CAUSE TITLE PCSO Case No. 52/15

Informant: XXXX

Accused: Md. Mafizur Rahman @ Sukul

S/o- Late Eusuf Ali, R/o- Chaolkhowa Near Rly. Station,

PS- Dibrugarh, District- Dibrugarh.

ADVOCATES:-

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

For the Defence: Mr. BL Kezriwal, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 52/15 G.R. Case No. 1823/15

> > State of Assam

-Vs-

Md. Mafizur Rahman @ Sukul

Charge: under Section 8 PCSO Act.

Date of evidence on : 10-03-16, 17-05-16, 15-06-16, 16-07-16 & 19-09-16.

Date of argument : 06-10-16. Date of Judgment : 06-10-16.

JUDGMENT

- 1) Prosecution case is that the alleged victims, hereinafter referred to as 'X' & 'Y' had gone to the place called Banipur in Dibrugarh on 05-07-15 where they were met by the accused person, who thereafter committed sexual assault upon them. The two minor girls did not return home in the evening and took shelter in a building, wherefrom they were recovered by the people of the locality. The police was informed and the accused person was handed over to the police by the elder brother of 'Y' and a police case was registered and investigation commenced. In course of such investigation, the Investigating Officer visited the place of occurrence, recorded the statement of witnesses and on completion of investigation, submitted the Charge-Sheet.
- 2) Upon committal, this Court framed charge under Section 8 of the 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 eight witnesses and on conclusion thereof, the accused person was examined under Section 313 CrPC wherein the accused person/persons took the plea of denial.
- 4) Heard Smti. R Devi, learned PP for the State and Mr. Kezriwal, learned counsel for the defence.

POINTS FOR DETERMINATION

- 1. Whether the victims, i.e., 'X' & 'Y' were children within the meaning of Section 2(d) of PCSO Act.?
- 2. Whether the accused committed sexual assault upon the prosecutrix?

DECISION AND REASONS THEREOF

Point No. 1:

5) The victim 'X' who deposed as PW-1 recorded her age as 11 years which is not in dispute and similarly, the victim 'Y' recorded her age as 12 years which is not disputed either. It is accepted therefrom that the both the victims were children at the relevant time.

Point No. 2:

- 6) The victim 'Y' who was examined as PW-5 deposed that at the time of occurrence, she was staying along with her parents in the rented house of accused person along with her parents. Another victim 'X' was also staying in the rented house of the accused at the relevant time. On the day of occurrence, at about 4 pm in the evening, she along with 'X' went to a nearby shop and on their return, 'X' asked her for playing near the shop and in course of such playing, they reached near the tea garden where 'X' asked her to stay there for a while, which she refused as it was going to be dark and her family member might rebuke her. Then 'X' caught hold of her for a while, then the accused arrived there who confronted 'Y' that she used to report his earlier activities with 'X' to other persons and dared her to do the same action. He called 'Y' as 'Shiani' (clever) whereafter he caught of her cheek by pressing it with one of his hands. When she started to cry, the accused told her to stop it and that he would beat her if she cries. The accused took out a small tablet and forcibly put it into her mouth. When she spat out the tablet, the accused again picked it up and made her to swallow it whereafter he pressed her breasts and also tried to remove her slacks. The accused tried to bite her neck whereafter she felt drowsy as a result of which froth came out of her mouth which fell on the body of the accused, whereafter the accused took both of them on his scooter and left him on the main road.
- 7) During cross-examination, the victim 'Y' stated that she was present in the Court for a short period when the statement of her elder brother was recorded whereafter she was asked to go out and accordingly, she went out. She stated the same thing to the Court as she had stated before the police.

She further stated that at the time of her examination, she stated before the attending lady doctor about pushing her chest and nothing else. She stated the whole incident at the time of recording her statement under Section 164 CrPC as deposed by her to the Court except that the accused called her 'Shiani'. Except the said persons, she did not state anything about the incident to any other person. She denied the suggestion that the accused did not press her breasts. She further stated that her slack was like a full pant. She further denied the suggestion that the accused did not try to take off her slack and that the accused did not try to bite her neck. She also denied the suggestion that she deposed falsely as tutored by her family members as they were ousted from the rented house of the accused.

