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 2017

U/s 4 of the POCSO Act

The state of Assum
-Versus -
Sri Rajesh Karmakar @ Pusu
S/o- Lt. Chutu Karmakar
R/o- Ambikagiri Rai Choudhury Path,
Neogchuk, Hijuguri
P.S- Tinsukia
District- Tinsukia, Assam Accused.
Appearance:
Sri B.L Agarwal,

Spl. Public ProsecutorFor the State

The State of Assam Complainant.

Shreeram Prasad,

Advocate For the accused.

Date of Argument: 11/06/2019

Date of Judgment: 25/06/2019

J U D G M E N T

PROSECUTION CASE

- 1. In the morning of 27/10/2017, the 9 years old daughter of the informant had gone out of her house to collect flowers from the neighbourhood. When she was collecting flowers, an unknown person appeared there and caught hold of her by her hands and forcibly took her to the nearby paddy field. The said person had removed the long pant of the victim and thereafter inserted his finger into her vagina. The victim girl shouted for help, but no one came forward. Thereafter, the said unknown person left the place and the victim girl immediately put on her pants and ran towards home.
- 2. On seeing the condition of the girl, her father had taken her to a Doctor at Tinsukia. The girl was referred to Dr. Giridhari Bayan of Holy Child Clinic & Hospital at Dibrugarh. Dr. Giridhari Bayan found that there were signs penetration in her vagina, as because there was a small cut in her labia minora and it was oozing with blood. Dr. Bayan also opined that there were some signs of penetration of a male penis.

- 3. The father of the victim girl did not lodge any ejahar immediately after the occurrence as because he feared that the future of his daughter would be at stake if the matter is made public.
- 4. After about fifteen days, on 12/11/2017, the victim along with her father was having a morning walk in their locality. At that time, the accused was also traveling on the same road. The victim girl identified the accused and informed her father that he was the person, who had inserted his finger into her vagina on 27/10/2017. The father of the victim girl nabbed the accused and handed him over to police at Hijuguri Outpost. Police at Hijuguri Outpost made a G.D. entry vide G.D. Entry No. 238 dated 12/11/2017. Police immediately sent the victim to the Tinsukia Civil Hospital for medical examination.
- 5. Dr. Nicky Shah of Tinsukia Civil Hospital examined the victim at about 12.05 pm that day. Dr. Nicky Shah did not find any significant matters at the time of examination. However, Dr. Shah had her radiological examination and at that time, it was ascertained that the victim was about 8 to 10 years old. Dr. Shah also did not find any signs of sexual assault, except for vaginal tenderness.
- 6. On conclusion of investigation, police filed the charge sheet against the accused.

POINT FOR DETERMINATION

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

DECISION AND REASONS THEREOF

- 8. In order to prove the case against the accused, the prosecution side has examined as many as eleven witnesses, including the Police Investigating Officer Paragjyoti Buragohain and Dr. Nicky Shah and Dr. Giridhari Bayan. The defence plea is total denial. I have carefully gone through the prosecution evidences.
- 9. Here in this case, Dr. Giridhari Bayan has stated during his cross examination that he found one cut mark in the labia minora of the victim girl and it was due to itching of the vaginal canal. Dr. Bayan has stated that the injury sustained by the victim girl cannot be sustained, if the victim falls on a hard substance or if the victim had the habit of riding bicycle. Dr. Bayan had examined the victim girl on 28/10/2017.
- 10. Dr. Nicky Shah examined the victim girl after about 14 days and she found that there was vaginal tenderness. Dr. Nicky Shah has stated before the defence counsel that such tenderness might also be caused because of itching.
- 11. After going through the evidences of Dr. Giridhari Bayan and Dr. Nicky Shah, I find that the victim had sustained injuries on her vagina. Dr. Giridhari Bayan stated in his evidence that the cut mark, which he found in the labia minora of the victim was due to stretching of the vaginal canal. The evidences of these two Doctors do not have any contradictions and discrepancies. Therefore, it is proved beyond doubt that the victim sustained injuries in her vagina on the day of occurrence.

