GAHC010094382024

2026:GAU-AS:16484

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

Case No. : Crl.A./138/2021

ESAHAQE ALI
S/O- LATE HAKIM ALI
R/O- VILL.- BARAMARA
P.S. AND DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PUBLIC PROSECUTOR
ASSAM

2:AFAZ MIAH
S/O- LATE SULTAN MIAH
R/O- VILL.- BARAMARA
P.S. AND DIST.- BARPETA
ASSAM

Advocate for : MR. J AHMED
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s): Mr. J. Ahmed, Advocate

Advocate for the respondent(s): Ms. B Choudhury, Amicus Curiae

Mr. B. Sarmah, learned APP

Date on which judgment was reserved :**NA**

Date of pronouncement of judgment :**10.11.2026**

Whether the pronouncement is of the :

operative part of the judgment?:**NA**

Whether the full judgment has been :**Yes**

pronounced?

JUDGMENT AND ORDER (ORAL)

(Justice, J. Shamima Jahan)

Heard Mr. J. Ahmed, learned Counsel for the appellant and Ms. B. Choudhury, learned Amicus Curiae for the informant. Also heard Mr. B. Sarmah, learned Additional Public Prosecutor for the State.

2. This is a Criminal Appeal filed under Section 374 of the CrPC, by the convicted appellant, challenging the judgment and order dated 20.03.2021

passed by the Special Sessions Judge, Barpeta in Special (POCSO) Case No. 29/2018, by which the appellant was convicted under Section 450 of the IPC as well as Section 4 of the Protection of Children from Sexual Offences Act, (hereinafter shortly referred to as the "POCSO Act"). The appellant by the said judgment was sentenced to undergo Rigorous Imprisonment for one (1) year with fine and default stipulation under Section 450 IPC as well as to undergo Rigorous Imprisonment for a period of seven (7) years with fine and default stipulation under Section 4 of the POCSO Act.

FACTS

3. The brief facts of the case is that an ejahar was lodged by the father of the victim stating inter alia that on 08.08.2017 at around 06:00 pm, while he was away from his home and his wife was washing clothes behind the house, his five-year-old minor daughter, who was present in the house, was raped by the appellant, by entering into his house and by taking advantage of their absence. It was further stated that when his daughter raised alarm, his wife and some neighbouring people arrived at the place of occurrence, subsequent to which, the appellant fled from the same. It was also stated that later on his daughter narrated the entire incident.

4. On receipt of the said ejahar, the Police registered the case, as Barpeta PS Case No. 1379/2017, under Section 450 IPC read with Section 6 of the POCSO Act. Upon completion of the investigation, the Police submitted charge sheet on 09.07.2018 arraying the appellant as the accused person on the ground that sufficient evidence was found against him, under Section 450 IPC read with Section 6 of the POCSO Act. Thereafter, on completion of necessary requirements, the Court of Special Judge, Barpeta, framed charges against the appellant under Section 450 of the IPC as well as under Section 4 of the POCSO

Act, which was read over and explained to the appellant who pleaded not guilty and claimed to be tried. During the trial, the prosecution examined eleven (11) witnesses and thereafter, the appellant was examined under Section 313 of the CrPC and after hearing the arguments, the Court of Special Judge, Barpeta passed the aforesaid judgment and order convicting the appellant and sentencing him as mentioned above.

EVIDENCE

5. The informant was examined as PW1 and he stated before the Trial Court that at the time of occurrence, he was in Guwahati and his wife was washing clothes in the backyard of the house and that his five-year-old daughter was inside the house. He further stated that upon hearing hue and cry of his daughter, his wife rushed towards the place of occurrence and saw his daughter and the appellant naked as the appellant raped his daughter. He also stated that upon hearing the cries, neighbours gathered and that the appellant fled from the place and that he came back from Guwahati and on the next day, he lodged the ejahar.

This witness was cross-examined and during the said examination, he stated that his daughter was examined by the doctor on the next day of the occurrence and that his daughter was examined by the Police very late. He also stated that he noticed injury marks on the private part of his daughter. He also stated that he had no dispute with the appellant.

