the backside of the house. When she went to the tube well, the accused pressed her mouth from her backside and dragged her towards the backside of the house. As the accused kept pressing her mouth, she could not shout. The accused took her to the bari and thereafter, tore her churider and churider pant. The accused dragged her to the nala and thereafter, pressed his penis against her vagina from her backside. During the process, she sustained injury on her private part. PW-6 further stated that she shouted and hearing her shout, her elder sister came and thereafter, seeing her, the accused fled from the place of occurrence. She narrated the incident to her elder sister. Blood was coming out from her vagina. On the same day, at night, her elder sister and elder brother-in-law (Bhini) apprehended the accused. The neighbouring people also gathered at the house of her elder sister after hearing about the occurrence.

- 12) During cross-examination, PW-6 stated that she was born at Duliajan and since then, she has been living at Duliajan. Prior to the occurrence, she did not see the accused and also did not know where he resides. She also did not know the family members of the accused. She could identify the accused person. As told by the neighbouring people and her elder sister, she stated before the Court that the name of the accused was Anul. The local people told her that the place of occurrence was called Radhagrant. PW-6 further stated that after the alleged incident, about 10/12 persons gathered there, but she did not know all those persons. She denied the defence suggestion that she has falsely implicated the accused.
- 13) What is of immense importance in the instant case is the issue of identification of the accused by the prosecutrix. She admitted that prior to the occurrence, she had never seen the accused. The occurrence took place at night time behind the house of the informant situated at a rural tea garden area and there is no evidence that there was any kind of lighting at the place of occurrence, sufficient for identification of a previously known person. in fact, the informant/PW-1 had stated in her cross-examination that there was no electricity in her house, behind which the occurrence allegedly took place. The prosecutrix only came to know of the name of the accused from the neighbours and her sister after the occurrence. In what manner, then, did she identify the accused to the PWs- 1 & 2, on the basis of which PW-1 could go

charging to the house of the accused. There is no allegation in the deposition of PW-6 that the perpetrator threatened her with a view to prevent disclosure, yet she falsely told PW-2 that she had gone to the latrine, after she returned from the place of occurrence. Although the accused was arrested the very next day, no Test Identification Parade was held and neither was there any identification of the accused by the victim at the police station after the accused was arrested and she had been taken there for recording her statement.

- 14) The accused in his defence statement stated that in the year 2013, he had a verbal quarrel with PW-2, brother-in-law of the victim. The issue was that his wife/PW-1 was going to work when her 'Tukri' and 'Japi' fell down when the accused and others were passing nearby. In the evening, PW-2, in a drunken state accused him of felling down his wife's 'Tukri' and 'Japi' and that led to the altercation. He threatened that he will get even (sai lom) and thereafter he had lodged the instant case.
- 15) Under the above circumstances, it is well nigh impossible to hold that the victim had succeeded in identifying her assailant, even though the medical evidence as well as the forensic evidence very well corroborates the oral testimony of the victim regarding the factum of forceful sexual intercourse.
- 16) 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 366 IPC read with Section 4 PCSO Act and he be set at liberty forthwith.
- 17) Issue Release Order.
- 18) Accused shall be released on execution of a personal bond of Rs. 20,000/-under Section 437-A IPC.

Given under my hand and seal of this Court on this the 10^{th} day of August, 2016.

Sessions Judge, Dibrugarh

Certified that the judgment is typed to my dictation and corrected by me and each page bears my signature.

APPENDIX

List of witnesses:

1. XXXXX

List of Exhibits:

- 1. Ext. 1 Seizure-List;
- 2. Ext. 2 Medico-legal Report;
- 3. Ext. 3 Statement of the victim recorded under Section 164 CrPC;
- 4. Ext. 4 Seizure-List;
- 5. Ext. 5 Sketch-Map;
- 6. Ext. 6-A Forwarding letter from FSL;
- 7. Ext. 6 FSL Report;
- 8. Ext. 7 Ejahar; and
- 9. Ext. 8 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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