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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 17 (M) of 2016

U/s 4 of the POCSO Act

The State of Assam	Complainant.
-Versus -	
Sri Abu Salam Nand,	
S/o- Sri Jothon Nand	
R/o- Sorupathar Padumoni Gaon	
P.S- Sorupathar	
District- Golaghat, Assar	n Accused.
Appearance:	
Sri B.L Agarwal,	
Spl. Public Prosect	utorFor the State
Arati Sarmah,	
Advocate	For the accused.

Date of Argument: 24/09/2019

Date of Judgment: 01/10/2019

J U D G M E N T

PROSECUTION CASE

- 1. In this case, the 47 year old accused Abu Salam Nand (herein after referred to as the accused only) is admittedly a Christian Priest and he has claimed that whenever he prays for somebody, the said person gets cured of diseases. It is also an admitted fact that the accused gives holy water to ailing persons and it cures their diseases.
- 2. The prosecution case against the accused revolves around an accusation that he had committed rape upon a blind minor girl, who was brought to him for regaining her eyesight.
- 3. The victim girl was born on 23/01/2001 and she studied up to class VI and thereafter, in the year 2012, she became completely blind. In the month of March 2016, Smti Khageswari Gogoi, who is the mother of the victim girl informed the mother of the victim girl that one quack had come to Digboi and he was capable of treating blindness of the minor girl. Therefore, the mother of the victim girl took her daughter to the accused for treating blindness of the victim girl. On the first day, the accused gave some oil and water to be administered to the eyes of the victim girl. She was again

called on the next day. In this way, the victim girl was called to the house of the accused for three days. On the last day, i.e on 21/03/2016, the accused called the victim and her mother, asking them to come by 6 am. Both the victim and her mother went to the house of the accused accordingly. Then the accused took the victim girl into the house, keeping the mother outside, the accused closed the door of the house. After about 9/ 10 minutes, the accused opened the door and asked the mother of the victim girl to take her away.

- 4. When the mother of the victim girl had entered into the room to take back her daughter, she found that her daughter was crying. Her daughter told her that the accused had touched her breasts after unbuttoning her upper garment. The victim girl also told her mother that the accused thereafter disrobed her and committed rape.
- 5. Then the accused convinced the mother of the victim that her daughter would be able to see and that is the reason why the mother of the victim girl did not raise any hue and cry.
- 6. After leaving the house of the accused, the victim and her mother went to the house of Debojita Changmai, who is the sister of the mother of the victim girl. They told Debojita Changmai about the occurrence and she immediately informed her husband Prabin Changmai. On hearing about the incident, Prabin Changmai refused to soft pedal the matter and he immediately went to the house of the accused. On reaching there, Prabin Changmai had a heated argument with the accused and on seeing that incident, many people gathered there. The accused then tried to run away, but failed. Instead, he entered into the house and closed the door from

inside and thereby disallowed other people to enter his house. The Gaon Burha also came to know about the matter and he informed police over telephone and police came to the place of occurrence. Thereafter, the mother of the victim girl had lodged an ejahar before police.

- 7. During the period of investigation, on the date of occurrence itself, the victim girl was subjected to medical examination and on the next day she was sent to the court for recording her statement u/s 164 Cr.P.C.
- 8. The findings of the Doctor goes like this:-

"Mental state- good. height - 4 feet. Weight - 60 kg, Teeth - 28 Nos. (permanent). Abdomen - Well developed and no injury. Breasts- Well developed and no injury. Aerola and nipples- Well developed and no injury. Scalp hair- Well grown. Pubic hair- Well grown, Axillary hair- Well grown. Labia majora-Well developed and no injury. Labia minora- Well developed and abrasion present of size 1x 1/2 cm². Hymen - Tear present. Vagina- Well developed and abrasion present in vaginal introitus of size 1 x 2 cm². Uterus - Not palpable on bimanual examination. Vaginal discharge/bleeding- Not present. Fourchette- Healthy. Injury on the body other than genitals-Bruises present both inner sides of the thighs of size 3x2 cm².

Radiological examination:-

Wrist joint- fusion is not complete

Elbow joint- fusion is complete

Illiac crest- fusion is not complete.

As per the radiological report, the age of the victim is assessed between 15- 17 years."

- 9. Doctor has opined that the injuries found in the private parts of the victim girl were suggestive of forceful sexual intercourse.
- 10. In her statement u/s 164 Cr.PC, the victim girl has quoted the facts, pertaining to the occurrence.

