

GAHC010083572025



DB

2026:GAU-AS:7099-

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

Case No. : CrI.A./162/2025

MD ZAHANGIR ALAM
S/O ABDUL AZIZI, R/O VILL. DHANBANDHA COLONY POLICE STATION
BARPETA, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR,
REPRESENTED BY PP, ASSAM.

2:SMT. BRINDA BARMAN

W/O SRI NAKUL CH BARMAN
VILL. HASRAWBARI
P.S. KAJALGAON
DIST. CHIRANG
ASSAM

Advocate for the Petitioner : MR P CHOWDHURY

Advocate for the Respondent : MRS. A. BEGUM, ADDL. PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 19.05.2026

Date of pronouncement of judgment : 22.05.2026

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. P. Chowdhury, learned counsel for the appellant. Also heard Mrs. A Begum, learned Addl. Public Prosecutor for the State. None represents the respondent No. 2.

2. This appeal is directed against the Judgment and Order dated 25.02.2025 passed by Sri C. Chaturvedi, Special Judge, Chirang, at Kajolgaon, in Special Pocso Case No. 09/2024 convicting the accused, namely, **Md. Zahangir Alam**, for the offence under Section 6 of the POCSO Act, sentencing to undergo rigorous imprisonment for 20 years and also to pay fine of Rs. 50,000/- and in default of payment, then to suffer further imprisonment for 2 years and accused was further convicted for the offence under section 363 IPC and sentenced to imprisonment for 2 years with fine of Rs. 50,000/- and in default

to pay fine, to undergo further imprisonment for six month.

3. The informant, who is the mother of the victim, lodged the instant FIR on 27.01.2024 before the OC, Kajalgaon PS, which was registered as FIR number 09, dated 27.01.2024 and therein, it was alleged that the accused person, who had represented himself as Ayan @ Jain had trapped the minor daughter of the informant, aged 17 years, on the pretext of love, and enticed her away to some hotel at Barpeta and committed rape upon her, and also made video recording of the aforesaid act, which is circulating in the social media.

4. Upon registration of Kajalgaon P.S. case number 09 of 2024 under sections 363/376/294/501 IPC, R/W Section 4/14 of the POCSO Act, R/W Section 67 of the IT Act, was registered and investigation commenced and upon completion of such investigation, charge sheet was submitted and charges were framed against the accused appellant under Section 4/6/14 of the POCSO Act as well as under Sections 363/376 IPC, as well as Section 67 of the IT Act. The accused/appellant pleaded not guilty, and accordingly, the trial commenced in the course of which 12 (twelve) numbers of prosecution witnesses were examined, and on conclusion thereof, the accused/appellant was examined under Section 313 Cr.P.C. The defence plea was one of denial,

and no evidence was adduced on behalf of the accused/appellant.

5. Upon consideration of the material on record, the accused/appellant was convicted and sentenced as above. Hence, this appeal.

6. At this stage, the evidence on record may be considered.

7. PW 1 is the victim. Her evidence shows that she is 17 years of age. She deposed that in the month of February, 2023, she came in contact with A1, who identified himself as Ayan jain. A1 had come to their village for laying water pipeline. She came in contact with him and started meeting him. On 27.05.2023, at about 10 AM, A1 asked her to meet him on the road. A1 took her in a bus to Barpeta Road. At Barpeta Road, A1 took her to a hotel and engaged in sexual relationship with her. Again on 14.07.2023, A1 induced her to accompany him and took her to a place near Barpeta where he again committed sexual intercourse with her. This time, A1 videographed the entire sexual intercourse in his mobile phone. On the third occasion when A1 wanted her to take her to a different place, she refused. A1 threatened that he would upload her nude pictures in social media. Thereafter, A1 took screen shot of the video which he had recorded during their sexual intercourse and sent these images to one Raju Ahmed of their village. Thereafter, her images went viral.

8. The trend of her cross-examination shows that she had not reported while going with A1 to different places and also about her relationship with A1, to her mother or to any other person. She also had not reported the act of video recording of sexual intercourse to anyone. She reported the entire incident to her mother only when her images went viral. She denied the suggestion that she was more than 18 years of age on the date of occurrence. She also denied the suggestion that A1 never had any sexual intercourse with her.

