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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

# **POCSO Case No. 46 (T) of 2017**

## U/s 4 of the POCSO Act

The State of Assam ...... Complainant.

-Versus -	
Sri Bikash Choudhury,	
S/o- Sri Nabin Choudhury	
R/o- Balugada, Sabjibari	
P.S- Tinsukia	
District- Tinsukia, Assam	Accused.
Appearance:	
Sri B.L Agarwal,	
Snl Public Prosecutor	For the State

S. Chutia,

Advocate ...... For the accused.

Date of Argument: 12/06/2019

Date of Judgment: 12/06/2019

### J U D G M E N T

### **PROSECUTION CASE**

1. On the day of occurrence, the 11 years old daughter of the informant was going to attend her tuition classes at about 7 am. On the road, the girl was accosted by Bikash Choudhury and Champak Choudhury. They caught hold of the girl by her hands and asked her to give message to her mother that she should withdraw the case, that her mother had filed against them. Thereafter, Champak Choudhury gagged the mouth of the girl with his hands. Bikash Choudhury pushed down her pant and pushed his finger into her vagina. At that moment, one lady was passing by the road and on seeing the occurrence, she shouted at the boys and then they fled away. The girl immediately returned home and informed her mother about the occurrence. Her mother immediately took her to the Police Station and filed a case. Police sent the girl to a Doctor for medical examine. The girl was also produced before a Magistrate for recording her statement u/s 164 Cr.PC.

#### **POINT FOR DETERMINATION**

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

#### **DECISION AND REASONS THEREOF**

- 3. In order to prove the case against the accused person, the prosecution side has examined as many as six witnesses, including the victim girl. The defence plea is total denial. I have carefully gone through the prosecution evidences. The accused pleaded that prior to this occurrence, the mother of the victim had lodged another false criminal case against him.
- 4. Considering the nature of the case, I shall first take up the evidence of the victim. She has supported the prosecution case, as narrated herein before.
- 5. The mother of the victim girl has stated that the accused wanted her to give message to her to withdraw the case, that was filed 15 days prior to the occurrence. The informant mother is not an eye witness and her evidence is based on whatever she had heard from her daughter.
- 6. Apart from the mother and the daughter duo, the other witnesses of this case have deposed irrelevant evidence. Neither they have seen the occurrence, nor they are in any manner material to this case. Both the victim and her mother have been extensively cross examined by the defence counsel. Before the defence counsel, the victim girl has stated that on the day of occurrence, she had gone to the house of her teacher Punam Giri to take tuition classes. The victim has admitted before police that another incident dated 28/09/2014

involving her mother and the accused took place and for that matter, her mother had lodged an ejahar before police. The victim has stated that on 28/09/2014, while she was in her residence in the morning hours, her mother had come home with an injury on her hands.

- 7. The mother of the victim has stated that with the present case, she has filed three cases against the accused. She has admitted that regarding the incident involving her daughter and the accused, she did not file any ejahar in the Police Station, rather she straightway went to the office of the Superintendent of Police and filed a complaint before him. The mother of the victim has stated that the complaint, which she had filed before the Superintendent of Police, was drafted by a Advocate. The mother of the victim girl has denied the fact that she had stated before police that she never informed her husband about the occurrence of this case. The mother of the victim has also stated that Punam Giri was the tuition teacher of her daughter.
- 8. On scrupulous perusal of the prosecution evidences, I find that only the mother and her daughter have supported the prosecution case. The prosecution never examined Punam Giri to confirm that on the day of occurrence, the victim had missed tuition classes. It is an admitted fact that the mother of the victim and the accused have been maintaining animolish against each other. It is also an admitted fact that on the day of occurrence, the mother of the victim never filed any ejahar before police, rather she had gone to the office of the Superintendent of Police to file a complaint. This fact clearly shows that the mother of the victim had the suspicion that police might not take cognizance of the matter. She had gone

to an Advocate and had the complaint drafted and later on, she filed the same before the Superintendent of Police. The mother of the victim has stated that police never arrested the accused and the case, which she filed alleging that the accused had caused a cut injury to her.

9. Under the aforesaid circumstances, it is clear on the face of the record that the mother of the victim has been maintaining enmity with the accused. Under the aforesaid premised reasons, the uncorroborated testimonies of the victim and that of her mother failed to inspire confidence. I, therefore, hold that the prosecution has failed to prove the offence against the accused beyond all reasonable doubts.

### ORDER

10. In the result, the accused Bikash Choudhury is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 12th day of June, 2019.

(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 - Sri Pradeep Kumar Sah,

2. PW2 - Smti Rujena Hussain

3. PW3 - Smti Sangeeta Tiwari

4. PW4 - Smti Nikita Tiwari

5. PW5 - Sri Sankar Pandey

6. PW6 - Sri Nitai Das

## **PROSECUTION EXHIBITS**

1. Ext.1- Ejahar

### **DEFENCE WITNESS**

None. `

Special Judge

<u>Tinsukia</u>