GAHC010029222023

2026:GAU-AS:17521-DB

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

Case No. : Crl.A./380/2023

UTTAM MONDAL
S/O AMULYA MANDAL,
VILL.- PAKRIGURI, P.S.- BIJNI, DIST.- CHIRANG, BTC, ASSAM, PIN- 783390.

VERSUS

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

2:PURNA ARJYA
S/O LATE DUKHLAL ARJYA

VILL.- NO. 2 CHATIANGURI
P.S.- BIJNI
DIST.- CHIRANG
BTC
ASSAM
PIN- 783390

Advocates for the appellant : Mr. M.U. Mahmud …..Advocate.

Advocates for the respondents : Ms. A. Begum. ….Addl. P.P., Assam.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Date on which judgment is reserved : **16.11.2026**

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)

(M. Zothankhuma, J)

1. Heard Mr. M.U. Mahmud, learned counsel for the appellant. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State and Mr. A.N. Ahmed, learned counsel for the respondent no.2.

2. This appeal is directed against the impugned judgment and order dated 16.12.2022 passed by the learned Special Judge (POCSO), Bijni, Chirang, in Sessions Case No. 110(B)/2018, arising out of Bijni P.S. Case No.133/2013, by which the appellant was convicted under Section 376 IPC and Section 6 of the POCSO Act, 2012 and sentenced under Section 6 of the POCSO Act, in view of Section 42 of the POCSO Act. The appellant was sentenced to undergo rigorous imprisonment for life with a fine of Rs10,000/-, in default, to undergo simple imprisonment for six months.

3. The brief facts of the case is that a complaint dated 18.06.2013 was submitted by the informant (PW-2) to the Court of the SDJM, Bijni, stating that the victim who was 15 years old, was his daughter and that the appellant, who was a neighbour and a married person had sexual intercourse with his daughter

for several days with effect from 15.12.2012. The complainant also stated that the appellant forbade PW-1 (victim), from disclosing the sexual relations he had with the appellant, who had promised that he would marry her. The victim, however, became pregnant and when the same was disclosed by the victim to PW-2, a petition was submitted to the Women's Committee of the Village, requesting for appropriate action to be taken against the appellant. Going against the will of the complainant, the Women's Committee of the Village married the victim with the appellant, notwithstanding the fact that the appellant already had a wife. The complainant also stated that 7 month pregnant victim was presently staying with PW-2. Owing to her pregnancy, there was a delay in lodging the complaint. The complaint was thereafter sent by the SDJM, Bijni to the Officer-in-Charge of the Bijni Police Station, wherein Bijni P.S. Case No.133/2013 under Section 376 IPC was registered.

4. PW-7, who was made the first Investigating Officer, was transferred prior to completing the investigation. PW-7 then handed over the case diary to the officer-in-charge of the Bijni Police Station.

5. PW-6, who was the second Investigating Officer stated that on 10.06.2015 he was given the case diary of the case and saw that the only thing required to be done was that the appellant was to be arrested. He accordingly arrested the appellant and after completing the investigation, he submitted the charge sheet, on finding a *prima facie* case under Section 376 IPC.

6. The learned Trial Court thereafter framed three charges against the appellant under Section 376 IPC and 417 IPC, read with Section 6 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried.

7. The learned Trial Court then examined seven Prosecution Witnesses and

one Court Witness. After examining the appellant under Section 313 Cr.P.C, it came to a finding that the appellant was guilty of having committed the offence punishable under Section 376 IPC read with Section 6 of the POCSO Act. In view of Section 42 of the POCSO Act, the appellant was sentenced under Section 6 of the POCSO Act, to undergo rigorous imprisonment for life with a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months.

8. The learned counsel for the appellant submits that there is a huge delay in filing the complaint, inasmuch as, the incident of rape had apparently started from 15.12.2012, while the complaint had been filed only on 18.06.2013, i.e, after six months. The same implied that there were embellishments made to the case by the victim and her father. Further, there was no proof of the age of the victim, even though the ossification tests on the victim showed that she was either 16 years or above, but below 18 years. This was due to the fact that to get to the actual age of a child in conflict with law or a victim of a sexual assault, the benefit of (+) (-) two years would have to be provided on the age determined by way of an ossification test. In that event, the victim would be 18 years of age and there being consent, there could have been no crime.

