

GAHC040002152024

2026:GAU-AP:203-DB



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

Case No. : Crl.A./8/2024

Shri Pange Pansa,
S/o – Shri Saige Pansa,
Vill- Nginu,
PO/PS- Wakka,
Dist.- Longding, Arunachal Pradesh.

....ACCUSED/CONVICT

Through;
Smti Chugat Gangsa @ Pansa,
W/o – Shri Pange Pansa.
Vill- Nginu,
PO/PS- Wakka,
Dist.- Longding, Arunachal Pradesh.

....APPELLANT

VERSUS

- 1. The State of Arunachal Pradesh, represented by the P.P.**

2. Smti. Ilen T. Bowam (Teacher)

W/o Shri Chapa Bowam,
PO/PS- Wakka,
Dist.- Longding, Arunachal Pradesh.

....RESPONDENTS

BEFORE

HON'BLE Mr. JUSTICE BUDI HABUNG

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocate for the Appellant	: Mr. Tabit Tapak
Advocate for the State Respondent No.1	: Ms. L. Hage, Addl. P.P
Advocate for the Respondent No.2	: Mr. D. Panging, Id. Adv.
Date on which Judgment is reserved	: 27.01.2026
Date of Hearing	: 27.01.2026
Date of Judgment and Order	: 27.02.2026

Whether the pronouncement is of the Operative part of the Judgment? :No

Whether the full Judgment has been pronounced ? : Yes

JUDGMENT & ORDER

(CAV)

[Budi Habung, J]

Heard Mr. Tabit Tapak, learned counsel for the appellant. Also heard Ms. L. Hage, learned Additional Prosecutor for the State respondent No.1 and Mr. D. Panging, learned counsel for the respondent No.2.

- 2.** This criminal appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, challenging the impugned judgment dated 08.08.2023 passed by the Court of the learned Special Judge (POCSO), Khonsa, in Khonsa/SC (POCSO) Case No. 05/2020, under Sections 376/366 of the IPC *read with* Section 4 of the Protection of Children from Sexual Offences Act, 2012, wherein the accused was convicted under Section 376(1) of the IPC and sentenced to suffer rigorous imprisonment for 12 (twelve) years with a fine of Rs. 5,000/- (Rupees five thousand only), and in default of payment of fine, to undergo further imprisonment for a period of 6 (six) months.
- 3.** The brief fact leading to the conviction of the accused and the filing of this appeal is that on 24.02.2019, the mother of the victim, lodged a written complaint before the Officer-in-Charge of Longding Police Station, alleging that at around 6:45 P.M., while the victim was returning home from Ngisa village after visiting her sister, the accused raped the victim multiple times, causing injuries to her private part.
- 4.** On the basis of the above FIR, the case was initially registered against the accused being Longding P. S. Case No.12/2019 under Section 376 of the IPC. After completion of the investigation, a charge-sheet was filed under Section 376 of the IPC *read with* Section 6 of the POCSO Act. Charges were framed against the accused under Sections 376/366 of the IPC *read with* Section 4 of the POCSO Act.
- 5.** To bring home the charges, the prosecution examined as many as four witnesses and also relied upon certain documents, which were duly proved during the course of the trial.
- 6.** After completion of the prosecution evidence, the accused was examined and his statement was recorded under Section 313 of the Cr.P.C. Although the accused did not fully or directly admit his guilt, he admitted that he had accompanied the victim to another village and stated that at the time of the incident, the victim had told him that she was having her menstrual cycle. He also did not specifically plead innocence.

Although the accused had furnished two names as defence witnesses, including himself, the examination of defence witness concluded after examining only one defence witness.