- 12. Now, the most pertinent question that arises is as to whether the present accused had caused the injuries to the victim girl?
- 13. The father of the victim girl has stated that while he was having a morning walk with his minor daughter, the victim had seen the accused on the road. The father of the victim girl has stated that his daughter identified the accused to be the person, who had inserted his finger into her vagina on the day of occurrence. The father of the victim girl has stated that at that point of time, he did not know the name of the accused, but another pedestrian told him that he was a mason. The father of the victim has stated that an unknown person showed him the house of the accused. The father of the victim has further stated that he apprehended the accused from his house and handed him over to police.
- 14. The victim girl has stated in her evidence that at the time of occurrence, she was collecting flowers and suddenly, an unknown person appeared before her and forcibly took her to a paddy field. According to the victim girl, the accused pulled down her pants and thereafter inserted his finger into her vagina. The victim girl further stated that she shouted for help, but no one came forward. According to the victim girl, after some days of the occurrence, when she was having a morning walk with her father, she had seen the accused on the road. The victim girl has disclosed that on seeing them, the accused tried to run away, but her father apprehended him.
- 15. The witness Sankar Jyoti Borgohain knew the accused Rajesh Karmakar @ Pusu. He has stated in his evidence that the occurrence of this case took place on the day of Chhat

Puja and at about 7 am that day, Puspa Deori called his mother over phone and asked her as to whether there was an incident of rape near a School. Sankar Jyoti Borgohain has stated that his mother did not have the knowledge about that fact. Therefore, his mother called some other persons of the locality to know about such incident. The witness ha stated that all of them told his mother about their ignorance on the issue.

- 16. Sankar Jyoti Borohain has stated that after about 15 days, while he was returning home, he saw that some women were questioning the accused near the school. According to Sankar Jyoti Borgohain, in his presence, the accuse had admitted before the women that he had inserted his finger into the vagina of the victim girl.
- 17. Now, I shall take up the evidence of Smti Puspa Deori. She has stated in her evidence that one day at about 5 am, on the day of chhat puja, she had seen that a small girl was running away from the paddy field and was going towards Monideep School. Puspa Deori has stated that after about 15/20 minutes, the said girl returned with her father. She has stated that she asked the victim as to what had happened and then the victim girl told her that she was subjected to sexual assault by one person.
- 18. The witness Smti Uma Tamang is the mother of the victim girl. She has stated in her evidence that on the day of occurrence, at about 5.30 am, her daughter had gone out of the house to collect flowers from the neighborhood and within half an hour, she returned home. The mother of the victim girl has stated that she noticed that the wearing apparels of her daughter was mud stained and her chappals were also

missing. The mother of the victim has stated that when she inquired about it, she told her that one unknown person had forcibly taken her to a paddy field and there, he inserted his finger into her vagina, after removing her pants. According to the mother of the victim, she wanted to give bath to her daughter and at that time, she noticed that the victim was bleeding from her vagina. The mother of the victim has stated that her daughter was immediately taken to a Doctor at Tinsukia, but this Doctor referred her to another Doctor at Dibrugarh.

- 19. The witness Chandra Kumar Tamang is the maternal uncle of the victim girl. He used to reside in the house of the mother of the victim girl. According to Chandra Kr. Tamang, he noticed that on the day of occurrence, his niece had returned home with stained cloth and without her chappals. From the victim girl, he came to know about the occurrence and along with the father of the victim, he searched the locality for the actual culprit, but could not find him. According to Chandra Kr. Tamang, the accused admitted his guilt, after he was apprehended by the father of the victim girl.
- 20. The witness Chandan Das is a friend of the witness Sankar Jyoti Borgohain and from him, he came to know about the fact that the accused was apprehended by some people on a charge that he had committed rape upon a minor girl. Chandan Das has stated that he immediately came to the place, where the accused was kept detained by people. He has stated that in his presence, the accused had admitted that he had committed the offence upon the victim.
- 21. The witness Pranjal Tamang is another maternal uncle of the victim girl. He came to know about the occurrence after

the father of the victim informed him about it over phone. The witness Pranjal Tamang had come to the house of the victim, after the accused was apprehended and in his presence, police seized the birth certificate of the victim girl.

- 22. The Police Investigating Officer Paragiyoti Buragohain spoke about the investigation of the case.
- 23. All the prosecution witnesses have been extensively cross examined by the defence counsel. At the time of cross examination of the victim girl, the defence side suggested that she had erroneously identified the accused to be the actual culprit.
- 24. There is no doubt that the victim was about 9 years old, at the time of occurrence. A child of that age already develops her senses. The accused failed to produce evidence to prove that the victim had erroneously identified the accused. There is nothing material in the cross examinations of Raju Tamang, Uma Tamang, Chandra Kr. Tamang, Chandan Dsa, Puspa Deori and Pranjal Tamang. Therefore I would restrain myself from discussing it elaborately.
- 25. During cross examination, the witness Sankar Jyoti Borgohain stated before the defence counsel that the accused once studied with him in the Primary School and therefore, he knew the accused and his family. Sankar Jyoti Borgohain further stated before the defence counsel that the accused had admitted before him that he had committed the offence upon the victim.
- 26. On the question as to why the ejahar was not filed on 27/10/2017, I shall rely upon a decision of the Supreme Court in **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**

(AIR 1983 SC 753). In this considering case the unsophisticated society where a girl or woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred, as she would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours, held that she would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is a taboo. Their Lordships held:-

"The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. So also a rustic woman will not be disclosing the incident which would affect the name and honour of the family to a doctor when the prosecutrix is being examined. It is in such circumstances, the failure to disclose the factum of rape as such, in Ext.P2 wound certificate is to be appreciated."

27. The witness Sankar Jyoti Borgohain has stated in his cross examination that the accused had admitted before him that he had committed the offence upon the victim on the day of occurrence. The Supreme Court in **S. Arul Raja v. State of Tamilnadu** (para 55) reported in (2010) 8 SCC 233 ruled thus

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- "55. xxxxx Before the court proceeds to act on the basis of an extra-judicial confession, the circumstances under which it is made, the manner in which it is made and the persons to whom it is made must be considered along with the two rules of caution: first, whether the evidence of confession is reliable and second, whether it finds corroboration.
- 28. Dr. Giridhari Bayan, who examined the victim on the next day of the day of occurrence, found that the victim sustained cut injury in the labia minora because of stretching of the vaginal canal of the victim girl. Dr. Bayan has stated that such an injury cannot be sustained by any other means.
- 29. So, at this stage, I have no hesitation to hold that the evidence of the victim girl has inspired confidence. There is nothing in the record that the accused had made a false confession. The medical evidence has corroborated the evidence of the victim girl and the evidence of Sankar Jyoti Borgohain. There is nothing in his evidence to hold that this witness has deposed false evidence. Therefore, I find myself foreclosed against all options, but to hold that the offence against the accused Rajesh Karmakar @ Pusu is proved beyond all reasonable doubt.

ORDER

30. In the result, the accused Rajesh Karmakar @ Pusu is found guilty and accordingly the accused is convicted u/s 4 of the POCSO Act.

SENTENCE

31. The convict is a pedophile. People like him are dangerous to the society. Children are vulnerable to sexual

assault and when a pedophile like the convict who roams freely in our society is nothing but a menace to our society. There are no mitigating circumstances in favour of the convict. Therefore, the convict must be adequately punished.

- 32. I have heard the convict in the matter of sentence. The convict claimed to be a mason by profession. He has his mother, wife and three children. The convict has admitted that he had committed the offence upon the victim and prayed for leniency.
- 33. Considering the circumstances of the case, the convict is sentenced to undergo Rigorous Imprisonment of 10 (Ten) Years. He is also sentenced to pay a fine of Rs. 50,000/-(Rupees Fifty Thousand Only) and in default of payment of the fine, the convict shall undergo another period of imprisonment for 6 (Six) months. The fine amount if paid, shall be given to the victim girl. I hope, this much of sentence would be sufficient to reach the ends of justice.

COMPENSATION

- 34. Law has mandated that victim of a crime must be compensated in monetary terms. In the case before me, the victim girl now stays in a hostel. Because of the incident, her parents found it unsafe to keep the girl in their house, therefore, she was sent to a hostel.
- 35. The victim has gone through a traumatic phase because of the act committed upon her by the convict. Therefore, she must be properly rehabilitated. Therefore, the State of Assam is directed to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand Only) to the victim girl as compensation. The money shall be disbursed by the District Legal Service Authority,

Tinsukia. The victim is a minor, so the money may be given to her father Raju Tamang.

36. 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 25th 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 Dr. Giridhari Bayan
- 2. PW2 Sri Raju Tamang
- 3. PW3 Smti Muskan Tamang
- 4. PW4 Sri Sankar Jyoti Borgohain
- 5. PW5 Smti Uma Tamang
- 6. PW6 Sri Chandra Kumar Tamang
- 7. PW7 Sri Chandan Das
- 8. PW8 Smti Puspa Deori
- 9. PW9 Sri Pranjal Tamang
- 10.PW10 Dr. Nicky Shah
- 11.PW11- Sri Paragjyoti Buragohain, S.I.

PROSECUTION EXHIBITS

- 1. Ext.1- Letter
- 2. Ext. 2- Report
- 3. Ext. 3- Seizure list
- 4. Ext. 4 Original birth certificate
- 5. Ext. 5- Ejahar
- 6. Ext. 6 Statement of victim u/s 164 Cr.PC
- 7. Ext. 7 Medical report

- 8. Ext. 8 Extract copy of G.E. Entry
- 9. Ext. 9 Sketch map
- 10. Ext. 10- Charge sheet

<u>DEFENCE WITNESS</u>

None.

Special Judge

<u>Tinsukia</u>