GAHC010271172025

2026:GAU-AS:15086-DB

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

CRL. APPEAL (J) NO.207 OF 2025

Shri Rabindra Phukan,
Son of Late Rohit Phukan,
Resident of Village: Phuloguri Pub Salmora under Roha Police Station in the District of Nagaon, Assam.

……..***Accused/Appellant (in jail)***

-***Versus***-

1. The State of Assam, represented by the Public Prosecutor, Assam.

2. Shri Abhinash Sarkar,
Son of Pallab Sarkar,
Resident of House No.19, Principal J.B. Road under Chandmari Police Station in the District of Kamrup (Metro), Assam.
(Informant)

……..***Opposite Parties.***

For the Accused/Appellant	:	Mr. U. Choudhury, Legal Aid Counsel.
For respondents	:	Mr. R.R. Kaushik, Additional Public Prosecutor, Assam for respondent No.1.

: Ms. S. Sharma, Legal Aid Counsel for respondent No. 2.

– **B E F O R E** –

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date of hearing : 06.10.2026.

Date of Judgment & Order **: 06.10.2026**.

JUDGMENT & ORDER (ORAL)

(Rajesh Mazumdar, J)

Heard Mr. U. Choudhury, learned Legal Aid Counsel for the appellant, and Mr. R.R. Kaushik, learned Additional Public Prosecutor, Assam, for respondent No. 1, as well as Ms. S. Sharma, learned Legal Aid Counsel appearing for respondent No.2.

2. The present appeal is arising out of the judgment and order dated 31.03.2022 passed by the Court of the learned Special Judge (POCSO), Kamrup (Metro), Guwahati in Sessions Case No.256/2018 arising out of Chandmari Police Station Case No.329/2018, by which the appellant/sole accused has been convicted under Section 4 of the POCSO Act and Section 377 of the IPC.

3. We have heard the learned counsel appearing for the appellant and also the learned Additional Public Prosecutor appearing for the State respondent as well

as Ms. S. Sharma, learned Legal Aid Counsel appearing for the respondent No. 2.

4. When the matter was sought to be argued on merits, it has come to the notice of this Court that there are serious infirmities in the recording of the statement of the appellant herein/sole accused by the learned Trial Court during the trial. The statement under Section 313 Cr.PC was recorded by the learned Trial Court on 30.03.2022 and for the sake of convenience and ready reference, the statements, as reflected in the Paper Book, are reproduced herein below:-

> "*1. PW 1, the victim boy deposed in his evidence that on the day of occurrence, At noon, at about 2 pm, he went to PurnoNivas to play with his friends. You were the security guard. As he was searching for his friend, Suddenly you grabbed his mouth with his hand and dragged him inside the security room of said PurnoNivas. He pushed him in the bed and thereafter forcibly opened by half pant. By opening his own pant, he pushed his penis inside his anus. He received a little pain and thereafter forcibly pushed him away and came out from the room. What do you have to say about the above evidence?*
>
> *Ans: Falsely deposed by victim. I did not do such act. I was not there.*
>
> *2. PW 2 Abhinash Sarkar deposed in his evidence that in the evening when he came back to the house and then he saw his younger brother in the bed. He asked him as to why he was not reading and what had happened to him, but his brother did not give any reply. Thereafter, he noticed that he was moving impatiently. Again he (PW2) asked him what had happened to him and then he broke out and cried and told HIM that he had gone to PurnoNivas apartment for playing with his friends. The security guard had dragged him inside the security room and forcebily opened his half pant. The victim boy also reported him that the said security guard had also opened his pant and thereafter inserted his penis into his annus. The victim boy also told him that he was suffering for pain. What do you have to say?*

Ans: Wrongly deposed. This is not true.

3. PW 3, Arati Sarkar deposed in her evidence that the victim boy told her that when he went to play in the PurnaNivas apartment, the accused person (you) who worked there as a security guard gagged his mouth by his hand, took him to his room and penetrated his penis into his anus. To save himself, he had biten on the cheeks of the accused and somehow, escaped from his clutches and came to the home. What do you have to say about the occurrence?

Ans: I did not do such thing. Falsely stated."

5. On referring to the original Trial Court Records, it appears that subsequent questions had also been put to the appellant herein, which were recorded in the handwriting of the learned Additional Sessions Judge-cum-Special Judge, POCSO, Kamrup (Metro) to the following effect:-

"*Q. What do you have to say about the occurrence?*

Ans: I was appointed through Protector Security Service as security guard in the apartment Punnya Nivas. I initially joined in the year 2010, but for five years I remained at my house. Again I joined in the year 2017 again. I joined the said apartment just after Bihu, may be after one or two days. I did not commit any offence as alleged.