9. PW 2 is the mother of the victim and she re-iterated the evidence as reported by the victim. She also reiterated the evidence of her daughter that on two occasions, A1 took her to different places and committed sexual intercourse with her. She also deposed that A1 circulated the images in social media.

10. In her cross-examination, she deposed that she had not checked the mobile phone of her daughter. She also admitted that she did not know A1 at the time of lodging of ejarah. She denied the suggestion that she had never seen any viral images of her daughter.

11. PW 3 Hemanta Barman and PW 4 Gita Barman deposed that they had come to know that nude pictures of victim had been circulating in the

Instagram account. PW 4 also deposed that the Birth Certificate of the victim was seized by police and she had signed in the seizure list.

12. PW 5 Sariful Islam deposed that A1 had given his phone number to him and asked him to share it with the victim.

13. PW 6 Purnima Ray deposed that she found nude pictures of the victim in social media.

14. PW 7 Bikram Biswakarma deposed that he is a Manager at Springvilla hotel at Hatigaon, Bhetapara, Guwahati. On 23.09.2023, one Zahangir Alam had given his Aadhaar Card as identity document and took entry to his hotel along with a girl who was identified as Saniyara Kanam. Police had seized the hotel registration card.

15. PW 10 Dr. Kukumoni Basumatary deposed that she found the hymen of the victim ruptured. But from X-ray report, her age was estimated around 19-21 years.

16. PW 12 is the expert, who deposed that he extracted the video recordings from the mobile phone of A1. The mobile was sent to DFS for forensic

examination. He has also exhibited the certificate under Section 65B(4) of the Evidence Act.

17. PW 14 is the Investigating Officer. In his cross-examination, PW 14 deposed that the ejahar was lodged at 7.30 PM. He deposed that he had not seized any document to show that Al Zahangir Alam also had an alias called Ayan @ Jain. He denied the suggestion that the person named in the ejahar and the person charge-sheeted accused are two different persons. The ejahar shows that date of occurrence is 27.07.2023, but the ejahar was lodged on 27.01.2024 and there is no explanation for delay. There is no reference in the ejahar that Al had taken the victim to Guwahati. He denied the suggestion that he had gone to Guwahati lodge on his own without there being any statement of victim or A1. He had not applied for any document to show that the mobile phone bearing SIM number 9864861185 belonged to A1. He had not recorded the statement of Raju Ahmed u/s 161 Cr.P.C. In the sketch maps prepared for Guwahati and Barpeta, he has shown some persons living near the place of occurrence, but he had not recorded their statements. He had not recorded the statement of the owner of the lodge at Guwahati. He had not seized the trade licence of the lodge. He further denied the suggestion that the mobile phone did not belong to A1, hence forensic report has no relevance to this case. PW

14 admitted that he had not seized the mobile phone of any other person to whom any alleged viral video was transmitted by A1.

18. Learned counsel for the appellant argued that the relationship between the accused/appellant and the victim was a consensual one and that, in view of the medical opinion, the victim was a major, aged around 19 to 21 years, and therefore, no offence has been made out. In support of his submission, learned counsel has relied upon the decision of the Hon'ble Apex Court in ***State of Uttar Pradesh Vs. Anurudh and Another***, reported in ***2026 SCC OnLine SC 40***. It is also urged on behalf of the appellant that a perusal of the evidence of the I.O. would show that the I.O. has shifted the place of occurrence to Guwahati from Barpeta Road, whereas, in the evidence of the victim, there is no allusion to any act having taken place in Guwahati, and therefore the prosecution case is riddled with contradictions emanating from the evidence of the prosecution witnesses themselves.

19. Per contra, learned Additional Public Prosecutor has submitted that the prosecution has proved this case beyond reasonable doubt and the accused/appellant has failed to discharge his onus under Sections 29/30 of the POCSO Act even on a preponderance of probabilities.

20. With regard to the contention regarding the age of the victim, it is submitted that the learned Trial Court has rightly relied on the school certificate (MO-1), which showed the date of birth of the victim as 20.03.2007, and the occurrence having taken place on 27.05.2023 and 14.07.2023. The victim was a minor below 17 years of age at the time of occurrence, and therefore, her consent is immaterial.

