

GAHC010007422014



2026:GAU-AS:9497

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

Case No. : Crl.Rev.P./112/2014

DR. ANUP KUMAR BARUAH
S/O LT. PUNYA KR. BARUAH R/O HOUSE NO.5, BYE LANE - 11, R G
BARUAH ROAD, GHY-24, P.S. GEETANAGAR, DIST. KAMRUP, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.T J MAHANTA, MR.A BHATTACHARYA,MR.B BORA,MR.P
P DUTTA

Advocate for the Respondent : , PP, ASSAM,,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the petitioner : Mr.T.J.Mahanta, Sr.Advocate

Advocate for the respondent : Mr. R.J.Baruah, Addl.P.P

Date on which judgment is reserved : 19.05.2026

Date of pronouncement of judgment : 13.07.2026

Whether the pronouncement is of
the operative part of the judgment : Full judgment.

Whether the full judgment has been
pronounced : Yes

JUDGEMENT AND ORDER (ORAL)

The instant criminal revision petition is preferred by Dr. Anup Kumar Baruah (herein after referred to as the petitioner), challenging the judgment and order dated 17.08.2013 passed by the learned Chief Judicial Magistrate, Morigaon in GR Case No.929/2009, convicting the petitioner under Section 354 of the Indian Penal Code ('IPC' for short) and sentencing him to undergo simple imprisonment for two years and to pay a fine of Rs. 10,000/- with default stipulation. The petitioner has also challenged the judgment and order dated 03.03.2014 passed in Criminal Appeal No.33/2013 by the learned Sessions Judge Morigaon, dismissing the appeal preferred by the petitioner and upholding the Judgment and order passed by the Chief Judicial Magistrate, Morigaon.

2. The genesis of the case was that on 05.09.2009, at about 1 pm, the victim 'X' went to Lily Medical Hall from her school to consult a doctor for her irregular menstrual periods. She was accompanied by two friends to the pharmacy and the petitioner was attending patients in his chamber in the pharmacy. The petitioner took the victim to his chamber for check-up and he unbuttoned the victim's blouse and started to grope her breasts. The victim protested, but the petitioner, a doctor tried to reassure her that such contact was not inappropriate. Thereafter, the petitioner removed the victim's panties and attempted to sexually assault her. The victim raised alarm and her friends

entered into the doctor's chamber and brought her out. She narrated about the incident to her elder brother 'Y' (name withheld) who lodged the FIR on the same day. The Morigaon PS case No.155/ 2009 was registered and investigation commenced. On finding *prima facie* materials against the petitioner, charge sheet was laid against the petitioner under section 354 of the IPC.

3. Heard learned Senior counsel Mr.T.J.Mahanta assisted by learned counsel Mr. T. Gogoi for the petitioner and learned Additional Public Prosecutor Mr. R.J.Baruah for the State of Assam.

4. Now, as this petition is under Section 397/ 407 of the Code of Criminal Procedure (CrPC for short), this Court is not required to delve into the nitty gritty of the evidence. The propriety and legality of the judgment is to be assessed by this Court. However, the learned Senior Counsel for the petitioner laid stress in his argument that an important medical officer was not examined and nor was the I.O. examined. The learned counsel delved into the intricacies of the evidence. The petitioner is prejudiced at present as argued. The contents of the FIR and the statement of the victim under Section 161 as well as 164 CrPC, and the depositions of the victim are contradictory. The conviction was based solely on the victim's statement. The victim's brother 'Y' testified as PW1 that his sister informed him about the incident after she reached home, whereas his sister 'X' deposed as PW2 that after the incident, she came out of the pharmacy and informed Ujjal Nath about the incident and Ujjal Nath called her brother (PW-1) over phone and when her brother had arrived, she informed her brother about the incident. It is further submitted that while submitting charge sheet, 12 witnesses were enlisted in the charge sheet, but the prosecution examined only 7 witnesses, and thus the truth could not be properly unearthed by the prosecution. Two medical officers were examined by the prosecution, but

one medical officer was not produced as a witness. It is submitted that the trial court had overlooked the admission of the petitioner. Trial court has ignored the admission of the petitioner who admitted that he had touched the victim's breasts as a part of the medical test, according to medical jurisprudence. It is further submitted that the trial court as well as the appellate court ignored the contradictory evidence of the two friends of the victim. A woman police constable who had accompanied the victim to the court for recording her statement under Section 164 CrPC was an important witness, but this witness was not examined. Her statement has projected a different version of the victim's story. The senior medical officer and gynecologist, Dr. Dharendra Ch. Nath was also not examined, but his evidence was vital to this case.

