CAUSE TITLE PCSO Case No. 29/15

Informant: Sri Hiteswar Baruah,

S/o- Sri Jogeswar Baruah,

R/o- Dihajan Gaon,

PS- Moran,

District- Dibrugarh.

Accused: Sri Pranta Jyoti Dutta,

S/o- Sri Biren Dutta,

R/o- Joyapara, PS- Sivasagar, District- Sivasagar.

ADVOCATES:-

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

For the Defence: Sri S Singhinia, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 29/15 G.R. Case No. 1014/15

> > State of Assam

-Vs-

Sri Pranta Jyoti Dutta

Charge u/S 8 PCSO Act.

Date of evidence on : 10-06-15, 02-07-15 & 18-08-15.

Date of argument : 23-11-15. Date of Judgment : 23-11-15.

JUDGMENT

- 1) Prosecution case is that on the night of 17-04-15, the accused person entered into the house of the informant and sexually assaulted the daughter of the informant aged about seven years. On 17-04-15, Moran Police Station received an information that the accused had tried to commit rape on a minor girl and the local people caught him and when they were assaulting the accused, police arrived and recovered him. Accordingly, General Diary Entry was made and subsequently, the informant lodged the ejahar and Moran PS Case No. 126/15 was registered and investigation commenced. In course of such investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map, sent the victim for medical examination and for recording her statement before the Magistrate. On completion of investigation, he submitted Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 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 six 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. Singinia, learned

counsel for the defence.

POINT FOR DETERMINATION

1. Whether the accused person committed sexual assault upon the alleged victim?

DECISION AND REASONS THEREOF

Point No. 1:

5) In this case, the age of the victim is stated to be seven years which is not disputed. The victim who was examined as PW-1, deposed that on the day of occurrence, her mother and father went out of the house to watch Bihu function held near the house at night. On the said night, she along with her elder brother was sleeping inside the house on a bed. The accused was also sleeping outside their room on a bed. When the accused came inside the room, she woke up. Coming into the room, the accused locked the door from inside. PW-1 further stated that thereafter, the accused wanted to sleep on her bed. Then she told the accused that she also wanted to see the Bihu function, but the accused did not allow her to go there. Then she started to cry. At that moment, her mother came back to their house and hearing her cry, she tried to open the door, but as it was closed from inside, so she gave a kick on the door and opened the same and thereafter, the accused fled from the place with a bicycle. She further stated that the accused touched her susu (vagina), but did not touch any part of her body and she felt pain for which she cried. In her statement before the Magistrate recorded under Section 164 CrPC, the victim deposed as follows:

"On the said night, I was sleeping with my elder brother inside the room. My mother went to enjoy Bihu festival. The accused being my uncle was drinking liquor, so my parents put him to sleep in the outside bed. The accused person, i.e., uncle lifted me from bed and sat me down near the backside door. He laid me down. I cried and then my mother arrived. My mother gave a kick on the door and entered into the room. Then the accused fled from the place. My uncle touched my private part and pinched my leg. My mother gave two slap to the accused and then he fled from the place."

The version of the victim before the Magistrate appears to be corroborative of her evidence before the Court in some respects. However, during crossexamination, she stated that the accused person stopped her going to see Bihu function as it was late night and when she started crying, her mother arrived and finding the door closed from inside, she kicked the door and opened the same whereafter the accused left. The accused did not threaten her and touched her body only to restrain her from going to the Bihu function. The accused did not use any force with her. Therefore, the deposition of the alleged victim in her cross-examination neutralized her version given in examination-in-chief.

- 6) PW-2 Sri Hiteswar Baruah, the informant deposed that he came to know from his wife that the accused tried to commit something bad with his daughter when he arrived at the house, the accused was going towards his house and then he caught hold of the accused and took him to their house. Some of his friends arrived and assaulted him. During cross-examination, he stated the accused did not try to flee and before lodging the ejahar, he did not ask anything to his daughter. Later on, when he asked his daughter, she told him that while she was crying and asking to go to watch Bihu function, the accused restrained her as it was late night and at that time, her mother arrived and entered the room by kicking open the door. His daughter did not state anything more.
- 7) PW-3 Smti. Bornali Baruah, mother of the alleged victim deposed that on the day of occurrence, her victim daughter and her son Sri Kalyan Baruah were sleeping in their house. The accused was also sleeping in the same house. PW-3 as well as her husband went nearby to watch Bihu function. Hearing that her daughter was crying, she rushed to her house and entered into her house by pushing the door. While she was asking her daughter as to what had happened, the accused left her house. The nearby people who were watching Bihu function gathered at their house and caught hold of the accused person. During cross-examination, she stated that her daughter told her that the accused did not allow her to go to see Bihu function as it was late night and that due to misunderstanding, the ejahar was lodged at the instance of the people who gathered there. She further stated that no such incident as alleged in the ejahar took place. There are no other material witnesses in the case.
- 8) From the evidence discussed above, it is clear that the prosecution case regarding the commission of sexual assault, cannot said to be established and the point is answered accordingly.

- 9) 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.
- 10) 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 $23^{\rm rd}$ 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 victim;
- (2) PW-2 Sri Hiteswar Baruah;
- (3) PW-3 Smti. Bornali Baruah;
- (4) PW-4 Smti. Nibedita Gogoi;
- (5) PW-5 Sri Hemanta Raj Khonikar; and
- (6) PW-6 SI Pratap Borgohain.

List of Exhibits:

- (1) Ext. 1 Statement of the victim recorded under Section 164 CrPC;
- (2) Ext. 2 Ejahar;
- (3) Ext. 3 Sketch-Map;
- (4) Ext. 4 Medical Report; and
- (5) Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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