



2026:GAU-AS:5593-DB

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

CRL.A. No. 72 OF 2023

Ram Pukar Roy

S/o- Shonka Roy

R/o- Birubari Thana Goli,

P.O- Gopinath Nagar

P.S- Paltan Bazar, Guwahati-16

District- Kamrup (M), Assam.

.....Appellant

-Versus-

1. State of Assam.

Represented by the Public Prosecutor,
Assam.

2. Smti. R. Tiwari

W/o- Sri Promod Tiwari,

R/o- Birubari Thana Goli,

P.O- Gopinath Nagar,

P.S- Paltan Bazar, Guwahati-16,

District- Kamrup (M), Assam.

..... Respondents

- B E F O R E -

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant(s) : Mr. A. Paul, Advocate.

For the Respondent(s) : Ms. B. Bhuyan, Additional Public

Prosecutor for respondent No. 1.

Mr. S. Saikia, Advocate for respondent

No. 2.

Date on which judgment
is reserved : **N/A.**

Date of pronouncement
of judgment : **23.04.2026.**

Whether the pronouncement
is of the operative part
of the judgment ? : **No.**

Whether the full judgment
has been pronounced : **Yes.**

JUDGMENT & ORDER (ORAL)

(Kaushik Goswami, J)

Heard Mr. A. Paul, learned counsel appearing for the appellant. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor appearing for the State respondent and Mr. S. Saikia, learned counsel appearing for the respondent No. 2.

2] This criminal appeal is directed against the judgment and order dated 31.12.2022 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (M), Guwahati (hereinafter referred to as the "trial court"), in Sessions Case No. 52/2021, whereby the accused/appellant was convicted under Section 377 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"), and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act"), and sentenced

to undergo rigorous imprisonment for 20 (twenty) years each and to pay a fine of Rs. 10,000/- (rupees ten thousand) each; and in default of payment of fine, to suffer simple imprisonment for another 6 (six) months each. Both the sentences were directed to run concurrently.

3] The brief narration of the prosecution case is that on 06.12.2020, the informant filed an FIR in the Birubari Police Outpost under Paltan Bazar Police Station against the accused/appellant, alleging that at around 7.00 PM, the accused/appellant induced the complainant's son (aged about 5 years) to accompany him by offering him chocolate and later sent him back to his home in an injured condition after committing a sexual offence. As a result, the complainant's son was seriously injured, and blood was coming from the anus.

4] On receipt of the ejahar, the Officer-in-Charge of Paltan Bazar P.S. registered a case bearing Paltan Bazar P.S. Case No. 981/2020 under Section 377 of the IPC, read with Section 6 of the POCSO Act. Upon completion of the investigation, the charge-sheet was submitted, and the accused/appellant was put to trial.

5] Charges under Section 377 of the IPC, read with Section 6 of the POCSO Act, were framed by the trial court against the accused/appellant, to which he pleaded not guilty and claimed trial.

6] The prosecution examined 9 (nine) witnesses. After closure of prosecution evidence, the statement of the accused

under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") was recorded. The accused denied the incriminating circumstances and stated that the informant had lodged a false case against him, as she owed him money. Upon hearing the parties, the trial court convicted the accused/appellant and sentenced him. Situated thus, the present criminal appeal has been preferred.

7] Mr. A. Paul, learned counsel appearing for the appellant, submits that the time of the offence has not been accurately mentioned in the charge for which the trial stands vitiated. He further submits that the conviction and sentence being based on the sole testimony of the victim is not sustainable in the backdrop of the reply of the accused/appellant in his 313 Cr.P.C. examination, wherein he has categorically explained that due to the altercation he had with the mother of the victim with regard to a loan she had asked, he has been falsely implicated in the criminal case in hand.

8] *Per contra*, Ms. B. Bhuyan, learned Additional Public Prosecutor appearing for the State respondent, submits that the victim having remained consistent as regards the allegation of sexual penetrative assault, no corroboration whatsoever is required. She further submits that the medical evidence, apart from indicating evidence of sexual assault and injuries over the anus of the victim, also indicated abrasion injury on the penis of the accused/appellant. She accordingly submits that the medical evidence also supports the prosecution case, and hence no interference against the impugned conviction is warranted.

9] We have given our prudent consideration to the arguments advanced by the learned counsels for both the parties and have also perused the material available on record.

