GAHC010116532025

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

**Case No. : Crl.A./204/2025**

BISHAL THAPA
S/O SHRI BOM BAHADUR THAPA, R/O VILL. NO 2 GOSSAI CHAPORI, P.S. SOOTEA, DIST. BISWANATH, ASSAM, PIN 784175

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY PP, ASSAM.

2:SMTI. MUNMI KONCH
R/O VILL. NO. 2 GOSSAI CHAPORI
P.S. SOOTEA
DIST. BISWANATH
ASSAM
PIN 78417

Advocate for the appellants : Mr. R.P. Sarmah, Sr. Adv.
Ms. A. Deka, Adv.

Advocate for the respondents : Mr. R.R. Kaushik Addl. P.P., Assam,
Ms. S. Sharma, Legal Aid Counsel
for (R-2)

**:::BEFORE:::**

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA**

Date on which judgment is reserved : **03/11/2026**

Date of pronouncement of judgment : **06/11/2026**

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. R. P. Sharma, learned Senior Counsel for the appellant assisted by Ms. A. Deka, learned counsel for the appellant. Also heard Mr. R. R. Kaushik, learned APP for the State and Ms. S. Sharma, learned Legal Aid Counsel for the Respondent No. 2.

***2.*** This appeal has put to challenge the impugned judgment dated 08/05/2025, passed by the learned Special Judge, POCSO, Bishwanath, Bishwanath Chariali, in Special (POCSO) Case No. 01/2021, by which the appellant has been convicted under Section 376 AB IPC read with Section 4(2) of the POCSO Act, 2012. However, in view of Section 42 of the POCSO Act, 2012, the appellant has been sentenced under Section 4(2) of the POCSO Act, to undergo rigorous imprisonment for a period of 20 years with a fine of Rs. 15,000/-, in default, to suffer rigorous imprisonment for another 3 months. The above conviction and sentence has been made due to the learned Trial Court having found the appellant having committed aggravated penetrative sexual assault on the victim girl, aged 6 years, by inserting his finger into the victim girl's private parts.

***3.*** The brief facts of the case is that the mother of the victim, who is also the Prosecution Witness-1 (PW-1), had submitted an FIR dated 02/01/2021 to the Officer-in-Charge, Sootea Police Station, stating that around 2 pm on 27/12/2020, when she had gone to the field to see the cows, after keeping her 5 year old daughter in the house of the neighbour (accused), her daughter came running home after an hour and informed her, while crying, that the accused-appellant had inserted his finger into her private parts, which resulted in bleeding and made her unable to urinate. The informant also stated in the FIR that blood came out from the victim with urine. Due to her husband being sick and the issue being raised with the family of the appellant,

there was a delay in filing the FIR. However, she was thereafter constrained to approach the Police to take necessary action against the appellant.

***4.*** Pursuant to the FIR dated 02/01/2021, Sootea P.S. Case No. 01/2021 under Section 376 AB IPC read with Section 4 of the POCSO Act was registered. The Investigating Officer (IO) (PW-11) thereafter conducted the investigation and on finding a *prima facie* case under Section 376 AB IPC read with Section 4 of the POCSO Act, submitted charge sheet against the appellant. The learned Trial Court framed 2 (two) charges against the appellant under Section 376 AB IPC and Section 4 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried.

***5.*** The learned Trial Court thereafter examined 11 Prosecution Witnesses and one Defense Witness. After examining the appellant under Section 313 Cr.P.C, the learned Trial Court came to a finding that the appellant had committed the offence punishable under Section 376 AB IPC read with Section 4 of the POCSO Act. As stated earlier, in view of Section 42 of the POCSO Act, the appellant was convicted under Section 4(2) of the POCSO Act and sentenced accordingly.

