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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 18 (M) of 2016

U/s 4 Of The POCSO Act

The State of Assam Complainant.

-Versus -
Sri Padmeswar Moran @ Melang Moran
S/o- Lt. Chokradhar Moran
R/o- No.2 Ratanipathar Village
P.S- Bordumsa
District- Tinsukia, Assam Accused.

Appearance:

Sri B.L Agarwal,

Spl. Public ProsecutorFor the State

Gaurab Alley,

Advocate For the accused.

Date of Argument: 31/10/2018

Date of Judgment: 31/10/2018

J U D G M E N T

PROSECUTION CASE

1. The prosecution case revolves around an allegation of sexual assault upon a 13 years old girl. The house of the victim girl is situated near the house of the accused. Infact, the accused is a relative paternal uncle of the father of the victim girl. The house of the accused and victim girl stands on the lands having a common boundary. In the month of May 2016, like other days, the victim girl had gone to the house of the accused. Infact, the youngest son of the accused is of the same age as of the victim girl and therefore they have friendly relationship. The accused has another elder son, who was elder than the victim girl. When the victim visited the house of the accused, the wife of the accused was absent. She found that the mobile phone of the accused was being charged on a table and therefore she unplugged the mobile phone and started to watch movies in the mobile. Suddenly, the accused entered into the room and he forcibly removed her T-shirt and also removed her pants and thereafter took her to the bed. After that the accused had inserted his penis into the vagina of the victim girl. The accused had threatened the victim girl not to disclose about the fact to anyone else or else he would kill her. For the threatened held out by the accused, the victim

did not tell anything about the occurrence to anyone else of her family. Thereafter, on two other occasions also the accused had committed forcible sexual intercourse with the victim girl, when she was alone in her own house. On one such occasion, there was no one present in the house of the victim girl and the accused had come there and he had committed rape upon her. At that point time of time the father of the victim girl returned home and on seeing him the accused left the house of the victim. In the mean time, the father of the victim girl had developed some suspicions, as to the manner in which the accused and the victim were found inside the house. The victim was interrogated by her father and she disclosed about the facts of the case to him. Accordingly, the father of the victim girl had lodged an ejahar before police. During the period of investigation, the victim had given a statement u/s 164 Cr.PC. She has supported the aforesaid facts in her statement.

2. The victim girl was also subjected to medical examination at the time of investigation. The Doctor's report goes like this:-

"Identification marks:- A mole over the neck on the right side. I took the L.T.I of the victim.

Weight- 40 kg, Height - 4 ft. 10 inches, Teeth- 24 Nos, Breasts are not puberted. Nipples are not puberted. She did not attend her menarchy. No vulva injury detected. Vaginal discharge/bleeding- absent. Examination was easy.

On radiological examination- wrist fusion not seen, elbow fusion not seen and iliac crest epichyse not see. Age is between 9 to 12 years.

Laboratory examination- vaginal smear was taken, but no spermatozoa were detected.

As per physical, dental and radiological examinations, age of the victim is between 9 to 12 years. No other injury marks detected."

POINT FOR DETERMINATION

3. The only point for determination in this trial, is as to whether the accused had committed penetrative sexual assault upon the victim girl?

DECISION AND REASONS THEREOF

- 4. In order to prove the case against the accused person, the prosecution side has examined as many as six witnesses, which included the Investigating Officer and the Doctor, who had examined the victim girl at the time of investigation. In this case the witnesses are the victim, her father and her mother and a person called Mahendra Moran. The defence plea is total denial. I have carefully gone through the prosecution evidences.
- 5. Here in this case, the victim has supported the prosecution case in her evidence. She has been extensively cross examined by the defence counsel, but her cross examination has nothing materials to warrant an elaborate discussion.
- 6. The father of the victim girl has stated that on the day of occurrence at about 8 O'clock in the morning, he had returned home from work and saw that the accused was coming out of his house in a manner in which the accused came out of his house caused this witness to grow suspicion.

He, therefore interrogated his daughter, who intern informed him that the accused wanted to have sexual acts upon her.

- 7. The mother of the victim is a hear say witness. Whatever she stated is based on whatever she had heard from her daughter. The witness Mohendra Moran is also a hear say witness. He is a member of Local Yabak Sangha. Mohendra Moran has stated that initially the father of the victim girl had filed an application before him, alleging that the accused had committed rape upon his daughter. This witness advised the father of the victim girl to file complaint before Police Station.
- 8. Here in this case, the medical evidence has completely nullified the allegation of rape.
- 9. In **Bhajan Singh Alias Harbhajan Singh and others v. State of Haryana** reported in (2011) 7 SCC 421 the Hon, ble Supreme Court held ---

Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-`-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

10. Thus, at this stage a substantial doubt is arises over the veracity of the prosecution case itself. It is true that in order to constitute sexual penetration, slightest penetration would suffice and in that case there may not be any medical evidence. But the prosecution story states that on multiple occasions, the accused had sexual intercourse with the victim girl. So, in such a case, there ought to have been some medical evidence. The Doctor has stated in her evidence that the victim was yet to attain puberty. Under the circumstances, for lack of medical evidence I find that the offence against the accused has not been proved beyond all reasonable doubts.

ORDER

11. In the result, the accused Sri Padmeswar Moran @ Melang Moran is found not guilty and accordingly the accused is acquitted from this case on benefit of doubt.

Given under my hand and seal of this Court on this 31st day of October, 2018.

(P.J. Saikia)

Special Judge

<u>Tinsukia</u>

Dictated & corrected by me.

Special Judge

<u>Tinsukia</u>

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Dr. Milky Shah
- 2. PW2 Smti Porashmoni Phukan
- 3. PW3 Sri Himanta Phukan
- 4. PW4 Smti Dipali Phukan
- 5. PW5 Sri Mahendra Moran
- 6. PW6 Sri Anupam Gowala, S.I

PROSECUTION EXHIBITS

- 1. Ext.1- Doctor's report
- 2. Ext. 2- Advice Slip
- 3. Ext. 3- Radiological report with X-ray plates
- 4. Ext.4- Statement u/s 164 Cr.PC
- 5. Ext.5 Ejahar
- 6. Ext. 6- Sketch map
- 7. Ext.7 Charge sheet
- 8. M. Ext.1- Birth Certificate.

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>