10] PW-1 (victim) deposed that he knew the accused/appellant. When he was playing outside his house, the accused/appellant offered him chocolate and took him inside his shop, where he committed "*gandakam*" on him. The accused/appellant kissed him and opened his clothes, and then he made him lie down on one table and inserted his penis inside his anus, for which he sustained injury. The accused/appellant gave him chocolate and chips and threatened him not to tell anyone about the incident. When he came back home, he felt pain while going to the bathroom to pass stool. There was bleeding, and he told his mother about the incident. He was taken to the medical for examination, and his statement was also recorded by the court.

11] During cross-examination, he clarified that the shop of the accused is situated at a little distance away from their house. He also clarified that he told his mother about the incident when he was unable to pass stool after going to the bathroom.

12] PW-2 (Rinki Tiwari), who is the informant, deposed that the victim is her son and is aged about 6 years. The occurrence took place about one year back. On the day of the occurrence, her son was playing outside as usual. The

accused/appellant took her son inside his shop by offering him chocolate. She was inside her house at that time. The accused/appellant opened the clothes of her son and did penetrative sexual assault with her son. One lady also came and saw her son in a naked position inside the shop of the accused/appellant. She further deposed that after committing the sexual assault, the accused/appellant threatened her son to assault him if he told anyone about the incident. She also deposed that when her son returned, he was in pain when he went to pass stool, and when he shouted, she asked him, and he told her about the incident. She saw blood coming out from his anus. She further deposed that when her husband came home around 7 o'clock, she told him about the incident, and then they went to the police station to lodge the ejahar.

13] During cross-examination, she clarified that the F.I.R. was written by someone else as per her narration and she had put her signature. She clarified that she saw blood stains on the body of her son immediately after the incident when her son was unable to pass stool and he screamed. She denied the fact that she did not state before police that her son told her about the incident immediately. She clarified that she did not mention in her F.I.R. or in her statement before police that one lady saw the occurrence, as she told her not to disclose her name, as her mother-in-law was having some issue. The lady told her about the incident immediately after the occurrence, i.e., at about 1 pm after the return of her son. She clarified that she did not immediately enquire the accused/appellant as he had closed the shop and enquired

him in the evening. She clarified that the accused/appellant assaulted her son on his shoulder, and she came to know by seeing the hand impression.

14] PW-3 (Pramod Tiwari) deposed that the occurrence took place in the year 2020. The informant is his wife, and the victim is his son. His wife informed him over the phone on the day of the occurrence that a big incident had taken place and asked him to come home. When he returned home at 9 pm, his wife told him that the nearby shopkeeper had done a very indecent act with their son and showed him the toilet parts of their son. He saw blood in the private parts. He further deposed that his son told him that the accused/appellant had called him and had committed an indecent act.

15] During cross-examination he clarified that the occurrence took place at about 1-1:30 pm. He clarified that he reached home at 9 pm and informed police at about 10 pm. He also clarified that there was one marriage party going on the day of the occurrence at about 1 o'clock, and small children were playing outside the house. He denied the suggestion that his son had sustained injuries due to falling down on the ground.

16] PW-4 (Parmeswar Pandit) deposed that the occurrence took place in the year 2020. The accused/appellant was his tenant for about 15 years. He knows the informant and her husband. They resided near his house. He heard about the occurrence when he returned from

work and came to know that the accused/appellant was taken to the police station.

17] PW-5 (Mustafa Hussain) deposed that the occurrence took place in the year 2020. He knows the informant, the victim, and the accused/appellant. They are his neighbours. He heard that the accused/appellant had given chocolate to the victim and committed penetrative sexual assault on him inside his shop.

18] PW-6 (Smti. Rekha Devi) deposed that on the day of the occurrence, when she was returning home, she came to know from the nearby people that the accused/appellant had committed an indecent act with the victim boy. When she reached home, PW-1 called her to their house, showed her the condition of the victim, and told her that the accused/appellant had committed rape upon her son.

19] PW-7 (Dr. Ujjal Chutia) is the Medical Officer, who deposed that on 07.12.2020, he examined the victim at 1 pm. During examination he found multiple anal tears (fresh) at the 8, 10 & 2 o'clock positions, & tender and bleeding on touch. He opined evidence of sexual assault and injuries in the anal region.