- 8) On the other hand, the other victim, i.e., PW-1 'X' deposed that she knew the accused being their landlord. The informant is the elder brother of her friend 'Y'. She could not remember when the occurrence took place. She further stated that her friend 'Y' used to stay in the rented house owned by the accused and she used to uproot some turmeric plants of the accused in her presence whereafter at around 3:00 pm, the accused threatened them by showing fire and warned them not to uproot turmeric plant again. On the day of occurrence, 'Y' told her that the accused had called them to Pub Banipur where he was waiting for them for presenting them with some gifts on the occasion of Eid whereafter she along with 'Y' went to the said place. But they did not find the accused there. The accused took her to the interior place of Pub Banipur. When they decided to return home, 'Y' told her that her mother would beat her if she returns home at that time, as it became dark. On their way, they came across the LP school where 'Y' used to study and accordingly, she along with 'Y' entered into the school whereafter 'Y' took out something from her pocket which resembled gems chocolate. When 'Y' consumed it, froth came out from her mouth whereafter she started to scream and hearing her shout, neighbouring people gathered and seeing froth coming out from her mouth, 'X' also fainted. When 'X' regained her senses, she found her at Assam Medical College & Hospital, Dibrugarh where she had to stay for the night. PW-1 further stated that 'Y' was also admitted in AMCH, Dibrugarh.
- 9) During cross-examination, PW-1 stated that they have been staying in the rented house of the accused for more than 3-4 years and during this period,

the accrued had done nothing bad with her. She further stated that she knows the father and mother of the victim 'Y'. She never saw the father of the victim 'Y' staying with his family. The mother of the victim 'Y' has two sons including one girl, i.e., the victim 'Y'. The mother of the victim 'Y' was also the tenant of the accused who does not presently reside in the rented house of the accused. She further stated that she could not say as to since when Rohima was not a tenant of accused Sikul Ali. The accused did not oust the mother of the victim 'Y' and her family members from his rented house, but only asked them to vacate his house which they vacated after the lodging of the case. PW-1 denied the suggestion that since the accused ousted the mother of the victim 'Y' and her family including the victim 'Y' prior to the alleged incident, she filed the instant case.

- 10) Therefore, the alleged co-victim did not support the prosecution case and she contradicted the version given by the victim 'Y'.
- 11) PW-2, the mother of the victim 'X' deposed that on the day of occurrence the accused as well as her husband were keeping Roza whereas she had gone for work and upon her return, when she did not find her daughter in the house, she searched her in and around whereafter she went to the police station along with her husband and the accused where they received a phone call stating that her daughter along with other victim 'Y' have been recovered from a school near her house. Accordingly, they went to the medical where they found both the victims who told that they went there on their own and that they did not implicate the accused person.
- 12) During cross-examination, PW-2 stated that the victim 'Y' is presently not residing in the tenanted house of the accused as he asked them to vacate his rented house.
- 13) Therefore, the mother of the victim 'X' also did not support the version of the victim 'Y' as she clearly stated that the girls did not implicate the accused person.
- 14) PW-3, the informant stated that on the date of occurrence, at about 7 pm, while he was at Santipara Dibrugarh at his work place, he came to know that his sister 'Y' was admitted in AMCH, Dibrugarh whereafter he immediately went there and found her undergoing treatment along with another minor girl. Later on, he came to know that his sister 'Y' along with another girl was recovered from a class room of Chaulkhowa LP School. Upon asking by him,

- his sister told him that the accused had given her medicine as a result of which she became unconscious. His sister also stated that another girl was also present at that time. PW-3 further stated that a village people wrote the ejahar whereafter he lodged the same at Amolapatty Police Outpost.
- 15) During cross-examination, PW-3 stated that he could not say about the content of the ejahar being an illiterate person. He further stated that at about 9/9.30 pm, when he met his younger sister 'Y' in the Hospital, about 30-40 persons were present there out of whom, he could only identify two persons, namely, Anowar and Khande. After 3-4 hours, when his sister was narrating the incident before him, no other person was present there. he denied the suggestion that the accused did not offer any tablet to the victim girl or she did not take any tablet and she also did not tell him like that.
- 16) Therefore, PW-3 the informant also did not say anything about the accused person having sexually assaulted either of the victims.
- 17) PW-4 & PW-6 as well as PW-7 did not implicate the accused person in any manner.
- 18) Although PW-5, i.e., the victim 'Y' had implicated the accused person, her evidence has not been corroborated by any of the witnesses. In fact the mother of the co-victim specifically stated that the victims did not implicate the accused person when they were recovered. The informant and elder brother of the victim 'Y' also did not say that the accused person committed sexual assault upon her. Most significantly, the only other eye-witness to the occurrence, i.e., PW-1 the victim 'X' has given a total clean-sheet to the accused. Under these circumstances, it would not be safe to place reliance upon the sole testimony of a child witness, who may be subjected to tutoring. Hence, it is not established that the accused person committed sexual assault upon the victims. The point is answered accordingly.
- 19) 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.
- 20) 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 6^{th} day of January October, 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: XXXX

List of Exhibits:

- 1. Ext. 1 Ejahar;
- 2. Ext. 2 Statement of the victim (PW-5) recorded under Section 164 CrPC;
- 3. Ext. 3 Sketch-Map;
- 4. Ext. 4 Extract copy of Gabharupather OP General Diary Entry No. 145 dtd. 06-07-15; and
- 5. Ext. 5 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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