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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

Sri B.L Agarwal,

Sri Munna Kr. Singh,

<u>Tinsukia</u>

# POCSO Case No. 56 (T) of 2017 U/s 4 POCSO Act

0,2 11 0000 7101

Spl. Public Prosecutor ......For the State

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

Advocate ...... For the accused.

Date of Argument: 05/01/2019

Date of Judgment: 21/01/2019

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

#### **PROSECUTION CASE**

- 1. The prosecution case against the accused lies within a short campus. It is alleged that on the day of occurrence, he had inserted his finger to the vagina of a 8 years old girl.
- 2. During the period of investigation, the victim girl was subjected to medical examination. The Doctor's report goes like this:-

"Menstrual history- She has not attained her menarche. She was oriented in space and time. Dentition - 24. Examination for injuries - There was no injury. Local examination of genital parts- External genitals- no abrasion, swelling, tear, edema or bruise present. Labia majora and minora - No scratch, finger nail mark, infection seen. Fourchette - No bleeding, tear present. Vulva - no bleeding or injury present. Hymen- torn. Vagina and cervix- no bleeding, tear, tenderness and edema noticed. Tenderness was noticed on per vaginal examination. Two vaginal swabs taken and as per report, supplied vaginal smear doe not show any spermatozoa. Radiological opinion on her age- her age is between 8 to 11 years."

3. The victim girl also gave a statement u/s 164 Cr.PC. She stated before the Magistrate that one evening, while she

was standing on the road, one person called Ajit called her to his house. She has stated that the aforesaid Ajit removed her pants and inserted his two fingers into her vagina. The victim girl further stated before the Magistrate that while the aforementioned Ajit was doing all those things to her, another person named Roghu was standing near by, though he did not do anything to her.

#### **POINT FOR DETERMINATION**

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

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

- 5. In order to prove the case against the accused person, the prosecution side has examined as many as 8 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.
- 6. 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 knew the accused for a long time. But on the day of occurrence, she met the accused in the house of Roghu. She has stated that the accused lubricated his fingers with his saliva and thereafter inserted his finger into her vagina. The victim girl further stated that after the said occurrence, she immediately returned home and informer her mother about the said occurrence and her mother accordingly lodged an ejahar before police.

- 7. Now, I shall take up the evidence of the mother of the victim girl. She has stated in her evidence that on the day of occurrence at about 4 pm she had returned home from work and at that time her daughter had gone out of the house to play. The mother has stated that at about 4.30pm her daughter returned home crying. She informed her mother that the accused had inserted his fingers into her vagina. The mother of the victim girl has stated that she immediately went to the house of Roghu along with her daughter, but she could not find the accused there.
- 8. The other non-official witnesses are Rajen Tanti, Smti Philisita, Sri Sohan Kanda and Sri Saban Purty.
- 9. The witness Rajen Tanti has stated in his evidence that he asked the victim girl about the occurrence. She told him that the accused had teased her only.
- 10. The witness Philisita has stated in her evidence that the victim girl told her that the accused had committed rape upon her.
- 11. The witness Sohan Kanda has stated in his evidence that when he heard about the occurrence, he had asked the accused about the same and to that the accused reportedly told him that he did not do any such thing. According to Sohan Kanda, the accused told him that he only teased the victim girl.
- 12. The witness Saban Purty has stated in his evidence that he had asked the victim girl about the occurrence and she stated before this witness that the accused had inserted his fingers into her vagina.

