GAHC010023902026

2026:GAU-AS:16601-DB

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

Case No. : Crl.A./102/2026

SRI DAMBA RABIDAS
VILLAGE-BURALIKSON, P.S.-KAMARGAON,
DISTRICT - GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

2

Advocate for the Petitioner : , MR. P C R DAS,MR D CHUTIA,MR. S J SARMAH

Advocate for the Respondent : PP, ASSAM, MR. B HALDAR (LEGAL AID COUNSEL, R2)

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	: 04.11.2026
Date of pronouncement of judgment	: 12.11.2026
Whether the pronouncement is of the operative part of the judgment ?	: N/A
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

1. Heard Mr. S.J. Sarmah, learned counsel for the appellant. Also heard Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, as well as Ms. B. Haldar, learned Legal Aid Counsel representing the informant.

2. This appeal is directed against the Judgment & Order dated 25.06.2025 passed by the learned Court of Special Judge at Golaghat, in connection with the SLP(P) Case No. 43/2022, convicting the appellant under Section 4(2) of POCSO Act and sentencing him to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs. 10,000/- (Rupees Ten thousand) only, and in default of payment of fine, to undergo simple imprisonment for one month.

The Factual Matrix:

3. The informant lodged an ejahar at Dhekial police out-post, under Golaghat police station, alleging that on 26.06.2022, at about 11:30 am, when he and his wife were not at home, accused Damba Rabidas entered his house and forcefully raped his daughter, Miss X, aged about 13 years.

4. The O/C of Golaghat PS registered Golaghat PS case no. 180/2022 u/s 376, IPC, r/w Sec. 6 of POCSO Act and SI Karpunpuli Doley was endorsed with charge of investigation. The accused person was arrested and remanded to judicial custody. After completing investigation, the I/O submitted charge sheet against accused Sri Damba Robidas under said sections of law.

5. The learned Trial Court framed charge under Section 4/8 of the POCSO Act against the accused person, and the trial commenced.

6. In support of its case, prosecution examined 12 (twelve) witnesses including the M.O and I.O. and exhibited 15 (fifteen) documents, including two material exhibits and also one seized garment. One Court witness was examined who exhibited one document.

7. After closure of prosecution evidence, the accused person was examined u/s 313 of Cr.P.C and further, u/s 351, BNSS, after examination of the Court witness. His plea was one of total denial.

8. The accused person adduced evidence of two witnesses in his defence.

The Evidence:

9. PW1-the victim, daughter of the informant, knew accused Damba Rabidas. She stated that the alleged incident occurred on 26.06.2022 at about 11:30 pm (am). At that time, she was in her house with her younger sister (PW-4). Her younger sister was 7 years old at that time. The victim stated that at the time of the alleged incident, she was brooming and the accused person came and gagged her mouth and dragged her to the kitchen and closed the door of the kitchen and disrobed her, laid her on the ground and inserted his penis into her vagina for some time. Her sister was peeping through a hole in the door of the kitchen. The victim saw white fluid ejecting from his penis. Thereafter he left. When her parents came back home from market at about 4:00 pm, she and her sister told them about the alleged incident. Along with her father, mother and sister, the victim went to the police station. Police searched for the accused person but could not find him. Police sent her for her medical examination and for getting her statement recorded u/s 164, Cr.P.C, which is Ext.P1/PW1. She stated that she was about 13 years old and was studying in class-VI in Boroguri Majalya Bidyalaya at the time of the alleged incident. Police seized one pant, i.e. MO1, vide the seizure list, Ext.P2, which she was wearing at the time of the

alleged incident, which the victim identified.

10. Statement of the victim, Ext.P1/PW1, recorded u/s 164, Cr.P.C, reads as follows:-

> *"My name is Miss X. My age is 13 years. I am a resident of Charingia. I have come to give my statement today out of my own will. Yesterday, on 26-06-2022, at around 11:30 am in the daytime, I was brooming the house. At that time, me and my younger sister, AR, were in the house. At that time, Damba Rabidas, who resides a little far from my house, and who had taken our garden, came inside the house, caught hold of me by gagging my mouth and took me to the kitchen. He closed the door and made me lie on the ground and opened the panty which I was wearing and also opened his pant and inserted his susu (penis inside my susu (vagina) and did bad deed with me and he touched my gaakhir (breasts). In that way, he did bad deed with me. After that, white white thing came out from his susu (penis) and he closed his pant (pant tu bondho kori diye) and released me. My younger sister watched this act from the hole in the wall and told Damba that she will tell everything to mother and father. Then Damba told her not to say anything and left from there. This is all I have to say."*