POINT FOR DETERMINATION

11. The only point for determination in this trial, is as to whether on 21/03/2016 at about 6 am, the accused had committed penetrative sexual assault upon the victim girl?

DECISION AND REASONS THEREOF

- 12. In order to prove the case against the accused person, the prosecution side has examined as many as ten witnesses, including the Doctor, who had examined the victim girl at the time of investigation and the Police Investigating Officer. The defence plea is total denial and the accused examined himself as a defence witness. I have carefully gone through the prosecution evidences.
- 13. Considering the nature of the case, I shall first take up the evidence of the victim girl. She has supported the prosecution case against the accused in her evidence.
- 14. During cross examination, the victim has stated before the defence counsel that she studied up to Class VI and prior to that in any class, she never failed. The victim stated that on two days prior to the occurrence, when she had visited the accused, he did not talk to her. The victim girl has stated that

on the day of occurrence, she was wearing a skirt, top and a sweater. She has stated that the accused had unbuttoned her garment and she did not make any hue and cry. The victim stated that she did not sustain any injuries, while the accused had committed rape upon her. The victim girl also stated before the defence counsel that she was made to lie on the bed before she was raped by the accused.

- 15. The mother of the victim girl has also supported the prosecution case against the accused in her evidence.
- 16. During her cross examination, she has stated before the defence counsel that the accused lived in a pucca house, consisting of three rooms and the occurrence took place in the middle room. The mother of the victim girl has stated before the defence counsel that at that time many people were sitting in the hall of the house to meet the accused. The mother of the victim also stated that she went out of the house, after keeping her daughter in the middle room. The mother of the victim has further stated that when her daughter came out of the room, she found her wearing apparels in order, but a safety pin on her T-shirt was found open. The mother of the victim has stated that she inquired about it from her daughter and then she told her the entire incident.
- 17. Now, I shall take up the evidence of Prabin Changmai. He has stated in his evidence that some tribal organization had organized a health check up camp near his house and the victim and her mother had come to that camp for medical check up. Prabin Changmai has stated that at about 6.10/15 am, the mother of the victim had called him over phone, but as he was sleeping at that time, he could not picked up the

phone. According to Prabin Changmai, while he was still sleeping one small boy had come to his house and told him that the victim was raped by the accused. Prabin Changmai has stated that he immediately went to the said camp and on seeing him, the accused tried to run away. Prabin Changmai has disclosed that the accused had entered into the room and bolted himself from inside. According to him, he started to shout at the accused from outside the room. Prabin Changmai has stated that the victim girl told him that the accused took her into the room and thereafter, laid down in a bed and promised her that he was doing something to her for which she would be able to see. Prabin Changimai has quoted the victim as informing him that the accused had removed her undergarments and committed rape upon her. Prabin Changmai has stated that when police arrived at the place of occurrence, then only the accused came out of the room.

- 18. The witness Prabin Changmai did not state before police that one small boy had informed him about the occurrence. This fact was confronted to Prabin Changmai at the time of his cross examination. He also did not state before police that the accused tried to run away from the camp and thereafter closed himself into a room. This fact was also confronted to Prabin Changmai by the Ld. defence counsel.
- 19. The witness Krishna Mahato is the Govt Gaon Burha of the village, where the accused had committed the offence. Krishna Mahato has stated that one person informed him over telephone in the morning hours that there was a huge quarrel at the place of occurrence and one person was assaulted by the villagers. The caller told him that the person, who was beaten by the villagers might die, because of the beatings of

the villagers. Krishna Mahato has stated that on hearing that news, he immediately informed police and thereafter he went to the place of occurrence. Krishna Mahato has stated that he pacified the angry villagers, who informed him that the accused had committed rape upon the victim girl on the pretext of giving her treatment.

- 20. At the time of cross examination, Krishna Mahato has stated that the house where the accused used to stay belongs to Dashram Majhi. The remaining part of his cross examination is irrelevant for the present case.
- 21. The Doctor, who had examined the victim during the investigation period has proved her report as Ext. 2. This Doctor was also cross examined by the defence counsel. The Doctor stated before the defence counsel that the abrasion, which was found in the labia minora of the victim girl might also be caused by self inflicted injury. The Doctor also stated before the defence counsel that the injury in the labia minora might also be caused due to forceful use of tampon.
- 22. The witness Debojita Changmai has stated that the accused had come to Digboi and had taken a room on rent near a field. She has stated in her evidence that the victim had to visit the accused for three consecutive days. Debojita Changmai has stated that the mother of the victim told her that the victim was subjected to rape. She has stated that the victim also confirmed the said fact.
- 23. The cross examination portion of Debojita Changmai consists of irrelevant facts.
- 24. The witness Bino Gogoi is a hearsay witness. She had heard from someone that one quack had committed rape upon

the victim girl. She has stated that some people of the locality had gone to the police station and she also accompanied them.

- 25. The cross examination portion of the evidence of Bino Gogoi is absolutely irrelevant for the case.
- 26. Now, I shall take up th evidence of Niru Gogoi. She resided in a house near the place of occurrence. Niru Gogoi has stated that on the day of occurrence in the morning while she was brushing her teeth infront of her house, she had seen one person named Baba Changmai, who told her that his niece, who had eye sight problem was brought to the accused for treatment and the accused had committed rape upon her by taking her inside the house.
- 27. Niru Gogoi stated before the defence counsel that the victim is not a relative, bit she knew her.
- 28. The witness Sanatan Murmu has stated that the accused had organized a camp for three days for giving treatment to the people. The house of this witness is situated at a distance of about half a kilometer away from the place of occurrence. Sanatan Murmu has stated that his mother told him that people were beating the accused. According to him, after hearing about that fact he went to the place of occurrence to know as to what had happened. He has stated that when he arrived at the place of occurrence, police also arrived there at the same time. According to Sanatan Murmu, he heard from the people, who gathered there that the accused had committed rape upon the victim girl.

- 29. The cross examination portion of the evidence of Sanatan Murmu does not contain any relevant facts, warranting an elaborate discussion.
- 30. The last prosecution witness to be examined is the Police Investigating Officer and he spoke about the investigation of the case.
- 31. Now, I shall take up the defence evidence. The accused has stated in his evidence that as a priest, he spreads message of Bible and also gives treatment to ailing persons by giving them water. The accused has produced one certificate, showing that the Believes Church gave him the certificate to do the aforesaid works. The accused claimed in his evidence that he has been unnecessarily framed in this case by the victim girl in association with her mother and Prabin Changmai.
- 32. During cross examination by the prosecution counsel, the accused has stated that he actually does not provide any medical treatment to ailing persons. He only prays for recovery of the ailing persons. Before the Ld. Public Prosecutor, the accused has admitted that the victim was brought to him on two days. The accused has stated that on the first day, the victim was brought to him in the afternoon and on the next day, she was brought to him at about 6 /7 am. The accused has stated in his evidence that he did not remember if police had recorded his statement, nor did he remember if he had stated before police that he gave treatment to the victim girl for giving back her vision.
- 33. On scrupulous perusal of the prosecution evidence as well as the defence evidence, I find that it is an admitted fact

that on the day of occurrence, the victim had come to the house of the accused for curing her blindness. There is no denial of the aforesaid fact. Now, a question arises as to why the victim girl and her mother would depose false evidence against the accused. He never pleaded any enmity with the aforesaid witnesses. The victim girl was medically examined on the day of occurrence at about 11.55 am. Doctor found abrasion on the labia minora of the victim girl. The Doctor has also stated in his evidence that the aforesaid injuries are suggestive of forceful sexual intercourse. I do not find any reason as to why the victim girl would self inflict abrasion on her labia minora. The Doctor has stated that the injury upon the labia minora can also be caused due to forceful use of tampon.

- 34. A tampon is a feminine hygiene product designed to absorb the menstrual flow by inserting into the vagina during menstruation. Once inserted correctly, a tampon is held in a place by the vagina and expands as its soaks up the menstrual blood. The majority of tampons sold in the market are made of rayon or a blend of rayon and cotton.
- 35. In this case, there is no evidence that the victim was using a tampon. It was the duty of the accused to prove that fact, but he did not adduce any evidence to that effect.
- 36. There are no contradictions or discrepancies in the evidence of the victim and her mother. Their evidences have been corroborated by the medical evidence. The so called discrepancies painstakingly highlighted by the ld defence counsel do not go to the root of the prosecution case. On the other hand, the evidence of the accused failed to inspire

confidence. He failed to probabilise the notion that he was unnecessarily framed in this case by the victim girl.

