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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

# POCSO Case No. 18 (T) of 2018 U/s 4 of POCSO Act

The State of Assam ...... Complainant. -Versus -Sri Ajad Rajput @ Sunil S/o- Lt. Jugen Rajput R/o- Gorh Basti, Tengapani No.2 Gaon P.S- Bordubi District- Tinsukia, Assam ...... Accused. Appearance: Sri B.L Agarwal, Spl. Public Prosecutor ......For the State B. Sharma, Advocate ..... For the accused. Date of Argument: 04/04/201 Date of Judgment: 04/04/2019

## J U D G M E N T

## **PROSECUTION CASE**

- 1. On 15/05/2018, at about 11 am, Sawan Tanti had lodged an ejahar before police, alleging that on the previous night at about 8 pm, when his 16 years old minor daughter had gone to the toilet, which is situated on the backside of their house, the accused jumped upon her and forcibly committed rape upon her.
- 2. During the period of investigation, the victim girl was produced before a Magistrate for recording her statement u/s 164 Cr.PC. She has stated before the Magistrate that the accused had forcibly taken her to a jungle on the backside of her house and thereafter, he removed her clothes and committed rape upon her.
- 3. The victim girl was also subjected to medical examination. The Doctor's report goes like this:-

"She was well oriented in space and time. Dentition- 28, permanent. No injury was found over her entire body at the time of examination. Genitals- pubic hair - not combining. External genitalia- No injury over labia majora and minora and fourchette. No vulval injury and no injury on perineum. Hymen was found torn. Vagina and cervix (any bleeding/discharge)-not present. No injury around anus. Urine was sent for HCG examination and the report was negative.

Radiological examination was done for ascertaining her age and as per radiological report, her age was between 18 to 20 years."

#### **POINT FOR DETERMINATION**

4. 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**

- 5. In order to prove the case against the accused person, the prosecution side has examined three witnesses, including the Doctor, who had examined the victim girl at the time of investigation and the victim girl herself. The defence plea is total denial. I have carefully gone through the prosecution evidences.
- 6. The Dr. Rani Gogoi, who examined the victim girl at the time of investigation has proved her report as Ext. 1.
- 7. The second witness to be examined is Sawan Tanti, the informant. He has stated, inter alia that his daughter was maintaining a love affair with the accused. According to Sawan Tanti, his daughter told him that the accused had committed rape upon her, but at a later stage, she told him that the accused did not do anything wrong to her.
- 8. The third witness is the victim herself. She has stated in her evidence that she was in love with the accused and on the day of occurrence, the accused had come to her house at night. According to the victim girl, her father became very angry, because of the visit of the accused in his house and out of anger he lodged an ejahar before police. The victim girl has proved her statement recorded u/s 164 Cr.PC as Ext. 3.
- 9. On scrupulous perusal of prosecution evidences, I find that the victim girl has resiled from her earlier statement

made before police. She has now failed to prove the prosecution case against the accused. Her father has also quoted his daughter, as saying to him that the accused did not do anything to her.

- 10. The medical evidence also failed to support the allegation of rape. Medical evidence sometimes may not support an allegation of rape. Therefore, I would ignore the medical evidence in this case, but so far as the evidence of the prosecutrix and the informant is concerned, I find that they have miserably failed to prove the prosecution case against the accused.
- 11. Under the circumstances, I find myself foreclosed against all options, but to hold that the prosecution has failed to prove the offence against the accused.

#### **ORDER**

12. That being the position, the accused Sri Ajad Rajput @ Sunil is found not guilty and accordingly he is acquitted from this case.

Given under my hand and seal of this Court on this 4th day of April, 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 Dr. Rani Gogoi
- 2. PW2 Sri Sawan Tanti
- 3. PW3 Smti Ashuwani Tanti

# **PROSECUTION EXHIBITS**

- 1. Ext.1- Medical report
- 2. Ext. 2- Ejahar
- 3. Ext. 3- Statement of victim u/s 164 Cr.PC

## **DEFENCE WITNESS**

None.

Special Judge

<u>Tinsukia</u>