- 13. The Police Investigating Officer spoke about the investigation.
- 14. On scrupulous perusal of the prosecution evidences, it is clear on the face of the record that except the victim girl there are no eye witnesses to the occurrence. There is no doubt that the victim girl was 8 years old at the time of occurrence. The medical evidence adduced by Dr. Nitamoni Khandait has revealed that there are tenderness in the vagina of the victim girl. The hymen of the victim girl was also found to be torn.
- 15. Here a question arises is as to whether the medical evidence has supported the oral testimony of the victim girl. The hymen of the victim girl can be torn because of many other activities. A torn hymen does not prove that the girl was subjected to sexual act. The Doctor reported that tenderness was noticed as per vaginal examination. There is no quarrel with the proposition of fact that tenderness in the vagina never proves sexual assault.
- 16. Here in this case, the occurrence took place while a person named Roghu was present at the place of occurrence. This court made an endeavor to examine this witness, but failed in that task.
- 17. The victim girl, her mother, Philisita, Sohan Kanda and Saban Purty have been cross examined by the defence counsel. There is no materials in the cross examination of the mother of the victim girl.
- 18. The victim girl stated before the defence counsel that at the relevant time of occurrence, she was not wearing any pant. She also admitted that she was trained by her mother as

to how to depose evidence. She also stated that at the time of giving statement to police and to the Magistrate, her mother had trained her.

- 19. The cross examination of Philisita, Sohan Kanda and Saban Purty do not contain any relevant materials.
- 20. Here in this case, I have already stated that the victim girl is the only eye witness to the occurrence and she is a child of only eight years.
- 21. In **Panchhi & Ors vs. State of U.P**: (1998) 7 SCC 177, the Supreme Court has held --

The evidence of child is required to be evaluated carefully because he is an easy prey to tutoring. Therefore, always the court looks for adequate corroboration from other evidence to his testimony.

22. <u>In State of U.P. v. Ashok Dixit</u> [2000 (3) SCC70], it has been observed in paragraph 9:

"Law is well settled that evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and as an easy prey to tutoring. Wisdom requires that evidence of a child witness must find adequate corroboration before it is relied on (see Panchhi v. State of U.P.). However it is a question of fact in each case, and there is no universal rule that the evidence of a child witness, even if it cannot be dislodged on the test of facts and probabilities of a particular case can never be sufficient for convicting an accused without corroboration.

23. In **Suryanarayana ..vs.. State of Karnataka** 2001 Cri.L.J. 705 The evidence of the child witness must find

adequate corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P. 1992 (4) SCC 225, Baby Kandayanathi v. State of Kerala 1993 Supp (3) SCC 667; Raja Ram Yadav v. State of Bihar, 1996 (9) SCC 287; Dattu Ramrao Sakhare v. State of Maharashtra 1997 (5) SCC 341).

- Anr, reported in (2011) 4 SCC 786) has examined the law relating to deposition by Child Witnesses. While examining the law on the aspect the Court has observed that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court and there is no embellishment or improvement therein, the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.
- 25. Coming back to the case in hand, I am of the considered opinion that without any corroboration, the evidence of the victim girl cannot be accepted in its face value. I have no doubt that it will not be safe to accept her evidence without any corroboration. Under the aforesaid circumstances, I hereby hold that the prosecution evidence failed to inspire confidence and accordingly failed to prove the offence against the accused beyond all reasonable doubts.

### **ORDER**

26. In the result, the accused Sri Sojit Choudhury is found not guilty and accordingly the accused 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

Tinsukia

Dictated & corrected by me.

Special Judge

<u>Tinsukia</u>

# A P P E N D I X

# **PROSECUTION WITNESSES**

1. PW1 - Dr. Nitamoni Khandait

- 2. PW2 Smti Barjinia Naag
- 3. PW3 Smti Karina Naag
- 4. PW4 Sri Rajen Tanti
- 5. PW5 Smti Philisita
- 6. PW6 Sri Sohan Kanda
- 7. PW7 Sri Saban Purty
- 8. PW8 Sri Jiten Gohain, S.I

# **PROSECUTION EXHIBITS**

- 1. Ext.1- Medical report
- 2. Ext. 2- Radiological report with X-ray plates
- 3. Ext. 3- Laboratory report
- 4. Ext. 4 Ejahar
- 5. Ext. 5 Sketch map
- 6. Ext. 6 Charge sheet

### **DEFENCE WITNESS**

None.

Special Judge

<u>Tinsukia</u>