11. During cross-examination, the victim stated that the accused person is known to them from a long time as he was running their bagaan (tea garden) on lease and in this connection, he used to visit their house. Prior to the alleged incident the accused person never committed any bad deed with her. She stated that the accused person is physically handicapped as he limps while walking. She stated that there are about four rooms in their house (Assam type). The first room is the verandah, next room is the bedroom and one room is for keeping clothes and the last room is the kitchen. There is a door in between the verandah and the bedroom; one door in between the bedroom and the clothes' room; and one door in between the clothes' room and the kitchen. On the day of the alleged incident, she was brooming the verandah and her younger sister was playing in front of courtyard of the verandah. She, her father, her mother and her younger sister stay in their house. Her father works in the bagaan and her mother is a housewife. There are houses of her uncle (MR), SR, and DR near their house. She stated that at the time of the alleged incident, she and her younger sister did not raise any hue and cry and they also did not call their neighbors. On the day of the alleged incident, the accused person left their house at about 11:30 am. From 11:30 am till return of her parents, she did not inform any of their neighbors, including her uncle, regarding the alleged incident. She did not know if there was a dispute between the accused person

and her parents regarding the lease of the tea garden. She did not remember after how many days of the alleged incident police sent her to Court. She stated that at the time of the alleged incident, though she wanted to escape, she did not try to kick, bite or push the accused person. The victim denied that she did not state before the police that on the day of the alleged incident the accused dragged her to the kitchen and closed the door of the kitchen and disrobed her, laid her on the ground and inserted his penis into her vagina for some time and that her sister was peeping through a hole in the door of the kitchen. This alleged omission was not exactly confirmed by the I/O. The I/O stated to Court that the victim told him that - "Damba Da closed the door and forcibly gagged my mouth and put me on the floor inside my house and disrobed me. He opened my panty and Damba Da opened his pant and inserted his penis into my vagina.....My eight-year-old younger sister, AR, was playing inside the house. "

12. Certain other alleged omissions were put to the victim, which she denied. It was also suggested to her that she was above the age of 18 years at the time of the alleged incident.

13. PW2-the informant, father of the victim, knew the accused person. He stated that the alleged incident took place about one year ago at about 11:30 am. At that time, he, along with his wife, had gone to the market. The victim

and her younger sister stayed in the house. At the time of the alleged incident, the age of the victim was 13 years and the age of her younger sister was about 9 years. The distance between their house and the house of the accused person is about one km. When they returned from market at about 4:00 pm, the victim told him that the accused person removed her pant inside the house and inserted his penis inside her vagina. He stated that the accused person has a betel nut shop at a distance of about ½ km from their house. He asked the accused person about the alleged incident, but the latter denied the allegation. Thereafter, he went to the police station and lodged the ejahar, Ext.P3/PW2. He did not remember who wrote the ejahar as per his dictation. Police sent the victim for medical examination and for getting her statement recorded u/s 164, CrPC, and arrested the accused person. Police also seized the birth certificate of the victim. He produced the original birth certificate of the victim, MO2. Police seized a pant of the victim from him, i.e. MO1, vide the seizure list, Ext.P2.

14. During cross-examination, PW2 stated that prior to the alleged incident, he had lodged an ejahar in the police station alleging misbehavior with the victim by one Bhuyan. Subsequently, the case was settled in the police station. He stated that in the year 2022, he gave 2 katha 10 lecha tea garden to the accused person on lease for 5 years. The house of his brother, MR, is situated near his house and in MR'S house, MR's wife and mother stayed. In his house,

the victim, another daughter and his wife stayed. He stated that when they returned home from the market, their daughters were normally present at home. Neighbors were not present. PW2 admitted that the victim did not state before him that the accused person removed her pant inside the house and inserted his penis inside her vagina. He denied that he had deposed falsely with regard to the above fact.

15. He also denied the defense suggestions that the victim was above 18 years and that her Birth Certificate was a forged document. He further denied the suggestions to the effect that he had lodged a false case against the appellant, on account of the dispute regarding the return of the tea garden which was leased out to the appellant. Suggestions of tutoring were also put to him, which he denied.

16. PW-3-Smti. RR, did not know the accused person but knew the complainant and the victim. She stated that the alleged incident took place about one year back. On that day, father of the victim from police station informed her over phone that the victim was raped in his house. On the next day, she went to the police station. The victim told her that she was raped. She stated that the age of the victim was about 16 years at that time. She put her signature in the police station when the age document of the victim was seized.

She identified said document in the Court. Ext.P3/PW3 is the seizure list.

17. During cross-examination, PW3 stated that she did not know who raped the victim. The victim did not tell her who raped her. When she reached the police station, she did not meet the victim and her father there. She went to Golaghat P.S. on the next day of the alleged incident. She did not know the contents of Ext.P2 (seizure list of pant of the victim) and stated that she put her signature on the same as directed by police. She stated that the age document which she saw in the Court was a photocopy. She admitted that she stated the age of the victim on assumption. Denying that the age of the victim was above 18 years at the time of the alleged incident, PW3 stated that she has been married since 17 years and the victim was toddler at the time of her marriage.

18. PW4 knew the accused person. She stated that alleged incident took place many years back. Police came to their house. She stated that the accused person committed bad deeds with her elder sister (victim) inside their house. At that time, she was outside and her elder sister was inside their house and when she entered inside their house to bring something, she saw the accused person committing bad deeds with her elder sister and she chased the accused person to assault him with a lathi. Her parents had gone to the market at that time. Only she and the victim were present in their house. At night, at about 5:30 pm,

her parents came home and she and the victim told their parents about the alleged incident. Then she, along with victim and her parents, went to the police station. Police brought her and the victim to Court and she gave her statement in the Court. She stated that she saw the accused person inserting his penis inside the vagina of the victim (her elder sister). She put her thumb impression at the time her statement was taken in Court.