5. The learned Addl. P.P. laid stress in his argument that in a revision petition, the scope is limited. The Court is to decide only on the legality and propriety of the judgment. Concurrent findings of two courts are not to be interfered with on the basis of minor contradictions. The argument of the learned senior counsel that the petitioner as a doctor can touch the breast of a victim suffering from gynecological problem can be safely brushed aside. It is apparent that in this case, the victim was not suffering from any gynecological problem but she was suffering from some menstrual problems. The medical officer Dr.Dhirendra Ch. Nath could not be examined as the medical officer did not appear despite receipt of summons.

6. The learned Addl.P.P. also emphasized through his argument that although the learned Senior Counsel for the petitioner has given weightage to the evidence of PW5 and PW7, these witnesses have turned hostile at the later stage of the trial and PW7 was also declared a hostile witness. It, thus cannot

be presumed that as submitted by the learned Senior Counsel for the petitioner, that as the victim did not inform her friends about the incident, her conduct appears to be doubtful. It is further argued by the learned Addl.P.P. that the victim's statement under 164 CrPC is consistent with the contents of the FIR Exhibit -1. The petitioner allegedly kissed the victim and bit her lips, which is not a routine test of pregnancy or menstrual problem. Thus, the concurrent findings of the trial court as well as the appellate court does not suffer from any impropriety or illegality. It is apparent that the employees of the doctor's chamber PW3 and PW4 will not implicate the doctor i.e. the petitioner. The learned Addl.P.P. has prayed to dismiss the revision petition as this petition is bereft of merits.

7. I have given my thoughtful consideration to the submissions at the bar.

8. In trial, to substantiate its stance, the prosecution adduced the evidence of 7 witnesses who were cross-examined by the defence. After analyzing the evidence carefully, the petitioner was held guilty of offence under Section 354 IPC. It was held by the learned trial court that from the evidence of the victim, it could be deciphered that the victim went to the doctor's chamber for medical check-up. The petitioner laid her on the bed in this chamber and placed his hands on her abdomen and asked her to unbutton her blouse. The victim unhooked her blouse and then the petitioner squeezed her breasts and the victim experienced pain. However, the petitioner continued to grope her inappropriately and he bit her lips and forced his hands inside her underwear. This evidence of the victim has been corroborated by the evidence of her brother PW-1. He also testified that at about 1 pm, his sister informed him about the incident. It was observed by the learned trial court that a doctor can touch the body of a patient while examining the patient clinically but the doctor

cannot outrage the modesty of woman during medical check-up. In this case at hand, the petitioner, a doctor, continued groping the victim's breasts despite protests from the victim and he went to the extent of touching her private parts and bit her lips. He inserted his hand into her mekhala (lower skirt) and groped her inappropriately. These acts of the petitioner suggest inappropriate sexual harassment with ill motive. The testimony of the victim is consistent to her statement under Section 164 CrPC. It has been observed by the learned trial court that the modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or asleep, the woman possesses modesty capable of being outraged. Whoever using criminal force with intent to outrage her modesty, commits an offence under Section 354 IPC. The culpable intention of the accused is the crux of the matter. The evidence of biting the victim's lips remained intact in spite of cross-examination. No *mens rea* for false implication could be deciphered. The evidence regarding the overt act of the petitioner was a definite pointer towards the guilt of the petitioner. The evidence of PW3, Md. Jamadul Haque and PW4, Junmoni Das proves the presence of the petitioner and the victim at the relevant point of time in the pharmacy. It was held that this offence was committed in the privacy of the petitioner's chamber and evidence of eyewitnesses is not forthcoming.