***6.*** The learned senior counsel for the appellant submits that there are major discrepancies in the evidence of the Prosecution Witnesses which goes to the root of the matter, raising a doubt as to whether there had been any insertion of the appellant’s finger into the victim's private parts. He submits that the evidence of the Doctor (PW-6) does not corroborate the evidence of the victim, to the effect that the appellant had inserted his finger into the victim's private parts. Further, the evidence of PW-5, who had apparently been shown the panties of the victim, approximately 6 (six) minutes after the incident, showed that the panties were clean, even though the victim had apparently bled from the alleged act of the appellant. The case IO had also not seized the panties of the victim due to the fact that the panties have been washed by the informant. He also submits that there is a delay of 1 (one) week in filing the FIR, inasmuch as, the incident had occurred on 27/12/2020, while the FIR had been filed on 02/01/2021.

***7.*** The evidence of PW-11 (IO) was also to the effect that the informant was reluctant in

having her child (victim) medically examined by a Doctor on 02/01/2021 and the child was examined only on 04/01/2021, which did not prove the testimony of the victim. The learned senior counsel for the appellant further submits that the evidence of the Defense Witness-1 (DW-1) is to the effect that the informant used to borrow money, time and again, from the appellant's family and the last loan of rupees 3000/- taken by the informant, had not been returned till date. Further, the family of the victim had demanded Rs. 50,000/- to Rs. 60,000/- for settlement of the matter regarding the alleged offence committed by the appellant. The above facts implied that a false case had been fabricated by the informant and the victim. He accordingly submits that in view of the above reasons, the impugned judgment should be set aside and the appellant should be acquitted of the charges framed against him under section 376 AB IPC read with Section 4(2) of the POCSO Act.

***8.*** Mr. R. R. Kaushik, learned APP and Ms. S Sharma, the learned Legal Aid Counsel for the respondent no. 2, submit that there is no infirmity with the conviction of the appellant by the learned Trial Court, inasmuch as, there is nothing to show that the victim had been tutored to make a false case against the appellant. They also submit that the issue with regard to non-payment of the loan amount of Rs. 3,000/- and the settlement of the case for an amount of Rs. 50,000/- to Rs.60,000/- is only an afterthought. If the reason for filing the case was the above monetary amount, the same could have been brought out by the appellant during cross-examination of the Prosecution Witnesses. However, neither had the same been done by the appellant, in the form of suggestions made during cross-examination of the Prosecution Witnesses, but also, no such explanation had been made by the appellant during his examination under section 313 Cr. PC. They accordingly pray that the conviction of the appellant should be upheld.

***9.*** We have heard the learned counsels for the parties.

***10.*** The evidence of PW-1 is to the effect that the house of the appellant was two houses away from the house of PW-1 (informant). PW-1 stated that her husband had been unwell for four years and was bedridden. Around 2 p.m. on the day of the incident, when PW-1 was about to go to the field to see the cows, her 5 year old daughter asked to watch TV. As there was no

TV in their house, PW-1 took the victim to the house of the appellant to watch TV. The mother of the appellant let the victim watch TV and thereafter, went to a group meeting nearby. Around 3 p.m, the victim returned home screaming ‘mother”. On asking her as to what had happened, the victim told PW-1 that the appellant had inserted his finger into her vagina. On taking off the victim's panty, PW-1 saw that there was bleeding from the vagina. PW-1 then called the appellant's mother to her house in the evening and told her everything. She also showed the panty of her daughter to the appellant's mother, which showed that there was still bleeding from the vagina of the victim. As it was a Sunday, PW-1 told the appellant's mother that medical treatment of the victim would have to be done on Monday. However, the appellant's mother paid no heed. Thereafter, PW-1 told the V.D.P. Secretary everything. The V.D.P. Secretary then called the uncles of the appellant and a meeting was held in the house of one of the villagers. On her daughter (victim) being questioned, her daughter told them everything. Thereafter, the V.D.P. Secretary wrote on a sheet of paper that payment would be made for treatment if some disease occurred in the victim's private parts. However, they did not hand over the document to PW-1 and no treatment was provided. Thus, PW-1 lodged an FIR with the Sootea Police Station on 02/01/2021, which was exhibited by PW-1. PW1 also stated that the Police seized the Birth Certificate which was handed back to her later.

