GAHC010203532023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./333/2023

NABIBAR DEWAN
S/O IBRAHIM DEWAN,
VILL.- TATIKUCHI, P.O.- SONAFULI,
P.S.- BARPETA, ASSAM, PIN- 781318.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P., ASSAM.

2:SOHIDUL ISLAM
S/O MALAM KHAN
VILL.- KHARUAPARA
P.O.- RADHA KUCHI
P.S.- BARPETA
DIST.- BARPETA
ASSAM
PIN- 781309

Advocates for the appellant : Mr. H.RA. Choudhury, Sr. Advocate.
Mr. I.U. Choudhury, Advocate.

Advocates for the respondents : M. R.R. Kaushik, Addl. P.P., Assam.
Mr. N.J. Dutta, (R-2)

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Date on which judgment is reserved : **15.09.2026**
Date of pronouncement of judgment : **17.09.2026**

Whether the pronouncement is of the operative part of the judgment ? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the appellant assisted by Mr. I. U. Choudhury, learned counsel. Also heard Mr. R.R Kaushik, learned Additional Public Prosecutor for the State. No one appears for the respondent No.2.

2. This appeal has been filed against the impugned judgment dated 17.08.2023 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Barpeta, in Special POCSO Case No.182/2019, by which the appellant has been convicted under Section 4(2) of the POCSO Act read with Section 376 IPC. However, the appellant has been sentenced under Section 4(2) of the POCSO Act only, to undergo rigorous imprisonment for 20 years, with a fine of Rs. 10,000/-, in default simple imprisonment for one year, in view of section 42 of the POCSO Act 2012.

3. Mr. H.R.A. Choudhury, learned counsel submits that there is a delay in filing the FIR dated 22/08/2019 and it is not understood on which date the medical examination of the victim had been conducted in the hospital, inasmuch as, the evidence of Prosecution witnesses shows that the victim had been examined on 21/08/2019 and also on 26/08/2019. He also submits that the rape case involving the 7 year old victim girl is a fabricated case and the reason for the false case is due to there being a land dispute between the family of the appellant and the informant. The learned Senior Counsel thus submits that

there could not have been any conviction of the appellant in view of the above discrepancies and the embellishments made to the prosecution case. In support of his submission, he has relied upon the decision of the Supreme Court in the case of ***Debraj Dutta vs. The State of West Bengal & Another [SLP (Crl.) No.16838/2025]***. The learned Senior Counsel also submits that the evidence of the prosecutrix is not reliable and as such, could not have been the basis for convicting the appellant, in the absence of any corroboration from other witnesses.

4. The learned Additional Public Prosecutor, on the other hand submits that the attempt by the appellant to suggest that a land dispute between the families, was the reason for a false case being filed against the appellant, is an afterthought, inasmuch as, no suggestions were ever put to the Prosecution witnesses, to the effect that the case had been filed due to a land dispute before the learned Trial Court. Further, there is no land dispute between the parties and no evidence to that effect has been led by the appellant. The learned Additional Public Prosecutor also submits that the fact that the victim stayed in the hospital for two days due to her injury which prior to the filing of the FIR, is clear from the evidence of PW-1, who stated that the victim was taken to the FAAMC & Hospital, Barpeta on 20.08.2019. The reason for the delay in filing the FIR has also been clearly spelt out in the FIR, where it has been stated that the family was busy with the medical treatment being given to the victim. The learned Additional Public Prosecutor also submits that the evidence of PW-3 and PW-5 corroborates the victim's statement that the victim had been raped by the appellant. He also submits that there was no reason for the victim to have falsely implicated the appellant. He submits that when the Doctor's evidence shows that the victim’s private parts was reddish and tender

to touch, besides there being a tear in the hymen, the factum of rape having been corroborated, there was no infirmity in the conviction of the appellant by the learned Trial Court.

5. We have heard the learned counsels for the parties.

6. The brief facts of the case is that, Prosecution Witness-1 (informant) submitted an FIR dated 22/08/2019 to the Officer-in-Charge, Barpeta Police Station, stating that at around 3 p.m on 19/08/2019, the appellant had lured his 7 year old daughter to his house and raped her. Although the victim raised an alarm, the appellant did not let her go. It was only after he raped her, did he send the victim home, warning her not to tell anyone about the incident. The FIR also stated that the appellant had lured the victim with a promise of giving her chocolates. The victim who came home crying and who was bleeding from her private parts, besides being in severe pain, told her mother everything, when she came home. The informant who came home later then took his daughter to the hospital for treatment the next day. The FIR also stated that the filing of the FIR got delayed, as the family was busy with the medical treatment being given to the victim. Pursuant to the FIR, Barpeta P.S. Case No.178/2019 under Section 376(AB) IPC read with Section 4 of the POCSO Act was registered.