Evidence of prosecution witnesses

7. P.W.-1, the victim, in her statement under Section 164 (5) of the Cr.P.C. which was exhibited as Ext-P-2 and identified her signature. It has been stated that on 24.02.2019, when she was returning from Ngisa village, she discovered that her mobile phone, which belonged to her mother, was missing. She went to a friend seeking her company, but her friend refused saying she was tired. The accused, however, voluntarily offered to accompany her. On reaching the place, she could not trace the missing mobile phone, and while returning, the accused dragged her to the jungle near the helipad at Nginu village. He thereafter tied her hands and inserted his finger and penis inside her vagina and buttocks, as a result of which the victim bled profusely. The victim resisted and shouted, but the accused covered her mouth. After the incident, she returned home with the accused. On the way, the accused threatened her with dire consequences if she disclose the incident to anyone. Nevertheless, upon reaching home, she narrated the entire incident to the mother/informant. Subsequently, the informant lodged the FIR against the accused, and the victim was taken for a medical examination.

In her deposition, P.W.-1, the victim, reiterated her earlier statement before the Magistrate (Ext-P-2) and deposed that while returning home, the accused took her to the helipad located in Nginu village on the pretext of urination. The accused then suddenly grabbed her and forcibly dragged her to a thatched house located nearby the helipad. She tried to shout, but he gagged her mouth. She further deposed that the accused made her lie down and opened his pant and then he also opened her pant and committed sex with her by inserting his penis into her private part, as a result, she was bleeding from her private part, which was painful. She also stated that

after the incident, the accused dropped her at home the same night, and upon reaching home, she immediately informed her parents about the incident. On the same night, her parents lodged the FIR. At the time of the incident, the victim was studying in Class-III and was about 13 years of age.

8. P.W.-2, Smti. Ilen T. Bowam, the informant, mother of the victim girl, deposed that on 24.02.2019, she sent her victim daughter to visit her another daughter studying at Ngisa school. However, her victim daughter returned home at around 6:30 to 7:00 P.M. bleeding and crying. She disclosed to her that she was dropped home by the accused Pange Pansa. She also revealed that she was subjected to rape by the accused and narrated the incident to her, after which she became unconscious. Upon learning the incident narrated, she apprehended the accused and took him to the police station along with her daughter on the same night and lodged the FIR. She further stated that at the time of the incident, her daughter was 13 years old.

In her cross-examination, this witness stated that the victim told her that she was sexually assaulted by the accused Pange Pansa. She further stated that, as per the Aadhaar card, the victim was born on 17.11.2009; however, she did not submit any document to prove the age of the victim.

9. P.W.-3, Shri C. Lowang, the Investigating Officer (IO) of the case, deposed that on 24.02.2019, at around 6:45 P.M., a written FIR was received from P.W.-2, who had brought the victim girl, aged about 13 years. The victim was alleged to have been subjected to rape by the accused. The case was accordingly registered, and the accused was also brought to the police station by the informant, P.W.-2. He was arrested. Thereafter, the victim was taken to the hospital for a medical examination.

He further deposed that during the course of the investigation, he had the statement of the victim recorded by the Judicial Magistrate First Class, Longding, under Section 164(5) of the Cr.P.C.[P-Ext-2]. He also collected the vaginal swab of the victim girl and sent it to the FSL, Calcutta, for expert opinion; however, no report was

received.

10. P.W.-4, Dr. P. Tayeng, the doctor who examined the victim, on 25.02.2019, and observed the following findings:

- i. On general examination, he found abrasion on both the knees of the victim.
- ii. On genital examination, he found bruise and swelling on vulva (labia majora and minora).
- iii. He also found active vaginal bleeding.
- iv. There was perforation of hymen with active bleeding.

As per findings, there was evidence of vaginal penetration. He had collected the vaginal swab of the victim and nail scrapping and handed over the same to the police.

11. P.W-4 also examined the accused Shri Pange Pansa on 25.02.2019 and found the following:

- i. Bite mark on right forearm dorsal aspect measuring 3x3 cm.
- ii. Bite mark on right deltoid region.
- iii. Nail scratch mark on left hand.
- iv. Contusion on right temporal region.
- v. Bruise on both lower eyelids.
- vi. Abrasion on right knees.

During cross-examination, he deposed that he did not made any attempt to determine the age of the victim, and there was also no request from the police.

According to him, there were signs of resistance by the victim. The tear on the hymen was fresh at the time of examination, and he examined both the victim and the accused 6 to 7 hours after the alleged incident.

12. On completion of the trial, the learned Trial Court found that the prosecution had proved its case against the accused beyond reasonable doubt. He was found guilty for offence under Section 376 (1) of the IPC. Accordingly, by the impugned judgment dated 08.08.2023, the accused was convicted and sentenced to undergo rigorous imprisonment for 12 years and to pay a fine of Rs. 5,000/-, with a default stipulation. Against this judgment, the present appeal has been preferred.

SUBMISSION OF THE LEARNED COUNSEL OF THE APPELLANT

13. Mr. Tapak the learned counsel for the appellant, contended that the victim gave false evidence and exaggerated the incident. She was a major, but wrongly stated before the police and in court that she was a minor, about 13 years of age. He further submitted that there was no eyewitness to the incident, and thus, the conviction of the accused is based purely on suspicion and solely on the lone evidence of the victim. There is no proof that she was major.

14. He further contended that the statement of the accused during his examination under Section 313 of the Cr.P.C., in which he stated that at the time of the incident, the victim told him she was having her monthly menstrual cycle, does not amount to an admission of guilt for the alleged offence. However, based on such a statement, which is a weak piece of evidence, the appellant has been convicted.

15. He further argued that the absence of eyewitnesses makes the prosecution case doubtful; therefore, the benefit of doubt ought to have been given to the accused. The learned counsel also submitted that although two names, including that of the accused, were given for adducing defence evidence, however, only one defence witness was allowed to be examined. He further submitted that the accused was not

properly defended by his, the then, defence counsel, before the Trial Court and after examining only one defence witness, the accused himself was not examined. Therefore, he prays that the accused be given an opportunity to defend his case by adducing himself as a defence witness.

16. The learned counsel for the appellant, referring to the memo of appeal, contended that there was improper legal defence at the time of trial and that the defence evidence was closed without examining the accused as a defence witness, although his name was given as a defence witness. The learned counsel for the appellant further submitted that the then, learned counsel for the accused later filed an affidavit stating that he was absent on the date of closure of defence evidence. However, the learned Trial Court reflected his presence in the order sheet. Therefore, he prays that the accused/convict may be allowed to examine himself as a defence witness.

17. In support of his submission, the learned counsel for the appellant relies on the following judgments:

- i. ***Balu Sudam Khalde & Anr. v. The State of Maharashtra***, reported in ***2023 Supreme (SC) 295***, paragraphs 39, 40, 41 & 42.
- ii. ***Vijay v. State***, reported in ***2019 SCC OnLine Del 10485***.

Submission of the learned Additional Public Prosecutor

18. Ms. Hage, learned Additional Public Prosecutor, while supporting the conviction and sentence of the appellant submitted that the victim is a sterling witness. She has been consistent in her statements regarding the facts of the incident before the Magistrate while giving her statement under Section 164 (5) of the Cr.P.C., and in her deposition before the court, her testimony is consistent and trustworthy. The defence side could not rebut her evidence during cross-examination.

19. She further submitted that although the victim, in all her statements and

evidence before the police and the court, stated her age as that of a minor, about 13 years, her mother corroborated her statement stating that she was 13 years old, however, in the absence of any supporting documents, she was not treated as a minor. Therefore, the offence charged against the accused under Section 4 of the POCSO Act was dropped by the learned trial court. She also submitted that in such cases, where the offence involves sexual assault, one cannot expect the presence of eyewitnesses, as the accused commits the offence after ensuring that no one is around to witness the incident.

