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

District: Tinsukia

Present: Sri P.J. Saikia,

Special Judge,

Tinsukia

POCSO Case No. 36 (M) of 2017 U/s 4 of the POCSO Act

The State of Assam	Complainant.
-Versus -	
Sri Raju Urang @ Bijoy	
S/o- Lt Sukdeo Urang	
R/o- Borgulai Telkhad Basti, Moran Bagan	
P.S- Margherita	
District- Tinsukia, Assam	Accused.
Appearance:	
Sri B.L Agarwal,	
Spl. Public ProsecutorFor the Complainant	

S. Sarma,

Advocate under D.L.S.A For the accused.

Date of Argument: 06/07/2018

Date of Judgment: 12/07/2018

J U D G M E N T

PROSECUTION CASE

- 1. The prosecution case revolves around an allegation of committing penetrative sexual assault by the accused upon his step-daughter.
- 2. The ejahar in this case has been lodged by the mother of the victim. She has alleged that on the day of occurrence at about 7 pm, the accused had committed penetrative sexual assault upon his 11 years old daughter in the leaf house of the tea garden. In the ejahar it has further been alleged that on 30/04/2017, at about 2 pm, while the victim girl was going to the forest to collect firewood, then also the accused had allegedly committed penetrative sexual assault upon the victim girl. The informant also alleged that on the next day i.e on Sunday at about 6 pm, while the informant was absent in her house, the accused had entered into her house and thereafter committed penetrative sexual assault upon the victim girl.
- 3. During the trial of the case, the victim girl was subjected to medical examination. The medical report goes like this:-

"Identification mark- Small black mole at the extensor surface of right thumb.

History- Alleged history of elopement four days back. Not attained puberty.

Mental state- healthy. height- 3 feet. Weight- 30 kg. Teeth- 28. Abdomen- soft. Breasts- developing. Areola-present. Nipples- present, normal. Scalp hair- present. Pubic hair- not seen. Axillary hair- not seen. Genitals- normal. Vulval injury- not present. Labia minora and majora- Normal. Hymen-not intact. Vagina- normal. Uterus- Not palpable. Vaginal discharge/bleeding- not present at the time of examination. Injuries on the body other than those on genitals- not present.

Radiological examination done at LGB Civil Hospital. Her age is between 7 to 9 years. Ultra-sonography of abdomen done at Margherita Civil Hospital, which shows normal study.

Report of laboratory examination of vaginal smearsupplied vaginal smear does not show any spermatozoa."

4. The doctor opined in the report that the victim was 7 to 9 years old at the time of examination. The doctor also opined that it could not be ascertained as to whether the victim was raped or not.

POINT FOR DETERMINATION

5. 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

- 6. In order to prove the case against the accused person, the prosecution side has examined as many as seven witnesses, including the Doctor, who examined the victim at the time of investigation and the police Investigating Officer. The defence plea is total denial. The accused was directed to enter defence, but he declined to adduce evidence. I have carefully gone through the prosecution evidences.
- 7. Considering the nature of the offence, I shall first take up the evidence of the victim girl. The victim girl has stated that on one day on the pretext of searching for lost money, the accused took her to the leaf house of the garden and there she was laid down on the ground and after removing her pants, the accused had tried to insert his penis into her vagina, but he failed. The victim has stated that while she had gone to the forest to collect firewood, at that time also the accused tried to push his penis into her vagina, but that time also he failed. The victim has further stated that on one occasion while her mother was absent in the house, then the accused had come to her house and after removing her pant he tried to insert his penis into her vagina. The victim has stated that after 6/7 days latter, when she was going to Tipong with her other, then she disclosed before her mother about the said occurrence. The victim girl has stated that her mother had lodged an ejahar before police and some villagers had apprehended the accused and handed him over to the police.
- 8. During the cross examination, the victim has stated when the accused took her to the leaf house of the garden, it was about 2 pm, and at that time some labourers were plucking tea leaves in the garden. The victim has stated

before the defence counsel that when the accused tried to insert his penis into her vagina, her mouth was not gagged by his hands. The victim has also stated that she shouted for help, but no one came forward. According to the victim, when she came out of the leaf house after the occurrence, she did not disclose before the people, who were plucking tea leaves that the accused had tried to commit penetrative sexual intercourse with her. The victim girl has stated that she did not inform her mother also that night about the occurrence that took place. While the victim was collecting firewood, the victim has stated that in that area also some women labourers also plucking tea leaves This time, the victim girl has stated that when the accused tried to insert his penis into her vagina after removing her pants, she did not shout for help. The victim has stated that at that time also she did not tell anyone about the aforesaid facts. According to the victim, though she slept with her mother that night, then also she did not tell her mother about the aforesaid facts. The victim further stated that on that day, on which the accused tried to commit rape upon her, she did not raise any alarm, nor did she tell her mother about the aforesaid facts.

- 9. The victim has stated before the defence counsel that the accused is her step-father and she did not like her.
- 10. The mother of the victim girl has also stated inter alia that she asked her daughter as to why she did not inform her earlier about those incidents, then her daughter told her that the accused threatened her with dire consequences, if she disclosed the matter to any one else. At the time of cross examination, the mother of the victim girl has stated that when the accused had taken the victim girl to the leaf house

of the garden, she was present in her house. The mother of the victim also stated before the defence counsel that after about 4 months of the occurrence, her daughter had informed her about the same.

- 11. The witness Padam Lama has stated that one day the mother of the victim girl informed him that her husband had attempted to commit rape upon her daughter. He has stated that on that day at about 11 am, some women had brought the accused to his shop and he was trussed to a tree. He has stated that the victim was also present there in front of his shop at that time and sometime latter, police came and took away the accused.
- 12. The witness Sumon Tanti is a hearsay witness and she heard that the accused had committed rape upon his own daughter.
- 13. The evidence of Sumpi Lama is a verbatim reproduction of what Sumon Tanti has stated.
- 14. The S.I Jatin Saikia spoke about the investigation.
- 15. Now, I shall take up the evidence of Doctor, who had examined the victim. She has stated that she could not ascertained as to whether the victim was raped or not. Her report disclosed that there were no injuries upon the private parts of the victim.
- 16. In this case, the victim has stated that on three occasions the accused had tried to insert his penis into her vagina and on all these three occasions, he failed. It is an admitted fact that immediate after the occurrence, on each occasions, the victim never disclosed about it to her mother.

The victim also admitted in her evidence that she did not like her step-father.

- 17. The mother of the victim has stated that after about four months of the occurrence, her daughter informed her about those facts.
- 18. Here at this stage, I have no doubt that in this case the victim is the only eye witness to the occurrence. On three occasions, her step-father attempted to commit rape upon her, but she did not inform her mother about those facts, rather she informed her mother after about an exceptionally long period of delay. Furthermore, she has admitted that there were some people near the said leaf house, who were plucking tea leaves, when she was allegedly sexually assaulted in the leaf house of the garden, but even then she did not tell them about those facts. Moreover, the medical evidence also failed to support a case of sexual assault upon the victim girl.
- 19. 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.

20. In **State of U.P. v. Ashok Dixit** [2000 (3) SCC 70]. 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.

- 21. The Supreme Court in **State of M.P. v. Ramesh and Anr.**, (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.
- 22. Thus under the premised reasons and under the settled position of law, pertaining to appreciation of evidences of child witness, I am of the considered opinion that the evidence of the victim girl failed to inspire confidence. Therefore, I have reasons to hold that the evidence of penetrative sexual assault upon the victim has not been proved against the accused beyond all reasonable doubts.

ORDER

23. In the result, the accused Sri Raju Urang @ Bijoy is found not guilty and accordingly the accused is acquitted from this case. Presently, the accused is in judicial custody, so he be set at liberty forthwith.

Given under my hand and seal of this Court on this 12th day of July, 2018.

(P.J. Saikia)

Special Judge

Tinsukia

Dictated & corrected by me.

Special Judge

Tinsukia

APPENDIX

PROSECUTION WITNESSES

- 1. PW1 Dr. Surabhi Borah
- 2. PW2 Smti Salmi Orang @ Mura

3. PW3 - Smti Lakhimoni Orang

4. PW4 - Sri Padam Lama

5. PW5 - Smti Sumon Tanti

6. PW6 - Smti Sumpi Lama

7. PW7 - Sri Jatin Saikia, S.I

PROSECUTION EXHIBITS

1. Ext.1- Medical report

2. Ext. 2- USG report

3. Ext. 3- Sketch map

4. Ext.4- Sketch map

5. Ext. 5- Sketch map

6. Ext. 6- Ejahar

7. Ext. 7- Charge sheet

DEFENCE WITNESS

None.

Special Judge

Tinsukia