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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 03 (M) of 2018 U/s 12 of POCSO Act

03/12/2018, 17/12/2018, 21/12/2018 & 04/01/2019

Date of Argument:

Date of Judgment: 10/01/2019

J U D G M E N T

PROSECUTION CASE

- 1. On the day of occurrence, at about 2 pm, the accused had come to the house of the victim girl. At that time, she was alone in the house, as her parents had gone out of home for work. On the day of occurrence, Swarasati Puja was being celebrated. It is alleged that the accused took the victim girl to the room of her uncle, where he pressed her mouth and removed her pants. At that moment, the mother of the victim girl entered into the room and nothing further could take place. The mother of the victim girl had lodged an ejahar before police.
- 2. During the period of investigation, the victim girl was subjected to medical examination. But the victim girl refused to give consent for medical examination of her private parts. However, on the basis of radiological examination, the Doctor opined that the age of the victim girl was between 13 to 15 years.
- 3. During the period of investigation the victim girl had also given a statement u/s 164 Cr.PC, wherein she has claimed to be 18 years of age. She has supported the prosecution case, while giving her statement u/s 164 CrPC.

POINT FOR DETERMINATION

4. The only point for determination in this trial, is as to whether the accused had sexually harassed the victim girl?

DECISION AND REASONS THEREOF

- 5. In order to prove the case against the accused person, the prosecution side has examined as many as six witnesses, including the Dr. Nirja Saikia, who had examined the victim girl during investigation and the Police Investigating Officer Kuladhar Konwar. The defence plea is total denial and no evidence has been adduced by the accused. I have carefully gone through the prosecution evidences.
- 6. Considering the nature of the case, I shall first take up the evidence of the victim girl. She has supported the prosecution case, by stating that the accused took her to the room of her uncle, where he had pressed her mouth and removed her pants. The victim girl has stated that the accused had lean upon her and at that moment her mother had entered into the room. During cross examination, the victim girl stated that on the day of occurrence and at the relevant time of occurrence, her younger brother Rahul was also in the house, but as he was playing on his own, he could not see the victim girl being taken into the room of her uncle. The victim girl has stated that the houses of Sita Sachi, Bodi and Mana have their houses around her house. The victim girl has stated that all these persons had come to her house when her mother started to beat the accused. The victim girl has stated that police had taken away her wearing apparels.
- 7. Now, I shall take up the evidence of the mother of the victim girl. She has stated in her evidence that according to the birth certificate (Ext.1), her daughter was born on 05/06/2009. She has stated in her evidence that on the day of occurrence, she had gone out of her house for work leaving behind the victim girl and her younger brother in the house.

She has stated in her evidence that within 15 to 20 minutes later, she returned home and heard moaning sound of her daughter, coming out from the room of her brother in law. Initially, the mother of the victim girl thought that it was a sound of a dog, but she opened the door of the room and saw that the accused was pressing the mouth of her daughter and he was trying to lay her on the bed. The mother of the victim girl has stated that she immediately jumped up over the accused and beat him and after that the accused fled. The mother of the victim girl has stated that on the same day, she had lodged an ejahar before police.

- 8. During cross examination, the mother of the victim girl has stated that she did not know her own date of birth, nor did she know the date of birth of her daughter.
- 9. The third witness is Laxmi Sonar. She is a neighbour of the victim girl. She has stated in her evidence that on the day of occurrence, at about 4 pm, she noticed that the mother of the victim girl was crying and she told this witness that the accused had committed rape upon her daughter.
- 10. There is nothing relevant in the cross examination portion of the evidence of Laxmi Sonar.
- 11. The witness Smti Ranjumoni Gohain has stated in her evidence that on the day of occurrence, she had noticed that there was a commotion in the house of the victim girl and also noticed that some police personnel were present there. Therefore, she had gone to the house of the victim girl, accompanied by her sister Mamoni Gohain. Ranjumoni Gohain has stated that when she arrived at the house of the victim girl, she saw that the brother of the accused Romesh Tanti was

beating the mother of the victim girl. According to Ranjumoni Gohain, she was told by the mother of the victim girl that her daughter was detained in a room by the accused Romesh Tanti. She has stated in her evidence that in her presence, the mother of the victim girl had asked her daughter as to how the incident took place and to that the victim girl told her mother that while she was watching T.V. in the house, she was carried away by the accused to the house of her uncle.

