IN THE COURT OF THE SPECIAL JUDGE :: :: TINSUKIA

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 48 (M) of 2017

U/s 4 of the POCSO Act

The State of Assam	Complainant.
-Versus -	
Sri Suraj Prasad	
S/o- Sri Dayanand Prasad	
R/o- Itakhuli Mokrani Line	
P.S- Margherita	
District- Tinsukia, Assam	n Accused.
Appearance:	
Sri B.L Agarwal	

Spl. Public Prosecutor For the Complainant

Sri Sumon Sharma

Advocate For the accused.

Date of Argument: 09/02/2018

Date of Judgment: 09/02/2018

J U D G M E N T

PROSECUTION CASE

- 1. The prosecution case against the accused Suraj Prasad is that on 21/06/2017, the prosecutrix, who is a girl below 18 years of age gone out of her house for school, but she did not return home.
- 2. On the next day, the father of the prosecutrix had lodged an ejahar before the police alleging that on 21/06/2017, though his daughter had gone to school, she actually did not attend her school and simply disappear. In the ejahar, the informant has stated that he suspected that the present accused might have kidnapped his daughter.
- 3. On the day of occurrence itself, the mother of the victim girl had informed her brother that the victim girl had disappeared and accordingly he somehow recovered the girl from Dibrugarh. The victim girl gave her statement before the magistrate u/s 164 Cr.PC stating that at the time of occurrence, she was a student of class IX and she was about 15 years of old. She further stated before the magistrate that she had eloped with the accused on 21/06/2017.

According to the statement recorded u/s 164 Cr.PC, the victim girl and the accused first came to Tinsukia and thereafter to Dibrugarh, where she married the accused on 27/06/2017. Thereafter, she and the accused stayed in the house of a relative of the accused as husband and wife. She has also stated before the magistrate that she had physical relationship with the accused during that period. The victim has further stated that her uncle arrived there and he brought the victim girl and the accused to the Police Station.

4. The victim girl was also subjected to medical examination. The doctor opined that the age of the victim girl was between 14-16 years.

POINT FOR DETERMINATION

5. The only point for determination in this trial, is as to whether the accused had committed penetrative sexual assaulted upon the victim girl, who was below 18 years of age?

DECISION AND REASONS THEREOF

- 6. In order to prove the case against the accused person, the prosecution side has examined as many as three witnesses including the victim girl. The defence plea is of total denial and no evidence has been adduced by the accused. I have carefully gone through the evidences.
- 7. Considering the nature of the case, I shall first take up the evidence of the victim girl. She has stated before the prosecution counsel that she did not know the accused. She has stated that on 22/06/2017, while she was going to school at about 9-10 am, the accused took her to an unknown place. The victim has stated that her uncle had brought her back to Ledo.

- 8. The prosecutrix has resiled from her earlier statement made before the police. She has stated before the Ld defence counsel that she did not remember if she had stated before the police that she was having love affairs with the accused. She has also denied having stated before the police that the accused had gifted her one mobile phone.
- 9. Now, I shall take up the evidence of the father of the victim girl. He has stated that after recovery of his daughter, she told him that she did not remember how she was taken to Dibrugarh. The father of the victim has stated that he came to know later on that the accused had taken away his daughter. The father of the victim has lastly stated that he had lost the original birth certificate of his daughter.
- 10. The last witness is the uncle of the victim girl. He is the brother of the mother of the victim girl. He has stated that on being informed by his sister, he initially went to Leo insearch of the victim girl and thereafter he went to Dibrugarh in search of his niece, where he ultimately discovered her in a house at Amulapatty. The uncle of the victim girl has stated that when he met the victim girl, she was a bid perplex and could not give proper answer as to how she reached that place.
- 11. After perusal of the prosecution evidences, I find that the victim girl has failed to support the fact that she was subjected to penetrative sexual assault by the accused. Therefore, in my considered opinion, the charge of penetrative sexual assault has already fallen through. Accordingly, I have reasons to hold that the prosecution side has failed to prove the offence against the accused beyond all reasonable doubts.

ORDER

12. In the result, the accused Suraj Prasad is found not guilty and accordingly he is acquitted from this case.

Given under my hand and seal of this Court on this 9th day of February, 2018.

Dictated & corrected by me.

(P.J. Saikia)

Special Judge Special Judge

<u>Tinsukia</u> <u>Tinsukia</u>

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Smti Sneha Mallah
- 2. PW2 Sri Joy Prakash Mallah
- 3. PW3 Sri Jiyalal Mallah

PROSECUTION EXHIBITS

1. Ext.1- Statement

2. Ext. 2- Ejahar

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>