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

Case No. : Crl.A./408/2025

AKABAR ALI @ AKABBAR ALI
S/O LT. ALTAB ALI, R/O. BORBORI, P/S. LAHARIGHAT, DIST. MORIUGAON, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:JAHURA KHATUN
W/O. MD. GULZAR HUSSAIN
VILL.- NO. 1 BORBARI
P/S. LAHARIGHAT
DIST. MORIGAON
ASSAM

Advocates for the appellant : Mr. H.R.A. Choudhury, Sr. Advocate,
Mr. I.U. Choudhury, Advocate.

Advocates for the respondents: Ms. A. Begum, Addl. PP. (R-1),
Ms. S. Sharma, Legal Aid Counsel, (R-2)

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date of hearing and judgment : 14.07.2026

JUDGMENT & ORDER

(M. Zothankhuma, J)

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the appellant assisted by Mr. I. U. Choudhury, learned counsel. Also heard Ms. A. Begum, learned Additional Public Prosecutor, Assam for the respondent no. 1 and Ms. S. Sharma, learned Legal Aid Counsel for the respondent no.2.

2. This appeal has been filed against the conviction of the appellant under Section 6 of the POCSO Act by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Morigaon, vide judgment dated 14.08.2025 passed in POCSO Case No.22/2022, arising out of Laharighat P.S. Case No.90/2021. The appellant was accordingly sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs.20,000/-, in default to undergo rigorous imprisonment for 3 months under Section 6 of the POCSO Act.

3. The appellant's counsel submits that the impugned judgment is not sustainable in view of the fact that, while the learned Trial Court had found the appellant guilty of having inserted his finger into the private parts of the 5 year old victim girl, the doctor's evidence does not indicate that any penetration of the private parts of the victim by the finger of the appellant had occurred. The evidence of the doctor and the medical report shows that there was no injury or redness in the private parts of the victim girl, besides the hymen being intact. He further submits that the incident had allegedly occurred on 19.02.2021 at around 4:30 p.m, due to which an FIR had first been lodged by the father of the victim (PW-5), on 19.02.2021. However, the same was not registered by the police and a second FIR had been lodged by the mother of the victim (PW-2) on

20.02.2021, which had been registered. As there appears to be suppression of the filing of the first FIR by the Prosecution, the second FIR would have to be considered to be a betterment of the first FIR, for the purpose of falsely ensnaring the appellant in a serious crime, only due to a land dispute between the appellant and the father (PW-5) of the victim.

4. The learned counsel for the appellant further submits that though the victim had been taken to Laharighat Hospital on the evening of 19.02.2021, the Doctor had not made any medical examination report and had told the victim's mother (PW-2) that a police case needed to be filed first and that the victim had to be treated in the Morigaon Civil Hospital. The same implied that there was no injury on the victim and that the incident had not taken place. After the second FIR was filed on 20.02.2021, the victim was taken to the Morigaon Civil Hospital and thereafter examined by the doctor, i.e. (PW-11), wherein no injury mark was seen in the private parts of the victim and her hymen was found to be intact. The learned counsel for the appellant submits that the same only goes to show that the case against the appellant is a fabricated case and had been made only due to a land dispute between the appellant and the father of the victim.

5. The learned Additional Public Prosecutor for the State submits that the evidence of the Prosecution Witnesses clearly shows that there was no land dispute between the appellant and the father of the victim (PW-5). She submits that PW-5 in his evidence has also clearly stated that he did not have any land in his name. Further, the explanation given by the appellant in his 313 Cr.P.C examination, is only to the effect that there was a quarrel regarding the use of water in a tube-well between the appellant and the father of the victim and

