

GAHC010028902025



2026:GAU-AS:12741

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

Case No. : CrI.A./62/2025

DILIP DEBNATH
S/O. LT. RAKHAL DEBNATH, R/O. NAMDANG BASHBARI, P/O. AND P/S.
MARGHERITA, DIST. TINSUKIA, ASSAM. TINSUKIA ASSAM

VERSUS

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

2:PINTU RAI
S/O. LT. BHASBESH GOSH
WHO BEING INFORMANT REP. THE VICTIM-MISS X (PW-3) R/O.
NAMDANG BASHBARI
P/O. AND P/S. MARGHERITA
DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR. R S MISHRA, MR. R K MAHANTA, MR. A K GUPTA

Advocate for the Respondent : PP, ASSAM, MR SARFRAZ NAWAZ, AMICUS CURIAE (R2)

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

Advocate(s) for the Appellant : Mr. A.K. Gupta, Advocate.
Advocate(s) for the Respondent No.1: Mr. B. Sarma, Addl. P.P., Assam.
Advocate(s) for the Respondent No.2: Mr. S. Nawaz, Amicus Curiae.
Date on which judgment is reserved : 12.05.2026.
Date of pronouncement of judgment : 03.09.2026.
Whether the pronouncement is of the
operative part of the judgment? : YES.
Whether the full judgment has been
pronounced? : YES.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Gupta, learned counsel appearing for the appellant. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam representing Respondent No.1 as well as Mr. S. Nawaz, the learned Amicus Curiae representing Respondent No.2.

2. This is an appeal under Section 415(2) of the BNSS, 2023 against the judgment and order dated 18.12.2024 passed by the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Tinsukia in POCSO Case No.62/2022. The appellant was convicted under Section 10 of the POCSO Act.

3. The facts of the case – on 20.11.2021, the 10 years old differently abled child was kept in the house of the appellant because on that day, her parents and her brother had gone to visit a doctor. The appellant is a neighbour and therefore, the child was kept there by her parents. The appellant allegedly committed rape upon the girl child.

4. The father of the girl had lodged the FIR before police and after investigation, police filed the *charge sheet* under Section 376AB of the Indian Penal Code read with Section 6 of the POCSO Act.

- 5.** The trial court framed the charges under Section 6 of the POCSO Act against the appellant.
- 6.** During the trial, the prosecution side examined as many as 7(seven) witnesses including the victim girl.
- 7.** The first witness to be examined is the father of the victim. He has stated that his daughter suffered from 90% locomotor disability. Ext.1 is the birth certificate. According to the said exhibit, the girl was born on 25.07.2011.
- 8.** The second witness is the mother of the victim girl.
- 9.** The third witness is the victim girl herself. She stated in her evidence that the appellant first inserted his finger into her vagina. According to the victim girl, the appellant also pressed her breast. She corroborated her statement recorded under Section 164 of the CrPC.
- 10.** The fourth prosecution witness is the doctor who examined the victim girl at the time of investigation. He stated in his evidence that the girl did not reach menarche. The doctor spoke about his findings.
- 11.** The fifth prosecution witness was present in the village met called by the father of the victim girl and this witness has stated that the victim girl had told in the said meeting that the appellant had inserted his male organ into her vagina.
- 12.** The sixth prosecution witness has quoted the victim girl as saying that the appellant had removed her pants and touched her vagina.
- 13.** The seventh prosecution is the police investigation officer who spoke about the police investigation.
- 14.** The appellant examined one defence witness. He is the younger brother of the appellant. This defence witness claimed that there is a land dispute between the appellant and the father of the victim girl. But that dispute was not so serious.
- 15.** I have carefully gone through the prosecution evidence as well as the defence

evidence.

16. From the prosecution evidence, it appears that there are two stories. One story says that the appellant had inserted his finger into the vagina of the victim girl and the other story says that the appellant had inserted his penis into the vagina of the victim girl. It is a settled principle of law that in a criminal case, the offence against the accused must be proved beyond all reasonable doubt.

17. The victim girl herself claimed that the appellant had inserted his finger into her vagina. The medical report available with the record shows that the victim did not suffer any injuries. The witness P.W.5 has stated in his evidence that the victim girl had disclosed before him that the appellant had inserted his male organ into her vagina. This witness has stated in his cross-examination that the appellant had inserted a niddle into the vagina of the victim girl. On the other hand, the PW.6 has claimed in his evidence that the victim had told before him that the appellant had removed her pants and touched her vagina.

18. Under the aforesaid circumstances, this court is of the opinion that the girl had disclosed different versions of the prosecution case before different forums. At this stage, this Court is constrained to hold that the evidence of the victim girl is not reliable. This Court has sufficient reasons to hold that the offence against the appellant has not been proved beyond all reasonable doubt.

19. The learned trial court had erroneously oriented itself and arrived at an incorrect finding. The offence against the appellant has not been proved beyond all reasonable doubt.

20. Therefore, the appeal is allowed. The appellant Dilip Debnath is found not guilty and he is acquitted from this case. The appellant shall be set at liberty forthwith.

Send back the trial court records.

JUDGE

Comparing Assistant