20] During cross-examination, he denied the suggestion that such injuries can be sustained as a result of passing hard stool. He clarified that such injuries may be caused after 24 hours depending on the magnitude of the injury.

21] PW-8 (Shri Kankan Mahanta) deposed that on 06.12.2020, an ejahar was lodged by PW-1. On receipt of the ejahar, a G.D. entry No. 134 dated 06.12.2020 was made and was forwarded to O/C Paltan Bazar P.S. for registering a case. Accordingly, Paltan Bazar P.S. Case No. 9821/2020 under Section 377 of IPC, read with Section 6 of the POCSO Act, was registered. During the investigation he went to the place of occurrence and recorded the statement of the complainant, the victim, and witnesses under Section 161 of the Cr.P.C. He arrested the accused/appellant on 07.12.2020 and forwarded him to the court. He also drew the sketch map. He then sent the victim for medical examination at GMCH and then to a court for recording of his statement under Section 164 of the Cr.P.C. He then collected the medical report of the victim and, after completion of the investigation, submitted the charge-sheet against the accused/appellant under Section 377 of the IPC, read with Section 6 of the POCSO Act vide Charge-Sheet No. 172 dated 29.12.2020.

22] During cross-examination, he clarified that he received the information on 06.12.2020 at about 7 pm. The date of occurrence was 06.12.2020 at 1 pm, as per the F.I.R. He clarified that the time of occurrence is mentioned as 7 pm in the ejahar. He clarified that he had not seized any undergarments of the victim or the accused/appellant.

23] PW-9 (Dr. Kumar Pinku Pratim) deposed that on 09.12.2020, he examined the accused/appellant at about 1 pm. During examination he found "*Genital Organs: healthy, Penis: Circular abrasion is present encircling the root of the*

glance penis which is reddish brown in colour." He opined that there is presence of an abrasion injury on the penis that is 2 to 4 days old.

24] During examination under Section 313 of the Cr.P.C., the accused/appellant stated that PW-2 had asked him for money a few days prior to the occurrence, whereupon he gave her Rs. 1,000/-. Thereafter, she again asked for Rs. 2,000/-, which he also gave. Subsequently, when she asked for Rs. 25,000/- he refused to pay, as she had not returned the amounts previously taken from him. He further stated that an altercation took place between them, during which she threatened to implicate him in a false case. After a few days thereafter, the present case was lodged against him, and he was arrested.

25] From the evidence on record, particularly the testimony of PW-2 (mother), it stands established that the victim was about 5 years of age at the time of the occurrence and thus a "child" within the meaning of Section 2(d) of the POCSO Act. The prosecution case substantially rests on the testimony of the victim. It is well settled that in cases of sexual offences, including those under the POCSO Act, conviction can be based solely on the testimony of the child victim, provided it is found to be credible, trustworthy, and of sterling quality. No rule of law mandates corroboration if the testimony inspires confidence.

26] In the present case, the victim has unequivocally deposed that the accused/appellant lured him with chocolates

to his shop, where he subjected him to sexual assault by removing his clothes, making him lie on a table, and committing penetrative sexual assault by inserting his penis into the victim's anus, resulting in bleeding and pain. Such act squarely falls within the definition of "penetrative sexual assault" under Section 3 of the POCSO Act. The testimony of the victim has remained consistent throughout. PW-2 and PW-3 (parents of the victim) have corroborated the surrounding circumstances. The medical evidence further substantiates the occurrence, and notably, the examination of the accused/appellant revealed an abrasion on his genitalia. On a cumulative appreciation of the evidence, the prosecution has proved the guilt of the accused/appellant beyond reasonable doubt.

27] The contention of the learned counsel for the appellant that the incorrect mention of the time of occurrence in the charge vitiates the trial is devoid of merit. While it is desirable that a charge contains accurate particulars of time, date, and place, any discrepancy in such particulars would not *ipso facto* vitiate the trial unless it is shown that the accused was prejudiced and that a failure of justice has occurred.

28] In the case at hand, although the ejahar and the charge mentioned the time of occurrence as about 7:00 PM on 06.12.2020, the charge-sheet submitted in the case clearly mentions the time of occurrence as around 1:00 PM. Furthermore, the evidence of the prosecution witnesses, particularly PW-3, indicates that the incident occurred in the afternoon between 1:00 PM and 1:30 PM. The

accused/appellant was aware of this aspect from the very inception of the proceedings. Despite such discrepancy, no prejudice has been demonstrated to have been caused to the accused/appellant on this account.

