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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

# POCSO Case No. 42 (T) of 2018

### U/s 6 of the POCSO Act

-Versus -
Sri Thepeng Karua @ Sunil
S/o- Sri Muhan Karua
R/o- Betjan T.E, No.2. Jungle Line
P.S- Makum
District- Tinsukia, Assam Accused.
Appearance:
Sri B.L Agarwal,

Spl. Public Prosecutor ..........For the State

The State of Assam ...... Complainant.

N.K. Phukan

Advocate under DLSA ...... For the accused.

Date of Argument: 12/06/2019

Date of Judgment: 12/06/2019

### J U D G M E N T

#### **PROSECUTION CASE**

- 1. The accused and the victim were in love with each other. The accused had sexual intercourse with the victim and when she became pregnant for five months, her mother detected the matter. The mother of the victim wanted to give her daughter to the accused in marriage, but the family members as well as the accused himself refused to accept the victim.
- 2. During the period of investigation, the victim girl was subjected to medical examination. She was also produced before a Magistrate for recording her statement u/s 164 Cr.PC.

#### POINT FOR DETERMINATION

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

#### **DECISION AND REASONS THEREOF**

4. In this case, the victim was born on 12/10/2000. The occurrence of this case took place between 01/01/2018 and 07/08/2018.

- 5. The victim girl has stated in her evidence that she was in love with the accused and therefore, she had sexual intercourse with the accused for ten times and for that matter, she became pregnant. The victim girl has stated that her mother had approached the parents of the accused and they refused to accept her as their daughter-in-law. For that matter, the mother of the victim has lodged an ejahar before police.
- 6. The mother of the victim girl has stated that when she came to know from her daughter that she was five months pregnant, she talked to the parents of the accused, in order to give her daughter in marriage to the accused. The mother of the victim girl has stated that the parents of the accused had denied the paternity of the child, that was being carried by the victim.
- 7. Here in this case, both the mother of the victim and the victim have been cross examined by the Ld. defence counsel. I have no hesitation to hold that the cross examination portions of their evidences do not have any material worth for an elaborate discussion. In this case, the victim was a consenting party to the act of the accused. There is no doubt that the victim was more than 16 years old, though she was below 18 years of age. Therefore, the victim had the legal competence to give consent for sexual intercourse.
- 8. Thus, the prosecution evidence has failed to prove that the victim girl was subjected to aggravated penetrative sexual assault by the accused. I, therefore, hold that the offence of aggravated penetrative sexual assault upon the victim girl by the accused has not been proved beyond all reasonable doubts.

### ORDER

9. In the result, the accused Thepeng Karua @ Sunil Karua is found not guilty and accordingly the accused is acquitted from this case. Presently, the accused is in jail hazot, so he be set at liberty forthwith.

Given under my hand and seal of this Court on this 12th 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 Smti Lila Karua
- 2. PW2 Smti Radhi Karua

# **PROSECUTION EXHIBITS**

- 1. Ext.1- Statement of victim u/s 164 Cr.PC
- 2. M. Ext. 1- Birth certificate of victim

### **DEFENCE WITNESS**

None.

Special Judge

<u>Tinsukia</u>