9. The learned counsel for the appellant further submits that the evidence shows that people in the village had forced the appellant and the victim to marry, due to which the victim also stayed in the house of the appellant along with his first wife. This shows the consensual nature of the relationship between the parties and as such, the learned Trial Court should not have convicted the appellant. He accordingly submits that the impugned judgment should be set aside and the appellant should be acquitted of the charges framed against him.

10. The learned APP and the counsel for the respondent no.2, on the other hand, submit that a baby has been born to the victim and the delay in filing the

complaint, was due to the fact that the appellant had promised to marry the victim. The marriage had also taken place, even though the marriage between the appellant and the victim could not be said to be a valid marriage, due to the appellant already having a living wife. They also submit that though the age of the victim by way of the ossification test shows that the victim was below 18 years of age at the time of the incident, the date of birth of the victim had been proven to be below 18 years at the time of the incident, in terms of the evidence adduced by the Court Witness (CW-1), who was the Headmaster of Bhetagaon ME School. The date of birth of the victim, as per the school Admission Register, showed that the victim took admission in the said school on 06.01.2009 and the Admission Register showed her date of birth to be 11.02.1998. Further, the entry in the Admission Register had been made on the basis of the Transfer Certificate issued by No. 385 Shiv Chanda Bagaria LP School. As such, the victim would have been below 14 years of age at the time of her having sexual intercourse with the appellant. As a minor cannot give a valid consent, the sexual relation between the appellant and the victim, which resulted in her pregnancy and the birth of a child, thus proved that there was no infirmity with the learned Trial Court convicting and sentencing the appellant under Section 6 of the POCSO Act, 2012. They accordingly pray that the impugned judgment should not be interfered with and the appeal should be dismissed.

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

12. The evidence of PW-1, who is the victim, is to the effect that PW-2 was her father and she knew the appellant, whose house was located near her house. She stated that the incident occurred approximately two years ago, at around 5:00 p.m. when she had gone to the house of the appellant, as the

appellant’s wife had called her to help with the cutting fish. At that time, the wife and daughter of the appellant were in the house. Later, the appellant came home and called her to his room. When she went to appellant’s room, the appellant gagged her with a pillow and raped her. The appellant then threatened to kill her, if she divulged the incident to anyone. She also stated that the appellant used to call her to his house by threatening her and raped her for six to seven days. She became pregnant as a result of the incident and in the seventh month of her pregnancy, she told her parents about the incident. When the incident was disclosed to the people of their village, the people got them both married, whereupon the appellant took her to his house. The appellant and his first wife then assaulted her and would not let her eat. She was left with no other option but to return to her parents' house. Thereafter, the victim's father filed a case in the Bijni Court. The police took her statement and also took her for medical examination, firstly to the hospital at Kajalgaon and then to the hospital at Kokrajhar. She stated that she was also taken to Court by the police and her statement recorded. She also stated that she was studying in Class-IX at Bijni Bhetagaon High School at the time of the incident. She also stated that she gave birth to a male child.

13. In her cross-examination, the victim stated that the appellant's house consisted of two rooms. One was a living room while the other was a kitchen, which were adjacent to one another. Both the rooms were separated by a tin partition/wall. The victim stated that she yelled and screamed while she was being raped. However, the appellant's wife did not come even after listening to her screams. She also stated that no one came even after hearing her cries. The victim also stated that she did not tell her parents immediately about the incident and only told them after 7 months. She also stated that the appellant's

wife was her friend. She denied the suggestion that she did not make statements before the Police and before the Magistrate, to the effect that the appellant had raped her. The victim also stated that the house at No.2. Chatianguri, where she had been living as tenants before the incident, was purchased by the appellant along with the land, from the owner. Before purchasing the land, the appellant forcibly evicted them from the land. Though her father requested him for some more time, but the appellant had refused to give them time. She denied the suggestion that her father and herself had filed a false case to harass the appellant. She also denied the suggestion that she was in love with one Rajesh Barman and that she had eloped with him. She also denied the suggestion that the appellant had not impregnated her or that she had been impregnated by Rajesh. She also denied the suggestion that she was 18 at the time of the incident.

