IN THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE CUM SPECIAL JUDGE-2 (FTC) (POCSO) :: :: TINSUKIA

District: Tinsukia

Present: Md. A. Hakim,

Addl. District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.

POCSO Case No. 73(T)/17 U/s 4 OF POCSO Act

	The State of Assam
	Complainant.
	-Versus -
	Sri Ganga Nayak,
	S/o- Sri Naga Nayak,
	R/o- 2 No. Daisa Balijan Gaon,
	P.S- Doomdooma,
	District- Tinsukia, Assam.
	Accused.
Appearance:	
Sri B.L Agarwal Spl. Public Prosecutor	For the Complainant
Sri H.K Bhagawati Advocate	For the accused.

Date of Argument: **27.09.2019.**Date of Judgment: **27.09.2019.**

<u>JUDGMENT</u>

- 1. The prosecution case in brief is that on 20.11.17(Monday) at No. 2 Daisa Balijan Gaon under Talap O.P, in the district of Tinsukia the daughter of the informant Sri Lashman Karmakar went to the house of his Nandu Karmakar who resides near his house. At around 8 P.M one local youth Sri Ganga Nayak came with his daughter to see her off to his house. But after some distance taking the advantage of darkness, he gagged the mouth of his daughter from behind and dragged her to Ladaka small tea garden and he slapped and beat her. The person also tied her hands and strangulate her and under the tea bushes raped her again and again the whole night and then fled away. The daughter of the informant fell unconscious the whole night in the tea garden. As the daughter of the victim did not return home, there was a chaotic situation prevailed in his house. Though the informant searched her everywhere but he could not find her. On 21.11.17 at 12 PM some local young boys and girls found her in unconscious state at Ladaka small tea garden and informed the informant about her. Then the informant took his daughter to Doomdooma Civil Hospital for treatment. Later, after regaining senses, she was brought to his home and she narrated the fact to the informant and then the informant lodged this case. The victim did not recover from her physical situation till lodging of the ejahar. Hence, the informant has prayed for doing the needful.
- 2. Receiving the FIR, Doomdooma P.S. being no. 343/17 registered a case and investigated the matter and on completion of the investigation, charge sheet was submitted against the accused and forwarded to face the trial.
- 3. Upon receiving the record and appearance of the accused in this court and upon hearing both sides and considering the materials on record charge u/s 4 of POCSO ACT has been framed, particulars of which on being read over and explained the accused had pleaded not guilty and claimed to be tried.

- **4.** During trial, prosecution examined three (3) witnesses. The examination of accused u/s 313 Cr.P.C is dispensed with as no material ingredients of offence is found against the accused.
- **5.** I have heard argument put forth by the ld. Counsel for both the sides as well as gone through the entire materials available on record.

6. POINT FOR DETERMINATION:-

1. Whether the accused on 20.11.17, Monday at around 8 P.M at No. 2 Daisa Balijan Gaon under Talap O.P, in the district of Tinsukia had committed penetrative sexual assault upon the victim girl i.e, daughter of Sri Lashman Karmakar and thereby committed an offence punishable U/s. 4 of POCSO ACT?

DISCUSSION, DECISION AND REASONS THEREOF:

- PW.1, Dr. Ashma Z.H Ghaznavi has deposed that on 23.11.17 when she was working as Sr. M & H.O at Doomdooma FRU. On that day at about 1:30 P.M, she examined victim girl in connection with Talap OP(Doomdooma P.S) GDE No. 412 dated 22.11.17. She was escorted by WPC, Nomita Borah and father Sri Laxman Karmakar. The victim girl had given the history that on 20.11.17 she was coming back from her relatives house around 8 P.M. Someone dragged her to nearby garden and assaulted her. She became unconscious. The girl was recovered next day around 12 noon by her mother and other family members.
- **8.** On examination she found as follows: Physical examination: Whether oriented in space and time Yes.
- **9.** No injury was found either on her genital or other parts of the body. Her swab were taken for microscopic examination and the result do not revealed any spermatozoa. Her Radiological examination

was done to ascertain her age and as per the report she was between 15 to 17 years. Ext. 1 is the Medical report, Ext. 1(1) and Ext. 1(2) are her signatures. Ext. 2 is the Laboratory report. Ext. 3 is the Radiological report with X-ray plate.

