
(2025) 08 GAU CK 0346
In the Gauhati High Court
Case No : CrI.A. Of 329 Of 2023

Ratul Bharali And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 26-08-2025

Acts Referred:

Protection of Children from Sexual Offences Act, 2012 — Section 6
Indian Penal Code, 1860 — Section 376
Code of Criminal Procedure, 1973 — Section 164, 313
Juvenile Justice (Care and Protection of Children) Act, 2015 — Section 94

Citation : (2025) 08 GAU CK 0346

Hon'ble Judges : M. Zothankhuma, J

Bench : Single Bench

Advocate : T. Som, A. Begum, S. Khataniar,

Final Decision : Dismissed

Judgement

M. Zothankhuma, J

1. Heard Ms. T. Som, learned counsel for the appellants. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the respondent no.1 and Ms. S. Khataniar, learned counsel for the respondent no.2.

2. This is an appeal against the judgment dated 28.07.2023 passed by the learned Special Judge, Majuli in Special Case No.47/2023, by which the appellants have been convicted under Section 6 of the POCSO Act, 2012, for raping the victim, who was 15 years old.

3. The prosecution case in brief is that an FIR dated 28.01.2023 was submitted by the informant (PW-1) to the Officer-in-Charge of the Garamur Police Station, to the effect that at around 5 to 6 a.m on 28.01.2023, his sister aged 13 years took the goats to the field. At the same time, the appellants had also taken their cows near the field where his sister had taken their goats. As there was fog at that time, it was not possible to see any one from a distance. Taking advantage

of the fog, the accused persons raped his sister. About the same time, PW-6 who was the son of the informant's father's elder brother also went to the same place with his cows. PW-6 then witnessed the appellants committing rape, due to which, he raised a hue and cry. The appellants then fled away from the scene. PW-6 rushed back home to inform the family members of the victim. Thereafter, the family members of the victim went to the place of occurrence and rescued the victim, who was admitted in Garamur Civil Hospital. However, doctors therein sent her to Jorhat.

4. Pursuant to the FIR, Garamur P.S. Case No.2/2023 under Section 376-DA IPC read with Section 6 of the POCSO Act was registered.

5. After investigation of the case had been completed and medical examination of the victim had been done, the Investigating Officer (IO) submitted a charge-sheet against the appellants, having found a prima facie case under Section 376-DA IPC read with Section 6 of the POCSO Act against them.

6. The learned Trial Court thereafter framed Charge under Section 6 of the POCSO Act against the appellants, to which they pleaded not guilty and claimed to be tried.

7. The learned Trial Court thereafter examined as many as 12 Prosecution Witnesses (PWs) and 3 Defence Witnesses (DWs). After examination of the appellants under Section 313 Cr.P.C, wherein their only explanation to the evidence adduced against them was "I am innocent", the learned Trial Court came to a finding that the appellants were guilty of having committed the offence of raping the victim. Consequently, the appellants were convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for life with a fine of Rs.20,000/- each, in default of fine, to suffer simple imprisonment for 2 (two) months.

8. The learned counsel for the appellants submits that the evidence of the victim who has alleged that she had been gang raped by the appellants cannot be the basis for convicting the appellants. She submits that there being no corroboration of the evidence of the victim by any other witnesses, the conviction of the appellants by the learned Trial Court on the sole evidence of the Prosecutrix is not sustainable. She also submits that the medical examination of the victim by the doctor shows that hymen of the victim had old tears present at 3, 6, 9 O'clock positions. The Medical examination report dated 29.01.2023 having shown that the victim's hymen was having old tears, there was no proof that the appellants had gang raped the victim the previous day.

9. The Additional Public Prosecutor and the Legal Aid Counsel for the respondent no.2 submit that the statement made by the victim under Section 164 Cr.P.C corroborates the evidence given by the victim during trial. Further, the testimony of the victim inspires confidence, given the fact that no stand has been taken by the appellants that there was enmity between the victim or her family with the appellants. As such, there was no reason for the victim to have made a false

accusation against the appellants. They accordingly pray that the impugned judgment passed by the learned Trial Court should not be interfered with.