21. Further, in view of the availability of the school certificate, the question of relying upon the medical evidence as regards the age of the victim does not arise, in view of the settled position of law in this regard, as laid down by the Hon'ble Apex Court in a catena of decisions, including the decision in ***P.Yuvaprakash Vs. State represented by Inspector of Police***, reported in ***(2024) 17 SCC 684***.

22. We have given due consideration to the rival submissions as well as the evidence on record.

23. In the cited case of ***P.Yuvaprakash*** (Supra), the Hon'ble Apex Court held as follows:

“15. It is evident from conjoint reading of the above provisions that

wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the court concerned has to determine the age by considering the following documents:

"94. (2)(i) *The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof;*

(ii) The birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) And only in the absence of (i) and (i) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board."

16. *Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on*

the orders of the authority concerned i.e. Committee or Board or Court."

24. A perusal of the evidence of the victim/PW1 would clearly show that she has very specifically implicated the accused as having committed sexual intercourse with her on two occasions, i.e., on 27.05.2023 and 14.07.2023 at Barpeta Road and someplace near Barpeta respectively, during which periods she was a minor and from the cross examination of the PW1, it is clear as daylight that the defense failed to contradict her evidence with reference to any omissions or contradictions in her previous statements either before the I.O. or before the Magistrate recorded under Section 164 Cr.P.C. The evidence of the prosecutrix has been found to be consistent throughout and it further appears from the trend of the cross examination of the prosecution witnesses, that the thrust of the defense case, as also evident from the submissions of learned counsel for the appellant, is that the sexual relationship between the two was of a consensual nature, which did not amount to any offense, in view of the age of the victim being above 18 years as per the medical evidence.

25. In view of the consistent evidence of PW1 and as is evident from the non-contradiction of the same by the defence with reference to any of her previous statements, the victim can be regarded as a sterling witness, whose evidence

can be considered as wholly reliable. As regards the question of age, it emerges from the cross examination of PW2 that the defense never challenged the authenticity of the birth certificate or the mode of its exhibition or the manner in which it was proved, which reflected her date of birth as 20.03.2007, thereby placing the victim in the category of a minor as on the dates of occurrence. It is nobody's case that the document is *per se* inadmissible.

26. Further, in view of the cited decision in ***P.Yuvaprakash (Supra)***, there can be no cavil that when the undisputed school certificate is available in evidence, the medical evidence as regards age would not find any place for consideration. As far as the decision in ***Anurudh (Supra)***, cited by the learned counsel for the appellant, is concerned, suffice to say that we would have understood had it been cited by the prosecution, inasmuch as the said decision nowhere lays down that medical evidence would have precedence over the school certificate, as far as the question of determination of the victim's age is concerned. It has been held in the decision of ***Anurudh (Supra)*** as follows:

"17. The necessary sequitur from the above exposition is that a medical determination of age of a victim cannot be resorted to as a matter of course, much less mandated. It can only be employed in a given circumstance when the other stipulations of Section 94 JJ Act are

not/cannot be met. This direction, therefore, has to be set aside."

27. As regards the submission of learned counsel for the appellant regarding the I.O. having stated that he visited a hotel in Guwahati, as the victim had stated before him that an occurrence of the said nature had taken place therein, suffice to say that the same is of no relevance inasmuch as, firstly, no such statement of the victim/ PW1, was put to her during cross-examination, and therefore the same is not permitted to be brought in by way of cross-examination of the I.O., in view of Section 162 Cr.P.C and Section 145 of the Evidence Act and secondly, this statement of the I.O., does not in any way, dilute her testimony regarding the occurrence at the other two places, which has withstood the test of cross examination

28. Having analyzed and discussed the evidence on record as aforesaid, we are of the firm view that the prosecution has succeeded in proving its case beyond reasonable doubt on the strength of its evidence, and therefore, resort to Section 29 of the POCSO Act is not even necessary, although the learned Trial Court also took the aid of the said section in returning a finding of guilt against the accused/appellant.

29. In view of the above, we find the appeal to be devoid of merit, and

accordingly, the same stands dismissed.

30. The conviction and sentence recorded by the learned Trial Court stands affirmed.

31. Send back the TCR.

JUDGE

JUDGE

Comparing Assistant