GAHC010209642024

2026:GAU-AS:17523-DB

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

Case No. : CRL.A(J)/100/2024

DALIM BISWAS @ MAMTA
S/O LATE DUKHIRAM BISWAS, VILL- CHAPARMUKH, P.S.-RAHA, DIST- NAGAON (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SRI SUNU THAKUR
S/O- LATE RAM CH THAKUR

VILL- MAROWARI PATTI
NEAR CHAPORMUKH RLY. JUNCTION
P.S. ROHA
DISTRICT- NAGAON
ASSA

Advocate for the appellant : Mr. M. Sarma, Amicus Curiae

Advocate for the respondents : Ms. A. Begum, Addl. P.P, Assam,
Mr. S.D. Purkayastha, Amicus Curiae.

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Date on which judgment is reserved : **17/11/2026**

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. Sarma, learned Amicus Curiae for the appellant as well as Ms. A. Begum, learned Addl. PP, Assam and Mr. S. D. Purkayastha, learned Amicus Curiae for the respondent No. 2.

2. This appeal has been filed challenging the conviction of the appellant under Section 6 of the POCSO Act, vide the impugned judgment dated 28.12.2023 passed by the learned Special Judge (POCSO), Nagaon in Special (POCSO) Case No. 159(N)/2022, arising out of Raha P.S. Case No. 123/2022 and sentenced to undergo rigorous imprisonment for a period of 20 years with a fine of Rs.50,000/-, in default, to undergo simple imprisonment for 6 months.

3. The brief facts of the case is that the informant (PW-2) submitted an FIR dated 18.08.2022 to the in-charge of Chaparmukh Outpost, Nagaon, stating that his daughter (aged 9 years), who was a student of Class-V, had been raped by the appellant. The FIR stated that they had seen the victim being sad, depressed and kept on crying for almost two months. On 17.08.2022 at around 5:00 PM, when all the members of the family gently and lovingly asked her what was wrong, the victim stated that one Saturday in the month of June, she and her friend (PW-4) were playing in the veranda of the appellant as the school

was closed. The wife and the children of the appellant were not present at that time. The appellant then gave Rs.10 to PW-4 and asked her to buy chips. Thereafter, the appellant took the informant's daughter inside the house, gagged her mouth and raped her. As the appellant had threatened to kill his daughter, his daughter did not inform them about it. They lodged the FIR after learning about the incident. The FIR also stated that when local people questioned the appellant, he admitted to raping the victim.

4. Pursuant to the FIR, GD Entry No. 278 dated 18.08.2022 was registered with the Chaparmukh Outpost and thereafter the same was forwarded to the O/C of Raha Police Station, wherein Raha P.S. Case No. 123/2022 under Section 376(AB) IPC read with Section 6 of the POCSO Act was registered.

5. The case was thereafter investigated by PW-7 and on completion of the investigation, PW-7 submitted the charge sheet against the appellant under Section 376(AB) IPC read with Section 6 of the POCSO Act.

6. The learned Trial Court then examined 7 Prosecution Witnesses and 1 Defence Witness. After examining the appellant under Section 313 Cr.PC, the learned Trial Court came to a finding that the appellant had committed an offence punishable under Section 6 of the POCSO Act, inasmuch as, the learned Trial Court found that a case of aggravated penetrative sexual assault had been committed on the 9-year-old victim girl, in terms of Section 5(m) of the POCSO Act.

7. The learned Amicus Curiae for the appellant submits that there is no proof

that the appellant had committed aggravated penetrative sexual assault on the victim, inasmuch as, the doctor's report and evidence points to the fact that the hymen was intact and that there were no injuries on the private parts or the body of the victim. He also submits that the evidence of PW-4, who had apparently been sent away by the appellant to buy chips for Rs.10, is to the effect that she (PW-4) and the victim played in the courtyard of the house of the appellant and thereafter both returned to their houses. Further, PW-4, in her cross-examination, has categorically denied going to buy chips when she was playing in the house of the appellant. PW-4 also denied seeing the victim enter the house of the appellant while they were playing. He also submits that there are discrepancies in the statements of PW-2 and PW-3, with regard to the manner and time in which PW-2 received the information regarding the offence committed by the appellant on the victim. He further submits that the case that has been lodged against the appellant, has been fabricated by the victim's family, only on account of the fact that the appellant did not lend his boat to the victim's father, as has been reflected in the last answer of the appellant to the last question asked during examination of the appellant under Section 313 Cr.PC.

