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

Case No. : CRL.A(J)/92/2025

HOREN BHUYAN,
S/O SRI ROTIYA BHUYAN, R/O VILLAGE KHUNTAI HENDURITING T.E, P.O.- BADULIPUR, P.S.- KAMARGAON, DISTRICT- GOLAGHAT, PIN 785611

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP, ASSAM

2:SMT ANJU GHATOWAR
W/O SRI GOBIN GHATOWAR
R/O - NEGHERITING NO. 12 LINE
P.S.- DERGAON
DISTRICT - GOLAGHAT
ASSAM.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the appellant : Ms. M.K. Brown, Legal Aid Counsel.

Advocates for the respondents : Ms. A. Begum, Addl. P.P., Assam (respondent no.1)
Ms. S. Sharma, Legal Aid Counsel (respondent no.2

Date of hearing & judgment :15.09.2026

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

1. Heard Ms. M.K. Brown, learned Legal Aid Counsel for the Appellant. Also Heard Ms. A. Begum, Learned APP and Ms. S. Sharma, learned Legal Aid Counsel for the Respondent No.2.

2. The appellant has been convicted under Section 363 IPC and Section 6 of the POCSO Act, vide the impugned judgment and order dated 30.09.2024 passed by the learned Special Judge (POCSO), Golaghat, in Special POCSO Case No.50/2021, arising out of Dergaon P.S case No. 188/2021.

3. The appellant's counsel submits that the victim was 16 to 18 years, as per the evidence of the doctor based on radiological examination. However, the learned Trial Court had come to a finding that the Date of Birth of the victim in the Admission Register of the school proved that the victim was a minor and as such, convicted the appellant for having committed an offence under Section 5(l) of the POCSO Act.

4. The learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of ***Birad Mal Singhvi vs. Anand Purohit***, reported in ***AIR 1988 SC 1796,*** in support of her submission that the entry in the Admission Register of the school could not have been the basis for the learned Trial Court to come to a finding that the victim was a minor, when the basis for the entry in the Admission Register had not been given in evidence. Thus, the

age of the victim was not proved by the Prosecution.

5. The learned counsel for the appellant further submits that appellant had not made the victim pregnant, as the contents of the charges framed against the appellant, was regarding the seduction and pregnancy of the victim on or subsequent to 07.05.2021, while the Doctor's evidence showed that the victim was found to be 13 months pregnant on the date of medical examination, i.e. on 13.05.2021. The charge framed against the appellant under Section 366 IPC and Section 6 of the POCSO Act only speaks of the appellant having kidnapped and seduced the victim, besides making her pregnant, on or after 07.05.2021, while in fact the victim was 13 weeks pregnant on the date of the medical examination, i.e. on 13.05.2021. She submits that in terms of Section 211(3) Cr.P.C, the contents of the charge requires the offence to be given a specific name, so as to give the accused appellant notice of the matter for which he was charged. However, in the present case, the appellant has been charged only for the offence that had allegedly occurred on or after 07.05.2021, thereby not giving notice to the appellant to make any defence with regard to the pregnancy or any sexual offence that is alleged to have been committed by the appellant prior to 07.05.2021. She also submits that there is no evidence to the effect that the appellant had sexual intercourse with the victim on or subsequent to 07.05.2021. She accordingly submits that in the absence of proof of the victim to be a minor, the provisions of the POCSO Act are not attracted. She also submits that when the charges framed against the applicant does not require the appellant to make a defence with regard to any alleged offence prior to 07.05.2021, there is no question of the appellant being convicted for an offence of having made the victim pregnant prior to 07.05.2021.