19. In her statement before the Magistrate recorded under Section 164 Cr.P.C., which was exhibited as Ext. P9/PW-12, PW-4 deposed that *"Yesterday, in the daytime, me and my Ba (elder sister) were at home. Our mother and father had gone to the house of our Koka. Then Damba Da came to our house and did bad deed with my Ba. Damba Da opened the pant of my Ba and took out his koni guti (penis) and made it touch Ba's pokor. After that, his white white came out and he touched it to the pokor (vagina) and after that, he put on the hook of his pant and went away. I was inside and was watching it. This is all I have to say."*

20. During cross-examination, PW4 stated that she came to Court with her father. The accused person used to visit their house in the presence of her parents. Their garden is adjacent to their house. She stated that the accused person used to visit their house when he went to visit the garden. She stated that her father tutored her what to say in the Court. She stated that in her statement u/s 164, Cr.P.C., she had stated that on the day of the alleged incident, her parents went to

the house of her grand-father. She stated that her elder sister was reading inside their house when the accused person came. She also stated that the accused person remained in their house till return of her parents. She did not inform her uncle and aunt who were residing near their house at the time of the alleged incident.

21. She denied the defense suggestions that her parents had tutored her to depose in the manner that she did.

22. PW5-Smt. MR, knew both sides. The informant and her /husband are 'Haribhakat. She stated that the complainant called her husband over phone saying that the accused person committed bad deeds with the victim and so, the case was filed against the accused person. She and her husband went to the house of the complainant, but they did not meet the complainant and so, they also went to the police station. She met the victim and her parents at the police station. The victim told her that the accused person committed bad deeds with her and she felt pain in her lower part. She stated that the victim was about 10/11 years old at the time of the alleged incident, which took place about one year back. She put her signature on the seizure list, Ext.P2, when police seized the pant of the victim at the police station.

23. During cross-examination, PW5 stated that she had no personal

knowledge about the alleged incident. Police did not record her statement regarding the alleged incident. She admitted that she did not state before the police that - *"The complainant called my husband over phone that the accused committed bad deeds with the victim and so, the case was filed against the accused. I and my husband went to the house of the complainant but we did not meet the complainant and so, we also went to the police station. I met the victim and her parents at the police station. The victim told me that the accused committed bad deeds with her and felt pain in her lower part."* Defence confirmed this from the I/O even though PW5 had admitted that she had not stated it before police. PW5 denied that she has deposed falsely in Court. She did not know who handed over the seized articled to the police and said that she stated the age of the victim on assumption.

24. PW6-Sri SR @ S, did not know the accused person but knew the complainant and the victim. He stated that the alleged incident took place about 11 months back. One day, the complainant called his sister-in-law (Nabou), RR, over phone to come to the police station as there was some problem. Accordingly, he, along with his sister-in-law and three other persons, went to the Golaghat police station from Negheriting. He met the complainant at the police station. Then the complainant told him that one of the persons of their village raped his daughter. He put his signature in the police station on a paper,

i.e. the seizure list, Ext.P2/PW6. Thereafter, he returned home.

25. During cross-examination, PW6 stated that he had no personal knowledge about the alleged incident. He did not know why police took his signature on a paper. He stated that police did not seize anything in their presence.

26. PW7-Smt. BR, sister-in-law of the complainant, did not know the accused person. She stated that the alleged incident took place about 1/1½ years back. The complainant informed her over phone that the victim was raped by one village boy in his house. She went to the police station in the forenoon and met the complainant, his wife, i.e. mother of the victim, the victim and some other people. The complainant also told her at the police station that one village boy raped the victim. She stated that in this month (October, 2024), the victim attained her puberty.

27. During cross-examination, PW7 stated that she did not know in detail about the alleged incident.

28. She denied the defense suggestions that she had falsely deposed regarding being informed by the complainant over phone that the victim was raped by one village boy and that the victim had attained her puberty in the current month.

29. PW8-Smt. NR, mother of the victim, stated that the alleged incident took

place about 2 years back inside their house at about 11:30 am/12:00 noon. She was not at home as she had gone somewhere. Her husband was not at home as he had gone for work. The victim and PW's younger daughter (i.e. her other daughter) told her that the accused person committed bad deeds with the victim by opening her pant. The accused person begged apology but they told him that they would not forgive him. She stated that the victim was about 11 years old at the time of the alleged incident and now she was studying in class V/VI.

30. During cross-examination, PW8 stated that she returned home at about 5:00 pm on the day of the alleged incident. The houses of BR and some others are near their house. She stated that since two years, she cannot hear properly. She went out from her house at about 10:30 am on the day of the alleged incident. Her husband returned home earlier than her. On the day of the alleged incident, she went towards one side and her husband went towards another side. She has forgotten her date of marriage and year.

31. PW-8 denied the defense suggestions that she had falsely stated regarding the victim having told her that the accused person committed a bad deed with the victim by opening her pant, that the victim was about 11 years old at that time, and that she had falsely deposed regarding the alleged act for the sake of

her daughter. It was suggested to her that she omitted to state before the police that the accused begged apology but they told him that they would not forgive him, which, however, was not confirmed by the I.O.

32. PW9-Sri SR, a fellow villager of both sides, stated that the informant is his bhakat. He stated that the occurrence took place around a year/one-and-half year ago. At the time of occurrence, he was not at home due to his daily wage work. After he returned home in the evening that day, he received a phone call from the informant, who asked him to come over to Dhekial police out-post as he was there in connection with a case relating to his daughter. PW-2 (the informant) told him that the accused person had raped his daughter in his house. PW9 did not know the exact time of occurrence. He went over and found the informant, his daughter and also the accused person in the police out-post. Police showed him a white and purple panty and a jangiya (panty) and asked him to sign on the seizure list, Ext.P2/PW1. MO1 is the seized panty which he identified. PW9 also stated that the victim girl was not a grown up girl at that time. She was not of much age. She might have been around 10 (ten) to 12 (twelve) years old at the time of occurrence.

33. During cross-examination, PW9 stated that police did not ask him anything or examine him. Police only asked him to sign on the seizure list. He stated that police did not ask him and that is why he did not state before police about what

he stated about the occurrence before Court. He did not know the exact age of the victim girl and stated her age on guessing as per what she looked like. PW9 denied that his assumption about the age of the victim was not true.

34. PW10-Sri PR, related grandfather of the victim, who did not know the accused person, stated that the occurrence took place around one-and-half years back. At the time of occurrence, he was at Negheriting, Gaon No. 12. The informant called up his elder brother, Sri JR, who resides in Negheriting. JR called PW10 on his mobile phone and told him about the occurrence. Then both he and JR came to the house of the informant. The informant was not there as he was in the police station. Then they went to police station. The informant told him that Damba Rabidas has raped his daughter. The informant did not tell him the place where this offence was committed. Police asked him how he is related to the informant. Police took their signatures and then they came back. He stated that his granddaughter/victim was around 12-13 years of age at the time of occurrence.

35. During cross-examination, PW10 stated that police did not ask him about the occurrence. As police did not ask him, he did not state before police about what he stated before Court. He did not mention the age of the victim to the police. He did not know the date of birth of the victim. PW10 denied that he has

deposed falsely and it is not true that the age of the victim was 12-13 years at the time of occurrence.

36. PW11-MO-Dr. Nirmali Konwar, examined the victim, aged about 13 years, on 27.06.2022, at around 11:10 am.

37. She further, inter alia, deposed that the breast of the victim was not developed and her hair-auxillary and pubic were not seen. She also deposed the condition of her external genitalia as follows: Perennial abrasion present at 9 o'clock, i.e. abrasion on surrounding area of the vagina on the right hand side. The injury was seen after parting both labia majora and labia minora, in the opening of the genitalia. The hymen was also found to have been ruptured; however, spermatozoa was not seen.

38. The MO stated that she did not mention any opinion on whether the patient was above 18 or below 18 years as no X-ray test was done but in her opinion on clinical examination, the patient was definitely below 18 years as her breasts were not developed and her pubic hair were absent. She had opined that sign of recent sexual intercourse was not seen as spermatozoa was not seen in the vaginal smear report. Injury on her private part or body was seen. Ext.P4/PW11 is the medical examination report and Ext.P5/PW11 is the spermatozoa report.

39. During cross-examination, the MO stated that abrasion may be self-inflicted also. Hymen maybe ruptured by cycling also. She stated that although she has not mentioned in her opinion about the body part where the injury was seen, she has mentioned in the earlier part in her report that the injury was seen in the vaginal area of the victim/patient, of the external part, after parting both labia majora and labia minora, in the opening of the genitalia. Denying that she had falsely stated that as per clinical examination the age of the victim/patient was definitely below 18 years, the MO stated that she could come to that finding on clinical examination.

40. PW12-IO-SI Karpunpuli Doley, stated that on 26.06.2022, when she was posted as Attached Officer at Golaghat P.S., at around 07:00 pm, the then O/C, Inspector Dhirendra Kalita, instructed her to go to Dhekial O.P. on getting information from its I/C, ASI Subhash Sunar, about rape being committed on the daughter of a couple by Damba Rabidas, after making Golaghat PS GD entry no. 527 dated 26.06.2022 at 07:00 pm. Ext.P6/PW12 is the extract copy of said GD entry. Accordingly, she opened MCD and went to Dhekial O.P. on 26.06.2022 itself. She met the victim girl, Miss X, and her parents. She examined the victim girl in presence of her parents and recorded her statement. On the original birth certificate of the victim girl, MO-2/PW2, being produced by her father (informant), the I/O seized the same in presence of witnesses, vide the seizure

list, Ext.P3. She also examined these witnesses and recorded their statements. On coming to know that the younger sister of the victim (PW-4), who was aged about eight years then, was also present at the time of occurrence, she examined PW-4 also and recorded her statement. As PW-4 was a minor, she seized her original birth certificate also on being produced by her father, in presence of witnesses, vide the seizure list, Ext.P7/PW12. She recorded statements of these witnesses as well. Thereafter, she went with the victim and her family to the place of occurrence, which was the kitchen in the house of the victim. She inspected it and prepared its sketch map, Ext. P8/PW12. The victim showed her the panty, MO-1, which she was wearing at the time of occurrence and which was lying on top of some firewood kept on the pirali, i.e. in the front part of the verandah. She seized the same in presence of witnesses, vide the seizure list, Ext.P2/PW1. Later, she sent it to the FSL, Kahilipara, for forensic analysis. She examined witnesses at the place of occurrence and recorded their statements. Then she went in search of the accused person, Damba Rabidas. All these were done on 26.06.2022 itself. She found him in his house. She apprehended him and sent him to Golaghat PS, escorted by ASI Subhash Sunar, while she brought the victim with herself and the seized articles to the Golaghat PS. She took the victim to SKK Civil Hospital, Golaghat, but as there was no lady doctor available to examine the victim, she kept the victim in the Ujwala Home

Centre, an NGO in Golaghat. The victim was sheltered there for the night.