8. The learned counsel for the appellant submits that the conviction of the appellant is not sustainable, as a reasonable doubt exists with regard to the prosecution case against the appellant, for which the appellant should be given the benefit of doubt. He accordingly prays that the impugned judgment should be set aside and the appellant should immediately be released from judicial custody.

9. On the other hand, the learned APP and the learned counsel for the respondent No. 2 submit that there is no infirmity with the conviction of the appellant under Section 6 of the POCSO Act by the learned Trial Court. They submit that the explanation given by the appellant with regard to the appellant not lending his boat to PW-2 during the time of flood, being the reason for the filing of a false case by PW-2, is an afterthought. Though the appellant has tried to make out the above reason as a cause for the filing of the present fabricated case, the appellant did not cross-examine any of the prosecution witnesses, as to whether PW-2 requested the appellant for the use of his boat and being denied the use of the same by PW-2. They submit that the said issue being brought up by the appellant, was also not put to the other Prosecution Witnesses during their cross-examination. They also submit that there is no reason to disbelieve the victim's testimony, especially when there was no enmity between the victim's family and the appellant.

10. The learned APP and the learned counsel for the respondent No. 2 submit that though the evidence of PW-4, who is a friend of the victim, is basically to the effect that PW-4 and the victim were playing in the courtyard of the appellant and that they had both gone home together, the same is not borne out by the statement of PW-4 given to the police. They submit that in the 161 Cr.PC statement given by PW-4 to the police, PW-4 had stated that two girls were playing in the veranda of the appellant and PW-4 had been asked to buy chips by the appellant. The counsels submit that even though PW-4 has not been declared to be a hostile witness, the contradiction between the statement made under Section 161 Cr.PC and her testimony should also be considered by this Court. They also submit that the appellant has not cross-examined any of

the Prosecution Witnesses, including the victim, with the allegation that the victim had been tutored.

11. They also submit that that an intact hymen does not ipso facto mean that no rape has taken place, as Section 3 of the POCSO Act provides for insertion of the penis or other parts of the body of an accused, to any extent, inside the private parts of the victim. They also submit that the statement made by the victim under Section 164 Cr.PC corroborates the evidence of the victim and there is no rebuttal of the testimony of the Prosecution Witnesses by the appellant. Accordingly, they submit that in view of the above reasons, the impugned judgment should not be interfered with.

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

13. The evidence of PW-1, who is the victim, is to the effect that around one year ago, at around 12 noon, after she had returned to her house, her friend (PW-4) had called her to the house of her paternal uncle (appellant) to play. While they were playing in the verandah of the appellant's house, the appellant gave Rs. 10/- to PW-4 and asked her to purchase chips from the shop. The appellant then took her inside one of the rooms of his house and closed the door. Thereafter, the appellant made the victim lie on the floor, whereupon he inserted his penis into her vagina. The appellant then took out some white substance from his penis and threw the same on her body. The victim also stated that when the appellant inserted his penis into her private parts, she told the appellant that she wanted to urinate. He allowed her to leave, but warned her that if she told anyone about the occurrence, he would chop her into pieces. When asked by the Trial Judge as to whether she reported the

occurrence/incident to her parents, the victim said that she did not report the incident to her parents immediately, out of fear. However, as her mother asked her after two months as to why she kept crying, she told her mother about the incident. Her mother then informed her father, due to which an FIR was lodged by her father. When asked whether she was medically examined, interrogated by the Police and had given her statement before the Court, she answered in the positive.

In her cross-examination, she was asked the name of her school and the distance from her house to school, which she replied. On being asked as to where she was playing with her friend, she said that they were playing in the verandah. When asked as to whether she raised an outcry when she was being raped, she answered in the positive, but said that no one heard her. When asked as to whether the white substance stuck to her clothes, she also answered in the positive.

14. The evidence of PW-2, who is the father of the victim, is to the effect that he lodged the FIR against the appellant. He stated that the occurrence took place in the month of June, 2022 and that his daughter had appeared sad and kept sulking from June, 2022. When her mother asked her as to what was the matter, the victim told her mother that she would tell her everything if she was not beaten up. On being asked by her mother, the victim told her mother in August, 2022 that the appellant had raped her and that only the appellant was present in the house. On returning to the house in the evening, PW-2 stated that his wife told him about the incident.PW-2 then stated that his wife and the villagers went to the house of the appellant the next morning and asked him about the incident, to which the appellant confessed his guilt in front of his wife (PW-3) and the villagers. PW-2 stated that the victim was around 9 years of age

when he lodged the FIR. He also stated that the Police seized the Birth Certificate of his daughter and that he had brought the original Birth Certificate with him, which was exhibited as Ext- 4. The Birth Certificate of the victim showed her date of birth to be 04/12/2012.

In his cross-examination, PW-2 stated that while the appellant lived in his own house at Chaparmukh, they lived in a rented house. PW-2 stated that he did not say that his wife went to the house of the appellant in the following morning and asked about the incident, to which the appellant confessed, in his statement made under Section 161 Cr.PC. He also stated that there were two houses between his house and the house of the appellant and that his daughter (victim) did not complain to them about any pain being felt by her and did not report the incident to any family member before the month of August. He denied the suggestion that the appellant had not raped his daughter.

15. The evidence of PW-3, who is the mother of the victim, is to the effect that in the month of June, 2022 at around 12 noon, PW-4 called the victim and they went to the verandah of the house of the appellant.PW-3 stated that she used to notice her daughter crying for about two months after the said date. She accordingly took a stick and asked her daughter why she kept on crying. She also stated that she had also asked the victim as to why she had cried on earlier occasions also, but her daughter did not make any reply to her earlier requests. Her daughter then requested PW-3 not to beat her and told her that she had gone with PW-4 to play on the verandah of the appellant's house, when the appellant was alone in his house. The appellant then sent PW-4 to buy chips after giving her Rs. 10/-. The appellant also forbade the victim from going with her friend PW-4. The appellant then took her daughter by the hand and took her inside one room, where he made her lie on the floor and opened her panty.

He then opened his pants and inserted his penis inside the victim's vagina.PW-3 also stated that the victim wanted to shout, but the appellant had gagged her mouth with his hand. Thereafter, the appellant threw white substance from his penis into the vagina of her daughter. On the victim telling the appellant that she wanted to urinate, the appellant threatened to kill her if she reported the incident to anybody.PW-3 stated that she learnt about the incident on 17/8/2022 and that she did not report the matter to her husband out of fear. However, the following day after lunch, she told her husband about the incident. Her husband informed their landlord and other people, whereupon the appellant was called by the villagers and asked about the incident. The appellant then confessed his guilt in the presence of PW-1, PW-3, PW-5 and other villagers.PW-3 stated that she did not remember the names of the other people and that her husband thereafter lodged the FIR. She also stated that at the time of the incident, her daughter was about 9 years and a few months old.

In her cross-examination, PW-3 stated that on the date of the incident, her daughter did not cry after returning from the house of the appellant. She also stated that her daughter was in a pensive mood for more than 15 days, and that she noticed a change in her behaviour after the incident. She denied the suggestion that she did not speak about the incident to her husband immediately in her Section 161 Cr.PC statement as her husband was in a drunken condition.PW-3 stated that on returning from the house of the appellant, her daughter immediately went to take a bath and washed her clothes by herself.She also stated that 3 days after the occurrence, her daughter told her that she developed a tendency to urinate frequently and her vagina used to pain during urination. Though she wanted to take her daughter to a doctor, her daughter refused to go.PW-3 was also stated that she did not tell the

Investigating Officer that 3 days after the occurrence, her daughter had told her that she developed a tendency to urinate frequently and that her vagina used to pain during urination. She denied the suggestion that the appellant had not taken the victim into a room and after opening his own clothes and the clothes of the victim, had sexual intercourse with her. She denied the suggestion that there was a fight between the appellant and her husband, as her husband used to get drunk, due to which a false allegation had been levelled against the appellant.

16. The evidence of PW-4, who was the 8 year old friend of the victim, is to the effect that she did not know the appellant, though she addressed him as "pisa" (uncle). PW-4 stated that she and the victim were playing in the courtyard of the appellant in the afternoon. Thereafter, the victim returned to her own house and she (PW-4) returned to her own house.

During cross-examination, PW-4 was asked as to whether she had gone to buy chips when playing in the house of the appellant, to which PW-4 answered, saying that she did not go to buy chips. On being asked as to whether PW-4 and the victim were playing together in the courtyard of the appellant, PW-4 replied in the positive. On being asked as to whether PW-4 had seen the victim going inside the house of the appellant when they were playing, she replied in the negative.

17. The evidence of PW-5 is to the effect that he knew PW-2 and the appellant, as both were his neighbours. While he was in his shop in the year 2022, PW-2 telephoned him and called him to his house. On going to the house of PW-2, PW-2 told him that when the victim and PW-4 were playing in the house of the appellant, the appellant sent PW-4 to buy chips from a shop. Thereafter, he did some bad things to the victim. PW-5 stated that the appellant

was the paternal uncle (peha) of PW-4. PW-5 also stated that the woman in the village and himself took the appellant to an open space, wherein the appellant denied the allegations made against him in front of the village women and other villagers. The villagers then called the police and the police took the appellant to the Police Station.

In his cross-examination, PW-5 stated that PW-2 had telephoned him two months after the incident. He also stated that PW-2 was his tenant for the last three years.

18. The evidence of PW-6, who is the Doctor who examined the victim, is to the effect that on 18/08/2022, he was posted at Naogaon B.P. Civil Hospital as Medical and Health Officer-I. On 10-30 p.m. of 18/08/2022, he examined the victim and he found the following:-

"***Identification Marks*** -
(a) Black mole under left axilla.
Height-120 Cm.
Teeth - 12/14.
Axillary Hair - not developed.
Hymen - intact.
Mark of violence - not seen.
LMP has not attained menarche.
Weight-25 Kg.
Breasts not developed.
Pubic Hair - not developed.
Vaginal Injury - not seen.
Clothings-normal.

Smear examination vide Regd. No. 6109, reported by Pathologist Dr. J. Hussain shows - No Spermatozoa.

X-Ray examination of the right wrist, elbow and iliac crest vide No. 18877,

dated 20.08.2022, reported by Radiologist Dr. M. Talukdar shows radiological age approx between 8 to 11 years.

Right Wrist joints, Right Elbow joints, Right Iliac Crest- Epiphysis have not fused, Epiphysis of radius and ulna have not appeared."

The opinion of PW-6 is to the following effect:-

"***OPINIONS***:

1) Her actual age is between 8 to 11 years.

2) There is no evidence of recent sexual intercourse.

3) There is no evidence of injury to her body and private parts.

4) She is not pregnant.

PW-6, Exhibit 5 is the Medical Examination Report and PW6, Exhibit 5(1) is my signature."

19. The evidence of PW-7, who is the Investigating Officer of the case, is to the effect that on 18/08/2022, while he was posted as SI at Chaparmukh PP, PW-1 lodged an FIR. He thereafter, registered GDE No. 278 dated 18/08/2022. On forwarding the same to the Officer-in-Charge of the Raha Police Station, the FIR was registered as Raha PS Case No. 123/2022 under Section 376AB IPC read with Section 6 of the POCSO Act. PW-7 stated that he was made the Investigating Officer and after investigating the case, besides having the statement of the victim recorded under Section 164 Cr.PC and the victim being medically examined, he submitted the charge sheet against the appellant under Section 376AB IPC read with Section 6 of the POCSO Act.

In his cross-examination, PW-7 stated that he recorded the statement of PW-4 and the other witnesses. PW-7 stated that PW-2 had not stated in his 161 Cr. PC statement that his wife had gone to the house of the appellant on the following day and asked him about the incident and that the appellant had confessed to having committed the offence. He also stated that PW-3 did not

state in her 161 Cr.PC statement that on learning about the occurrence, she did not tell her husband immediately about the same, as he was in a drunken condition. He denied the suggestion that he did not investigate the case properly.

20. The evidence of DW-1, who is the mother-in-law of the appellant, is to the effect that she has resided in the house of the appellant for the last 12 years. She stated that in the year 2022, in the absence of her daughter, two girls visited the house of the appellant. She was in the house of the appellant at that time and she told the two girls that there was nobody in the house and asked them to go away. DW-1 stated that she did not know the names of the two girls and that nobody except herself was present in her daughter's house at that time. DW-1 stated that the allegations against the appellant were completely false.

In her cross-examination, DW-1 stated that she did not remember the date when the two girls visited the house of the appellant. She, however stated that the two girls had visited the house of the appellant when she was present at around 9 to 10 a.m. She denied the suggestion that she had been tutored by the appellant to depose before the Court.

21. The examination of the appellant under Section 313 Cr.PC, with regard to the appellant being present in the house when the victim and PW4 were playing in the verandah of his house, the appellant stated that he was not alone in the house, as his mother-in-law was present in the house. He also denied the evidence that had been recorded to the effect that he had confessed his guilt in front of PW-3 and the villagers, by saying that no villager had come to his house and that he had not confessed anything. With regard to the evidence of PW-4 that PW-4 and the victim were playing in the courtyard of the appellant, before

returning to their respective houses, the appellant stated that the victim and PW-4 were playing in the courtyard and he was working on something. With regard to the question regarding the evidence where he had sent PW-4 to buy chips from a shop and thereafter had raped the victim, the appellant stated that "I did not commit any bad work with 'X'. He also denied the suggestion that any village women or villagers had come to his house with regard to the said incident, by saying that no one came to his house. On being asked as to what he had to say about the allegations made against him, the appellant stated as follows:

> "*The father of 'X' used to quarrel with me in intoxicated condition. He asked for my boat during flood. As I refused to give my boat, he used obscene words at me and said 'sai lom'. The allegations are false*." "Sai lom" translated means "We'll see"

22. The statement of the victim made under Section 164 Cr.P.C. is to the following effect :-

> "*The incident occurred before the first flood (this year). Around 12 noon, I returned from school. When I was at home, Sumi came and called me to the house of her Peha (uncle husband of her father's sister) to play. We were playing on the verandah of her Peha's house. At that time, her Peha Dalim Biswas was alone in his house. He sent Sumi (his niece) to go to a shop to purchase chips. I also wanted to go with Sumi, but her Peha (Dalim) dissuaded me. After sometime, he took me inside a room. He forcefully made me lie on the ground and removed my small pants (pair of panties). Peha forcefully inserted his penis into my vagina. I felt acute pain. He kept pressing for a while and threw some "white substance" on my body. I felt scared. I came out saying that I needed to urinate. Sumi's Peha (Dalim Biswas) warned me that if I reported the incident to anybody else, he would cut me into pieces.*
>
> *I did not tell my parents out of fear, but I kept crying every day. One day*

when my mother questioned me angrily, I told her everything about the incident."

23. In the case of ***State of H.P. vs. Manga Singh***, reported in ***(2019) 16 SCC 759***, the Supreme Court held that merely because there was no rupture of the hymen, it cannot be said that there was no penetration of the perpetrator's penis into the private parts of the victim. It further held that in a case of rape, it is not necessary that external injury is to be found on the body of the prosecutrix.

24. In the case of ***State of Tamil Nadu vs. Raju @ Nejru***, reported in ***(2006) 10 SCC 534***, the Supreme Court held that rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to, be made by the Medical Officer treating the victim. The only statement that can be made by the Medical Officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one. Thus, even if the opinion of the Doctor is to the effect that examination of the victim showed that the findings were not consistent with recent sexual intercourse or assault, the same cannot be sufficient to disbelieve the accusation of rape by the victim. The probative value of medical evidence is merely that of a corroborating nature, if at all any such corroboration is necessary.

25. Though the medical evidence does not indicate that rape had been committed by the appellant upon the victim, we have to keep in mind the fact that the victim was around 9 years of age at the time when she was alleged to have been raped. A reading of Section 3 of the POCSO Act, shows that a slight penetration, to any extent, by the penis into the vagina of the victim' also attracts the offence of penetrative sexual assault. The evidence of the child that appellant's penis had penetrated her vagina and that a white substance came

out from the appellant's penis, which was thrown at her body by the appellant, supports the testimony of the victim that she had been raped.