6. On the other hand, the learned counsels for the respondents submit that the entry in the Admission Register of the school can be the basis for determining the age of the victim and in this regard, the learned counsel for the respondent no.2 has relied upon the decision of the Supreme Court in the case of ***State of Chhattisgarh vs. Lekhram***, reported in ***(2006) 5 SCC 736***. They also submit that though there might be an error in the framing of charges, the appellant was well aware of the intent of the charge framed against him, as all the documents to be relied upon by the Prosecution during trial had been served upon him, which showed that he had also been accused of aggravated penetrative sexual assault and making the victim pregnant prior to 07.05.2021. They also submit that in terms of Section 215 Cr.P.C and Section 464 Cr.P.C, no finding or sentence or order by a competent Court can be deemed to be invalid, merely on the ground of some error or irregularity in the charge, unless the same has occasioned a failure of justice. In the present case, there has been no failure of justice on the basis of the charges framed and the appellant has defended himself, from the charge of having raped and made the victim pregnant, which can be seen from the cross-examination of the Prosecution witnesses. They accordingly pray that the appeal should be dismissed.

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

8. With regard to the stand of the appellant's counsel that the charges framed against the appellant have not been made in terms of Section 211(3) Cr.P.C, we would have to see the exact nature of the charges framed against the

appellant. The charges framed against the appellant by the learned Trial Court are under Section 366 IPC and Section 6 of the POCSO Act, 2012 on 25.02.2022, which are as follows :

> "***Firstly***- *that you on 07/05/2021 at 12 noon took away the alleged victim Smti R.R. resident of Negheriting Line No-12, under Dergaon P.S. in Golaghat District(although the actual name and description is stated to the accused, to protect her identity actual name is not disclosed here) who was aged about 16 years during that time without the consent of her guardian with intent that she would be seduced or forced to illicit intercourse, and thereby committed an offence punishable U****/S 366 of the Indian Penal Code*** *and within my cognizance.*
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> ***Secondly****-That you on the above date and subsequent thereto, time and place committed penetrative sexual attack with the atteged victim who was aged about 16 years and made her pregnant and thereby committed an offence punishable* ***U/S 6 of the Protection of Children from Sexual Offences Act, 2012*** *and within my cognizance.*
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> *The above charges are read over, interpreted and explained to the accused person to which, he has pleaded not guilty.*
>
> *Dated Golaghat the 25th day of February, 2022."*

9. The evidence of the Doctor (PW-3) is to the effect that she examined the victim on 11.05.2021 and found that her hymen was absent and in her opinion, the age of the victim was above 16 years and below 18 years as per the radiological report. Further, there was no sign of recent sexual intercourse or injury in the private parts or body of the victim. PW-3 also exhibited the ultrasonography report done on the victim on 13.05.2021 by the Department of Radiology, Swahid Kushal Konwar Civil Hospital, Golaghat, wherein it showed that the victim was apparently pregnant for 13 weeks and 3 days, inasmuch as, the impression given in the said report was as follows :.

"*Single intrauterine live pregnancy at 13 weeks 3 days of gestational age"*

10. The cross-examination of the Prosecution Witnesses by the appellant also shows that he was aware that during the framing of charge and trial, he had been charged with raping the victim and was responsible for the pregnancy of the victim which occurred prior to 07/05/2021. One example is the cross-examination of PW-2 by the appellant, where PW-2 (victim) denied the suggestion that the appellant did not rape the victim or that the appellant was not responsible for the pregnancy of the victim. Thus, the above clearly shows that the appellant was aware, at the time of framing of charge and also subsequently, that he had been charged with raping the victim and making her pregnant. The above also shows that the appellant was not misled by the error, and/or omission made in the charges, wherein it was stated that the seduction and pregnancy that occurred on or after 07/05/2021.

11. Section 215 and 464 Cr.P.C states as follows :

"***215. Effect of errors*** *- No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."*

"***464. Effect of omission to frame, or absence of, or error in, charge*** *– (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the*

Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

12. On a perusal of the above provisions of the Cr.P.C and due to the fact that the appellant was well aware that he had been charged with seducing and making the victim pregnant, it cannot be said that the error, and/or omission at the time of framing of the charge by the learned Trial Court had misled the appellant and consequenty occasioned any failure of justice to the appellant. On that score, we hold that the error/ omission made by the learned Trial Court during framing of charge, did not vitiate the trial and could not be a ground to throw out the Prosecution case.