41. The I/O stated that on the next day, i.e. on 27.06.2022, at around 09:00 am, the informant lodged the ejahar, Ext.P3/PW2, at Golaghat PS and said O/C registered Golaghat PS Case No. 180/2022 u/s 376, IPC, r/w sec. 6, POCSO Act, and handed charge of investigation to her. That day, i.e. on 27.06.2022, she examined the informant whom she met in the police station and then sent the victim again to said hospital, escorted by WPC Anjali Ray, for her medical examination and for getting her statement recorded u/s 164, Cr.P.C, which is Ext.P1/PW1. She also sent the victim for getting her statement recorded u/s 164, Cr.P.C, which is Ext.P9/PW12, along with a videographer. She examined the accused person who was brought to the PS on the previous day and as she found him involved in the alleged occurrence, she arrested him and forwarded him to Court. She also sent the seized articles to be shown to Court. Thereafter, she handed over both the original birth certificates in zimma to the informant, after keeping its photocopies with her. She identified MO-3/PW12 to be the photocopy of birth certificate of Miss AR. It was on 27.06.2022 that she sent the seized panty of the victim to the FSL, Kahilipara, through the S.P., Crime Branch, Golaghat, for forensic analysis. That day itself, she produced the victim before the CWC, Golaghat. On 11.07.2022, she collected the medical report of the victim from SKK Civil Hospital, Golaghat, Ext.P4/PW11. On 22.07.2022, she

collected the FSL report, Ext.P10/PW12, dated 13.07.2022. Ext.P11/PW12 is the forwarding letter of said FSL report. The FSL report states that the white and purple coloured flowery panty gave negative result for presence of semen/spermatozoa. On 24.07.2022, she completed her investigation and submitted the charge-sheet, Ext.P12/P12, against accused Sri Damba Rabidas u/s 376, IPC, r/w sec. 6, POCSO Act.

42. During cross-examination, the I/O stated that she was the one who examined all the witnesses. On 26.06.2022, she reached Golaghat PS back at 11:50 pm, after doing some investigation. She confirmed the contradictions/omissions in the testimonies of the witnesses as highlighted in the relevant paras above. The I/O got the health check-up done of the accused person. She did not get him tested to clarify whether he was capable of having sexual intercourse. She did not get his sperm tested to see if it matched with any spermatozoa on the panty of the victim. Denying that she did not seize the documents in presence of witnesses, the 1/0 questioned that if she did not do so, then how can the signatures of witnesses be on the seizure list. The I/O stated that she did not conduct any investigation to see if the documents seized by her were authentic and genuine and explained that when they get original documents, they usually do not go to check its authenticity or genuineness. The IO denied that she submitted charge-sheet against the accused person without

conducting investigation properly.

43. The accused person was examined u/s 313, Cr.P.C. His plea was one of total denial. He stated that the allegations were all false statements and he never did anything like that. He did not know what the doctor said but stated that PW1 (the victim) was around 18 to 20 years of age at that time and the witnesses had stated falsely her age. He stated that the panty had been brought falsely. He did not beg for any forgiveness and this evidence was false. He questioned the truthfulness of the evidence stating that when he did not do anything, why should he beg for forgiveness. He stated that he had not done anything and the medical report about perennial abrasion at 9 o'clock, i.e. abrasion on surrounding area of the vagina of the victim, on the right hand side, in the opening of the genitalia, was false. He further stated that he had taken a small tea garden from the father of the victim (PW-2) for five years on lease for Rs. 16,500/-. Somebody kept committing theft from the tea garden. He rebuked someone whom he suspected to have committed theft. He was not getting green leaf from that garden. Then PW-2 asked him to give him the garden back as it was getting difficult for PW-2 to pull on. The accused person refused, as the five years were not over. He stated that even now, three years were left for the lease period to be over. He did not remember in which year he had taken the lease and stated that it was written in the agreement which he had not

brought. Because he did not return his tea garden, AR got him falsely implicated in this rape case. The accused person stated that he was slightly disabled in his left leg and could not walk properly. This condition was since birth. He was somehow fending for his family by selling betel nut and betel leaf. He had three small children. He stated that he had not committed the alleged occurrence. He had been falsely implicated. He stated that he had not yet returned the tea garden. Even the bamboo fence of the tea garden kept getting stolen, he added.