7. PW-6 was made the first Investigating Officer, who conducted the investigation. On his transfer, the case diary was given to another Police Officer, who completed the investigation and submitted the charge-sheet against the appellant, on finding a *prima facie* case established against him under Section 376 (AB) IPC read with Section 4 of the POCSO Act. The learned Trial Court thereafter framed 2 charges against the appellant, i.e. under Section 376 IPC and Section 4 of the POCSO Act. The learned Trial Court then examined 7

Prosecution witnesses and 2 Defence Witnesses during trial.

8. After examining the appellant under Section 313 Cr.P.C, wherein the appellant made a blanket denial to all the incriminating evidence adduced against him, the learned Trial Court came to a finding that the appellant was guilty of committing an offence punishable under Section 3 of the POCSO Act and also under Section 376 IPC. The learned Trial Court thereafter convicted the appellant under Section 376 IPC and under Section 4 of the POCSO Act, holding that the victim was below 12 years at the time of the incident.

9. The evidence of PW-1, who is the informant and father of the victim is to the effect that on returning home, he was informed of his daughter being raped, as the incident had been told by his daughter to her mother. As his daughter sustained bleeding injuries on her vagina and was finding it difficult to pass urine, the victim was taken on 20th of the said month of the incident to FAAMCH, Barpeta. PW-1 also stated that the date of birth of his daughter was 13.06.2012 and was about 9 years old on the date when he gave his evidence, i.e 14.06.2022. He also stated that he filed the FIR on 22nd of the said month on account of the delay due to being busy with the treatment being given to his daughter. PW-1 also stated that the Police took his daughter for medical examination and his daughter's statement under Section 164 Cr.P.C was also recorded by the Magistrate on 26/08/2019.

In his cross-examination, PW-1 stated that the appellant was his relative, inasmuch as, the appellant was the son-in-law of his brother Mamtaz Khan. He also stated that on the day of the incident, his daughter's urinary tract had been ruptured and on taking his daughter to the FAAMCH, Barpeta in the morning of 20th of the said month, the Doctor examined his daughter (victim). Though he

did not notice whether there were any bloodstains on the pants of his daughter, his wife might have noticed the same. He also stated that his daughter was admitted as an indoor patient in FAAMCH, Barpeta for 2 days.

10. Prior to the victim (PW-2) giving her testimony, preliminary questions were put to her by the learned Trial Court, which she answered. On the learned Trial Court being satisfied that the victim could understand the questions put to her and give rational answers to the same, the testimony of the victim was recorded by the learned Trial Court. The victim stated that the appellant was her brother in law**.** On the day of the incident after coming from school at about 3 p.m, she went to the house of the father-in-law of the appellant to watch T.V. In her uncle's house, the appellant told her that he would give her chocolates, if she came to his house. The victim then went to the house of the appellant where she was offered rice with duck meat. The appellant then made the victim lie on the bed and thereafter put his penis inside her vagina. The victim screamed and cried. After the said incident, she came to her own house and narrated the incident to her mother. She felt severe pain in her urinary tract and her father was not at home at that time. When her father came home, her mother narrated the incident to him. The next day, her father took her for treatment. The victim also stated that her father lodged a case against the appellant. She also stated that the Police took her statement and her statement was also recorded by the Magistrate.

In her cross-examination, the victim stated that in the house of her uncle, other family members were present, while she was watching T.V. The victim also stated that DW-1 (wife of the appellant) was also present in the house. At the time of the rape, the wife of the appellant was washing clothes in the courtyard. DW-1, who is the wife of the appellant did not come to rescue her when she

screamed. After the rape, the appellant dropped the victim in her house. Blood oozed out and soaked her clothes. The victim also stated that prior to the incident her father and mother used to visit the house of the appellant. The victim also used to visit the house of the appellant. She also stated that the appellant's son studied in the same school with her, but in a different class. She denied the suggestion that the appellant had not asked her to come to his house by tempting her, by saying that he would give chocolates to her. She also denied the suggestion that she was not raped. The victim also testified that she remained admitted in the hospital for about 3 days for her treatment.

11. The evidence of PW-3, who is the mother of the victim is to the effect that the incident took place in the year 2019 and the date of the incident was the 19th, but she forgot the month. On the evening of the incident, her daughter started weeping and told her that she was finding difficulty in passing urine. On being asked, the victim told her that the appellant had committed bad act with her. On being asked what she meant by bad act, the victim referred to penetrative sexual assault. At the time of the incident, the victim's father was not present but he returned late in the evening, whereupon he was apprised of the incident. The next morning, her husband took her daughter to the FAAMCH, Barpeta. Her husband then lodged the FIR.

In her cross-examination, PW-3 stated that her daughter went to the house of her brother-in-law to watch TV. Though the other family members of her brother-in-law knew about their daughter being in the house watching TV, she could not say whether the family members knew that the appellant had taken her daughter to his (appellant's) house prior to the occurrence. PW-3 also stated that when her daughter told her about the incident, she checked her private parts and noticed a slight rupture in her private parts besides there

being a slight bleeding from the wound. Her daughter was wearing a half pant and a ganji (vest) at the time of the incident and blood had soaked her half pant. She also stated that she accompanied her daughter to FAAMCH the next morning. No stitching was done on the wound and only medicines were applied. PW-3 stated that her statement was recorded on the 22nd of the said month.

12. The evidence of PW-4 is to the effect that he knew the informant, the appellant and that the victim, who was the daughter of the informant. In his evidence, he stated that when he had gone to the house of the informant, the victim had narrated the incident to him.

13. The evidence of PW-5 is to the effect that he knew the informant and the appellant. The victim was the daughter of the informant. On the day of the incident, the informant and his wife came and informed them that the appellant had raped the victim. On asking the victim, the victim told him and others present that she was having pain in her vagina. As a nurse, PW-5 examined the private parts of the victim and noticed rupture of the hymen. The victim then told PW-5 that the appellant gave her chocolates and took her to his house. After showing her a film on his mobile phone, the appellant committed bad act on her. The next day after the incident, the victim was taken to the hospital for treatment, where she remained admitted for 2 to 3 days.

In her cross-examination, she stated that her house was opposite to the house of the informant. PW-5 also denied the suggestion that she had not told the I.O that the victim's mother had told her on 19-08-2019 that the appellant had lured the victim to his house and raped her.

14. The evidence of PW-6, who was the first investigating officer, is to the effect that an FIR was lodged by PW-1 on 22-08-2019 and acting upon the

same, she started her investigation. She also found that the appellant was absconding. However, she could arrest the appellant on the same day. She also proceeded to the FAAMCH, Barpeta to record the victim's statement, but the same could not be done. On 26-08-2019 when the informant produced the victim in the Police Station, her statement was recorded. The informant also produced the birth certificate of the victim which was seized. On 26-08-2019, the victim's statement under Section 164 Cr.P.C was also recorded. As she was transferred, she handed over the Case Diary to the O/C. Barpeta Police Station, who entrusted the case for further investigation to another officer. Thereafter, the second Investigating Officer completed the investigation and submitted the charge sheet.

In her cross examination, PW-6 stated that she visited the FAAMCH, Barpeta on 22-08-2019 and found that the victim had already been admitted in the said hospital. PW-6 also stated that PW-5 did not tell her that the victim had stated that she was having pain in her vagina and as she was a nurse, she had examined the private parts of the victim and noticed the rupture of the hymen. PW-6 also stated that PW-5 did not tell her that the victim had stated that the appellant gave her chocolates, took her to his house and after showing a film on his mobile phone, committed a bad act.

15. The evidence of PW-7, who is the Doctor and Demonstrator at the Department of Forensic Science Medicine, Fakhruddin Ali Ahmed Medical College & Hospital (FAAMCH) Barpeta, is to the effect that she examined the victim on 21-08-2019. The police requisition for examining the victim also came on 26-08-2019 and as such, she examined her on 26-08-2019 also. The genital examination of the victim showed the following:

"***Genital Examination***

Pubic hairs : Not yet attained.

Vulva (Labia majora & minora): Swollen, tender to touch

Hymen :Recent tears at 4 O'clock position. Red in colour with oozing of blood Tender to touch

Vagina : Healthy

Cervix & Uterus : Healthy, Uterus not palpable per abdominally

Fourchette & Perineum: Healthy

Result of vaginal swab smear examination: Microscopic examination of vaginal smear reveal no spermatozoa.

Final Opinion *- On the basis of physical (including dental) examination and laboratory investigation done on the victim, I am of the opinion that :*

(1) Evidence of recent sexual intercourse is not detected on her person However genital findings are suggestive of recent forceful penetration

(2) No injury or violence mark is detected.

(3) Foreign particulars like hair, blood, semen etc are not detected on her person"

In her cross-examination, PW-7 stated that on examining the victim on 21-08-2019 no woman home guard accompanied the victim. She stated in her cross-examination as follows :

"……. Since the victim was found to be bleeding from her vagina, it indicates that the accused had penetrated himself on the victim. No injury was noticed on the vagina of the victim girl. Hymen of a female may be teared even without the female undergoing sexual intercourse. Hymen may not tear even if a female has sexual intercourse……"

16. The evidence of DW-1, who is the wife of the appellant, is to the effect that on the day of the incident, they had been invited to her father's house for lunch. While they were in their father's house, DW-1's son and daughter played with the victim. At about 4:00 p.m, DW-1 and her family returned home with the victim accompanying them. After one hour, her son and daughter dropped the victim to her house. Three days later, she came to know that PW-1 had lodged an FIR against her husband, alleging that her husband had committed a bad act against his daughter. DW-1 stated that on the day of the incident, the appellant was with her the whole day and the allegations made against her husband were false. She also stated that there was a land dispute between PW-1 and her husband.

In her cross-examination, DW-1 stated that they had gone to her father's house at 8:00 a.m to have lunch and did not know the exact time when they returned. DW-1 also stated that she had not brought any land record to show that PW-1 had a land dispute with her husband.

17. The evidence of DW-2, who is the mother-in-law of the appellant, is to the effect that on the day of the incident, she had invited the appellant and his family to lunch. The victim was also there and the victim played with the grandchildren of DW-2. When the appellant's family returned to their own house, the victim also accompanied them and her grandchildren dropped the victim at her house. DW-2 also stated that there was a land dispute between PW-1 and the appellant and that the present case had been lodged against her son-in-law because of the land dispute.

The examination of the appellant under Section 313 Cr.P.C shows that the

stand taken by the appellant is to the effect that the case filed against him was a false case and that he was innocent.

18. The learned Trial Court on considering the evidence adduced by the witnesses, came to a finding that the evidence of DW-1 and DW-2 was too general and vague in nature to be worth considering, inasmuch as, no evidence was led by them to show that any land dispute existed between the appellant and PW-1. On the other hand, the evidence of the victim remained steadfast and there was no evidence to show that she was tutored to make a false case. Further, the evidence of the Medical Officer supported the testimony of the victim that she had been raped, as the vulva of the victim was found swollen and tender to touch. The hymen was found to have a recent tear at 4 o'clock position and was red in colour with blood oozing out. The same was also tender to touch.

19. Now, coming to the submission of the appellant's counsel that it was not understood on which date the medical examination of the victim had been conducted in the hospital, we find that the very fact that there is no denial that the child was in hospital on account of having been raped, fortifies our view that she had been subjected to rape. The evidence of the Medical Officer clearly corroborates the testimony of the victim that she had been raped. Just because the victim had been examined on two occasions, i.e, on 21/08/2019 and 26/08/2019 does not take away the fact that the injury to her private parts was caused due to some other reason, other than rape.

20. The stand of the defence witnesses that a false case had been filed due to there being a land dispute between PW-1 and the appellant, is not supported by

any evidence or document. Further, as has been rightly pointed out by the learned Addl. P.P, no suggestions were ever put to the Prosecution witnesses at the time of recording their evidence before the learned Trial Court, that the case had sprung up due to a land dispute between the parties. As such, we are of the view that the alleged land dispute between the parties, is an afterthought on the part of the appellant to throw us off the scent of the trial. Therefore, no doubt is created in our minds, due to the above stand taken by the defence witnesses that there was no case of penetrative sexual assault.

21. With regard to the stand taken by the appellant's counsel that there are discrepancies in the evidence of the witnesses, inasmuch as, they have testified beyond what had been stated by them in their statements made to the Investigating Officer under Section 161 Cr.P.C, thereby lowering the credibility of the Prosecution witnesses, the evidence of the Investigating Officer given during cross-examination would have to be seen vis-à-vis the statement given by the witnesses during investigation.

The Investigating Officer (PW-6) had stated in her cross-examination as follows :

(a) "Witness PW.1 did not state before me that his wife told him that their daughter has gone with the accused to his house for watching TV."

(b) "The informant did not state before me specifically that his wife told him that the accused had committed penetrative sexual assault upon his daughter."

(c) "Witness Sahera Begum did not state before me that the victim girl narrated the incident and that she was present at the house of the informant."

(d) "Witness Rinjuwara Khanam did not state before me that the victim told her and others that she was having pain in her vagina and that as a nurse when she examined the private parts of the victim girl, she noticed rupture of hymen on the vagina of the victim girl when she asked her."

(e) "Witness Rinjuwara Khanam did not state before me that the victim told her that the accused gave her chocolates and took her to his house and after showing a film on his mobile phone, committed the bad act with her."

On a perusal of the Section 161 Cr.P.C statement made by PW-1 (informant), we find that PW-1 had made the above statement to PW-6 and thus, the evidence of PW-6 with regard to the above (a) was not correct.

22. With regard to whether PW-4 had told PW-6, that the victim girl had narrated the incident to her, we find that the victim had narrated the incident to PW-4. On this score also, we find that the evidence of PW-6 on (b) was not correct. With regard to the statement made by PW-6, that PW-5 did not tell her that the victim told PW-5 and others that she was having pain in her vagina, we find that the Section 161 Cr.P.C statement of PW-5 is to the effect that she had stated that the victim told her there was blood coming out from her vagina. However, PW-5 in her 161 Cr.P.C statement did not say that she had examined the private parts of the victim and had noticed rupture of the hymen. PW-5 also did not tell PW-6 that the victim had told PW-6 that the appellant had given chocolates and took her to his house and showed her a film on mobile prior to committing the bad act.

23. The above facts go to show that while the statements made by PW-6 that

PW-1 and PW-4 did not make any statement to her with regard to the above facts, was not correct. On the other hand, there is slight discrepancy with respect to the evidence of PW-5 who apparently testified more than what she had told PW-6 during investigation. In any event, though there might have been some discrepancies, the same does not go to the root of the matter, i.e with regard to the rape of the seven year old victim by the appellant. They also do not controvert the fact that the evidence of the victim has been corroborated by the Doctor's evidence. Thus, it cannot be said that PW-5 is a discredited witness. In any event, it is settled law that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable Prosecution case.

24. With regard to the stand of the appellant's counsel that there is a delay in lodging the FIR by 3 days, we find the said fact to be true. However, the delay has been explained in the FIR and in the testimony of the informant (PW-1), that due to the treatment being given to their daughter (victim), there was a delay in filing the FIR. We do not have any reason to doubt the explanation given by PW-1 as to the reason for the delay in filing the FIR, as the health and treatment to be given to a 7 year old child, subjected to rape, would have been the paramount consideration of a parent.

25. In the case of ***State of H.P. vs. Gian Chand,*** reported in ***(2001) 6SCC 71***, the Supreme Court has held that delay in filing an FIR in rape cases is normal when the perpetrator is a relative.

26. In the case of ***State of U.P. vs. Manoj Kumar Pandey,*** reported in ***(2009) 1 SCC 72,*** the Supreme Court has held that absence of explanation in

filing delayed FIR, does not per-say apply to cases of rape.

27. In the case of ***Deepak Vs. State of Haryana*** reported in ***(2015) 4 SCC 762***, the Supreme Court has held that the Courts cannot overlook the fact that in sexual offences and in particular, the offence of rape on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. In the case of ***State of Punjab vs. Gurmit Singh,*** reported in ***(1996) 2 SCC 384***, the Supreme Court has held that in sexual offences, delay in the lodging of the FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.

28. In the case of ***Debraj Dutta (Supra),*** the Supreme Court held that delay in lodging of an FIR assumes great importance, especially, when there is no explanation for the same. It also held that unless the testimony of a victim child is found to be fully credible and trustworthy, the question of applying the presumption under Section 29 of the POCSO Act could not arise.

29. In the present case, as stated in the foregoing paragraphs, the explanation for the delay in filing the FIR was due to the medical treatment being given to the victim in a hospital, on account of the rape inflicted upon her by the appellant. It is not the case of the appellant or any other person that the victim was suffering from some disease other, than being raped, due to which she was in the hospital. As such, we do not have any reason to doubt the testimony of the victim girl that she had been raped by the appellant, which

finds corroboration in the evidence of the Medical Officer. The foundational facts of penetrative sexual assault having been established by the Prosecution, it was the duty of the appellant to discharge his duty in rebutting the presumption under Section 29 of the POCSO Act, which it failed to do.

30. In view of the reasons stated above, we do not find any reason to interfere with the impugned judgment of the learned Trial Court.

31. The appeal is accordingly dismissed.

32. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant

Kuntal Datta

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