# CAUSE TITLE PCSO Case No. 10/15

Informant: Sri Raju Murah,

S/o- Late Digambar Murah, R/o- No. 1 Duliajan Bijulibari,

PS- Duliajan,

District- Dibrugarh.

Accused: Sri Ranjan Bora,

S/o- Late Mahuram Borah, R/o- Joyanagar Chandan Path,

PS- Duliajan,

District- Dibrugarh.

# **ADVOCATES:-**

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

For the Defence: Mr. UK Saha, learned Advocate.

Present: Shri S.K. Sharma, AJS,

Sessions Judge, Dibrugarh.

> PCSO Case No. 10/15 G.R. Case No. 3323/14

> > State of Assam

-Vs-

Sri Ranjan Borah

Charge: under Section 4 PCSO Act.

Date of evidence on : 13-03-15, 31-03-15, 13-05-15, 14-07-15 &

26-11-15.

Date of argument : 09-06-16. Date of Judgment : 23-06-16.

### **JUDGMENT**

- 1) Prosecution case is that the prosecutrix, a minor aged about 10 years was working as the maid servant at the house of the accused person and used to look after his baby. The wife of the accused person, a school teacher used to go out for duty and during this period, the accused person committed penetrative sexual acts upon the prosecutrix. On 26-12-14, the father of the prosecutrix lodged an ejahar at the Duliajan Police Station and investigation commenced. In course of the investigation, the Investigating Officer visited the place of occurrence, prepared Sketch-Map, got the statement of the prosecutrix recorded under Section 164 CrPC, medically examined her and on completion of investigation, submitted the Charge-Sheet.
- 2) Upon committal, my learned predecessor framed charge under Section 4 of 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 six witnesses and on conclusion thereof, the accused person was examined under Section 313 CrPC wherein the accused person took the plea of denial. Defence also examined two witnesses on behalf of the accused.

4) Heard Smti. R Devi, learned PP for the State and Mr. Saha, 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 penetrative sexual assault upon the prosecutrix?

## **DECISION AND REASONS THEREOF**

### Point No. 1:

5) PW-3 Dr. Nibedita Shyam deposed that on 27-12-14, she examined the prosecutrix on police requisition and on the basis of physical and radiological investigation, her age was found to be above 12 years and below 14 years. The age of the prosecutrix is not disputed by the defence and hence, it is established that the prosecutrix was a child at the time of occurrence.

## Point No. 2:

6) PW-1, the prosecutrix deposed that the accused had gone to her house and taken her to his house to look after his baby by saying that he will send her school and she went to his house and stayed there for two months and the wife of the accused and his baby were also present in the house of the accused. She further stated that the wife of the accused was a teacher by profession and used to go to the school during the day and during the day time, the accused used to take off her frock and pull down his pant and used to press his penis against her vagina and when she felt pain and began to cry, the accused used to take it out. The accused also used to do the same at night when his wife was sleeping. She further stated that she used to sleep in the same room as his wife on a folding bed and he used to take her photograph on his mobile phone after taking off her clothes and threatened her that if she speaks to anybody about the occurrence, he would show the photograph to her parents and also used to threatened to kill her if she revealed anything. She further stated that such occurrence took place on several days and it became so painful that she had to pass urine in standing position and the accused also asked her whether he should

make baby for her. One day, in the morning, when she became senseless, the accused took her to her parent's house and thereafter, the accused took her to a hospital situated at Duliajan along with her father and elder brother. During the day, she stayed in the hospital and the attending doctor gave her injection and saline and in the evening, the accused brought her and her father home in his car and the accused left for home. She narrated the incident to her mother, who lodged the ejahar. She further stated that her statement was recorded by Magistrate wherein she had stated as follows:

"I cannot remember when my mother and father had given me to Sri Ranjan Bora for looking after his baby. The wife of Sri Ranjan Bora does service in the school. After going of his wife to the school, Sri Ranjan Bora forcefully tied my hands/feet, took off my cloth, panty and does bad work with me. He often does the same and thereafter, I feel severe pain and feel pain at the time of passing urine for which I have to pass urine in standing position. Sri Ranjan Bora does bad work with me and he takes photograph and told me that if I say anything to any person, he will show the same to police. I therefore, do not say anything to anybody out of fear. He used to do bad work with me on each day. One day, when I was looking after the baby, I fell down and then Sri Ranjan Bora took me to hospital and gave information to my house. My father and my elder brother had gone and thereafter, I had gone to my house. I told my mother that Sri Ranjan Bora used to do bad work with me. Thereafter, the nearby people came and gave police after writing. Police sent me to the doctor."

7) During cross-examination, PW-1 stated that the accused used to do bad deed with her every day for two months during her stay at his house both during the day and also at night. She admitted that she did not report the incident to anybody during her stay for two month in the house of the accused. This appears to be somewhat surprising because the informant and father of the prosecutrix

- deposed during cross-examination that he used to visit the house of the accused occasionally and used to spend 10-15 minutes there and also used to talk to his daughter, but she did not tell him anything when he used to visit her.
- 8) Similarly, the mother of the prosecutrix PW-4 also stated during cross-examination that she went to meet her daughter twice while she was staying in the house of the accused for over a period of two months and she used to spend about half an hour there and used to talk to her daughter, but her daughter did not make any complaint before her about any such incident.
- 9) It is true that PW-1 deposed that the accused used to threaten her that he would kill her if she tells it to anybody and also took her naked photographs on his mobile phone and that if she spoke to anybody, he would show her photographs to her parents.
- 10) The question that arises is that why would the accused would show the naked photographs of the prosecutrix taken in his own mobile phone to the parents of the prosecutrix and thereby make himself open to self-incrimination. In her statement recorded before the Magistrate, the prosecutrix had stated that the accused threatened her that he would show the photographs to the police if she reveal the matter to anybody, which equally does not make any sense. Therefore, the reason assigned by the prosecution for not disclosing the matter to anybody, not even to her own mother and father for the entire period of two months, despite ample opportunity and despite being in pain, appears to be improbable.
- 11) The prosecutrix has also deposed that the accused repeatedly penetrated her vagina every day for two months throughout day and night and it became so painful she has to pass urine in standing position. But the doctor Dr. Nibedita Shyam of Assam Medical College & Hospital, Dibrugarh who was examined as PW-3 deposed in her examination-in-chief that no evidence of recent injury was detected on her body or private part and if sexual intercourse is done continually with a girl of 12-14 years, on several occasions, there will be clear tears in the hymen. But in the present case, she did not find any such type of tear, rather she detected an intact hymen. Therefore, the version of the prosecutrix regarding the

- forcible penetration is not corroborated by the medical evidence also. Rather, it is contradicted.
- 12) The prosecutrix during cross-examination stated that she used to sleep in the same room as the wife of the accused, but on a separate bed and the accused used to sleep with his wife and the baby. The bed on which the prosecutrix used to sleep was a folding bed made of iron and plastic and its size was 3 ½ feet x 6 feet and it was an old bed. The accused used to get onto her bed to at around 9:00 pm. This version appears to be highly improbable, in as much as, if a grown up person like the accused gets on to an old iron-plastic folding bed and indulges any such act involving bodily movement, the bed would definitely make creaking sounds which would definitely reach the ears of the wife of the accused sleeping on the next bed in the same room. Since the wife of the accused was sleeping with a baby, she could be awake or be woken up at any time. Under such circumstances, no husband would take such risk, especially when he had the opportunity to do such acts when his wife was away during the day time. For these reasons, I find the version of the prosecutrix to be guite incredible and unsafe to rely upon. The Hon'ble Apex Court had occasion to observe that child witness can be dangerous witness as they are much susceptible to tutoring and Court's must be extremely cautious in acting upon their testimony.
- 13) The prosecutrix also admitted during her cross-examination that in addition to the charges paid regularly by the accused, the father of the prosecutrix took money from the accused and some other parties also took money from the accused. During cross-examination of the PW 2 & 4, father and mother of the prosecutrix, it was suggested to them that they had lodged false ejahar against the accused person intending to extract money from the accused by using their daughter.
- 14) The defence examined Smti. Gitarani Das the wife of the accused as DW-1 who stated that the allegation against her husband are totally false. She further stated that one day during her stay in the house, the prosecutrix became ill and accordingly, they took her to OIL Hospital, Duliajan and after treatment, they took her

to her parent's house. On the next day, two boys came to their house and called her husband to the house of the parents of the victim and when her husband arrived there, both the boys demanded huge amount of money from her husband, but her husband refused to pay the same to the said two boys. Later on, DW-1 came to know that the family members of the victim lodged an ejahar against her husband. Both the said two boys introduced themselves as AATSA members and demanded huge amount of money from her husband. She further stated that after registration of the case, police came to their house and took her husband to the police station.

- 15) DW-2 Smti. Amiya Kalita deposed that she knew that some tea garden organizations demanded money from the accused, but the accused refused to pay the same.
- 16) During cross-examination, she stated that when the alleged victim was staying in the house of the accused, she heard that some organizations had demanded money from the accused. She admitted during cross-examination that in course of the investigation, when police visited the house of the accused, she did not state before police about any demand for money by the members of AATSA. That is not surprising because the Investigating Officer admitted during cross-examination that he did not examine any of the neighbours of the accused person.
- 17) The ejahar was lodged on 26-12-14, the police got the prosecutrix examined under Section 164 CrPC only on 29-04-12, leaving ample scope for tutoring and concoction. Although the police seized the mobile phone of the accused which was allegedly used to take naked photographs of the prosecutrix, the same was not sent to FSL for forensic examination which is another lacuna in the investigation. For the aforesaid reasons and unreliable nature of the testimony of the prosecutrix which is contradicted by the medical evidence and the inherent probabilities in the prosecution version as discussed above, the charge against the accused does not stand established and the point is answered accordingly.
- 18) 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 4 PCSO Act and he be set at liberty forthwith.

19) 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 23<sup>rd</sup> 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. XXXX

List of Exhibits:

- 1. Ext. 1 Medical Report;
- Ext. 2 Statement of the victim girl recorded under Section 164 CrPC;
- 3. Ext. 3 Ejahar;
- 4. Ext. 4 Sketch-Map;
- 5. Ext. 5 Seizure-List; and
- 6. Ext. 6 Charge-Sheet.

List of witnesses and Exhibits for defence- None

Sessions

Judge,

Dibrugarh

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