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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

# POCSO Case No. 37 (M) of 2015 U/s 6 of the POCSO Act

The State of Assam ..... Complainant. -Versus -Sri Surjya Upadhaya S/o- Sri Hari Har Upadhaya R/o- 6th Mile Rampur P.S- Lekhapani District- Tinsukia, Assam ...... Accused. Appearance: Sri B.L Agarwal, Spl. Public Prosecutor ...... For the State M.S Alley, Advocate ..... For the accused. Date of Argument: 06/06/2019 Date of Judgment: 13/06/2019

## J U D G M E N T

#### **PROSECUTION CASE**

- 1. The victim in this case belongs to tea tribes community. She is the adopted daughter of Maha Prasad Sharma. It may be stated that Maha Prasad Sharma is a teacher by profession, but he has been a businessman also. Maha Prasad Sharma has a car, but he does not know how to drive car. Therefore, he used to hire the accused to drive his car. For the matters relating to his business, Maha Prasad Sharma often traveled in his car along with the accused. In this way, a friendly relationship grew up between Maha Prasad Sharma and the accused.
- 2. Maha Prasad Sharma used to consume liquor. On the day of occurrence, the victim was alone in the house of Maha Prasad Sharma, as because his wife had gone to Tezpur. On that day Maha Prasad Sharma had liquor with the accused somewhere outside his house. Under the influence of liquor, Maha Prasad Sharma lost his senses. He was not in a position to walk also. Therefore, the accused brought Maha Prasad Sharma to his house and laid him on the bed and Maha Prasad Sharma went into deep sleep.
- 3. After Maha Prasad Sharma had fallen into deep sleep, the accused allegedly jumped upon the victim girl in another room of the house and committed forcible sexual intercourse with her. After being raped, the victim girl ran out of the house and at that time, she was bleeding from her private part. Sri Rup Narayan Sharma, the brother of Maha Prasad Sharma used to reside in a nearby house. Binita Sharma, the wife of Rup Narayan Sharma had noticed that the victim girl was crying in the cowshed of the house of Maha Prasad Sharma.

So, she asked the victim girl as to why she was crying. The victim girl told Binita Sharma that the accused had committed a sin and requested Binita Sharma to take her to the house of Maharaj Sharma, who resided in another nearby house. Binita Sharma had noticed that the victim girl was bleeding from her private part, as because her clothes were stained with blood. Binita Sharma immediately called some neighbours and with the help of Maharaj Sharma, the victim girl was taken to the hospital. Binita Sharma and Maharaj Sharma did not go to the hospital, but they went to the house of Maha Prasad Sharma. Maha Prasad Sharma was sleeping at that time. Therefore, Maharaj Sharma woke him up and informed him about the occurrence.

- 4. In the mean time, Doctors of Jagun Mini PHC found the condition of the victim to be bad and therefore, Doctors informed police. Next morning, Maha Prasad Sharma had lodged an ejahar before police, alleging that the accused had committed rape upon his foster daughter.
- 5. After filing of the ejahar, police registered a case and sent the victim girl to Tirap Gate State Dispensary for medical examination. Accordingly, Dr. Mouchumi Gogoi of Tirap Gate State Dispensary examined the victim girl on 27/10/2015 at about 1.10 pm.
- 6. After examination of the victim girl at Tirap Gate State Dispensary, the victim girl was sent to AMCH, Dibrugarh on that day itself and accordingly, on that day i.e. 27/10/2015, at about 8.30 pm, the victim girl was examined by Dr. Nibedita Shyam. At AMCH, Dibrugarh, on examination it was found that spermatozoa was present within the vagina of the victim girl.

Doctor also opined that there were signs of recent sexual intercourse.

7. Finally, on conclusion of investigation, police filed the charge sheet against the accused.

#### POINT FOR DETERMINATION

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

# **DECISION AND REASONS THEREOF**

- 9. In order to prove the case against the accused, the prosecution side has examined as many as eleven witnesses, including the two Doctors namely Dr. Mouchumi Gogoi and Dr. Nibedita Shyam and the Police Investigating Officers. The defence plea is total denial and the accused has examined one witness named Bhim Prasad Sharma. I have carefully gone through the prosecution evidences as well as the defence evidence.
- 10. Here in this case, the prosecution contention is that the victim girl is below 18 years of age. There is no school documents or birth certificates of the victim girl. Dr. Mouchumi Gogoi has stated in her evidence that as per radiological examination, the age of the victim was above 12 years and below 14 years. Dr. Nibedita Shyam of AMCH, Dibrugarh has stated in her evidence that the age of the victim girl was above 12 years and below 14 years. There is no cross examination, challenging the aforesaid evidence. Therefore, I have reasons to hold that the victim girl was below 14 years of age is not a disputed fact in this case.