6. The mother of the victim was examined as PW2 and she stated that at the relevant point of time, she was washing clothes in the backyard of the house and upon hearing hue and cry of her daughter, she rushed to the house and

saw appellant committing rape upon her daughter. She also stated that appellant upon seeing her, fled from the place and that she informed the neighbours and also that her daughter was crying at that juncture.

This witness was cross-examined and during the same, she denied of not stating before the Police that she was washing clothes in the backside of the house and that she found her daughter in a naked condition and also that she informed the neighbours about the incident and further that her daughter was weeping at that point of time.

7. A neighbour of the informant was examined as PW3 and he stated that he heard from a co-villager that appellant committed rape upon the minor daughter of the informant. During his cross-examination, he stated that he did not speak to the victim girl and that he also did not state before the Police that a boundary dispute was going on between the appellant and the informant.

8. Another neighbour of informant was examined as PW4 and he stated that when upon hearing, he enquired with the appellant, the appellant confessed his guilt of committing rape upon the daughter of the informant but this witness also stated that later on, the appellant denied. During cross-examination, he stated that he did not state before the Police about the appellant confessing his guilt or denying it later and also about the boundary dispute.

9. The grandmother of the victim was examined as PW5 and she stated that the appellant entered the house and committed rape upon the victim causing injuries on her private part. She also stated that upon hearing cries of the victim, she went near her and that the accused fled away. She further stated that the villagers questioned the appellant and the appellant admitted of visiting the house of the informant. During her cross-examination, she stated that after

the incident she was in the residence and further stated that the appellant was near her house but she did not speak with him and that she stated before Police that she offered betel nut to the appellant. She denied of not stating before the Police that on the day of occurrence, the victim was playing inside the house when the appellant came and committed rape upon her and also that the appellant admitted his guilt.

10. A relative of the informant was examined as PW6 and he stated that upon hearing hue and cry, he reached the place of occurrence and saw the victim weeping and narrating the incident to other villagers. He also stated that the appellant had admitted his guilt. During cross-examination, he stated that on the day of incident, the grandmother of the victim and the wife of the informant was present in the house and he denied of not stating before the Police about the village meeting held with regard to the offence.

11. One of the Investigating Officer who was examined as PW7 stated before the Court that he had sent the victim for medical examination and had recorded the statement of the witnesses and the victim. However, due to his transfer, he handed over the Case Diary to his successor. During the cross-examination, this witness stated that the mother of the victim did not state before him that she was washing clothes and that she saw her daughter in naked condition and also that she informed the neigbours and narrated the story to them. This witness further stated that PW3 i.e. the neigbour stated before him that there was a boundary dispute between the informant and appellant and that informant had filed a false case. This witness further stated that the other neighbor, PW4 did not state before him that appellant admitted his guilt.

12. The doctor who examined the victim deposed as PW8 and she upon examination stated that she did not find any sign of sexual intercourse but

found swelling of labia majora and minora, which was again found to be tender. However, the doctor opined of no injury on the private part of the victim. During cross-examination, this witness stated that the victim girl had named the accused person as Yasad Ali and further stated that since the examination was done within 24 hours of the incident, symptoms of rape should have been present.

13. The other Investigating Officer, who took over the case from PW7 was examined as PW9 and he apart from stating the duties he did reiterated in his cross-examination that the mother of the victim had not stated about the statements as narrated above by PW7. He further stated that the grandmother of the victim did not state before him that while the victim was playing inside the house, appellant raped her and that the victim sustained injuries on her private part. Contradictions were also stated with regard to the statement of PW6.

14. The victim was examined as PW10 and the Trial Court after testing her intelligence and understanding by putting certain questions, to which she gave rational answers, recorded her statement on camera, wherein the victim stated that while she was playing in her house, the appellant came and kissed her private parts and while saying so, the victim had pointed to her vagina. The victim further stated that the appellant put his private parts into her vagina and that she cried and that her mother reached and the appellant left seeing her mother.

This witness was cross-examined wherein she stated that when appellant came inside the house, her grandmother was present and she spoke with him and she also stated that when the appellant put his penis into her vagina, her grandmother was present.

15. The Magistrate, who recorded the statement of the victim under Section 164 CrPC was examined as PW11 and she stated that she recorded the said statement on 01.06.2018.

These are the evidences put forth by the prosecution. The appellant was thereafter examined under Section 313 of the CrPC, wherein he completely denied the allegations and stated that he had been falsely implicated.

16. The appellant did not adduce any defence witness and after hearing the argument on behalf of both the sides, the Court of Special Judge, Barpeta had convicted the appellant as stated above.

SUBMISSIONS

17. Mr. J. Ahmed, learned Counsel for the appellant submits that there was admittedly a land dispute between the appellant and the informant and the said case was lodged by the informant to wreak vengeance. He further submits that there are contradictions in the statement of the witnesses and the said contradictions are proved by the Investigating Officers during their examinations. He also stated that the grandmother of the victim, whose presence is stated by the victim at the time of occurrence, did not state before the Police that appellant had raped the victim. He further submits that the mother of the victim, who claims to have seen the victim in a naked condition and who also claims to have seen the appellant raping the victim, had not stated the same before the Police. He further submits that the appellant who was inflicted with the punishment of seven-year incarceration under Section 4 of the POCSO Act, has already served out the sentence for more than five years and that by taking into account, the remission period that a convict is entitled, the convict has almost completed his sentence.

18. On the other hand, Mr. B. Sarmah, learned Additional Public Prosecutor submits that the victim was barely of five years of age and that the appellant had sexually assaulted her, which resulted in injuries in the private part of the victim girl. He relied on the report of the doctor, who on examination found swelling in the private parts. He also submitted that little discrepancies in the statement of the victim are natural since she was very young. He submitted that contradictions with regard to other witnesses will not matter in the instant case.

19. Ms. B. Choudhury, learned Amicus Curiae for the informant supports the argument of the learned Additional Public Prosecutor and further submits that the instant case reveals a very ghastly incident being committed upon a five-year-old child by a man of around 70 years. She submits that the mother of the victim had seen the victim in a naked state who had further stated that she saw the appellant committing rape upon the victim. She also relied on the statement of the villagers, who stated that the appellant confessed his guilt. She also submitted that the victim had given statements which are consistent with regard to the root of the case.

These are the submissions of the learned Counsels for all the parties.

ANALYSIS AND FINDINGS

20. In cases involving sexual offences, the clinching evidence is the evidence of the prosecutrix as has been held by the Hon'ble Supreme Court. In such cases, seldom any ocular evidence can be found and it is no longer res-integra that if the statement of the victim is found to be consistent before all the authorities inspiring confidence of the Court, conviction can be awarded on the sole basis of the same. It is held in ***Rai Sandeep Vs State of NCTof Delhi***, reported in ***(2012) 8 SCC 21*** as under:

"*15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."*

21. It is therefore seen from above that the statement of the victim has to be examined right from the beginning till the end i.e. her statement before the Police, thereafter her statement before the Magistrate and then her statement before the Trial Court.

22. It is therefore imperative upon this Court to examine the statement of the victim recorded by the Police at the very first instance. The victim was examined by the Police under Section 161 of the CrPC on 28.05.2018 and the said examination was in question-and-answer form, wherein it is seen that the victim was asked as to whether she knows the appellant to which she answered as ***Yes*** and she was further asked as to whether anything had taken place with

her, to which she also answered as ***Yes.***

23. In her statement before the Magistrate recorded under Section 164 of the CrPC, the victim stated after she was examined of her capacity to understand the implications, that the appellant had hurt her on her anus and that the appellant had committed bad act by applying saliva on her anus and that when she cried, he pressed her mouth. She also stated that thereafter she came home and told her grandmother about the incident and that her grandmother asked her whether she had fallen upon something.

24. During her examination before the Trial Court, which had taken place after two years of the incident, the victim stated that while she was playing in her house, the appellant came to her house and kissed her private parts, which she indicated by pointing her finger towards her vagina. She also stated that the appellant had put his penis into her vagina and that she cried and that when her mother came, she told her the incident and that the appellant left.

25. The discrepancies are writ large in the statement of the victim as narrated above. During her examination by the Police, she simply stated that something was done to her by the appellant and in the examination by the Magistrate, she stated that appellant committed bad act in her anus and in the trial, she stated that appellant kissed her private parts and put his penis into her vagina. Although, the victim was only five years of age at the time of the incident but her examination by the Police was done on 28.05.2018 i.e. almost after a year and her examination by the Magistrate was done on 01.06.2018 and finally her examination by the Trial Court was done on 02.09.2019. Further, although it can safely be held that the victim being of such a minor age, cannot be expected to give consistent statement, to the exact sense of the term, before all the authorities but at the same time, the discrepancies seen in her statement

cannot by any stretch, can be said to be connected or similar to each other. As such, this Court is duty bound to look into the other evidence on record.

26. It is a settled position of law that in case the statement of the prosecutrix or the victim does not inspire confidence, the Court will look into other corroboration to the prosecution story. In the instant case, the corroboration at best can come from the statement of the mother of the victim. The mother of the victim stated that upon hearing cries of her daughter, she rushed inside the house and saw appellant committing rape upon her daughter and also saw her daughter naked and that seeing her, the appellant fled from the house. She also stated that she informed the neighbours and told them the incident. However, in her cross-examination, she was confronted with her statement made before the Police, to which she replied that she stated before the Police the said statements of seeing the incident or informing the neighbours. With the placing of the said statement, which is denied by the said witness, the contradiction is brought on record. It is thereafter proved by examining the Investigating Officer, who had stated in clear terms that the mother of the victim had not stated the same and as such, the contradiction stood proved. Accordingly, the statement of the mother of the victim cannot have the potentiality to support the version of the victim.

27. The other corroboration that can be deduced to the statement of the victim is the statement of the grandmother of the victim. It is stated by the victim herself in her statement before the Magistrate that after the incident, she told it to her grandmother. However, the grandmother stated that upon hearing cries of the victim, she came nearby and that the appellant fled away. Although in her examination in chief, she stated that appellant committed rape upon the victim but in her cross-examination, she stated that after the incident, she was

in the residence. The further contradiction is noticed by this court, when she was confronted with the statement before the Police, to which she replied that she stated before the police thaton the day of incident, the victim was playing inside the house and the appellant came and raped her and also that appellant admitted his guilt. However, the said contradiction was thereafter placed before the Investigating Officer and the Investigating Officer stated that the grandmother of the victim did not state the said statements. As such, the contradiction stood proved and the statement of the grandmother also cannot corroborate the prosecution case.

28. The law relating to proving of contradictions has been enunciated by the Apex Court in ***V.K. Mishra Vs. State of Uttarakhand,*** reported in ***(2015) 9 SCC 588***. It has been held as under:

> *"18. Under Section 145 of the Evidence Act when it is intended to contradict the witness by his previous statement reduced into writing, the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction."*

29. Contradictions are also seen with regard to the sequence of events as

narrated by the witnesses. The victim stated before the Magistrate that after the incident, she came back home and told her grandmother about the incident, whereas the grandmother said that upon hearing cries of the victim, she went near the victim. Further, the evidence in the instant case shows that it was the mother of the victim, who reached the place of occurrence first and she informed the villagers, which is also stated by the father of the victim examined as PW1. With regard to the further fact as to whether there is any extra judicial confession on the part of the appellant, there is further contradiction in the statement of the villagers as stated above. It is also seen that the victim during her medical examination stated the name of the accused person as Yasad Ali and not the appellant, which also demolishes the case of the prosecution. Therefore, looking at the aforesaid discrepancies as well as the contradictions, this Court deems it fit to interfere with the Judgment and Order passed in the present case convicting the appellant.

CONCLUSIONS

30. As such, the Judgment and Order dated 20.03.2021 passed by the Court of Special Judge, Barpeta in Special POCSO Case No. 29/2018 is set aside and quashed.

31. The appellant is accordingly acquitted of the charges and is directed to be released forthwith, if not required in any other case.

32. Send back the LCR.

33. No order as to costs.

34. Further this Court directs the Legal Services Authority to pay the remuneration, which is required to be given to the Amicus Curiae, for rendering her appreciable service to this Court, with regard the present case.

35. Accordingly, the Criminal Appeal is disposed of.

JUDGE

Comparing Assistant