CAUSE TITLE PCSO Case No. 25/15

Informant: Smti. Madhu Sonar,

D/o- Sri Dolbahadur Sonar, R/o-New Madhuting, near GCS-7,

PS- Duliajan,

District- Dibrugarh.

Accused: Sri Jadav Ahom,

S/o- Sri Punaram Ahom, R/o- Khowang Haldabari,

PS- Khowang, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Smti. R Ray, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 25/15 G.R. Case No. 475/14

> > State of Assam

-Vs-

Sri Jadav Ahom

Charge u/S 451 IPC, r/w Section 8 PCSO Act.

Date of evidence on : 23-06-15, 22-07-15, 22-07-15 & 26-08-15.

Date of argument : 24-09-15. Date of Judgment : 24-09-15.

JUDGMENT

- 1) Prosecution case is that on 22-02-14, the accused person who was working as Home Guard and posted at Oil India, trespassed into the house of the alleged victim and touched her with sexual intent. On 23-02-14, the victim lodged the ejahar at Bhadoi Police Outpost which was forwarded to Duliajan Police Station and Duliajan PS Case No. 62/14 was registered. In course of the investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map, recorded the statement of the informant and also got the statement of the victim recorded under Section 164 CrPC. On completion of investigation, he submitted Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charges under Sections 451 IPC, r/w Section 8 of Protection of Children from Sexual Offices 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 five 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 Smti. R Ray, learned counsel for the defence.

POINTS FOR DETERMINATION

- 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 trespassed into the hose of the victim with intention to committing an offence?
- 3. Whether the accused committed sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

- 5) All the points are discussed simultaneously for the sake of convenience.
- 6) PW-1 Sri Mahendra Chetri is not an eye-witness to the occurrence and he merely deposed that he came to know that the alleged victim had lodged an ejahar and police came to the place of occurrence and asked his name and place of duty when he was posted as a Home Guard at GCS-7 of Oil India.
- 7) PW-3 Smti. Mina Kumari Dorji deposed that she knew both the accused and the victim and she heard from the neighbouring people that the accused misbehaved with the victim, but she did not see the occurrence.
- 8) PW-4 Sri Amar Subba also deposed that he knew both the accused and the victim. It was reported to him by his brother that some incident had taken place near the house of the victim and accordingly, he went to the place of occurrence and upon asking, the victim told him that while she was working inside her house, the accused came and gave a proposal to marry. During cross-examination, she stated that the victim did not report about anything else having been done by the accused to her.
- 9) The victim herself was examined as PW-2. She stated that on the day of occurrence, in the evening, while she was preparing food in her kitchen, the accused went there and caught hold of her from the backside and when she shouted, the accused fled. During cross-examination, she stated that the accused was engaged as Security Guard at an OIL rig near her house and sometimes he used to visit her house. She did not know if the accused caught hold of her jokingly. In other words, it cannot be said that the accused touched the victim with sexual intent so as to make out a case under Section of PCSO Act. Statement of the victim was recorded by the learned Magistrate vide Ext. 2 wherein the victim had stated that on 22-02-14 when she was in the kitchen of her house, the accused came and caught hold of her from

backside and when she shouted, the accused fled and all the people of the house saw the accused flee and that the accused caught her with bad intention. But during cross-examination, PW-2 stated that she had given the statement before the Magistrate regarding her age as 16 (sixteen) on being tutored by police and that she has no allegation against the accused person.

- 10) It may be noted that the victim stated during cross-examination that at the time of occurrence, she was 19 years old. PW-1 also stated similarly. Medical examination to determine her age was not carried out and no documentary evidence of age to show that the victim was below 18 years, has been adduced in evidence.
- 11) Under the above circumstances and in view of the evidence discussed above, it is neither established that the victim was a child within the meaning of PCSO Act or that the accused did any act with sexual intent involving physical contact with the victim. Similarly, there is also no evidence to establish that the accused committed house trespass into the house of the victim in order to commit an offence.
- 12) In view of the forgoing discussion, 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 451 IPC, r/w Section 8 PCSO Act and he be set at liberty forthwith.
- 13) 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 24th day of September, 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 Sri Mahendra Chetri;
- 2. PW-2 Smti. Madhu Sonar;
- 3. PW-3 Smti. Mina Kumari Dorji;
- 4. PW-4 Sri Amar Subba; and
- 5. PW-5 SI Biswajit Saikia.

List of Exhibits:

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

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh