

GAHC010114912025



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

Case No. : CrI.A./193/2025

RAM LOCHAN CHOUDHURY
S/O LATE JALESWAR CHOUDHURY, R/OI VILL- DOIGRUNG NO. 2, P.S.-
GOLAGHAT, DIST- GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI MUNI TELENGA
W/O SRI BIRAJ TELENGA
R/O VILL- NO. 2 DOIGRUNG TEA ESTATE
JONGHOL LINE
P.S.- GOLAGHAT
PIN-785702
DIST- GOLAGHAT
ASSA

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the appellant : Mr. P. K. Munir,

For the respondents : Mr. R. R. Kaushik, Add.PP.,

Mr. K. P. Pathak (for R 2)

Date of hearing : 25.02.2026

Date of judgment : 25.02.2026

JUDGMENT & ORDER

(M. Zothankhuma, J)

1. Heard Mr. P.K. Munir, learned counsel for the appellant and Mr. R. R. Kaushik, learned Additional Public Prosecutor, Assam for the State. Mr. K. P. Pathak, learned counsel appears for the respondent No. 2.

2. This is an appeal against the judgment dated 26.09.2023 passed by the learned Special Judge, POCSO at Golaghat in Special POCSO Case No.25/2022, arising out of Golaghat P.S. Case No.69/2022, by which the appellant had been convicted under Section 6 of the POCSO Act, 2012 and sentenced to undergo rigorous imprisonment for life with a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for 3 (three) months.

3. The case against the appellant is that he had raped the victim girl who was an alleged minor, due to which the appellant has been convicted under Section 6 of the POCSO Act, 2012. The ossification test that had been conducted on the victim shows that she was between 16 and 18 years during the time the incident of rape had occurred. Keeping in view the decision of the Supreme Court in the case of ***Ram Suresh Singh vs. Prabhat Singh @ Chhotu & Another***, reported in ***(2009) 6 SCC 681*** and ***Jyoti Prakash Rai @ Jyoti Prakash vs. State of Bihar***, reported in ***(2008) 15 SCC 223***, the age determined by an ossification test not being a precise one and therefore a 2 year margin of error may be applied on either side of the age of the victim.

4. In the case of ***State of Uttar Pradesh vs. Chhoteylal***, reported in ***(2011) 2 SCC 550***, the Supreme Court had held that there is no such Rule, much less and absolute one that two years have to be added to the age of the victim, determined by a doctor. This decision had been made on the basis of a Three Judges Bench decision of the Supreme Court in the case of ***State of Karnataka vs. Bantara Sudhakara @ Sudha & Anr***, reported in ***(2008) 11 SCC 38***, wherein it has been stated at para 12 as follows:-

'12. Additionally, merely because the doctor's evidence showed that the victims belong to the age group of 14 to 16, to conclude that the two years' age has to be added to the upper age-limit is without any foundation.'

5. The above being said, in the case of ***Rajak Mohammad vs. State of Himachal Pradesh***, reported in ***(2018) 9 SCC 248***, the Supreme Court has held that while it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt would naturally go in favour of the accused.

6. Though the above judgments are in relation to giving the benefit of ± 1 or 2 years to an accused on whom an ossification test had been conducted. One issue that arises is whether to determine the age of the accused, the above said principle of ± 2 years margin of error can be applied on an ossification test

conducted on a victim. Though it is settled law that in the event of there being 2 views, one in favour of the accused and one in favour of the State, we should lean in favour of the accused, the question whether margin of error of plus 1 or 2 years can be given, when it comes to determining the age of the victim after an ossification test is conducted, is a moot question. The above being said, it is the case of the prosecution that a child has been born out of the rape that had been committed by the appellant on the victim. On a query made to the learned counsels for the parties, as to whether a DNA test should be conducted, to determine the paternity of the child vis-a-vis the appellant, the counsels of the parties had submitted that they did not have any objection if a DNA test was conducted on the child and the appellant.

7. In the case of ***Sudip Biswas @ Bura vs. The State of Assam & Another*** (Criminal Appeal 73/2023), the Division Bench of this Court, vide Order dated 13.10.2023, had directed that a DNA test/profiling should be conducted on the child of the victim and the accused/appellant therein, to get to the truth of the matter, as the offence of rape was an offence against the society at large and as the objective of a Court proceeding was to find out the truth. This Court, thus held that though it might be argued that a right to privacy is a part of the right to life and personal liberty under Article 21 and that Article 20(3) provides that nobody should be compelled to give evidence against himself, the said right cannot over-ride the search for the truth.

8. In the case of ***Harishchandra Sitaram Khanorkar Vs. State of Maharashtra***, reported in ***2023 (1) ABR (CRI) 259***, the Division Bench of the Bombay High Court has held that there can be no doubt that there have

been remarkable technological advancement in forensic science and in scientific investigations. The DNA testing has an unparalleled ability both to exonerate the wrongly convicted person and to identify the guilty. It has the potential to significantly improve both the criminal justice system and police investigative practices. Modern DNA testing can provide powerful new evidence unlike anything known before DNA technology. It provides not only guidance to the investigation, but also supplies the Court accurate information regarding the identification of the criminal.

9. In the case of ***Pravin Suryabhanji Gube Vs. State of Maharashtra***, reported in ***2019 (2) ABR (CRI) 70***, the Bombay High Court has held that DNA is a modern scientific technique, which is very useful and helpful not only for investigators, but also for Courts to reach to the truth. DNA conclusively points the finger of guilt towards the perpetrator of a crime. However, while considering this scientific piece of evidence, the Court is required to examine as to whether at any point of time, it could be said that there was the slightest chance of playing with the samples and/or tampering with it by anyone.

10. In the case of ***Mukesh Vs. State (NCT of Delhi) 2017 6 SCC 1***, the Hon'ble Supreme Court spoke on the importance of DNA evidence. It observed in paragraph Nos. 216 and 217 as follows:-

"216. DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing

countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner.

217. *Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is a must."*

11. In the case of ***Pantangi Balarama Venkata Ganesh Vs. State of A.P.***, reported in ***2009 14 SCC 607***, the Supreme Court held that experts opined that identification by DNA profiling is hundred percent precise. However, there is a need for quality control. Further, the evidence of experts is admissible in evidence in terms of Section 45 of the Evidence Act, 1872. The Supreme Court in the above case has held at paragraph No. 41 as follows:-

"41. Submission of Mr. Sachar that the report of DNA should not be relied upon, cannot be accepted. What is DNA? It means:

(Deoxyribonucleic Acid), which is found in the chromosomes of the cells of living beings is the blueprint of an individual. DNA decides the characteristics of the person such as the colour of the skin, type of hair, nails and so on. Using this genetic fingerprinting identification of an individual is done like in the traditional method of identifying fingerprints of offenders. The identification is hundred percent precise, experts opine."

12. In the case of ***Manoj Vs. State of M.P.***, reported in ***AIR Online 2022 SC 767***, the Supreme Court has held at paragraph No. 158 as follows:-

"158. This Court, therefore, has relied on DNA reports, in the past, where the guilt of an accused was sought to be established. Notably, the reliance was to corroborate. This Court highlighted the need to ensure quality in

the testing and eliminate the possibility of contamination of evidence; it also held that being an opinion, the probative value of such evidence has to vary from case to case."

13. Section 53A(2)(iv) Cr.P.C, which is equivalent to Section 52(2)(iv) BNSS provides that a registered medical practitioner shall prepare a report of his examination, of a person/material taken from the person, arrested on a charge of committing an offence of rape or an attempt to commit rape by way of DNA profiling, if there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence. Section 164A (2)(iii) Cr.P.C, which is equivalent to Section 184(2)(iii) BNSS provides that the registered medical practitioner, to whom a victim of rape or attempted to be raped is sent, shall, without delay, examine her in person and prepare a report of his examination giving various particulars, one of them being, the description of material taken from the person of the woman for DNA profiling.

14. Section 52 BNSS Section 184 BNSS are reproduced herein below as follows:-

“Section 52 of BNSS:-Examination of person accused of rape by medical practitioner ---

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector,

and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely;

(i) the name and address of the accused and of the person by whom he was brought,

(ii) the age of the accused,

(iii) marks of injury, if any, on the person of the accused,

(iv) the description of material taken from the person of the accused for DNA profiling, and”.

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of Sub-Section (6) of that section.

Section 184 BNSS:- Medical examination of the victim of rape---

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely—

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and

(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent, to give such consent on her behalf to such

examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 193 as part of the documents referred to in clause (a) of Sub-Section (6) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation – For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as respectively assigned to them in Section 51.

15. In the case of ***Santosh Kumar Singh Vs. State***, reported in **2010 9 SCC 747**, which was in respect of a young girl who was raped and murdered, the DNA report relied upon by the High Court was approved by the Supreme Court and held that the DNA report can be accepted as being scientifically accurate and an exact science as held by the Supreme Court in ***Kamti Devi Vs. Poshi Ram***, reported in **2001 5 SCC 311**.

16. In the case of ***Krishan Kumar Malik Vs. State of Haryana***, reported in **2011 7 SCC 130**, which was a case of gang rape, the prosecution had not conducted the DNA test or made any analysis and matching of the semen of the accused with that found on the undergarments of the prosecutrix. The Supreme Court has held at paragraph No. 44 as follows:-

44. *Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23.06.2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in Cr.PC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences."*

17. In the case of ***Sandeep Vs. State of U.P.***, reported in ***2012 6 SCC 107***, which was a case of murder of a pregnant girlfriend and the unborn child of the accused, the Supreme Court held that the DNA report confirmed the accused as the father of the unborn child.

18. In the case of ***Rajkumar Vs. State of M.P.***, reported in ***2014 5 SCC 353***, which was a case involving the rape and murder of a 14 year old girl, the Supreme Court held that the DNA report established the presence of the semen of the accused in the vaginal swab of the prosecutrix.

19. We have also noticed that in the case of ***Bhabani Prasad Jena Vs. Orissa State Commission for Women***, reported in ***2010 8 SCC 633*** and ***Dipanwita Roy Vs. Ronobroto Roy***, reported in ***2015 1 SCC 365***, DNA testing had been allowed to determine the paternity of the child.

20. Keeping in view the above decisions and the order dated 13.10.2023 passed in Criminal Appeal 73/2023 (***Sudip Biswas @ Bura vs. The State of Assam & Another***), we directed the learned Trial Court, vide order dated 16.09.2025, to take additional evidence under Section 391 Cr.P.C, which is

equivalent to Section 432 BNSS, by taking steps for ensuring that a DNA test/profiling of the appellant and the child of the victim alleged to have been fathered by the appellant, is undertaken, after taking the samples from the appellant and the child in the presence of the learned Judge of the learned Trial Court.

21. In pursuant to the above, the Joint Director, Directorate of Forensic Science, Assam, Kahilipara, has written a letter No. DFS-1632/25/28 dated 28.11.2025 to the Special Judge (POCSO), Golaghat, Assam with report No. 1632/25/7937/DNA-1079 dated 27.11.2025, issued by Ms. Violina Pathak, Scientific Officer, DNA Typing Unit, Directorate of Forensic Science, Assam, Kahilipara, which is to the effect that the baby of the victim has not been fathered by the appellant. Ms. Violina Pathak also appeared virtually today and stated that in terms of the report dated 27.11.2025, the DNA test/profiling proved that the appellant was not the father of the child born to the victim.

22. The letter dated 28.11.2025, issued by the Joint Director, Directorate of Forensic Science, Assam, Kahilipara and the letter dated 27.11.2025, issued by Ms. Violina Pathak, Scientific Officer, DNA Typing Unit, Directorate of Forensic Science, Assam, Kahilipara are made a part of the record and marked as Annexure-X and Y respectively.

23. As can be seen from the evidence of the victim, i.e. PW-4, the appellant has been projected to be the father of the baby. The evidence of the victim also points to the victim having been subjected to penetrative sexual assault by the appellant only. The victim has not stated anything in her evidence that she had

sexual intercourse with any other person, other than the appellant. However, Annexure-Y has shown that the said allegation is an outright lie. Though it is settled law that the evidence of a prosecutrix has the same value as the evidence of an injured witness and can be the basis for convicting an accused, the same has to be truthful and should inspire the confidence of the Court. The testimony of the victim however does not inspire the confidence of this Court and does not appear to be truthful.

24. In the case of ***Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, the Supreme Court has held that conviction can rest on the sole testimony of the prosecutrix, which should be of sterling quality. Sterling quality has been defined by the Supreme Court in ***Rai Sandeep (supra)***, where it has been held that the statement of a prosecutrix should be consistent, natural and free from material contradictions. The stand of the sterling witness should be consistent from the very beginning till the very end, besides the witness being able to withstand any questions put to him or her. Para 22 of the said judgement is reproduced herein below, as follows :-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the

cross-examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

25. In present case, the evidence of the victim has not been able to withstand the result of the DNA test/profiling conducted upon the appellant and the child of the victim. As such, the victim cannot be said to be a sterling witness. It would thus not be proper to convict the appellant on the basis of the evidence of the victim, which is not free from material contradictions. There is nothing in the evidence of the other prosecution witnesses to corroborate the evidence of the victim, inasmuch as, there was no eye witness to the appellant committing the alleged offence of penetrative sexual assault upon the victim, other than what the victim said.

26. When the only evidence against the appellant was the statement of the

victim, which resulted in the birth of a child, the demolition of the said statement by the DNA test leaves us with no other option but to hold that the prosecution has not been able to prove the guilt of the appellant under the charge framed under Section 6 of the POCSO Act read with Section 376 of the IPC.

27. Accordingly, the appellant is acquitted from the charge framed against him. Consequently, the judgment dated 26.09.2023 passed by the learned Special Judge, POCSO at Golaghat in Special POCSO Case No.25/2022, arising out of Golaghat P.S. Case No.69/2022, is hereby set aside.

28. The respondents shall release the appellant immediately from judicial custody, if not wanted in any other case.

29. Send back the TCR.

30. In appreciation of the assistance provided by Mr. K. P. Pathak, learned Amicus Curiae, his fee should be paid by the Assam State Legal Services Authorities, as per norms.

JUDGE

JUDGE

Comparing Assistant