

GAHC010064422026



undefined

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

Case No. : CrI.A./124/2026

SRI SARAT PHUKAN
SON OF LATE UMA PHUKAN, RESIDENT OF VILLAGE- AKHAIYA GAON,
P.S.- MORANHAT, DISTRICT- CHARAIDEO, ASSAM, PIN-785673

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI MOUSUMI BARUAH
W/O- SRI BADHIN BARUAH
R/O- VILLAGE- AKHOYA GAON
P.S.- MORANHAT
DISTRICT- CHARAIDEO
ASSAM

Advocate for the Petitioner : U SWARGIARY, MR. R BURAGOHAJN,MR. B PHUKAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 01/04/2026
(Michael Zothankhuma, J)

1. Heard Mr. B. Phukan, Learned Counsel for the Appellant. Also heard Mr. R.

R. Kaushik, Learned APP, Assam, appearing for the State.

2. The appellant has put to challenge the impugned judgment dated 13/02/2026, passed by the Court of the learned Special Judge, Charaideo, in Special (POCSO) Case No. 23/2018, arising out of Moranhat PS Case No. 93/2018, by which the appellant has been convicted and sentenced under section 376 AB IPC, to undergo rigorous imprisonment for 20 years with a fine of Rupees 10,000/-, in default, to undergo R.I. for another 3 months.

3. The main ground of challenge to the impugned judgment of the learned Trial Court, amongst others, is that while the charge had been framed against the appellant under section 376 (2)(i) of the IPC, the said charge had been altered during final hearing/argument stage by the learned Trial Court vide order dated 03/01/2026 from 376 (2)(i) IPC to section 376 AB IPC, in terms of section 216 Cr. P.C. Further, the learned Trial Court did not give any opportunity to the appellant to re-examine or recall the witnesses under section 217 Cr.PC. He accordingly submits that the impugned judgment and order should be set aside and the case be remanded back to the learned Trial Court, to enable the appellant to make a proper defence in relation to the altered charge framed against the appellant.

4. Mr. R R Kaushik, learned APP, Assam, submits that he has got no objection to the submission made by the learned counsel for the appellant.

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

6. Section 216 and 217 Cr. PC, states as follows:-

“216. Court may alter charge. – (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the

prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

217. Recall of witnesses when charge altered. - *Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—*

- 1. to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;*
- 2. also to call any further witness whom the Court may think to be material.”*

7. A perusal of the above 2 (two) sections go to show that when a charge is altered by the Court after commencement of the trial, the Prosecutor and the accused shall be allowed to recall or re-summon and examine any witness, who has already been examined.

8. In the present case, no such opportunity had been provided by the learned Trial Court to either of the parties, to recall or re-summon any witness for examination in terms of section 217 Cr. PC. The charge against the appellant had initially been framed under section 376 (2)(i) IPC, which had been omitted by the Act 22 of 2018 with effect from 21/04/2018. As such, the above clearly goes to show that the appellant had never been given a chance to defend himself with regard to the altered

charge made under section 376 AB IPC.

9. In view of the fact that section 217 Cr. PC has not been followed by the learned Trial Court, we are of the view that the case should be remanded back to the learned Trial Court to enable the learned Trial Court to take recourse to section 217 Cr. P.C, by asking the parties as to whether, they want to recall or re-examine any witness who might have already been examined, in respect of the altered charge under section 376 AB IPC.

10. Consequently, the impugned judgment in order dated 13/02/2026 passed by the Court of the learned Special Judge, Charaideo, in Special (POCSO) Case No. 23/2018, is hereby set aside. The case is remanded back to the learned Trial Court to proceed with the trial in terms of the observations indicated above.

11. The appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant