

GAHC010093022022



REPORTABLE

2026:GAU-AS:10798

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

Case No. : Crl.A./94/2022

BITOPAN KALITA
S/O SRI THANESWAR KALITA
RESIDENT OF VILLAGE DANGUAPARA, PO ANEKUCHI, PS AND DIST
NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:ARATI TAMULI
W/O SRI NARAYAN TAMULI
RESIDENT OF VILLAGE DANGUAPARA
PO BANEKUCHI
PS AND DIST NALBARI
ASSAM

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the appellant(s): Mr M C Kalita
Mr B K Das
Ms Priti Das
Mr M Ali

Advocate for the respondent(s): Ms S H Bora, APP, Assam
Mr S N Krishnatraya, R-2

Date on which judgment was reserved : **31.07.2026**

Date of pronouncement of judgment : **04.08.2026**

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been : **Yes**

pronounced?

JUDGMENT AND ORDER (CAV)

This is an appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, challenging the Judgment and Order dated 14.03.2022, passed by the learned Special Judge, Nalbari, in Special (P) Case No. 15 of 2019. By the said judgment and order, the appellant was convicted under Section 354 of the Indian Penal Code, 1860 (for short, 'the IPC'), read with Section 8 of Protection of Children from Sexual Offences Act, 2012 (hereinafter, referred to as "the POCSO Act"), and was sentenced to undergo Rigorous Imprisonment for a term of 5 (five) years with fine of Rs. 30,000/- and in default of the payment of fine, to undergo SI for 6 (six) months under Section 8 of the POCSO Act. The appellant was also sentenced to undergo Rigorous Imprisonment for a term of 3 (three) years, with fine of Rs. 10,000/-, and in default of the payment of fine, to undergo SI for 2 (two) months under Section 354 IPC. Since the sentences were not directed to run concurrently, imprisonment should continue one after the other. As such, the total period to be undergone by the appellant was directed for 8 years.

FACTS:

2. The case of the appellant is that one ejahar was lodged on 10.12.2018 by the mother of the victim stating, *inter alia* , that on the same date, i.e., on 10.12.2018, at around 11:30 am, her daughter had gone to deposit the amount meant for Bandhan Bank to a person's house, namely, Umesh Barman and while she was returning from there, the appellant intercepted her on the way and forcibly took her by pulling her hand inside his house and there he kissed her minor daughter on her face and lips and by holding her recorded a video and threatened her not to divulge the incident to anyone or else, he would kill her and told her to visit his place off and on. The informant further stated that her daughter, on reaching her home, by crying told the incident to her mother, i.e., the informant. The Police, on receipt of the FIR, registered the same as Nalbari PS Case No. 874 of 2018, under Section 354/387 IPC, read with Section 4 of the POCSO Act. The Police on completion of the investigation, submitted charge sheet against the appellant on 28.02.2019, under the said provisions of law and after completion of necessary requirements, the case was committed to the learned Court of Special Judge, Nalbari. The learned Trial Court framed the charge against the appellant under Sections 354/506 IPC, read with Section 8 of the POCSO Act, by order dated 07.08.2019. Thereafter, the trial commenced and during the trial, 8 (eight) numbers of witnesses were examined on behalf of the prosecution, which included the medical doctor and the Investigating Officer and after recording the statement of the appellant under Section 313 of the CrPC, convicted the appellant under Section 354 IPC, read with Section 8 of the POCSO Act, as mentioned above. The learned Trial Court had based its conviction and the sentence on the following grounds:-

- i) The victim was proved to be minor in view of the statements by the witnesses as well as her birth certificate, which was seized by

the Police.

- ii) Evidence is clear that appellant kissed the minor victim on her mouth, which amounted to sexual offence.
- iii) The prosecution established the foundational facts and the presumption under Section 30 of the POCSO Act came into operation.
- iv) The appellant failed to rebut the presumption.
- v) It is proved that the appellant used criminal force upon the victim with the intent to outrage her modesty. The prosecution succeeded in proving that the appellant pulled the victim by her hand into his house and then committed the sexual act.
- vi) The evidence of the victim and her mother proved the offence against the appellant beyond reasonable doubt.
- vii) It is further proved that the appellant by kissing the victim's mouth and by inserting his tongue into her mouth, had outraged her modesty.

EVIDENCE:-

3. PW-1 was a co-villager and he knew both the victim and the appellant. He stated before the Trial Court that he heard the incident from the village people when they were discussing that appellant, after calling the victim did indecent act with her. He, however, stated that he did not know what kind of

indecent act was committed by the appellant upon the victim. He, however, stated that he knew that appellant had bad reputation and that he is a bad boy of the locality. At this stage, this witness was declared as hostile by the Court, upon the prayer made by the prosecution, and as such, prosecution was allowed to cross-examine him. During the said cross-examination, he declined the statement made before the Police to the effect that the accused had pulled the victim to his house, forcibly kissed, took photographs in his mobile, recorded a video of kissing incident and that the girl, thereafter narrated the incident at her home by crying. This witness was further cross-examined by the defence and during the same, he stated that he did not hear the incident when the victim disclosed it to her mother or other family members and also that he did not have the personal knowledge that the appellant was of a bad character.

4. Another neighbour examined as PW No. 3, stated that he heard from the parents of the victim that the appellant took the victim girl inside his house from the road and molested her. He further stated that upon knowing the incident, the village people made a search of the accused, but he could not be found. During his cross-examination, this witness stated that he did not state before the Police that appellant molested the victim.

5. The mother of the victim was examined as PW No. 3, and she stated that at the time of the incident, the victim was 12 years old. She further stated that on the day of the incident, she sent her daughter to the house of one Umesh

Barman, to deposit the installment of Bandhan Bank and that after some time, her daughter returned back to her home and narrated that while she was coming home from the house of Umesh Barman, the appellant restrained her

when she reached the front of the appellant's house and that the appellant dragged her inside his house. This witness further stated that her daughter divulged that the appellant after taking her inside his house, forcibly kissed her on her face and body and had put his tongue inside her mouth and also that the appellant took photographs, placing his hand on her neck, i.e., by holding her. Her daughter also stated that the appellant threatened her not to disclose the fact to any other person and that, if she discloses he will kill her. This witness further stated that when her husband came home, she disclosed the incident to him, and when her husband wanted to go and confront the appellant, she restrained him, telling that she will go herself and ask him. This witness also stated that accordingly, she went and asked the appellant and that the appellant confessed before her that he dragged her daughter to his house, kissed her on her face, took photographs and recorded the video, and that he had shown the photographs and video to this witness. She further stated that while she was returning from the house of the appellant, she met one lady and upon asking, she told the lady about the incident, at which, the lady replied that mother of the appellant was not at home and requested this witness to come later. The said lady had further stated that had the accused been her son, she would have punished him and on further asking about her identity, the said lady replied that she is the 'jethi' of the appellant. This witness, as such, stated that thereafter, she went and lodged the FIR and that Police had seized the original birth certificate of the victim.

This witness was cross-examined at length and she stated that she did not witness the incident personally and that she further denied of making certain statements before the Police to the effect of her going to the place of the appellant or the appellant confessing his deeds or showing the photographs or

even meeting the lady on her wayback from the house of the appellant. This witness further stated that on the day before, i.e., on 09.12.2018, there was Panchayat election. She also denied that the case was lodged as a retaliation due to the altercation between her and the appellant's family on damage been done to the rice-fields of the appellant.

6. Yet another neighbour was examined as PW No. 4 and he submitted before the Trial Court that the mother of the victim came to his house and informed about the incident, and in his cross-examination, he stated that no one was present when the said incident was narrated by the informant.

