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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

POCSO Case No. 68 (T) of 2018 U/s 4 of POCSO Act

Date of Judgment: 01/10/2019

J U D G M E N T

PROSECUTION CASE

- 1. On the day of occurrence, at about 2 pm, the victim had gone to the nearby jungle to bring some vegetables. She had a sickle with her hands. While she was in the jungle, she met the accused, who asked her whether she had seen a red colour cow. The victim told him that she did not notice his cow and thereafter the accused took her deep into the jungle, where he had pressed her breasts and also inserted his hand inside her pant and touched her vagina. Thereafter, the accused had committed rape upon her.
- 2. At the time of occurrence, the victim resisted the accused and thereby she hit the accused with the sickle, which was in her possession at that time and the accused sustained one cut injury below his eyes.
- 3. The victim returned home after the occurrence and informed her mother about the occurrence.
- 4. After four days of the occurrence, the victim girl found the accused on the road and thereafter her mother had lodged an ejahar before police. After filing of the ejahar, the victim was subjected to medical examination.
- 5. The findings of the Doctor are as follows:-

"Her age of menarche was 12. Last menstrual period was unknown. At the time of examination, she was not menstruating. She was not pregnant at the time of examination. In general physical examination- she was oriented to space and time. Clothings - stains of blood present. She had washed her body and her genitals. Teeth- 28. On

examination of genitals- no injury found, but history of biting over breast- present. Local examination of genitals portion - labia major swelling and tear was present. There was vulval haematoma, size about 5 cm x 3cm on the right side. Vulval bleeding was present. Hymen was torn, but there was no fresh injury. Vaginal smear of hymen was taken for detection of spermatozoa. On examination of supplied smear- does not reveal any spermatozoa. Urine for HGC was done- Negative. USG advised. As per radiological opinion, her age is between 14 to 16 years."

- 6. The Doctor opined that there were no signs of suggestive use of recent force and forceful penetration into the vagina.
- 7. On conclusion of investigation, police filed the charge sheet against the accused.

POINT FOR DETERMINATION

8. The only point for determination in this trial, is as to whether on 23/12/2018, the accused had committed penetrative sexual assault upon the victim girl?

DECISION AND REASONS THEREOF

9. In order to prove the case against the accused person, the prosecution side has examined as many as five witnesses, who included the Police Investigating Officer and the Doctor, who had examined the victim girl at the time of occurrence. The defence plea is total denial and no evidence has been adduced by the accused. I have carefully gone through the prosecution evidences.

- 10. The mother of the victim girl is the informant herein and she was examined first by the prosecution. Her evidence is based on whatever she had heard from her daughter. She has stated in her evidence that her daughter told her that one unknown person had committed rape upon her inside a jungle. The mother of the victim girl has quoted her daughter as telling her that she had attacked the accused with a sickle and for that matter, the accused sustained a cut injury below his eyes. The mother of the victim girl has stated that since she could not find the accused and therefore, she did not file ejahar immediately after the occurrence.
- 11. Now, I shall take up the evidence of the victim girl. She has supported the prosecution case against the accused in her evidence.
- 12. The witness Papu Baruah has stated in his evidence that on the day of occurrence at about 4 pm, the mother of the victim girl had come to his house and told him that the accused had committed rape upon her daughter inside the jungle. Papu Baruah has stated that for the next four days they were searching for the accused and on the fourth day, they found him at Tekeraguri village and handed him over to police. He has stated that the accused had admitted that he had committed rape upon the victim girl.
- 13. The Police Investigating Officer spoke about the investigation of the case.
- 14. All the prosecution witnesses have been cross examined by the Ld. defence counsel.
- 15. During her cross examination, Dr. Lovelin, who had examined the victim girl during the period of investigation has

stated before the defence counsel that in her report, she mentioned that the injury which was found on the labia majora of the victim girl was recent. Dr. Lovelin further stated that the word "recent" does not mean fresh. She has stated that the word recent in her report means till the injury was not healed. Dr. Lovelin has further stated before the defence counsel that the injury which were found on the labia majora of the victim were fresh and by the word fresh, she meant that it was about 24 hours old.

- 16. The mother of the victim girl did not state before the police that on the day of occurrence, her daughter came home crying and she told her that one unknown person had committed rape upon her. She also did not state before police that her daughter told her that she had attacked the accused with a sickle and caused a cut injury below his eyes. These facts have been confronted to this witness by the Ld. defence counsel. The Police Investigating Officer in his cross examination has proved that fact. The mother of the victim girl has stated before the defence counsel that after four days of the occurrence, when she discovered the accused, he was still bleeding from his wound below his eyes.
- 17. The victim girl has stated before the defence counsel that after the occurrence, when she returned home she did not tell anyone on the road about the said occurrence. The victim also stated before the defence counsel that after four days of the occurrence, she recognized the accused by seeing the injury mark below his eyes.
- 18. The evidence available in the record clearly shows that at the time of occurrence, the victim girl did not know the accused. She had caused a cut injury below the eye of the

accused by using a sickle and after four days of the occurrence, she identified the accused on seeing the cut injury below his eyes. There is no investigation in this case to that effect that at the time of his apprehension, the accused had a cut injury below his eyes.

- 19. Another aspect of the evidence that has come to my notice is that Dr. Lovelin in her report marked as Ext. 1 has stated that there were signs of suggestive of recent use of force and forceful penetration into the vagina. Dr. Lovelin has clarified that the said "recent injuries" were not fresh injuries. Dr. has also clarified in her evidence that the word recent means that till the injury was not healed.
- 20. Here in this case, after four days of the occurrence the ejahar was lodged. The reason is that the victim did not know the accused. After four days of the occurrence, she saw the accused on the road and identified him from the injury below his eyes. In our society many people can have the same or similar injuries below their eyes. The method of identification of the accused failed to inspire confidence.
- 21. In my considered opinion, the delay of four days has not been satisfactorily explained in the instant case. It is true that delay in lodging an ejahar does not always affect a prosecution trial, but in the instant case, the delay has caused some doubts in my mind. The Investigating Officer has not stated in his evidence that the accused had a cut injury below his eyes, when he was arrested.
- 22. Under the aforesaid circumstances, I have no hesitation to hold that there is a substantial doubt about the veracity of the prosecution case against the accused. I, therefore, hold

that the prosecution evidence failed to inspire confidence. The prosecution has failed to prove the offence against the accused beyond all reasonable doubts.

ORDER

23. In the result, the accused Binoy Sonowal is found not guilty and accordingly, he is acquitted from this case on benefit of doubt.

Given under my hand and seal of this Court on this 1st day of October, 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 Atuwari Orang
- 2. PW2 Smti Manju Orang
- 3. PW3 Dr. Lovelin
- 4. PW4 Sri Papu Baruah
- 5. PW5 Sri Kapil Ch. Das

PROSECUTION EXHIBITS

- 1. Ext.1- Medical report
- 2. Ext. 2- Radiological report with X-ray plates
- 3. Ext. 3- Laboratory report
- 4. Ext. 4 G.D. entry
- 5. Ext. 5 Sketch map
- 6. Ext. 6 Ejahar
- 7. Ext. 7 Statement of victim u/s 164 Cr.PC
- 8. Ext. 8 Charge sheet.

DEFENCE WITNESS

None.

Special Judge

<u>Tinsukia</u>