

GAHC010024952023



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

Case No. : I.A.(Crl.)/127/2023

MD. RAFIQUUL ISLAM @ ROFIKUL ISLAM
S/O MD. YUNUS ALI
RESIDENT OF VILLAGE SHARIATPUR
PS KALGACHIA
DIST BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SMTI DALIMI NAMASUDRA
W/O SRI BALEN NAMASUDRA

RESIDENT OF PUNIA
PS TAMULPUR
DIST BAKSA
ASSAM
781367

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.10.2023

(M. Zothankhuma, J)

Heard Mr. A. Ahmed, learned counsel for the applicant, who prays that the sentenced imposed upon the applicant should be suspended, which had been given pursuant to the impugned judgment and order dated 21.01.2023, passed by the learned Special Judge (POCSO), Baksa, in Special (POCSO) Case No. 114/2018, by which the applicant/appellant has been convicted under Section 4 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 15 years and to pay a fine of Rs. 20,000/- (Rupees twenty thousand) only, in default to undergo Rigorous Imprisonment for 8 months.

The learned counsel for the applicant submits that though the applicant had questioned the age of the victim girl during cross-examination of the prosecution witnesses during trial, to the effect that she was 18 years and above on the date of the incident, the prosecution did not prove the age of the victim as being below 18 years on the date of the incident. He submits that the said requirement of proving the age of the victim, as being below 18 years, was a requirement of law under Section 34 (2) of the POCSO Act, 2012. He further submits that the medical report of the victim girl implies that the hymen of the victim girl was intact and that in the opinion of the Doctor, there was no evidence of recent sexual intercourse. He also submits that though the Doctor had given an opinion that the girl was between the ages of 16 years and below 18 years, as per radiological evidence, the learned Trial Court was duty bound to

come to a definite finding regarding the age of the victim girl. In this respect, he has relied upon the judgment of this Court in the case of **Manirul Islam Vs. State of Assam & Ors.**, reported in **2021 (3) GLT 128**. He also submits that in terms of cross-examination of the victim girl, there was no time for any rape to have occurred.

Ms. S. Jahan, learned Additional Public Prosecutor, submits that the statements made by the victim under Sections 161, 164 Cr.P.C. and before the learned Trial Court, were consistent and as such, there was no infirmity in the finding of guilt against the applicant. She also submits that the mother of the victim girl had seen the applicant jumping over the wall of the washroom. She also submits that in all her statements, the victim girl stated that her age was 15 years and as such, there was no reason to disbelieve the statements made by the victim girl. She accordingly submits that the victim, being a minor girl, the question of the girl being treated as an adult did not arise.

We have heard the submissions made by the learned counsels for the parties.

As can be seen from the Doctor's evidence and medical report, the hymen of the girl was intact. The Doctor also states that the age of the victim girl was between 16 and below 18 years, as per the radiological examination. However, in view of the fact that the prosecution has not proved the age of the victim girl on the date of the incident, by producing her birth certificate or the registration of her date of birth in the register of the school that she had attended, we are of the view that the sentence imposed upon the applicant should be suspended at this stage.

Accordingly, the sentence imposed upon the applicant in terms of the

impugned judgment and order dated 21.01.2023, passed by the learned Special Judge (POCSO), Baksa, in Special (POCSO) Case No. 114/2018, is hereby suspended till final disposal of the case. Consequently, the applicant is hereby allowed to go on bail on a bail bond of Rs. 30,000/- (Rupees thirty thousand) only, with one surety of like amount to the satisfaction of the learned Special Judge (POCSO), Baksa. The trial is subject to the condition that all the orders passed by this Court and the learned Trial Court shall be complied with.

The Interlocutory Application is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant