

GAHC010003522023



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

Case No. : I.A.(Crl.)/11/2023
In Crl. Appeal No. 349 of 2022

RAMJAN ALI
S/O LATE ABDUL BAREK
RESIDENT OF NO. 3 DAKSHIN DAYALPUR GAON, PS URIAMGHAT, DIST
GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:FORIDA BEGUM
D/O ABDUL HAI
RESIDENT OF NO. 3 DALANIPATHAR GAON
PO AND PS URIAMGHAT DIST GOLAGHAT
ASSAM PIN 785601

Advocate for the Petitioner : MR. M A I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

24.02.2023

(Michael Zothankhuma, J.)

Heard Mr A Ahmed, learned counsel for the applicant. Also heard ms S Jahan,
learned Additional Public Prosecutor for the State of Assam.

2. This application has been made under Section 389 CrPC for suspension of the sentence given pursuant to the Judgment dated 31.03.2022, passed by the learned Special Judge, Golaghat, Assam, in Special (POCSO) Case no. 40 of 2020, by which the applicant has been convicted under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 20 years, with a fine of Rs. 5,000/-, in default, Rigorous Imprisonment for 3 (three) months.

3. The Learned counsel for the applicant submits that the statements made by the victim girl in her confessional statement under Section 164 CrPC is contradictory to the statement of PW-2, the victim's mother and PW-3, who is the sister of the victim girl. He submits that while the victim girl has taken the stand that the applicant had come to their home and forwarded her private photos from her mobile phone to his mobile phone, at the time the victim's mobile was being charged.

However, the evidence of PW-2 and PW-3 is to the effect that they were told by the victim that the applicant had taken her nude photograph while she was having a bath. He submits that there was no question of the applicant blackmailing the victim and forcing her to have sexual intercourse, as no such photos were seized or seen by the Police nor were they available in the victim's mobile or applicant's mobile. He submits that the nude photos of the victim were never brought to the notice of the learned trial Court also. As such, the evidence of the victim was not believable and the applicant should be released on bail after suspending the sentence.

4. The learned counsel for the applicant also submits that the date of birth of the victim given in the school certificate, which was produced before the learned trial Court is suspect, as the contents of the birth certificate were not proved by the maker of the certificate.

5. The learned counsel for the applicant further submits that while the victim (PW-1) had stated in her evidence that she had been forced to have sexual intercourse with the applicant on three different occasions and had refused to have sexual intercourse on the

fourth occasion, the evidence of the sister of PW-1, i.e., PW-3, is to the effect that she was told by the victim that she had met the applicant in the field once, after which the case was filed against the applicant in the Police Station. He, accordingly, submits that there being a contradiction, as to the number of days the applicant and the victim had sexual intercourse, the evidence of the victim cannot inspire the confidence of the Court, as the evidence of PW-1 was unreliable.

6. Ms S Jahan, learned Additional Public Prosecutor, on the other hand, submits that the applicant was a married man at the time of the incident as per the statement made by the victim under Section 164 CrPC. She also submits that there is consistency in the statement of the victim in her statement under Section 164 CrPC and in her evidence. She also submits that the medical report shows that the victim's hymen was ruptured and that her age was around 16 years at the time of the incident, as per the school certificate and school register.

7. On considering the submissions made by the learned counsels for the parties and the materials on record, we are of the view that as the offence is of a very serious nature, wherein the victim is purportedly below 18 years and has had her hymen ruptured, we are not inclined to allow the application at this stage.

8. The Interlocutory Application is accordingly rejected and disposed of.

JUDGE

JUDGE

Comparing Assistant