Q. Do you wish to adduce DW Evidence?

Ans: No."

6. It is further noticed that in the Trial Court Records, the overleaf of the page, where the handwritten recordings of the learned Additional Sessions Judge-cum-Special Judge, POCSO, Kamrup (Metro) is found, contains a signature of the appellant although the entire page has been left blank. This reflects a very sorry

state of affairs and is alarming. Apparently, the accused/appellant here was made to sign a blank page with no recordings thereon.

7. Coming back to the recording of the statement under Section 313 Cr.PC, we noticed that the learned Trial Court has taken the entire evidence of each Prosecution Witness as a whole and has put the same to the appellant as one single composite question followed by a general query, as to what the accused has to say about the evidence. To each of the questions, the appellant had given brief replies, which are natural consequences, keeping in view the manner in which the questions were framed.

8. The Supreme Court has repeatedly emphasized the requirement of proper recording of the examination of the accused under the provisions of Section 313 of the Cr.P.C. In ***Satbir Singh -Vs- State of Haryana, (2021) 6 SCC 1***, it was held to be a matter of grave concern that Trial Courts often record the statement of an accused under Section 313 Cr.PC in a casual and cursory manner, without specifically questioning the accused as to his defence, and that the provision imposes an obligation on the Court to question the accused fairly, with care and caution.

9. In ***Nar Singh -Vs- State of Haryana, (2015) 1 SCC 496***, it was held that, while Section 313 Cr.PC is a procedural safeguard for the accused, it imposes a duty on the Court to question the accused properly and fairly, so as to bring

home to him the exact case he will have to meet.

10. From the above, it is apparent that it is the solemn duty of the learned Trial Court to put to the accused each and every incriminating circumstance appearing against him in the evidence separately, that is, to break the evidence of each witness into small, simple and distinct questions, each relating to one fact or circumstance, so as to enable the accused to give a clear and specific answer to each of them. It is not possible for an accused to give a single cogent answer to five or six different incriminating circumstances clubbed together. Such a course inevitably leads to overlapping of explanations and to ambiguity.

11. While going through the evidence, it has also come to the notice that the learned Trial Court had failed to put to the accused the incriminating materials, which were reflected in the evidence of PW-4 and PW-5.

PW-4 was the Medical Officer, who had examined the victim at the Gauhati Medical College & Hospital on 19.04.2018 and had specifically deposed that contusions were present around the anal margin and that the findings suggested recent anal penetration. The Medical Officer also opined on the estimated age of the victim to be above 12 years and below 16 years.

PW-5 was the Investigating Officer, whose deposition naturally contains incriminating statements against the accused. As stated hereinabove, the incriminating materials against the accused found in the depositions of PW-4 and PW-5 were never put to the accused and, therefore, he had lost the valuable

right to rebut the incriminating materials against him.

12. It is a settled position of law that when evidence or material is not put to the accused under the provisions of Section 313 Cr.PC, such evidence or material cannot be used against him. In the present case, the medical evidence and the evidence of the Investigating Officer, which form a substantial part of the prosecution case, have been left out entirely by the learned Trial Court while confronting the accused with the incriminating materials against him and, therefore, such examination under Section 313 Cr.PC cannot be termed to be merely defective but is beyond the contours of the prevalent law. The presence of a blank page containing the signature of the accused is another disturbing feature noted in the case records. Prima facie, it appears the learned Trial Judge has not exercised due caution in the proceedings. The presence of a signature on a blank page casts a doubt on the integrity of the trial proceedings, and thus the sanctity and the reliability of the records are now questionable.

13. The learned Trial Court was required to ask simple questions to the accused on each fact and circumstance separately so as to enable the accused to answer or explain the said questions clearly.

Accordingly, by following the decision of the Supreme Court in ***Nar Singh*** (Supra), we remand the matter back to the learned Trial Court and direct retrial of the case from the stage of examination of the accused under Section 313 Cr.PC. The learned Trial Court shall thereafter ensure that at the time of putting

questions to the accused under Section 313 Cr.PC, the questions are asked in relation to a particular fact and/or circumstance separately. There should not be several questions clubbed into one question. Consequently, the impugned judgment dated 31.03.2022 passed by the Court of the learned Special Judge (POCSO), Kamrup (Metro), Guwahati in Sessions Case No.256/2018 is set aside, to the extent that the accused had been held guilty.

14. The appellant shall be at liberty to prefer appropriate application praying for bail during the remainder of the trial, which application, if preferred, shall be considered on its own merit without reference to the present remand.

15. The learned Trial Court shall make an endeavour to dispose of the case within a period of 6(six) months from the date of receipt of a copy of this order. Send back the TCR.

16. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant