

GAHC010065562023



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

Case No. : CrI.L.P./12/2023

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

VERSUS

MD. ZAKIR HUSSAIN
S/O MD. TAIZUDDIN, VILL.- NO. 1, BORBORI, P.S.- LAHARIGHAT, DIST.-
MORIGAON, ASSAM.

Advocate for the Petitioner : PP, ASSAM,

Advocate for the Respondent : MR A A DEWAN, MR M K DAS, MR H A RASHID

Linked Case : **CrI.A./3151/2023**

THE STATE OF ASSAM

VERSUS

MD. ZAKIR HUSSAIN A

Advocate for : PP
ASSAM

Advocate for : appearing for MD. ZAKIR HUSSAIN A

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20-11-2024

(S. K. Medhi, J)

Heard Ms. S. Jahan, learned Addl. PP, Assam. Also heard Shri A. A. Dewan, learned counsel for the opposite party.

The instant petition has been filed under Section 378 (3) of the Cr.PC of the 1973 praying for leave to prefer appeal against the judgment and order dated 14.10.2022 passed by the learned Addl. Sessions Judge-cum-Special Judge, Morigaon, Assam in POCSO Case No. 24/2021, acquitting the respondent of the charges under Section 341/366A/376 of the IPC r/w Section 4 of the POCSO Act, 2012.

Ms. Jahan, the learned Addl. PP, Assam has submitted that the finding of acquittal arrived at by the learned Addl. Sessions Judge-cum-Special Judge, Morigaon is not based on the materials on record, more particularly the version of the victim who had herself lodged the FIR and had also recorded her statement before the Magistrate under Section 164 of the CrPC. She submits that though the learned Judge had noted certain inconsistencies, those are minor in nature and will not affect the merits of the case. She has also submitted that the primary aspect of an allegation pertaining to the POCSO Act is the age of the victim which has been proved in this case by medical evidence.

On the other hand, Shri Dewan, the learned counsel for the opposite party has submitted that the findings arrived at by the learned Court below are proper as there were no cogent materials to come to a finding of guilt. He has also submitted that there are major inconsistencies in the versions of the victim/informant. He has also highlighted the aspect of inordinate and unexplained delay in lodging the FIR in spite of the fact that the house of the opposite party was at a distance of only 3 kms. and no missing report was lodged by her parents.

After hearing the learned counsel for the parties, we are of the opinion that the appeal is required to be heard on merits and accordingly, leave under Section 378(3) of the Cr.P.C. is granted.

Petition accordingly stands disposed of.

Let the appeal be registered and listed for admission expeditiously.

JUDGE

JUDGE

Comparing Assistant