- 12. The Police Investigating Officer Kuladhar Konwar spoke about the investigation.
- 13. Here in this case, the Dr. Nirja Saikia is the medical officer, who had examined the victim girl during the period of investigation. She has stated in her evidence that the victim girl did not give consent for examination of her private parts. Therefore, she had to physically examine her. She has stated in her evidence that as per radiological report, her age was between 13 to 15 years.
- 14. On scrupulous perusal of the prosecution evidences, I find that the accused has never disputed or challenged the fact that the victim was aged between 13 to 15 years on the day of occurrence.
- 15. The birth certificate of the victim girl has been exhibited as Ext. 1 and in that it is stated that the victim girl was born on 05/06/2009. Therefore, it is proved beyond all reasonable doubts that on the day of occurrence, the victim girl was below 18 years of age.
- 16. So far as the evidences of the victim and her mother is concerned, these two witnesses have been extensively cross examined by the defence counsel. Inspite of that I could not

find any discrepancies and contradictions in their evidences. I find that the evidences of these two witnesses have inspired confidence.

17. These two witnesses are found to be reliable and trustworthy. In this case, the ejahar was lodged immediately after the occurrence. There was no delay in lodging the ejahar. The accused has not pleaded any enmity with these two witnesses. I do not see any reason to disbelieve these two witnesses. Under the circumstances, the offence of sexual harassment meted out to the victim girl is proved beyond all reasonable doubts against the accused Romesh Tanti.

ORDER

18. In the result, the accused Romesh Tanti is found guilty and accordingly he is convicted u/s 12 of the POCSO Act.

SENTENCE

- 19. The convict Romesh Tanti is guilty of committing sexual harassment upon a child. The children are always vulnerable to sexual assault, as they are defenceless. This is the reason why our Parliament has enacted the POCSO Act to deal with the peodophiles.
- 20. I have heard the convict in the matter of sentence. He still denied his involvement in the instant case. I do not find any mitigating circumstances in his favour. Thus, considering all the relevant facts relating to the convict, I hereby sentence to undergo Rigorous Imprisonment of 6 (Six) months. He is also sentenced to pay a fine of Rs. 5,000/- (Rupees Five Thousand Only) and in default of payment of the fine, he shall undergo another period of imprisonment of 1 (one) month.

The period of detention already undergone by the convict in custody shall be set off against the substantive sentence. The fine if paid, shall be given to the victim girl accordingly.

COMPENSATION

- 21. Law has mandated that victims of a crime must be compensated in monetary terms. Here the victim girl must have undergone mental trauma, because of the sexual assault carried on upon her by the convict. Therefore, I hereby direct that an amount of Rs. 10,000/- (Rupees Ten Thousand Only) shall be paid to the victim girl for her rehabilitation. The compensation money shall be paid by the District Legal Service Authority, Tinsukia. I hope the sentence and compensation awarded in the instant case is sufficient to reach the ends of justice.
- 22. 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 10th day of January, 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 - Smti Sita Yadav

2. PW2 - Smti Neha Yadav

3. PW3 - Smti Laxmi Sonar

4. PW4 - Dr. Nirja Saikia

5. PW5 - Smti Ranjumoni Gohain

6. PW6 - Sri Kuladhar Konwar, S.I

PROSECUTION EXHIBITS

1. Ext.1- Birth certificate of victim

2. Ext. 2- Statement of Neha Yadav

3. Ext. 3- Medical report

4. Ext.4 - Ejahar

5. Ext. 5 - Sketch map

6. Ext. 6 - Charge sheet

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>