7. The victim was examined as PW No. 5, and she stated before the Trial Court that she knew the victim and that the incident took place at about 11 am on the day of occurrence. She stated that in the morning, her mother sent her to the house of Umesh, whom she addressed as uncle to pay the monthly installment and that she went to the said house by riding a bicycle and while she was returning and reached the front of the house of the appellant, the appellant who was standing thereon, called her to his house at which, she replied that she can't go as her examination was on the next date, but then the appellant held her bicycle by one hand and held her hands tightly by the other hand and dragged her inside his house. She also stated that when she entered the house, she found the house dark and at that juncture, the appellant kissed her on her face and lips and by opening her mouth, he licked by putting his tongue and threatened her to kill her, if she discloses the incident to anyone and further asked her to come to his house regularly. She, thereafter, stated that she came home and told the incident to her mother, who went, taking her along and met the accused and, thereafter, lodged the ejahar. She then stated that her

statement was recorded by the Magistrate under Section 164 CrPC.

The victim was cross-examined by the defence and during the same, she stated that the appellant had left her bicycle on the road and dragged her inside his house holding her hand and that she experienced pain when appellant had held her hand tightly. She further stated that appellant held her and took photographs by putting his hand around her neck. She also stated that there was no other house in between the house of the appellant and said Umesh from whose house, she was returning and that when she was dragged inside the house of the appellant, no one was present on the road. She, thereafter, stated that after the incident, she came back straight to her home without disclosing the incident to anyone she met on the way. She further admitted that she had not stated that appellant licked her mouth and had put his tongue in her mouth, before the Police. She also reiterated that she along with her mother, went to the house of the appellant and that she did not find the mother of the appellant in his house. She also stated that she is not aware as to whether the appellant had shown the photographs to others or not. She further in her cross-examination stated that it is not a fact that the appellant recorded a video with her.

8. PW No. 6 was another neighbour, who was examined in the instant case and he deposed that there was a village meeting to decide on the allegation as to whether the appellant had called the victim and used obscene language towards her. However, in his cross-examination, he stated that there was no recording of the events in the meeting and that the victim never told him anything about the incident and he also did not know what obscene language was used by the appellant.

9. The doctor who examined the victim deposed as PW No. 7, and he stated that he examined the victim on 15.12.2018 and that on examination, he found her hymen, ruptured, but without any tenderness or bleeding. He further found no injury on the body of the victim or her private parts. This witness further stated that based on the X-Ray report, the age of the victim would be below 14 years and above 12 years. He opined that no evidence of recent sexual intercourse was found in the body of the victim.

10. The Investigating Officer was examined as PW No. 8 and she stated before the Trial Court that she recorded the statements of the witnesses, including the victim and had also sent her for recording her statement under Section 164 CrPC. This witness further stated that the victim's birth certificate was seized and the same showed that the victim was of 12 years of age at the time of occurrence.

11. These are the evidence put forth by the prosecution. Thereafter, the appellant was examined under Section 313 of the CrPC and in reply to the various incriminating circumstances put to the appellant, he denied all of them and stated in his defence that no such incident of sexual harassment was committed upon the victim and that a false case was lodged against him. He further stated that there was an argument between him and the informant's family over damaging his fields by the informant's cattle and as such, according to him, the case was lodged to harass him. No defence witness was examined by the appellant and that the Special Judge, Nalbari, heard the arguments on 17.02.2022 and fixed 14.03.2022, for judgment and that the judgment was delivered on the said date.

SUBMISSIONS:

12. Ms Priti Das, learned counsel for the appellant submitted by referring to her written submission that there are inconsistencies in the statement of the victim before the Court and before the Police. She stated that during her cross-examination, the victim admitted that she did not make any such statement, i.e., appellant licking her mouth with his tongue before the Police, and also that no videography was done by the appellant. She also stated that no hue and cry was raised by the victim. It is in her further submissions that Sri Umesh Barman, from whose house she was returning was not examined as a witness. To substantiate her argument, she has relied on three judgments mentioned below:-

i) ***Raja and Others -vs- State of Karnataka;*** reported in **(2016) 10 SCC 506.**

ii) ***Shri Lalchhananhlua -vs- The State of Mizoram;*** (Crl. Appeal No. 21 of 2020).

