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

**Case No. : Crl.A./294/2024**

JEHIRUL ISLAM  
S/O. MOOR ISLAM @ NUR ISLAM, R/O. VILL- DUHUTI HALOI, P/O.  
JAGIROAD, P/S. JAGIROAD, DIST. MORIGAON, ASSAM, PIN-782410

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE PP, ASSAM.

2:DOIBOKI PATAR  
D/O. BIMAL PATAR  
R/O. VILL- MOKORIA  
P/O. AND P/S. JAGIROAD  
DIST. MORIGAON  
ASSAM  
PIN-78241

**Advocate for the Petitioner** : MR. M U MAHMUD, MS. D BORA, MR S H MAHMUD, MR S ISLAM

**Advocate for the Respondent** : PP, ASSAM, MS T PARASHAR (AMICUS CURIAE,R2)

**BEFORE**  
**HONOURABLE MR. JUSTICE PRANJAL DAS**

**JUDGMENT**

Date on which judgment is reserved : **02.04.2026**

Date of pronouncement of judgment : **23.04.2026**

Whether the pronouncement is of the: N/A

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

**JUDGMENT & ORDER (CAV)**

Heard Mr. M.U Mahmud, learned counsel for the convict/appellant. Also heard Mr. B. Sharma, learned Additional Public prosecutor for the State and Ms. T. Parashar, learned Amicus Curiae for the respondent No. 2/informant.

2. The instant criminal appeal has been preferred by the convict/ appellant, Md. Jehirul Islam against the judgment & order dated 03/08/2024 passed by the learned Special Judge (POCSO), Morigaon in POCSO Case No. 15 of 2018, whereby the appellant as accused was convicted under sections 354/341 IPC, read with section 8 of the POCSO Act 2012. For such conviction, he was sentenced to undergo rigorous imprisonment for 5 years and pay a fine of Rs.5,000/- in default, R.I for 1 month for his conviction under Section 354 IPC; rigorous imprisonment for 4 years and fine of Rs.5,000/- in default, R.I for 1 month for his conviction under Section 8 of the POCSO Act; fine of Rs. 500/-, in default imprisonment for 10 days for his conviction under section 341 IPC. The sentences were directed to run concurrently, and he was given the benefit of set-off.

3. Before the learned Trial Court, the prosecution case, in brief was that a verbal information was given by one Tapan Deka on 14/05/2018 at the Nellie Police Outpost with allegation that he had seen one boy pulling and pushing one girl with bad intention in the middle of Mokoria, Salbagan. On the basis of the said information, GDE No. 279 of 2018 dated 14/05/2018 was made at 05:10 PM, and the In-charge of the outpost entrusted ASI Muzammil Hazarika to proceed to the place of occurrence along with staff. Subsequently, on the same day at around 6:30 PM, a formal Ejahar was lodged by the victim herself before the In-charge of Nellie outpost with the allegation that on 14/05/2018 at around 5:00 P.M, while she was on the way from Nellie towards Mokuria by NH 37 on foot, and had reached near Nellie Salbagan, the appellant suddenly restrained her and outraged her modesty by placing his hand on her body, and he tried to forcefully pull her towards the forest, whereupon she raised a hue and cry. Some people came running to her rescue. The FIR was forwarded to the Jagiroad Police Station, whereupon Jagiroad PS Case No.186 of 2018 was registered under Section 341/354 IPC, read with Section 12 of the POCSO Act. Investigation was conducted, and upon completion of the same, police filed a charge-sheet against the appellant under the same sections mentioned above under which the FIR was registered. Subsequently, upon his appearance and the completion of the usual formalities as per criminal procedure, charges were framed against the appellant under Sections 341/354 IPC read with Section 8 of the POCSO Act vide order dated 10/01/2020 the charges, upon being read over and explained to the accused, were denied by him, whereupon the trial commenced.

4. During the trial, the prosecution examined 5 witnesses, including the victim. Thereafter, the appellant was examined under Section 313 Cr.PC. The defense did not adduce any evidence.

