GAHC040011612025 2026:GAU-AP:1192

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

Case No. : Crl.A./17/2025

Raja Kiliue @ Adeng
Son of Late Soiong Kiliue, resident of Keoseng Village, 2nd Mile Namsai, PO and PS Namsai, Namsai District, Arunachal Pradesh.

VERSUS

The State of AP and Anr
represented by the PP of AP

2:Miss AB
Age: 0
Occupation :
Daughter of Shri Chouseng Mirip
2nd Mile Namsai
PO
PS and District Namsai
Arunachal Pradesh

Advocate for the appellant : Mr. T. Tsering

Advocate for the respondents : Mr. D Loyi, PP

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 18.11.2026

Date of pronouncement of judgment : 26.11.2026

Whether the pronouncement is of the operative part of the judgment ? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. T Tsering, learned counsel for the applicant. Also heard Mr. D Loyi, learned Public Prosecutor for the State of Arunachal Pradesh.

2. This appeal is directed against the judgment dated 27.05.2025 and the order of sentence dated 02.06.2025 passed by the learned Special Judge (POCSO), Anjaw/Lohit/Dibang Valley/Lower Dibang Valley/Namsai Districts at Tezu, Arunachal Pradesh, in Sessions Case No. 28 (NMS)/2016, whereby the appellant was convicted under Section 363 IPC and Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹10,000/- for the offence under Section 6 of the POCSO Act, and to undergo rigorous imprisonment for 2 years and to pay a fine of ₹5,000/-, in default of payment of fine, to undergo simple imprisonment for 6 months, for the offence under Section 363 IPC.

3. The prosecution case is that on 29.02.2016, at around 10:30 hours, a missing report was received from Mr. 'X', the father of the victim, reporting that his daughter, aged about 13½ years, had been missing from Kungsung village

since 27.02.2016 and that, despite his best efforts, she could not be traced. He suspected that she might have been kidnapped. On the basis of the said missing report, an FIR was lodged by Mr. C.M. Longjan, SI of Police, on 04.03.2016.

4. Accordingly, a case was registered and the then OC, PS, Namsai, G. Ronya, took up the investigation himself. The IO seized two letters addressed to the DC, Namsai, and the OC, PS, Namsai, purported to have been written by the victim, AB, alleging against her parents, brother-in-law and elder sister that they had arranged her marriage with an elderly person of Deobil village, namely, Mr. Latum Pangio, and that she would return home only if her parents and the said relatives were arrested. However, during the investigation, no such marriage arrangement was detected and the letters were found to have been written to mislead. In the further course of investigation, it was found that the accused had handed over the said letters, packed inside a polythene packet**,** to the Winger driver, Mr. Sunil Handique, at Tinsukia, with a request to hand over the letters to the AIR bus booking counter staff, which were accordingly handed over to Mr. Joganando Borgohain, who later posted the letters by registered post as per the instruction of the accused. Since both Mr. Sunil Handique and Mr. Joganando Borgohain were ignorant about the contents of the letters and the case, both were let off. The IO had collected the birth certificates of the victim and found her to be aged below 14 years.

5. The accused was identified and called to Namsai Police Station on 07.03.2016 and thereafter arrested. The accused denied having kidnapped the victim until victim AB was recovered, after which he confessed to his deed. The accused disclosed that he had established a physical relationship with victim AB for the first time in the rented house of Mr. Joganando Borgohain, located at the back of Buddha Mandir**,** Namsai, in the month of September 2015**,** and continued having physical relations with victim 'AB' at different places in Namsai township whenever he got the opportunity, by luring her with promises that he was in love with her, that he would arrange her school admission at Itanagar for her better education, secure a Government job for her and marry her as his second wife. The accused further promised that after their marriage, she would be kept at Itanagar, away from his first wife. Between December 2015 and 1 February 2016, the accused continued to have physical relations with victim AB at his house, without the knowledge of his wife.

6. On 27.02.2016, the accused made a plan and sent victim AB to Dumduma in a hired vehicle from Assam and, after two days, they left for Itanagar and kept AB in a rented house at Mowb-2 Colony. Before leaving for Itanagar, the accused, on 29.02.2016, arranged for the letters to be sent from Tinsukia with the intention of misleading the authorities through those letters. Victim AB was recovered from Itanagar on 13.03.2016 and brought to Namsai Police Station by

her mother and elder sister. The victim's statement under Section 164 Cr.P.C. was recorded through Smt. J. Pertin, the then JMFC, Namsai. The victim was also medically examined at Namsai Hospital in connection with the alleged sexual offence and for determination of her age, during which victim AB was found to be pregnant. On the basis of the materials presented and collected from the witnesses, the I.O. came to the conclusion that a prima facie case had been made out for the offence under Sections 366(A)/376(2)(i) IPC, read with Section 6 of the POCSO Act, against the accused and submitted the charge-sheet accordingly.