44. The accused person adduced evidence of two witnesses in his defence.

45. DW1-Sri Puna Rabidas, elder brother of accused person, who is from the same society (samaj) as the informant, stated that this was a false case lodged against the accused person around two years back. His younger brother, Damba Rabidas, had a betel nut shop at Betioni Bagan Chariali which provides for his family. One of his legs was not straight from birth and as such, he sits in the betel nut shop. He stated that informant has filed a false case against him as he has land measuring 2 kathas and has a small tea garden also. Informant gave the tea garden on lease to the accused person in the year 2021 for five years. For one year, the accused person ran the tea garden by employing people. Then suddenly one day, the informant went to the house of the accused person and

got into an altercation with him. The house of the accused person and the house of DW 1 are within the same courtyard. DW1 heard the altercation and he asked his brother what had happened. The accused person told him that the informant wanted him to return the tea garden or pay money in its stead, as some other person were offering the informant Rs. 50,000/-. DW1 told the informant that it was not a good thing he was doing. DW1 also said that when an agreement had been executed, how could the tea garden be returned or money be given in contravention of the agreement. DW1 also told him that if he required money, he should collect some people and extend the years of lease and that he should not create haphazardness and go home. Just when the informant was going home, he threatened the accused person that he will see him. Suddenly after about one month, on a Sunday, police came and took the accused person. DW1 was at home at that time. One boy of his village, Huntu Ganju, came and informed him about it. He went to Dhekial out-post and asked the accused person about what happened. Damba wept and told him that because he did not give money to the informant at that time, a false case had been lodged against him, where it was alleged that he had raped the daughter of the informant. The informant was also there in the police out-post and DW1 asked the informant, why he falsely implicated Damba. DW1 also told him that he had done a bad thing, by putting the name of his daughter in a false

allegation against the accused person, who was lame. The informant said that he had no idea that the case would become so big. The informant said that he had committed a big mistake and his brother-in-law was also not listening to him now. DW1 stated that some people of their samaj had also come to the outpost and they also told the informant that he should not have falsely implicated the accused person and that the informant had committed a huge mistake. Even Satishlal Robidas, Hemanta Robidas and Manindra Robidas said that the informant should not have put the accused person in such a dangerous situation. They also told the informant that he should not have gone to the police station when the samaj people were there. Police did not listen to them and said that whatever could happen, it would be in the Court. Police brought the accused person to Golaghat PS. DW1 returned home and kept worrying about what to do for his younger brother. On the next day, he went to the house of the informant and asked his neighbor MR, about the occurrence and MR said that he was working in his house the whole day and he did not see the accused person coming to the house of the informant. MR also said that the informant had falsely implicated the accused person to get back the tea garden and get money for having alcohol. DW1 stated that the house of DR and PR were near the house of the informant. DW1 asked them and they also told him that this case could never be true. DW1 stated that he also asserted and said

that this case was a false one. His younger brother (i.e. the accused person) had a wife at home and three children and it would be difficult if he went to jailed. DW1 could never believe the allegations to be true. It was his request to release the accused person.

46. During cross-examination by prosecution, DW1 stated that he had not brought the agreement which he has stated had been executed. DW1 denied the suggestion that as no such agreement was executed, he did not bring the agreement. He also denied the suggestion that all his averments were false.

47. DW1 stated in Court that he did not stay with his younger brother the whole day. DW1 further stated that on the day of occurrence, he was at home, but the accused person was not at home. He was not with the accused person. He could not say where the accused person went after he left home in the morning, saying that he was going to his betel nut shop. He stated that the tea garden was still with them. The tea garden was not returned to the informant. Thereafter, DW1 said that the tea garden was now in the possession of informant. Then again DW1 said that the tea garden was now in possession of the accused person.

48. DW2-Shri Putul Ch. Rabidas, brother-in-law of the accused person, stated that the occurrence took place in the month of June, 2022. He stated that the

entire case against the accused person was false. He stated that the accused person had taken a tea garden of the informant on lease for five years for Rs. 15,500/- One day, the informant came to the house of the accused person and asked for more money from him, saying that he had found another man for his tea garden, who would pay more money and asked the accused person to pay more money to him. The accused person replied that he had already taken the tea garden on lease for five years for the said fixed amount and questioned how he could pay more money now. The informant then told the accused person to pay more money, or else he would give the tea garden to someone else. The accused person replied that he had already taken the tea garden for five years and how could the informant give it to someone else. The matter stopped there. The informant left his house, saying from his courtyard that, "Wait, I will see you one day," (i.e. Ro. Tuk moi edin sai lom). After some days, the informant implicated the accused person in a false case. The tea garden is in the house (meaning house compound) of the informant, in his baari (farming area), situated in Borjongol Gaon. DW2 stated that he knew the accused person for about 15 years now. The accused person ran a small paan shop in Betiyoni Bagan Chariali, of Betiyoni Tea Estate, in Golaghat, and fends for his family. The accused person is disabled as one of his legs is slightly bent. His character, as far as what DW2 had seen till now, was not bad. DW2 had not received any

report of his bad character till now. It was his belief that the accused person did not commit such an act as alleged.