26. In the case of ***Lok Mal Alias Loku Vs. State of Uttar Pradesh*** reported in ***(2025) 4 SCC 470***, the Supreme Court in para 16 has held as follows :-

> "*16. It is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In* ***State of Punjab v. Gurmit Singh*** *reported in* ***(1996) 2 SCC 384****, the Supreme Court observed as under: (SCC p. 403, para 21)*
>
> > *"21. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend "assurance" to her testimony, short of corroboration f required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."*

27. When we look at the evidence of the victim (PW-1), the father (PW-2), and the mother (PW-3), we find that the core issue of the victim having been raped by the appellant is quite apparent, notwithstanding the fact that there are minor discrepancies as to when PW-2 got to know of the fact that his daughter had been raped. In any event, the said discrepancy is a minor discrepancy and does not go to the root of the Prosecution case.

28. The problem with the above, however, arises with the evidence of the victim's friend, i.e, PW-4, who testified that she did not know the appellant, though she addressed him as uncle. PW-4 further testified that she and the victim were playing in the courtyard of the appellant and both returned to their respective houses subsequently. PW-4 further denied that she had gone to buy chips. This testimony of PW-4, however, is belied by her statement made under Section 164 Cr.P.C, wherein she has stated that the two girls were playing in the verandah of the appellant and that PW-4 had been asked to buy chips by the appellant, which is similar to the testimony of the victim. We also find that PW-4, though not declared a hostile witness, is basically trying to spin a lie, inasmuch as, she stated in her testimony that she did not know the appellant, whom she addressed as 'Pisa' (uncle). This is clear from the evidence of PW-5, who stated that the appellant was the paternal uncle (Peha) of PW-4. The above clearly goes to show that PW-4 has intentionally tried to throw the Prosecution off guard, by pretending not to know her uncle, i.e, the appellant. On considering the above, we are of the view that the evidence of PW-4 is not truthful and has only been made to save her uncle, i.e, the appellant. As such, we find the testimony of PW-4 as not reliable.

29. The fact that the victim and PW-4 were playing in the verandah of the appellant's house, as per the testimony of the victim, has not been shaken by the appellant, inasmuch as, there is no cross-examination of the victim, to the effect that the victim had not been playing in the verandah of the appellant's house along with PW-4. The closest question that was asked with regard to the above during the time the victim gave her testimony, was as follows:

> *"Were you playing on the courtyard or on the veranda?"* The victim answered:

"We were playing on the veranda."

30. There was no suggestion that the victim was playing in the courtyard of the appellant's house. In view of the above, we are of the view that the victim had been playing in the verandah of the appellant's house.

31. Though the Doctor (PW-5) has stated that the hymen of the victim was intact, we are of the view that there had been penetrative sexual assault on the victim by the appellant and the description of the white thing that had come from the appellant's penis, which had been thrown onto the victim's body, implies that the same was spermatozoa and nothing else. In fact, no suggestion had been made by the appellant to the victim during cross-examination that no white thing had come out from the penis of the appellant, that had been thrown onto the body of the victim.

32. With regard to the appellant's counsel's submission that the non-lending of the appellant's boat to the victim's father resulted in a false case being filed against the appellant, the same is not borne out by any evidence. In fact, the appellant has not put the said issue before the Prosecution witnesses, to prove that the non-lending of the boat by the appellant to the victim's father, was the reason for a false case to be instituted against the appellant. We accordingly find that the said excuse/explanation was an afterthought and could not have been the reason for filing the present case against the appellant. We also find that the statement made by the victim under Section 164 Cr.P.C corroborates her testimony given during trial and as such, we find the testimony of the victim to be trustworthy and inspires the confidence of the Court. Thus, we do not find any ground to interfere with the decision of the learned Trial Court. The birth certificate of the victim clearly shows that she was below 12 years of age at the time of the incident. As such, we do not find any infirmity with the conviction of

the appellant under Section 6 of the POCSO Act.

33. Accordingly, the appeal is dismissed.

34. Send back the TCR.

35. In appreciation of the assistance rendered by the learned Amicus Curiae for the appellant and respondent No.2, their fees should be paid by the Gauhati High Court Legal Services Committee as per norms.

JUDGE **JUDGE**

Comparing Assistant