7. Upon committal and on the basis of the police materials on record, a prima facie case for the offence under Section 363/376(2)(i) IPC was found to be made out against the accused-appellant. Accordingly, the charges under Section 363/376(2)(i) IPC were framed against the accused A1 in a separate sheet on 06.12.2016 by the learned Trial Court. The charges were read over and explained to the accused-appellant, who pleaded not guilty and claimed to be tried.

8. The prosecution examined 13 witnesses, whereafter the accused-appellant was examined under Section 313 Cr.P.C. [Section 351 BNSS], during which he partly denied his involvement. The defence also adduced the evidence of 3

defence witnesses. After conclusion of the trial, the learned Trial Court framed an additional charge under Section 6 of the POCSO Act, which was again read over and explained to the accused, and thereafter proceeded to pronounce its judgment.

9. Mr. T. Tsering, learned counsel for the appellant, contended that the age of the victim has not been properly proved, and at any rate, she cannot be said to have been below 16 years of age on the date of occurrence. Learned counsel has referred to the deposition of PW-3, the mother of the victim, who deposed on 09.03.2017, and in her deposition, she stated that the victim was about 17 years of age, i.e., on the date of deposition. The missing report which was lodged on 29.02.2016 stated the age of the victim to be 13½ years, which could not be correct if the victim was 17 years of age as on 09.03.2017. Moreover, the victim herself stated her age to be 17 years on the date of deposition, that is, 19.11.2018, which was about 8 months after the deposition of her mother.

10. It is submitted that although the IO claimed to have seized the birth certificate, in respect of which he exhibited a seizure list, the birth certificate itself has not been exhibited, and moreover, no radiological examination of the victim was carried out to establish her age. From the above, it cannot be held that the victim was a minor, or at any rate, below 16 years of age at the time of

occurrence.

11. It is next contended that the victim, in her statement before the Magistrate recorded under Section 164 CrPC, nowhere stated that the accused had any sexual intercourse with her, and in this regard, learned counsel for the appellant has also referred to the evidence of the Magistrate who recorded the said statement and who was examined as PW-10, who during his/her deposition categorically stated that the victim did not mention about any such sexual intercourse during her deposition. This appears to be a material omission amounting to a contradiction of the testimony of the victim before the Court in the course of the trial. Therefore, the deposition of the victim cannot be regarded as wholly reliable, and in the absence of any corroboration, the same ought not to have been acted upon by the learned Trial Court.

12. With regard to the aspect of pregnancy of the victim which has surfaced in the evidence, it is submitted with reference to the medical report that the victim had her last menstrual period on 21.02.2016, whereas the mother of the victim (PW-3) stated that after recovery of the victim, when the victim was taken to Namsai Hospital, she was found pregnant for 1 month and 4 days. It is submitted that the victim was examined on 14.03.2016, as indicated in the medical report itself. Therefore, counting backwards from 14.03.2016, if the

victim had become pregnant 1 month and 4 days prior thereto, she could not have had her menstrual period on 21.02.2016. In other words, the factum of pregnancy of the victim has also not been satisfactorily proved. Furthermore, this is further compounded by the fact that there is no FSL report confirming pregnancy or the termination thereof.

13. Learned Counsel for the appellant has also hammered on the point that the father of the victim had only lodged a missing report, and no FIR was lodged by either the victim or her parents. It is submitted that criminal law cannot be set in motion if the victim or her family members are not aggrieved.

14. Learned counsel for the appellant, while summing up the case of the appellant, has submitted that although Section 29 of the POCSO Act creates a statutory presumption, the same does not absolve the prosecution of its burden to establish its case beyond reasonable doubt, and in view of the above deficiencies in the prosecution case, sufficient doubt arises regarding the culpability of the appellant, because of which he deserves to be acquitted.

15. In support of his aforesaid submissions, learned counsel for the petitioner/appellant has referred to multiple authorities:

1. In ***Deepak in JC vs. State Government of NCT Delhi, 2026 INSC 1008***, cited by learned counsel for the appellant, it was held that a

sterling witness should be of a very high quality and caliber whose version should therefore be unassailable, and such version should be acceptable at its face value without any hesitation, and what would be relevant would be the consistency of the statement right from the starting point till the end. It was also observed therein, with reference to a decision of the Bombay High Court,

that the presumption under Section 29 of the POCSO Act is not an absolute one and would come into operation only when the prosecution is first able to establish facts that would form the foundation for the presumption.

