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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

R. K. Borthakur,

<u>Tinsukia</u>

# **POCSO Case No. 35 (M) of 2015**

# U/s 4 of the POCSO Act

Advocate ...... For the accused.

Date of Argument: 21/01/2019

Date of Judgment: 21/01/2019

## J U D G M E N T

## **PROSECUTION CASE**

1. The prosecution case revolves around an allegation of sexual assault upon a minor girl, who was born on 20/05/2002. It is alleged that one day in the month of June/July, 2015, when the said minor girl was alone in the house the accused had come there and asked her to bring him some water to his stilted house, situated nearby. Infact, the accused had a tea garden adjacent to the house of the victim girl and there he had a stilted house, which was meant to keep eyes over marauding wild animals. According to the request made by the accused, the victim girl went to the stilted house and served him water. Then the accused caught hold of the victim girl, removed her wearing apparels and then committed sexual intercourse with her. The accused gave the girl an amount of Rs. 50/- and asked her not to tell anyone about those things. The victim girl complied with the request of the accused and did not tell her parents about what was done to her by the accused. She continued to go to her school as usual. Thereafter, on 3/4 occasions, the accused again had sexual intercourse with her. Unfortunately, the matter somehow fell into the ears of the parents of the victim girl. But, after that the victim girl left her house and went to the house of her aunt Anjali Gogoi, at Tingkhang. The parents of the victim girl had

followed her to Tingkhang and brought her back and on her return home, she narrated everything to her parents. Thereafter, the mother of the victim girl had lodged an ejahar before police.

2. The parents of the victim girl had arranged a village meeting. The accused attended the said meeting and he denied before public that he had committed any such acts upon the victim girl. The elder brother of the accused gave a proposal of marriage between the accused and the victim girl, but the parents of the girl did not agree to that.

#### **POINT FOR DETERMINATION**

3. 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**

- 4. In order to prove the case against the accused person, the prosecution side has examined as many as thirteen witnesses, including the Doctor, who had examined the victim girl at the time of investigation and the Police Investigating Officer. The defence plea is total denial. I have carefully gone through the prosecution evidences.
- 5. Considering the nature of the case, I shall first take up the evidence of the victim girl. She has stated in her evidence that she never disclosed before anyone that she was sexually assaulted by the accused on multiple occasions. The victim girl has stated that her parents rebuked her after hearing about those things. Therefore, she revolted and left her house and went to the house of her aunt at Tingkhang.

- 6. Now, I shall take up the evidence of Janmoni Sonowal. She is aged about 13 years. She is the daughter of the younger brother of the father of the victim girl. She has stated in her evidence that about three years ago, at about 12 noon, she came out of the house to play games and therefore she was searching for the victim girl. The victim girl has stated that when she was searching for the victim girl, she found her with the accused in a house, situated in the tea garden of the accused. She has stated in her evidence that she had seen the victim girl and the accused in a nude state and both of them were in a compromising position. After seeing the accused and the victim girl in that state, the witness Janmoni Sonowal immediately returned home and informed her mother. Then her mother informed the parents of the victim girl about the said fact.
- 7. The witness Moni Sonowal is the mother of Janmoni Sonowal. She has stated in her evidence that one day at about 6 p, her daughter Janmoni told her that the victim girl was sleeping with the accused in a house in the garden of the accused. She has stated in her evidence that she immediately informed the parents of the victim girl and they interrogated the victim girl. She has stated in her evidence that initially the victim was reluctant to say anything to her parents, but subsequently she admitted that the accused had forcibly took her to a house in the garden and he had forcible sexual act upon her.
- 8. The witnesses Gulapi Sonowal, Pakhya Sonowal and Prasanta Sonowal were present in the village meeting that was convened by the parents of the victim girl. Gulapi Sonowal has stated that the victim girl had alleged before public that the

accused had forcibly taken her to the garden and there he had committed rape upon her. He has stated that in the village meeting, the accused was also present, but she could not hear what the accused had stated in the said meeting.

