GAHC010184932025

2026:GAU-AS:14939

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

Case No. : Crl.A./335/2025

PRABODH SARMA
S/O. LT. AKHIL SARMA, R/O. VILL.- H/NO. 3, BYE LANE NO. 4, P/O AND P/S. GEETANAGAR, DIST. KAMRUP (M), ASSAM

VERSUS

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

2:RIMKI SARMAH
W/O. SRI NILUTPAL SARMAH
R/O. H/NO. 4
4TH BYE LANE
JAYA PATH
NARIKAL BASTI
P/S. GEETANAGAR
DIST. KAMRUP (M)
ASSAM

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s):Mr. S. Borthakur,Senior Advocate
Mr. N. Sarkar, Advocate
Mr. A. Bannerjee, Advocate
Mr. H. Deka, Advocate

Advocate for the respondent(s): Ms. SH Bora, APP
Ms.Debasmita Ghosh, Advocate

Date on which judgment was reserved :30.09.2026

Date of pronouncement of judgment : 06.10.2026

Whether the pronouncement is of the :

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

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

pronounced?

JUDGMENT AND ORDER (CAV)

(Shamima Jahan, J.)

This is a criminal appeal filed by the convicted appellant challenging the Judgment dated 06.06.2025 and the sentencing order dated 17.06.2025 passed by the Court of Additional Sessions Judge Cum Special Judge, POCSO, Kamrup(M), Guwahati in Sessions (SPL) Case No. 245/2023. By the said judgment and Order, the appellant was convicted under Section 10 of the POCSO Act and was sentenced to undergo RI for a period of five years with a fine of Rs. 10,000/- and in default, to undergo RI for another period of three

months.

FACTS

2. The case of the prosecution is thaton 06.11.2023, the mother of the victim lodged an ejahar, before the Officer in Charge of Geetanagar Police Station, stating inter alia that her daughter, who was nine years old, was sexually abused by her tuition(piano) teacher i.e. the appellant. The informant further stated that her daughter, who was objecting to attend her piano sessions for the last many months, could not express as to what she was facing and that on the day of lodging the ejahar, her daughter told the incident initially to her grandfather and that thereafter everyone in the family came to know about the incident. The informant also stated that the appellant used to teach piano to her daughter in the evening hours when it is dark and that he comes drunken and touches her daughter inappropriately and the same has been happening on a regular basis. Upon receipt of the ejahar, the police registered the case as Geetanagar Police Station Case NO. 274/2023 under Section 354A(1) IPC read with Section 8 of Protection of Children from Sexual Offences Act (here-in-after referred to as "the POCSO Act"). On completion of the investigation, the Investigating Officer submitted charge-sheet vide charge sheet no. 181 of 2023 dated 24.11.2023 arraying the appellant as the accused person and by stating inter alia that the case has been established under Section 354A(1) IPC as well as Section 8 of the POCSO Act against the appellant.

3. On further completion of the necessary procedures, the case was transmitted to the Court of Special Judge, POCSO, Kamrup(M) and the said Court vide order dated 25.01.2024 framed charges against the appellant under Section 354A(i) of IPC as well as Section 10 of POCSO Act. The learned Trial Court during the trial

examined 6 (six) prosecution witnesses including the Investigating Officer. Thereafter, the Trial Court examined the appellant under Section 313 of the CrPC and subsequently examined four numbers of defence witnesses and thereafter upon hearing the arguments adduced by both the parties, the learned Trial Court passed the judgment and order as mentioned above.

EVIDENCE

4. The informant was examined as PW1 and she stated before the Trial Court that the date of birth of the victim i.e. her daughter was on 04.01.2014 and that she obtained her birth certificate. She further stated that the appellant was teaching piano to her daughter around five-six months since the incident and that her daughter used to learn piano in a room in the ground floor, which was used as a study room cum guest room. This witness also stated that her daughter was initially very keen in learning piano but later she showed disinterest and that she used to tell that she does not want to continue and on asking the reason behind, her daughter never revealed anything. This witnesses thereafter stated that on 05.11.2023 she came to know about certain facts while having dinner with her family wherein her father told her that when they went abroad for a trip, her father heard from the neighbors that the appellant is a habitual drinker and that he has bad behavior. She thereafter stated that her daughter came to her on the same day at around 10:00 pm and told her that the appellant touches her private part and that the appellant tells her to shut the door and that she feels bad for such actions. Upon hearing the same, she went and lodged the ejahar.

This witness was cross-examined at length and she stated that she never

heard that accused had bad character and that she further stated that for the tuition classes, she used to pay the appellant monthly fees and that her husband had also paid additional amount as a loan and also that tuition fees was regularly paid to the appellant. This witness also stated that it is not a fact that she had not stated before the Police about hearing the incident at the dinner table. She also denied of not making a statement before the Police that her daughter came and told her about the incident at night. She further denied of not making a statement before the Police that she and her husband used to leave their daughter with her father at times during the tuition and also that she never doubted that appellant had bad character.

5. The victim was examined as PW2 and the Trial Court after examining her competency to depose and her understanding of the implication of Court case, put questions to which she answered that she used to take piano classes in her study room which is in the ground floor and that when the appellant comes for tuition, he touches her breast and shoulder and that she felt bad. To the further question put by the Trial Court, she answered that she told the incident to her father after many days and that one day when her grandfather was telling her father in the dining room that the appellant was a drinker, she realized that she has to inform her father about the actions of the appellant. She also apprised the Trial Court that she had made her statement as per her own version.

During her cross-examination, the victim again answered in question and answer form and she stated that none used to stay near her, when she used to take her tuition classes and that the appellant used to tell her that she is good at playing piano and also that the appellant stopped coming to her house after she came back from her abroad trip. This witness also stated that she had not

given her statement before the Police.

6. The father of the victim was examined as PW3 and he stated that the date of birth of his daughter was on 04.01.2014 and that the birth certificate was also obtained, which was seized by the Investigating Officer. This witness further stated that the appellant used to come thrice or twice in a week to his house for teaching piano to his daughter. He also stated that he and his family went for a vacation abroad and returned on 03.11.2023 and that after returning from the trip, while his family members were having dinner, his father-in-law told that the appellant is a drinker and has a bad behavior which was apprised to him by his wife. He further stated that on hearing the same, he and his wife decided to discontinue the tuition classes and when the victim overheard the conversation, she told them that appellant used to touch her private parts and also that appellant used to shut the door and that she feels bad. This witness thereafter stated that he went straight to the appellant's house and confronted him and that the appellant did not deny the same and also that the appellant's wife requested to forgive her husband.

This witness was cross-examined at length and he stated that apart from paying the tuition fees to the appellant, he also gave him a loan and he denied that he ever failed to pay the fees. This witness however denied of not stating before the Police about all the statements that he made in his examination in chief. He also stated that on certain occasions, he although detected the odor of alcohol from the appellant's mouth but he ignored.

7. The house owner of the appellant's tenanted premises was examined as PW4 and he stated that on 05.11.2023 at around 11:00 pm, the informant as well as her husband came to his house and abused the appellant and on asking

the reason behind, the parents of the victim stated to him that the appellant had harassed their daughter and that the appellant was thereafter handed over to the police.

During cross-examination, he however stated that he had never noticed any ill behavior on the part of the appellant.

8. Another tenant, who stayed in the rented premises of PW4 was examined as PW5 and he stated before the Trial Court similarly that on 05.11.2023 at around 11:30 pm, the parents of the victim came to the house of the appellant and abused him and upon hearing the same, when this witness came out, he was apprised that the appellant had touched the victim and also that the informant slapped the appellant many times and the police took the appellant.

During cross-examination, he however stated that he had never noticed any ill behavior on the part of the appellant.

9. The Investigating Officer was examined as PW6 and he stated that he apprehended the appellant on being informed by the informant from the place of the appellant. He stated that he recorded the statement of the victim and other witnesses and sent the victim to the Magistrate for recording her statement under Section 164 CrPC and that he had seized the birth certificate of the victim and also that upon finding incriminating evidence against the appellant, he submitted the charge sheet.

During cross-examination of this witness, he stated that although he met a domestic help in the house of the informant but he did not record the statement. This witness further proved the contradiction which was placed by the informant and her husband during their cross-examination. This witness

stated that the informant had not stated that she came to know about the behavior of the appellant, while having dinner with her father as well as other members and also that her daughter came and told her about the incident and also that she and husband goes out for work, leaving the victim with her father. This witness also stated that the father of the victim i.e. PW3 had not stated that his wife came to know about the behavior of the appellant while having dinner with her father and that she came and told him and when they were discussing to discontinue the tuition classes, the victim heard and told them about the incident and also that this witness confronted the appellant and that the appellant accepted it and that the wife of the appellant asked for forgiveness.

These are the evidences adduced by the prosecution witnesses.

10. Thereafter, the appellant was examined under Section 313 of the CrPC, wherein the appellant answered to all the incriminating circumstances put to him and stated that the allegation is totally false and further stated that the father of the alleged victim did not pay his fees and when he asked for his tuition fees, parents of the victim scolded him and when he came to know that they were going abroad he asked for his fees again, to which they said they would clear his outstanding fees after coming from abroad and after returning they forcefully entered into his room, assaulted him and lodged the case against him.