there was no land dispute between them. Thus, the evidence of the appellant as DW-4, where DW-4 has stated that there was a land dispute between the parties was an afterthought, without any specifics of the alleged land dispute being provided by the appellant. The learned Additional Public Prosecutor further submits that just because PW-11 (Doctor) has made a finding that there was no injury on the private parts of the victim, does not mean that she had not been subjected to aggravated penetrative sexual assault, inasmuch as, the Supreme Court in the case of ***Ranjit Hazarika*** vs. ***State of Assam***, reported in ***(1998) 8 SCC 635*** has held that in the facts of that case, neither the non rupture of the hymen nor the absence of injuries on the private parts of the victim belies the testimony of the prosecutrix, as to why she would falsely implicate the appellant therein on the charge of rape. The Supreme Court in the above case held that the opinion of the doctor that no rape appeared to have been committed due to absence of rupture of the hymen and injuries on the private parts of the victim, could not throw out an otherwise cogent and trustworthy evidence of the victim. The learned Additional Public Prosecutor thus submits that the absence of injury on the private parts of the victim does not mean that the appellant did not insert his finger into the private parts of the victim girl.

6. Ms. S. Sharma, the learned Legal Aid Counsel for the respondent No.2 reiterates the submissions made by the learned Additional Public Prosecutor and submits that the evidence of the victim has not been shaken by the appellant. She further submits that the absence of injury on the private parts of the victim does not mean that the victim had not been subjected to penetrative sexual assault. She also submits that the non-acceptance of the testimony of a victim of sexual assault, in the absence of corroboration as a rule, would add insult to

injury. In support of the above submission, she has relied upon the judgment of the Supreme Court in the case of ***Lok Mal Alias Loku vs State of Uttar Pradesh***, reported in ***(2025) 4 SCC 470.*** The learned Legal Aid Counsel for the respondent no.2 also summits that when a 4 year old girl's private parts had been penetrated by the finger of the accused, the said act attracted Section 5(m) of the POCSO Act which was punishable under Section 6 of the POCSO Act, as was held in the case of ***Nawabuddin vs. State of Uttarakhand,*** reported in ***(2022) 5 SCC 419.*** She submits that in the present case, the private parts of the 5 year old victim girl had been penetrated by the appellant herein and as such, Section 6 of the POCSO act was rightly attracted. Accordingly, the appeal should be dismissed.

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

8. The brief facts of the case is that the mother (PW-2) of the victim girl submitted an FIR dated 20/02/2021 to the Officer in Charge of the Laharighat Police Station, stating that she had left her house at around 4.30pm on 09/02/2021, leaving her five year old daughter at home. Taking advantage of her absence, her neighbour (appellant) entered her house and lured her daughter, by tempting her with money and took her inside the Latrine (toilet) of his own house. The appellant thereafter inserted his finger into her daughter's private parts and attempted to rape her. When her daughter started crying, the appellant let her out of the toilet. Her daughter subsequently came to her and narrated the incident to her. Pursuant to the FIR, Laharighat PS case No. 90/2021 under Section 376 AB IPC read with section 6 of the POCSO Act was registered. After the girl was sent for medical examination, her statement under section 164 Cr.P.C was recorded and investigation was completed Charge Sheet

was submitted against the appellant, as a *prima facie* case had been found against him under section 6 of the POCSO Act read with Section 376 AB IPC.

9. The learned Trial Court thereafter framed charge against the appellant under section 6 POCSO Act and section 376AB IPC, to which the appellant pleaded not guilty and claimed to be tried.

10. After the evidence of 11 Prosecution Witnesses and 8 Defence Witnesses were recorded, the learned Trial Court examined the appellant under Section 313 Cr.P.C. Thereafter, the learned Trial Court came to a finding that the appellant had committed the offence of aggravated penetrative sexual assault under Section 5(m) of the POCSO Act. The appellant was, thus, convicted and sentenced under Section 6 of the POCSO Act, in view of Section 42 of the POCSO Act.

11. The deposition of the victim (PW-1), when she attained the age of 8 years, was recorded by the learned Trial Court, after the learned Trial Court satisfied itself that the victim was able to understand the preliminary questions put to her and could give rational answers to the same.