20. The learned Additional Public Prosecutor further submitted that in his examination under Section 313 of the Cr.P.C. and during cross examination, the accused admitted that he had accompanied the victim in the evening to travel to another village to collect the mobile phone which was missing. The accused further stated that at the time of the incident, the victim told him that she was menstruating, although he denied committing the alleged offence of rape. She further submitted that although the accused examined one defence witness, but the said witness did not support the defence case, as he was not a material witness.

21. The learned Additional Public Prosecutor further submits that the victim is a reliable and trustworthy witness, and her evidence is corroborated by the medical evidence. Therefore, the injuries shown in the medical report of the accused also support the resistance offered by the victim. The evidence of the victim and her medical evidence has also received support from other witnesses, such as P.W.-3 and P.W.-4.

22. In support of his submissions, the learned Additional Public Prosecutor relied on the following decisions:

- i. ***Natasha Singh v. CBI (State)***, reported in ***2013 Supreme (SC) 467***;
- ii. ***Ganesan v. State represented by its Inspector of Police***, reported in ***2020 (10) SCC 573***; and

iii. ***State of Punjab v. Gurmit Singh & Ors.***, reported in ***(1996) 2 SCC 384.***

23. Upon consideration of the pleadings, evidence, and submissions made by the learned counsel for the parties, the following points emerge for determination:

- i. Whether the conviction under Section 376 of the IPC is sustainable;
- ii. Whether the failure to examine the accused as a defence witness vitiates the trial; and
- iii. Whether the appellant is entitled to remand or a re-trial.

24. It is settled law that a conviction can be based on the sole testimony of the prosecutrix if she is trustworthy. In the instant case, the victim's testimony is consistent, natural, and fully supported by the documentary evidence, other evidence, and the evidence of P.W.-2. Although her minor age could be inferred from her statement and that of her mother (P.W.-2), and it was evident that she was merely studying in Class 3, due to the non-production of any documentary evidence establishing her age, she could not be declared a minor within the definition of child under the POCSO Act.

25. It is also clear that no material contradiction could be elicited during the cross-examination of the victim (P.W.-1), mother (P.W.-2), and the doctor (P.W.-4). The medical evidence clearly shows that there was recent evidence of sexual assault on the victim, and that the assault was forceful vaginal penetration. Further, the injuries and findings on examination of the accused clearly demonstrate the resistance offered by the victim, which caused injuries to the accused. The injuries found on the accused support the prosecution case of struggle; thus, the circumstantial evidence also corroborates the prosecution's case.

26. However, the absence of a POCSO conviction does not affect the offence under

the IPC for rape. The record shows that, vide the Trial Court order dated 10.07.2023, the defence counsel, Mr. L. Phuksa, was present during the proceedings, and after examining DW-1 Khamge Pangsa, upon agreement by the learned counsel for both parties, the defence evidence was closed. Thus, it appears that the defence side was afforded the opportunity to adduce evidence; however, he closed not to avail, under the circumstances, the subsequent affidavit claiming absence cannot override the judicial record unless proved by cogent evidence.

27. Moreover, the law does not mandate that the accused must be examined as a defence witness; hence, no prejudice has been shown to have been caused to the accused. The affidavit and authorities relied upon by the appellant relate to prejudice due to denial of a fair opportunity. However, in the present case, ample opportunity was given to the defence, which the accused failed to avail. The citations relied upon by the learned Additional Public Prosecutor further support the testimony of the victim.

28. From the above, this Court is of the view that the prosecution has proved the guilt of the accused beyond reasonable doubt. The conviction recorded by the learned trial court is well-reasoned and based on proper appreciation of the evidence. No perversity or illegality is found. Accordingly, this criminal appeal is dismissed. The conviction under Section 376 of the IPC is affirmed, and the sentence of 12 years rigorous imprisonment with a fine is confirmed.

29. In view of the above, this appeal stands disposed of.

30. Sent back the Trial Court Record.

JUDGE

JUDGE

Comparing Assistant