29] In *Chittaranjan Das v. State of West Bengal*, reported in **AIR 1963 SC 1696**, the Apex Court held that the test for validity of a charge is whether the accused had a clear and reasonable understanding of the case he had to meet. Mere inaccuracies or omissions do not vitiate the trial unless prejudice is shown.

30] Likewise, in *Sandeep Yadav v. Satish and Ors.*, reported in **2026 Supreme(SC) 327**, the Apex Court reiterated that defects in framing of charge or omission thereof are not fatal unless they occasion a failure of justice. The object of framing a charge is to give notice to the accused, and procedural lapses which do not affect the fairness of the trial are curable.

31] Similar principles have been reiterated in *Babulal Sao v. State of Bihar*, reported in **2004 CRI. L. J. 2465**, by a coordinate bench of the Jharkhand High Court and in *Tara Singh v. State of Rajasthan*, reported in **2000 CrIj 1982**, by a coordinate bench of the Rajasthan High Court, wherein it has been held that incorrect mention of date or time of occurrence in the charge does not vitiate the trial in the absence of prejudice.

32] In the present case, the accused/appellant was fully aware of the nature of the accusation and the case he was

required to meet. Therefore, the discrepancy in the time of occurrence mentioned in the charge has not caused any prejudice and does not vitiate the trial.

33] Upon appreciation of the evidence, the testimony of the child victim is found to be cogent, consistent, and trustworthy. There is no material contradiction or embellishment affecting its credibility. In POCSO cases, the Court is required to adopt a sensitive approach while evaluating the testimony of a child victim, and minor discrepancies, if any, do not detract from the core of the prosecution case.

34] The medical evidence lends assurance to the version of the victim, and the testimonies of the prosecution witnesses further corroborate the surrounding circumstances, thereby strengthening the prosecution case regarding the commission of penetrative sexual assault by the accused/appellant.

35] The explanation offered by the accused/appellant in his examination under Section 313 Cr.P.C., that he has been falsely implicated due to an altercation with the mother of the victim, remains wholly unsubstantiated. Notably, no such suggestion was put to PW-2 during cross-examination. Furthermore, no suggestion whatsoever was put to the victim that he had been tutored by his mother to depose falsely against the accused/appellant. In the absence of any such challenge in cross-examination, the defence has failed to

probabilise its plea. Consequently, the defence is liable to be rejected.

36] The contention advanced by learned counsel for the accused/appellant that, in view of an inconsistency in the name of the victim as reflected in the medical examination report (Exhibit-3), the findings of the Medical Officer (PW-7) cannot be said to have been duly proved, does not merit acceptance. The record clearly indicates that the medical examination report (Exhibit-3) has been duly proved by the Medical Officer (PW-7), who examined the victim upon production by the Investigating Officer (PW-8). Significantly, no suggestion was put in cross-examination to either PW-7 or PW-8 that the victim was not examined by PW-7 or that Exhibit-3 does not pertain to the victim in question. In the absence of any such challenge, the factum of medical examination stands duly established. A mere misdescription or incorrect mention of the victim's name in the medical report, by itself, does not vitiate the prosecution case or the trial, particularly when the identity of the victim and the fact of examination are otherwise proved on record. Be that as it may, in view of the finding that the testimony of the victim is cogent, credible, and trustworthy, no further corroboration is required.

37] Having regard to the nature and gravity of the act proved on record, the age of the victim, and the attendant circumstances of the case, this Court is of the considered view that the punishment prescribed under Section 6 of the POCSO

Act is clearly attracted and fully warranted in the facts of the present case.

38] In view of the foregoing discussion, this Court finds no infirmity or illegality in the judgment of the trial court convicting and sentencing the accused/appellant under the provisions of the POCSO Act.

39] Accordingly, the appeal is devoid of merit and stands dismissed.

40] Resultantly, the conviction and sentence imposed upon the accused/appellant on 31.12.2022 by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Kamrup (M), Guwahati, in Sessions Case No. 52/2021, are hereby affirmed *in toto*.

41] The appellant shall undergo the remaining part of the sentence.

42] Return the trial court record.

JUDGE

JUDGE

Comparing Assistant