5. Mr. M.U Mahmud, the learned counsel for the appellant makes the following submissions;

(i) That, without rescuing the victim girl, the said Tapan Deka went to the Police Station. (ii) That, the testimony of PW-1, the prosecutrix, is not reliable. (iii) That, the boys mentioned in the FIR who supposedly came to the place of occurrence have not been examined. (iv) That, the testimony of PW-3 has not supported the prosecution case. (v) That, there are contradictions in the testimony of the prosecutrix because of which it is not safe to rely on her evidence for conviction. (vi) That, the place of occurrence was stated to be near a marketplace, and therefore the said aspect was not properly appreciated by the learned Trial Court. (vii) That, there is no proper effort to ascertain her age. (viii) That, witness PW-3 Uday Mithi has not stated about slapping the accused at the time of the incident. (ix) That, PW-3 did not witness the incident. (x) That, no medical evidence was gathered by the investigating officer. (xi) That, witness Tapan Deka has improved upon his testimony. (xii) That, the investigation has been defective, as persons who gathered immediately after the incident were not examined. (xiii) That, the convict/appellant was a fish seller, and there was dispute with the family of victim over money, due to which he has been falsely implicated.

6. In support of his contentions, the learned counsel for the appellant cited the following decisions;

(i) *State of Haryana -versus- Jai Parkash & Others*, reported in (2002) 9 SCC 663.

(ii) *Bhagwan Rama Shinde Gosai & Others -versus- State of Gujarat*, reported in (1999) 4 SCC 421.

(iii) *Mousam Singha Roy & Others -versus- State of West Bengal*, reported in (2003) 12 SCC 377.

(iv) *Krishan Kumar Malik -versus- State of Haryana*, reported in (2011) 7 SCC 130.

(v) *Bul Turi -versus- State of Assam*, passed in Crl. A No. 135(J)/2010.

(v) *Devatha Venkataswamy -versus- Public Prosecutor, High Court of A.P.*, reported in (2003) 10 SCC 700.

(vi) *Kalam Mandal -versus- The State of Assam & Another* passed in I.A(Crl.) No. 630/2022.

(vii) *Shah Alom -versus- The State of Assam*, passed in I.A(Crl.) No. 701/2022.

7. On the other hand, Mr. B. Sharma, the learned Additional Public Prosecutor appearing on behalf of the prosecution, makes the following submissions;-

(i) That, the testimony of the prosecutrix as PW-1 is cogent and find support from her statement recorded under Section 164 Cr.PC (ii) That, from the birth certificate she has been correctly held to be a minor (iii) That, the sketch map clearly indicates the place of occurrence (iv) That, the guilt of the appellant has been convincingly proved by the testimony of the victim and other witnesses, and therefore there is no infirmity in the conviction and sentence recorded by the learned Trial.

In support of his contentions, the learned Addl. P.P for the State cited the follows decisions;

(i) **Aasif -versus- The State of U.P & Others**, passed in CrI. Appeal No. 3409/2025 (arising out of SLP(CrI.) No. 11361/2025).

**8.** Ms. T. Parashar, the learned Amicus Curiae appearing for the informant submits that the testimony of PW-1 and PW-3 are not contradictory; that, due to place of occurrence being a busy place, people saw the occurrence; that, the story about dispute over money regarding sale of fish is false as with regard to Question No.36, the appellant has admitted that he does not know the mother of the victim. That, there is no contradiction about the place of occurrence; that, there is no legal bar in the second I.O submitting the charge-sheet. Supporting the stand of the prosecution, it is submitted that there is no infirmity in the impugned judgment & order and that the same may be upheld and confirmed.

**9.** I have perused the appeal memo, the impugned judgment & order, the evidence on record and other relevant materials. I have considered the submissions of the learned counsel on both the sides, and I have also perused and considered, the decisions cited at the Bar.

**10.** The prosecutrix adduced evidence as PW-1. She stated about the incident having taken place on 14/05/2018 in the evening time, while she was coming from Nellie Bazaar towards her home by walking. She has testified about being called by the appellant on the way with the words "oi", but she tried to ignore whereupon he restrained her from proceeding and caught hold of her right hand on the wrist. She further testified that when she tried to move away, the appellant caught hold of her chest and that the said incident had taken place by the side of the highway.

**11.** PW-1 has testified that apart from pulling her away as stated above, the appellant also tried to pull her towards the Khalbagan jungle and told obscene

words to her, asking her to give some time for sex and that he also caught hold of her chest. The prosecutrix raised hue and cry whereupon some persons came. She has mentioned about the presence of Udhab Mithi, Tapan Deka and some others whose names she could not recollect. As part of her deposition, PW-1 has exhibited the FIR as Exhibit P1 and her signature thereon as Exhibit P1(1). She has also stated about being brought before the Magistrate for recording a statement and she proved that statement as Exhibit P2 and her signatures thereon as Exhibit P2(1) to P2(3). She has stated that her date of birth was 08/03/2001 and at the time of the incident she had appeared in HSLC examination. She has stated about Police seizing the HSLC admit card and she deposed about bringing the original admit card at the time of her testimony during the trial.

**12.** I next take up the statement of the prosecutrix recorded before Magistrate under section 164 Cr.PC. She has stated on similar lines in her statement and stated that on that day she was going towards her home from the market and on the way the appellant called her and subsequently accosted her. In such statement also she has stated about the appellant catching hold of her right hand and pulling her towards the jungle whereupon she shouted. In her statement before Magistrate also she has stated about the presence of Udhab Mithi, Milan Bhuyan and Tapan Deka. In the statement before Magistrate also the prosecutrix has mentioned about the appellant at the time of the incident uttering obscene words to her though she has not elaborated on the same, unlike that in the trial. In this regard, it is interesting to note that in her statement she has indicated her age to be 17 years and the said statement was recorded before a male JMFC, while during the trial the deposition was recorded before a female Judge. In cross-examination PW1 has stated about the incident

initially taking place by the side of the National Highway which is at a distance of about 1.5 kilometers from the Nellie Bazaar. The incident took place on the side of the National Highway. In her cross-examination, she stated that various persons from their village go to the same bazaar, but at the time of the incident no such persons were present. She denied the defense suggestion that she has falsely testified about the appellant calling her; that the appellant out caught hold of her right hand on the wrist and when she tried to move away he caught hold of her chest and uttered obscene words asking her to give some time for sex and that he also caught hold of her chest. She denied that the date of birth indicated in the certificate and as told by her is not correct. She denied that she was a major at the time of the incident.

**13.** From the testimony of the prosecutrix and her statement recorded during investigation before learned JMFC, what I find that in both the statements she stated on very similar lines about being called out by the appellant while she was going home on foot from the Nellie Bazaar on the day of the incident and subsequently being accosted by him, wherein he caught hold of her hand, then chest and uttered obscene words to her, asking her to give time for sex. As mentioned earlier, though she did not describe the obscene words in her statement before Magistrate but she elaborated on the same during her deposition which was taken by a lady Presiding Officer. In my considered opinion the same would not be a material contradiction and the non-description of the obscene words in her statement before the learned JMFC has to be seen in this perspective.

**14.** There is no medical evidence on record. In cases of sexual offences other than penetrative sexual assault, the medical evidence, even if available, could be less helpful to the Court in finding out details regarding the incident.

From that point of view, in such cases of sexual offences other than offences of penetrative sexual assault, the testimony of the victim is even more crucial. Thus, to put it in another manner, for offences like the instant one pertaining to sexual harassment or alleged outraging of modesty of a girl her testimony could be of even more importance. In this case, in her testimony and her statement before learned JMFC, PW-1 has stated about the presence of three persons namely Tapan Deka, Milan Bhuyan and Udhab Mithi.

**15.** It appears that during the trial, Milan Bhuyan expired and he could not be examined as a prosecution witness though he was a crucial person to be examined. However, the aforementioned Udhab Mithi and Tapan Deka have been examined as PW-3 and PW-2 respectively. PW-3 Udhab Mithi stated about knowing the victim and he has stated about going from Jagiroad side by his vehicle whereupon he saw some assembling of people near Nellie outpost and then he stopped his vehicle and saw some villagers who told him that one person belonged to a certain community had pulled and pushed the victim girl near Salbagan. He also stated about seeing the victim at the outpost but he did not ask her anything. In cross-examination, he denied that he had witnessed the incident.

**16.** As per the testimony of PW-1, PW-3 Udhab Mithi arrived at the time of the incident and that he slapped the accused. However, this aspect does not emerge from the testimony of PW-3. He has denied in cross-examination that he saw the incident. He is also silent about slapping the convict/appellant. The prosecution perhaps ought to have prayed to the Court to declare him hostile and if done so, proceed to cross-examine PW-3. However, that was not done. Nevertheless, the important part about the testimony of PW-3 is that he has

testified about coming to know from villagers about one person belonging to a certain community pulling and pushing the victim which tallies with the nature of the incident described by the prosecutrix in her testimony during trial and statement before learned JMFC.

**17.** From the testimony of PW-3, it also emerges that he saw the assembling of people upon going from Jagiroad side towards Nellie side and therefore, the testimony of PW-3 corroborates the testimony of PW-1 regarding the place of occurrence. Tapan Deka is a vital witness and he testified as PW-2 during the trial. He stated about knowing the victim and seeing the accused on the day of the incident. He testified about being on the way to Nellie market from his house by bike along with Milan Bhuyan and he mentioned about the jungle area named Salbagan where he saw one person pulling away a girl towards the jungle by catching hold of her hand that, whereupon he dropped the said Milan Bhuyan at that place and went to the Nellie outpost to inform about the incident.

**18.** PW-2 further stated that thereupon the Police came immediately to the area and found the boy and girl in the jungle area and he was apprehended. He identified during his deposition that the accused is that boy who was apprehended at the time of the incident. In cross-examination, he stated that when he was coming by bike at the time of the incident, there were no other persons other than the accused and the victim.

**19.** This part of his testimony tallies with the testimony of the prosecutrix PW-1 that at the time of the incident, no such village persons were present. In cross-examination, he reiterated that he had witnessed the incident and also denied that due to any previous monetary dispute, the case has been lodged. He denied that he had not seen the accused pulling the victim by catching hold

of her hand and pulling her towards the jungle at Salbagan.

**20.** Thus, in her testimony during the trial as well as in her statement before learned JMFC, the victim girl stated about the presence of Tapan Deka and the said Tapan Deka, in his testimony has corroborated the testimony of the victim girl, as because he has testified about having seen the incident and intervening in the same. The testimony of PW-2 has remained unshaken in cross-examination. The mother of the prosecutrix has adduced evidence as PW-4 in which she stated about knowing the accused since the case. In cross-examination, she has admitted that she has not witnessed the incident and that though they did not have talking terms with the accused but had seen him earlier. The testimony of PW-4 regarding the incident and her knowledge about it is based mainly on what she came to know about it from her daughter.

**21.** It also emerges that from her testimony that PW-2, Tapan Deka informed maternal aunt of PW-4 that while she was going to the market, the victim girl was pulled by one person towards the jungle by catching hold of her hand. It is further testified that the said maternal aunt of PW-4 in turn informed her about the incident whereupon she went to Nellie Outpost and met her daughter. She was also reported about the incident by her daughter that the appellant had caught hold of her hand and pulled her.

**22.** One important aspect that emerges from the testimony of PW-4 is her statement about being told by her daughter that if Tapan Deka and Milan Bhuyan (since deceased) would not have come, she might have been in danger. With regard to PW-2 Tapan Deka informing the maternal aunt of PW-4 who in turn informed PW-4, it may be mentioned herein that from the testimony of PW-2 Tapan Deka, it has emerged that the informant and her family belong to the same village as his. Therefore, this testimony of PW-4 about PW-2 informing her maternal aunt about the incident appears logical and coherent.

**23.** The initial Investigating Officer, Muzammil Hazarika was not examined as a witness during the trial though he ought to have been examined. However, the subsequent I.O who submitted charge-sheet namely Jyotirmoy Dutta has been examined as PW-5 and he has stated about taking over the Case Diary from ASI Muzammil Hazarika and thereafter laying charge-sheet. One important aspect that

emerges from his testimony is that based on the oral information given by Tapan Deka at Nellie Outpost about seeing one boy pulling and pushing one girl with bad intention near Salbagan, GDE No. 279 dated 14/05/2018 was made and Muzammil Hazarika proceeded to the place of occurrence.

**24.** This aspect of testimony of PW-5 lends vital corroboration to the testimony of PW-2 Tapan Deka that upon seeing the appellant pulling the girl towards the jungle, he dropped Milan Bhuyan at the same place and rushed to the Nellie Outpost to inform about the incident. The extract copy of the GDE Case No. 279/2018 mentioned above has been exhibited as Exhibit P5 and Exhibit P5(1) is the signature of PW-5. PW-5 also proved the sketch map as Exhibit P7 and his signature thereon as Exhibit P7(1). He proved the charge sheet as Exhibit P8 and his signature thereon as Exhibit P8(1). In cross-examination, PW-5 has also stated about seizure of the HSLC admit card of the girl thereby lending support to the testimony of PW-1 in this regard about seizure of the admit card, HSLC regarding her date of birth. The defense has projected a story that the appellant was a fish seller and used to supply fish to the family of the informant victim and over some monetary dispute, he has been falsely implicated.

**25.** However, upon appreciating the evidence on record, I do not find much force in the contention inasmuch as the prosecutrix as PW-1 has denied about any such transaction or false implication. Her mother, PW-4, has specifically denied the defense suggestion that over such monetary dispute regarding sale of fish, the appellant has been falsely implicated. In fact, she has stated in her testimony that she did not know him or had any talking terms with him prior to the incident.

**26.** As rightly pointed out by the learned Amicus Curie appearing for the informant, in his examination under section 313 Cr.PC, the appellant in reply to Question No. 36 has stated that he does not know PW-4, the mother of the informant. Thus the aforesaid story of defense about false implication due to a monetary dispute over sale of fish falls through.

**27.** In *Devatha Venkataswamy (supra)*, the Hon'ble Supreme Court discussed the aspect of contradictions and infirmities in the testimony of the witnesses and in facts of that case as to how the same impacted on the prosecution case. However, in the instant case, the testimony of the most vital witnesses have been found to be cogent and not suffering from any material contradictions. Further, the infirmities pointed out by the defense in support of its contention against the conviction and sentence had not been found to have fatally damaged the prosecution case.

**28.** The decision in *Mousam Singha Roy (supra)* has also discussed such aspects of infirmities and therefore, for the reason discussed above, would not be of much help to the appellant side in dislodging the prosecution evidence, which as already stated is

found to be cogent and acceptable.

**29.** The decision in *Imrat Singh (supra)* discussed some material contradictions in testimony and does not come to the appellant side as the prosecution evidence in the instant case does not suffer from any material contradictions, in my considered view, so as to throw doubt upon the prosecution case.

**30.** In *Jai Prakesh (supra)*, the two star witnesses were found to have made so many improvements in their testimony and ultimately the case resulted in acquittal. In the instant case, this is not the case and rather, it is found that the evidence of the star witnesses (PW-1 & PW-2) are sound, reliable and cogent.

**31.** In *Krishan Kumar Malik (supra)*, the two aspects discussed were that solitary evidence of the prosecutrix can be sufficient for conviction and secondly, in the fact of that case, the testimony of the prosecutrix was found to be suffering from several significant variations in material facts. However, in the instant case, the testimony of the prosecutrix is found to be cogent. Her testimony is consistent during the examination in trial and before the Magistrate. The aspect of not elaborating the obscene words in her statement before the Magistrate has already been discussed earlier. She has elaborated the obscene words before the learned Trial Court presided over by the lady Judge. For the sake of argument, even leaving aside the obscene words, the incriminating materials, corroborating statement by the PW-2, including the aspects of holding her chest, dragging her towards the jungle by her hand with bad intent, can also be sufficient to sustain conviction for wrongful restraint, sexual assault and outraging of modesty.

