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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 69 (M) of 2017 U/s 6 of POCSO Act

-Versus -
Sri Anil Karmakar @ Dulal Karmakar
S/o- Lt. Sonia Karmakar
R/o- No.1 Tokowpathar
P.S- Pengaree
District- Tinsukia, Assam Accused.
Appearance:
Sri B.L Agarwal,

Spl. Public ProsecutorFor the State

The State of Assam Complainant.

Shreeram Prasad,

Advocate For the accused.

Date of Argument: 18/01/2019

Date of Judgment: 18/01/2019

J U D G M E N T

PROSECUTION CASE

- 1. It is alleged that on 22/11/2017 at about 1 pm, the accused had committed rape upon a 8 years old girl and at about 4 pm, the victim girl informed her mother about the said fact. Thereafter, on 24/11/2017, a village meeting was held on that issue, but finally on 25/11/2017, the ejahar was lodged by the mother of the victim girl, alleging the aforesaid facts.
- 2. During the period of investigation, the victim girl was subjected to medical examination. The Doctor found the following injuries upon the dead body of the deceased:-

"Menstrual history- not attained menarche. General configuration and development - Average. Mental state - Normal. Teeth- 19. Abdomen, breasts, areola and nipples - no injury. Scalp hair present. Pubic and axillary hair- not see. Genitals - No injury seen. Hymen - present. Vagina admits one finger. Uterus - Not palpable. No vaginal bleeding/discharge present at the time of examination. No other injury on any other body parts. Radiological examination was done and as per report, age is between 7 to 10 years. Ultrasonography done and as per report, it found normal study. No spermatozoa present in the supplied vaginal smear."

- 3. The Doctor opined that there was no recent signs of sexual intercourse. No external injury on genitals and other body parts were found.
- 4. The victim girl gave a statement u/s 164 Cr.PC. She has stated before the Magistrate that the accused Anil Karmakar had called her to his house on the pretext of giving her some vegetables. When the victim girl entered into the kitchen of the house of the accused, the accused gagged her mouth with hands and removed her panty and laid her on the ground and inserted his penis into her vagina. She has further stated that though she felt pain, but she could not shout as because her mouth was gagged by the accused. Thereafter, the accused left her go with a threatening that if she has disclosed the matter to anyone else, she would be killed. The victim girl has stated before the Magistrate that she nonetheless informed her aunt Bobita Gorh about the said occurrence.

POINT FOR DETERMINATION

5. 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

6. In order to prove the case against the accused person, the prosecution side has examined as many as ten witnesses, out of which two are non official witnesses. The Police Officer Sanjib Saikia and Dr. Niharika Borah, who examined the victim girl during the period of investigation are the official witnesses. The defence plea is total denial. I have carefully gone through the prosecution evidences.

- 7. Considering the nature of the case, I shall take up the evidence of the victim girl. She has supported the prosecution case in her evidence.
- 8. Now, I shall take up the evidence of the mother of the victim girl. She has stated in her evidence that her daughter was born on 22/07/2009 and to that effect, a birth certificate has been produced. The mother of the victim girl has stated that her sister in law Bobita Gorh had told her that her daughter was called by the accused to his house on the pretext of giving vegetables and when she had entered into his house, she was forcibly laid on the ground and after that the accused committed rape upon her, after removing her clothes. The mother of the victim girl has stated that she asked her daughter about the said matter and her daughter reportedly admitted those things. The mother of the victim girl has stated that she had examined the vagina of her daughter and found swelling there. The mother of the victim girl had informed the local mahila samity also.
- 9. The witness Bobita Gorh is the aunt of the victim girl. She has stated in her evidence that one day at about 9 am, the victim girl had come to his house, who wanted to urine, but she was unable to pass urine. She has stated in her evidence that the victim girl told her that the accused called her to his house for giving some vegetables and then when she had entered into the house of the accused, the accused had committed rape upon her. She has stated in her evidence that she had examined her vagina and saw that there was blood stained.
- 10. The witness Sima Chetry has stated in her evidence that she heard from the mother of the victim girl that her

daughter was raped by the accused on 22/11/2017. She has stated in her evidence that she had gone to the house of the victim girl, examined her private parts and noticed injury marks in her vagina.