iii) ***Mussauddin Ahmed -vs- State of Assam;*** reported in **(2009) 14 SCC 541.**

13. The learned counsel also submits that there are contradictions regarding the extra-judicial confession stated by the mother of the victim to the effect that the said extra-judicial confession was not stated by the mother of the victim to the Police. She relied on the judgment rendered by the Supreme Court in ***Raju and Others -Vs- State of Madhya Pradesh;*** reported in **(2008) 15 SCC 133.**

14. The learned counsel submits before this Court that there is discrepancy in the facts as is revealed by PW No. 6, who stated that village meeting was held to look into the aspect of using obscene language towards the victim by the appellant. The learned counsel further submits that although the victim stated that photos and videos were taken but the same were not seized by the Police neither the same were treated as evidence. She further submits that all the independent witnesses, i.e., PWs-1, 2, 4 and 6 are hearsay witnesses and that the medical findings were not in favour of the victim, as no evidence of injury or any sexual intercourse were found on the body of the victim or her private parts.

15. The learned counsel also made the submissions that the incident had taken place in broad daylight, and when she was dragged inside the home by the appellant, she did not raise any alarm, despite there being a threat to her life. She also submitted that the fact of there being a Panchayat election, the possibility of animosity and disputes amongst families were apparent along with the incident of cattle trespass, as mentioned above. The learned counsel had also relied on the principle of *actus reus*, i.e., physical criminal act and stated that the same was not established beyond reasonable doubt. She further submitted that the prosecution has failed to prove the foundational facts and as such, no presumption against the appellant is attracted in the present case.

16. The learned counsel further relied on the following judgments:-

i) ***V K Mishra and Another vs. State of Uttarakhand***; reported in **(2015) 9 SCC 588**, by which the Apex Court had held that material omissions in respect of statements before the Police, amounts to material contradictions.

ii) ***State of Rajasthan vs. Rajendra Singh***; reported in **(2009) 11 SCC 106**, by which the Apex Court had deliberated on improvements and embellishments of statements in a Trial Court.

iii) ***Rai Sandeep @ Deepu vs. State of NCT of Delhi***; reported in **(2008) 12 SCC 81**, by which the Supreme Court has observed the quality of the sterling witness and its reliability in a case.

iv) ***Santosh Prasad vs. State of Bihar***; reported in **(2020) 3 SCC 443**, by which the Apex Court had held that conviction can be based on sole testimony of the prosecutrix.

v) ***Arjun Pandit Rao Khotkar vs. Kailash***; reported in **(2020) 7 SCC 1**, by which the Apex Court had observed on failure to seize electronic evidence as fatal to prosecution.

vi) ***Vadivelu Thevar vs. State of Madras***, reported in **AIR 1957 SC 614**, to bring into home the fact that victim's testimony is neither wholly reliable nor wholly unreliable and since the evidence falls under the third category, i.e., neither wholly reliable nor wholly unreliable, the Court has to look for corroboration. It is her submission that there was no corroboration to the statement made by the victim.

vii) ***Kailash Gaur vs. State of Assam***; reported in **(2012) 2 SCC 34**, in order to show that acquittal under Section 506 IPC discredits the narrative given by the victim.

17. These are the main judgments referred by the learned counsel to put forth

her point.

18. On the other hand, Ms S H Bora, learned Additional Public Prosecutor for the State, submits that the statement of the victim before all the authorities, i.e., Police, Magistrate and the Trial Court are consistent as far as the root of the offence is concerned. She stated that the victim narrated that she was first dragged from the road by the appellant to his house, wherein she was subjected to sexual harassment and was threatened not to divulge the incident to others. She further submits that the statement of the mother corroborates the statement of the victim in the instant case and that the foundational facts have been established by the prosecution and the presumption under Section 29 of the POCSO Act, comes into play. She also submits that victim is admittedly minor and as far as her not making hue and cry is concerned, the same can be backed by reason that there was no house near the house of the appellant, which can be seen from the sketch map. She as such, submits that the conviction and sentence imposed upon the appellant, is correct in the eyes of law. To substantiate her argument, she relied on a judgment delivered by the Supreme Court in ***State of Punjab vs. Gurmeet Singh***; reported in **(1996) 2 SCC 384**, and the judgment delivered by this Court in the case of ***Bhupen Kalita -Vs- State of Assam***, in Criminal Appeal (J) No. 87 of 2017, on 05.06.2020.

19. Mr S N Krishnatraya, learned counsel appearing for respondent No. 2, submits that the statement of the victim is consistent with her statement before the Magistrate and further submits that petitioner is admittedly minor. He also submits that the sketch map prepared in the instant case demonstrated that there were no houses nearby the place of occurrence, and as such, the incident

was not heard by anyone and that no contradiction with regard to the statements of the victim as well as other witnesses were proved in the instant case. He further states that the victim who was of 12 years of age, was made to face sexual harassment and she will be in such a trauma that she won't be able to tell it to others whoever she meets on the way. He also submits that it is not possible for a 12 years old girl to get away from the clutches of a 26 years old young man. The learned counsel relied on a judgment rendered by the Hon'ble Apex Court in ***Ganeshan vs. State***; reported in **(2020) 10 SCC 573**, by which the Apex Court had observed that the sole testimony of the victim if absolutely trustworthy, unblemished and is of sterling quality, can be relied on for holding a person guilty of the sexual offence.

ANALYSIS AND FINDINGS:

20. It is a settled position of law that sexual offences are done in closed rooms and as such, there can be no ocular evidence to that effect. Accordingly, the Hon'ble Apex Court had, time and again, held that the version of the prosecutrix or the victim can be the sole basis for conviction, however, the same should be trustworthy, reliable, without any inconsistency, inspiring confidence of the Court. It is no res integra that in order to see the trustworthiness of the version of the victim, consistency in her statement before all the authorities, right from the inception, i.e., from the statement of the victim before the Police, to her last statement, i.e., statement before the Trial Court, has to be seen with circumspection. Apart from the said two statements, there is yet another statement, i.e., the statement of the victim recorded by the Magistrate under Section 164 CrPC. The consistency in the statement of victim under the aforesaid Section has also to be seen and compared with other statements as

mentioned above.

21. The Hon'ble Supreme Court in the case of **Rai Sandeep (supra)** has observed as follows:-

“15. 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."

22. In view of the settled position of law and as held by the Supreme Court in the aforesaid decision, the statement of the victim before all the authorities has to be examined, in order to see the sterling nature of the victim. As such, the statement of the victim before the Police authorities be referred hereinbelow:-

i) She stated that she is studying in Class-V and that on the day of occurrence, at around 11:30 am, she went to the house of Umesh Barman, to deposit the installment amount given by her mother, by riding a bicycle, and on her wayback, the appellant by intercepting her, made her get down from the bicycle and took her inside his house forcibly by dragging her hand and on reaching inside the house, the appellant forcibly kissed her on her face and lips and by holding her he took photographs and recorded video and also threatened her not to divulge the incident to anyone or else he will kill her and also requested her to keep coming to his place often. She further stated that she somehow got away from his clutches and returned back to her home and told her mother the entire incident. She also stated that during the incident there was no one in the house of the appellant.

ii) Thereafter, the statement of the victim was recorded by the Magistrate under Section 164 CrPC and the said statement is as follows:-

She stated that on 10.12.2018, at around 12:00 noon, she went to the house of one Monica Barman, to give the installment amount by riding a bicycle, and while she was returning, the appellant who stays near her place, stopped

her saying that he wants to speak with her, at which she replied that she has examination on the next date and that she had no time to speak with him. She further stated that at that point of time, the appellant pulled the cycle by the carrier attached to it and dragged her by holding her hand and took her inside his house. She then stated that the appellant had kissed her on her face and lips and that he inserted his tongue into her mouth and that she was forced to kiss him on his lips and that the appellant further told her not to divulge the incident to anyone, or else, he would kill her. She then stated that she somehow, got away from him and came back to her house and informed the incident to her mother. She, thereafter, stated that the appellant had done such incident with another girl, which the appellant had himself told her and when her mother went and asked that girl, that girl cried.

23. During the trial, the victim was examined as PW-5 and her statement before the Trial Court was as follows:-

i) She stated that on 10.12.2018, at around 11:00 am, she went to the house of Sri Umesh, to deposit the monthly installment that her mother gave her by riding a bicycle and while she was returning and reached the house of the appellant, the appellant who was standing in front of his house, called her to his home, to which she replied that she has examination on the next day and as such, she cannot go, but the appellant held her bicycle by one hand and held her hands tightly with the other hand and dragged her inside the house and on reaching inside the house, which was dark, the appellant kissed her face and lips and inserted his tongue into her mouth and threatened her not to disclose the incident to anyone or else, he would kill her and requested her to come to his house everyday. She also stated that she came back to her house and told

her mother, the entire incident and that thereafter, she and her mother went to the house of the appellant and on meeting the appellant, her mother spoke to him and that subsequently, her mother lodged the ejahar.

ii) It is noticed in the statement before the Police the victim stated that the appellant stopped her on the road and by making her get down from the bicycle, forcibly, by holding her hands, dragged her inside his house. In this statement, the victim did not state that the appellant had held the bicycle by one hand and dragged her by the other, which she had stated before the Magistrate and the Court. Before the Police, the victim had stated further that by taking her inside the house, the appellant had kissed her on her face and lips and by holding her, he took photographs and recorded video. However, in this statement, the victim did not state that the appellant had inserted his tongue inside the mouth of the victim. The further statement that the appellant had threatened her not to disclose the incident to anyone and if she discloses he would kill her and the request made by him to her that she should come to his place often, however, remain intact before all the authorities. As such, discrepancies are seen in the statement of the victim before Police authorities.

24. In her statement before the Magistrate, recorded under Section 164 CrPC, she stated that by stopping her on the road, the appellant told her that he wants to speak to her and then when she stated that she has to prepare for her examination, the appellant pulled her cycle and by pulling her hand, he took her inside his house. She, however, did not state before the Magistrate that the appellant took her down from the bicycle and forcibly took her inside his house. In her further statement before the Magistrate, she stated that after taking her inside his room, the appellant kissed on her face and lips and inserted his

tongue into her mouth and told her to kiss him back. However, in this statement, the victim had added that the appellant had inserted his tongue into her mouth which did not find place in her statement before the Police. Further, in this statement, the victim did not state that the appellant took photographs and recorded a video, which is stated by her before the Police. Also the statement that the appellant made her kiss him by installing fear in her, also does not find place in her statement before the Police. The further statement that victim was told by the appellant to visit his place often also is absent in her statement before the Magistrate. Discrepancies are seen in the statement before the Police and the Magistrate.

25. In the statement before the Trial Court, the victim stated that when she reached the house of the appellant, the appellant standing in front of his house, called her and told her to come to his house, to which he replied she cannot go since she has to prepare for her examination and at this, the appellant held her bicycle by one hand and held her hands tightly by the other and took her inside his house. In this statement, the manner in which the victim was taken inside his house, was differently stated as compared to her statement before the Police and the Magistrate. It is the further submission of the victim that by taking her inside his house, the appellant kissed her face and lips and inserted his tongue inside his mouth. Inserting of his tongue inside the mouth of the victim was not stated by the victim before the Police. The further statement of the victim before the Police that photos were taken and video was recorded, also do not find place in both the statements before the Magistrate as well as in her statements recorded under examination -in- chief , before the Trial Court. Before the Trial Court, the victim made a statement during cross-examination that appellant took photographs, but she in the same cross-examination, stated

that no video was recorded. As such, discrepancies are writ large in her statements.

