

GAHC010181612022



DB

2026:GAU-AS:3964-

REPORTABLE

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

Crl. A. 227/2022

Lakhi Prasad Das
S/O Late Jogen Das
Resident of Village-Dorikapar Rajabari
PS and Dist-Sivasagar
Assam 785640

----- Accused/Appellant

– *VERSUS* –

The State of Assam and Anr.
Represented By P.P. Assam
2. Smti Nayanmoni Das
W/O Sri Gautom Das
Resident of Village Dorikapar Rajabari
PS and Dist-Sivasagar
Assam 785640.

-----Respondent

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE PRANJAL DAS

Advocate for the **appellant:-** Mr. A.K. Goel.

Advocate for the **respondents:-** Mr. R.R. Kaushik, Addl.P.P

Ms. P. Saha, Legal Aid Counsel for the respondent no.2

Date of hearing & Judgment : 17.03.2026

JUDGMENT & ORDER (ORAL)

(Mr. M. Zothankhuma, J.)

1. Heard Mr. A.K. Goel, learned counsel appearing for the appellant. Also heard Mr. R.R. Kaushik, learned Addl. P.P. appearing for the State respondents and Ms. P. Saha, Legal Aid Counsel appearing for the respondent no.2.
2. This appeal has been filed against the impugned judgment dated 07.07.2022, passed by the Court of the Additional Sessions Judge-cum- Special Judge, POCSO, Sivasagar, in Special POCSO Case No. 08 of 2021, arising out of Sivasagar P.S. Case No.1488/2020, by which the appellant has been convicted under Section 6 of the POCSO Act, 2012 and under Section 376 AB IPC. He was convicted under Section 6 of POCSO Act and was sentenced to undergo rigorous imprisonment for a period of 20(twenty) years with a fine of Rs.10,000/-, in default to undergo R.I. for a period of 6(six) months.
3. The prosecution case, in brief, is that an FIR dated 21.12.2020 was submitted by the informant (PW-1), who is the mother of the victim girl, aged about 9 years. The FIR which had been submitted to the Officer-in- Charge of the Sivasagar police station stated that the informant's daughter (victim), returned home after receiving tuition near their home and went out at around 5.00 P.M. on 21.12.2020. The appellant called the victim to his house, on the pretext that the appellant's daughter had called the victim. Thereafter, the appellant committed a bad act on the victim. However, as the daughter of the appellant arrived at the scene, the victim was somehow saved.
4. Pursuant to the FIR dated 21.12.2020 submitted by prosecution witness

one, (PW-1), Sivasagar P.S. Case No.1488/2020 under Section 376 AB IPC, read with Section 6 of the POCSO Act, was registered on 21.12.2020. After having the victim examined by a doctor and having her statement recorded under Section 164 Cr.P.C, the case I/O, (PW-6) submitted the charge-sheet after completion of investigation, wherein, he found a *prima facie* case under Section 376 AB IPC read with Section 6 of the POCSO Act, established against the appellant.

5. The learned trial Court, thereafter, framed two charges against the appellant under Section 376 AB IPC and Section 6 of the POCSO Act, 2012, to which, the appellant pleaded not guilty and claimed to be tried.

6. The learned trial Court, thereafter, examined 6(six) prosecution witnesses and one defense witness. The appellant was also examined under Section 313 Cr.P.C. The learned trial Court then came to a finding that the appellant was guilty of having committed aggravated penetrative sexual assault against the victim in terms of Section 3(d) read with Section 5 (m) of the POCSO Act. The appellant was then convicted under Section 6 of the POCSO Act and sentenced accordingly.

7. The learned counsel for the appellant has challenged the impugned judgment passed by the learned trial Court, on the ground that while the victim in her evidence has stated that a tape had been put on her mouth by the appellant and had tied both her hands and legs with a "gamosa", no tape or "gamosa" had been seized by the police. He also submits that the evidence of all the other prosecution witnesses does not speak of the victim's mouth being taped or her hands and legs being tied with a gamosa, even though their evidence had been based on what the victim had stated. He also submits that while the evidence of the informant (PW-1) is to the effect that PW-1 & PW-4

were both present when the victim had come out of the house of the appellant and the victim had rushed to her grandmother (PW-4) and informed them of the incident, the evidence of PW-2 and PW-4 was to the effect that the incident had been first informed by the victim to the grandmother (PW-4) only and thereafter, the grandmother had informed the incident to the mother of the victim (PW-1). He also submits that the evidence of the witnesses shows that the left hand of the appellant was disabled and as such, the appellant could not have taped the mouth of the victim or tied her legs and hands with a gamosha (a piece of cloth, which can also be used as a towel) or any other material.

8. The learned counsel for the appellant further submits that the medical evidence of the doctor (PW-5) proved that no sexual act had been committed by the appellant on the victim, inasmuch as, there was no injury on the private parts of the victim. Further, as there was no sign of recent sexual intercourse, on examination of the genitalia of the victim, no case of penetrative sexual assault had been made out by the prosecutrix. He submits that in view of there being no corroboration of the sexual assault on the victim, in terms of the evidence of the doctor (PW-5), conviction of the appellant could not have been made on the basis of the sole testimony of the prosecutor.

9. The learned counsel for the appellant further submits that there was enmity between the family of the parents of the victim and the appellant due to a land dispute, for which an FIR had also been submitted by DW-1 on 22.12.2020. In view of the above reason, it is apparent that a false case has been foisted upon the appellant by PW-1 in connivance with PW-3, who is the father of the victim.

10. Mr. R. R. Kaushik, the learned Addl. P.P., on the other hand, submits that there was no land dispute between the family of the victim and the appellant.

He submits that the evidence of DW-1, who is the 18 year old daughter of the appellant who submitted an FIR regarding the land dispute, has not made any mention of there being any enmity between the two families in her evidence as Defence Witness – 1 (DW-1). On the contrary, DW-1 said that the relationship between the two families was cordial, though they had some minor quarrels at times.

11. The learned Addl. P.P. also submits that the evidence of the witnesses shows that the Investigating Officer (PW-6), in his cross-examination, had stated that it was not known to him if the left hand of the appellant was disabled. Further, the observation of the trial Court, while recording the evidence of PW-1 is to the following effect:- “The accused is physically produced before this Court. The Court has noticed that there are old injuries on the left hand of the accused and movements of his hand are restricted and not normal.”

12. The learned Addl. P.P. submits that the above facts does not indicate that the left hand of the appellant cannot be used for taping the mouth of the victim or not being able to tie the hands and legs of the victim with a gamosa. The learned Addl. P.P. submits that the testimony of the victim is consistent vis-à-vis her statement given under Section 164 Cr.P.C. Further, absence of injury on her private parts does not mean that she has not been subjected to sexual assault in terms of the judgment of the Hon’ble Supreme Court in the case of ***The State of Punjab Vs. Gurmit Singh*** reported in ***(1996) 2 SCC 384***. He also submits that the evidence of the victim being truthful and confidence inspiring, conviction can be based on the sole testimony of the victim. As such, the impugned decision of the learned Trial Court should not be interfered with.

13. Ms. P. Saha, learned legal aid counsel appearing for the respondent no.2 reiterates the submission made by the learned Addl. P.P and submits that the

impugned appeal should be dismissed.

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

15. The victim (PW-2) in her statement made under 164 Cr.P.C, has stated that the appellant had gagged her from behind and tied her hands with a gamosa and her legs with a towel. Thereafter, he planted a kiss on her vagina and inserted his penis into her vagina. She said that she felt an extreme burning sensation in her vagina. Thereafter, her friend who was the daughter of the appellant, knocked at the back door. Since the door at the back was not opened, she again knocked at the front side. Then, the appellant asked to leave the room from the rear side of the room. Escaping from the rear side of the room, she disclosed everything to her grandmother. She also stated that while she left the room from the rear side, her friend saw her from the front door. After telling her grandmother of the incident, her grandmother (PW-4) told the same to her mother (PW-1) and others. Thereafter, her mother and others caught the appellant and her mother beat him up. The appellant fell down as he was already under the influence of liquor.