10. We have heard the learned counsels for the parties.

11. The evidence of the victim (PW-4) is to the effect that she knew the appellants. On the day of occurrence when she went to tether the goats in the grazing fields, the appellants had also come to tether their cattle in the said field. The appellants then caught hold of the victim and dragged her near a Jujube (Bogori) tree near a pond. Thereafter, Kon @ Manash Bharali raped her while Ratul Bharali held her tight. Thereafter Ratul Bharali raped her, while Kon @ Manash Bharali held her tight. After raping her, both the appellants fled away. PW-4 further stated that she became unconscious for some-time and as one of her cousin brother saw the occurrence, her parents were informed, who brought her to her house. In her cross-examination, PW-4 stated that the appellant Ratul Bharali was her cousin brother and other accused was a co-villager. She also denied the suggestion that she had been forced or directed to speak falsely against the appellants or give false evidence against them.

12. The evidence of PW-6 is to the effect that he knew the informant (PW-1), the victim and the appellants. On the date of occurrence, when he went to tether his cattle in the field, he saw the victim girl with her goats. Thereafter, while walking along with the cattle he saw the appellants Ratul Bharali raping the victim. The other appellant Kon @ Manash Bharali, on seeing PW-6, fled from the place of occurrence. He thereafter went to the house of the victim and told the father and mother of the victim as to what he had seen. PW-6 then accompanied the father and mother of the victim and showed them their daughter, who was lying in the field. The mother and father then brought the victim home. PW-6 was then taken before a Magistrate, where PW-6 gave his statement under Section 164 Cr.P.C.

13. The evidence of PW-10, who is the Doctor who had examined the victim, is to the effect that there were old tears present at the 3, 6, 9 O'clock positions in the hymen of the victim and redness was present. He also noticed injuries on the victim which were as follows :

"Injuries:

1. Contusions (bite marks) of size 4 cm x 3 cm present on left face, 4 cm away from left angle of mouth.
2. Contusions of size 10 cm x 2 cm present left lateral aspect of lower part of left thigh, 5 cm above from left knee joint.

Both injuries were red in color.

Ext.P-8 is the medical examination report and Ext.P-8(1) is my signature therein."

The Doctor also found redness present in the inner parts of the thighs of the victim and in the vulva.

In his cross-examination, PW-10 stated that the injury on the victim was simple in nature and fresh. He also stated that it was difficult to assume how the thigh injuries had occurred near the private parts of the victim. He also found injuries in the genital area of the victim. He also found manipulation on the vagina of the victim.

14. The evidence PW-11, who is the Investigating Officer (IO) is to the effect that he registered a case on the basis of FIR dated 28/01/2023 submitted by PW-1. He initially assigned one S.I. Madhurjya Gogoi to visit the Place of Occurrence (PO), record the statement of the victim girl, seize the clothes of the victim girl and sent the victim for medical examination. The victim was also taken before a Magistrate for recording her statement under section 164 Cr.P.C. He arrested the appellants and filed a charge sheet under section 376 DAS IPC read with section 6 of the POCSO Act against the appellants.

15. In his cross examination, PW-11 stated that he had received the radiological report, where the age of the victim was shown to be above 18 years and below 19 years. However, the School Certificate revealed that her date of birth was 08/05/2008 i.e. about 15 years and hence, he did not annex the radiological report with the charge sheet. He further stated in his cross examination that as per the report, there was no sexual intercourse, but was some fresh mark of struggle was mentioned. He could not say whether the date of birth could be reduced or not. He however stated that during the course of investigation, the appellants confessed that they had raped the victim.

16. The appellants Ratul Bharali and Manash Bharali gave their evidence as DW-1 and DW-2, wherein, they had stated that they knew the informant and the victim girl. Their basic case was that they did not know anything about the rape that had occurred and that they had tethered their cattle and returned back. While coming back, one Bhaba Bharali had seen them. Further, they had seen one boy, namely, Karuna Bharali talking to the victim girl. Karuna Bharali was their enemy and that is why he had falsely implicated them in the present case. The evidence of the appellants as DW-1 & 2 is basically to the effect that a false case had been made against them by one Karuna Bharali. However, there is no Karuna Bharali among the prosecution witnesses and it appears that DWs-1 & 2 are speaking of PW-6 "Karuna Bania". The appellants case is that a false case had been foisted upon them by Karuna Bharali (Karuna Bania). There is nothing stated against the victim or her family by the appellants in their evidence as DW-1 & DW-2. In fact, in his cross examination, DW-2 has stated that he had no enmity with the family of the victim girl. In view of the above, there is no reason for the victim girl to have made a false complaint against the appellants. In fact, it is not the case of the appellants in their testimonies, as DW-1 and DW-2, that a false case had been foisted upon them by the victim girl.