- **10.** In Cross-examination the PW.1 has stated that she has stated the age of the victim basing on the Radiological report of Tinsukia civil hospital. She did not clinically examined the victim to ascertain her age.
- P.W.2, Sri Laxman Karmakar has deposed that the victim is his daughter. He also knows the accused Ganga Nayak. The accused is now his son in law as he has married the victim. The incident has taken place nearly two year back. Since the accused had kidnapped his daughter, that is why out of anger he had lodged this case. His daughter is presently 19 years. Ext. 4 is the ejahar lodged by him. Ext. 4(1) is his signature. After lodging the ejahar police had come and interrogated him and the victim. Police had sent the victim for her medical examination. She was also produced before the magistrate, for recording her statement U/s. 164 of the Cr.P.C. The victim is now residing with the accused and they have one female issue.
- 12. In Cross-examination he has stated that the ejahar Ext. 4 was written by one teacher and the contents of the Ejahar was not read over to him. At the time of lodging of the FIR, i.e Ext. 4, the girl, i.e the victim was aged about 19 years and she fled away with the accused on her own will.
- **13**. PW.3. the victim has deposed that she knows the accused Ganga Nayak. Now he is her husband. The incident has taken place nearly two years back. She had eloped with the accused on her own will. Thereafter her father had lodged the case. Police interrogated her. Police had sent for her medical had examination. She was also produced before the magistrate, for recording her statement U/s. 164 of the Cr.P.C. Ext. 5 her statement, Ext. 5(1) and 5(2) are hid signatures. The accused did

not sexually molested her. Now she has a female child from the side of the accused.

- 14. In Cross-examination she has stated that at the time of incident she was aged about 19 years
- the defence has pointed out that prosecution has failed to prove the case beyond reasonable doubt. As the complainant and the victim have not implicated the accused person. The victim girl has not alleged that the she was sexually assaulted by the accused nor the medical evidence saying anything about the sexual assault. Hence the prosecution has failed to prove the case beyond all reasonable doubt.
- **16.** In reply Ld. P.P has also fairly submitted that there is no material ingredients of offence against the accused person. Hence the accused person should be acquitted and set at liberty.
- 17. Upon hearing both sides, I have gone through the material evidence on record and found that the material witness victim i.e. PW 3 has deposed that the now the accused is her husband. The incident has taken place nearly two years back. She had eloped with the accused on her own will. Thereafter her father had lodged the case. The accused did not sexually molested her. Now she has a female child from the side of the accused. During cross examination she has stated that at the time of lodging of the FIR, i.e. Ext. 4, she was aged about 19 years and she fled away with the accused on her own will.
- 18. There is also no medical evidence about the sexual assault on the victim girl. There is not an iota of evidence about the sexual harassment by the accused to the victim girl. Which proved that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt.
- **19.** In view of the above discussion and considering the evidence on record, I am of the considered opinion that the Prosecution has

failed to prove the case against the accused U/s. 4 of POCSO Act beyond all reasonable doubts. Hence, the accused person namely 1) Sri Ganga Nayak is acquitted and set at liberty.

- **20.** The Prosecution is directed to dispose of the seized material if any in accordance with law.
- 21. As there is no proof of sexual assault on the victim girl I am not inclined to allow victim compensation to the victim girl as per S. 357 A Cr.P.C.
- **22.** Send a copy of the Judgment to the Deputy Commissioner of Tinsukia.
- **23.** The case is disposed of herewith.
- **24.** Given under my hand and seal of this court on this the 27th day of September, 2019.

Dictated & corrected by me:

(A. Hakim), Addl. District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia. (A. Hakim),
Addl. District & Sessions Judge
cum Special Judge-2(FTC),
(POCSO)Tinsukia.

Transcribed by:

P.D Phukan, (Steno)

ANNEXURE

PROSECUTION WITNESSES:

P.W.1, Dr. Ashma Z.H Ghaznavi,

P.W.2, Sri Laxman Karmakar,

PW.3, Victim girl.

PROSECUTION DOCUMENTS:

Ext. 1 is the Medical report,

Ext. 2 is the Laboratory report,

Ext. 3 is the Radiological report with X-ray plate.

Ext. 4 is the Ejahar,

Ext. 5 is the 164 statement of the victim recorded by magistrate,

(A. Hakim), Addl. District & Sessions Judge cum Special Judge-2(FTC), (POCSO)Tinsukia.

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