In her cross-examination, PW-1 stated that when the victim was watching TV in the appellant's house, only the victim and the appellant were present. The reason for the delayed filing of the FIR, as stated by PW-1, was that she was waiting for treatment to be provided to her daughter as she had no money for the said treatment, being a daily wager. PW-1 denied the suggestion that the appellant did not commit the crime against the victim or that a false accusation had been made by PW-1.

***11.*** The evidence of PW-2 (victim) shows that prior to her evidence being recorded, preliminary questions were put to her by the learned Trial Court. On being satisfied that the victim was able to understand the questions put to her and give rational answers to the same, the victim's evidence was recorded.

The victim in her evidence stated that she called the appellant “Bhai” and that his house

was next to theirs. She also stated that she used to go to the appellant's house to watch TV. On the day of the incident, while she was watching TV with the appellant, electricity was getting disconnected frequently. The appellant was playing games on his mobile. However, he inserted a wire and his finger into her panty and ultimately into her vagina thereafter. It hurt and she bled. On returning home crying, she told everything to her mother. The victim also stated that she was brought to the Court where the Madam recorded what she had said. Though there is nothing mentioned with regard to insertion of a wire into her panty by the appellant, in the translated version of the testimony of PW-2, we find that the victim had stated that a wire had been put inside her panty by the appellant, as per the evidence recorded by the learned Trial Court in the victim's vernacular language.

***12.*** The evidence of PW-3 is to the effect that she worked at Sakhi One Stop Centre and that a person along with the victim girl had come to the said Centre. Though she counseled the victim, she did not remember what she had told the girl. The evidence of PW-3 is also to the effect that she did not know the informant nor the appellant.

***13.*** The evidence of PW-4 is to the effect that she knew the informant and the appellant, who was present in the dock. PW-4 said that she had forgotten about the incident that took place around 1½ years ago.

***14.*** The evidence of PW-5 is to the effect that she knew the informant and the appellant, who was her neighbour. PW-5 stated that PW-1 showed her the pants of her daughter and also told her that the appellant had inserted his finger into the private pants of her daughter. In her cross-examination, PW-5 stated that the pants that were shown to her were clean and that she was told by PW-1 that the incident had taken place 6 minutes prior to showing her the pants. Further, the appellant was good in his studies. It may be stated here that the use of the words “pants” would have to be construed to be “panties”.

***15.*** The evidence of PW-6, who is the Doctor who examined the victim on 04/01/2021, is to the effect that at the time of examination of the victim there was no bleeding. Further, no sign of injury could be seen anywhere in the body of the victim, including her private parts. There was also no sign of sexual intercourse. PW-6 further stated that the girl was conscious and that

there was insertion of finger into vagina followed by bleeding. Pertinently, PW-6 has not stated as to who had informed her that there was insertion of finger into the victim's vagina followed by bleeding.

***16.*** The evidence of PW-7 is to the effect that PW-1 had come to his house and told him that the appellant had touched the private parts of her daughter, due to which a meeting was held in the village. In the meeting (bichar), the parties settled the matter. However, the Police visited the place of occurrence later and arrested the appellant. In his cross-examination, PW-7 stated that nothing was written or recorded in the village meeting. As the guilt of the appellant was not proved, matter of reconciliation was discussed. PW-7 further stated that he knew the appellant since childhood and that he was a good boy. He also stated that he did not think that the appellant could have done such an act and that the informant had lodged the FIR on a false accusation.

***17.*** The evidence of PW-8 is to the effect that he knew the informant and the appellant. On the day when he was returning home after tethering the cows, PW-1 called him to her house and told him that the appellant had inserted his finger into the private parts of her daughter in his house. In the meeting, the appellant denied doing such an act. Later, the informant lodged an FIR with the Police. In his cross-examination, PW-8 stated that in his statement made before the Police, he did not state that the village bichar was held in his house and that only a discussion had been held. In the discussion, they had asked the victim to visit a Doctor. PW-8 further stated that the VDP Secretary had told him that the informant's husband had informed the Secretary that Rs. 50,000/- to Rs. 60,000/- would be needed to be paid to avoid lodging a complaint. However, no monetary transaction occurred. PW-8 further stated that as per what he had heard, the informant lodged a complaint to procure money and that in his opinion, the appellant was innocent.

