IN THE COURT OF THE SPECIAL JUDGE:: TINSUKIA

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 3 (T) of 2015 U/s.448/354 of I.P.C., r/w Sec.8 of POCSO Act.

Appearance:

Sri A. Hatikakaty,

Addl. Public Prosecutor.....For the State

Smti N. Kalita,

Advocate......For the Accused

Date of Argument: 19.06.2017 Date of Judgment: 19.06.2017

J U D G M E N T

PROSECUTION CASE

1. The prosecution case against the accused lies within a short campus. On the day of occurrence, the victim was alone in her house and the accused came to her house and wanted a glass of water. When the girl gave him a glass of water, the accused squeezed her breasts.

2. **POINTS FOR DETERMINATION**

The points for determination in this case are -

- (i) Whether the accused had committed criminal trespass into the house of the victim and thereby committed an offence u/s.448 I.P.C.?
- (ii) Whether the accused had committed sexual assault upon the victim girl and thereby committed an offence u/s.354 I.P.C., r/w Sec.8 of POCSO Act?

3. **DECISION AND REASONS THEREOF**

In this case, the victim girl was aged about 17 years, when she tendered evidence on 5.11.16. She has supported the prosecution case against the accused in her evidence. The mother of the victim (PW3) has stated in her evidence that on 5.11.16 her daughter was aged about 17 years.

- 4. In this case, ld. counsel has pointed out that in a case under POCSO Act, it is the duty of the prosecution to prove that the victim was a child, below 18 years of age on the day of occurrence. Ld. counsel has also submitted that the victim was not examined by doctor during the period of investigation, nor any school certificate available in the record to prove the age of the victim girl.
- 5. On this, I have decided to agree with Id. counsel for the accused. POCSO Act is a Special Act having stringent punishment. It is a well settled principle of law that stricter is the law, higher is the degree of proof. Therefore, in this case, prosecution has miserably failed to prove the age of the victim girl on the day of occurrence, which allegedly took place on 6.2.2015.
- 6. Under the aforesaid circumstances, I hereby hold that the prosecution has failed to prove that the victim was a minor, below 18 years of age on the day of occurrence and therefore, failed to prove the offences against the accused beyond all reasonable doubt.

ORDER

7. That being the position, accused Dipak Biswas is found not guilty. He is acquitted from this case.

Given under my hand and seal of this Court on this the 19^{th} day of June, 2017.

Dictated & corrected by me.

Special Judge <u>Tinsukia</u>

(**P.J. Saikia**) Special Judge <u>Tinsukia</u>

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Smti Ranu Rout
- 2. PW2 Sri Nanhe Lal Sharma
- 3. PW3 Smti Rita Sharma
- 4. PW4 Smti Bandana Sharma
- 5. PW5 Smti Sumita Deka (I.O.)
- 6. PW6 Sri Paragjyoti Buragohain

PROSECUTION EXHIBITS

- 1. Ext.1 Ejahar
- 2. Ext.2 Statement of the victim u/s.164 CrPC
- 3. Ext.3 Charge-sheet
- 4. Ext.4 Sketch map
- 5. Ext.5 Statement of wit. Nanhelal Sharma u/s.161 CrPC

Special Judge <u>Tinsukia</u>