CAUSE TITLE PCSO Case No. 10/14

Informant: Smti. Gulapi Munda,

W/o- Late Jiten Munda,

R/o- Alubari, PS- Dibrugrarh, District- Dibrugarh.

Accused: (1) Sri Anup Munda @ Bhumba,

S/o- Sri Gulap Munda, R/o- Alubari, Borbari, PS- Dibrugarh, District- Dibrugarh.

- (2) Sri Lakhinath Karmakar, S/o- Late Bhusan Karmakar, R/o- Phanibanglow, Borbari, PS- Dibrugarh, District- Dibrugarh.
- (3) Sri Santosh Ray, S/o- Late Mahendra Ray, R/o- Paltanbazar, Bashugudam, PS- Dibrugarh, District- Dibrugarh.

ADVOCATES:-

For the State: Mr	s. Runumi Devi, lear	rned Public Prosecutor
For the Defence	i	_, learned Advocate.

IN THE COURT OF THE SESSIONS JUDGE: DIBRUGARH

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 10/14 G.R. Case No. 1031/14

> > State of Assam

-Vs-

Sri Anup Munda @ Bhumba & others

Charge u/S 4/18 Protection of Children from Sexual Offices Act.

Date of evidence on : 30-07-15 & 28-08-15.

Date of argument : 30-09-15. Date of Judgment : 30-09-15.

JUDGMENT

- 1) Prosecution case is that the accused persons, namely, Sri Anup Munda @ Bhumba, Sri Santosh Ray and Sri Lakhinath Karmakar had gone to the house of the alleged victim for drinking country liquor which was being sold by the mother of the victim. During their visit, the accused persons attempted to commit rape upon the victim. The First Information Report was lodged by the mother of the alleged victim and investigation commenced. In course of such investigation, the victim was medically examined and after completion of investigation, the Investigating Officer submitted Charge-Sheet.
- 2) Upon committal, this Court framed charges under Sections 4/18 of Protection of Children From Sexual Offences Act (hereinafter PCSO Act) against the accused persons and the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.
- 3) In course of trial, prosecution examined six witnesses and on conclusion thereof, the accused persons were examined under Section 313 CrPC wherein the accused persons took the plea of denial.
- 4) Heard Smti. R Devi, learned PP for the State and 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 persons attempted to commit penetrative sexual assault upon the alleged victim?

DECISION AND REASONS THEREOF

Point No. 1:

5) As per medical evidence adduced by PW-1 Dr. Nibedita Shyam, the age of the victim was above 14 (fourteen) years and below 16 (sixteen) years at the time of her examination. Defence declined to cross-examine the medical officer. Therefore, from the evidence of the medical officer, it is established that the victim was a child at the time of occurrence.

Point No. 2:

- 6) PW-2, the victim deposed that she knew the accused persons since the date of occurrence. On the day of occurrence, the accused persons came to their house for having Hajpani (a kind of house made liquor). At first, the accused persons wanted water from her, but she did not provide water to them. Then, one of the accused persons caught her waist, who was standing in front of her. Her elder sister saw the incident and asked the accused whether they had come to the house for having hajpani or creating the nuisance. In the mean time, her elder brother Sri Suraj Munda arrived at the house and knowing about the occurrence, he raised halla. Accordingly, many persons gathered in their house and apprehended the accused persons. Her elder brother and public assaulted the accused persons. At that time, her mother also arrived at the house. Her elder brother as well as the public took the accused persons to the police station and handed them over to police. On the same day, she went to the police station along with her mother.
- 7) PW-2 identified the accused Sri Santosh Ray as the person who had caught hold of her. During cross-examination, she stated that she did not know the name of the accused person.
- 8) PW-3 Smti. Gulapi Munda deposed that she knew the accused Sri Anup Munda @ Bhuma, but do not know the other accused persons. The alleged victim girl is her daughter. At the time of occurrence, the age of her victim daughter was 16 years. The alleged incident took place about one year back. At the time of occurrence, she was not present in the house. At the time of occurrence, when she was at her workplace, in the evening time, one boy of

