

GAHC010204162022



DB

2026:GAU-AS:195-

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

Case No. : Crl.A./252/2022

SHAJIT AHMED @ SAJIT AHMED .
S/O RAFIKUL ISLAM, RESIDENT OF VILLAGE KAJIAMATI, PO AND PS
GOBARDHANA, DIST BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:BILLAL HUSSAIN
S/O LATE ABDUL GANI
RESIDENT OF VILLAGE SATIPUR
PS DHALIGAON
DIST CHIRANG
ASSA

Advocate for the Petitioner : MR A W AMAN, MR. SURAJIT DAS,MR SARFRAZ NAWAZ,MR
S T ADNAN,MS SURAYA RAHMAN,MR S A BARBHUYAN

Advocate for the Respondent : PP, ASSAM, MS. L DEVI (R-2)

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

ORDER

07.01.2026

(M. Zothankhuma, J)

Heard Mr. S Nawaz, learned counsel for the appellant. Also heard Mr. R R Kaushik, learned Additional Public Prosecutor, Assam for the State as well as Ms. L Devi, learned counsel for the respondent No. 2.

2. This is an appeal against the impugned judgment dated 24.08.2022 passed by the learned Sessions Judge/Special Judge (POCSO), Chirang, Kajalgaon in Special POCSO Case No. 5/2020 arising out of Dhaligaon Police Station Case No. 196/2019 by which the appellant has been convicted under Section 376(3) IPC read with Section 6 of the POCSO Act. However, the sentence has been imposed under Section 376(3) of the IPC.

3. Learned counsel for the appellant submits that the appellant has been convicted under Section 376(3) IPC, without the trial being conducted by a public prosecutor. He submits that from the time of framing of charge till conviction of the appellant by the learned Trial Court, no public prosecutor/additional public prosecutor had appeared to conduct the prosecution on behalf of the State. The learned Trial Judge acted as a prosecutor and had taken the evidence of the prosecution witnesses during the examination-in-chief of the witnesses. He thus submits that the learned Trial Judge acted as a prosecutor and judge in the case and as such, the conviction

made by the learned Trial Court should be interfered with.

4. Mr. R R Kaushik, learned Additional Public Prosecutor submits that he has no quarrel with the submission made by the learned counsel for the appellant, to the effect that no public prosecutor/additional public prosecutor had conducted the prosecution case before the learned Trial Court. The learned Presiding Judge had acted as the prosecutor and judge in the case. In view of the above, the entire criminal trial, including recording of the evidence of the prosecution witnesses, was vitiated. He submits that the same being in violation of Section 225 CrPC, the impugned judgment should be set aside and re-trial should be initiated by the learned Trial Court.

5. We have heard the learned counsels for the parties and also perused the materials available on record.

6. Section 225 of CrPC states as follows –

“In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.”

7. Perusal of Section 225 CrPC shows that in every trial before a Court of Sessions, the prosecution is to be conducted by a public prosecutor. The present case being a POCSO case, a public prosecutor was necessary to conduct the trial proceedings before the learned Trial Court. However, the same had not been done. No public prosecutor/additional public prosecutor had participated in the trial proceedings, from the time of framing of charge under Section 376(3) IPC read with Section 6 of the POCSO Act till conviction of the appellant, by way of the impugned judgment dated 24.08.2022 passed by the learned Sessions Judge/Special Judge (POCSO), Chirang, Kajalgaon in Special POCSO Case No. 5/2020.

8. When there has been a breach of Section 225 of the CrPC in conducting the trial proceedings, wherein the learned Judge conducted the duties of the prosecutor in the absence of any public prosecutor/additional public prosecutor, the trial proceedings which included the recording of the evidence of the witnesses, would have to be deemed to be vitiated.

9. The present case being a case relating to POCSO, which is a very serious case that could lead to a sentence of life imprisonment, we are of the view that the conviction of the appellant by the learned Trial Court in violation of Section 225 of the CrPC is not sustainable in law.

10. Accordingly, the impugned judgment dated 24.08.2022 passed by the learned Sessions Judge/Special Judge (POCSO), Chirang, Kajalgaon in Special POCSO Case No. 5/2020 is set aside.

11. The above being said, we are of the view that when the guilt or innocence of the accused is to be decided with respect to a serious and heinous crime, it would be appropriate for the learned Trial Court to have a re-trial of the case in terms of Section 225 CrPC, from the stage of framing of charge and recording of the evidence of the prosecution witnesses in the presence of the public prosecutor/additional public prosecutor.

12. The learned Trial Court is accordingly directed to re-try the case, after restarting the trial from the stage of framing of charge of the appellant.

13. Send back the TCR.

14. The appellant shall continue to be on bail during the trial before the learned Trial Court, provided the bail conditions are not violated by the appellant.

15. The appeal is accordingly disposed of, remanding the matter back to the learned Trial Court for retrial.

JUDGE

JUDGE

Comparing Assistant

**Pranab
Kumar
Deka**

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by Pranab
Kumar Deka
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