- 37. Under the circumstances, I have sufficient reasons to hold that the victim girl and her mother are reliable witnesses. Their evidences inspired confidence. Now, I have no hesitation to hold that the offence of penetrative sexual assault upon the victim girl is proved beyond all reasonable doubt against the accused.
- 38. At this stage a question arises as to whether the victim was below 18 years of age at the time of occurrence. She claimed that she was born on 23/01/2001. The medical evidence has found the victim girl to be between 15 to 17 years. The accused never challenged the aforesaid facts during cross examination. Therefore, I hereby hold that the offence u/s 4 of the POCSO Act is proved against the accused beyond all reasonable doubts.

ORDER

39. In the result, the accused Abu Salam Nand is found guilty of committing penetrative sexual assault upon the minor girl and accordingly, he is convicted u/s 4 of the POCSO Act.

<u>SENTENCE</u>

40. The convict has cheated the faith of the victim girl and her family. The convict failed to keep the faith reposed upon him by people. The convict used, his so called divine knowledge, to commit rape upon the blind minor girl. The convict Abu Salam Nand is a danger to the society. He must be

punished adequately. Therefore, I have heard the convict in the matter of sentence.

- 41. Apart from pleading not guilty, the convict has stated that he has his wife and daughter, who are presently residing in the District of Golaghat.
- 42. The Ld. Special Public Prosecutor has submitted that he would not object to whatever the convict has pleaded. According to the Ld. Special Public Prosecutor, no separate sentence hearing is necessary in the instant case. Mr. B.L. Agarwal has further stated that the sentence upon the convict may be awarded today itself.
- 43. It appears that the convict is a pedophile. People like the convict targets helpless minor children to satiate their lust. They use children for illegal sexual purpose. Our children are our future. Therefore, in order to protect them from the preying eyes of people like the convict, the Special Legislation POCSO Act of 2012 has been enacted by our Parliament. This is a special legislation only to protect children from being sexual abused. Sexual abuse at a tender age causes mental trauma to the children and it haunts them in their entire life. Therefore, considering the aforesaid facts, I hereby sentence the convict Abu Salam Nand to undergo Imprisonment of 7 (Seven) Years. The convict is further sentence to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) and in default of payment of the fine, the convict shall undergo another period of imprisonment of 6 (six) months.

COMPENSATION

44. Law has mandated that the victim of a crime must be adequately compensated by the State. Here in this case, the

victim is a minor blind girl. She did not have the capacity to resist the convict when he had committed rape upon her. Therefore, in order to rehabilitate the victim girl, the District Legal Service Authority, Tinsukia is directed to pay a compensation of Rs. 50,000/- (Rupees Fifty Thousand Only) to the victim girl.

45. I hope, the sentence imposed and the compensation awarded would be sufficient to reach the ends of justice.

46. A free copy of the judgment be given to the convict immediately. Another copy of the judgment shall be forwarded to the Ld. Deputy Commissioner, Tinsukia, under the the provision of section 365 of the Cr.PC. A copy of the judgment shall also be forwarded to the District Legal Service Authority, Tinsukia.

Given under my hand and seal of this Court on this 1st day of October, 2019.

(P.J. Saikia)

Special Judge

Tinsukia

Dictated & corrected by me.

Special Judge

<u>Tinsukia</u>

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Smti Labita Chutia
- 2. PW2 Smti Pahi @ Parakhmoni Chutia
- 3. PW3 Sri Prabin Changmai
- 4. PW4 Sri Krishna Mahato
- 5. PW5 Dr. (Mrs.) Rani Gogoi
- 6. PW6 Smti Debojita Changmai
- 7. PW7 Smti Binu Gogoi
- 8. PW8 Smti Niru Gogoi
- 9. PW9 Sri Sanatan Murmu
- 10.PW10 Sri Gauranga Dey, S.I. of Police

PROSECUTION EXHIBITS

- 1. Ext.1- Ejahar
- 2. Ext. 2- Medical report
- 3. Ext. 3- Laboratory report
- 4. Ext. 4 Radiological report
- 5. Ext. 5 Sketch map
- 6. Ext. 6 Charge sheet
- 7. M. Ext.1- Birth certificate of victim
- 8. M. Ext.2- Statement u/s 164 Cr.PC.

DEFENCE WITNESS

1. DW1 - Abu Salam Nand

<u>DEFENCE EXHIBITS</u>

- 1. Ext. A- Certificate
- 2. Ext. B- Certificate
- 3. Ext. C- Certificate

Special Judge

<u>Tinsukia</u>