49. During cross-examination by prosecution, DW2 stated that his house was at Tinisuki Chapori. The house of the accused person was at Buragaon, around 15 km away from his house. The accused person had three sons and his wife in his family. The accused person fended for his family and also does the house work, besides rice cultivation and also marketing, etc. He also does tea cultivation in his small tea garden which is in his house, in his small baari, and does the tea garden works himself. The house of the informant is around 4 km away from the house of the accused person. The shop of the accused person is not attached to his house. The informant has two girls and his wife in his family. Both the girls are small girls. The eldest one is perhaps in Class VII now. He did not know about the younger one. He did not know if the informant did any other work, but stated that the informant worked as a daily wage labour in other small tea gardens. He stated that the informant's wife also works as a daily wage labour in other small tea gardens. This is what DW2 has seen since he had known them. They did not have any helper to take care of their daughters. They leave their daughters alone in the house when they go for work. He did not know the area of the tea garden which the informant owned although he had seen the small tea garden. He stated that a written agreement

was executed between the accused person and the informant on stamp paper, as per what the accused person told him. He had not seen the agreement in Court. The accused person also did not show him that written agreement. He stated that as far as what he knew, the occurrence took place in the month of June, 2022, on a Sunday. He did not know the exact date. The bazaar/market is held at Betiyoni tea garden on Saturday, on the fortnightly wage day. The weekly market at Misamora is held regularly on Sundays. He stated that the informant and the accused person must be going to the Misamora bazaar also. They may be doing their marketing in all bazaars. He stated that the accused person himself took care of the tea garden he took on lease, such as spraying of pesticides, plucking green leaf, weeding, etc., by going there himself. This tea garden is in the house of the informant, in his baari. The tea garden of the informant, which the accused person had taken on lease, is on the side of the house of the informant. There was one entrance/poduli/gate in the house of the informant. The informant's house and the garden are on the same land. If one entered the podui/gate to go to the house of the informant, one could go to his tea garden. If one entered the tea garden, one could also go to his house. He stated that when this case was filed, the lease period of the tea garden was continuing. It was not over. He was not sure when this lease agreement was entered into and stated that it may have been in the year 2021 or 2022, also

but not in the year 2020. He stated that the tea leaves are plucked from the months of March-April till November-December. The accused person was plucking green tea leaf from this tea garden taken on lease till the case was filed. He used to sell the green leaf. DW2 did not know if the accused person committed the alleged offence. He did not know if any such occurrence as alleged had taken place in the house of the informant. It was the accused person who told him that the informant had demanded more money from him for the tea garden. He did not see the informant stating the same to the accused person. He was not present at that time. He could not confirm if what the accused person told him about the informant demanding more money from him or about giving the tea garden to someone else was true or not. He did not stay with the accused person for 24 hours every day. He did not meet him daily. He met him sometimes.

50. CW1-Dr. Ranjit Hazarika, Addl. Registrar, Birth and Death, Golaghat, who had been serving as such since the year 2022, produced the Birth Register of the period from October, 2007, to December, 2008, Ext.C1/CW1, and stated that as per record maintained in the Birth Register of Golaghat Municipality, the birth of the victim was registered on 07.09.2008, vide registration no. 4261, and her date of birth was 28.08.2008. Her place of birth was SKK Civil Hospital, Golaghat. Her date of birth was entered on the basis of documents received

from SKK Civil Hospital, Golaghat. He saw from case record that a birth certificate of the victim was issued, which is exhibited as MO2/PW2, and stated that it was issued by Dr. Dilip Rajbongshi, the then Registrar, Birth & Death, Golaghat Municipality, whom CW1 knew very well, as he was CW1s colleague and also his classmate and CW1 knew his signature on MO2(1)/CW1. He also knew that at present, Dr. Dilip Rajbongshi was the SDM&HO at Charingia BPHC, Golaghat. CW1 made known that in the year 2017, the office of Registrar of Birth & Death, Golaghat Municipality, was closed down and shifted to office of the Joint Director, Health Services, Golaghat, and the Registers of Birth & Death were taken to the office of the Joint Director. In the office of the Joint Director, Health Services, i.e. in the main district headquarters, the Registrars of Birth & Death are called Additional Registrars but in the peripheral areas of the district, such as in the PHCs or BPHCs or MPHCs, they are called Registrars.

51. CW1 stated that on the relevant page, in some entries, there is no name of the child against the date of birth but the names of the parents are there and explained that this Register was manually maintained at that time and on receipt of information from the civil hospital, the birth of the child was registered and the names of the child's parents were written. In cases where the parents did not come to take the birth certificate, the name of the child could not be entered and, therefore, in some entries, the name of the child is

not written. CW1 confirmed that the contents of the birth certificate, i.e. MO2/PW2, are the same as the contents in the Birth Register.

52. During cross-examination by defence, CW1 stated that there is no column in the Birth Register to note down the address of parents and child. The birth of the victim was registered in the year 2008. He could not find the Delivery Register in SKK Civil Hospital pertaining to that year and that is why, he could not bring any document to show that the victim was born in the civil hospital but stated that when children are born in civil hospital, the information of their birth is sent to Golaghat Municipality and their births get automatically registered.

53. On his further examination u/s 351, BNSS (313, CrPC), after examination of CW1, the accused person stated *inter alia*, that he does not know if the testimony of CW1 may be false also. He remains unwell also and this is a false case heaped on him.

Submissions on Behalf of the Appellant:

54. Mr. S.J. Sarmah, learned counsel for the appellant submitted that as per the prosecution story, the victim as well as her younger sister were present in the house and both claimed to be eyewitnesses to the occurrence. In that circumstance, there ought not to have been any variance in the testimonies of

the victim and her younger sister. However, in the present case, there are glaring discrepancies *vis-à-vis* the statements of the aforesaid PW-1 (victim) and PW-4, besides other contradictions.