- 11. The witness Anita Upadhaya had also heard from the mother of the victim girl that the accused had committed rape upon the victim girl. She has stated in her evidence that she along with some of Mahila Samity members confronted the accused. They brought the accused with them and produced him before the village Gaonburha. She has stated in her evidence that she had also examined the private parts of the victim girl and noticed small injury mark on the vagina of the victim girl.
- 12. The witness Prem Newar has stated that on 24/11/2017, there was a meeting in the village and at the end of the meeting, he was informed by the mother of the victim that on 22/11/2017, the accused had committed rape upon her daughter. He has stated that he along with the witness Sima Chetry, Anita Upadhaya and some other members of Local Mahila Samity had gone to the house of the accused and confronted him with the allegation. He has stated that the accused denied his involvement in the said incident and then he had informed police.
- 13. The witness Mainu Gorh also spoke like Sima Chetry and Anita Upadhaya. She has stated in her evidence that she had also seen some reddish mark on the vagina of the victim girl.
- 14. The witness Bhim Chetry has stated that one day the mother of the victim girl had come to him and informed him

that the accused had committed rape upon her daughter. He has stated that he asked the accused about his involvement in the said incident, but the accused reportedly denied his role in the said act. Bhim Chetry has stated in his evidence that the accused refused to attend the village meeting, which was held on the aforesaid issue, as because the accused was afraid that he would be beaten by the villagers in the said meeting. He has stated that it was the accused, who had requested him to call police and also requested him to hand him over to police.

- 15. Here in this case, there is no doubt that the medical evidence failed to prove the prosecution case against the accused. Here the entire prosecution case is based on the evidence of the victim girl. She is a child below 12 years of age.
- 16. In **State of U.P. v. Ashok Dixit** [2000 (3) SCC 70]. it has been observed in paragraph 9:

"Law is well settled that evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and as an easy prey to tutoring. Wisdom requires that evidence of a child witness must find adequate corroboration before it is relied on (see Panchhi v. State of U.P.). However it is a question of fact in each case, and there is no universal rule that the evidence of a child witness, even if it cannot be dislodged on the test of facts and probabilities of a particular case can never be sufficient for convicting an accused without corroboration.

17. The Supreme Court in **State of M.P. v. Ramesh and Anr.**, (2011) 4 SCC 786) has examined the law relating to deposition by Child Witnesses. While examining the law on the

aspect the Court has observed that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.

18. In **Panchhi & Ors vs. State of U.P**: (1998) 7 SCC 177, the Supreme Court has held --

The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony.

19. Coming back to the case in hand, here the medical evidence has totally nullifies the ocular evidence. At this stage, I have reasons to hold that the evidence of the victim girl fails to inspire confidence. Her evidence cannot be accepted without any corroboration and it must be stated that there are no corroboration of her evidence. Under the circumstances, I hereby hold that the prosecution has failed to prove the offence against the accused beyond all reasonable doubts.

ORDER

20. In the result, the accused Sri Anil Karmakar @ Dulal Karmakar is found not guilty and accordingly the accused is

acquitted from this case. Presently, the accused is in judicial custody, so he be set at liberty forthwith.

Given under my hand and seal of this Court on this 18th day of January, 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 - Smti Bharoti Gorh

2. PW2 - Smti Junali Gorh

3. PW3 - Dr. Niharika Borah

4. PW4 - Smti Sima Chetry

5. PW5 - Smti Anita Upadhaya

6. PW6 - Sri Prem Newar

- 7. PW7 Smti Bobita Gorh
- 8. PW8 Smti Mainu Gorh
- 9. PW9 Sri Bhim Chetry
- 10.PW10 Sri Sanjib Saikia, S.I

PROSECUTION EXHIBITS

- 1. M.Ext.1- School certificate
- 2. Ext. 2- Medical report
- 3. Ext. 3- Extract copy of the G.D.E
- 4. Ext. 4 Ejahar
- 5. Ext. 5- Sketch map
- 6. Ext. 6 Charge sheet
- 7. M. Ext. 2- Copy of the statement.

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>