14. The evidence of PW-2 is to the effect that the victim was her daughter and he knew the appellant, whose house was near his house. He stated that he got to know about the incident 7/8 months after it's occurrence. Since her daughter was young, PW-2 and his wife took her to a doctor and then got to know that PW-1 was pregnant. PW-2 then informed the Women's Committee (Mahila Samiti) of No. 385 Chatianguri about the incident. The Members of the Women's Committee asked PW-1 about the incident and she told them that the appellant had made her pregnant. The Women's Committee convened an extra-judicial trial/meeting, where the appellant, his parents and father-in-law were present. People of other village were also present. After the trial/meeting, the Women's Committee married off his daughter (victim) to the appellant and sent her to the house of the appellant. PW-2 stated that PW-1 stayed with the appellant for 18 days, during which time the appellant and his wife assaulted his

daughter. PW-2 also stated that the appellant and his wife did not let the victim eat for 6 days and unable to bear the torture, the victim returned to his house. PW-2 informed the villagers about the turn of events. However, as he did not get the desired outcome from them, PW-2 filed a complaint in the Court. The complaint was then sent by the Court to the Police Station. Thereafter the Police took the statement of PW-1 and made her undergo medical examination. Later, PW-1 was brought to the Court by the Police and her statement was recorded. PW-2 stated that PW-1 gave birth to a male child and both were residing in his house. PW-2 also stated that at the time of incident, PW-1 (daughter) was about 13.5 years and she was studying in Class-VIII at Bijni Bhetagaon School.

15. In his cross-examination PW-2 stated that he knew that the appellant was married. PW-2 denied the suggestion that his daughter had affair with a boy named Rajesh Barman and that she had eloped with Rajesh to Barpeta. PW-2 denied the suggestion that the appellant did not impregnate his daughter. PW-2 stated that he had been living as a tenant in the house of a widow before the incident and later that land was purchased by the appellant. PW-2 denied the suggestion that as the appellant forcibly evicted him from the land where was living in, he made a false allegation only to harass the appellant. PW-2 further stated that the victim was presently married to another person.

16. The evidence of PW-3 is to the effect that he knew PW-1, PW-2 and the appellant. PW-3 stated that 5 years ago, PW-1 (victim) had an affair with the appellant, due to which she became pregnant and her parents got to know about it on the 7 month of pregnancy. The parents of PW-1 (victim) informed the public and the Women's Committee about it. The public then apprehended the appellant and assaulted him. The appellant's father then requested them not to assault his son and said that his son (appellant) would marry PW-1. PW-3

stated that the appellant also pleaded guilty and said that he would accept PW-1 as his wife. The parents of PW-1 accepted the decision of the public. Subsequently, the public and the Women's Committee married the victim with the appellant in the nearby Kali Mandir, whereupon the appellant took the victim to his house. Later, the victim gave birth to a male child, who was presently 4 years 7 months.

17. In his cross-examination, PW-3 stated that the victim did not tell them about the incident, before the extra-judicial trial had taken place. PW-3 further stated that the victim went to the appellant's house and started her conjugal life. He also stated that the victim and her parents were tenants in the appellant's father-in-law's house. He also denied the suggestion that the appellant pleaded guilty in front of the public due to fear. He also stated that he did not know whether the case was filed when the appellant's father-in-law asked the victim's father to vacate the house.

18. The evidence of PW-4 is to the effect that he knew PW-1, PW-2 and the appellant. The victim was 7 months pregnant around 5/6 years ago, when she was studying in school, with her age being around 13 to 13.5 years. The victim's mother told him that the victim was made pregnant by the appellant. PW-4 stated that she told the victim's mother to inform the Police, but she informed the public instead. He then asked the appellant about the incident at a tea stall, whereupon the appellant told him that it was true that he had impregnated the victim. The public thereafter held the extra-judicial trial/meeting and got the victim and the appellant married at Kali Mandir. The appellant then took the victim to his house and she stayed there for 10/12 days. PW-4 then stated that the victim's mother told him that the appellant tortured the victim and did not give her food to eat. They informed the public as well as the Women's

Committee and afterwards filed a complaint at the Police Station. Later, the victim gave birth to a male child.

19. In his cross-examination, PW-4 stated that he did not remember the date when the appellant admitted before him at the tea stall, that he had impregnated the victim. PW-4 also stated that he did not know the name of the tea stall owner and that at the time of the extra-judicial trial held by the public, the appellant had agreed that he would give the victim half a katha of land. He also stated that the victim never spoke to him about the incident. PW-4 stated that PW-1 called him uncle. PW-4 denied the suggestion that the appellant had no relation with the victim or that he pleaded guilty because of the pressure of the public. He also denied the suggestion that the victim's father had filed a false case to take land from the appellant.

20. The evidence of PW-5, who is a doctor, is to the effect that on 27.06.2013 at about 1 p.m., he examined the victim aged 16 years. He found the vulva and vagina of the victim to be well-developed and that it easily admitted two fingers and was lax. There were no injuries and the hymen was torn. He also found that she was pregnant and that there was a single live fetus of 30 weeks. The ossification test done on the victim showed the following:

"*Wrist : Distal Radial epiphysis is not fused.*

Head of the humerus is not fused.

Distal humerus is seen fused."

The further cross-examination of the doctor (PW-), is to the effect that as per the radiological examination done on the victim, her age was found to be above 16 years, but below 18 years.

21. The evidence of PW-6 is to the effect that he was working in the Bijni Police Station on 10.06.2015, when the Officer-in-Charge of Bijni Police Station entrusted him with the responsibility of investigating Bijni Police Station Case No.133/2013. On perusing the case diary which had been handed over to him, he saw that only thing left to be done, was to arrest the appellant. Accordingly, he arrested the appellant and sent him to Court. After completing the investigation, he submitted the charge-sheet.

In his cross-examination, PW-6 stated that he did not perform any investigation other than arresting the appellant.

22. The evidence of PW-7 is to the effect that on 23.06.2013, he was posted as an Attached Officer at the Bijni Police Station, when the ejahar in the case was received on being forwarded by the Court of the learned S.D.J.M (M), Bijni under Section 156(3) Cr.P.C. After recording the statements of the witnesses, he visited the house of the informant and recorded the statement of the victim and other witnesses. He also stated that the victim was about 7 months pregnant. So, he sent her for medical examination. The statement of the victim was also recorded under Section 164 Cr.P.C. He went to the house of the appellant, but did not find him. Though he made other attempts to arrest the appellant, he could not find him at his house. As he was transferred, he could not complete the investigation and handed over the case diary to the O/C of the Bijni Police Station.

23. The evidence of the Court Witness (CW-1), is to the effect that he was the Headmaster of Bhetagaon M.E. School, which he joined as Headmaster on

12.05.2000. CW-1 produced the School Admission Register, wherein the victim's date of birth was recorded as 11.02.1998. CW-1 also stated that the said entry was made by him in the said register, on the basis of the Transfer Certificate issued by the earlier school which the victim had attended, i.e, No. 385 Shiv Chanda Bagaria L.P. School. He also exhibited the Transfer Certificate of the victim girl issued by the earlier school, on the basis of which her date of birth was recorded in the School Admission Register.

24. The appellant in his examination under Section 313 Cr.P.C has basically stated that all the evidence adduced against him were "not true", and has stated in respect of the last question as follows:

> "*Q 40) Do you have anything else to say?*
>
> *A 40) I am innocent and the informant has falsely implicated me into this case only to get half Katha of land."*

25. The statement made by the victim under Section 164 Cr.P.C is to the following effect:

> "*I am 15 years old now. I read in Class IX. I read in Bhetagaon High Secondary School. One evening, at about 5 p.m. towards the end of the last Puh month (January), neighbour Minati Mondal called me to her house as she was alone in the house. After a while her husband Uttam Mondal arrived, bringing fish and Minati went to cut fish. I also went with her. After a while, Uttam Mondal called me to his room and when I went there, Uttam Mondal gagged me, put me on the bed and taking my clothes off, had sexual intercourse with me forcibly. And he threatened me that he would kill my parents if I disclosed the incident. That is why I didn't tell this to anyone. After a few days, Uttam Mondal again called me to his house and saying that he would marry me, established physical relation with me again. Thus, on the*

pretext of marrying me, he had sexual intercourse with me 7 to 8 times in total. As a result, I became pregnant. Presently, I am 7 months pregnant. When I told my parents about this, they submitted a complaint to Maa Kaali Women's Committee at the village. Then, the Women's Committee got me married to Uttam Mondal by executing a deed. I stayed at Uttam Mondal's house for about 20 days. But Uttam Mondal and his wife Minati Mondal assaulted me. They did not give me food to eat. That's why I returned to my parents' house. Now, I am residing at my father's house.

26. The evidence recorded by the learned Trial Court goes to show that the victim had been impregnated by the appellant and that the Women's Committee of the village had ensured that the appellant married the victim, even though the provisions of the Hindu Marriage Act, 1955 do not allow for a second marriage, when one of the partners has a living spouse. It is also not disputed that the victim went to live with the appellant and with the appellant's first wife. It is also not denied by anybody that the victim has had a male child.

27. The complaint submitted by the victim's father shows that the sexual intercourse between the parties, which had apparently lasted for several days, had started on 15.12.2012 and the complaint had been filed by the victim's father 6 months later, i.e, on 18.06.2013, after the appellant and his wife had apparently ill-treated the victim and not given her anything to eat while they all lived together. The delay in PW-2 approaching the learned Court with his complaint is explained by the appellant initially threatening the victim, the subsequent marriage of the parties and ill-treatment meted out to the victim.

28. The evidence of PW-7, the first I.O, shows that he was unable to apprehend the appellant, which implies that the appellant was absconding. The same points to the guilty conscience of the appellant.

29. The evidence of PW-6, who is the second I.O, is to the effect that he was handed over the case diary pertaining to the present case on 10.06.2015 and that he had arrested the appellant. Thus, what emerges from the evidence of PW-6 is that the appellant was arrested 2 years after the criminal case was registered, which proves that the appellant was hiding from the law.

30. As the facts of the case point to the appellant having had sexual intercourse with the victim, the next question arises as to whether the victim was a minor at the time the appellant had sexual intercourse with her. The evidence of PW-5, who is the Doctor, is to the effect that the hymen was ruptured and the victim was pregnant. This corroborates the testimony of the victim. Further, as per the ossification test, the victim was 16 years or above, but below 18 years of age. However, in view of the evidence of CW-1, who has proved the age of the victim to be below 18 years at the time of the incident, due to her date of birth recorded in the School Admission Register, it is quite apparent that the appellant has taken advantage of the young minor victim and made her pregnant, which has ultimately led to the birth of a male child.

31. One aspect of this case which we cannot ignore is with regard to the order dated 06.08.2026 passed by this Court, wherein this Court had directed the counsel for the appellant and the counsel for the respondent No.2, to obtain instructions from their clients, as to whether the appellant and the child born to the victim should be subjected to a DNA test, to determine the paternity of the child.

32. Mr. M.U. Mahmud, the learned counsel for the appellant, submits today

that the appellant is not willing to undergo a DNA test, though he had stated some time earlier that he was willing to undergo the same.

33. Mr. A.N. Ahmed, learned counsel for the respondent No.2, submits that he has not been able to make any communication with the respondent No.2, to obtain instructions with regard to the query raised by this Court.

34. On considering the submission made by Mr. M.U. Mahmud, learned counsel for the appellant, we are of the view that the refusal by the appellant to undergo a DNA test also gives rise to an adverse inference that the appellant is the father of the child born to the victim. Even if we are to assume that the child born to the victim has not been fathered by the appellant, we are of the view that the evidence recorded by the learned Trial Court, points to the fact that the appellant had sexual intercourse with the victim. In fact, PW-4 has stated that the appellant had been asked by him as to whether the incident was true, which the appellant admitted to be true regarding impregnating the victim.

35. On perusing the cross-examination of PW-4, we find that there is no suggestion made by the appellant that PW-4 had not asked him whether he had impregnated the victim. There was also no suggestion made by the appellant to PW-4 that the appellant had not answered PW-4 by saying the incident was not true.

36. The evidence of the victim has also been corroborated by her statement made under Section 164 Cr.P.C. In view of the above reasons and as we do not find anything to doubt the truthfulness of the testimony of the victim, we do not

find any ground to interfere with the conviction of the appellant.

37. The above being said, we find that the learned Trial Court had sentenced the appellant to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 6 months. On considering the sentence awarded to the appellant, we are of the view that the interest of justice would be served, if the appellant is sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 10,000/-, in default, to undergo simple imprisonment for 6 months.

38. Accordingly, the sentence imposed upon the appellant by the learned Trial Court is hereby set aside and he is sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs. 10,000/-, in default, to undergo simple imprisonment for 6 months. The impugned judgment and sentence order is accordingly modified to the extent indicated above.

39. The appeal is accordingly disposed of.

40. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant

Kuntal Datta

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