**32.** Lastly, in the decision of the Division Bench of this Court, eye witnesses were not found reliable. The same is not the situation in the instant case and therefore, this decision would not help the appellant side.

**33.** From the evidence on record, I find that the testimony of PW-1, the prosecutrix, during the trial and her statement before learned JMFC is cogent and in harmony with one another regarding the nature of the incident that initially while she was coming back home from the Nellie market, she was called out by the accused. Thereafter, he caught hold of her hand, tried to pull her towards the jungle, uttered obscene words, asked for sex and pulled her chest, whereupon Tapan Deka and the other person arrived at the place of occurrence, thereby saving her.

**34.** As already discussed above, the non-mentioning of the specific nature of obscene words in her statement before the learned JMFC, but elaborating on the same in her testimony during the trial, has been seen in a proper perspective as already discussed above and in my considered opinion that does not constitute a material contradiction or omission to cast doubts on the testimony of the prosecutrix. PW-3 has undoubtedly not supported the prosecution's story in the way he was expected to and he was not declared

hostile by the prosecution. Nevertheless, the basic nature of the incident about seeing assembling of people at the place of occurrence while he was coming on the way by his vehicle, lends important corroboration to the prosecution's story that has emerged from the testimony of PW-1 and PW-2.

**35.** In my considered opinion, the infirmities in the testimony of PW-3 would not demolish the prosecution case. PW-2 Tapan Deka has lent vital corroboration to the testimony of the prosecutrix. His name emerges from her testimony and her statement before learned JMFC and he in his testimony has narrated about the incident which tallies with the description of the incident made by the prosecutrix before the trial court and before learned JMFC.

**36.** Thus, the testimony of PW-2 is cogent and unshaken and I do not find any infirmities in the same. The testimony of the informant's mother, though not an eyewitness, also lends broad corroboration to the prosecution's story. As already discussed, her testimony about PW-2 informing her maternal aunt, who in turn informed her, appears natural in view of the testimony of PW-2 that he belongs to the same village as the informant and her family.

**37.** From the testimony of the I.O, PW-5, exhibiting of GDE No. 279/2018, recorded on the basis of the initial information of Tapan Deka, as testified, has lent important corroboration to the prosecution case. Regarding the age of the victim, the same has been cogently proved by the birth certificate mentioned by her as well as by the I.O/PW-5. As per the birth certificate, she was a minor aged below 18 years at the time of the incident.

**38.** The said testimony regarding her minority is also corroborated by other witnesses, such as her statement in her testimony, that at the time of the incident, she had just appeared in her HSLC examination and her denial that the date of birth pertaining to the certificate is wrong and also denying that she was a major. PW-2 has also denied about the victim being a major at the time of the incident and rather he has stated about her being about aged about 16 years at the time of the incident. His knowledge about the victim's age is plausible as he has stated about being a co-villager in his evidence. The victim's mother, PW-4, has also stated her age to be 17 years at the time of the incident. Therefore, sufficient evidence was adduced by the prosecution to prove that the victim was aged below 18 years at the time of the incident.

**39.** Section 7 of the POCSO Act, 2012 defines sexual assault and may be reproduced hereinbelow;

*“7. Sexual assault-- “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does*

*any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault”.*

40. In the impugned judgment, the learned Trial Court has referred to the decision of the Hon’ble Supreme Court in the case of **State of Punjab -versus- Major Singh**, reported in **AIR 1967 SC 63**. The said decision is one of the earliest judgments on the scope of the penal provision pertaining to outraging of modesty of a woman. The relevant paragraphs may be reproduced hereinbelow;