9. It was also held by the learned trial court that although the victim did not inform her friends Konaklata Bordolai and Subhamoni Das about the incident after she emerged from the chamber of the petitioner, her reaction should be examined in the light of the fact situation of the case.

10. The learned trial court however compared the earlier statement of the witness PW7 Smti Konaklata Bordoloi with the testimony of the victim. This witness was declared to be a hostile witness and the cross-examination of the

PW7 by the prosecution relating to her statement under Section 161 CrPC was held to be corroborating evidence. Certain contradictions were dismissed as minor contradictions. The argument of the defence that PW2 testified that immediately after the incident she called her elder brother PW1 to Morigaon town, while PW-1 testified in his evidence that the victim informed him about the incident at home was held to be irrelevant. It was also observed by the learned trial court that the petitioner during his examination under Section 313 CrPC admitted that he squeezed the breasts of the victim.

11. I concur with the findings of the learned trial court. Some minor contradictions does not indeed thwart the evidence of a sterling witness.

12. Aggrieved by this judgment of the learned trial court, the petitioner preferred an appeal which was registered as Criminal Appeal No.33/2013.

13. It has been held by the learned appellate court that the trial court did not commit any error or illegality in holding the petitioner guilty of offence under Section 354 IPC warranting any scope for interference. The learned appellate court had re-appreciated the entire evidence, elaborately discussed by the trial court. The appellate court had reiterated the discussions of the trial court.

14. For the sake of brevity, the analysis of evidence is not repeated. It was also held that the evidence of PW3 and PW4 was not found reliable as they were employees of Lilly Pharmacy and they were interested witnesses. It was also observed that the victim's friends PW5 and PW7 turned hostile and they did not support the victim's evidence.

15. It is apt to mention that both the trial court and the appellate court had analyzed the statement of PW 5 and PW7 under Section 161 CrPC as evidence. This view of the trial court as well as the appellate court is erroneous. The

learned trial Court has relied on the statements of PW5 and PW7 under Section 161 CrPC and the appellate court went further ahead and relied on the statements of PW5 and PW7 under Section 161 CrPC. Despite the error in appreciating evidence by discussing the statements under Section 161 CrPC, the entire judgment and order of the learned trial court and the appellate court cannot be set aside on this ground alone. The remaining part of the analysis of evidence by both the trial court as well as the appellate court cannot be held to be erroneous as only the testimonies of the witnesses have been taken into consideration without considering the earlier statements of the witnesses under section 161 CrPC, except for contradictions and corroborations. The statement of the victim is sufficient to hold an accused guilty of any offence relating to her modesty or any offence relating to sexual assault. It is true that eyewitnesses in such cases are not forthcoming. The appellant has been convicted under section 354 of the IPC and in such cases, the evidence of the prosecutrix, if found to be consistent can be relied on. Outraging the modesty of a woman is an abstract term. The victim is the person who can justify if her modesty has been outraged.

16. In this case, when the evidence is scrutinized carefully, it is apparent that no contradictions as per Section 145 of the Indian Evidence Act 1872 (the Evidence Act for short) *qua* Section 162 of the CrPC could be elicited and thus the I.O's evidence was not necessary. Thus, it has been correctly held by both the trial court and the appellate court that the petitioner has not been prejudiced due to non-examination of the I.O. or the medical officer. It has been correctly held by the trial court and the appellate court that the victim has consistently stated that the petitioner inappropriately touched her private parts, groped her breasts and bit her lips. This conduct of the petitioner cannot be

considered to be a routine examination of a gynecologist to cure irregular menstrual period. It has been correctly observed by the learned appellate court that the victim was not required to unhook her blouse as she was suffering from irregular periods which is an internal problem. Thus, the plea of the petitioner that on a routine examination of gynecological problem, he had touched her tummy and groped and pressed her breasts, appears to be absurd. He has also admitted in his statement under section 313 CrPC that it was a routine examination for a pregnancy test and he had touched her tummy and pressed her breasts. Even for pregnancy test, groping the breasts inappropriately appears to be absurd. A doctor may touch the tummy or the abdomen, but he is not required to squeeze the breasts for any pregnancy test. It has to be borne in mind that the doctor's plea appears to be absurd in the sense that the victim has categorically stated that she went for examination as she was suffering from menstrual problems, whereas the medical officer/ appellant has taken the plea of inappropriately touching the victim while conducting pregnancy tests, which is not so in this case. Rather, the statement of the petitioner under section 313 CrPC is self implicating and corroborates the consistent evidence of the prosecutrix.

17. Now at this stage, the appellant has taken a new plea which the appellant had not taken before the Trial Court as well as before the Appellate Court of first instance.

18. The learned Senior Counsel for the petitioner laid stress in his argument that an important Medical Officer was not examined and an important witness who accompanied the victim to the Magistrate for recording her statement under Section 164 of the Cr.PC was not examined. The learned Senior Counsel for the petitioner has also drawn the attention of this Court towards the

medical jurisprudence by emphasizing that a doctor had opined that on gynecological tests, breasts of a patient has to be examined. This doctor was not examined as a witness.

19. This Court is however not inclined to delve into the medical jurisprudence as this case is under Section 354 of the IPC. Ingredient to be proved in this case is whether the victim's modesty has been outraged. It has already been held in the foregoing discussions that there is sufficient evidence that the victim's modesty has been outraged. Victim's presence in the clinic has not been disputed. Even the witnesses who were employees of the clinic had affirmed the presence of the victim in the clinic. The employees of the Lilly Pharmacy, PW3 and PW4 have categorically stated that the victim was present at the time of incident in the clinic. Definitely during a gynecological examination or examination relating to menstrual problems, the patient will be examined in the privacy of the clinic and not in presence of witnesses. This is when the alleged incident took place.

20. It has been correctly held by both the Trial Court as well as the Appellate Court that no *mens rea* is discernible to falsely implicate the doctor. In this case, the victim has not sustained any physical injury as a consequence of the offence committed by the petitioner, but this conduct of the petitioner has affected the psyche of the victim. The victim is the best person to describe her mental state in cases of assault of this nature. The non-examination of two medical officers, Dr. Dishan Bordolai as well as Dr. Dhirendra Ch. Nath has not caused a dent in the evidence. Although it is not required to delve into the intricacies of the evidence, yet, as the learned counsel for the petitioner has emphasized on the minor contradictions, this Court has also scrutinized the evidence.

21. It can also be held that no prejudice could be attributed for non-examination of another witness, ABC-Sewali Deka. Scrutiny of the evidence reveals that no contradictions as per Section 145 of the Evidence Act *vis-à-vis* Section 162 of the Cr.PC could be elicited through the cross-examination of the witnesses. Witnesses were cross-examined elaborately, but no contradictions could be elicited. There are a few minor contradictions relating to the place and time when the victim informed her brother about the incident, but apart from these minor contradictions, the victim's and her brother's statements were found sufficient to bring home the charges leveled against the petitioner.

22. Another witness, Ujjal Kumar Nath, also deposed as PW6 that on 05.09.2009 at about 1 p.m., the victim informed him that the accused while examining her, groped her breasts after removing her inner garment. She also informed him that the accused/petitioner bit her lips and touched her private parts. This evidence of PW6 also supports and corroborates the evidence of PW1 and PW2. His cross-examination revealed that he got the appointment of the victim for examination by the petitioner. The argument on behalf of the petitioner that PW7 is the victim's boyfriend and that he is an interested witness holds no water, more so, when no contradictions could be elicited through a vigorous cross-examination of PW7. The cross-examination of PW7 depicts that a partition with glass cover between the pharmacy and the doctor's chamber is covered by a curtain. This clearly depicts the possibility of covert act in the privacy of the chamber, which is covered by a curtain.

23. The argument on behalf of the petitioner that the evidence of Mohammed Jamadul Haque, PW3 and the evidence of Junmoni Das, PW4 depicts that the doctor's chamber is visible through the partition, can be safely brushed aside. It has to be borne in mind that both PW3 and PW4 were

employees in the Lilly Pharmacy. The evidence of PW1 and PW7 clearly reveals that the incident occurred on 05.09.2009 at about 12.30 to 1 pm.

24. I have scrutinized the cross-examination of PW1, PW2 and PW6. They were vigorously cross-examined by the defence, but no contradictions could be elicited as per Section 145 of the Evidence Act *qua* Section 165 of the Cr.PC. The only contradiction between the evidence of PW1 and PW2 is the place of informing PW1 about the incident by PW2. This contradiction is not relevant. Some minor discrepancies are required to be brushed aside as an incident is recalled in a different manner by different individuals and perceived in a different manner by different individuals. Different individuals visualize an incident in their own perspective. A Photostat memory is not required. The incident occurred on 05.09.2009 and the witnesses deposed in the Court after 10 months. Human beings are prone to forget certain details and certain incidents. Surprisingly, not a single cross-examination was made relating to the FIR and the statement of the victim under Section 164 of the Cr.PC as the deposition of the victim is consistent to the FIR as well as her statement under Section 164 of the Cr.PC and so is the deposition of PW1. His statement is consistent to his FIR.

25. On the ground of submission of the learned Senior Counsel for the petitioner relating to non-examination of the medical officers, it would be pertinent to mention that the Appellate Court and the Trial Court have correctly held that the examination of the medical officers is not required in an offence under Section 354 of the IPC. No injuries on account of sexual assault is expected in such offences. It is true that in such cases, when a victim goes for opinion on irregular menstrual periods, the doctor may touch the abdomen or he may feel it necessary to touch the private parts, but a diligent person will

understand that he is not required to squeeze the breasts or grope the breasts inappropriately as alleged. It is the victim who feels that her modesty has been outraged by such an act. A doctor's opinion is not required to prove that a victim's modesty has been outraged, nor is a doctor's opinion *sine qua non* to prove that a victim's modesty has been outraged.

26. The other issue raised by the learned Senior Counsel on behalf of the petitioner is that both the victim's friends have not supported the evidence. This cannot be an issue. In many cases, we have seen witnesses turning hostile after a certain point of time. Both the victim's friends, Smt. Subhamoni Das and Smt. Kanaklata Bordolai deposed as PW5 and PW7 in 2011 and 2012 respectively. PW3 and PW4 being employees in the pharmacy are inimical witnesses whereas, PW5 and PW7 are hostile witnesses, despite the fact that the witness PW5 was not declared to be a hostile witness by the Court.

27. In view of the foregoing discussions, it is thereby held that no illegality or impropriety is discernible in the decisions of the Trial Court as well as the Appellate Court. The intricacies of the evidence are not required to be dealt with, as this Court has delved into the evidence and the cross-examination of the witnesses. Thereby, it is held that no contradictions could be elicited through the cross-examination of PW1, PW2, PW3, PW4 and PW6.

28. In the wake of the foregoing discussions, this Court upholds the conviction of petitioner under Section 354 of the IPC, but the sentence is scaled down and modified. This incident occurred before the amendment of 2013. The petitioner is thus sentenced accordingly. The petitioner is at present 71 years old as submitted by the learned Senior Counsel. Much water has flowed under the bridge.

29. I have also considered the age of the petitioner. The conviction under Section 354 of the IPC vide Judgment and Order dated 17.08.2013 in connection with GR Case No. 929/2009 is upheld, but the sentence is reduced to fine only. The petitioner is convicted under Section 354 of the IPC and sentenced to pay a fine of Rs 5000/- in default to undergo rigorous imprisonment for 2 (two) months. The fine so paid will be deposited in the Trial court and this fine shall be transferred to the DLSA, Morigaon to form a part of the compensation in the victim's compensation scheme.

30. In terms of the above observation, this petition stands disposed of.

31. Send back the Trial Court Records as well as the Appellate Court Records.

32. No order as to costs.

JUDGE

Comparing Assistant