55. It is submitted that PW-4 stated that the victim (PW-1) was reading inside the house when the accused person came, but the victim stated that she was brooming the floor. Further, the victim stated that the accused person left the house at around 11:30 AM, but PW-4 stated that the accused person remained in their house till the return of the parents. Furthermore, the victim did not raise hue and cry and did not even inform her neighbors about the occurrence till her parents arrived much later, i.e., at or after 4:00 PM on the same day. Neither did she try to resist the appellant by biting, pushing or kicking him, though she tried to escape.

56. To the contrary, PW-4 stated that she chased the accused person to assault him with a lathi, and till then the accused person was in the house. Therefore, the aforesaid testimonies are mutually destructive of each other. There are other variances with regard to the time of arrival of the parents, which has been stated as 4:00 PM and 5:30 PM by the two witnesses.

57. In view of the aforesaid contradictions, the said witnesses cannot be regarded as credible ones and therefore, their testimonies are liable to be

rejected, submits learned counsel. Learned counsel would further submit that since the victim's father has not denied that the appellant had taken his tea garden on lease, the stand of the defense is a plausible one - that a false case has been lodged against the appellant in order to get back the tea garden from the appellant prior to the expiry of the lease. It is further pointed out that PW-4 admitted that her father tutored her what to say in the Court.

58. Learned counsel has further submitted that the age of the victim has not been properly proved.

Submissions on Behalf of the Prosecution and Informant:

59. Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, submits that except for some minor inconsistencies in the depositions of the witnesses, the prosecution has been successful in proving its case. Moreover, the medical evidence also supports the version of the victim, who was a minor aged just above 14 years, which fact has been proved by the evidence of CW-1.

Learned counsel representing the informant also submits to the same effect and argues that the foundational facts proved by the prosecution have not been successfully rebutted by the defense and therefore, the impugned judgment requires no interference.

60. On a perusal of the evidence on record more particularly that tendered by

CW-1, Dr. Ranjit Hazarika, Addl. Registrar, Birth and Death, Golaghat, it appears that there was no suggestions from the defence during his cross-examination that the date of the birth of the victim is not 28.08.2008. The said witness had duly proved that the birth of the victim was registered in the official records on 07.09.2008, i.e., barely 10 days after her birth, and he had produced the birth register of Golaghat district. He also deposed during cross-examination that when any birth takes place in the civil hospital, the information of the birth is sent to Golaghat Municipality and their births get automatically registered. Furthermore, it is reflected in the impugned judgment that in course of arguments, defense did not dispute the age of the victim. Therefore, on this aspect, we do not find any force in the contention of learned counsel for the appellant.

61. A perusal of the impugned judgment would show that the learned Trial Court had discarded the testimony of PW4 on the ground that her testimony was a tutored one. Therefore, the issue of contradiction between the testimonies of the two witnesses, i.e., PW1 (victim) and PW4, do not require consideration. This is so because having held that the testimony of PW4 is unreliable on account of being tutored, she cannot really be regarded as an eyewitness in the real sense of the term. However, and for that reason, because of the differences in the testimony of PW4 *vis-à-vis* that of PW1, the

testimony of PW1 cannot be rejected.

62. From the evidence of the PW-1 (victim) discussed above, there appears to be no material omissions or contradictions *vis-à-vis* her statement before the I.O. and the Magistrate and therefore, there appears to be no sound reason to disregard her testimony. As rightly held by the learned Trial Court, the facts of the case reveal that the tea garden area leased out to the appellant was adjacent to the PO house, and it has come from the defense evidence itself that it is the appellant who used to tend to the said tea garden and that he was also not present in his house on that day, which lends further credence to the testimony of PW-1.

63. The fact that the victim did not violently or aggressively resist the appellant while he was in the process of committing rape upon her, may be on account of various reasons and also depends to a large extent on the personality of the victim. Different people have different reactions to the same situation, and there cannot be any hard-and-fast rule that in every case of rape there must be active resistance on the part of the victim by way of biting, kicking, etc. The tender age of the victim, i.e., 14 years, is also a relevant consideration with regard to the aforesaid aspect of the matter. The victim may not even raise hue and cry or inform her immediate neighbors on account of

shame and embarrassment, but that is no reason to discard her testimony.

64. The defense had set up the plea of false implication on account of a dispute regarding the land of the informant leased out to the appellant as a tea garden. The DW-1 had stated that after about one year of the commencement of the lease, the informant had gone to the house of the appellant and got into an altercation demanding the return of the tea garden or money in lieu thereof, as some other person was offering Rs. 50,000/- to the informant. The DW-1 claims that he had sought to pacify the informant and also gave him some alternative suggestions, but just as the informant was going back, he threatened the appellant that he would "see him." But none of this was put to the informant during his cross-examination, except for a general suggestion about having lodged the case falsely on account of the aforesaid dispute and altercation. Therefore, the version of DW-1 appears to be a made-up story and does not impress us.

65. Moreover, the medical evidence indicating injuries on the private parts of the victim and rupture of the hymen also supports the version of the victim and conversely negates the aforesaid plea of the appellant. Therefore, there is no sufficient material to establish the aforesaid plea of false implication raised by the appellant.

66. In view of what has been discussed above, we do not find any infirmity in the impugned judgment and sentence, and consequently the same stands affirmed and the present appeal stands dismissed.

67. Send back the TCR..

JUDGE **JUDGE**

Comparing Assistant