*“3. I would first observe that the offence does not, in my opinion, depend on the reaction of the woman subjected to the assault or use of criminal force. The words used in the section are that the act has to be done “intending to outrage or knowing it to be likely that he will thereby outrage her modesty”. This intention or knowledge is the ingredient of the offence and not the woman’s feelings. It would follow that if the intention or knowledge was not proved, proof of the fact that the woman felt that her modesty had been outraged would not satisfy the necessary ingredient of the offence. Likewise, if the intention or knowledge was proved, the fact that the woman did not feel that her modesty had been outraged would be irrelevant, for the necessary ingredient would then have been proved. The sense of modesty in all women is of course not the same; it varies from woman to woman. In many cases, the woman’s sense of modesty would not be known to others. If the test of the offence was the reaction of the woman, then it would have to be proved that the offender knew the standard of the modesty of the woman concerned, as otherwise, it could not be proved that he had intended to outrage “her” modesty or knew it to be likely that his act would have that effect. This would be impossible to prove in the large majority of cases. Hence, in my opinion, the reaction of the woman would be irrelevant.*

*4. Intention and knowledge are of course states of mind. They are nonetheless facts which can be proved. They cannot be proved by direct evidence. They have to be inferred from the circumstances of each case. Such an inference, one way or the other, can only be made if a*

*reasonable man would, on the facts of the case, make it. The question in each case must, in my opinion, be : will a reasonable man think that the act was done with the intention of outraging the modesty of the woman or with the knowledge that it was likely to do so? The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such a woman. The expression "outrage her modesty" must be read with the words "intending to or knowing it to be likely that he will". So read, it would appear that though the modesty to be considered is of the woman concerned, the word "her" was not used to indicate her reaction. Read all together, the words indicate an act done with the intention or knowledge that it was likely to outrage the woman's modesty, the emphasis being on the intention and knowledge.*

*15. I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section."*

**41.** On the basis of the prosecution evidence, it has been proved, as already discussed above, that at the time of the incident, the appellant pulled the victim by her hand, pulled her chest, uttered obscene words to her. Keeping in mind the parameters and principles laid down in Major Singh (supra) and also the definition of sexual

assault incorporated in section 7 of the POCSO Act, it can be said that the Act of the appellant at the time of the incident outraged the modesty of the girl and such act also constituted sexual assault within the meaning of section 7 of the POCSO Act.

**42.** Thus, on the basis of the evidence on record, I come to the considered finding that the prosecution has successfully proved that at the time of the incident, the appellant had wrongfully restrained the victim girl, caught hold of her chest with sexual intention, uttered obscene words to her asking for sex. The said acts of the appellant apart from constituting sexual harassment within the meaning of section 7/8 of the POCSO Act, also constitutes outraging the modesty of the victim girl within the meaning of section 354 IPC. Therefore, the conviction of the appellant under section 341/354 IPC, read with section 8 of the POCSO Act by the learned Trial Court does not suffer from any infirmity and it is hereby **upheld and confirmed**.

**43.** Regarding the sentence, the girl was aged about 16-17 years at the time of the alleged incident. The age of the accused was mentioned as 26 years during his examination under section 313 Cr.PC and therefore, age-wise the accused was a matured adult. The appellant had committed wrongful restraint, sexual harassment upon a minor girl and outraged her modesty as well. The place of the incident was a lonely place near the jungle and but for the intervention of PW-2 and his deceased friend, who was coming with him on the two-wheeler, the victim might have faced the possibility of a graver sexual crime. I have not found anything to make any concession or reduction in the sentence imposed by the learned Trial Court. Therefore, the sentences imposed by the learned Trial Court upon the appellant for his conviction under the aforementioned penal provisions is also **upheld and confirmed**.

**44.** Consequently, the impugned judgment & order dated 03/08/2024 passed by the learned Special Judge (POCSO) Morigaon in POCSO Case No. 15 of 2018 is hereby **upheld and confirmed**.

**45.** Accordingly, the criminal appeal stands **dismissed**.

**46.** Return the TCR forthwith.

**JUDGE**

**Comparing Assistant**