IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. of 2026
[@ Special Leave Petition (Crl.) No.16804 of 2026]

Md. Akter Khan @ Bapon Khan

...Appellant

Versus

The State of Assam & Ors.

...Respondents

O R D E R

Leave granted.

2. The appellant is aggrieved with the impugned judgment, by which the High Court though found the charges under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) to be not sustainable for reason of the age of the prosecutrix not having been proved, still upheld the conviction under Section 376 (1) of the Indian Penal Code, 1860 (IPC) and maintained the sentence as awarded by the Trial Court, of 15 years of rigorous imprisonment with a fine of Rs.50,000/- and a default sentence of simple imprisonment for one year.

3. Prosecution alleged that PW1, the victim was offered a lift in a car driven by the accused and later she was taken to two places; first an Ethnic Village Park at Jatinga, where she felt dizzy from the

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soft drink and short eats offered earlier by the accused, in which state she was sexually assaulted repeatedly. It was also alleged that, then the accused had taken her to another place where again he raped her, at which point she totally lost her consciousness. She was found unconscious on the roadside from which she was taken to the hospital by her brother who was summoned there, by a friend. The accused was arrested from his house and after investigation, the case was put up for trial in which he was convicted and sentenced as hereinabove stated.

4. We heard Sri Shekhar Prit Jha, learned Advocate-on-Record appearing for the appellant and Sri Ankit Roy, learned Advocate-on-Record appearing for the respondent.

5. Altogether twenty witnesses were examined, and we have gone through the testimonies of the relevant ones as produced in the appeal. PW1 was the victim, who deposed that though she knew the accused; he being a regular visitor to the house of one of her friends, they were formally introduced on 15.08.2019. It is her deposition that on 15.08.2019 while she was returning home along with PW16, her cousin, the accused came in his car and offered lift. On persistent request made, they boarded his car, when he introduced himself. On that day, he dropped both at the house of the victim, as promised. Two days later, on 17.08.2019, while she

was proceeding to the hospital to check on a sick neighbour, the accused again came in his car and offered to drop her at the hospital. However, he refused to stop the car at the hospital and proceeded further and stopped the car near the Cultural Institute Hall. He bought her potato chips and coca cola and while proceeding further, at his request, she ate the chips and drank the soft drink, despite her statement that the drink had a smell emanating from it. Ignoring her request to drop her at the civil hospital, she was taken first to the Ethnic Village Park, where inside the car, she was sexually assaulted repeatedly; allegedly three times, and then later taken to another place where she was raped again. She claims that she regained consciousness at the hospital. The prosecution case was entirely founded on her testimony, and we will look at the corroboration attempted by the prosecution before the Trial Court.

6. At the outset, we have to notice that the prosecution was at pains to bring forth a confession as elicited from the accused through PW4 and PW5; witnesses to the crime scene reconstruction, PW7; the photographer who accompanied the police team and PW8, the Assistant Commissioner, who also accompanied the IO in the crime scene reconstruction. Obviously, the confession was made when the accused was in police custody

and cannot be relied upon under Section 26 of the Indian Evidence Act, 1872. PW5, who was witness to the crime scene reconstruction also turned hostile.

7. In the sequence of events, as put forth by the prosecution, PW2, an auto driver was proffered as a witness to indicate that the victim was found abandoned on the road in an unconscious state. PW2 submits that PW9, the brother of the victim came to the scene of occurrence, on being summoned. PW9, the brother of the victim, in his deposition said that he was summoned over the phone by a friend, who saw his sister lying unconscious on the roadside. He is said to have rushed in his auto rickshaw, along with three others; another younger sister and a couple to Bagetar, where the victim was found lying on the roadside. He is said to have taken her to Haflong Civil Hospital for treatment wherein she narrated about the incident of her having been taken in the car, made unconscious and raped. PW9, also an auto driver, does not speak of the name of the friend who summoned him nor of the couple and his other younger sister, who accompanied him; none of whom were examined before Court. The evidence of PW2, another auto driver, a chance witness, regarding the abandonment of the victim, hence, is insufficient; especially since none from the crowd gathered,

informed the police of the abandoned girl, who was also lying unconscious.

8. The evidence of PW3 is irrelevant, since he claimed to be the Secretary of All Assam Gorkha Students Union, Haflong, who had visited the victim at the hospital, to whom, the victim is said to have narrated the very same allegations. It is also relevant that the crime scene reconstruction spoken of by PW4 and PW7 specifically speaks of such reconstruction having been done at the Ethnic Village Park and at Pan Nala; the second site having not been spoken of by PW1 herself. PW6 is the owner of a Pan/Cosmetic shop, who merely deposes that the accused, who is the driver of a cruiser vehicle, purchased coke and chips from his shop but he does not remember the day or the time when such purchase was made and he deposes that 2-3 days later, he was informed of the accused having been arrested for the rape of a girl. The evidence of PW7 and PW8, who accompanied the IO, at the time of reconstruction of the crime scene, as already found is irrelevant. PW10 is the father of the accused and PW15 is the uncle of the victim who does not depose anything about the crime as such.

9. Relevant is the deposition of PW16, who is said to have accompanied the victim on 15.10.2018 when both were picked up by the accused in his car. While PW1, the victim stated that on the

said day, herself and PW16 were dropped in front of her house by the accused, PW16 had a different version. PW16 says that without taking them towards their home, the accused drove the car around Haflong town and took them to Ethnic Village near Jatinga and after repeated requests, they were dropped near Dimasa Mandir Surat Nagar, Haflong. The version of PW16 differs considerably from that of PW1, the victim. The conduct of the accused, on the previous occasion, as spoken of by PW16, if true, should have cautioned the victim on the next occasion.

10. Further, it is to be reiterated that the deposition of PW1 indicates that she was not only sexually assaulted but also beaten up inside the car and the accused had forceful sexual intercourse with her 2-3 times inside the car at the Ethnic Village Par. Again, she deposes that she was taken to another place; the location not being indicated, where she was again raped. The medical evidence, hence, assumes significance insofar as the specific allegations raised. PW17, a Psychiatrist, who examined her mental condition did not depose anything with respect to the crime proper as such. The Doctor who examined her on 19.08.2019, testified as PW20 before the Trial Court. The examination revealed that there were no minor or major injuries on any part of the body of the victim nor was there any sign of sexual intercourse present. Her

age as per the X-Ray findings were approximately 18 to 19 years and there was no sign of spermatozoa on the vaginal swab and there was no violation mark detected. The allegations of forceful sexual assault on more than three occasions and the allegation of beating up inside the car are not supported by the medical evidence. Despite the fact that the witness was examined two days after the incident, the complete absence of any signs of assault and forceful intercourse raises a reasonable doubt.

11. Pertinent also is the fact that there was nothing produced to indicate the history of the crime recorded at the time of admission to the hospital, which assumes relevance again for reason of the FIR having been registered on 18.05.2019, the next date of her admission. The explanation given by the brother is of tending to his sister admitted to the hospital, which cannot be accepted; especially since the hospital, on admission would have immediately intimated the police.

12. Considering the above circumstances, we are unable to find the accused guilty of the offence alleged, especially noticing the discrepancies in the deposition of the victim, which does not align with that of the other witness, PW16 and the medical report. But for the deposition of the victim, there is nothing incriminating found against the accused. The vehicle is said to have been recovered by

Ex. P7, seizure list as deposed by PW18 in whose name the same was registered. PW18 spoke of a sale having been carried out to the accused but the registration having not been changed. Pertinent is the fact that the IO did not speak of the seizure of the car nor was any examination carried out inside the car to find any telltale signs of assault complained of and the sexual intercourse carried out inside the car as alleged. PW1's testimony is not of the sterling character required for conviction on that sole basis.

13. We are unable to sustain the conviction of the accused, who hence stands acquitted. He shall be released forthwith, if not required in any other case. If he is already on bail, then his bail bonds shall stand cancelled.

14. The appeal is allowed.

15. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
NOVEMBER 20, 2026.

ITEM NO.43 COURT NO.5 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No. 16804/2026
[Arising out of impugned final judgment and order dated 13-11-2025 in CRLA No. 124/2023 passed by the Gauhati High Court]

MD AKTER KHAN @ BAPON KHAN Petitioner(s)

VERSUS

THE STATE OF ASSAM & ORS. Respondent(s)

IA No. 202028/2026 - CONDONATION OF DELAY IN FILING

Date : 20-11-2026 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) :Mr. Shekhar Prit Jha- 1245, AOR
Ms. Preeti Kumari, Adv.
Ms. Akansha Yadav, Adv.
Ms. Sushmita Rawat, Adv.
Mr. Anurag Bansal, Adv.

For Respondent(s) :Mr. Ankit Roy- 3248, AOR
Ms. Mrinalini Ramesh, Adv.
Mr. Prem Mankani, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. **Leave granted.**

2. **The appeal is allowed in terms of the signed order.**

3. **The relevant part of the order is as under:-**

"13. We are unable to sustain the conviction of the accused, who hence stands acquitted. He shall be released forthwith, if not required in any other case. If he is already on bail, then his bail bonds shall stand cancelled."

4. **Pending application(s), if any, shall stand rejected.**

(CHANDRESH) (POOJA SHARMA)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)
(Signed order is placed on the file)