

GAHC010099552025



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

Case No. : I.A.(Crl.)/1303/2025

) DIPAK RUSAL
SO SRI ROHIT RUCHAL
RO VILL NO 2 BAIJANTIPUR
PO JOYRAMPUR
PS GOGAMUKH
DIST DHEMAJI
ASSAM
PIN 787026

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
GAUHATI HIGH COURT
GUWAHATI
ASSAM

2:SRI BHAKTA SIRUWAL
SO LATE KHARGA BAHADUR SIRUWAL
RO VILL NO 2 BAIJANTIPUR
PO JOYRAMPUR
PS GOGAMUKH
DIST DHEMAJI
ASSAM
PIN 787026

Advocate for : MD. A SAHAD
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

in Crl.A./192/2025

DIPAK RUSAL
SON OF SRI ROHIT RUSAL, RESIDENT OF VILLAGE NO 2, BAIJANTIPUR,

P/O. JOYRAMPUR, P/S. GOGAMUKH, DIST. DHEMAJI, ASSAM, PIN-787026.

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, GAUHATI HIGH COURT,
GUWAHATI, ASSAM

2:BHAKTA SIRUWAL
SON OF LATE KHARGA BAHADUR SIRUWAL
RESIDENT OF VILLAGE NO 2
BAIJANTIPUR
P/O. JOYRAMPUR
P/S. GOGAMUKH
DIST. DHEMAJI
ASSAM
PIN-787026

Advocate for the Petitioner : B.L. SARMA, POMPA CHOUDHURY,MD. A SAHAD

Advocate for the Respondent : PP, ASSAM, MR A TIWARI (LEGAL AID COUNSEL, R2)

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

ORDER

Date : 25/02/2026

(Michael Zothankhuma, J)

1. Heard Mr. A. Sahad, learned counsel for the applicant/appellant. Also heard Ms. B. Bhuyan, learned APP, Assam, appearing for the State and Mr. Atal Tiwari, learned Amicus Curiae, for the respondent no. 2.

2. This application under section 430 BNSS, is for suspension of the sentence imposed upon the applicant due to his conviction under section 4 of the POCSO Act read with section 506 IPC. In pursuance to his conviction, he has been sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 30000/-, in default, to undergo rigorous imprisonment for years under section 4 of the POCSO Act. He was also sentenced to undergo rigorous imprisonment for

3 years with a fine of Rs. 5000/-, in default, rigorous imprisonment for 3 months under section 506 IPC.

3. The applicant's counsel submits that the medical evidence does not corroborate the testimony of the victim that she had been subjected to penetrative sexual assault, inasmuch as, the Doctor had deposed that there was no violent marks on the body of the victim or secondary sexual part of the body.

4. Ms. B. Bhuyan, learned APP, Assam and Mr. A. Tiwari, learned counsel for the respondent no. 2 submit that the absence of injury on the private parts of the victim does not mean that she had not been subjected to penetrative sexual assault, as held by the Supreme Court in the case of ***Lok Mal alias Loku Vs. State of Uttar Pradesh*** reported in ***(2025) 4 SCC 470***.

5. In the case of ***Lok Mal (Supra)***, the Supreme Court has held that the absence of injury on the body of the victim does not indicate that the victim was not subjected to penetrative sexual assault. As such, the absence of injury does not render the evidence of the victim to be unbelievable, Further, the evidence of the Medical Doctor shows that the hymen of the victim girl was not intact.

6. In view of the above, we are not inclined to allow the present application. The application is accordingly dismissed. Any observation or finding made in this order, will not be construed to be the final observation or finding of this Court at the time of final hearing of the appeal.

JUDGE

JUDGE

Comparing Assistant