CAUSE TITLE PCSO Case No. 48/15

Informant: XXXX

Accused: Sri Riki Bora @ Himangshu,

S/o- Sri Suresh Bora, R/o- Dumori Chuk Gaon,

PS- Pulibor, District- Jorhat.

ADVOCATES:-

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

For the Defence: P Hiloidhari, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 48/15 G.R. Case No. 1701/15

> > State of Assam

-Vs-

Sri Riki Bora @ Himangshu

Charge: under Section 366 IPC, r/w Section 4 PCSO Act.

Date of evidence on : 16-02-16. Date of argument : 16-02-16. Date of Judgment : 16-02-16.

JUDGMENT

- 1) Prosecution case is that the accused induced the prosecutrix, a minor to go with him to Jorhat, married her and had sexual intercourse with her. Mother of the prosecutrix lodged an ejahar (Ext. 1) and accordingly, a case was registered and investigation commenced. Police recovered both the accused and the prosecutrix from Jorhat. During the course of investigation, the Investigating Officer recorded the statement of witnesses and on completion of investigation, he submitted the Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charges under Section 366 IPC, r/w 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 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 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 abducted the prosecutrix 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 committed penetrative sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

5) The prosecutrix (PW-1) stated her age as 16 (sixteen) years and the informant (PW-2) stated it to be 15 (fifteen) years. This was not challenged in cross-examination. Hence, it is established that the prosecutrix was a child at the time of alleged occurrence.

Point Nos. 2 & 3:

6) PW-2 the informant and mother of the prosecutrix deposed that the alleged incident took place on 26-06-15 and on the said date, her daughter went out of the house saying that she would go to her tuition. But she did not come back to the house and so, she made phone calls to her, but she did receive her phone calls. Accordingly, PW-2 made phone call to her tuition master who informed her that her daughter had not gone to him for tuition. Thereafter, she made several phone calls to her daughter, but she did not receive her phone calls. Then she made phone call to her husband and informed the matter. At about 4:00 pm, her daughter received her phone call and she informed PW-2 that she eloped with the accused. Then PW-2 asked her as to where she had gone and she told PW-2 that she was with the accused at Dibrugarh. Thereafter, PW-2 and others went to the police station and informed the matter to police. They also lodged an ejahar at the police station regarding the incident. Ext. 2 is the ejahar lodged by her wherein Ext. 2(1) is his signature. Thereafter, police made phone call to her daughter and confirmed her location whereafter police made phone call to Jorhat. PW-2 also informed police that the house of the accused was situated at Jorhat. Accordingly, Duliajan Police with the help of Pulibor Police Station recovered her daughter as well as the accused and took them to Duliajan Police Station on the next day. Thereafter, PW-2 took the jimma of her daughter. She asked her daughter about the alleged incident. Police recorded her statement. Police also brought her daughter to the hospital for her medical examination. PW-2 asked her daughter as to where she was staying and she told PW-2 that she was along with the accused in the house of his maternal uncle with his grandmother. During cross-examination, PW-2 stated that her daughter told her that she voluntarily went with the accused. She further stated that the accused was not responsible for the alleged incident and she did not have any objection if the accused gets acquittal in the case as he is a minor and a student.

- 7) PW-1, the prosecutrix deposed that the alleged incident took place on 26-06-15. She knew the accused for two years prior to the day of alleged incident. During the said period, she used to make phone calls to the accused person. At study time also, she used to make phone calls to the accused and for the said conduct, her parents used to rebuke her and also used to beat her up. On the day of occurrence, she made phone call to the accused asking him to come to the coloney near their house. When the accused arrived at the said place, she went out from her house making the pretext of going to her tuition. She met the accused on the road and the accused along with her boarded a vehicle towards Jorhat and on the way, she informed her mother over phone that she got married with the accused. Arriving at Jorhat, they stayed in the house of the maternal uncle (Mama) of the accused for the said night. On the next day, her paternal uncle along with police party of Pulibor Police Station went to the house of the maternal uncle of the accused and brought them back to Pulibor Police Station. Her parents brought them from the said police station. She further stated that during their stay in the house of the maternal uncle of the accused, there was no co-habitation between her and the accused. During cross-examination, PW-1 stated that she voluntarily went with the accused who was not responsible for the said incident and he did not force her to go with him.
- 8) As can be seen from the evidence discussed above, the prosecutrix took the initiative to go with the accused with whom she was having an affair. Though she was not an adult, she was on the verge of attaining majority. In fact, although Medical Officer was not examined, as per medical repot, she was above 16 (sixteen) years and below 18 (eighteen) years and quite capable of understanding the nature and consequence of her actions. As per the law laid down by the Hon'ble Apex Court in *Shyam and another vs. State of Maharashtra* [1995 CrLJ 397 (SC)], such type of act does not constitute

'taking' for the purpose of Section 361 IPC. Further, the prosecutrix merely stated that they stayed in the house of the maternal uncle of the accused at Jorhat, but did not make any whisper regarding any act of sexual nature committed by the accused upon her, and neither did the informant (PW-2). In fact, PW-1 categorically stated in her examination-in-chief that there was no cohabitation between her and the accused during their stay at Jorhat. Therefore, regardless of her statement under Section 164 CrPC, there is no substantive evidence to establish the charge of penetrative sexual assault under Section 4 of the PCSO Act. The points are, therefore, 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 366 IPC, r/w Section 4 PCSO Act 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 16^{th} day of February, 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:

- 1. PW-1 The prosecutrix; and
- 2. PW-2 Mother of the prosecutrix.

List of Exhibits:

- 1. Ext. 1 Statement of the victim recorded under Section 164 CrPC; and
- 2. Ext. 2 Ejahar.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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