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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 60 (T) of 2017 U/s 8 of POCSO Act

Date of Judgment: 08/02/2019

J U D G M E N T

PROSECUTION CASE

- 1. On the day of occurrence, at about 4.30 pm, the 7 years old girl was taken into the house of the accused and thereafter the accused had attempted to commit rape upon her. But, before the accused could commit the act, the grand mother of the victim girl arrived there and she saved the victim girl. Smti Koushalya Bhumiz, the grand mother of the victim girl had lodged an ejahar before police, alleging the aforesaid fact.
- 2. During the period of investigation, the victim girl was subjected to medical examination. The Doctor found the injuries upon the victim girl.

"The victim gave history of sexual assault on the last Thursday, i.e 07/09/2017 by two people, who are their neighbours.

On examination, I found the following:

Menstrual history - Menarche not yet attained. General and physical examination - The victim was oriented in space and time. Dentition- 23. Injuries absent. Examination of genital parts- congested of labia majora present. No other injuries found.

Vaginal smear was taken and as per report, no spermatozoa was detected.

Radiological examination was done. Writs joint- fusion not seen. Elbow- fusion not seen. Iliac crest- fusion not seen. As per radiological opinion, her age is between 8 to 11 years."

3. The victim girl also gave a statement u/s 164 Cr.PC, wherein she has stated before the Magistrate that at the relevant time of occurrence, the accused had removed her pants and rode over her and committed bad act. The Ld. Magistrate, who had recorded the statement of the victim girl u/s 164 Cr.PC, has noted the manner of the victim girl by stating that the victim girl did not say anything more than that.

POINT FOR DETERMINATION

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

DECISION AND REASONS THEREOF

- 5. In order to prove the case against the accused person, the prosecution side has examined as many as seven witnesses, including the Police Investigating Officer and the Doctor, who had examined the victim girl during the period of investigation. The defence plea is total denial. I have carefully gone through the prosecution evidences.
- 6. Considering the nature of the case, I shall first take up the evidence of the victim girl. She has stated in her evidence that at the time of occurrence, the accused had inserted his penis into her vagina.
- 7. During cross examination, the victim girl denied that she never stated before the police that the accused had inserted his penis into her vagina.
- 8. The victim girl also did not state before the Magistrate that the accused had inserted his penis into her vagina; rather

she stated before the Magistrate that the accused had done bad act upon her. By no means the words "bad act" cannot be construed to mean sexual intercourse. I find that the evidence of the victim girl failed to inspire confidence, because there are serious contradictions in her evidence.

9. In the instant case, the victim girl is the only eye wetness to the occurrence, and her evidence is infested with serious contradictions. Therefore, the evidence of the remaining witnesses have lost their relevance. Under the aforesaid premised reasons, I hereby hold that the offence of sexual assault, committed upon the victim girl has not been proved beyond all reasonable doubts against the accused Sumon Chakraborty.

ORDER

10. That being the position, the accused Sumon Chakraborty 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 8th day of February, 2019.

(P.J. Saikia)

Special Judge

<u>Tinsukia</u>

Dictated & corrected by me.

Special Judge

Tinsukia

A P P E N D I X

PROSECUTION WITNESSES

- 1. PW1 Dr. Nicky Shah
- 2. PW2 Smti Koushalaya Bhumij
- 3. PW3 Smti Anila Mura
- 4. PW4 Sri Bijoy Munda
- 5. PW5 Smti Bharoti Bhumij
- 6. PW6 Smti Soniya Mura
- 7. PW7 Sri Pradip Baruah

PROSECUTION EXHIBITS

- 1. Ext.1- Medical report
- 2. Ext. 2- Laboratory report
- 3. Ext. 3- Radiological report with X-ray plates
- 4. Ext. 4 Ejahar
- 5. Ext. 5 Sketch map
- 6. Ext. 6 Charge sheet

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>