

GAHC010164912022



2026:GAU-AS:580

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

Case No. : Crl.A./199/2022

POBITRA GOGOI AND ANR
S/O. GOLAP GOGOI,

2: JANMONI GOGOI @ JAN GOGOI

S/O. HOLIRAM GOGOI
BOTH ARE R/O. VILL. DIHINGIA GAON
SILONIJAN
P.O. AND P.S. BARPATHAR
KARBI-ANGLONG
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, GAUHATI HIGH COURT

2:AGA RENGMA
S/O. LT. REGON SINGH RENGMA
R/O. KHOWANI GAON
P.S. BARPATHAR
DIST. KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR. S K DEORI, MS. T BEGUM,MR. A ROSHID,MS. SOMILA

Advocate for the Respondent : PP, ASSAM, MR. N MAHAJAN, AMICUS CURIAE (R-2),MR. S BISWAS, AS LEGAL-AID-COUNSEL FOR (R-2)

:: BEFORE ::
(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Appellants : Mr. A. Roshid,
Advocate.

Advocate(s) for the Respondents : Mr. K.K. Das,
Addl. P.P., Assam.

Date on which judgment is reserved : 11.11.2025.

Date of pronouncement of judgment : 20.01.2026.

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. Roshid, learned counsel appearing for the appellants. Also heard Mr. K.K. Das, learned Addl. Public Prosecutor, Assam.

2. This is an appeal under Section 374 (2) of the Code of Criminal Procedure (CrPC) against the judgment and order dated 28.07.2022 passed by the learned Asstt. Sessions Judge, Diphu, Karbi Anglong in Sessions Case No.20 of 2011. The appellants were convicted under Section 376(2)(g) of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for 10(ten) years and to pay fines of ₹10,000/- each with default stipulations.

3. On 14.10.2009 at about 10.30 P.M., Shri Aga Rengma had lodged an FIR before police stating that on that day at about 8 P.M. his sister, while she was returning home from the house of Jan Gogoi, he along with the appellant Pobitra Gogoi and one

unknown person forcibly took the girl to the jungle and committed rape upon her.

4. Police registered the case being Borpathar P.S. case No.63/2009 and after investigation filed the charge sheet against Jan Gogoi, Pobitra Gogoi and Biswajit Sarma. This Biswajit Sarma was shown as an absconder.

5. The charge under Section 376(2)(g) of the IPC was framed against the present two appellants.

6. The prosecution side examined as many as 10(ten) witnesses. On the basis of the evidence on record, the trial court arrived at the impugned finding.

7. I have heard the learned counsel of both sides. I have also gone through the evidence available on record.

8. The first witness to be examined was the informant (PW-1). He has stated that the victim had gone to Silonijan to watch a football match. He also went to watch the football match. After watching the match, he came to his friend's house and while he was sitting there, a girl called Jakia Rengma informed him over phone that two boys had forcibly taken away the victim girl after tying her hands. This witness and his friends immediately started a search for the victim girl. He also informed the police in the meantime. Police party was also joined the search. Thereafter, by the side of the road, the appellant Jan Gogoi and the victim girl were discovered. She alleged that the Jan Gogoi and the present appellant Pobitra Gogoi had committed rape upon her. This witness has stated that at that time the victim girl was 19 years old. He proved the FIR as Exhibit-1.

9. In his cross-examination, the witness Aga Rengma has stated that he named three persons in the FIR as perpetrator of the said offence. According to this witness, one of the perpetrators has already escaped.

10. The second prosecution witness is the victim herself (PW-2). She claimed to be 19 years old at the time of occurrence. She has stated in her evidence that after

watching the football match she and Jokia Rengma were returning home on foot. At that time, it was about 8.30 P.M. The victim girl had stated that he present two appellants came from behind and her mouth was gagged with a piece of cloth and thereafter she was forcibly taken into the jungle. The victim girl had stated that that both the appellants had committed rape upon her inside the jungle.

11. The victim girl had stated that in the meantime, the villagers had arrived there in search of her and managed the appellant Jan Gogoi while the appellant Pobitra Gogoi managed to escape.

