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

Present: Sri P.J. Saikia,

Special Judge, Tinsukia

# POCSO Case No. 16 (M) of 2016

U/s. 4 of the POCSO Act

The State of Assam.....Complainant

### - Versus -

# Sri Sanjoy Boruah @ Jotin

S/o Late Indreswar Boruah R/o Niz Makumkilla

P.S. Margherita & Dist. Tinsukia, Assam.....Accused

# Appearance:

Sri A.K. Choubey,

Public Prosecutor.....For the State

Sri N. Prasad,

Advocate......For the Accused

Date of Argument: 27.10.2017

Date of Judgment: 27.10.2017

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

#### **THE PROSECUTION CASE**

1. The prosecution case against the accused is that on 11.03.2016 at about 4 p.m., the 27 years old accused had called the 7 years old minor daughter of the informant into his house on a promise of giving her money. When the girl entered into his house, the accused disrobed her and kept her confined. But, the victim girl managed to escape from his house.

#### **POINT FOR DETERMINATION**

2. The only point for determination in this trial is as to whether the accused Sanjoy Boruah @ Jotin had sexually assaulted the minor victim girl?

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

- 3. In order to prove the offence against the accused, the prosecution side has examined as many as 5 (five) witnesses, including the victim girl and the doctor, who examined the victim during the period of investigation. The defence plea is total denial. I have carefully gone through the evidence.
- 4. The evidence of the doctor is irrelevant in the instant case, because there was no allegation of any penetrative sexual intercourse.
- 5. Now, I shall take up the evidence of the victim girl. She stated that at the relevant time of occurrence, she had gone to witness the construction of a bridge near her residence. After some time, she

returned home, but while she was coming home, she met the accused near his house. The victim stated that the accused called her to his house because he wanted to give her biscuits. The victim stated that the biscuits were not available in his house. Therefore, he stated that when his mother comes home, she will give her biscuits.

- 6. The victim further stated that the accused raised her frock and put his hand into her pants and touched her vagina and the accused told her that she should touch his penis. The victim stated that she did not see the penis of the accused, rather she shouted at him and left the house of the accused.
- 7. Now, I shall take up the evidence of the informant, who is the father of the victim girl. His evidence is hearsay, because he was not present in his house at the time of occurrence. He just lodged the ejahar, marked as Ext.3.
- 8. The mother of the victim girl has quoted her daughter as saying to her that the accused tried to remove her pants. The mother has also quoted her daughter as saying to her that the accused had inserted his finger into her vagina.
- 9. The last witness in this case is Dilip Borgohain. His evidence is also hearsay. The witness Dilip Borgohain is the brother of the mother of the victim.
- 10. All the prosecution witnesses have been extensively cross-examined by the defence counsel. In her cross-examination, the victim girl has stated that she gave statement to police after her mother tutored her as to how to give the statement and accordingly, she gave

the statement to police. She further stated that when she was brought before a Magistrate for recording her statement u/s. 164 of the Cr.P.C., at that time also, her mother tutored her as to how the statement was to be given. The victim stated that on the day of occurrence, all the villagers got together and thrashed the accused.

- 11. The thrashing of the accused by the villagers and thereafter, handing over of the accused to the police has been supported by the mother of the victim during her cross-examination.
- 12. The mother of the victim girl never stated before police that the accused had tried to remove pants of her daughter and also inserted his finger into her vagina. When this fact was brought to the notice of the witness, she denied. It may be stated that the mother of the victim stated before police that the accused wanted the victim girl to touch his penis.
- 13. From the evidence available in the record, I find that the mother of the victim has made exaggerations. Another aspect of this case that came to my notice is that all the prosecution witnesses, who are named, are close relatives of the victim. It is true that relationship between the witnesses cannot be a reason to discard or disbelieve the witnesses. But, at this stage, I shall rely upon decision of the Hon'ble Supreme Court regarding the value of evidence of related witnesses.
- 14. The Hon'ble Supreme Court in Raju @ Balachandran & Ors. Vs State of Tamil Nadu (AIR 2013 SC 983), has deliberated upon the subject the difference between a related witness and an interested witness. Referring to its own decisions in State of Rajasthan v. Kalki, (1981) 2 SCC 752, State of Bihar v. Basawan Singh, AIR

1958 SC 500, Dalip Singh v. State of Punjab, 1954 SCR 145, Waman v. State of Maharashtra, (2011) 7 SCC 295, Sarwan Singh v. State of Punjab, (1976) 4 SCC 369, Balraje v. State of Maharashtra, (2010) 6 SCC 673, Prahlad Patel v. State of Madhya Pradesh, (2011) 4 SCC 262, Israr v. State of Uttar Pradesh, (2005) 9 SCC 616, S. Sudershan Reddy v. State of Andhra Pradesh, (2006) 10 SCC 163, State of Uttar Pradesh v. Naresh, (2011) 4 SCC 324, Jarnail Singh v. State of Punjab, (2009) 9 SCC 719 and in Vishnu v. State of Rajasthan, (2009) 10 SCC 477, the Hon'ble Apex court has held -----

The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law, as held in Dalip Singh and pithily reiterated in Sarwan Singh in the following words:

"The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration."

15. Furthermore, in the case before me, the victim in her evidence has also stated that she was tutored by her mother to give statements before the Magistrate as well as before the police.

- 16. Children are the most vulnerable of all witnesses. Several factors influence children's memory capacity, including the child's age, psychological development and intellectual ability, the complexity of the event, their familiarity with the event and the delay between the event and the time at which the event is recalled.
- 17. The Supreme Court, in **State of M.P. v. Ramesh and Anr.**, reported in (2011) 4 SCC 786), has examined the law relating to deposition by Child Witnesses. While examining the law on the aspect the Court has observed that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.
- 18. The aforesaid facts have created a substantial doubt about the veracity of the prosecution case against the accused Sanjoy Boruah @ Jotin. I find that the truthfulness of the prosecution case against the accused is a subject matter of substantial doubt. At this stage, I have decided to give the benefit of doubt to the accused.
- 19. The prosecution evidence failed to inspire confidence and accordingly, I hereby hold that the prosecution has failed to prove the offence against the accused beyond all reasonable doubt.

# **ORDER**

20. That being the position, the accused Sanjoy Boruah @ Jotin is found not guilty and he is acquitted from this case on benefit of doubt.

Given under my hand and seal of this Court on this the  $27^{\text{th}}$  day of October, 2017.

Dictated & corrected by me.

Special Judge <u>Tinsukia</u> **(P.J. Saikia)**Special Judge
<u>Tinsukia</u>

# A P P E N D I X

# **PROSECUTION WITNESSES**

PW1 - Dr. Pulak Paul

PW2 - Smti Mamu Boruah

PW3 - Sri Tarun Boruah

PW4 - Smti Baby Boruah

PW5 - Sri Dilip Borgohain

# **PROSECUTION EXHIBITS**

Ext.1 - Report prepared by Dr. Jahnabi Das

Ext.2 - Radiological Report with X-Ray Plates

Ext.3 - Ejahar

Ext.4 - Statement of Baby Boruah

Mat. Ext.1- Birth Certificate

### **DEFENCE WITNESSES AND EXHIBITS**

NIL

Special Judge <u>Tinsukia</u>