12. The evidence of PW-1 is to the effect that she knew the appellant, who was her neighbour and whom she addressed as "Nana". She stated that the incident took place around 3 years back when she was alone in her house and was looking at the mobile. At that time, her mother had gone to a shop and her father had gone to the market. The appellant on coming to her house, gave her Rs 6/- in coins and then took her inside his toilet (latrine) while holding her hand. Inside the toilet, the appellant opened her panty and inserted his finger inside her urine passing organ (private parts). The appellant inserted his finger

inside her private parts for some time. The victim cried when the appellant inserted his finger into her private parts because she felt pain. The appellant then left her and asked her to go home. The victim then went in search of her mother and found her in a shop. On informing her mother about the incident, her mother lodged a case with the Police. She also stated that the Police had taken her to the Court where her statement was recorded by a Magistrate and her thumb impression was put on the said statement made by her. PW-1 also stated that the Police sent her to hospital for medical examination.

In her cross-examination, the victim denied the suggestion that her parents had tutored her and that she had made a false testimony in Court.

13. The evidence of PW-2, who is the mother of the victim, is to the effect that on the relevant date, she had gone to a shop leaving her daughter alone in the house. After about an hour, her daughter found her in a shop and told her while crying, that the appellant "Nana" had come to their house and after giving Rs.6/- to her, took the victim to his house and inserted his finger inside her private parts. On hearing about the incident, PW-2 stated that she shouted and cried due to which her neighbours came and she informed them about the incident. She also reported the incident to the wife of the appellant, who refused to believe her. She then called her husband over phone and told him about the incident. She took her daughter to a Doctor as she saw redness in the victim's private parts. However, the Doctor told PW-2 that a case had to be first lodged due to which she went to the Police Station. After the case was lodged, the Police sent her daughter to Morigaon Civil Hospital for examination. PW-2 also exhibited the Birth Certificate of her daughter, which was seized by the Police.

In her cross-examination, PW-2 denied the suggestion that they had a boundary dispute with the appellant and because of which a false case had been lodged. PW-2 did not deny the fact that no medicine was provided to her daughter at Laharighat Hospital.

14. The evidence of PW-3 is to the effect that she had given her signature on a document after being shown some coins. The said document (seizure list) was exhibited as Ext. No. P-2 and he identified his signature as Ext. No. P-2(1). Ext. No. P-2 was made in relation to the seizure of the Birth Certificate of the victim, showing her date of birth as 27/04/2015 and the seizure of three 2 Rupee Coins. Cross examination of PW-3 was declined by the appellant.

15. The evidence of PW-4 is to the effect that the Police showed him 3 (three) coins of Rs.2/- each, which was alleged to have been taken by the Police from the victim. The Police also seized the Birth Certificate of the victim. PW-4 stated that he was the seizure witness and identified his signature in the seizure memo, which was exhibited as Ext. P-2 and his signature as Ext. P-2(2). In his cross-examination, PW-4 stated that he had not seen the seized coins in the Court.

16. The evidence of PW-5, who is the father of the victim, is to the effect that at the time of the incident, his daughter was 5 years 6 months and that the appellant was their neighbour. He was not in his house at the relevant point of time and his wife had called him home by phone. On coming back home around 5 pm, he found his wife and daughter crying. His daughter then told him that the appellant had taken her to his toilet (Latrine) and inserted his finger inside her private parts and that it was paining. Her daughter disclosed the incident while crying. Thereafter, PW-2 and PW-5 took the victim to Laharighat Civil

Hospital. However, the Doctor, after examining their daughter, told them that a Police case needed to be filed and that their daughter had to be treated at Morigaon Civil Hospital. On the same day, they went to Laharighat Police Station and the FIR was filed. However, on the next day, the Police visited their house and recorded the statement of their daughter. The Police then wrote one FIR which was signed by PW-2 and told them that the earlier FIR was not proper. The Police then sent his daughter to Morigaon Civil Hospital for examination and then to the Court, where her statement was recorded by a Magistrate.

In his cross examination, PW-5 stated that he had lodged one FIR on the date of the incident in Laharighat Police Station. However, on the next day, the Police visited their house and wrote an FIR which was signed by his wife as the earlier FIR had not been properly made. He also stated that there was no land dispute between him and the appellant and that there was no land in his name. He also denied the suggestion that they had lodged a false case.

17. The evidence of PW-6 is to the effect that he came to know about the incident from the Police. The evidence of PW-7 is to the effect that she was the neighbour of the informant (PW-2) and that she knew the victim. She also knew the appellant who was their neighbour. On the relevant day, on hearing the informant making a hue and cry, she went to the informant's (PW-2) house, wherein PW-2 told the persons gathered therein, including PW-7, that the appellant had raped her daughter by inserting his finger inside her private parts. In her cross-examination, PW-7 stated that she heard about the incident from PW-2 and that the victim was crying at that time. She also stated that she did not ask the victim about the incident.

18. The evidence of PW-8, who is a neighbour of PW-2 and the appellant, is

to the effect that, on the relevant date, she heard a hue and cry in the house of PW-2. On going with PW-7 to the house of the informant, they found the informant and her daughter crying. Many villagers had assembled there and they heard the informant saying that the appellant had taken her daughter to his bathroom and tried to commit rape with his fingers.

19. The evidence of PW-9 is to the effect that, on 20/02/2021, he was posted as Officer-In-Charge of Laharighat Police Station. An FIR was lodged by PW-2, which was registered and which case he took up for investigation. After completing the investigation, he handed over the case diary to SI Alimuddin Ahmed, who subsequently submitted the charge sheet, as he had been transferred.

20. The evidence of PW-10, who was posted as Judicial Magistrate 1st class Morigaon on 20/02/2021, is to the effect that she recorded the statement of the victim aged 5 years, after being satisfied that the victim could give rational answers to the preliminary questions put to her. PW-10 stated that she recorded the victim's statement under Section 164 Cr.P.C in the presence of her mother and without administering oath, as she was less than 12 years of age. She also stated that the victim deposed voluntarily, without any force or coercion. The thumb impression of the victim was also obtained after recording the statement of the victim.

21. The evidence of PW-11, who was the Medical and Health Officer-1 at Morigaon Civil Hospital, is to the effect that she examined the victim on 20/022021 and found nothing abnormal with the victim. The victim's hymen was intact and her opinion on the medical examination conducted on the victim, was to the effect that there was no evidence of recent sexual intercourse nor

evidence of any injury marks seen on the body or private parts of the victim.

22. The evidence of Defence Witness-I (DW-1), is to the effect that the he did not know anything about the case nor was he aware of any previous quarrel between the parties before the case was lodged. He also stated that if there was any previous quarrel between the parties, he would have been informed of the same, as he was a leading member of the society.

23. The evidence of DW-2 is to the effect that the appellant had not told him that he had any previous land dispute with PW-2.

24. The evidence of DW-3 is to the effect that he knew the parents of the victim and the appellant and that they never told him anything about the case.

25. The evidence of DW-4, who is the appellant, is to the effect that he had a land dispute with PW-5 because of which, a false case had been lodged against him. He also stated that on the day of the incident, he was in the market throughout the day and returned back at about 11pm. He had gone to the market at about 6 am. He also stated that after the case was lodged, the villagers tried to make a compromise, but the father of the victim did not listen. In his cross-examination, DW-4 stated that he had not filed any case relating to a land dispute against the father of the victim (PW-1).

26. The evidence of DW-5 is to the effect that he knew the parents of the victim and the appellant. He also stated that there was a land dispute between the appellant and PW-2, because of which the present case had been filed. DW-5 stated that the informant and the appellant were adjacent neighbours and there was a boundary dispute between them. He also stated that the appellant did not tell him anything about the case.

27. The evidence of DW-6 is to the effect that he knew the appellant and the parents of the victim. To his knowledge, there was a land dispute between the appellant and the father of the victim, due to which a false case had been filed against the appellant. He also stated that the father of the victim had sold his land and house and shifted to another place.

28. The evidence of DW-7 is to the effect that he had heard that there was a land dispute between the parents of the victim and the appellant, who was his maternal uncle. He also stated that the instant case was a false case. He stated that he did not know the case number relating to the land dispute between the parties.

29. The evidence of DW-8 is to the effect that there was a land dispute between the parties and the case had been filed due to a land dispute.

30. The explanation/answers given by the appellant during his examination under Section 313 Cr.P.C, is basically a blanket denial that he had inserted his finger in the private parts (vagina) of the victim.