17. The evidence of DW-3 (Sri Bhaba Bonia) is to the effect that he knew the informant, the victim and the appellants, who were his nephew. On the date of the occurrence, he went to the grazing ground to tether his cattle. He saw

Karuna, the victim girl and both the accused persons there. Both the accused persons thereafter returned with him to their respective houses. However, when he returned back, he heard that the accused persons (appellants) had been arrested by the Police. He also stated that he tethered his cattle far away from the place of occurrence. On considering the evidence of DW-1 and DW-2, we are not convinced with the truthfulness of the same. Though DW-1 and DW-2 have denied raping the victim, the evidence of DW-3, which is their alibi, shows that DW-3 had tethered his cattle far away from the place of occurrence. Thus DW-3 could have met up with the appellants only after the appellants had raped the victim. The above could be due to PW-6 coming later to the place of occurrence, i.e. after the appellant Manash Bharali had raped the victim. It should also be remembered that PW-6 had not seen Manash Bharali raping the victim, but had seen Ratul Bharali raping the victim. Further, as per the testimony of the victim, Ratul Bharali had raped her, after Manash Bharali had raped her.

18. On considering the evidence of the victim girl vis-à-vis her statement made under section 164 Cr.P.C., we are of the view that her statement made under Section 164 Cr.P.C. the testimony of the victim. Further, the statement of PW-6 under section 164 Cr.P.C. and his testimony given before the Trial Court also corroborates the evidence given by the victim.

19. In the case of Dalip Singh Vs. State of Punjab [AIR 1953 SC 364], the Supreme Court has held that a witness is normally to be considered independent unless he/she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause of enmity that there is tendency to drag an innocent person against whom a witness has a grudge along with the guilty but the foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. In the present case, when there is no animus shown or proved by the appellants towards the victim and vice versa, there was no reason for the victim to implicate the appellants, especially when one of them was her cousin. There is nothing to show that there was any enmity between the appellants and the family of the victim also.

20. We are of the view that the statements made by the victim under section 164 Cr.P.C. and her testimony, which is further corroborated by the evidence of PW-6 and his statement made under section 164 Cr.P.C., proves that the appellants had gang-raped the victim. Though the medical examination of the victim by the Doctor is advisory in nature, we are of the view that the medical evidence also corroborates the testimony of the victim.

21. In the case of Narendra Kumar Vs. State (NCT of Delhi) [(2012) 7 SCC 171], the Supreme Court has held that once the statement of the prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on

the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons, which necessitates the Court for corroboration of her statement. Corroboration of testimony of the prosecutrix, as a condition for judicial reliance is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

22. With regard to the submission of the appellants' counsel that the medical report did not support the case of the prosecution that rape had been committed, it would be profitable to refer to the judgement of the Supreme Court in the case of B.C. Deva V@ Dyava Vs. State of Karnataka [(2007) 12 SCC 122] wherein, it had been held by the Supreme Court that though the report of the Gynecologist pertaining to the medical examination of the prosecutrix did not disclose any evidence of sexual intercourse, the oral testimony of the prosecutrix which is found to be cogent, reliable, convincing and trustworthy, has to be accepted, even in the absence of medical evidence.

23. With regard to the evidence of the IO (PW-11) that the radiological report was not annexed to the charge sheet in view of the School Certificate, which revealed the date of birth of the victim to be 08/05/2008, we find that the appellants had not made an issue with regard to the age of the victim. Suffice to say that in terms of section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, if there is a doubt about a person's age, the first age determination test would be to rely upon the Date of Birth Certificate from the School or a Matriculation or equivalent certificate from the relevant Board. Secondly, if the above is unavailable, the Birth Certificate issued by the Municipal Authority or the Panchayat is to be considered for determining age. If that is also un-available, an Ossification test may be conducted. In essence, section 94 prioritizes documentary evidence like the Date of Birth Certificate from the School. In the present case, the Date of Birth Certificate from the School shows the victim to have been born on 08/05/2008, which would mean that she was about 15 years of age at the time of the incident. As the victim had been gang-raped by the two appellants, the appellants were rightly charged and convicted for the offence under section 6 of the POCSO Act, 2012.

24. On considering the fact that the victim's testimony regarding the gang-rape committed upon her by the appellants has been corroborated by her statement under section 164 Cr.P.C. and the evidence of PW-6 and PW-10, besides finding the victim's testimony to be cogent, convincing and trust worthy, we do not find any ground to interfere with the impugned judgement and order passed by the learned Trial Court.

25. The appeal is accordingly dismissed.

26. Send back the TCR.

27. In appreciation of the assistance provide by the learned Legal Aid Counsel for

the respondent no.2, her fee should be paid by the Assam State Legal Services authority.