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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

Advocate

<u>Tinsukia</u>

# POCSO Case No. 06 (M) of 2018

## U/s 4 OF THE POCSO Act

The State of Assam Complainant.
-Versus -
Sri Mridul Sen @ Nidul
S/o- Sri Narayan Sen
R/o- Dihing T.E, Pathar Basti
P.S- Marghertia
District- Tinsukia, Assam Accused.
Appearance:
Sri B.L Agarwal,
Spl. Public ProsecutorFor the Complainant
Mr. S.K Agarwal,

..... For the accused.

Date of Argument: 18/05/2018

Date of Judgment: 18/05/2018

#### J U D G M E N T

### **PROSECUTION CASE**

On 15/02/2018 Sri Ajay Tanti had lodged an ejahar 1. before police, alleging that the accused being the husband of his sister had married another girl. So, the informant Ajay Tanti sought the help of police. During the period of investigation, the victim girl was sent for medical examination. The doctor interalia reported that the victim was between 19 to 22 years of age. The victim girl was also sent to the court for recording her statement u/s 164 Cr.PC, wherein she stated that she was 13 years of old at that time. She has stated before the Magistrate that two months prior to the occurrence, she had eloped with the accused and stayed with him for the next two months. During that period, she and the accused had physical relationship. The victim disclosed that her husband had married another girl from Dibrugarh.

#### **POINT FOR DETERMINATION**

2. 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**

- 3. In the instant case, the prosecution side has examined the informant Ajay Tanti and the victim girl. The defence plea is total denial and no evidence has been adduced by the accused. I have carefully gone through the prosecution evidences. The sum and substance of the evidence of Ajay Tanti is that his sister was given in marriage to the accused and on one occasion, she suspected that the accused was having some sort of relationship with another woman and on that issue she returned home. He has stated that the suspicion of his sister was not true and therefore after filing of the ejahar by him, the victim girl continued to stay with the accused till today.
- 4. The victim girl has also stated in the similar manner. She has stated that she suspected that her husband was having illicit relationship with another woman and on that issue she returned home, but she has admitted that presently she has been residing with the accused. The victim girl has stated that she was given in marriage to the accused.
- 5. On perusal of the evidence adduced by the prosecution side, I have found that the prosecution side has failed to prove the offence against the accused beyond all reasonable doubts.
- 6. Here in this case, the doctor has reported that the age of the victim girl is about 19 to 22 years. Today, while she was examined by the Ld Special Public Prosecutor, she has stated her age today is 20 years. The Ld. Special Public Prosecutor has filed a document, issued by the Gaonburha, wherein, it was stated that the victim was born on

15/05/1998. In my considered opinion, the age certificate given by the Gaoburha is never acceptable in the eye of law. At this stage, I am of the considered opinion that the evidence of the victim girl to the effect that she was about 20 years old at the time of occurrence, deserves to be accepted. The occurrence of this case took place only three months ago. Considering all these facts, I hereby hold that the prosecution has failed to prove the offence against the accused beyond all reasonable doubts.

#### **ORDER**

7. That being the position, the accused Mridul Sen is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 18th day of May, 2018.

(P.J. Saikia)

Special Judge

**Tinsukia** 

Dictated & corrected by me.

Special Judge

Tinsukia

### A P P E N D I X

## **PROSECUTION WITNESSES**

- 1. PW1 Sri Ajay Tanti
- 2. PW2 Smti Sivani Tanti

## **PROSECUTION EXHIBITS**

1. M. Ext.1- Birth Certificate of victim

### **DEFENCE WITNESS**

None.

Special Judge

<u>Tinsukia</u>