2. In ***Md. Shah Alam vs. The State of Assam, 2026 Supreme (Gau) 493***, which is a decision of a Division Bench of our High Court, it was held that the prosecution must establish the essential elements of the charges beyond a reasonable doubt, and the inconsistencies and lack of corroboration would lead to acquittal. It was held that in criminal jurisprudence, the prosecution must establish foundational facts beyond reasonable doubt, and suspicion, however strong, cannot substitute legal proof.

3. In ***Ram Singh vs. State of Himachal Pradesh, 2026 INSC 830***, it was held that a court in appeal must consider the entire evidence, including medical reports and forensic findings, and if the prosecution version of the incident is substantially contradicted by the medical evidence and lack of forensic evidence, the conviction cannot be sustained.

4. In ***Ashish vs. State of Maharashtra, 2026 Supreme (Online) (Bom) 36***, it was held that the prosecution must establish the identity and age of the victim beyond reasonable doubt, especially in cases involving minors under special protection laws, and the testimony of the victim and corroborative evidence need to be clear and unambiguous.

5. In ***Manirul Islam alias Manirul Zaman vs. The State of Assam, 2021 Supreme (Gau) 44***, a Division Bench of this Court had held that although a birth certificate issued by the Health Department is a part of the public record and therefore admissible under Section 35 of the Evidence Act, the same is required to be proved by a public servant who made the entry in discharge of his official duty or by any other person in performance of his duty especially enjoined by law. Further, on the aspect of drawing of the presumption under Section 29, it was held that Sections

29 and 30 of the POCSO Act do not altogether relieve the prosecution of the burden of proof contemplated under Sections 101 and 102 of the Evidence Act, and merely lessen the burden on the prosecution by shifting the onus upon the accused. However, such reverse onus would shift upon the accused only when the prosecution succeeds in prima facie establishing the charge by adhering to the standard of proof of preponderance of probability.

16. *Per contra*, learned Additional Public Prosecutor, by referring to the evidence of the victim and that of the Medical Officer, has submitted that the prosecution has established its case beyond reasonable doubt, and therefore, the impugned judgment requires no interference. In support of his aforesaid contentions, learned Addl. Public Prosecutor has referred to the decision of the Hon'ble Apex Court in ***Phool Singh vs. State of Madhya Pradesh, (2022) 2 SCC 74***, wherein it has been held that a conviction can be sustained on the sole testimony of a prosecutrix when her evidence is found to be trustworthy, unblemished, credible, and is of sterling quality. Learned PP has also referred to the decision in ***Ganesan vs. State, (2020) 10 SCC 573***, which has been relied upon in ***Phool Singh*** *(supra)* and which is also to the same effect.

17. There is certainly no disputing the aforesaid propositions of law which

have come to be regarded as settled law by now. However, each case has to be examined on its own factual matrix.

18. At the outset, it must be noticed that there have been lapses in the investigation, inasmuch as the IO, despite collecting the birth certificate of the victim, did not exhibit the same, which is also a lapse on the part of the prosecution. Another lapse on the part of the prosecution is that, as seen from the record, a confessional statement of the accused-appellant was also recorded, but the prosecution neglected to prove the same through the Magistrate or through any other witness whatsoever.

19. The learned Trial Court had initially framed charge under Section 363 IPC and Section 376(2)(i) IPC against the accused appellant on 06.12.2016, wherein it is stated that the accused appellant on 27.02.2016 kidnapped the victim, aged about 13 years, and thereafter subjected her to rape at Namsai and Itanagar on various dates. Despite noticing that the victim was aged 13 years, no charge under the POCSO Act was framed against him and the trial proceeded on the basis of the aforesaid two charges only. It was only at the stage before delivery of judgment that the charge under Section 6 of the POCSO Act was framed against the accused appellant, which was read over and explained to the accused, which he denied.

20. The learned Trial Court recorded in its order dated 27.05.2025 that since the accused is aware of the charge that he has been prosecuted for kidnapping, commission of penetrative sexual assault on the victim, consequent to which the victim got pregnant and her pregnancy was terminated, no prejudice is going to be caused to the accused if the Court proceeded with pronouncing of the judgment after adding the charge to the charge under Section 6 of the POCSO Act.

21. At this stage, it would be relevant to refer to Sections 216 and 217 Cr.P.C., which read as follows:

"***216. Court may alter charge***

(1) *Any Court may alter or add to any charge at any time before judgment is pronounced.*

(2) *Every such alteration or addition shall be read and explained to the accused.*

(3) *If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*

(4) *If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the*

prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

217 – Recall of witnesses when charge altered

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) *to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;*

(b) *also to call any further witness whom the Court may think to be material.*

22. From the above, it is evident that sub-section (3) of Section 216 Cr.P.C. would be applicable at a stage before the conclusion of the trial. At that stage, the Court may, in its discretion, proceed with the trial if it is of the opinion that no prejudice is likely to be caused to the accused in his defence or to the prosecutor in the conduct of the case. In the present case, the trial had long concluded and arguments had also been heard before the charge was altered. Therefore, sub-section (3) of Section 216 Cr.P.C. would not be attracted. However, Section 217 Cr.P.C., which is couched in mandatory terms, as is evident from the use of the word "shall", would definitely be attracted. By virtue

of the said provision, in the event of alteration or addition of a charge, it is incumbent upon the Court to allow the prosecutor and the accused to recall or re-summon and examine, with reference to such alteration or addition, any witness who may have already been examined. As the section provides, if the Court considers that the request of the accused or the prosecutor to recall or re-examine a witness is intended for the purpose of vexation or delay or for defeating the ends of justice, such an opportunity may be denied. Even in such a case, the Court is required to record reasons in writing justifying the denial of such an opportunity. This also indicates the mandatory nature of the aforesaid provision. However, a perusal of the order sheet of the case shows that no such opportunity was granted either to the accused or to the prosecution. Therefore, an important statutory right of the accused has been violated. While it is true that the defence may not have made any such application for recalling the witnesses, that would not relieve the Court of its duty to provide the said opportunity to the defence. The prosecution may fail, and so may the defence, in discharging their respective duties, but the Court cannot fail.

23. However, in the instant case, it appears that the learned Trial Court has failed on several counts, right from the stage of framing of charge, to the denial of an opportunity to the accused to recall and re-examine the witnesses following the addition of the charge under Section 6 of the POCSO Act. Further,

despite the fact that the entire trial proceeded on the charge under Sections 363/376(2)(i) IPC and that no provision of the POCSO Act formed part of the charge, the learned Trial Court, while arriving at a finding of guilt, nevertheless resorted to the presumption of guilt available under Sections 29 and 30 of the POCSO Act. This has undoubtedly caused prejudice to the accused in the presentation of his defence as there existed no onus upon the accused to prove his innocence by rebutting any presumption, in the absence of a charge under any provision of the POCSO Act. Such a course of action is wholly impermissible. Some of the other lapses on the part of the prosecution, such as the non-exhibition of the birth certificate as well as the confessional statement of the accused, could also have been prevented had the learned Trial Court played a more vigilant role. The Apex Court has repeatedly cautioned that a Trial Court is not expected to remain a mute spectator during the course of a trial.

24. The charge under Section 376(2)(i) was framed by the learned Trial Court on 06.12.2016, but on 27.05.2025, by way of the impugned judgment, the said charge was 'dropped' as the aforesaid section had been omitted by the Amendment Act of 2022. However, the Court failed to notice that the alleged occurrence itself is the year 2015-2016, as reflected in the charges, at which point of time the said provision was in force. Section 6 and 6A of the General Clauses Act provides:

"***6. Effect of repeal.—***

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6A. Repeal of Act making textual amendment in Act or Regulation.—

Where any Central Act or Regulation made after the commencement of this Act repeals any enactment by which the text of any Central Act or

Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

25. Therefore, by virtue of the aforesaid provisions, the accused/appellant would continue to be liable for the offence committed prior to its repeal or omission, which have the same meaning and effect, as explained by the Apex Court in ***M/S Fibre Boards (P) Ltd. Vs. Commissioner of Income Tax, Bangalore: (2015) 10 SCC 333***.

26. Therefore, this Court is now left with no alternative but to set aside the impugned judgment and order and remand the matter to the learned Trial Court. This would necessarily entail further expenditure of judicial time and costs, as well as additional time and costs for the parties involved.

27. Resultantly, the impugned judgment dated 27.05.2025 and order of sentence dated 02.06.2025 are hereby set aside, and the matter is remanded to the learned Trial Court with a direction to grant the parties an opportunity as provided under Section 217 Cr.P.C. and thereafter proceed with the case in accordance with law.

28. Since the appellant was on bail during the trial, it is directed that he be

released on bail on such terms and conditions as may be deemed fit by the learned Trial Court.

29. The appeal stands allowed to the extent above. Send back the TCR.

JUDGE

Comparing Assistant