their locality went to her and reported that one boy entered into their house and she had to go to their house. Accordingly, she went back to their house. Her granddaughter Niki told her that Sri Santosh Rai entered into the house and tried to lift the skirt of the victim. Her younger daughter Priyanka saw the incident and she raised halla. Her son Suraj caught the three accused persons and took them to the police station. She as well as Niki and Priyanka went to the police station along with Suraj. Police recorded her statement as well as Niki, Priyanka and Suraj. During cross-examination PW-3 stated that she did not file any written paper at the police station. Police personnel went to their line with a written paper and she put her thumb impression on the same. She does not know the contents of the said paper whereon she had put her thumb impression. She further stated that on getting the information, when she arrived at the house, she met only Priya and Priyanka and except them, she did not meet any other person in the house. Though Priyanka told her about the occurrence, she did not state the same to any other person or police. PW-3 stated that the houses of VDP President and Secretary are situated near their house, but she did not tell them anything about the occurrence. She further stated that she stated before the Court on the basis of what Priyanka told her about the occurrence.

- 9) PW-5, sister of the alleged victim deposed as an eye-witness to the occurrence and stated that the accused Sri Santosh Ray had asked water from her elder sister and when she was about to give him water, the accused Sri Santosh Ray had lifted the skirt of her sister. But during cross-examination, she stated that on the day of occurrence, she had gone to school and after the incident, she came from school and entering the house, she found her sister crying and came to know about the occurrence from her. Therefore, it is apparent that PW-5 is not an eye-witness to the occurrence.
- 10) PW-6 Smti. Niki Munda is not an eye-witness to the occurrence. She deposed that on the day of occurrence, at about 3:00 pm, she was in her house. At that time, Smti. Priyanka Munda called her by shouting that one boy had entered into her house. She alone went to her house immediately. Arriving at her house, she saw the accused Ari Santosh Rai coming out from inside her house and other two accused were waiting outside the house (the witness pointed to the accused Sri Santosh Rai). She asked the accused Sri Santosh Rai as to why he had entered into the house of the victim and he replied that

- he had gone inside the house for drinking water. She entered into the house of the victim and saw that the victim was crying. She asked the victim as to why she was crying. The victim replied that the accused Sri Santosh Rai caught hold of her hands and lifted her skirt.
- 11) At this stage, it may be noticed that the alleged victim had deposed that the accused Sri Santosh Ray had caught her by her waist while standing in front of her. She mentioned nothing about the accused lifting her skirt. Therefore, the version of PW-6 & PW-5 regarding the victim having reported to them that the accused Sri Santosh Ray lifted her skirt appears to be contradictory. Even the informant and mother of the victim deposed whatever she had head about the occurrence, was from her other two daughters and not from the victim and the said two other daughters, i.e., PWs-5 & 6 are not eye-witness to the occurrence. Therefore, the evidence of the informant is purely hearsay. There is nothing in the evidence to show that the accused persons or any one of them had attempted to commit penetrative sexual assault upon the victim. If the sole testimony of the victim is to be believed, the accused Sri Santosh Ray had caught her waist and in order to constitute sexual assault as defined in Section 7 of the Act, it is necessary that the victim should be touched with sexual intent. It cannot be a matter of presumption that simply holding a little girl by the waist ipso facto displays presence of sexual intent, in absence of any other evidence in this regard.
- 12) In view of the aforesaid contradictions and deficiency in the prosecution evidence, I am unable to hold that the prosecution has succeeded even in establishing the ingredients of sexual assault, late alone of attempt to commit penetrative sexual assault. The point is answered accordingly.
- 13) In the result, I hold that the prosecution has failed to establish its case beyond reasonable doubt and consequently, the accused persons are acquitted of the offence under Sections 4/18 of Protection of Children from Sexual Offices Act and they be set at liberty forthwith.
- 14) 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 30^{th} day of September, 2015.

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 Dr. Nibedita Shyam;
- 2. PW-2 Smti. Priya Munda;
- 3. PW-3 Smti. Gulapi Munda;
- 4. PW-4 Sri Suraj Munda;
- 5. PW-5 Smti. Priyanka Munda; and
- 6. PW-6 Smti. Niki Munda.

List of Exhibits:

1. Ext. 1 Medical Report.

List of witnesses and Exhibits for defence- None

Sessions Judge, Dibrugarh

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