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

Present: Mrs. S.P. Khaund,

Sessions Judge, Dibrugarh.

#### **PCSO Case No.10 of 2017**

Under Section 448/376/511 of IPC read with Section 4/18 of PSCO Act.

State -Versus-

Rupeshwar Chetia ......Accused person.

#### Appearance:

For the State : Smti. S. Akhtar, Ld. Addl. P.P.

For the accused : Sri A. Baruah Ld. Defence Counsel.

Date of evidence recorded :5.7.17. Date of argument heard : 5.7.17.

Date of judgment : 5.7.17.

# <u>Judgment</u>

- 1. The prosecution case is brief is that on 12.1.17 at about 3.30 p.m Rupeshwar Chetia (hereinafter the accused) gagged the victim 'X' and attempted to commit rape on her, but he was caught red handed by the victim's elder sister. The accused threatened the victim's elder sister with dire consequences. An ejahar regarding this incident was registered as Tingkhong P.S Case No. 7/17 under Section 448/506 of IPC read with Section 8 of the Protection of Children from Sexual Offences Act, 2012.
- 2. The investigating officer (I.O in short) embarked upon the investigation. He forwarded the victim to the Magistrate for recording her statement and also to the medical officer for medical examination. He went to the place of occurrence and recorded the statement of the witnesses and prepared the sketch map.
- 3. On finding prima-facie materials he submitted charge-sheet against the accused under Section 448/506 of IPC read with Section 8 of P.C.S.O Act. On appearance of the accused person the copies were furnished and after hearing both the sides a formal charge under Section 448/376/511 of IPC

- read with Section 4/18 of the P.C.S.O Act was framed which was read over and explained to the accused person. The accused abjured his guilt and claimed to be innocent.
- 4. The prosecution adduced the evidence of three(3) witnesses. On closure of prosecution evidence the statement of the accused was recorded.
- 5. I have heard the argument forwarded by both the sides.

#### Points For Determination

- 6. On the backdrop of the rival contention following points are taken up for decision:
- (I) Whether on 12.1.17, at about 3.30 p.m the accused committed house trespass and trespassed into the Milan Konwar's house to commit an offence.
- (II) Whether at the same time and place the accused attempted to commit rape on the victim 'X'.
- (III) Whether at the same time and place the accused attempted to commit penetrative sexual assault on the victim.

#### **Decision thereon and the reasons for the decision:**

7. The victim 'X' testified as P.W.1 that she knows the accused. He is her neighbour. The incident took place about 3 months ago. She addressed the accused person as "Barta" (uncle). Their family and the accused person's family visit each other frequently because they are closely acquainted to them. On the day of the incident at about 3.00 p.m she went to her own Barta's house (uncle) to wash clothes. On that time, her cousin Nishamoni Knowar (Baidou) sent her to bring one lemon from her house. She went to her house to fetch the lemon. At that time, she did not know that the accused was inside the house. When she went in and brought out the lemon the accused playfully pulled and tugged at the lemon (dhemali) and while they were struggling with the lemon, she fell down on the bed along with the accused. Meanwhile, her sister Nishamoni Konwar saw them and having misunderstood them raised alarm. Finally this case was lodged on misunderstanding. In the evening there was a meeting and after

the meeting it was decided to lodge this case. She was forwarded to the Magistrate to record her statement and she was also forwarded to the doctor for medical examination. The police also recorded her statement. Exhibit 1 is her statement before the Magistrate and Exhibit 1(1), 1(2) and 1(3) are her signatures.

- 8. The victim's father Milan Konwar testified as P.W.2 that the accused Rupeshwar is his distant relative. Rima Konwar is his daughter. She is about 16 to 17 years of age. The incident took place about 3 months ago. On that day of the incident there was a commotion when he returned from work and he noticed the trouble. Many people were assembled. He does not know much about the incident. He lodged this case on suspicion that the accused misbehaved with his daughter. Exhibit 2 is the ejahar and Exhibit 2(1) is his signature. He went to the Police Station and Police recorded his statement.
- 9. The victim's mother P.W.3 Smti. Junmoni Konwar testified that victim 'X' is her daughter and she is about 16 years. The incident took place about 3 to 4 months ago. On the day of the incident she was not at home. When she returned home in the evening she heard from her elder daughter that when her younger daughter went to bring lemon from the house, the accused was inside the house and there was a suspicion that the accused person misbehaved with her younger daughter and this case was lodged on the basis of suspicion. The police recorded her statement after the investigation.
- 10. Analysing the evidence, it is clear that the victim's family and the accused person were closely acquainted. They used to visit each other frequently so the question of house trespass does not arise at all. Moreover, the evidence of the victim depicts that the accused play fully pulled and tugged at the lemon which the victim was taking out from her house. While pulling and tugging at the lemon both the accused and the victim fell on the bed in their playfulness. They were misunderstood by the victim's sister and she raised alarm. The incident was blown out of proportion and a case was lodged against the accused. All P.W.1, P.W.2 and P.W.3 have stated that this case was lodged against the accused due to misunderstanding. Moreover, the victim has stated that her statement before the Magistrate was tutored by her family members. She has not

Page 4 of 5

named the family members who tutored her. The victim is a minor girl and

she was under duress of her family members.

11. Recapitulating the entire evidence, it is thereby held that there is no

evidence that the accused attempted to commit rape on the victim. There

is also no evidence that the accused attempted to commit penetrative sexual assault on the victim. There is also no evidence of house trespass.

12. Thereby the accused is acquitted from the charges under Section

448/376/511 of IPC read with Section 4/18 of P.C.S.O Act on benefit of

doubt and set at liberty.

13. Judgment is signed, sealed and delivered in the open Court on the  $5^{\,\mathrm{th}}$  day

of July, 2017.

(Smti.S.P. Khaund),

Sessions Judge,

Dibrugarh.

# **APPENDIX**

# **Prosecution witnesses**

PW-1 :-Smti. Rima Konwar(victim).

PW-2 :- Sri Milan Konwar (complainant).

PW-3 :- Smti. Junmoni Konwar.

# **Defence witnesses**

Nil.

# **Court witnesses**

Nil.

# **Exhibits**

Ext-1 :- Statement of the victim before the Magistrate.

Ext-1(1), 1(2) and 1(3): - Are the signatures of the victim.

Ext-2 :- Ejahar.

Ext-2(1) :- Is the signature of the complainant.

(Smti.S.P. Khaund), Sessions Judge, Dibrugarh.