16. The evidence of PW-2 before the learned trial Court, is to the effect that the appellant had put a tape on her mouth and tied both her hands and legs with a "gamosa". A "gamosa" is also used as a towel. She also stated in her evidence that the appellant made her lie on a bed, removed her panty and touched her vagina with his penis. He also applied his tongue into her vagina. In the meantime, her friend had knocked at the back door, but the appellant did not open the door. Then her friend knocked again on the front door. The appellant then untied her (PW-2) and opened the door on the back and told her to go. The victim then went to her house and narrated to her grandmother what the appellant had done to her. The grandmother then narrated the incident to

her mother.

17. The evidence of the mother of the victim i.e. PW-1, is to the effect that she searched for her daughter and called out her name loudly when she did not find the victim in their house. Then she saw the victim running from the back of the residence of the appellant towards their house. The victim then told them that the appellant had gagged her mouth and tied her hands from behind and removed her pants. Thereafter, he touched her vagina with his penis and also applied his mouth onto her vagina.

18. The evidence of PW-3, who is the husband of PW-1 and the father of the victim, is to the effect that he was told of the incident by his wife, that is PW-1.

19. The evidence of the grandmother (PW-4) is to the effect that while her daughter-in-law (PW-1) was searching for the victim, the victim came running from the back of the house of the appellant crying. The victim then hugged PW-4 and she was trembling in fear. On asking as to what had happened to her, she narrated the incident to PW-4, stating that the appellant had tied her hands and gagged her mouth. He then made her lie on the bed and touched her vagina with his penis. He also applied his mouth on her vagina.

20. The evidence of the Medical Doctor (P.W-5), is to the effect that on 22.12.2020, he conducted a medical examination over the 9 year old victim and some of his findings are as follows:-

“Development of hair:

Axillary - Absent,

Development - Not developed,

Pubic Absent,

Findings- Normal,

Marks of violence on the body: Absent.

Genitalia: Development of genitalia- Not fully developed,

Pubic hair- Absent, Clitoris- Normal, Labia Majora & minora- present Normal, Fourchette Normal, Hymen Absent, Vagina Normal, Injuries- Absent, Discharges and stain Absent. Abdominal examination - Normal, Internal Examination- Normal, not done,

Laboratory investigation: (Date 22.12.2020 at Civil Hospital, Sivasagar).

No spermatozoa seen,

Pregnancy test (H.C.G. in urine)-(Date 22.12.2020 at Civil Hospital, Sivasagar).

Negative, Prepubertal pelvic organs,

RADIOLOGICAL EXAMINATION:

Skiagram of the (L) elbow joint reveals incomplete fusion of the epiphyses.

Skiagram of the (L) wrist joint reveals incomplete fusion of the epiphyses.

OPINION

On examination of Priyanshi Das, I am of the opinion that (i) She is below 18 years of age, (ii) There is no injury to the private parts and body (iii) Prepubertal pelvic organs, (iv) There is no sign of recent sexual intercourse during the time of examination,

Ext. 4 is the medical report wherein Ext. 4 (1) is my signature. Ext. 4 (2) is the radiological report.

Cross-examination :

Cross examination is declined.”

21. The evidence of the case, Investigating Officer (PW-6), is to the effect that on 21.12.2020, he was posted as S.I of police at Sivasagar police station. PW-1 lodged an FIR and the investigation was entrusted to him. On the date of lodging the FIR, he found the appellant on his bed in his residence, drenched in blood. The appellant was sent to the Sivasagar Civil Hospital for medical

treatment and he was discharged from the hospital on the next day, whereupon, he was arrested and forwarded to the Court. He stated that the victim had told him that her mother had assaulted the appellant, due to which, the appellant had sustained injury. In his cross-examination, PW-6 stated that he did not know if any case had been lodged by the daughter of the appellant, on the ground that the father of the victim (PW-3) and his family had assaulted the appellant. He also did not know if the left hand of the appellant was disabled. He also stated that, though he tried to interrogate the friend of the victim who was also the daughter of the appellant, she refused to give her statement. He also stated that he did not seize any tape or towel in connection with the alleged sexual assault on the victim.

