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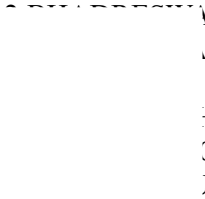
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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CrI.A./219/2024**

VERSUS

STATE OF ASSAM AND ANR.  
REP. BY PUBLIC PROSECUTOR.



**Advocate for the Petitioner** : MR. K R PATGIRI, MR G SARMA

**Advocate for the Respondent** : PP, ASSAM, DR. P AGARWAL, AMICUS CURIAE(R-2)

Linked Case : CrI.A./222/2024



VERSUS

THE STATE OF ASSAM AND ANR.  
REP. BY PUBLIC PROSECUTOR.

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Advocate for : MR. K R PATGIRI  
Advocate for : PP  
ASSAM appearing for THE STATE OF ASSAM AND ANR.

Linked Case : Crl.A./223/2024

VERSUS

STATE OF ASSAM AND ANR.  
REP. BY PUBLIC PROSECUTION.

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Advocate for : MR. K R PATGIRI  
Advocate for : PP  
ASSAM appearing for STATE OF ASSAM AND ANR.



**BEFORE**

**HON'BLE MR. JUSTICE PRANJAL DAS**

**Advocated for appellants:**

Mr. K. R. Patgiri,

Mr. B. G. Sarma, Advocate

**Advocate for Respondents:**

Mr. P. Borthakur, learned Addl.P.P

Dr. P. Agarwal, *Amicus Curiae*

**Date on which judgment is reserved : 27.01.2026**

**Date of pronouncement of judgment : 17.03.2026**

**Whether the pronouncement is of**

**the operative part of the judgment? : No**

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

**JUDGMENT & ORDER (CAV)**

1. Heard Mr. K. R. Patgiri and Mr. B.G. Sarma, learned counsel for the appellants. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for respondent No.1 and Dr. P. Agarwal, learned *Amicus Curiae* appearing for respondent No.2.

2. The three criminal appeals herein are being disposed of by this common judgment and order. All the three criminal appeals have been preferred by the respective convict appellants against the judgment dated 05-06-2024 and order of sentence dated 07-06-2024 passed by the learned Special Judge (POCSO), Kamrup, Amingaon in Special (POCSO)



Case No. 25/2017, whereby all the three convict appellants were convicted under section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 10(ten) years and pay a fine of Rs. 5000/- in default undergo R.I. for 2(two) months.

3. Criminal Appeal No. 219 of 2024 has been preferred by convict appellants namely, ; Criminal Appeal No. 222 of 2024 has been preferred by convict appellant namely, and Criminal Appeal No. 223 of 2024 has been preferred by convict appellant namely,

4. The prosecution case in brief is that on 31.01.2013 at about 10 PM when the 14 year old daughter of the informant was alone in her house the convict appellants entered into her house and dragged her out and committed rape upon her. With these allegations an FIR was lodged at the police station on 31-01-2013, whereupon Chhaygaon P.S. Case No. 26 of 2013 was registered under section 376(g)/307/379 IPC and investigation started. Upon completion of investigation, charge-sheet was submitted against the convict appellants under section 376D/307 IPC r/w section 4 of the POCSO Act.

5. Subsequently after completion of usual formalities the learned trial court framed charges against the three convict appellants under section 6 of the POCSO Act r/w section 307 of IPC. The charge being denied by the accused persons. The trial commenced during which the prosecution examined 9(Nine) witnesses including the victim MO and IO. Thereafter, the accused persons were examined under section 313 CrPC.



6. The defence adduced the evidence of 3(three) witnesses. After conclusion of trial, the learned trial court convicted and sentenced all the three accused persons as mentioned above. Aggrieved by the same the three convict appellants, as mentioned above, have preferred the instant three appeals which as mentioned above are being disposed of by this common judgment and order.

7. The learned counsel for the convict appellants has taken the Court through the evidence of the prosecution witnesses adduced during the trial. It is submitted that though it is mentioned in the FIR that the informant, who is the father of the victim had found the victim unconscious in the field but in the testimony of the victim as well as the testimony of the said informant, it is stated that the victim had come back home after the incident. It is submitted that this is an important contradiction between the FIR and the testimony of PW-1.

