

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

District: Tinsukia  
Present: **Sri P.J. Saikia,**  
Special Judge,  
Tinsukia

**POCSO Case No. 37 (CH) of 2018**

**U/s 448 & 387 of I.P.C.**

**R/w Section 18 of POCSO Act**

The State of Assam ..... Complainant.

**-Versus -**

**Sri Deepak Kalita**

S/o- Sri Someswar Kalita

R/o- Pub-Nabapur Village

P.S- Sadiya

District- Tinsukia, Assam ..... Accused.

Appearance:

Sri B.L Agarwal,

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

G.B. Chetry and Sandip Sarmah,

Advocates ..... For the accused.

Date of Argument: 08/07/2019

Date of Judgment: 08/07/2019

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

### **PROSECUTION CASE**

1. On 24/04/2018, the informant lady had lodged an ejahar before police, alleging that the accused and two other persons had come to her house and after showing a pistol tried to commit rape upon her 13 year old daughter. It is also alleged in the ejahar that the miscreants demanded a cash amount of Rs. 1 lac from the said girl.

2. During the period of investigation, the victim girl gave a statement u/s 164 Cr.PC, wherein she has stated that on the day of occurrence, two persons had come to her house and asked her for the whereabouts of her father. The victim girl has stated that those two persons accused the victim of concealing her father somewhere inside the house.

3. On conclusion of investigation, police filed the charge sheet against the present accused Deepak Kalita u/s 448/387 of Indian Penal Code and 18 of the POCSO Act.

### **POINTS FOR DETERMINATION**

4. The points for determination in this trial, are as to  
I. Whether the accused had committed house trespass by entering into the house of the informant by unlawfully remaining there with intent to intimidate her?

II. Whether the accused had intentionally put the complainant in fear of committing sexual assault upon her minor daughter?

III. Whether the accused had attempted to commit penetrative sexual assault upon the minor daughter of the complainant?

### **DECISION AND REASONS THEREOF**

5. In order to prove the case against the accused person, the prosecution side has examined the complainant and the victim girl only. 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 claimed to be 16 years old. The victim girl has stated in her evidence that on the day of occurrence her parents were absent in the house and the accused came to her house in police uniform. According to the victim girl, the accused was accompanied by two other persons in civil dress. The victim girl has stated that the accused and the two other persons inquired her about whereabouts of her father and her mother. The victim has stated that one of the rooms of her house was under the lock and key and the accused and the other two persons told her that she had kept her father hidden inside that room. The victim girl has further stated that the accused and the other two persons wanted to have tea and therefore, the victim went to the kitchen to prepare tea for them. According to victim girl, the accused and the other two persons followed her into the kitchen and they caught hold of her by her hands and then the accused and the two other persons showed a pistol to her. The victim has stated that by that time, her mother had arrived home and the accused and the other two persons released her. The victim disclosed that the accused and the other two persons had some talks with her mother. The victim girl has stated that she over heard one of the unknown persons demanding Rs. 1 lac from her mother.

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 6 pm, she arrived home and heard that her daughter was shouting from side the house. The mother of the victim girl disclosed that she saw that the accused and one unknown persons were coming out from the kitchen. This witness disclosed that her daughter informed her that the present accused had caught her by her hands and also showed a pistol to her. According to the mother of the victim girl, the accused and his accomplices were wearing police uniform at that time. The witness has stated that the accused asked her to pay an amount of Rs. 1 lac within the next 10 days and also told her that in the event of failure to pay the money, her entire family will be wiped out.

8. The mother of the victim girl has stated that after 5 months ago of the said occurrence, police came to her house in search of her husband. The witness has stated that police had believed that her husband was working for an extremist organization. The witness has stated that after police had left her house, the accused had come to her house and threatened her that he will finish her of.

9. Both the witnesses have been cross examined by the defence counsel. The victim did not state before police that the accused and the other two persons wanted to have tea in her house and when she had gone to the kitchen to prepare tea for them, the accused and the other two persons had followed her into the kitchen. This fact was confronted to the witness and she denied that fact.

10. The victim has stated that her father was in Jail for six months. The defence side has suggested to her that before filing of the ejahar by her mother, her father was already arrested by police. The mother of the victim girl stated before the defence counsel that three days prior to the coming of

police to her house, police had seized her mobile phone. This witness was also suggested by the defence counsel that her husband was arrested on 22/04/2018 and she filed the ejarah on 24/04/2018. This witness was further suggested that different explosive items were seized from the possession of her husband.

11. I have carefully gone through the prosecution evidence. The victim in this case did not state before police that the accused and the two other persons had followed her into the kitchen, where they had reportedly threatened her and also showed a pistol to her. There are no witnesses in this case to support that fact. Therefore, it amounts to a contradiction. Regarding the evidence of the mother of the victim girl, there is no corroborating evidence to suggest that the accused had demanded Rs. 1 lac from her.

12. Here in this case, it is an admitted fact that the husband of the complainant was arrested by police on an allegation that he possessed some explosive items and after his arrest, the present case has been filed. The witnesses, who are not examined by the prosecution in this case are Anjali Gogoi, Bimala Gogoi and Dipali Gogoi, are all hearsay witnesses and they have not supported the prosecution case against the accused. For this reason, the Ld. Public Prosecutor declined to examine them. After going through the materials available with the case record, I had agreed with the decision of the Ld. Public Prosecutor.

13. Now, it is clear on the face of the record that in this case the evidence of the victim girl has contradiction. Her earlier statement made before police does not tally with her evidence. The materials available with the case record disclose that after the arrest of the husband of the

complainant, she filed this case against the present accused and the two other persons. The accused is a driver of police vehicle and seems to have been acquainted with the complainant since prior to the occurrence.

14. Under the aforesaid circumstances, I find that the prosecution evidence available with the case record failed to inspire confidence to the effect that this accused had ever attempted to commit rape upon the victim girl. The evidence also failed to inspire confidence to the effect that the accused had wrongfully entered into the house of the informant and also demanded money from her. Therefore, I hereby hold that the prosecution evidence failed to prove the offence against the accused beyond all reasonable doubts.

#### **ORDER**

15. In the result, the accused Deepak Kalita is found not guilty and accordingly the accused is acquitted from this case.

Given under my hand and seal of this Court on this 8th day of July, 2019.

**(P. J. Saikia)**

Special Judge

Tinsukia

Dictated & corrected by me.

Special Judge

Tinsukia

**A P P E N D I X****PROSECUTION WITNESSES**

1. PW1 - Smti Nirumai Gogoi
2. PW2 - Miss Parashmoni Gogoi

**PROSECUTION EXHIBITS**

1. Ext.1- Ejahar
2. Ext. 2- Statement u/s 164 Cr.PC
3. Ext. 3- Statement u/s 164 Cr.PC

**DEFENCE WITNESS**

None.

Special Judge

Tinsukia