22. The evidence of DW-1, who is the 18 year old daughter of the appellant and the elder sister of the victim's friend, is to the effect that the victim was the daughter of her paternal uncle and the informant was her paternal aunt. She stated that a case was lodged on 21.12.2020, as her father had been assaulted by PW-1 and PW-3 at about 7.00 P.M. DW-1 had gone to the fair price shop for purchasing rice along with PW-1 on being asked to accompany PW-1. On her return, she saw the victim in the courtyard of their house and on asking her why she had come to her house, the victim went to her house without saying anything. At about 8.00 P.M., on 21.12.2020, PW-3 brought the appellant to their house, from the road where the appellant was sitting. Thereafter, the PW-3 assaulted the appellant, with a wood on his head. PW-1 also assaulted the appellant, due to which the appellant became unconscious.

23. DW-1 also stated that she lodged an FIR on 22.12.2020 and that before the incident, there used to be quarrel on trivial matters. She also stated in her cross-examination, that on the date when she went to purchase rice with PW-1,

they had a cordial relation. Though there used to be quarrels, the relationship between the families was cordial. The evidence of DW-1 in her cross-examination is as follows:-

Cross by Prosecution:-

“On the date of incident I went with Nayanmoni Khuri to purchase rice and as on that date we had a cordial relation with them. After we returned after purchasing the rice, I was not aware who were present inside our house. The alleged incident against my father took place before my father was assaulted. It is not a fact that for the sake of my father I have testified falsely before the Court today. Although there used to be quarrel with Nayanmoni Das and her husband, but our relation again used to become cordial.”

24. The examination of the appellant under Section 313 Cr.P.C, shows that he has denied committing any aggravated penetrative sexual assault on the victim.

25. Though the appellant has tried to make out a case that there was some enmity between the parties and that the same has been proved by the assault on the appellant by PW-1 and PW-3, the evidence of DW-1 belies the said claim. There is nothing to show that there was any festering enmity between the family of the victim and the appellant. The stand that there was a land dispute between the two families, is also not borne out in the evidence of the prosecution witnesses or the defence witness. Though there was a suggestion put to PW-3 & PW-4 that there was a land dispute between the parties in their cross-examination, the same was denied by PW-3 & PW-4. Further, in the evidence of DW-1, there is no whisper of there being any land dispute between the families of the appellant and the victim.

26. It is seen that though a question had been put to PW-3 in his cross-

examination, to the effect that DW-1 had filed a case against him on 22.12.2020 at Sivasagar Police Station, which had been registered as Sivasagar P.S. Case No. 1491/2020 under Section 307/34 IPC, the contents of the said FIR had not been brought to the notice of PW-3 or the learned trial Court. Neither was the same exhibited during the trial.

27. The FIR submitted by DW-3 has apparently only been made on 22.12.2020 with regard to an incident that occurred at 7.00 P.M. on 21.12.2020, i.e., the same date the FIR against the appellant had been filed by PW-1. There is no FIR or claim made by the appellant or his family members with regard to PW-3, threatening to grab the property of the appellant prior to 21.12.2020 i.e., prior to the incident that fell upon the victim. It thus appears to us that the FIR filed by DW-1 on 22.12.2020 is an afterthought and in retaliation to the FIR submitted by PW-1.

28. As stated earlier, there is no evidence to show that there was any enmity between the family of the victim and the appellant regarding a land dispute, for the victim to have fabricated a case against the appellant. There is also no cross-examination of the victim to the effect that she had been tutored to make a false case against the appellant.

