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2026:GAU-AS:17522-DB

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

Case No. : Crl.A./425/2024

RANJAN BORUAH
S/O SRI SACHINDRA BARUAH,
RESIDENT OF JATIA UJJAL NAGAR, GANESHGURI, PS DISPUR, DIST KAMRUP M ASSAM

VERSUS

STATE OF ASSAM AND ANR
REPRESENTED BY PP ASSAM

2:MAMTA BEGUM
W/O RAHIM UDDIN

RESIDENT OF VILLAGE CHOTE LENGRI
PS DILLAI
DIST KARBI ANGLONG
ASSA

For the Appellant : Mr.D. Talukdar, Sr. Adv.
Mr. P. Choudhury, Adv.

For the Respondent : Mr. R.R. Kaushik, APP, Assam (R/1)
Mr. A.M. Dutta, Amicus Curiae (R/2)

- B E F O R E -

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Date on which judgment is reserved : **19/11/2026**

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.D. Talukdar, learned senior counsel assisted by Mr. P. Choudhuary, learned counsel for the appellant. Also heard Mr.R.R. Kaushik, learned APP for the State and Mr. A.M. Dutta, learned Legal Aid Counsel for the respondent no. 2.

2. The present appeal is against the impugned judgment dated 21.10.2024 passed by the Additional District & Sessions Judge, Karbi Anglong, Diphu, in Sessions Case No. 134/2015, arising out of Dillai PS Case No. 17/2012, by which the appellant was convicted under Section 376(2)(f) IPC and sentenced to undergo rigorous imprisonment for 14 years with a fine of Rs. 1 lakh, in default, simple imprisonment for 3 months. He was also convicted and sentenced under Section 458 IPC to undergo rigorous imprisonment for 5 years with a fine of Rs. 10,000/-, in default, simple imprisonment for 1 month. Both the sentences were to run concurrently.

3. The brief facts of the case is that an FIR dated 31.05.2012 was submitted by the informant (PW-1), who is the mother of the victim, to the Officer-in-Charge, Dillai Police Station, Karbi Anglong.
The FIR stated that around 1:00 a.m. on 31.05.2012, the appellant trespassed into their house and raped her 8 year old daughter. She also stated that her husband had expired about 5 months ago and she had no other family members except her two young sons. She also stated that she could not stop the appellant and that she knew the appellant, who used to come to their house earlier. Pursuant to the FIR, Dillai PS Case No. 17/2012 was registered under Section 458/376(2)(f) IPC.

4. The investigation of the case was entrusted to PW-17, who was the in-charge of the Lahorijan Police Outpost and
PW-18, who was entrusted with the case diary pertaining to the said case. PW-17 stated that as he was transferred, he handed over the case diary to the DSP, Karbi Anglong. PW-18 also stated that she arrested the appellant during investigation and had also handed over the case diary to the Reserve Sub-Inspector, SP Office, Diphu, on conclusion of the investigation.PW-16 stated that he received the case diary from the Office of the Superintendent of Police, Karbi Anglong on 07.01.2013 and carried on the investigation, as the case was re-registered as Diphu PS Case No. 17/2012 under Section 458/376(2)(f) IPC. On completion of the investigation, PW-16 submitted the charge sheet against the appellant under Sections 458 and 376(2)(f) IPC.

5. The learned Trial Court then examined 18 Prosecution Witnesses and after examining the appellant under Section 313 Cr.PC, it came to a finding that

the appellant had committed the offences punishable under Section 458 IPC and Section 376(2)(f) IPC. Consequently, the appellant was convicted and sentenced under Section 458 and Section 376(2)(f) IPC.

6. The learned Counsel for the appellant submits that the impugned conviction and sentence has to be set aside in view of the fact that the testimony of the victim and her mother have been contradicted by their statements made under Section 164 Cr.PC.
He also submits that there is no identification of the appellant by the witnesses. Further, the Doctor's report shows that the hymen of the victim was intact, though there was a tear in the fourchette.
He also submits that it is highly unlikely that a person would rape the victim, while she was sleeping with her mother and two brothers inside one mosquito net. He accordingly submits in view of there being no evidence to prove that rape had been committed upon the victim, the appellant should be acquitted of the charges framed against him.

7. On the other hand, the learned APP submits that the deposition of the victim remains intact, though the same is contradicted by the statements made in her Section 164 Cr.PC, inasmuch as, the statements made in her 164 Cr.PC have not been put to the victim at the time of examination of the victim. He also submits that the Doctor's medical report is to the effect that there has been manipulation of the victim's genitalia, which prove that rape had occurred. He submits that he is not relying upon the statement of the victim and the victim's mother made under Section 164 Cr.PC, inasmuch as, there is an obvious contradiction in their statements vis-à-vis their testimonies before the learned

Trial Court.

8. Mr. A.M. Dutta, learned Amicus Curiae, for the respondent no. 2 submits that there appears to be some infirmity as regards identification of the person, who raped the victim, based on the statements made by PW-1 andPW-2 under Section 164 Cr.P.C. Further the medical evidence of the Doctor shows that the hymen was intact, though there was small tear seen at the fourchette. The evidence of the Doctor was that there was no evidence of recent sexual intercourse, though the genitalia showed that there was suggestive manipulation.

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

10. The evidence of PW-1, who is the mother of the victim, is to the effect that she knew the appellant and that 7 years ago, while sleeping with her children, she heard a hue and cry from her daughter at about 1:00 a.m. On waking up, she saw the appellant going out of their room. Her daughter then told her that the appellant had raped her. She went to the Police Station and filed the case on the next day.

11. The cross-examination of the victim [PW-1] is to the following effect:-

> "*I have not seen the occurrence.*
>
> *It is not a fact that I have filed false case."*

12. The statement of PW-1 under Section 164 Cr.PC is to the effect :-

"*I live with my children at Lahorijan Bazar. I sell vegetable in the market for my living. On the night of 30/8/12 Sri Ronjon rang me up in my mobile three time and he gave me miss call four times. Then I had conversation with him. Where he asked me about my husband and what I do for a living. I told him that my husband had died due to cancer in Gauhati and that it is almost five months since he passed away. He then insisted that he wants to come over for the night, to which I refused. But around 1 AM he came to my house and open the door of my house and came inside. He sat inside the room for sometime and had smoke cigarette and I came to know that from the cigarette butt on the floor of the house.*

After sometime I saw a men coming inside my mosquito net and to the bed. He then went near where my daughter was sleeping and began to assault her sexually. My daughter was in great pain, due to forcible entry into her private part, and she shouted for help. I also got up and started to cry for help but no one came for help us. I do not recognize the person as I saw only the backside of the person. Early in the morning at around 6.30 AM I went to the Battalion Camp located at Lahorijan Sunday market looking for Ronjon, as he was the last person with whom I had talk with on that night and that what I presumed."

The same has been exhibited by the learned Trial Court as Ext. 8.

13. The evidence of PW-2, who is the victim, is to the effect that she knew the appellant and that 7 years ago, when she was sleeping with her mother, brother and sister, the appellant trespassed into their house and raped her. On raising a hue and cry, her mother woke up, whereupon she told her mother about being raped. In the morning, PW-2 and her mother went to the Police

Station,where a case was filed. PW-2 further stated that she was produced in the Court and the Magistrate recorded her statement.

In her cross-examination, PW-2 stated, *"At the time of occurrence electric light was there in our room."*

14. The 164 Cr.PC statement of the victim (PW-2) is to the following effect:-

> "*I live with my mother and two small brothers at Lahorizan Bazar. On the night of 31/5/12, I was sleeping along with my mother and two small younger brothers. On that night at about 1 AM I suddenly felt someone on top of me, and felt a sharp pain in my private part. Since I was in great pain I screamed for help, and then only everyone woke up. I then saw a men running out of the room. I do not recognize the person, as I have seen only his backside. After sometime I wash myself with water in the river in the morning after my mother left for the Battalion Camp.*"

15. The evidence of PW-3 is to the effect that he did not know the informant nor did he know the appellant. In the year 2012, he was posted in the Dillai Police Station as a Constable and remembered putting his signature in two seizure lists as asked by PW-17, wherein two mobile phones had been seized.

16. The evidence of PW-4 is to the effect that he did not know anything about the case.

17. The evidence of PW-5, who is the Doctor,who examined the victim (PW-2) on 31.05.2012, is that he found the following on the victim:-

> "*1. Height 114cm, weight 15.5 Kg,*
>
> *2. Secondary sexual character- not fully developed.*
>
> *3. No injury marks seen on the body.*
>
> *4. Dentition upper 6-6, lower 6-5.*
>
> *5. Hymen intact, however a small tear seen at the fourchette.*
>
> *6. Vaginal swab- no spermatozoa seen."*

The opinion of the Doctor (PW-5) with regard to his examination of the victim was to the following effect :-

> "*1. There is no evidence of recent sexual intercourse. Recent means within 72 hr.*
>
> *2. There is suggestive manipulation of genitalia.*
>
> *3. Age of the victim below 18 years."*

18. The evidence of PW-6, PW-7, PW-11 and PW-12,is to the effect that they did not know anything about the incident.

19. The evidence of PW-8, PW-9, and PW-10, is to the effect that they had heard about the incident.

20. The evidence of PW-13 is to the effect that he was told by the Officer-in-Charge of the Dillai Police Station that the appellant had to be sent to the Dillai Police Station. Later, he was informed that the appellant had been arrested

in a rape case.

21. The evidence of PW-14 is to the effect that he later came to know that the appellant had been taken to Diphu Police Station, though he did not know the reason for the same.

22. The evidence of PW-15 is to the effect that he heard that the appellant had been taken to the Police Station, though he did not know the reason for the same.

23. The evidence of PW-16 is to the effect that he received the case diary from the SP, Karbi Anglong, for investigating the Dillai PS Case No. 17/2012, which was re-registered as Diphu PS Case No. 17/2012 under Sections 458/376(2)(f) IPC. As a substantial part of the investigation had already been completed, he collected the FSL report and the medical examination report of the victim. Thereafter, he submitted the charge sheet against the appellant under Sections 458 and 376(2)(f) IPC.

24. The evidence of PW-17 and PW-18 is to the effect that they were initially made to investigate the case pertaining to Dillai PS Case No. 17/2012. However, PW-17 was transferred and as such, PW-17 and PW-18 handed over the case diary to the SP's office, Diphu.

25. The evidence of Defence Witness -1 (DW-1) is to the effect that he and the appellant were posted together in Lahorijan BOP for three years. After finishing his duty after 12:00 a.m. on 30.05.2012, the appellant came on duty after 12:00 a.m. He also stated that they were not allowed to leave their camp without the permission of the senior officer. He also stated that the appellant was arrested due to an allegation of rape.

26. The examination of the appellant under Section 313 Cr.PC with regard to the adverse evidence adduced against him, had been replied by the appellant by saying that he had been falsely implicated in the case.

27. As can be seen from the evidence of the Prosecution Witnesses and the Defence Witness, to make a finding with regard to whether rape had been committed upon the victim, the evidence of PW-1 and PW-2 are relevant along with that of PW-5 (Doctor). PW-1 has stated in her testimony that on hearing a hue and cry from her daughter, she woke up and saw the appellant going out from their room and that her daughter had told her that the appellant had raped her. We however find the same to be contradicted by the statement of PW-1 made under Section 164 Cr.PC, which is prior in point of time, wherein she has categorically stated that the appellant had come to their house and had smoked cigarettes. The latter part of her statement under Section 164 Cr.PC does not speak of the appellant sexually assaulting the victim, as she could not recognize the person. When PW-1 states that she saw some man coming into her

mosquito net in her Section 164 Cr.PC statement, it could only refer to a third person, as the appellant's name had already been identified as the person who smoked cigarettes and there was nothing stated to the effect that it was the appellant who came inside the mosquito net and sexually assaulted the victim. Further, the statement of PW-1 under Section 164 Cr.PC is to the effect that she did not recognize the person as she only saw the back side of that person.

28. The evidence of the victim (PW-2), is to the effect that she identified the appellant as the person who had raped her. The statement made by the victim under Section 164 Cr.PC is to the effect that she saw a man running out from the room and that she did not recognize the person, as she saw only his back side.

29. In the case of ***R. Shaji vs. State of Kerala*** reported in ***(2013) 14 SCC 266***, the Supreme Court has held that a statement made under Section 161 Cr.PC can be used for contradicting a witness, while a statement made under Section 164 Cr.PC can be used not only for the purpose of contradicting a witness, but also for the purpose of corroborating the testimony of the witness. In the present case, the Section 164 Cr.P.C statements of PW-1 and PW-2 clearly show that they have not identified the person who had allegedly raped the victim. Further, the evidence of the Doctor (PW-5) is to the effect that the hymen of the victim was intact though a small tear was seen at the fourchette. There was also no evidence of recent sexual intercourse, though there was suggestive manipulation of the genitalia.

30. We are aware that for the purpose of contradicting a witness, the witness has to be drawn to the particular statement he has made under Section 161 Cr.PC or Section 164 Cr. PC, to discredit the witness, which has not been done in the present case, in terms of Section 145 of the Evidence Act. However, we cannot turn a *Nelson's eye* to the blatant contradiction made by the PW-1 and PW-2 in their Section 164 Cr.PC statement, especially when they have been exhibited as Ext. 8 and Ext. 9 respectively. Once they have been exhibited by the learned Trial Court, they would have to be considered and compared with the testimonies given by PW-1 and PW-2 during trial, even if the statements made under Section 164 Cr.PC are not substantive evidence.

31. The evidence of PW-1 is to the effect that she saw the appellant going out of their room and that her daughter had told her that the appellant had raped her. The evidence of PW-2 (victim) is to the effect that when she was sleeping with her brother, sister and mother, the appellant trespassed into their home and raped her. On hearing a hue and cry, her mother woke up. There is nothing in the evidence of PW-1 and PW-2 to show that the victim had felt any pain due to the alleged rape and as to what had been done thereafter. It is inconceivable that a rape would have occurred while the victim was sleeping with her siblings and her mother in one bed and under one mosquito net. Though PW-1 had stated that she saw the appellant going out of their room, it is only the PW-2, who had stated that the appellant had raped her. However, their statements made under Section 164 Cr.PC, which was made just one day after the alleged rape, is conspicuously silent with regard to the identity of the rapist. The testimony of PW-1 and PW-2, which was however taken after six years, has named the appellant as the perpetrator of the rape. We are not

convinced with the evidence of PW-1 and PW-22 that the appellant was the person, who was the perpetrator of the crime in question, keeping in view the fact that the hymen of the victim was intact, as can be seen from the evidence of the Doctor and the medical report, which had been made on 31.5.2012 at 4:15 p.m., while the alleged rape had also occurred on the same day.

32. On considering the fact that there is a major discrepancy and contradiction with regard to identification of the perpetrator of the crime, in terms of the testimony of PW-1 and PW-2 and their respective statements made under Section 164 Cr.PC, the testimony of PW-2 cannot be said to be reliable to convict the appellant, in the absence of other corroborative evidence. In terms of the judgment of the Supreme Court in the case of ***Rai Sandeep vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21,*** the Supreme Court has held that the statement of a sterling witness should be consistent from the starting point through the final Court testimony, with no contradictions/prevarication regarding the sequence of events, the crime or the person involved. In the present case, not only has there been a contradiction of the testimony of PW-1 and PW-2 by their statements made under Section 164 Cr.PC, which have been exhibited in the Court, we are not convinced with the truthfulness of the evidence of PW-1 & PW-2. As such, they cannot be said to be sterling witnesses and as such, it would not be safe to convict the appellant in the absence of some other corroborative evidence.

33. We are accordingly of the view that a reasonable doubt has arisen as to whether the appellant was the perpetrator of the alleged offence of rape, besides keeping in view the fact that the Doctor's evidence is to the effect that

the hymen was intact and there was no evidence of recent sexual intercourse.

34. In view of the reasons stated above, we are not in agreement with the learned Trial Court that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt. In fact, we are of the view that the prosecution has not been able to prove beyond all reasonable doubt that the appellant had committed the offence under Section 376(2)(f) IPC.

35. With regard to the question of trespass of the house, the victim's mother has said nothing about the appellant trespassing their house, in her testimony, though in her statement made under Section 164 Cr.PC, PW-1 has stated that though she did not want the appellant to come to her house, he had come into their house at around 1:00 a.m. and opened the door. He had also sat inside the room for some time and smoked cigarettes. The statement made by PW-1 under Section 164 Cr.PC is not admissible as evidence and is not a part of her testimony. Though PW-2 (victim) had stated that the appellant had trespassed into their house and raped her in her testimony before the Court, which we have held to be doubtful, the statement of PW-2 under Section 164 Cr.PC does not say anything about the appellant trespassing into their house or raping the victim. However, as we do not have confidence in the evidence of PW-2, the conviction of the appellant under Section 458 IPC is accordingly set aside, as the prosecution has also not been able to prove his guilt beyond all reasonable doubt.

36. In view of the reasons stated above, the appellant is acquitted of the charges framed against him under Section 458 and 376(2)(f) IPC, by giving him the benefit of doubt. Consequently, the impugned judgment dated 21.10.2024

passed by the learned Additional District & Sessions Judge, Karbi Anglong, Diphu, in Sessions Case No. 134/2015, is hereby set aside.

37. The appellant should be released from judicial custody immediately, if not wanted in any other case.

38. The appeal is accordingly allowed.

39. Send back the TCR.

40. In appreciation of the assistance provided by Mr. A.M. Dutta, learned Amicus Curiae for the respondent no.2, his fees should be paid by the Gauhati High Court Legal Services Committee as per norms.

JUDGE **JUDGE**

Comparing Assistant

Sukhamay Dey

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