***18.*** The evidence of PW-9 is to the effect that she knew the informant and the appellant who was in the dock. PW-9 stated that PW-1 told her that the appellant had inserted his hands inside the pants of her daughter in the house of the appellant. Further, PW-1 had showed her the victim's pants.

***19.*** The evidence of PW-10 is to the effect that on 04/01/2021, while serving as a Policewoman at Sootea Police Station, she brought the victim to the Court for recording her statement in connection with the case.

***20.*** The evidence of PW-11 (Investigating Officer) is to the effect that he was posted as officer-in-charge of Sootea P.S on 01.01.2021, when he received an FIR from PW-1, due to which Sootea P.S Case No. 1/2021 under Section 376 AB IPC, read with Section 4 of the POCSO Act was registered. PW-11 then took up the investigation himself and recorded the statement of the informant. He also got the statement of the victim recorded by Women Police Constable Priyanka Bharati. He thereafter visited the place of occurrence and drew the sketch-map. He also recorded the statements of the witnesses and apprehended the accused appellant. He also seized the birth certificate of the victim. PW-11 also stated that he sent the victim for medical examination on 04/01/2021 and sent the victim to the Court for recording her statement. On completion of the investigation, he submitted the charge-sheet under Section 376 AB IPC read with Section 4 of the POCSO Act against the appellant.

In his cross-examination, PW-11 stated that he received the FIR on 02/012021 and that the incident had taken place on 27/12/2020. He stated that on the date the FIR had been filed, the informant did not insist for medical examination of the victim in spite of his insistence for the same. He also stated that he did not seize any clothes worn by the victim at the time of the incident, as PW-1 had washed it. He also stated that PW-5 did not tell him about showing the clothes and panty of the victim to her by PW-1.

***21.*** The evidence of the Defence Witness (DW-1), who is the mother of the appellant is to the effect that she knew the informant (PW-1) and the victim. The incident took place on 27/12/2021. PW-1 told one Dipa Devi about the incident and Dipa Devi had told her that her son had committed a ‘bad act’ with the victim. On hearing about it, DW-1 went to the house of PW-1, wherein she asked the victim about it. However, the victim denied “saying about any incident”. Thereafter, DW-1 returned back home. DW-1 also stated that there were three houses between her house and the house of the informant. After two days, DW-1 talked about the incident to the uncle of the appellant and a village meeting was held in his house. In the village

meeting, the V.D.P. Secretary and a few others were present. However, in the meeting, the victim denied that she had spoken to anyone about the 'bad act' done by the appellant with her. After two days, on 02/01/2021, Police came and took away the appellant from their home to the Sootea P.S. Thereafter, DW-1 came to know that the mother of the victim had lodged an FIR against the appellant. DW-1 also stated that before the incident, the mother of the victim used to borrow money from her. In the village meeting, the informant told the village people that if DW-1 gave her a sum of Rs.60,000/- she would withdraw the case against the appellant. DW-1 also stated that in the year 2020, PW-1 had borrowed a sum of Rs. 3,000/- from her and had not returned the same, even though DW-1 had asked for the same. DW-1 stated that the appellant was not involved in the crime.

In her cross-examination, DW-1 stated that the V.D.P. Secretary was not related to her and that she had called for the village meeting. She also denied the suggestion that the victim's mother had not borrowed a sum of Rs.3,000/- from her and had not returned the same, despite DW-1 asking for it. She also denied the suggestion that the victim's mother did not say that she would withdraw the case against the appellant, if given a sum of Rs.60,000/-.

***22.*** In the examination of the appellant under Section 313 Cr.P.C, the appellant has basically stated that a false case had been lodged against him and he had not done anything against the victim.

***23.*** As can be seen from the evidence recorded by the learned Trial Court, the entire case against the appellant rests on the testimony of the victim, which was to the effect that the appellant had inserted his finger into her private parts, which led to bleeding. The mother of the victim had stated that around 3 p.m., the victim came screaming, stating that the appellant had inserted his finger into her private parts and on taking off the victim's panty, she saw there was bleeding in the vagina. However, PW-5, in her cross-examination had stated that the pants (panties) of the victim was clean, even though the same had been shown to her six minutes after the incident had taken place. The evidence of the doctor shows that while the incident of penetration of the victim's private parts had occurred on 27/12/2020, the victim had been examined only on 04/01/2021, i.e, approximately 8 days after the incident. The doctor's

evidence does not give any inkling as to who had told him that there was insertion of the appellant's finger into the vagina of the victim girl, which led to bleeding. As such, the only relevant portion of the evidence of the doctor (PW-6), which can be taken into consideration, is with regard to his findings at the time of his examination of the victim. In his evidence, PW-6 has stated that there was no bleeding in the private parts of the victim and there was no blood clot or any other stain on her body and private parts. Further, there was no sign of injury anywhere in her body including in her private parts. There is nothing in the medical report or in the evidence of PW-6 to show whether there was any rupture of the victim's hymen. We have also noticed that while the victim in her testimony had stated that the appellant had put a wire into her private parts, besides inserting his finger, the same is not corroborated by any other evidence, inasmuch as, there is no mention of any wire by the victim in her statement made under Section 164 Cr.P.C. It is also not the case of the other Prosecution Witnesses that any wire had been inserted into the private parts of the victim and neither was any wire seized by the Police. This also leaves us with a reasonable doubt as to whether there was any insertion of any wire into the private parts of the victim.

***24.*** A reasonable doubt has thus also arisen as to whether there was any insertion of the appellant's finger into the victim's private parts. Further, there is no proof that there was bleeding from the private parts of the victim. It is only the statement of the mother of the victim and the victim which is to the effect that there was bleeding. However, there is no corroborative evidence of the same.

***25.*** On considering the evidence of the victim, we do not doubt that the appellant had put his hands inside the panty of the victim and had apparently touched the private parts of the victim. However, as there is no proof of there being any bleeding of the private parts of the victim in terms of the testimony of PW-5, as claimed by the victim and her mother, we are of the view that the Prosecution has not been able to prove that the appellant had inserted a finger into the victim's private parts. Further, the doctor's (PW-6's) evidence also does not prove that there was insertion of the appellant's finger into the victim's private parts. As such, we are of the view that due to a reasonable doubt being created as regards penetration of the victim's private parts by the appellant's finger, the conviction of the appellant under Section 6 of the

POCSO Act was not sustainable.

***26.*** The above being said, we also find that there has been a delay of approximately 7 days in filing the FIR, inasmuch as, the incident had occurred on 27/12/2020, while the FIR had been filed only on 02/01/2021.

***27.*** In the case of ***State of U.P. vs. Manoj Kumar Pandey,*** reported in ***(2009) 1 SCC 72,*** the Supreme Court has held that absence of explanation in filing delayed FIR, does not per-say apply to cases of rape.

***28.*** In the case of ***Deepak Vs. State of Haryana*** reported in ***(2015) 4 SCC 762***, the Supreme Court has held that the Courts cannot overlook the fact that in sexual offences and in particular, the offence of rape on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons.

***29.*** In the case of ***State of Punjab vs. Gurmit Singh,*** reported in ***(1996) 2 SCC 384***, the Supreme Court has held that in sexual offences, delay in the lodging of the FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.

***30.*** We are of the view that though it is understandable that there are delays in filing FIRs pertaining to cases of sexual assault due to the reasons stated in the foregoing paragraphs, the reason for the delay in filing the present case is a little suspect. Though PW-1 had stated that the delay in filing the FIR was due to the victim's parents waiting for the appellant’s family to pay for the treatment of the victim's daughter, as they were in a poor financial condition, there is nothing to show that any medical treatment was required to be given to the victim girl. In fact, the evidence of the Investigating Officer (PW-11) is to the effect that on the date of filing the FIR, the victim's mother did not want or ask that the medical examination of the victim should be done, in spite of the insistence of PW-11. We are unable to understand as to why the victim's mother did not want the victim to undergo medical examination, if her private parts

had required treatment. The above also leaves us with a further doubt as to whether there had really been any insertion of the appellant's finger into the private parts of the victim, which led to an injury being sustained by the victim that led to bleeding in the private parts of the victim. However, as stated earlier, other than PW-1 and PW-2, there is nothing in the evidence of the Prosecution witnesses especially the Doctor, which is to the effect that the victim had bled from her private parts, due to the alleged insertion of the appellant's finger into the victim's private parts. On considering these facts, we are of the view that there has been time for embellishment of the case by the informant due to the delay in filing the F.I.R, in the peculiar facts and circumstances of the case.

***31.*** On considering all the above and keeping in view the evidence of the victim that the appellant had placed his hand inside her panty at the time that the victim was watching TV in the appellant's house, we are of the view that a case of sexual assault has been made out by the victim against the appellant in terms of Section 7 of the POCSO Act, 2012. As the victim was below 12 years old, Section 9(m) of the POCSO Act would apply, thereby making the offence committed by the appellant to be aggravated sexual assault, which is punishable under Section 10 of the POCSO Act. Consequently, the appellant is found to have committed the offence punishable under Section 9(m) of the POCSO Act, punishable under Section 10 of the POCSO Act, wherein the minimum sentence to be given is 5 years to an accused person.

***32.*** Having stated the above, we are not inclined to accept the stand of the appellant that the present case had been fabricated against the appellant, on account of the victim's mother not returning Rs.3,000/- taken as loan from DW-1. Further, the demand of Rs.60,000/- for settling the matter as per the evidence of DW-1 also does not imply that the present case is a fabricated case. The ground taken by the appellant that the failure of PW-1 to return the loan amount and the demand of Rs 60,000/- was the cause for filing a fabricated case appears to be an afterthought, inasmuch as, the Prosecution Witnesses had never been asked questions to that effect during their cross-examination. As such, we are not inclined to accept the case of the appellant that the present case is a fabricated case. In view of the above reasons, we do not agree with the finding of the learned Trial Court that Section 6 of the POCSO Act is attracted to

the facts of this case, as we find that only an offence punishable under Section 10 of the POCSO Act has been attracted.

***33.*** In view of the above reasons, the charge under Section 6 of the POCSO Act is hereby altered to Section 10 of the POCSO Act in terms of Section 216 Cr.P.C.

***34.*** The appellant is accordingly convicted under Section 10 of the POCSO Act and sentenced to undergo rigorous imprisonment for 5 years, with a fine of Rs.15,000/-, in default to suffer rigorous imprisonment for another 3 months. The period of imprisonment already undergone by the appellant shall be adjusted against the sentence imposed by way of the present judgment. Consequently, the impugned judgment dated 08/05/2025, passed by the learned Special Judge, POCSO, Bishwanath, Bishwanath Chariali, in Special (POCSO) Case No. 01/2021 is hereby modified to the extent indicated above. The sentence imposed pursuant to the impugned judgment dated 08/05/2025 is accordingly set aside and the appellant is to undergo the sentence provided under Section 10 of the POCSO Act, 2012, as provided in the earlier paragraphs, i.e, rigorous imprisonment for 5 years with a fine of Rs.15,000/-, in default, to undergo rigorous imprisonment for another 3 months.

***35.*** The appeal is accordingly disposed of.

***36.*** Send back the TCR.

***37.*** In appreciation of the assistance provided by the learned Legal Aid Counsel, her fees should be paid by the Gauhati High Court Legal Services Committee, as per norms.

**JUDGE** **JUDGE**

**Comparing Assistant**

Kuntal Datta

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