

GAHC010250602025



2026:GAU-AS:11937-DB

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

Case No. : Crl.A./296/2025

VERSUS

THE STATE OF ASSAM AND ANR.
REP BY THE PP ASSAM

Advocate for the appellant : Mr. B. Sinha,
Advocate for the respondent no.1 : Ms. A. Begum, Addl. P.P.
Advocates for the respondent no.2 : Ms. B. Sarma, Legal Aid Counsel

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Date of hearing and judgment : 21.08.2026

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

Heard Mr. B. Sinha, learned counsel for the appellant and Ms. A. Begum, learned Addl. P.P, Assam appearing for the State respondent No.1 as well as Ms. B. Sarma, learned Legal Aid Counsel for the respondent No.2.

2. The appellant has put to challenge the impugned judgment dated 22.04.2025, passed by the learned Special Judge, Udalguri in Special (POCSO) Case No.32/2022, by which the appellant has been convicted under Section 376(3) IPC read with Section 6 of the POCSO Act. However, in view of Section 42 of the POCSO Act, the appellant has been sentenced to undergo rigorous imprisonment for life with a fine of Rs.20,000/-, in default, simple imprisonment for 2 months, under Section 6 of the POCSO Act.

3. The main ground of challenge to the conviction of the appellant, is that in terms of the doctor's (PW-8) evidence, he had examined the victim on 18.10.2017. As per the ultrasonography done on the abdomen of the victim, a live foetus of 35 weeks 2 days was found in the womb of the victim. However, the evidence of the victim (PW-1), being to the effect that she had been raped by the appellant on 11.04.2017, the victim could have gotten pregnant only in the month of February, 2017, i.e. around 2 months prior to the date of the incident. As such, when the pregnancy of the victim occurred in February, 2017 and the allegation of rape had been made with respect to the date 11.04.2017, the appellant could not have been the person who raped the victim.

4. The FIR submitted by the victim before the Officer-in-Charge of the Panery Police Station on 17.10.2017, was to the effect that on 11.04.2017, at around

4.30 p.m., while she was on her way to bring back cattle from the village paddy field, she was raped by the appellant in the jungle. The appellant also threatened her not to reveal the fact to anyone or she would have to face dire consequences, including death. Five days later, the appellant came to the victim's house and again tried to rape her. However, as her younger sister was inside the house, the appellant ran away.

5. The charges framed against the appellant by the learned Trial Court was that on 11.04.2017, at about 4.30 pm, the appellant was alleged to have raped the victim and, as such, the same was punishable under Section 376(3) IPC read with Section 6 of the POCSO Act. The appellant pleaded not guilty and claimed to be tried.

6. The victim (PW-1) in her evidence stated that on 11.04.2017, at around 10 a.m., when she went to bring home the cattle from the paddy field, the appellant raped her in the jungle. As a result of the rape, the victim became pregnant. The baby however died in the womb. The victim also stated that she was 16 years at the relevant point of time. The statement given by the victim under Section 161 Cr.PC is similar to her testimony, except that she did not make a mention of the fact that she became pregnant due to the rape committed by the appellant.

7. The doctor (PW-8), who examined the victim one day after the filing of the FIR, i.e. on 18-10-2017, stated that, on ultrasonography being done on the abdomen of the victim, the same revealed a single live foetus of 35 weeks 2 days. PW-8 also stated that on 10.11.2017, he had examined the dead body of

one newborn female child, who was stillborn.

8. The evidence of PW-8, who stated that when he examined the victim on 18.10.2017, there was a live foetus of 35 weeks 2 days in her womb, shows that the pregnancy of the victim, would have occurred only in the month of February, 2017, inasmuch as 35 weeks 2 days would be approximately equivalent to 8 months 3 days.

9. If the victim became pregnant in February, 2017, based upon the age of the live foetus in the victim on 18.10.2017, the appellant could not have raped the victim on 11.04.2017. This is due to the fact that the victim has stated in her evidence that she became pregnant due to the rape on 11.04.2017 and the next attempted rape five days later by the appellant ended in failure, as the sister of the victim was also in the house. There is nothing in the evidence of the victim or any other Prosecution Witnesses, to the effect that the victim had been raped on any other date except 11.04.2017, by the appellant. When the medical evidence with regard to the live foetus proved that the victim had become pregnant in February, 2017, her testimony that she had been raped by the appellant in April, 2017, which led to her being pregnant, turns out to be false. The evidence of PW-1 cannot be said to be trustworthy or truthful. Consequently, the evidence of the other Prosecution Witnesses, like the victim's mother and father, (PW Nos. 2 & 4), who had also stated that the rape resulted in the pregnancy of the victim, is also not believable, as the same is hit by the medical evidence.

10. It is interesting to note that PW-2 (mother of the victim), in her cross-

examination, has stated that the appellant had been urging for a DNA test of the baby. However, the same was not done due to the fact that the Officer-in-Charge of the Police Station was transferred. PW-3, who is the uncle of the victim, in his cross-examination, also stated that he did not know if the appellant insisted on a DNA test. However, the victim had been reluctant to have a DNA test. PW-4 (father of the victim) also stated, in his cross-examination, that the appellant insisted for a DNA test, stating that he was innocent.

11. The above being said, though blood samples had been taken for DNA profiling, as per the entries made in the case diary, the blood samples taken, was not sufficient for coming to a proper finding regarding the paternity of the child.

12. The above being said, the fact remains that the date of pregnancy of the victim was two months prior to the alleged rape. As such, the victim could not have been raped by the appellant.

13. Consequently, in view of the above reasons, we hold that the impugned judgment dated 22.04.2025, passed by the learned Special Judge, Udalguri in Special (POCSO) No.32/2022, is not sustainable, as the prosecution has not been able to prove the guilt of the appellant. Consequently, the impugned judgment is hereby set aside. The appellant is accordingly acquitted of the charges framed against him under Section 376(3) IPC and Section 6 of the POCSO Act. The respondents are directed to release the appellant from judicial custody immediately, if not wanted in any other case.

14. The appeal is accordingly allowed.
15. Send back the TCR.
16. In appreciation of the assistance provided by learned Legal Aid Counsel, her fees should be paid by the High Court Legal Services Committee.

JUDGE

JUDGE

Comparing Assistant