11. Thereafter, the Trial Court examined four defence witnesses. The appellant himself examined as DW1 and he stated that the father of the alleged victim, approached him to teach piano to his daughter, to which he agreed and that they were regularly paying fees but later his fees were not paid. He

thereafter stated that when he asked for his fees, he was abused by PW1 and PW3 and further that on repeated asking, PW3 paid him Rs.2420/- before going to abroad and assured him that he would pay his entire fees after coming back therefrom and that on returning, the parents of the alleged victim confronted him when he was opened the gate and attacked him and within five minutes, police came and arrested him. He also stated that whenever he takes tuition classes, the grandfather of the alleged victim was always with them and that PW1 and her two domestic helpers also visits the room to serve him tea.

During cross-examination of this witness, he however, reiterated that the grandfather used to be with him when he imparts lessons to the alleged victim.

12. A singer, who meets the appellant during music programs was examined as DW2 and she stated that to her estimation, the appellant is a good person and that she never heard of any ill reputation and never noticed any inappropriate action on the part of the appellant with any other female.

13. A neighbor was examined as DW3 and he stated that he never saw the appellant doing anything inappropriate to anyone or heard anything ill of him.

14. Another neighbor was examined as DW4 and he also stated that he never heard that the appellant had a bad character. He stated that to his knowledge appellant is a good person. These are the evidences put forth in the instant case.

SUBMISSIONS

15. Mr. S Borthakur, learned Senior Counsel submits before this Court that there are discrepancies in the statement of the witnesses as well in the

statements made in the FIR to the effect that in the FIR, it is stated by the informant that the victim had disclosed about the incident to her grandfather and thereafter, they came to know about the same but in the statement of the informant, it was stated that the victim told her first on the night when the informant came to know from her father that appellant had bad character. Discrepancy is also seen according to the learned Counsel, in the statement of the father of the victim, wherein he stated that the victim upon hearing the discussion regarding discontinuance of the tuition classes, came and told them about the incident. The learned Senior Counsel also stated that the vital witnesses were not examined in the instant case i.e. the grandfather of the alleged victim as well as the two other domestic helpers of the informant, who were alleged to have brought tea during the tuition classes. He also submits that few of the listed witnesses arrayed in the charge sheet were also not examined. He further submits that the Trial Court had not considered the statement of the appellant i.e. DW1 wherein he stated that grandfather of the alleged victim always used to present himself during the tuition classes. The learned Counsel has also placed contradiction in the statement of the alleged victim and her parents with regard to the duration of tuition classes imparted by the appellant. The learned Counsel submits that it is a settled position of law that both the prosecution witnesses and the defence witnesses should be given equal importance but the Trial Court had not considered the defence witnesses and the defence projected by them.

16. On the other hand, Ms. SH Bora, learned APP submitted that the statement of the victim before the Trial Court and before the Magistrate recorded under Section 164 of the CrPC which was exhibited as Ext. P3 was consistent to the fact of the case and as such, there is nothing to disbelief the

victim and on that count itself, conviction can be awarded, which has been rightly done by the Trial Court as submitted by her. She further submits that the victim is a sterling witness and her statement along with the corroboration present in the instant case is sufficient to bring home the guilt of the appellant.

17. Ms. D. Ghosh, learned Counsel for the respondent no.2 submits before this Court that the testimony of the victim is of sterling quality and that it does not require any corroboration. She stated that minor discrepancies which do not go to the root of the case should not be permitted to discredit a witness. She submits that PW2 had given a consistent, natural and coherent account of the abuse, in both of her statements and that she withstood the cross-examination. She also submitted that although there were minor discrepancies in the testimony of the family witnesses, the same had not vitiated the prosecution case. She has also placed reliance on Section 29 and 30 of the POCSO Act, by which it was provided that the Court will presume that appellant had committed the offence unless the contrary is proved, which according to the learned Counsel was not done so. She further stated that examination of the two helpers would not matter in view of the statement made by the victim that the appellant used to shut the door which establishes the fact that nobody had noticed the said incident apart from the victim. She also submits that non-examination of the grandfather would also not demolish the prosecution case. She thereafter stated that the victim was not examined under Section 161 of the CrPC and as such there was no question of confronting the victim with any contradiction. She further stated that the appellant was in a position of trust and he had broken the same and also that although there is some delay in the disclosure made by the victim to her parents about the incident but the same will not demolish the truthfulness of her testimony. To substantiateher

argument, the learned Counsel has placed reliance of the following judgments:

i) ***State of Punjab Vs. Gurmit Singh and Ors,*** reported in ***(1996) 2 SCC 384.***

ii) ***Rai Sandeep alias Deepu Vs. State (NCT of Delhi), r***eported in ***(2012) 8 SCC 21.***

iii) ***State of Himachal Pradesh Vs. Sanjay Kumar @ Sunny, r***eported in ***(2017) 2 SCC 51.***

iv) ***Sarwan Singh and Ors. Vs. State of Punjab, reported in (1976) 4 SCC 369.***

v) ***Meharban Vs State, delivered by Delhi High Court in Crl Apl . No. 289 of 2018.***

vi) ***V.K. Mishra and Anr. Vs. State of Uttarakhand and Anr.***, reported in ***(2015) 9 SCC 588.***

ANALYSIS AND FINDINGS

18. It is a settled position of law that in cases of sexual offence, the statement of the victim assumes utmost importance and if the said statement inspires confidence of the Court, the same can be the sole basis of conviction. It is also held by the Hon'ble Apex Court that in case the statement of the victim does not inspire confidence and it is seen that the victim cannot be termed as a sterling witness, corroboration from other evidence on record should be sought for, to bring home the guilt of the accused person. It is also held by the Apex Court that in order to reach to a finding that the statement of the victim inspires

the confidence, the victim's statement right from the beginning i.e. her statement before the Police, then her statement before the Magistrate, then her statement before the Trial Court, has to be seen and if is found that the same are consistent, conviction can be imposed. In this present case, it is noticed that the victim was not examined by the Police under Section 161 of the CrPC and the same has been stated by the victim herself. Although, the Investigating Officer in his statement before the Trial Court had stated that he had recorded the statement of the victim but on perusal of the case record, the statement of the victim did not find place. As such, this Court is left with the statement of the victim recorded by the Magistrate and by the Trial Court.

19. The victim in her statement before the Magistrate recorded under Section 164 of the CrPC stated that her piano teacher keeps on rubbing her boobs during her classes since the last two months. She also stated that her teacher insists on evening classes and tells her to close the door and that he then keeps on touching and presses her boobs. She also stated that her teacher keeps on rubbing her arms and while saying so the victim had pointed at her breast and arms. Further, while asking about the name of her piano teacher, the victim replied by taking his name, who is the appellant herein. The victim also replied to the question put to her as to whether the appellant did anything else and she stated that the appellant keeps on calling her and threatens her that he will beat her, if she does not attend classes. It be stated here that the aforesaid entire examination was in question-and-answer form. It is also seen that the said statement was recorded on 06.11.2023 i.e. on the day of lodging of the ejahar.

20. The victim before the Trial Court had stated about the incident in her

answers to the questions put by the Trial Court. The Trial Court after examining the competency of the victim and on being satisfied with regard to her ability to understand the questions, had put her the specific questions to which she replied that the accused person was her piano teacher and that he is in jail and that he has taught her piano for about two months and also that the appellant teaches her piano in her study room which was in the ground floor of her house. To the specific question as to whether the appellant had done anything wrong to her, she replied in the affirmative and stated that when he came for tuition, he used to touch her boobs and arms and she further stated that she felt bad. The Trial Court further asked her as to whether she reported the incident to anybody,to which she stated that she revealed the incident to her father one night after many days of the incident and she further stated that when her grandfather told her father in the dining room that appellant was a drinker, she then realized that she needs to inform her father about the appellant's actions and as such, she informed. This witness in her cross-examination stated that when she takes tuition, no one comes near her.

21. By examining both the aforesaid statement, it is noticed that as far as the appellant touching her private parts that is her boobs and arms are concerned, it is consistent in both the statements, with however some further additions in her statement before the Magistrate that the appellant used to keep on rubbing her boobs and presses the same and also that he keeps on rubbing her arms. That is however a minor discrepancy which is irrelevant and the said discrepancy can also result due to the fact that the statement was given by the victim after many months of the incident before the Trial Court. However, in her statement before the Trial Court, the victim did not state that the appellant used to shut the door of the room, which she stated in her statement under Section

164 CrPC. Further, the statement made by her before the Magistrate that the appellant keeps on calling her and had threatened her to beat her up, if she does not attend her class, did not find mention in her statement before the Trial Court. It is also seen that in her reply to the question as to whether she has reported the incident to anybody, she stated that she had mentioned the incident to her father, after her grandfather had told her father that appellant was a drinker. The father during his deposition had stated certain contradictory statement with regard to the fact that his father-in-law i.e. the grandfather of the victim had stated to his wife and other family members while they were having dinner that the appellant was a drinker and had a bad character. He also stated that his wife went and told him about the same and that they discussed to discontinue the tuition classes which was overheard by the victim and that the victim thereafter told both to him as well as to his wife about the incident. As such, the statement of the victim that she told her father who heard from her grandfather that appellant was a drinker did not tally with the statement of the father.

22. There is also a discrepancy when we see the statement of the mother, who stated that when she went upstairs after hearing few facts from her father, her daughter came and told her about the incident. This witness did not state about the discussion held by her with her husband. Further, in the FIR, the mother of the victim stated that the victim initially revealed the incident before her grandfather which is however not stated both by the victim as well as by the mother of the victim and neither by the father of the victim. Accordingly, a number of discrepancies are seen in the statement of the victim by looking at her own statement before different authorities and also by comparing the same with the statement of other witnesses. As such, in the considered opinion of the

Court, the victim cannot be termed as a sterling witness. In **Rai Sandeep (Supra),** the Hon'ble Supreme Court had held as under:

> "*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."

23. On the basis of the aforesaid observation made by the Apex Court, it is although seen that the statement of the victim before both the authorities are consistent with regard to the root of the case and the victim had also withstood the cross-examination but it has given room for some doubt as to the factum of the occurrence as well as the sequence of it. It is held by the Apex Court that the version given by the victim should co-relate with other supporting material and should consistently match with the version of other witnesses. In this case, the sequence with regard to the information given by the victim to her relatives did not match with the version of other witnesses. It is also seen that there is inconsistency in the factum of the case itself. As such, the victim cannot be termed as a sterling witness as stated above. In that case, the corroboration should be sought for as held by the Apex Court.

24. It is noticed that there are contradictions in the statement of the mother and father of the victim and the said contradiction was proved by the Investigating Officer. The informant stated in her cross-examination that it is not a fact that she had not made a statement before the Police about her father stating about the appellant's character, her daughter revealing the incident as well as her living the daughter with her father many times during the tuition period. These statements were thereafter placed before the Investigating Officer and the Investigating Officer had proved the contradiction by stating that the mother of the victim had not stated the same before him. Similar is the case with regard to the father of the victim i.e. PW3, where the contradiction which was placed before the said witness was proved by the

Investigating Officer. It has been held in **V.K. Mishra (Supra)**by the Hon'ble Apex Court that to prove a contradiction, the statement made by the concerned witnesses in their examination in chief, which did not find place in their statement before Police, should be placed before them during their cross-examination and if they admit that they had made those statement before the Police, the contradiction is stated to have been placed. It is the further held therein that the said contradiction will thereafter be placed before the Investigating Officer and if the Investigating Officer states that the said statements were not stated by the witnesses before him, the contradictions stand proved. This is what has happened in the instant case.

25. Corroborations to the statement of the victim are also not discernible from the other witnesses i.e. PW4 and PW5, who had although stated that victim's parents had confronted the appellant with regard to the said incident but on the other hand, they had also stated that they had never noticed any ill behavior on the part of the appellant.

26. Further it is a settled position of law that defence witness and the prosecution witness should be considered equally by the Trial Court in dealing with a case. In **Munshi Prasad Vs. State of Bihar**, Reported in **(2002) 1 SCC 351**, the Hon'ble Apex Court has held as under :

"3. * * * *

Before drawing the curtain on this score however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence - witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be attributed to the defence witnesses at part with that of the prosecution - a lapse on the part of the defence

witness cannot be differentiated and be treated differently than that of the prosecutors' witnesses"

The appellant by examining himself as DW1 had stated that the parents of the victim had not paid his fees and when he asked his money repeatedly from them,the parents of the alleged victim came and attacked him and handed him over to the Police. He had made these statements during his examination under Section 313 of the CrPC too. It is also noticed that other defence witnesses had stated that they had never seen the appellant doing anything inappropriate with any lady or anyone.

CONCLUSIONS

27. On a complete analysis of the evidence on record, it is as such found that the victim is not a sterling witness and there is also no corroboration to her evidence and also due to the fact that equal emphasis should be given to both the prosecution witness and the defence witnesses, this Court concludes that the appeal be allowed.

28. In view of the same, this Court therefore interferes with the Judgment dated 06.06.2025 and the sentencing order dated 17.06.2025 passed by the Court of Additional Sessions Judge Cum Special Judge, POCSO, Kamrup(M), Guwahati in Sessions (SPL) Case No. 245/2023. Accordingly, the said judgment is set aside and quashed and the Appellant is acquitted of the charges.

29. As such, the appellant be released forthwith, if not required in some other case.

30. Send back the LCR.

JUDGE

Comparing Assistant