8. It is also submitted that the medical report indicates that there were no injuries found on the private parts of the victim and that the DNA particulars also do not match as per the testimony of the forensic witness.

9. The learned counsel for the appellants has taken the court through the testimony of the medical witness PW-6 and submitted that though the doctor has indicated the margin of age of the victim basing the same upon the radiological examination conducted by one Dr. M. C. Das, but that, the said report or the radiological report has not been exhibited during the trial.

10. Regarding the age of the prosecutrix, it is submitted by the



learned counsel that no birth certificate has been seized and the projected age of the victim is not based on any documentary evidence. Relying on decision of this Court in the case of ***Nakul Kalita vs. State of Assam reported in 2025(1) GLT 879***, it is submitted that if such evidence regarding the age of the prosecutrix is merely by way of statements of the witnesses, the same should not be relied upon. It is submitted that the FIR of the case has also not been exhibited.

11. It is submitted by the learned counsel for the appellants that the main witnesses are the victim and her parents and they are interested witnesses. Summing up his submissions, the learned counsel for the appellants submits that there are infirmities in the impugned judgment and order passed by the learned Trial Court and he prays for interference with the same and acquittal of the convict appellants.

12. Ms. Pooja Agrawal, learned *Amicus Curiae* appears on behalf of the informant has taken the Court through the testimony of the victim, her brother and her parents and submitted that the testimony of the victim is consistent and reliable.

13. Referring to the testimony of PW-6, the doctor, it is submitted that upon examination of the victim, the doctor also found tenderness in the private parts, thereby lending corroboration to the allegation of sexual assault. It is submitted that such tenderness cannot be due to a fall.

14. Referring to the relevant portions of the judgment, it is submitted by the learned *Amicus Curiae* that with regard to the age of the victim, the medical evidence clearly indicates her to be below 18 years, including



the margin of two years incorporated therein. Moreover, the statements of the witnesses are consistent regarding her age.

15. Taking the Court through the testimony of the three witnesses who have adduced evidence on behalf of the defence, learned *Amicus Curiae* submits that all the three defence witnesses have expressed their ignorance as to whether the accused persons had come to the house of the victim and committed the offence as alleged. It is submitted that the FIR is not meant to be an encyclopedia and that the evidence adduced during the trial is more important.

16. Summing up her submissions, the learned *Amicus Curiae* representing the informant/victim, submits that the learned trial court has rightly convicted and sentenced the accused persons and that the same may be upheld and confirmed.

17. Mr. Borthakur, learned Additional Public Prosecutor, supports the arguments of the learned *Amicus Curiae* and he submits that the prosecution has been successful in proving the foundational facts, where after the burden of proof shifted to the accused person during the trial and that the accused persons were unable to successfully rebut the said presumption against them.

18. Supporting the submissions of the learned *Amicus Curiae* in this regard, the learned Additional Public Prosecutor submits that by the standard of proof applicable, the prosecution has been able to prove and drive home the foundational facts triggering the shifting of the burden upon the accused during the trial.



19. With regard to the contention regarding some infirmities in the investigation, it is submitted by the prosecution as well as the learned *Amicus Curiae* that the previous statements of the prosecutrix and her related witnesses were not put to them during cross-examination and therefore, non-examination of the first investigating officer has not caused any prejudice to the defence.

20. Summing up the submissions, the prosecution contends that there is no merit in the appeal and that the same may be dismissed by upholding the judgment and order.

### EVIDENCE

21. PW-1, the prosecutrix stated in her deposition that the informant was her father and she knows the accused persons. She stated that she was 14 years old at the time of the incident which took place on 30<sup>th</sup> January, 2013 at about 10 p.m. She testified that at the relevant time she was sleeping in her house with her younger brother and her parents had gone to attend a meeting in the village. She further testified that thereafter the accused called her from outside and asked her to be present in a village meeting which was going on, whereupon she opened the door a little but refused to go with them as it was too late. However, at that time the accused persons pushed the door and entered their house. Thereafter, accused Nripen Rabha closed her mouth with his hand and the three accused persons pulled her forcibly and took her to a nearby paddy field where they tore her wearing clothes and made her completely naked. PW-1 testified that she shouted but accused pressed her mouth and stopped her from shouting. Thereafter,