29. It is settled law that a statement made under Section 164 Cr.P.C can be used to either contradict or corroborate the evidence of the said witness. In the present case, there is no contradiction of the testimony of the victim vis-a-vis her statement made under Section 164 Cr.P.C. In fact, the statement corroborates the victim's testimony. Though there is one minor discrepancy, which is to the effect that the victim in her statement made under Section 164 Cr.P.C had stated that the appellant's penis was inserted into her vagina, while in her testimony before the learned Trial Court, the victim had stated that the

appellant's penis touched her vagina. Thus, there was no testimony by the victim before the learned Trial Court that there was penetration in her vagina by the appellant's penis. The above, in our view does not affect the core of the prosecution case, as the victim is a minor girl of 9 years and there can be some confusion in the understanding of the victim. The slip up between the words "insertion" and "touch" of the appellant's penis into her vagina does not take away the fact section 3(a) POCSO Act, 2012 is attracted to the facts of this case. In any event, as the appellant has put his mouth onto the victim's vagina, Section 3(d) of POCSO Act, 2012 is attracted. Further, in terms of Section 5(m), the penetrative sexual assault on the 9 year old victim can be said to be aggravated penetrative sexual assault, which attracts the punishment provided under Section 6 of the POCSO Act, 2012.

30. There is nothing in the evidence to show that the appellant could not use his injured left hand to tape the victim's mouth or tie her legs and hands with a gamosa. The observations of the learned Trial Court at the time of cross-examination of PW-1 only shows that the movement of the appellant's injured left hand was restricted and not normal. The above, coupled with the evidence of PW-6, who says that it was not made known to him that the appellant's hand was not disabled, leaves us with no doubt that the appellant could use his left hand for taping the mouth of the victim and tying her hands and legs.

31. In the case of ***Gurmit Singh (supra)***, the Apex Court has held that the testimony of a victim of sexual assault stands on par with that of an injured witness and does not require corroboration unless there are compelling reasons.

32. In the case of ***Ganesan vs. State***, reported in ***(2020) 10 SCC 573***, the Apex Court has held that where the testimony of the victim is found consistent, reliable and trustworthy, conviction on the basis of such testimony is

permissible.

33. The evidence of the prosecution witnesses and the defence witness goes to show that the appellant had been beaten up by PW-1 & PW-3, i.e, the parents of the victim at around 7 p.m on the day of the incident. When there is no enmity between the parties and the physical assault on the victim had occurred after the sexual assault, it implies that the said physical assault on the appellant had been made as a consequence of the sexual assault by the appellant on the victim. There is no evidence to show that the physical assault on the appellant by PW-1 was due to any land dispute. There is no land dispute between the parties and nothing to that effect has been adduced in the evidence of the defence witness. The particulars of the land in dispute has also not been provided by the appellant or DW-1. Thus, in the absence of any land dispute between the parties, we find it hard to believe that the minor victim could have fabricated a case against the appellant, who is a relative and well known to the victim. Further, it appears that the appellant was under the influence of liquor at the time of the incident. The fact that the victim had exited the house of the appellant from the backdoor is also borne out by the evidence of PW-1 & PW-4. It is interesting to note that the friend of the victim, i.e. the daughter of the appellant had declined to be interrogated by PW-6. This fact also gives rise to an inference that the victim's friend did not want to implicate her father, though her actions had led to the victim being allowed to escape from the clutches of the appellant.

34. It is settled law that conviction of a minor child can be made on the sole testimony of the prosecutrix, provided the same is truthful and inspires the confidence of the Court. In this case, we do not find any reason to doubt the truthfulness of the testimony of the victim. As the same inspires our confidence,

the small discrepancies, which do not go to the root of the matter, cannot be a ground for throwing out an otherwise reliable prosecution case.

35. In view of the above reasons, we do not find any ground to interfere with the impugned judgment and order dated 07.07.2022 passed by the learned Court of the Additional Sessions Judge-cum-Special Judge, Sivasagar in Special POCSO Case No.08/2021.

36. The appeal is accordingly dismissed.

37. Send back the TCR.

38. In appreciation of the assistance provided by Ms. P. Saha, learned Legal Aid Counsel for the respondent no.2, her fees should be paid by the High Court Legal Services Committee as per norms.

JUDGE

JUDGE

Comparing Assistant