

GAHC010095482023



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

**Case No. : I.A.(Crl.)/952/2023**

MD. AMIR HAMZA  
S/O BHOMAR ALI  
VILL.- NARESHING BARI  
P.S.- GOBARDHANA  
DIST.- BAKSA  
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.  
REP. BY THE P.P.  
ASSAM.

2:MAZAM ALI  
S/O JAHARUDDIN  
VILL.- UTTAR BHAKUAMARI  
P.S.- SALBARI  
DIST.- BAKSA  
ASSAM.

-----  
Advocate for : MR A HAQUE  
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.)**

1. Heard Mr. J. Ahmed, learned counsel for the applicant. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.
2. The applicant has prayed for suspension of the sentence that he has to undergo in terms of the judgment and order dated 24.02.2023 passed by the Court of the Special Judge (POCSO), Baksa, in Special (POCSO) Case No.16/2020, by which the applicant has been convicted under Section 4 of the POCSO Act, 2012.
3. The applicant is to undergo rigorous imprisonment for 15 years and to pay fine of Rs.20,000/-, in default to undergo simple imprisonment for 8 (eight) months.
4. The prosecution case in brief is that on 09.09.2019, PW-1, who is the father of the victim (PW-2), lodged an FIR in the Anandabar Police Outpost under Salbari Police Station stating that on 07.09.2019 at about 3 p.m., the applicant had forcibly taken PW-2 to the middle of the jungle and raped her. It was stated in the FIR that PW-1 found his daughter in a naked condition and that the applicant had run away.
5. The learned counsel for the applicant submits that Medical Report and evidence given by the Doctor does not support the prosecution case, inasmuch as, the hymen was intact and there was no evidence of sexual penetration detected on the body of the person of the victim, besides there being no

evidence of injury on her body or on her private parts.

6. The learned counsel for the applicant further submits that the evidence of PW-1 is to the effect that the son of PW-1 i.e. Abdul Haque had seen the act of rape being committed by the applicant on the victim. The evidence of PW-2, on the other hand is that one Habijul Haque, who is the younger brother of the victim had seen the incident of rape. Further, the PW-1 had seen the applicant committing rape on the victim by opening her clothes and running away on seeing PW-1. However, the said Abdul Haque and Habijul Haque have not been made prosecution witnesses in the case, even though they were supposed to be eyewitnesses to the crime in question.

7. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand submits that witnesses had seen the applicant running away from the scene of the crime and that the statement of the victim has been consistent even during statement given under Section 161 Cr.P.C and before the learned Trial Court. She accordingly submits that the application should be rejected.

8. We have heard the learned counsels for the parties.

9. We have noticed that the incident had occurred on 07.09.2019 and there were witnesses to the crime in question, as given in the testimony of PW-1 & PW-2. However, the FIR has been filed only after 2 (two) days i.e. on 09.09.2019, besides Abdul Haque and Habijul Haque have not been made prosecution witnesses. It is true that just because the hymen has remained intact, does not mean that there was no penetration on the private parts of the victim. However, without going to deep into the evidence, we are of the considered view that *prima facie*, the sentence inflicted upon the applicant should be suspended.

10. Accordingly, the sentence to be undergone by the applicant in terms of the impugned judgment and order is hereby suspended. Consequently, the applicant is released on a bail bond of Rs.20,000/- with one surety of like amount to the satisfaction of the learned Trial Court.

11. The application is accordingly disposed off.

**JUDGE**

**JUDGE**

**Comparing Assistant**