26. Contradictions in the statement of the victim can also be seen during her cross-examination. It is a settled position of law that statements which are not there in the statements of the concerned witnesses before the Police, will be shown first to the said witness and if the witness admits that he or she had not stated the same before the Police, the contradiction stands proved. In case, the concerned witness states during the cross-examination that he or she had stated before the Police, the said statement, then the said statement is placed before the Investigating Officer and if the Investigating Officer states that the concerned witness had not stated the same, the contradiction then gets proved. In the instant case, the victim had given a positive statement that she had not stated before the Police that appellant had inserted his tongue into her mouth, results in proving of the said contradiction. There is a further contradiction in the statement of the victim when she had negated that video was recorded by the appellant, whereas, in her statement before the Police, she had stated the same. As such, there are many contradictions which are visible and apparent in the statement of the prosecutrix and it is a settled position of law that in case, the statement of the prosecutrix does not inspire the confidence of the Court, corroborations are sought for.

27. With regard to the corroborations to the statement of the victim, it is noticed that there is only the statement of the mother as well as to certain extent, the statement of the doctor. However, the mother's evidence is also not free from discrepancies. The mother of the victim was examined as PW No. 3 and she was informed by her daughter about the incident and the said witness,

i.e., the mother stated that after hearing the incident she went and confronted the appellant and that the appellant had confessed before her about the incident and showed her the photos and videos. However, the victim in her statement before the Trial Court stated that she along with her mother went to the house of the appellant and that her mother spoke with the appellant about the incident, but she did not state that the appellant had confessed before her mother or had shown photographs and videos to her mother. It cannot be lost sight of the fact that since mother and daughter had gone together to the house of the appellant and there being no one present in the house of the appellant, as it is in the evidence, it cannot be expected that daughter will not know about the alleged confession made or about the photographs or videos been shown to her mother. Further, in her cross-examination, the victim stated that she cannot say whether the appellant had shown the photographs to others or not and further she said that no videography was made with her by the appellant. In these facts, the statement of the mother of the victim, cannot lend support to the statement of the victim due to the said discrepancies. Be that as it may, the mother of the victim is otherwise, a hearsay witness. Her subsequent statement shows discrepancy and the same do not inspire the Court to the truthfulness of the same.

28. Further, the statement of PW No. 6 also reflects a different story. He is a neighbour of both the appellant and the victim and he stated that there was a village meeting with regard to the allegation that appellant had called the victim and that he had used obscene language. Whereas, the case at hand, is the sexual assault committed by the appellant upon the victim. The said offence was nowhere mentioned by the said witness in his deposition. As such, the statement of this witness does not lend support to the prosecution case.

29. The doctor who examined the victim, had stated that he found the hymen of the victim ruptured and that he did not find any other injury on the body of the victim or her private parts. The instant case is not a case under Section 4 of the POCSO Act, i.e., an offence for penetrative sexual assault. It is in the evidence of the victim that the appellant had kissed her on her face and lips and for the sake of argument, even if it is considered that the appellant had inserted his tongue into the mouth of the victim, the said acts would come under Section 8 of the POCSO Act. The findings of the doctor that hymen was ruptured or no injury was seen on the private parts of the victim has no connection whatsoever with the facts of the present case. Accordingly, the doctor's evidence does not lend any support to the prosecution case.

CONCLUSION:-

30. In view of the statements made above, it is noticed that there are inconsistencies in the statement of the victim before the authorities, and as such, the same does not inspire the confidence of the Court. As far as the corroboration to the statement of the victim is concerned, the same is not available in the instant case, and accordingly, this Court is constrained to hold that the impugned Judgment and Order dated 14.03.2022, passed by the learned Special Judge, Nalbari, in Special (P) Case No. 15 of 2019, convicting and sentencing the appellant, is not sustainable in law and accordingly, the conviction and the sentence imposed upon the appellant is as such, set aside and quashed.

31. The appellant is accordingly, acquitted of all the charges.

32. The interim order dated 27.05.2022, allowing the appellant to go on bail, stands vacated. The bail bonds are discharged.

33. Send back the Trial Court Record.

JUDGE

Comparing Assistant