- 11. Now, I shall take up the evidence of the victim girl. She has stated in her evidence that on the day of occurrence, her foster father Maha Prasad Sharma had returned home and took dinner and went to sleep. The victim girl has stated that at that time, she was watching T.V. and she continued to watch T.V., after Maha Prasad Sharma had fallen asleep. The victim girl has stated that the wife of Maha Prasad Sharma was not present in the house, as because she had gone to Tezpur. The victim has stated that after sometime, the accused knocked the door and from outside asked the victim to open the door, on the ground that he had left his mobile phone in the house. The victim has stated in her evidence that she opened the door and then the accused jumped upon her and took her to another room of the house. According to the victim, the accused disrobed her and had forcible sexual intercourse with her.
- 12. The witness Binita Sharma is the sister in law of Maha Prasad Sharma. She has stated in her evidence that on the day of occurrence, at about 8.30 pm, she noticed that the victim girl was crying in the cowshed of the house of Maha Prasad Sharma. Binita Sharma has quoted the victim girl as telling her that the accused had committed a sin. Binita Sharma has stated that she noticed that the victim girl was bleeding from her vagina and her clothes were stained with blood. According to Binita Sharma, she called some other villagers and with the help of Maha Prasad Sharma took the victim to the hospital. Binita Sharma has stated that she and Maha Prasad Sharma did not go to the hospital, but they came to the house of Maha Prasad Sharma. According to Binita Sharma, Maharaj Sharma managed to wake up Maha Prasad Sharma and informed him about the occurrence.

- Now, I shall take up the evidence of Maha Prasad 13. Sharma. He has stated in his evidence that on the day of occurrence, he was feeling unwell and so he retired to his bed room earlier than before. He has stated that at about 9.30 / 10 pm, he woke up from his bed and saw that Uma Devi Sharma, Rita Sharma, Maharaj Sharma and Binita Sharma were present by the side of his bed. Maha Prasad Sharma has stated that all of them told him that the accused had committed rape upon his adopted daughter. Maha Prasad Sharma has stated that he immediately asked the victim girl about the occurrence and the victim told him that the accused had committed rape upon her. Maha Prasad Sharma has stated that his daughter was bleeding profusely and therefore, he took her to Jagun Mini PHC. According to Maha Prasad Sharma, on seeing the condition of his daughter, Doctors at the hospital informed police. Maha Prasad Sharma has stated that police gave the custody of his daughter to Uma Devi for the night. Maha Prasad Sharma has stated that next morning, he had lodged an ejahar before police.
- 14. The other witnesses in this case are Gopal Sonar, Rup Narayan Sharma, Maharaj Sharma, Rita Sharma and the Police investigating officers Pratap Gogoi and Pulak Kumar. It may be stated that the witness Rita Sharma is the wife of Maharaj Sharma.
- 15. The witness Gopal Sonar is a hearsay witness. His evidence is not relevant for this case.
- 16. The witness Rup Narayan Sharma is the another brother of Maha Prasad Sharma. He has stated in his evidence that on the day of occurrence, at about 8 / 9 pm, his wife informed him that the accused had ill-treated the victim girl.

Rup Narayan Sharma has stated that at that point of time, he was not having a good relationship with his brother Maha Prasad Sharma. Rupa Narayan Sharma has stated that for the aforesaid reason, his wife took the victim to the house of Maharaj Sharma. He has stated that on the day of occurrence, Maha Prasad Sharma along with the accused had returned home in the evening in a drunken state. Rup Narayan Sharma has stated that on seeing the condition of Maha Prasad Sharma, he told the accused that he should inform the wife of Maha Prasad Sharma, because this witness apprehended that under the drunken condition, Maha Prasad Sharma might suffer death.

17. The witness Maharaj Sharma has stated that on the day of occurrence, at about 9 pm, Rupa Narayan Sharma and his wife Binita Sharma brought the victim to his house. According to him, both Rup Narayan Sharma and Binita Sharma informed his wife Rita Sharma and told her that the victim girl was crying and was telling that someone had tried to pierced something into her belly. Therefore, she was suffering pain. Maharaj Sharma has stated that after hearing about the matter from his wife, he immediately went to the house of Maha Prasad Sharma. He has disclosed that at that time, Maha Prasad was completely drunk and was sleeping. Maharaj Sharma has further stated that he woke up Maha Prasad and informed him about the aforesaid facts. Maharai Sharma has stated that after hearing about the occurrence, Maha Prasad Sharma woke up from his bed and came to his house. Maharaj Sharma has stated that he had also informed the Gaonburha Bhim Prasad Sharma and he sent the victim girl to the hospital in the company of some other women of the village.

- 18. The witness Rita Sharma is the wife of Maharaj Sharma. She has stated in her evidence that on the day of occurrence, at about 9 /10 pm, Rup Narayan Sharma and his wife Binita Sharma had come to her house along with the victim girl. Rita Sharma has stated that the victim was crying at that time. According to her, Binita Sharma told her that the victim was telling her that the accused had pierced her body. Rita Sharma has stated that her husband Maharaj Sharma immediately informed the Gaonburha and on the basis of the advice of the Gaonburha, the victim girl was sent to the hospital. She has stated that she along with some other women took the victim girl to the hospital.
- 19. The Investigating Officers spoke about the investigation of the case.
- 20. Now, I shall take up the evidence of the defence witness Bhim Prasad Sharma. He is the Gaonburha of the village and his name has been referred to by the prosecution witness Maharaj Sharma. The defence witness Bhim Prasad Sharma has stated that on the day of occurrence, at about 7.30 / 8 pm, he had seen Maha Prasad Sharma in a drunken state and Maha Prasad Sharma was having an argument with some other persons. He has stated that at that time, he was in the shop of Gopi Sharma at 6th Mile of Rampur Village. Bhim Prasad Sharma has further stated that the accused was also present near Maha Prasad Sharma. So, he asked the accused to interfere into the matter. Bhim Prasad Sharma has stated that after that the accused took Maha Prasad Sharma home in a car. Bhim Prasad Sharma has stated that on that day at about 9.30 pm, he was returning from a Kirtan and at that time, the prosecution witness Maharaj Sharma called him over phone and informed him that rape was committed upon a girl

in the house of Maha Prasad Sharma. Bhim Prasad Sharma has further stated that after getting the news, he went to the house of Maharaj Sharma along with Gopi Sharma. The defence witness has stated that he advised Maharaj Sharma to take the victim girl to a Doctor immediately.

- 21. The defence witness Bhim Prasad Sharma has stated that prior to the occurrence, one day the wife of the accused told him that the accused had learnt to drink liquor in the company of Maha Prasad Sharma and therefore, he should informed him to given up such bad habit. Bhim Prasad has stated that thereafter he had advised Maha Prasad Sharma not to call the accused to drive his car and also told Maha Prasad Sharma not to give company to the accused at the time of drinking liquor.
- 22. All the prosecution witnesses have been extensively cross examined by the defence counsel and the lone defence witness has been cross examined by the Ld. prosecution counsel. After going through the prosecution evidences, I have found that the witnesses Dr. Mouchumi Gogoi found one 6 O'Clock tear in the vagina of the victim, which suggested that the victim had sexual intercourse. Dr. Gogoi also found that labia majora of the victim girl was swollen and there was a laceration of fourchette. According to Dr. Mouchumi Gogoi, the victim girl was bleeding from her vagina at the time of examination.
- 23. Dr. Nibedita Shyam of AMCH, Dibrugarh has stated that she found the evidence of recent sexual intercourse upon the victim girl.
- 24. Both the Doctors have been cross examined by the defence counsel. The aforesaid facts have not been

challenged in their cross examinations. Therefore, it is proved beyond all reasonable doubts that on 26/10/2015, the victim was raped.

- 25. Now, the most pertinent question that arises is as to whether the accused had committed forcible sexual intercourse upon the victim girl. In his examination u/s 313 Cr.PC, the accused had admitted that on the day of occurrence he was not drunk and he had gone to the house of Maha Prasad Sharma to drop him only. So, it is an admitted fact that on the day of occurrence, the accused had gone to the house of Maha Prasad Sharma. The victim girl was cross examined by the defence counsel. She has stated in her cross examination that on the day of occurrence, she shouted for help and one male person had come to the house, but she did not know his name. The victim girl stated before the defence counsel that she did not tell that the male person anything about the incident. The victim has stated that she tried to wake up Maha Prasad Sharma, but failed, as because he was drunk at that time.
- 26. The witnesses Maha Prasad Sharma, Binita Sharma, Rup Narayan Sharma, Maharaj Sharma and Rita Sharma have also been extensively cross examined by the defence counsel.
- 27. The witness Maha Prasad Sharma has stated before the defence counsel that the victim girl was not able to speak Assamese language properly. He has admitted that apart from being a Govt. teacher, he is also a part time business man. He has also admitted that at the time of occurrence, his wife of Lakhi Devi had gone to her mother's house at Biswanath Chariali and on 28/10/2015, after she came she had gone to AMCH, Dibrugarh to see the victim girl.

- 28. The witness Maha Prasad Sharma has further stated before the defence counsel that on the day of occurrence, at about 7.30 pm, he returned home and then he told the victim girl that the accused will be come to his house and asked her to take back the keys of his car.
- 29. There is nothing materials in the cross examinations of Gopal Sonar, Binita Sharma, Rup Narayan Sharma, Maharaj Sharma and Rita Sharma.
- 30. On scrupulous perusal of the prosecution evidences, I have found that there are no contradictions or discrepancies in the evidence of the victim girl. Neither there are any contradictions or discrepancies in the evidences of Maha Prasad Sharma, Binita Sharma, Rup Narayan Sharma, Maharaj Sharma and Rita Sharma. There is nothing in their cross examinations to hold that these witnesses have deposed false evidence. The medical evidence has supported the evidences of the prosecution witnesses. Hence I hereby hold that the prosecution evidence inspired confidence. Now, I have reasons to hold that the offence of aggravated penetrative sexual assault upon the victim girl has been proved against the accused beyond all reasonable doubts.

#### ORDER

31. In the result, the accused Surjya Upadhaya is found guilty and accordingly he is convicted u/s 6 of the POCSO Act.

#### <u>SENTENCE</u>

32. Since long, the children have been the most vulnerable to sexual assaults. They are always defenseless. Our legislature had to take up the matter seriously and enacted the POCSO Act. Persons like the convict are

dangerous to human society. Our children are not safe whenever persons like the convict shall be roaming freely in the society. I do not find any mitigating circumstances in favour of the convict. Therefore, I have heard the convict in the matter of sentence.

- 33. The convict has stated that he is a cultivator by profession. He has his family, consisting of his wife, children and his parents.
- 34. Considering the nature of the offence and the circumstances, under which the offence was committed, I have decided that the convict deserves to be adequately punished. Accordingly, the convict Surjya Upadhaya is sentenced to undergo Rigorous Imprisonment of 10 (Ten) Years. The convict is also sentenced 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. I hope this much of sentence will be sufficient to reach the ends of justice.

#### COMPENSATION

35. Law has mandated that the victim of a crime must be compensated by money, primarily for his/her rehabilitation. In the instant case, the victim is an illiterate girl and after the incident she has been living in a children's home. She has suffered a mental trauma. Therefore, in order to facilitate her rehabilitation, a compensation of Rs. 1,00,000/- (Rupees One Lakh Only) is awarded in favour of the victim. 50% of the compensation amount shall be kept fixed deposited in the name of the victim till she attains majority. The other 50% of the compensation amount shall be given to the In-Charge of the Children's' Home, where the victim is presently residing.

This money shall be paid in 10 equal monthly installments. The compensation money shall be paid by the District Legal Service Authority, Tinsukia.

36. 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 13th 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 - Dr. Mouchumi Gogoi

2. PW2 - Miss Junmoni Tanti

3. PW3 - Dr. Nibedita Shyam

4. PW4 - Sri Maha Prasad Sharma

5. PW5 - Sri Gopal Sonar

6. PW6 - Smti Binita Sharma

7. PW7 - Sri Rup Narayan Sharma

8. PW8 - Sri Maharaj Sharma

9. PW9 - Smti Rita Sharma

10.PW10- Sri Pratap Gogoi, S.I.

11.PW11 - Sri Pulak Kumar, S.I.

## **PROSECUTION EXHIBITS**

- 1. Ext.1- Medical report
- 2. Ext. 2- Laboratory report
- 3. Ext. 3- Report of Forensic Medicine, AMCH, Dibrugarh.
- 4. Ext. 4- Ejahar
- 5. Ext. 5- Seizure list
- 6. Ext. 6- Sketch map
- 7. Ext. 7- Charge sheet.

## **DEFENCE WITNESS**

1.DW - Sri Bhim Prasad Sharma

Special Judge

Tinsukia