CAUSE TITLE PCSO Case No. 32/15

Informant:	XXXXX
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Accused: Sri Subhas Tanti,

S/o- Late Shyam Sunder Tanti,

R/o- Pakka Line, Achabam Tea Estate,

PS- Nameup,

District- Dibrugarh.

AD	W	o c	ΔΊ	FS	- :

For the State: Mrs	. Runumi Devi,	learned	Public	Prosecutor
For the Defence: _		_, learne	d Advo	cate.

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 32/15 G.R. Case No. 258/15

> > State of Assam

-Vs-

Sri Subhas Tanti

Charge: under Sections 12 read with Section 11(ii) PCSO Act.

Date of evidence on : 29-07-15, 13-08-15, 18-09-15, 18-11-15 &

20-01-16.

Date of argument : 13-06-16. Date of Judgment : 27-06-16.

JUDGMENT

- 1) Prosecution case is that on 25-01-15, the victim aged about 8 years visited the house of the accused person Sri Subhas Tanti to watch TV. The accused asked her to throw away a leaf (tokou pat) on which he had brought meat. When the victim went outside, the accused followed her and tried to open her panty. But arrival of the mother of the victim made the accused leave without doing anything further.
- 2) An ejahar was lodged on 01-02-15 regarding the incident on the basis of which a police case was registered and investigation commenced. In course of the investigation, the Investigating Officer visited the place of occurrence, prepared Sketch-Map, recorded the statement of witnesses and on completion of investigation filed the Charge-Sheet.
- 3) Upon committal, this Court framed charge under Section 12 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.
- 4) 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.

5) Heard Smti. R Devi, learned PP for the State and learned counsel for the defence.

POINTS FOR DETERMINATION

- Whether the victim 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 sexually harassed the victim?

DECISION AND REASONS THEREOF

Point No. 1:

6) As per medical opinion, the victim was above eight years and below ten years at the time of examination and hence, it is established that the victim was a child at the time of occurrence.

Point No. 2:

- 7) PW-1 Smti. Kusum Kachari deposed that on the day of occurrence, at night, she went to the house of the accused along with her elder brother Pushpa to watch TV. The accused asked her to throw the tokou pat (a big size leaf used as dish for serving food) on which the accused had brought meat. When she went outside to throw the said tokou pat, the accused followed her and caught her and tried to open her panty. At that time, her mother arrived and called her and then the accused left her and returned back. She further stated that knowing about the occurrence, her father called the accused to their house and assaulted him.
- 8) PW-2 Smti. Raboti Kachari stated that on the day of occurrence, in the evening time, she was in her house and her daughter went to the house of the accused to watch TV. As it was study time, PW-2 went to the house of the accused to bring her daughter back home, but she did not find her in the house of the accused. Then PW-2 called her daughter loudly and repeatedly, but there was no response from her. She further stated that then she again went back to her house and after some time, she again went to the house of the accused, but she did not find her in his house. Thereafter, she again came back to her house and found her daughter crying inside the house. She asked her as to why she was crying and where she had gone. She reported to PW-2 that while she went to the house of

the accused, he took her to the backside of his house and on hearing PW-2 calling her, he left her. She further stated that coming to know about the occurrence, PW-2 again along with her daughter went to the house of the accused and brought him to her house by calling him. Thereafter, she interrogated him about his behavior with her daughter, which he denied. Then, she slapped him making allegation that he misbehaved with her daughter. Thereafter, she called the mother of the accused and asked her to take the accused to his house. She further stated that after two days of the occurrence, the mother of the accused called her as well as her husband stating that a meeting would be held in the house of the accused. Accordingly, they went there and upon their arrival in the house, the accused as well as his friends assaulted her as well as her husband. Due to the said assault, her husband sustained grievous injury on his chest for which her husband had to undergo treatment at St. Luke Hospital, Tinsukia for three days.

- 9) During cross-examination, PW-2 stated that that it was mentioned in the ejahar that on 28-01-15, at about 3:30 pm, the accused quarreled with her husband and assaulted him with kick, fist blow, etc., and caused grievous injury to his person for which he was undergoing treatment, but it was not mentioned in the ejahar that-"After two days of the occurrence, the mother of the accused called me as well as my husband stating that a meeting would be held in their house. Accordingly, we went there. After our arrival in the house of the accused, the accused as well as his friends assaulted me as well as my husband. Due to the said assault, my husband sustained grievous injury on his chest for which my husband had to under treatment at Scentlooks Hospital, Tinsukia for three days." She further stated that while her daughter went to the house of the accused, she was accompanied by her younger sister.
- 10) The First Information Report may not have included all the details surrounding the occurrence and the above omission is not a significant one. Although PW-2 said during cross-examination that she stated before the police that the occurrence took place n 26-01-16, everywhere else the date of occurrence is stated as 25-01-16. Therefore, there could have been a mistake either in recording or

stating, as far PW-2's statement before the police is concerned.

- 11) The evidence of PW-1 could not be shaken during crossexamination with reference to any contradiction or material omission in her previous statement before the Investigating Officer. Although PW-1 stated that at the time of arrival of her mother in the house of the accused, other persons were watching TV, the fact cannot be lost sight of that the alleged occurrence took place not inside the house of the accused, but outside and other persons watching TV inside could not have witnessed the same. According to PW-2, when she saw her daughter crying, she asked her immediately as to why she was crying and the victim reported to her that the accused took her to the backside of his house and on hearing the PW-2 calling the victim, the accused left her. Therefore, in most material particulars, the version of PW-1 is corroborated by the evidence of PW-2 as the victim reported the matter to PW-2 almost immediately after the occurrence, while she was crying and therefore still in a state of excitement. Such evidence is admissible as res gestae evidence. Moreover, the evidence of PW-2 that on coming to know about the occurrence, she again went to the house of the accused with her daughter and brought the accused to her house and slapped him, accusing him of misbehaving with her daughter is unchallenged during cross-examination.
- admitted the above incident. Therefore, unless an occurrence of the kind deposed to by the PW-1 had actually happened, the subsequent incident of the mother of PW-1 slapping the accused on the allegation of the accused having misbehaved with the victim would not have taken place. Even the deposition of PW-2 that the accused person assaulted the husband of the PW-2 and caused injuries to his person has been confirmed during cross-examination. The accused in his defence statement stated that when the PW-2 and her husband came for a meeting, they tried to force him to sign a paper stating that he would not repeat such act in future, but the accused refused as he did not do anything and thereafter, some boys of the village assaulted them. Therefore, the factum of assault upon the husband of the PW-2 is also established, which is a

- circumstance that provides general corroboration to the prosecution story.
- 13) The husband of PW-2 who was examined as PW-3 also deposed that the accused person and his friends assaulted him when they had gone to the house of the accused for the meeting.
- PW-2 had stated during cross-examination that there are other houses by the side of the accused. The Investigating Officer also stated during cross-examination that there are houses adjacent to that of the informant in the same row and there was no boundary wall among the said houses and one house can be seen from other houses as they were situated in the open spaces. But there was a jungle near the place of occurrence. Regardless the presence of other houses near the house of the accused or the informant, since the occurrence took place at night, outside the house of the accused, it cannot be expected that the neighbours would be able to see the same. Defence has sought to build up a case by giving suggestions to the PWs to the effect that the father (PW-3) of the victim was engaged in the business of preparing homemade liquor and selling it from his house, which part is admitted by PW-3. But the suggestion that the accused person had tried to stop the same and had complained to the garden authority about it, because of which the mother of the victim lodged a false case against the accused, have been denied by the PWs. On the other hand, the accused himself in his statement recorded under Section 313 CrPC stated that he had altercation with the mother of the PW-3 about three years ago because of it he had been falsely implicated. Therefore, the stand of the defence during cross-examination of the PWs by way of suggestions is at variance with the statement of the accused in his defence, rendering the defence case improbable and contradictory.
- 15) Admittedly, the First Information Report was lodged on 01-02-15 whereas the occurrence is alleged to have been taken place on 25-01-15 thereby indicating a delay of six days in lodging the First Information Report. But from the evidence discussed so far, it transpires that after the occurrence, the accused was called to the house of the informant where he was assaulted. As deposed to by

PW-3, he informed the matter to the Ward Member on the same day and as the next day was 26th day of January (Republic Day), no discussion could be done regarding the incident and on the next day, he informed the matter to the Village Defence Party Secretary as well as the Garden Secretary. On 27-01-15, PW-3 along with Ward Member along with two other persons called the accused to the house of PW-3 and interrogated him about the occurrence and also assaulted him and the accused confessed his guilt and assured that he would not repeat the same. The accused person in his defence statement admitted the above version of PW-3 except the confession part. Apparently, because of this development, the informant side did not contemplate to go to the police at that time. But on the next day, the informant and her husband, i.e. PW-3 were called to the house of the accused, purportedly for a meeting and upon their arrival, they were assaulted by the accused and his people because of which PW-3 had to be hospitalised. Thereafter, the ejahar was lodged. It is quite probable that had the last incident had not happened, the informant side would not have lodged the ejahar at all. But that does not imply that the occurrence itself did not take place. In my view, sufficient explanation for the delay in lodging the First Information Report has emerged from the evidence on record. It is well settled that delay by itself does not always fatal to the prosecution case and each case must be considered in the light of the facts and circumstances peculiar to the said case.

- 16) The accused has been charged under Section 12 read with Section 11(ii) of PCSO Act. Section 11 defines sexual harassment as follows:
 - 11. A person is said to commit sexual harassment upon a child when such person with sexual intent,—
 - (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
 - (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii)	
(iv)	
(v)	

(vi)

Explanation.—Any question which involves "sexual intent" shall be a question of fact.

- 17) In the present case, what the victim herself stated in her evidence is that the accused person tried to open her panty. Had he succeeded in opening her panty, it certainly would have amounted to making the child exhibit a part of her body so that it is seen by such person. It is only the call emanating from the mother of the victim that terminated the act of the accused. Therefore, the act of the accused must be regarded as attempt to commit sexual harassment, punishable under Section 12 read with Section 18 of PCSO Act. The point is answered accordingly.
- 18) In the result, I hold that the prosecution has proved its case beyond reasonable doubt and consequently, I hold the accused guilty of the offence under Sections 12/18 PCSO Act and he is convicted accordingly thereunder.
- 19) Heard the learned counsel State Defence Counsel and the convict on the point of sentence. Also heard the learned Public Prosecutor.
- 20) It is urged that the considering the young age, illiterate and rustic background of the convict and also the fact that he is a first time offender, the convict may be leniently dealt with. Pending trial, the convict had already spent nearly six months in jail, w.e.f. 02-02-15 to 17-07-15.
- 21) Considering the matter in its entirety, it is my view that the ends of justice would be met by sentencing the convict to the period of imprisonment already undergone under Sections 12/18 of PCSO Act, and to pay a fine of Rs. 5,000/-.
- 22) Accordingly, the convict Sri Subhas Tanti is sentenced to undergo the period of imprisonment already undergone and to pay a fine of Rs. 5,000/- (Rupees Five thousand) only, in default, SI for 1 (one) month. Fine amount, if realised, be paid to the victim's guardian.
- 23) Previous bail bond shall remain in force for 6 (six) months under

Section 437-A CrPC.

- 24) Furnish a free copy of this judgment immediately to the convict.
- 25) Also furnish a copy of this Judgment to the District Magistrate, Dibrugarh.

Given under my hand and seal of this Court on this the 27th day of June, 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. XXXXX

List of Exhibits:

- 1. Ext. 1 Statement of the victim girl recorded under Section 164 CrPC:
- 2. Ext. 2 Ejahar;
- 3. Ext. 3 Medic-legal Report;
- 4. Ext. 4 Medic-legal Report issued by St. Looks Hospital, Tinsukia;
- 5. Ext. 5 Sketch-Map.
- 6. Ext. 6 XXXX;
- 7. Ext. 7 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions

Judge,

Dibrugarh

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