13. With regard to the issue as to whether the entry in the Admission Register of the school proved the age of the victim to be a minor, the same would have to be considered in the light of the decisions of the Hon'ble Supreme Court.

14. In the case of ***Birad Mal Singhvi (supra),*** the Supreme Court held that the entries contained in the school register are relevant and admissible, but have no probative value, unless the person who made the entry or provided the date of birth is examined. In this regard, paragraph nos.14 and 15 of the said judgment are reproduced hereinbelow, as follows :

> "***14***. … *If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value.* … *The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.* …
>
> "***15***. *Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is (2003) 8 SCC 745 1988 Supp SCC 604 relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to the date of birth made in the school register is relevant and*

admissible under Section 35 of the Act, but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded. … The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made is examined…"

15. In the case of ***Lekhram (supra),*** the Supreme Court held that though entries in school registers are admissible under Section 35 of the Evidence Act, their evidentiary value improves only when corroborated by oral testimony of persons who are aware of its content, such as the parents or the person who made the entry at the time of admission. In this regard, paragraph nos.12 and 13 of the said judgment are reproduced hereinbelow, as follows :

"***12****. A register maintained in a school is admissible in evidence to prove date of birth of the person concerned in terms of Section 35 of the Evidence Act. Such dates of births are recorded in the school register by the authorities in discharge of their public duty. PW 5, who was an Assistant Teacher in the said school in the year 1977, categorically stated that the mother of the prosecutrix disclosed her date of birth. The father of the prosecutrix also deposed to the said effect.*

"***13****. …The materials on record as regards the age of the prosecutrix were, therefore, required to be considered in the aforementioned backdrop. It may be true that an entry in the school register is not conclusive, but it has evidentiary value. Such evidentiary value of a school register is corroborated by oral evidence as the same was recorded on the basis of the statement of the mother of the prosecutrix."*

16. In the case of ***Vishnu vs. State of Maharashtra***, reported in ***(2006) 1 SCC 283,*** the Supreme Court held that very often parents furnish incorrect date of birth to the school authorities, to make up the age, in order to secure admission for their children. For determining the age of the child, the best evidence is of his/her parents, if it is supported by impeccable documents. It also held that entry made in the official record by an official or person authorised in performance of an official duty, is admissible under Section 35 of the Evidence Act, but the party may still ask the Court/authority to examine its probative value. The authenticity of the entry would depend, as to on whose instruction/information such entries stood recorded and what was his source of information. The Supreme Court also held that entry in the school register/certificate requires to be proved in accordance with law. Standard of proof for the same remains as in any other civil and criminal case.

17. In the case of ***Birka Shiva vs State of Telangana***, reported in ***2025 SCC OnLine SC 1454,*** the Supreme Court held that when the Prosecution had failed to examine the person who made the entry in the Admission Register, to ascertain on what basis such an entry was made, it was not possible to ascertain as to whether the Date of Birth was correct and as such, could not be relied upon to definitely determine the age of the victim. The law laid down by the Supreme Court in the above cases thus show that for determining the age of a person in terms of the Admission Register of a school, the person who made the entry or provided the date of birth has to be examined.

18. In the present case, the mother of the victim, who had been examined as

PW-2, stated in her cross examination as follows:

"*I do not have the birth certificate of the victim and I cannot say the date of birth of the victim. I stated the age of the victim in the ejahar as 16 years at the time of the alleged incident on assumption.*"

19. The facts show that the person who had made the entry of the victim's date of birth in the Admission Register of the school has not been examined and as the mother of the victim, besides not knowing the date of birth of the victim, has not stated that she had given the age of the victim to the person who had entered the Date of Birth of the victim in the Admission Register, to prove that the victim had been born as per the date of birth entry made in the Admission Registrar. Thus, it cannot be said with certainty that the victim was a minor at the time of the incident.

20. The above being said, the radiological/ossification test report dated 13.05.2021 of the victim, as testified by PW-3, who examined the radiology report, found the victim to be over 16 years of age and below 18 years at the time of the incident.

21. In the case of ***Mukarrab Vs. State of UP***, reported in ***(2017) 2 SCC 210,*** the Supreme Court has held that an ossification test cannot be solely relied upon as conclusive proof of age and the said test by no means can be said to be so infallible and accurate a test, so as to indicate the correct number of years and days of a person's life. The medical examination leaves a margin about 2 years on either side for determining the age. Thus, there has to be an

addition or substraction of +/- 2 years on the date of birth of a person, determined on the basis of an ossification test.

22. In the case of ***Yuvaprakash vs. State of TM***, reported in ***(2024) 17 SCC 684***, the Supreme Court has held that in the absence of the birth certificate issued by the Corporation or Municipal Authority or Panchayat or the School or the Board, in terms of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the prosecution would require to prove the victim's age on the basis of an ossification test.

As the ossification test is not a full proof method for determining the exact age of a child with conflict or the victim, the benefit +/- 2 years would have to be given to the age determination, on the basis of the ossification test, to the child in conflict with law or to the victim, depending upon the facts of each case. This is due to the fact that when there are two views available from the evidence on record, the Court should lean in favour of an accused.

23. Keeping in view the decisions of the Supreme Court, wherein the benefit of +/- 2 years is to be added to determine the age of a person who has undergone an ossification test, two years would have to be added to the age of the victim, so as to lean in favour of the accused. Thus, due to the above reason, the victim would have to be considered to be above 18 years at the time of the incident.

24. The evidence of the victim is to the effect that she had eloped with the appellant, as she was in love with him. The above testimony of the victim,

coupled with her being a major, leaves us with no choice but to hold that there was no offence committed by the appellant under the POCSO Act 2012 or under the IPC, as there was consensual sexual relations between two adults. Further, the evidence of the victim under Section 164 Cr.P.C is to the effect that she had known the appellant for about 2 years and they had fallen in love, whereupon they had a physical relationship due to which she had become pregnant. On becoming pregnant, she had informed the appellant and had asked him to take her with him. On 07.05.2021, the victim travelled to Jorhat and on the appellant arriving there, they went to Dibrugarh. They stayed 2 days there and spent 1 day at the appellant's aunt's house. Thereafter, the appellant's mother called them over phone and asked them to go to appellant’s house. On going to the appellant's house the victim arrived at the police station. She also stated in her 164 Cr.P.C statement that she had gone with the appellant on her own free will because she was pregnant. The above statement of the victim under Section 164 Cr.P.C corroborates the evidence of the victim that there was a consensual relationship.

25. There being no specific date when they first had sexual intercourse, the proof of committing an offence under the POCSO Act cannot be ascertained, as the penetrative sexual act would have to take place before the victim became a major. In the absence of a specific date on which they first had sexual intercourse, there is no proof that the victim had been subjected to sexual intercourse when she was a minor.

26. On account of the above facts, we are of the view that the learned Trial

Court could not have convicted the appellant under Section 6 of the POCSO Act, 2012. Accordingly, for the reasons stated above, the appellant is acquitted of the charges framed against him under Section 363 IPC and Section 6 of the POCSO Act, 2012. Consequently, the impugned judgment and order dated 30.09.2024 passed by the learned Special Judge (POCSO), Golaghat, in Special POCSO Case No.50/2021 is hereby set aside. The respondents are directed to release the appellant from judicial custody immediately, if not wanted in any other case.

27. The appeal is accordingly allowed.

28. Send back the TCR.

29. In appreciation of the assistance provided by learned Legal Aid Counsels for the appellant and the respondent no.2, their fees should be paid by the High Court Legal Services Committee.

JUDGE **JUDGE**

Comparing Assistant