31. With regard to the question raised by the learned Trial Court at the time of his examination under Section 313 Cr.P.C. that the victim had deposed in Court, that the appellant had come to her house and given her Rs. 6/- in coins and took her inside his toilet (latrine) by holding her hand, the appellant stated that the same was false and that he was not in the house at that time.

32. To a question whether the appellant had any boundary dispute with PW-2, the appellant stated that there was a quarrel regarding the use of water in the Tube Well. With regard to the evidence of PW-4, that the Police had shown her 3 coins having the value of Rs. 2/- each, the appellant stated that when he

was going home from the market, the victim had taken a Rs. 5/- coin from him. With regard to whether PW-5, (father of the victim) had any land in his name, the appellant stated that PW-5 did not have any land in his name. With regard to the question whether the Latrine (toilet) where the incident took place belonged to the informant and whether it was a proper (Pucca) Latrine, the appellant stated that the Latrine was his and it was a Pucca Latrine.

33. The questions put to the appellant under section 313 Cr.P.C and the explanation given by him with regard to question nos. 5, 6, 23, 41, 48, 65, 94 and second 99, are as follows :-

"***Q5.*** *PW-1 Miss. xxxx deposed in Court that at the time her mother went to a shop and her father went to market. Do you have anything to say?*

Ans. *Her mother was in house at that time.*

Q*6.* *PW-1 Miss. xxxx deposed in Court that the accused Akabbar Ali then came to their house and gave her Rs. 6/- in coins and took her inside their latrine by catching hold of her hand. Do you have anything to say?*

Ans. *False. I was not in house at that time.*

Q23. *PW-2 Musst. Johura Khatun deposed in Court that her daughter xxxx was alone in house at that time. Do you have anything to say?*

Ans. *False. She was alone in house at that time with xxxx.*

Q41. *PW-2 Musst. Johura Khatun deposed in Court during cross that they do not have any boundary dispute with the accused. Do you have anything to say?*

Ans. *Quarrel was regarding water of tube well.*

Q.48. *PW-4 Jebina Khatun deposed in Court that police then called her and showed her three coins of Rs. 2/- each and the same was shown to have been taken from the victim. Do you have anything to say?*

Ans. *When I was going home from the market, the small girl took Rs. 5/- coin from me.*

Q.65. *PW-5 Gulzar Hussain deposed in Court during cross that there was no land dispute with the accused and that there is no land in his name. Do you have anything to say?*

Ans. *Yes, he has no land in his name.*

Q94. *PW-9 S.I. Adith Boro deposed in Court during cross that the latrine where the incident took place was of the informant and it was a pucca latrine. Do you have anything to say?*

Ans. *The latrine was mine. Yes, it was a pucca latrine.*

Q99. *(2^{nd}) Do you have anything more to say?*

Ans. *We had dispute regarding use of water of tubewell and regarding which there was quarrel in the evening."*

It may be stated here that the Section 313 Cr.P.C examination of the appellant shows that there are two Question Nos. 99 and accordingly two answers. We are concerned with the second (2^{nd}) question/answer 99.

34. The victim's statement under Section 164 Cr.P.C is to the effect that while her mother had gone to a shop and her father had gone to the market, she was at home, when the appellant came and gave her some money. He took her to his toilet where he then put his finger inside her vagina. On being asked by the Judicial Magistrate, 1st Class, who was recording the statement of the victim girl, as to where the appellant had put his finger, the victim had pointed to the lower part of her body to the Magistrate, indicating her vagina. The victim also stated that she felt pain when the appellant had inserted his finger and that she had told her mother about the incident when she returned from the shop. Though there is a discrepancy here vis-à-vis her testimony in Court, where she stated that she reached and found her mother in a shop, we find the said discrepancy to be a minor discrepancy, which does not go to the root of the matter and thus, can be ignored. Further, besides the victim not being confronted during cross-examination regarding the above discrepancy to discredit the victim (PW-1), in terms of Section 145 of the Evidence Act, PW-2 has corroborated the evidence of PW-1 (victim) by stating that her daughter (victim) found her in a shop and narrated the incident to her while crying.

35. In the present case, the stand of the appellant is that a false case has

been foisted upon him, on account of there being a land dispute between him and the victim's family.

36. In the case of ***Raju and Others Vs. State of Madhya Pradesh,*** reported in (***2008) 15 SCC 133,*** the Supreme Court has held that rape causes the greatest distress and humiliation to the victim, but at the same time, a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Though a victim of sexual assault is akin to an injured witness, who would ordinarily not be considered as a person who would tell a lie, there can be no presumption for assuming that the statement of such a witness is always correct or without embellishment or exaggeration. Thus, though the evidence of the victim of sexual assault/rape must be examined as that of an injured witness, whose statement should be considered to be probable, it cannot be presumed that such a statement, without exception, should be taken as the gospel truth. We would have to see each case on the basis of the peculiarities of each case.

37. In the present case, the appellant has tried to make out a case that there was a land dispute between the parties and in this regard, a suggestion had been put to PW-2 and PW-5 that a false case had been filed due to the alleged land dispute. However, PW-2 and PW-5 have denied that there was any land dispute between the parties and PW-5 has stated that there was no land in his name. Though, DW-4, (appellant) had stated in his evidence that there was a land dispute, which was corroborated by the evidence of DW-5, DW-6, and DW-7, there are no specifics mentioned with regard to the land dispute. There is

no proof of there being any land dispute between the parties, inasmuch as, PW-5 (father of the victim) has denied having any land in his name and denied that there was any land dispute between the parties. The appellant, in his answer to question nos. 41 and second 99, has only spoken of there being a dispute regarding use of water of the tubewell, which argument, apparently occurred one morning. There is nothing mentioned in the explanation given by the appellant in his Section 313 Cr.P.C. examination that there was any land dispute between the parties. The only explanation was that there was a quarrel with regard to the use of water from the tube well, which we feel could not be a reason enough to lodge a false case. Further, the parents of the victim were never confronted during cross-examination, with regard to any quarrel having occurred due to the use of water from a tubewell.

38. The answer to question no.65, in his examination under Section 313 Cr.P.C, shows that the appellant had admitted that PW-5 did not have any land in his name. There is nothing stated by the appellant or his witnesses, with regard to which specific land was the subject matter of a dispute between the parties. We are also hard-pressed to understand as to why the victim's family would have shifted elsewhere after the case was filed after allegedly selling their land, (as DW-7 testified that PW-2 sold their land and shifted elsewhere), when the objective of filing the alleged false case against the appellant can be said to have been achieved. On considering all the above reasons and the fact that there are no particulars of the alleged land dispute, it cannot be said that there is proof of there being any land dispute between the parties.

39. The second issue to be decided is whether the absence of any injury,

redness or swelling on the private parts of the victim proved that the appellant had not inserted his finger into the private parts of the victim. It would be profitable to refer to the decision of the Supreme Court in the case of ***Nawabuddin (supra),*** wherein the accused therein had fondled the private parts of the four-year-old victim girl and inserted his finger into the vagina of the victim. The Doctor had found redness and swelling around the vagina, though the hymen remained intact.

40. In the case of ***Lokmal @ Loku (supra)***, the Supreme Court has held that in each and every case where there is an allegation of rape, it is not necessary that there should be an injury to the private parts of the victim. Absence of injuries on the private parts of the victim is not always fatal to the case of the Prosecution.

41. In the present case, there was no sign of injury on the private parts of the victim. There was also no redness or swelling around the vagina of the victim. This could be due to the fact that in the present case, there is no allegation made by the victim that the appellant had fondled/manipulated the private parts of the victim. The only allegation is that the appellant had inserted his finger into the private parts of the victim, without there being any fondling or manipulation of the private parts of the victim. The redness and swelling in the private parts of the victim in the case of ***Nawabuddin (supra)*** could have been attributable to fondling or manipulating the private parts of the victim. It also cannot be said that in every case of insertion of a finger into the vagina, there has to be redness or swelling of the private parts of the victim. No such clarification had also been asked from PW-11 (Doctor). Just because there was

no injury, redness or swelling of the vagina of the victim in the present case, does not mean that there was no insertion of the appellant's finger into the private parts of the victim. We should also remember that the medical examination was done one day later, by which time any redness or swelling could have disappeared.

42. The next issue is with regard to the filing of two FIRs with respect to the same incident. A reading of the evidence of PW-5 (father of the victim) shows that he had filed the first FIR in the Laharighat P.S. on the day of the incident. The same was however not registered and a new FIR was filed by PW-2 (mother of the victim) a day after the incident, which was registered as Laharighat P.S. Case No. 90/2021 under Section 376AB IPC read with Section 6 of the POCSO Act. The reason given for filing the subsequent FIR was that the earlier FIR had not been properly made. We do not find any infirmity with the filing of the subsequent FIR by PW-2, just because the earlier FIR was not properly made. Also, there is nothing shown by the appellant as to how the filing of the subsequent FIR has caused prejudice to the appellant.

43. The evidence of the Prosecution witnesses shows that the victim had first been taken to the Laharighat Hospital on the date of the incident i.e. 19/02/2021 and subsequently to the Morigaon Civil Hospital after the filing of the FIR on 20/02/2021. We do not find any prejudice being caused to the appellant, only because the victim had been taken to two hospitals, inasmuch as, the medical report and evidence given by PW-11, the Doctor posted in Morigaon Civil Hospital, does not cause any prejudice to the case of the appellant, especially when there is no improvement on material particulars in

favour of the victim, on the basis of any medical examination that might have been conducted in Laharighat Hospital.

44. In the present case, we do not find any reason for the 5-year-old victim girl to have fabricated a case of penetrative sexual assault against the appellant. Further, the victim girl had been subjected to preliminary questions, prior to recording her statement under Section 164 Cr.P.C and prior to her testimony during the trial. The Magistrate/Trial Court, have both been satisfied with the capacity of the minor victim to understand the preliminary questions put to her and give rational answers to the same. There is also nothing to show that the victim had been tutored by her parents to make a false allegation against the appellant. In fact, the evidence of the victim and the consequential behaviour of the mother of the victim, as described by the Prosecution Witnesses' in their evidence, only reinforces our view that the victim had been given money in coins by the appellant and the offence under Section 5(m) of the POCSO Act had been committed upon her. Though, the appellant, as DW-4, has stated that on the date of the incident he was in the market from 6 a.m till he returned back home at about 11 p.m, the appellant in his explanation to Question No.48 in his examination under Section 313 Cr.P.C has stated that "*when he was going home from the market, the small girl took Rs.5/- coin from me*". When the incident had occurred at 4.30 p.m on the relevant date, it does not appear plausible for the girl to have taken a 5/- rupee coin from the appellant at around 11 p.m at night. However, what the above indicates is that the appellant had given money to the victim on the relevant date. The above thus reinforces our view that the appellant had given the victim three 2/- Rupee Coins on the date of the incident. Further, as per the evidence of PW-3 and PW-4, the seizure

witnesses had stated that they had seen three 2/- Rupee coins, which had been seized by the Police and which Seizure List they had signed as Exhibit P-2(1) & P-2(2).

45. The appellant had stated in his answer to question nos. 5 & 23 that PW-2 was with the victim in their house on the date of the incident. How could the appellant have known this, if he was in the market place from 6 a.m. to 11 p.m. on that date.

46. On considering all the above facts, we find the testimony of the victim child to be trustworthy, which inspires the confidence of the Court. Accordingly, we find that the foundational facts of the appellant having committed aggravated penetrative sexual assault on the victim had been made out, which attracted the presumption under Section 29 of the POCSO Act that the appellant was guilty of the crime, requiring him to rebut the said presumption. However, as can be seen in the foregoing paragraphs, the appellant has not been able to rebut the presumption of guilt of having committed aggravated penetrative sexual assault on the victim. Consequently, we do not find any reason to interfere with the judgment dated 14/08/2025 passed by the learned Additional Sessions Judge-cum-Special Judge (POCSO), Morigaon, in POCSO Case No.22/2022.

47. The appeal is accordingly dismissed.

48. Send back the TCR.

49. In appreciation of the assistance provided by the learned Legal Aid Counsel, her fees should be paid by the Gauhati High Court Legal Service Committee.

JUDGE **JUDGE**

Comparing Assistant