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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

<u>Tinsukia</u>

## POCSO Case No. 61 (T) of 2017

### U/s 8 of the POCSO Act

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

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| -Versus -                                 |
| Sri Arjun Chouhan,                        |
| S/o- Sri Surajbonshi Chouhan              |
| R/o- Hijuguri Rajendra Nagar, Near Maszid |
| P.S- Tinsukia                             |
| District- Tinsukia, Assam Accused.        |
| Appearance:                               |
| Sri B.L Agarwal,                          |
| Spl. Public ProsecutorFor the Complainant |
| Sri Munna Kr. Singh,                      |
| Advocate For the accused.                 |

Date of Argument: 21/08/2018

Date of Judgment: 28/08/2018

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

#### **PROSECUTION CASE**

1. On the day of occurrence, the victim aged about 12/13 years old, who was a student of class VI was going to school in the morning. She was accompanied by her friend Sima Mahato. While both were walking towards school, the accused appeared before them and he touched the chest of the victim girl and left the place.

#### POINT FOR DETERMINATION

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

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

- 3. In order to prove the case against the accused person, the prosecution side has examined as many as nine witnesses, including the police investigating officer and the doctor, who examined the victim girl during the period of investigation. The defence plea is total denial and no evidence has been adduced by the accused. I have carefully gone through the prosecution evidences.
- 4. Considering the nature of the case, I shall first take up the evidence of the victim. She has supported the prosecution case in her evidence-in-chief. Her friend Sima Mahato has also supported the prosecution allegation against the accused.

- 5. Now, I shall take up the evidence of Abdul Ansari. He has stated that at the relevant time of occurrence, he was standing infront of the tea shop of Ramjee. He has stated that the accused was drunk and was limping. According to Abdul Ansari, the accused was throwing abuses and some people caught hold of him and beat him and later on handed him over to the police.
- 6. The witness Lal Babu Rai has stated that at the relevant time of occurrence, he was taking his child to school and then he had seen that the victim was crying on the road. He has stated that he asked the victim as to why she was crying, but she did not give any answer. According to him, another woman, who was standing nearby told him that one body had molested the victim and that lady also showed him the boy who allegedly molested the victim girl. Lal Babu Rai straightway apprehended the boy and handed him over to the police.
- 7. In this case, the father of the victim girl has been examined and referred to as the PW1. He had lodged the ejahar before police. He is not an eye witness to the occurrence. Therefore, his evidence is irrelevant for the present case. The other witnesses namely Smti Soni Devi and Ramji Sah have deposed irrelevant evidence. The Police Investigating Officer spoke about the investigation of the case. The Doctor did not find any injury upon the person of the victim girl and the medical report has been proved as Ext.4 by the Dr. Bicki Sonar.
- 8. The victim and the other witnesses have been cross examined by the defence counsel. The victim stated before the defence counsel that the accused touched her breasts.

Ramjee Sah and his wife were present at the place of occurrence at the relevant time of occurrence. The witness Seema Mahato has stated before the defence counsel that at the relevant time of occurrence, the accused seems to be under the influence of liquor, as because he was limping at that time.

- 9. The victim has referred to Ramjee Sah in her cross examination. I have already stated that his evidence is irrelevant for the present case, as because he never admitted that he had seen the occurrence.
- 10. On scrupulous perusal of the prosecution evidence, one thing clearly appears that at the relevant time of occurrence, the accused was under the influence of liquor.
- 11. In a case u/s 29 of the POCSO Act, it has been stated that where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3,5,7 and 9 of the Act, this Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless contrary is proved. So, u/s 8 of the POCSO Act with which the accused is charged with there is no such presumption. Further more, in a criminal case, the intention of the accused to commit an offence is a primary requirement for successful conviction. The words "sexual assault" defined by the POCSO Act has been defined under Section 7 of the Act as follows:

"Sexual Assault - Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which

involves physical contact without penetration is said to commit sexual assault."

12. In the instant case, there is evidence that at the relevant time of occurrence, the accused was limping, as because he was drunk at that time. I have found that the prosecution evidence has failed to convince that the accused had the intention to commit the offence of sexual assault upon the victim girl. The evidence failed to inspire confidence to that effect. Under the circumstance, I hereby hold that the offence of sexual assault u/s 8 of the POCSO Act has not been proved against the accused beyond all reasonable doubts.

#### **ORDER**

13. In the result, the accused Sri Arjun Chouhan is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 28th day of August, 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 Rajendra Mahato
- 2. PW2 Smti Joymala Kumari
- 3. PW3 Smti Seema Mahato
- 4. PW4 Sri Abdul Ansari
- 5. PW5 Dr. Bicki Sonar
- 6. PW6 Smti Soni Devi
- 7. PW7 Sri Lal Babu Rai
- 8. PW8 Sri Ramji Sah
- 9. PW9 Sri Paragjyoti Buragohain, S.I.

#### **PROSECUTION EXHIBITS**

- 1. Ext.1- Ejahar
- 2. Ext. 2- Statement u/s 164 Cr.PC
- 3. Ext. 3- Statement u/s 164 Cr.PC
- 4. Ext. 4- Doctor's report
- 5. Ext. 5- Radiological report
- 6. Ext. 6- Certified extract copy of GDE No. 192 dated 11.9.17
- 7. Ext. 7- Sketch map
- 8. Ext. 8- Charge sheet

## **DEFENCE WITNESS**

None.

Special Judge

<u>Tinsukia</u>