GAHC010265752022

2026:GAU-AS:13229-DB

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

Case No. : CRL.A(J)/188/2025

BASUDEV KHODAL
S/O, LATE BARIKA KHODAL
R/O, BAMUNPUKHURI HAPJAN LINE
P.O. NAZIRA
P.S. NAZIRA
DIST- SIVASAGAR,
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP ASSAM

2:PALLAVI KHODAL
D/O
LATE RAJESH KHODAL
VILL- BAMUNPUKHURI HAPJAN
P.O. NAZIRA
P.S- NAZIRA
DIST- SIVASAGAR
ASSA

Advocate for the appellant : Mr. R. Dev, Legal Aid Counsel

Advocate for the respondent No.1 : Ms. S.H. Bora, Addl. P.P, Assam

Advocate for the respondent No.2: Ms. M.K. Brown, Legal Aid Counsel

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : **10.09.2026**

Date of pronouncement of judgment : **11.09.2026**

Whether the pronouncement is of the operative part of the judgment ? : No.

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Mr. R. Dev, learned Legal Aid Counsel for the appellant. Also heard Ms. S.H. Bora, learned Addl. P.P, Assam appearing for the State and Ms. M.K. Brown, learned Legal Aid Counsel for the respondent No.2.

2. This is an appeal against the impugned Judgment dated 05/08/2022 passed by the learned Addl. Sessions Judge-cum-Special Judge (POCSO), Sivasagar in Special (POCSO) Case No.65/2019 arising out of Nazira P.S. Case No.277/2019, by which the appellant has been convicted under Section 6 of the POCSO Act, for having caused aggravated penetrative sexual assault on his step daughter aged 15 years. The appellant was accordingly sentenced to undergo rigorous imprisonment for life with a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 6(six) months.

3. The brief facts of this case is that an FIR dated 16/08/2019 was submitted by the victim girl (PW-1) to the Officer-in-Charge of the Model Police Station, Nazira, to the effect that at around 2:00 p.m on 15/08/2019, her stepfather had taken her to a low lying area of the agricultural field situated in a corner of Garden No.20. After working in the field for some time, the appellant forcibly took her to the tea garden by threatening her with a dagger and raped her after removing her panty. The FIR also stated that the appellant had driven away the victim's mother on 14/08/2019 and had tortured her physically. Pursuant to the FIR, Nazira P.S Case No. 277/2019 under Section 376(1) IPC read with Section 4 of the POCSO Act was registered. After PW-6 (Investigating Officer) completed the investigation, she submitted the charge-sheet against the appellant under Section 376(1) IPC read with Section 4 of the POCSO Act,

4. The learned Trial Court, thereafter, framed two charges against the appellant under Section 376(3) IPC read with Section 6 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried. The learned Trial Court, thereafter, examined 7(seven) Prosecution Witnesses and 1(one) Court Witness. After examination of the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the appellant had committed an offence punishable under Section 6 of the POCSO Act. Accordingly, the appellant was convicted under Section 6 of the POCSO Act and sentenced accordingly. Thus, this appeal.

5. The learned Legal Aid Counsel for the appellant submits that the appellant did not rape the victim. In fact, the appellant in his examination under Section 313 Cr.P.C had stated that he had not taken the victim to the paddy

field. However, on the alleged date of the incident, he had seen the victim talking with one boy near the paddy field. The learned Legal Aid Counsel for the appellant submits that it was most probably due to the above fact that a false case had been registered against him by the victim. The appellant's counsel also submits that the age of the victim had not been proved by the Prosecution, so as to attract the provisions of the POCSO Act. Accordingly, the impugned judgment should be set aside and the appellant should be acquitted of the charges framed against him.