12. In her cross-examination, she has stated that apart from the present two appellants, there was another person at the time of occurrence but she did not recognize her. The victim girl had stated that she knew the appellants since prior to the occurrence.

13. The third prosecution witness is the doctor (PW-3) who examined the victim girl during the period of investigation. He spoke about his findings. The doctor has stated that he did not find any injuries over the body of the victim girl. The doctor further submitted that though the hymen of the girl was absent, no spermatozoa was detected in her vagina.

14. The fourth prosecution witness (PW-4) is Jakia Rengma. She has stated that on the day of occurrence at about 8 P.M., she along with the victim girl were returning home from Silonijan. At that time, somebody came from behind and forcibly closed her eyes and covered her mouth with hands. According to Jakia Rengma, at that time, another person forcibly took away the victim girl leaving her there on the road. Jakia Rengma has stated that she immediately informed the villagers who instantly came and searched for the victim girl. Jakia Rengma has stated that the villagers recovered the victim girl. Jakia Rengma also stated that the victim girl has told her that the present two appellants has committed rape upon her.

15. In her cross-examination, Jakia Rengma had stated that she never witnessed the

occurrence.

16. The fifth prosecution witness (PW-5) is Prodip Engti. He has stated in his evidence that one day police came to his village and asked him about the said incidents.

17. The sixth prosecution witness (PW-6) is Probin Rengma. He has stated that the informant of this case told him that his sister was raped by the present appellants.

18. The seventh prosecution witness is Ashine Rengma (PW-7). He has stated that he had heard that one Rengma Naga girl was raped by somebody.

19. The eighth prosecution witness is Athang Rengma (PW-8). He stated in his evidence that at the time of occurrence he was in his home. He further stated that the appellants had taken the victim girl into the jungle and committed rape upon her.

20. The ninth prosecution witness is the police investigating officer and he spoke about the investigation.

21. The tenth prosecution witness (PW-10) was the Executive Magistrate. On 16.10.2009, he recorded the confessional statements of the appellant Pobitra Gogoi. According to PW-10, the appellant Pobitra Gogoi had confessed before him that on the day of occurrence, the other appellant Jan Gogoi @ Jitumoni Gogoi, Raju Saikia and Biswajit Sarma took him to the nearby forest gate. At that time, the victim girl was coming on foot with a friend. The appellant Pobitra Gogoi further disclosed that Raju Saikia and Biswajit Sarma tried to detain the friend of the victim girl but she managed to escape and after that they took the victim girl to the nearby school. Pobitra Gogoi confessed that first Jitumoni Gogoi had committed rape upon the girl and he did so subsequently and after that, he left the place. According to Pobitra Gogoi, villagers apprehended Jitumoni Gogoi at the place of occurrence.

22. After perusal of the prosecution evidence, some things have come up clearly.

23. Except the victim girl, there are no other eye witnesses. Even, the so-called eye

witness Jakia Rengma could not say as to who are the persons involved in the kidnapping and subsequent rape of the victim girl though she was with the victim girl just prior to the occurrence. The medical evidence measurably failed to support the prosecution case though she was examined on the very next day of occurrence.

24. The victim girl never stated in her evidence as to who amongst the appellants, had first committed rape upon her. She spoke nothing about the third person against whom police had filed the charge sheet.

25. In *Raju v. State of M.P., (2008) 15 SCC 133*, the Hon'ble Supreme Court has held as under:

”11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

26. Reverting to the case in hand, two grown up persons had forcibly taken away a 19 year old girl and both of them committed rape upon her and on the very next day the doctor could not give any opinion about rape. No injury marks were found over the body of the victim girl.

27. Under the aforesaid circumstances, this Court is of the opinion that there is a serious doubt over the veracity of the prosecution case against the appellants. On principle, the benefit of doubt must be given to the appellants. The prosecution has failed to prove the offence against the present appellants beyond all reasonable doubt.

28. The appeal is allowed. The appellants Jan Gogoi @ Jitumoni Gogoi and Pobitra Gogoi are acquitted after giving them benefit of doubt. Both the appellants shall be set at liberty forthwith.

With the aforesaid direction, the present criminal appeal is disposed of. Send back the TCR.

JUDGE

Comparing Assistant