# CAUSE TITLE PCSO Case No. 2/16

Informant: XXXX

Accused: Sri Sunanda Saikia,

S/o- Late Ananda Saikia, R/o- Bogibeel Jagalani Grant,

PS- Barbaruah, District- Dibrugarh.

# ADVOCATES:-

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

For the Defence: Sri Ashok Sahu, learned Advocate.

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

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 2/16 G.R. Case No. 3069/15

> > State of Assam

-Vs-

Sri Sunanda Saikia

Charge: under Section 8 PCSO Act.

Date of evidence on : 15-03-16. Date of argument : 15-03-16. Date of Judgment : 15-03-16.

#### **JUDGMENT**

- 1) Prosecution case is that on 22-10-15, when the alleged prosecutrix was alone in her house, the accused person who is a neighbour entered into her room and sexually assaulted her. The father of the prosecutrix lodged the First Information Report whereafter investigation commenced. In course of the investigation, the Investigating Officer visited the place of occurrence, drew up Sketch-Map and recorded the statement of witnesses and on completion of investigation, filed Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 8 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 three 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 Sri Sahu, 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 committed sexual assault upon the prosecutrix?

#### **DECISION AND REASONS THEREOF**

### Point No. 1:

- 5) The informant who is the father of the prosecutrix deposed as PW-3 that at the time of occurrence, the age of his daughter was 11 (eleven) years which is not challenged during cross-examination.
- 6) PW-1, the mother of the prosecutrix also stated similarly wherefrom it is established that the prosecutrix was a child within the meaning of the PCSO Act.
- 7) PW-3 deposed that on the date of occurrence, his daughter was staying in one of their rooms on account of her attaining puberty at that time. He along with his wife went to the market and after few days, he came to know from his daughter that the accused person entered in her room while she was staying in the room within the period of her puberty. He further stated that after the incident, his nearby people told him to inform the matter to the police. Accordingly, he went to Barbaruah Police Station and lodged an ejahar after completion of his daughter's puberty ceremony. During cross-examination, he stated that the case was filed under misunderstanding and no allegation against the accused.
- 8) PW-1, the mother of the prosecutrix deposed that on the date of occurrence, when she went to market, her daughter aged about 11 (eleven) years was staying in one of their rooms as she had attained puberty at that time. After returning from market, her daughter informed her that the accused entered in the room and gagged her mouth with bad intention. Her daughter also told PW-1 that that when she assaulted the accused person with a rod, he fled away from the room. She further stated that she informed the matter to her neighbour who suggested her to file a First Information Report. After completion of traditional puberty ceremony, her husband filed a First Information Report in the police station. During cross-examination, she admitted that she did not state before the police that the accused gagged the mouth of his daughter
- 9) The prosecutrix herself examined as PW-2. She deposed that on the date of occurrence, she was staying in a room on account of her puberty ceremony. Her parents were not present in the home as they had gone to market. While

she was preparing food in her room, the accused person entered her room with a piece of Banana leaf which was used as plate for her dinner and thereafter, the accused left the room giving her the said banana leaf. When her mother came from market, she told her mother that the accused person had entered her room. After completion of her traditional puberty ceremony, her father informed the matter to police station. During cross-examination, she stated that she did not have any allegation against the accused person.

- 10) From the above, it is seen that no substantive evidence has emerged against the accused person. Although during her examination under Section 164 CrPC, the prosecutrix had implicated the accused, the same is not sufficient to establish the guilt of the accused in the absence of any substantive evidence. The point is answered accordingly.
- 11) 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.
- 12) 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 15<sup>th</sup> day of March, 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
- 2. XXXXX
- 3. XXXXX

## 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.