6. On the other hand, the counsels for the respondents submit that the victim is a sterling witness and there is no discrepancy in her statement made under Section 164 Cr.P.C or her testimony before the learned Trial Court. They further submit that the victim was medically examined by the Doctor (PW-5) on 20/08/2019, wherein it was found that the victim’s hymen was perforated and the margins were irregular. There was also a fresh tear in the vagina at 5:30 o'clock position with bleeding present. Further, as per the radiological report, the age of the victim was around 16 to 18 years. In his opinion, the Doctor stated that the age of the victim was less than 18 years. They also submit that as per the Admission Register of the school, the victim's date of birth was 05/02/2005. As the incident had occurred on 15/08/2019, the victim would have been around 14 years on the date of the incident. They also submit that as per the Medicolegal Examination Report dated 20/08/2019, which was exhibited as Ext.-3, the general physical examination of the breasts of the victim showed it to be Tanner stage II-III. The radiological examination of the bone age of the victim done on her wrist/elbow/shoulder and iliac, showed that her bone age was less than 18 years, as the lower epiphyses of the radius and ulna were not fused.

Thus, when the medical evidence clearly showed that the victim was below 18 years, it was clear that the victim was a minor and the appellant being a guardian of his step-daughter, the offence under Section 5(n) of the POCSO Act had been made out. They accordingly pray that the impugned judgment should not be interfered with.

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

8. The evidence of the victim (PW-1) is to the effect that she had been raped by the appellant in the paddy field after removing her slacks and panty, due to which she suffered severe pain and injury with bleeding from her private parts. After the appellant had left her in an injured condition, she fled from the place of occurrence and went to her home, wherein she told her younger sister, aged about 11 years, to enquire whether the neighbourhood aunt was at home or not. On her sister telling her that the aunt was at home, she went to her aunt's house and informed her about the incident. She was concealed in the house of her neighbour and the next morning the members of the Village Defence Party (VDP) came to the said house, whereupon the victim told them about the incident. The victim also stated that she was medically examined 5 days after the incident and that her date of birth was 29/12/2005.

In her cross-examination the victim denied the suggestion that she was over 18 years of age.

9. The evidence of PW-2 is to the effect that she knew the appellant, as he was her neighbour. PW-2 further stated that the victim was the step-

daughter of the appellant. She stated that the victim came to her house one evening crying and on asking her as to what had happened, the victim did not say anything at first and kept on crying. However, on consoling her and after some time had elapsed, the victim told PW-2 that the appellant had taken her to a field in the tea garden and raped her. The next morning, PW-2 and other villagers went to the VDP Secretary and told him about the incident, as narrated by the victim. PW-2 stated that the victim herself lodged the FIR.

In her cross-examination PW-2 denied the suggestion that she had kept the victim concealed in her house. She also denied the suggestion that the victim did not tell her that her father had raped her.

10. The evidence of PW-3 is to the effect that she knew the victim who was her neighbour as well as the appellant. The victim was the step-daughter of the appellant. The victim had come to their house one evening crying. On asking her as to what had happened, the victim did not say anything initially and kept on crying. However, after being consoled, the victim told her that her father had taken her to the field in the tea garden and raped her. The next morning, she and other villagers had gone to the VDP Secretary and told him about the incident, as narrated by the victim.

In her cross-examination, PW-3 denied the suggestion that the victim had not told her that her father had raped her.

11. The evidence of PW-4 is to the effect that the victim came to them the day after the incident when he was with VDP Lojen Khodal, Dinesh Tanti and

Bholenath, stating that the appellant had raped her in a tea garden the previous day. Further, the appellant had threatened her with a dao at the time of the incident. The VDP of the area then came and took the victim to the police station. After the victim had lodged an FIR, they apprehended the appellant and handed him to the police.

12. The evidence of PW-5, who is the Doctor who examined the victim on 20/08/2019, is to the following effect:-

> "*6. Hymen: Perforated hymen margins irregular.*
> *7. Vagina: A fresh tear at 5:30 O'clock position, bleeding present.*
> *8. Injuries: Perforated hymen margins irregular."*

Further, as per the radiological report, the age of the victim was around 16 to 18 years.

13. The Medicolegal Examination Report dated 30/08/2019, which included the general physical examination of the victim's breasts, showed the development of the same at Tanner stage II-III. Further, the radiological examination of the victim showed that the lower epiphysis of radius and ulna were not fused. In the opinion of the Doctor, the age of the victim was less than 18 years and that there was evidence of hymen and vaginal injury.

14. The evidence of PW-6, who is the Investigating Officer, is to the effect that she was made the Investigating Officer. After having the victim medically examined and having her statement recorded under Section 164 Cr.PC, she had forwarded the victim to the CWC and the victim was thereafter kept at Ahana

Children Home, as she had nowhere to go. On 20/08/2019, the victim was handed over to a legal guardian. On completion of the investigation, she submitted the charge-sheet against the appellant under Section 376(1) IPC, read with Section 4 of the POCSO Act.

In her cross examination, PW-6 stated that the victim did not tell her that "the accused after removing my clothes inserted his penis into my vagina". PW-6 also stated that though she wanted to seize the wearing clothes of the victim, the same was not done, as the same had been washed.

15. The evidence of PW-7 is to the effect that he knew the victim and the appellant. On the morning after the incident, PW-2 had called him and on going there he found the victim. The victim then told him that the appellant had taken her inside the garden and thereafter opened her panties. However, the victim did not say anything further because she was feeling ashamed.

16. The evidence of Court Witness-1 (CW-1), is to the effect that she was the Headmistress of Rajadhap LP School, Sonari, Charaideo and that the victim had taken admission in her school on 06.01.2013. As per their Admission Register, the date of birth of the victim was 05/02/2005.

In her cross-examination, CW-1 stated that no document was submitted by her guardian in support of her date of birth, which was registered in the Admission Register. Further, there appeared to be an overwriting on the date 06/01/2013 which was her date of admission. There was also no initials made due to the overwriting in the Admission Register.

17. With regard to the age of the victim, the learned Trial Court has held that the victim was less than 18 years of age at the time of the incident, on account of the evidence given by the medical Doctor, the Medicolegal Report and keeping in view the Admission Register. We are however not convinced that the entry in the school admission can be regarded as the date of birth of victim, due to the person making the said entry not being examined in the Court and in the absence of the guardian/parents of the victim corroborating the said entry. Further, the victim in her evidence has also given a different date of birth, i.e, 29/12/2005, which is not as per the entry in the School Admission Register, where it is recorded as 05/02/2005. It was also deposed by CW-1/Manju Borgohain in her cross-examination that no document was submitted by the guardian of the victim in support of her date of birth. Further, there is no material to show that CW-1 was the person who made the entry in the School Admission Register.

18. In the case of ***Birka Shiva vs State of Telangana***, reported in ***2025 SCC OnLine SC 1454,*** the Supreme Court held that when the Prosecution had failed to examine the person who made the entry in the Admission Register, to ascertain on what basis such an entry was made, it was not possible to ascertain as to whether the Date of Birth was correct and as such, could not be relied upon to definitely determine the age of the victim. The law laid down by the Supreme Court in the above cases thus show that for determining the age of a person in terms of the Admission Register of a school, the person who made the entry or provided the date of birth has to be examined.

The Supreme Court further held that the entry in the

School Admission Register can also be corroborated by the parents/guardian.

19. In the present case, neither the person who made the entry in the Admission Register of the school nor the person who provided the date of birth of the victim, i.e the parents or guardian, have give evidence to prove/corroborate the date of birth of the victim entered in the Admission Register as correct.

20. The evidence of the doctor (PW-5) and the contents of the Medicolegal Examination report dated 20.08.2019, shows that the general physical examination of the breast of the victim was at Tanner stage II-III and in view of the Radiological Examination report, it is clear that the victim would have been less than 18 years of age at the time of the incident. Tanner staging is also known as Sexual Maturity Rating (SMR), which is an objective classification system to track the development and sequence of secondary sex characteristics of children during puberty. The various literature on medical science shows that Tanner stage II usually begins around 9 to 11 years of age with a normal range starting between 8 and 13, marked by the appearance of small breast buds and sparse and straight pubic hair. Tanner Stage III usually occurs around 11 to 13 years, marked by further breast enlargement and darker, coarser pubic hair, often accompanied by a rapid growth spurt. Thus, in view of the victim being found to have breast development at Tanner stage II and III, read with the Radiological Examination of her bones, the victim's age would have been below 18 years, at the time of the incident.

21. With respect to whether the provisions of the POCSO Act could be

applicable to the facts of this case, we find no reason to doubt the testimony of the victim, which is to the effect that the appellant had raped her. The same is also corroborated by her statement made under Section 164 Cr.PC before the Magistrate on 17.08.2019, where she has again stated that she was raped in the paddy field by her stepfather.

22. We also find that the evidence of PW Nos. 2 and 3 corroborates the evidence of the victim that she had gone to the house of her neighbor after the incident and told them about being raped by her stepfather.

23. The evidence of the doctor also corroborates the testimony of the victim that she had been raped by her stepfather, as per the injuries sustained in her private parts.

24. The testimony of the victim that she had been threatened by her father with a *dao* also appears to be corroborated by the explanation given by the appellant, during his examination under Section 313 Cr.PC, where he said that he had not threatened the victim with a *dao* at the time of the incident, but had told her to take the *dao* home from the paddy field. Thus, the presence of the dao is undisputed.

25. With regard to the I.O. (PW-6) stating in her cross-examination that the victim did not tell her that the appellant had inserted his penis into her vagina after removing her clothes, we find that the said question had not been put to the victim during her cross-examination. As such, when a witness is not cross-examined as to their previous statements, in terms of Section 145 of the Indian

Evidence Act, 1872, for the purpose of contradicting the said witness, we find that there is no contradiction or discrepancy in the statement of the victim given during her testimony before the learned Trial Court. Further, the Courts cannot *suo-moto* take cognizance of any contradiction, unless the same is brought on record, as per Section 162 Cr.PC, read with Section 145 of the Indian Evidence Act, as held by the Hon'ble Supreme Court in the case of ***Anees Vs. State (NCT of Delhi)***, reported in ***2024 SCC OnLine SC-757***. In the present case, the credibility of the victim has not been shaken. We do not find any discrepancy or contradiction in her testimony vis-à-vis her statement made under Section 164 Cr.P.C. It is settled law that conviction in a case of sexual assault/rape can be based on the sole testimony of the victim, who is akin to an injured eyewitness. However, in the present case, there is corroboration of the testimony of the victim.

26. In view of the reasons stated above and as we find the testimony of the victim to be truthful, we find no reason to interfere with the conviction of the appellant by the learned Trial Court under Section 6 of the POCSO Act, as an offence under Section 5(n) of the POCSO Act has been made out. However, we are of the view that the sentence imposed should be reduced and we are of the considered opinion that justice would be met, if the appellant is sentenced to undergo the minimum sentence of rigorous imprisonment for 20 years, instead of life imprisonment. Accordingly, we set aside the sentence imposed upon the victim by the learned Trial Court. We accordingly sentence the appellant to undergo rigorous imprisonment for 20 years with a fine of Rs. 10,000/-, in default, to undergo rigorous imprisonment for another 6 months.

27. Accordingly, while the conviction of the appellant under Section 6 of the POCSO Act is not interfered with, the sentence to be undergone by the appellant is modified to the extent indicated above. Consequently, the impugned judgment is interfered with, only to the extent of the sentence to be undergone by the appellant. The appeal is accordingly disposed of.

28. Send back the TCR.

29. In appreciation of the assistance provided by the Legal Aid Counsel for the appellant and the respondent No. 2, their fees should be paid by the High Court Legal Services Committee.

JUDGE **JUDGE**

Comparing Assistant

Anupam Chutia

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