- 9. The witness Pakhya Sonowal has stated that the accused was invited to the said meeting, but he did not come and thereafter the accused had filed a case against this witness and also implicated some other persons namely Durlov Sonowal, Prasanta Sonowal and Ananta Sonowal, alleging that they had assaulted the accused.
- 10. The witness Prasanta Sonowal has stated that for the said meeting, the accused did not come. Prasanta Sonowal has stated that in the said meeting, the brother of the accused had come. Ghanashyam, the brother of the accused reportedly gave a proposal that if the instance, as alleged by the victim girl was true, then he was ready to solemnize a marriage between the accused and the victim girl. Prasanta Sonowal has stated in his evidence that the father of the victim girl did not agree to the proposal, on the ground that the accused was already married. The other non-official witnesses are hear say witnesses. The Police Investigating Officer spoke about the investigation.
- 11. On scrupulous perusal of the prosecution evidence, I found that the victim girl though sexually assaulted on multiple occasions, never disclosed about that fact to her parents. The witness Janmoni Sonowal had seen the victim girl and the accused in a nude state and she had also seen both of them in a compromising position. The victim girl has stated that when her parents first confronted her with those facts, she had revolted and left her house and went to the house of

her aunt at Tingkhang. She disclosed the facts of the case to her parents, after she was brought back from Tingkhang. The accused had forcible sexual intercourse with the victim girl on multiple occasions, but she did not disclose those facts to her mother. When her parents first confronted her with those facts, she had revolted. The witness Janmoni Sonowal had found both the accused and the victim girl in a compromising position. These facts are sufficient to hold that the victim girl was a consenting party to the act of the accused.

- 12. I have reasons to hold that the evidence of the victim girl fails to inspire confidence to the effect that the accused had committed sexual assault upon her.
- 13. Here in this case, the mother of the victim girl has claimed that her daughter was born on 22/05/2002 and the victim girl herself has claimed that she was born on 20/05/2002. But, no documentary evidence has been filed to that effect. Dr. Rani Gogoi, who had examined the victim girl during the period of investigation has reported that as per radiological examination, the age of the victim girl was found to be above 14 years and below 18 years. So, at this stage, I have to accept the evidence of the Doctor for determining the age of the victim girl. It is a settled law that two years can be added or subtracted from the age mentioned by the Doctor. It goes to show that on the day of occurrence, the victim girl was below 18 years of age, though she was above 14 years of age.
- 14. I have already stated herein before that the evidence of the victim girl to the effect that the accused had committed multiple penetrative sexual assault upon her, fails to inspire confidence. I have also already stated herein before that the victim girl was a consenting party to the act of the accused.

15. Therefore, I have reasons to hold that the prosecution has miserably failed to prove the offence against the accused beyond all reasonable doubts.

#### **ORDER**

16. That being the position, the accused Sri Mahendra Gogoi @ Sanjay is found not guilty and accordingly he is acquitted from this case.

Given under my hand and seal of this Court on this 21st day of January, 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. Rani Gogoi
- 2. PW2 Smti Dulumoni Sonowal

- 3. PW3 Miss Pronamika Sonowal
- 4. PW4 Sri Durlove Sonowal
- 5. PW5 Smti Kunja Sonowal
- 6. PW6 Smti Gulap Sonowal
- 7. PW7 Smti Moni Sonowal
- 8. PW8 Smti Janmoni Sonowal
- 9. PW9 Sri Pakhya Sonowal
- 10.PW10 Sri Prasanta Sonowal
- 11.PW11 Smti Thusan Sonowal
- 12.PW12 Smti Swarna Boro
- 13.PW13- Sri Birakson Ramchiary, S.I

# **PROSECUTION EXHIBITS**

- 1. Ext.1- Medical report
- 2. Ext. 2- Requisition of Dr. Rani Gogoi
- 3. Ext. 3- Laboratory report
- 4. Ext. 4 Radiological report
- 5. Ext. 5 Ultra sonography report with plates
- 6. Ext. 6- Ejahar
- 7. Ext. 7- Seizure list
- 8. Ext.8- Statement of Smti Dulumoni Sonowal
- 9. Ext. 9- Sketch map

- 10. Ext. 10- Charge sheet
- 11. M.Ext. 1- Birth certificate of victim

# <u>DEFENCE WITNESS</u>

None.

Special Judge

<u>Tinsukia</u>