forcibly did sexual intercourse with her, where after accused committed forceful sexual intercourse upon her against her will. PW-1 testified that the accused persons then threatened to kill her if she shouted and if she disclosed the matter to anyone and then they went away leaving her in the field. She also found that her two golden earrings were missing and she returned to her house crying. PW-1 further testified that her parents came around 12 midnight and she told the incident to them and on that very night, her parents informed the Gaonburah Santa Raba over phone and on the next day, a village meeting was held regarding the incident, but the accused persons were not present in the meeting as they fled away on the night of the occurrence itself. Subsequently, father of the prosecutrix lodged the FIR. PW-1 stated that police recorded her statement, got her medical examination done and also took her before the Magistrate for recording her statement. She proved her statement before learned JMFC as Exhibit-1 and her signatures thereon as Exhibit-1(1) and Exhibit-1(2).

22. During cross-examination, PW-1 stated that the house of and other villagers were located a little distance away from the place of occurrence. She denied the suggestion that the accused persons did not have forcible sexual intercourse with her and she also denied that her father lodged a false case against the accused persons. She stated that at the time of the incident, she was studying in school in 9<sup>th</sup> standard. She denied that she had not passed matric examination. She denied that she had deposed falsely. She denied the suggestion that the accused persons did not forcibly pull her from the house on the night of the occurrence.



23. PW-2 is \_\_\_\_\_, the informant of the case and father of the victim girl. He stated in his deposition that he knew the accused persons and the victim was aged about 14 years at the time of the occurrence which took place at around 10 PM at which time he and his wife were not at home and had gone to attend a village meeting in a *mandir*. He further testified that at that time the girl, with her 12 year old brother \_\_\_\_\_ was at home and at around 10.30/11 PM when they returned home, his victim daughter told him that the accused persons \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ had entered the house by breaking open the bamboo door while she was sleeping and they pulled her by her hands and forcibly took her to a nearby paddy field having a pond. PW-2 stated that he was told that thereafter the accused persons raped her and left her on the field and she came home herself and took a bath. PW-2 testified that it was winter season and when they met her she was shivering. PW-2 testified that he informed the incident to village headman, President and Secretary of the village and thereafter, visited the place of occurrence where they found the sandal and innerwear of the prosecutrix in the field and brought it home. He testified that on the next day, a village meeting took place but no decision could be taken as the accused persons fled away from there. Subsequently, he lodged the *ejahar* in Chhaygaon police station by putting his thumb impression and police recorded his statement. He testified that police also seized the wearing clothes of the prosecutrix and he put his thumb impression on the seizure list.

24. In cross-examination, he admitted that he had not seen the incident by himself. He denied that he had sent the accused persons to his house



to bring the prosecutrix in a meeting. He stated that police did not seize the broken bamboo door of their house. He denied that the incident had taken place by the side of Bherbheri river and not by the side of a pond. He stated that the houses of \_\_\_\_\_ located near the place of occurrence. He denied not having stated before the police about informing the incident to the village headman, President and Secretary of the village. He denied the suggestion that he had deposed falsely.

25. PW-3 | \_\_\_\_\_ is the younger brother of the victim girl. He stated during his deposition that he knew the accused persons and that the incident had taken place at around 10 PM about five years prior to his date of deposition. He testified that at the time of the occurrence, his parents were not at home having gone to attend a village meeting and he was at home with his sister who was aged 13 years and he was aged 12 years. He further testified that when they were sleeping, the accused persons entered their house by breaking the bamboo door and they pulled his sister by hands and forcibly took her outside. He further testified that when he got up and came outside, the accused persons pushed him inside the house and out of fear he stayed inside. He further testified that at around 10/11 PM, his sister returned home crying and told him that accused persons took her to a nearby field and raped her. He further testified that he had seen that her clothes were torn and she asked him to get some water from the well and she took a bath. It was winter season. At around 1 AM, when his parents returned, he and his sister informed about the incident whereupon they informed about the same to the village headman and neighboring people. On the next day, a village meeting was



held and thereafter, his father lodged the case.

26. In cross-examination, he stated that the houses of [redacted] were located near their house. He admitted that he had not seen the incident by himself. He stated that police did not seize the broken bamboo door of their house. He further stated that he did not attend the village meeting as he was very small. He stated that the place of occurrence was nearby their house. He denied the suggestion that he had deposed falsely.

27. PW-4 [redacted] is the wife of the informant and mother of the prosecutrix. In her deposition, she stated about knowing the accused persons. She testified that at the time of the incident her daughter was aged 14 years and the incident took place in 2013 at around 10 PM at which time she and her husband were not at home and had gone to attend a village meeting in a temple. She further testified that the victim girl was at home with her 12 year old brother [redacted]. She further testified that at around 11.30 PM when they returned home her daughter told her that the accused persons entered their house by breaking open the bamboo door while she was sleeping and then they pulled her by her hands and forcibly took her to the nearby paddy field by the side of a pond. She further testified that the accused persons pushed their son when he got out and came outside the house. PW-4 testified that the accused persons tore the wearing apparels of the prosecutrix and raped her and left her in the field. It is testified that the accused persons bit on her face, chest and injured her and her golden earrings were also pulled off from her ears. After the incident, the victim came home herself



and the incident was informed to the village headman and other villagers and on the next day village meeting took place but no decision could be taken as the accused persons fled away. Subsequently, her husband lodged an FIR before the police. The police seized the wearing clothes being top and underwear of the prosecutrix by seizure list which she proved as Exhibit-2 and her signature thereon is Exhibit 2(1). She proved as a Material Exhibit-A the seized materials which she saw in the court at the time of deposition.

28. In cross-examination, she stated that she was in Ouguri temple at the time of occurrence and did not see the incident by herself. She stated that there were no houses near the place of occurrence. She denied that the incident took place by the side of Bherbheri river and not by the side of a pond. She also stated that there are houses of

near their house. She denied that she had deposed falsely in favour of her daughter.

29. PW-5 is ASI Amanur Rahman who stated that on 01-02-2013 he was working as attached officer at Chhaygaon police station on which day at around 12.40 AM, informant [redacted] lodged an ejarah in the police station, whereupon, Chhaygaon P.S. Case No. 26 of 2013 under section 376(g)/307/379 IPC was registered and he was directed to conduct a preliminary investigation. Testifying further, PW-5 stated that he recorded the statements of witnesses, including that of the informant, his wife and of the victim in the police station. That, thereafter, he visited the place of occurrence with other staff, prepared sketch map and recorded the statements of other witnesses. He sent the victim to GMCH for medical



examination and also got her statement recorded before court on 01-02-2013. He stated that on 05-02-2013, the accused surrendered before the Chhaygaon police station as per order of the court. He proved the sketch map as Exhibit-3 and his signature thereon as Exhibit-3(1). PW5 stated that he seized the wearing apparels of the victim by Exhibit-2 seizure list where Exhibit 2(1) is his signature. He collected the blood samples of the accused persons and handed them over to the O/C, Chhaygaon along with the case diary. He stated that after completion of his preliminary examination, he handed over the case diary to the O/C of the police station and subsequently SI, Bhaskar Malla Patowary collected the FSL report. He stated that he recognizes the signature of the Bhaskar Malla Patowary SI. He stated that charge-sheet was submitted against all the three accused persons under section 376 D/307 IPC read with section 4 of the POCSO Act. He proved the charge-sheet as Exhibit-P4 and as Exhibit-P4(1) the signature of SI Bhaskar Malla Patowary stating that he recognizes the same.

30. In cross-examination, PW-5 stated that he recorded the statements of the victim and her parents. It is stated that the residences of people are a bit far from the place of occurrence. He also stated that he has not recorded the statements of

and and not seized the door broken open by the accused persons. He stated about sending the blood samples to the FSL and subsequently collecting the FSL report. He stated that the statements of independent witnesses were not recorded. He stated about seizing the wearing apparels of the victim as given by the victim in the presence of her parents. He stated that he had not seized any birth certificate of the



victim. He denied that he had not investigated the case properly and denied that he had wrongly charge-sheeted the accused persons.

31. PW-6 Dr. Tribeni Athpuria stated that on 01-02-2013 she was posted in the Forensic Medicine Department of GMCH and on that day she examined the victim in connection with Chhaygaon P.S. Case No. 26 of 2013. She testified that victim was escorted and identified by WPC-1227 Purnima Das and the victim's mother. She stated that the age of the victim was stated as 13 years. She further stated that the victim narrated the history that – on 30.01.2013 at 10 PM, *when she was at home, three boys came and knocked the door and told that her father and mother were being beaten in a meeting and the boys opened the door forcefully and took her to a nearby space and had sexual intercourse with her.* PW-6 stated that upon examination of genital organs she found a tear present at 5 o'clock and 8 o'clock position and the margins were swollen and tender. She also found a linear abrasion over left cheek 0.3 cm in length, 2 cm from midline and 7 cm below orbit which is brown in colour. She also found a linear abrasion below nostril of left side 1 cm from midline and 7 cm below orbit and brown in colour. PW-5 stated that radiological examination was done and based on the clinical, physiological and laboratory investigation, including radiological examination it was opined that her age is above 14 years and below 16 years. There was no evidence of recent sexual intercourse. There is evidence of injury on her body. There is no evidence of pubic hair or foreign particulars. Exhibit-5 is her report and Exhibit- P-5(1), P-5(2), P-5(3) and P-5(4) were her signatures.

32. In her cross-examination, she stated that the victim was examined on the next day of the incident. She stated that the injury she mentioned



were in the form of abrasion over left cheek 0.3 cm in length, 2 cm from midline and 7 cm below orbit which is brown in colour; linear abrasion below nostril of left side 1 cm from midline and 7 cm below orbit and that the same can happen if somebody falls. She stated that she did not find any specific injury on the private part of the victim but it was tender. A court question was asked that her mention of tears refers to which part of the body to which PW-6 replied that the tear present at 5 o'clock and 8 o'clock margin are swollen and tender is for hymen. To a court question as to what no recent sexual intercourse means – stated that as per medical jurisprudence, when swab is taken within 24 hours of the incident and there is absence of spermatozoa – it is mentioned as no recent sexual intercourse.

33. PW-7 SI Pranab Kumar Dekha deposed that on 04-11-2014 while being posted as OC of Chhaygaon Police Station. He was entrusted with the further investigation of the case but the investigation was nearly completed and only collection of FSL report was left, which he collected and handed over the same along with CD to C.I. Chhaygaon for necessary action.

### **DISCUSSION**

34. In her examination-in-chief, the prosecutrix as PW-1 has implicated all the three appellants mentioning their names and as being involved in breaking open into their house, pulling her away to a nearby field and committing rape upon her one after the other. She has exhibited her statement recorded before learned JMFC and upon perusing the said statement, I find that it is very much similar to her deposition during the



trial in as much as in the said statement also – she has stated about her parents going for a meeting at night and she was with her younger brother when the three accused persons called her to go to the meeting and upon her refusal, pulled her out of the house. She also stated in the statement that thereafter the accused persons took her to a field and committed rape upon her one after the other. Thus, I find that the testimony of the victim as PW-1 and her statement record before learned Magistrate during investigation tally with one another and lend corroboration to one another regarding the nature of the incident and the implications of the three appellants by name.

35. Upon perusing the cross-examination of the victim PW-1, I am of the opinion that her testimony in examination-in-chief has not been demolished in cross-examination nor her testimony in cross-examination reveal any contradictions with her statement before the learned Magistrate. She has specifically denied the suggestion that the accused persons did not forcibly pull her out of the house and denied that the accused persons did not commit forceful sexual intercourse upon her. She denied the suggestion that she had deposed falsely. Thus, I find that the testimony of the prosecutrix as PW-1 has not only stood its ground in cross-examination and not revealed any contradictions – but the prosecutrix has also reiterated about the incident in her cross-examination.

36. PW-2 is the father of the victim and informant of the case while PW-4 is her mother. In her testimony, PW-1, the prosecutrix has stated about reporting the incident to her parents when they came back from the



meeting. This is corroborated by both PW-2 and PW-4 about being reported regarding the incident by their daughter. Therefore, the knowledge of PW-2 and PW-4 regarding the nature of the incident is on the basis of what was reported to them by their daughter, the victim. In fact, both PW-2 and PW-4 have admitted in cross-examination that they have not seen the incident. PW-2 and PW-4 also denied the suggestion that they have deposed falsely in favour of their daughter. The nature of the incident, the testimony of the prosecutrix in her deposition and also in her statement before magistrate finds corroboration from the testimony of her parents as PW-2 and PW-4. In her testimony, PW-1, the victim has stated about the presence of her younger brother, aged about 12 years, with her in the house at the time of the incident. The said younger brother has deposed as PW-3 and at the time of his deposition he is stated to have been aged 18 years. His testimony corroborates the testimony of his sister. He has also stated about being present at home with his sister when their parents had gone to attend a village meeting and about the accused persons forcibly entering their house and pulling out her sister. He has also deposed that he tried to resist but he was pushed away. He has stated about his sister returning home crying and both of them reporting the incident to their parents when they returned, thereby corroborating the testimony of their parents in this regard. PW-3, brother of the prosecutrix, denied the suggestion in cross-examination that he had deposed falsely. His testimony has stood its ground and remained unshaken in cross-examination.

37. I find that even the testimony of PW-2 and PW-4, the parents of the victim, stood their ground in cross-examination and was not shaken or



demolished. Thus, I find that the testimony of the prosecutrix stood its ground in cross-examination and received due corroboration from her statement under section 164 CrPC. This evidence of the prosecutrix received due corroboration from the testimony of her brother who is an eyewitness to part of the incident and supported the testimony of the victim that the accused person pulled her out of the house at night when their parents were absent. It has also emerged from the testimony of PW-2, father of the victim and informant of the case that after coming to know about the incident, he along with others of the village went to the place of occurrence and recovered the sandal and innerwear of the prosecutrix and brought it home. In this regard, the seizure list pertaining to the same has been exhibited as Exhibit-2 by PW-5, one of the investigating officers of the case. And he has also stated about seizing the wearing apparels of the victim and the police officer also exhibited his signature on the seizure list.

38. The testimony of PW-6, the MO lent further corroboration to the evidence of the prosecution side in as much as upon examination she stated about tears in the hymen and with the margins being swollen and tender. The incident is stated to have taken place on 30.01.2013 and the victim was examined on 01.02.2013. And in her cross-examination, PW-6, MO has also stated that she examined the victim on the next day of the incident. Apart from finding tears in the hymen with margins swollen and tender, she also found abrasions on her cheek, nostril. And in cross-examination, she has also indicated that there is evidence of injury on her body as described by her. Though she stated about no evidence of recent sexual intercourse, but to a question by the court, she has replied that the same means that when medical swab is taken within 24 hours of the



incident and there is absence of spermatozoa, it is mentioned as no recent sexual intercourse.

39. The testimony of PW-6, MO about finding tears in the hymen with margins swollen and tender is an extremely important piece of evidence in favour of the prosecution, especially when it is clear that the victim was examined on the next day of the incident. Thus, it can be said that the testimony of the MO has not been demolished in cross-examination. Therefore, the medical evidence is definitely indicative of a sexual activity by way of assault and lends crucial and significant corroboration to the testimony of PW-1, the victim, her statement under section 164 CrPC, the testimony of her brother and that of her parents.

40. The three defence witnesses examined on behalf of the defence have tried to make out a story that a village meeting was called regarding accusation upon one Kajiram Rabha of stealing money from the informant. And as the money could not be found in the house of Kajiram Rabha, he felt humiliated and called for the meeting and in the meeting, some youths assaulted the informant.

41. The defence witnesses have tried to make out a story that in the backdrop of this alleged meeting and assault upon the informant, he has lodged a false case upon the accused person. However, in the cross-examination of the prosecution witnesses, especially during the examination of PW-2 and PW-4, the parents of the victim, no question was put in cross-examination regarding any such false implication. Moreover, in the context of the findings of the medical officer and the concomitant medical evidence adduced during the trial, it can be safely said that the



projected defence story of false implication is not convincing.

42. Regarding the age of the victim, it has been consistently revealed from the prosecution evidence that the victim was aged 14 years at the time of the incident. In her testimony, the victim has stated her age to be 14 years. Both her parents have stated her age to be 14 years. To corroborate the said evidence, the medical evidence upon examination has stated that her age is between 14 and below 16 years. Therefore, in my considered opinion, there is no dispute about the minority of the victim and about being less than 18 years at the time of the incident. The learned counsel for the appellants has referred to a decision of ***Nakul Kalita vs. State of Assam & Anr., reported in 2025 (1) GLT 879*** and in Para 42 of the said decision, it was held as follows –

*“42. In view of the above, we are also of the considered opinion that in absence of any documentary evidence or medical opinion regarding the age of the victim girl, only the oral testimony of witnesses as regards the age of the victim is a very weak piece of evidence to come to the finding regarding the correct age of the minor victim, whose age is stated to be 16 to 16 years by the witnesses.”*

43. In my considered opinion, the said decision would not come to the aid of the appellants side, because in the instant case, the oral testimony of the prosecution witnesses, including the victim herself, regarding her age is also supported by the medical evidence regarding her age.

44. PW-9, Dr. Manalisha Choudhury, is a forensic official who has testified regarding the DNA examination. She deposed that the DNA exhibits in connection with this case were examined. The forensic opinion



was that the DNA found in the underwear of the victim did not match with the DNA of the other three samples, which were from the blood samples collected from the three appellants.

45. In the impugned judgment, the learned court has discussed this aspect of the matter and held that despite the negative DNA findings – in view of the cogent and positive testimony of the victim supported by the medical evidence and the testimony of other witnesses – the prosecution case could not be dismissed. The learned trial court has referred to the decision of the Hon'ble Supreme Court in the case of ***Sunil v. State of Madhya Pradesh***, reported in **(2017) 4 SCC 393**. Para 43.4 of the said judgment referred to by the learned trial court may be reproduced herein below –

*"43.4. From the provisions of Section 53-A of the Code and the decision of this Court in Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130 it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishan Kumar (para 44), Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. CRRFC-01 & CRA-2151 of 2018 favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."*

46. I am in agreement with the opinion of the learned trial court on this



aspect. In view of the testimony of the prosecutrix, corroborated by her section 164 CrPC statement; the testimony of her brother who was part eyewitness; the corroboration rendered by the medical findings – it has to be held that the prosecution has successfully proved the factum of sexual assault upon the victim by the appellants. In any case, as far as the DNA evidence is concerned, it is not stated that the DNA sample which was taken from the innerwear of the victim and matched with the blood sample of the convict appellants pertain to any DNA/body material of the appellants.

47. The DNA sample taken from the innerwear of the victim could be her DNA as well. And not necessarily the DNA belonging to any or more of the appellants. There is no error in my opinion in the appreciation of evidence of the Learned Trial Court on the aspect of the DNA evidence. And I do not find sufficient force in the contentions of the learned counsel for the appellants in this regard.

48. In the given facts and circumstances and on the basis of the evidence on record, I come to the considered opinion that there is no infirmity in the finding of the learned trial court that the accused persons committed penetrative sexual assault upon the victim girl who was a minor aged below 18 years. Therefore, the conviction of the appellants under section 6 of POCSO Act, 2012 is hereby **upheld and confirmed.**

49. The appellants have been imposed with a substantive sentence of 10 (ten) years rigorous imprisonment. The nature of the crime is heinous in as much as – a minor girl was alone in her home with her even younger brother in the night, in the absence of her parents and the accused



persons pulled out the girl and committed a rape upon her one after the other. There is absolutely no reason to modify the sentence on the lower side and accordingly the sentence imposed upon the appellants is also confirmed.

50. Consequently, the impugned judgment dated 05.06.2024 and sentence dated 07.06.2024 passed by the learned Special Judge (POCSO) Kamrup, Amingaon in Special (POCSO) Case No. 25/2017, is **upheld and confirmed.**

51. Resultantly, the appeal is found to be devoid of merits and is dismissed.

**JUDGE**

**Comparing Assistant**