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2026:GAU-AS:17224-DB

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

Case No. : CRL.A(J)/192/2025

SAFIUDDIN ALI
S/O- LATE IBRAHIM ALI, R/O- BIDYAPARA PT-II, P.S. AND DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: [redacted]

Advocate for the Petitioner : , DR. P AGARWAL, LEGAL AID COUNSEL

Advocate for the Respondent : PP, ASSAM, MS. S NATH, LEGAL AID COUNSEL FOR R 2

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 12.11.2026
Date of pronouncement of judgment : 20.11.2026
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)

Heard Dr. P Agarwal, learned Legal Aid Counsel appearing for the appellant. Also heard Ms. B Bhuyan, learned Legal Aid Counsel & Addl. Public Prosecutor, assisted by Ms. R Saloi, as well as Ms. S Nath, learned Legal Aid Counsel representing for the respondent No. 2/informant.

2. This is a jail appeal against the judgment dated 09.09.2025 passed by the Court of the Additional Sessions Judge-cum-Special Judge, POCSO, Dhubri, in Special Case No. 431/2024, arising out of Dhubri P.S Case no. 68/2024, by which the appellant has been convicted under Section 6 of the POCSO Act.

3. The factual matrix:

1. The brief fact of the case of the prosecution is that the complainant namely [redacted] lodged an ejahar against the accused namely Safiuddin Ali before the Bazar TOP of Dhubri Police Station on 05.03.2024 alleging inter-alia

that on 05.03.2024 at about 11 AM, the informant's had a minor daughter aged about 7 years 4 months, and the accused enticed and took her to his house and committed rape upon her. After that, the victim came out from the house of the accused and informed about the matter to her mother by crying that accused had done wrong with her by putting off her pant and when she tried to raise hue and cry, the accused gagged her mouth with his hand and for that reason she was unable to raise alarm.

Accordingly, the informant is praying for taking necessary action.

2. After getting the information police registered the case being Dhubri P.S. Case No. 68/24 under section 376AB of IPC and R/W section 6 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter referred as POCSO Act) and investigated the same and after completion of investigation police has submitted the charge-sheet against the accused Safiuddin Ali under section 376AB of IPC R/W Section 6 of POCSO Act.

3. On appearance, copy was furnished to the accused person. Formal charges are framed against the accused person under section 376AB of IPC R/W section 6 of the POCSO Act. The charge so framed are read over to the accused person to which he pleaded not guilty and claimed to be tried.

4. In support of the prosecution case, prosecution side examined 10 (Ten) witnesses, including the victim and the complainant. The statement of the accused person was recorded under Section 313 Cr.P.C. and thereafter both sides' arguments were heard at length. Defence has adduced no evidence.

4. The trial culminated with the conviction and sentencing of the accused appellant as above. Hence, this appeal.

5. The evidence:

1. PW-1/[redacted] stated in his evidence-in-chief that he is the informant in this case. The victim is his daughter. He knows the accused, Safiuddin Ali, who was present at the dock that day. The incident took place about four months ago. His victim daughter was aged 7 years and 2 months. On the day of the incident, he went to pay the electricity bill. Thereafter, his wife called him and informed him that the villagers had seen the accused taking his daughter to his house and locking the door. Then, his wife, along with some villagers, went to the house of the accused and knocked on the door. The accused opened the door and, on seeing the people, ran away. His daughter also ran away from the house of the accused and, due to fear, concealed herself in the house of their neighbour. Thereafter, he brought his daughter from the

house of their neighbour, and his daughter informed his wife that she had been raped by the accused, Safiuddin Ali. Thereafter, he went to the police station along with his daughter to lodge this case. After the case was filed, the police sent his daughter for recording her statement under Section 164 Cr.P.C. and also sent her for medical examination. Ext. P-1/PW-1 is the ejahar, and Ext. P-1(1)/PW-1 is his signature. During the course of investigation, the police seized the birth certificate of his daughter, which was given in his zimma. Ext. P-2/PW-1 is the seizure list, and Ext. P-2(1)/PW-1 is his signature.

2. In his cross-examination, he stated that the house of the accused is adjacent to his house and, hence, the accused is his neighbour. His house is situated on the eastern side and the house of the accused is situated on the western side. The accused uses his land to enter and exit.

He denied that, for the aforesaid reason, there is a dispute between him and the accused. He also denied that the case was falsely lodged against the accused.

The accused has four sons and three daughters-in-law. Only one son and his wife have been living in that house with the accused. The grandchildren of the accused are aged about 5 years, 2 years and 1 year. The wife of the accused also resides in the same house. The neighbours who saw the accused

closing the door after taking his daughter inside his house are Sahinuri Khatun, Sahera Begum, Beli, etc. On the western side of the accused's house is the house of Sahera Begum; on the northern side is the house of Beli; and on the southern side is the house of Sahinur Khatun. The police went to their houses.

He denied that he had not stated in his statement recorded before the police that, "On the day of the incident, he went to pay the electricity bill. Then his wife called him and informed him that the villagers had seen the accused taking his daughter to his house and locking the door of his house. Then his wife, along with some villagers, went to the house of the accused and knocked on the door of his house." He denied that there was a land dispute between him and the accused and that, for that reason, he had falsely filed this case. He also denied that the accused did not commit rape upon his daughter.

The area where his house is situated is thickly populated. The incident took place on the 5th, but he cannot remember the month. The incident took place at about 11:15 AM. At around 11:00 AM, people generally remain at their respective houses. The age of the accused is below 70 years.

He denied that there is no approach road to his house and that he has to use the land of the accused to enter and exit his house, due to which there is a dispute between them and, for that reason, he lodged this false case against

the accused. He also denied that the accused is not related to this case.

3. PW-2/Victim, in her evidence-in-chief, stated that she told her mother that the accused (Baro Abba) had committed a misdeed with her. The accused brought her inside his house and locked the door. Out of fear, she started crying, and the accused gagged her mouth with his hands.

4. In her cross-examination, she stated that she does not know the name of the accused.

5. PW-3/Morzina Khatun, in her evidence-in-chief, stated that the informant is her husband and the victim is her daughter. She knows the accused, Safiuddin Ali, who was present at the dock that day. The incident took place about two months ago. Her daughter was aged 7 years and 2 months. On the day of the incident, the daughter of her brother-in-law called her daughter to play. When the victim was not found, she asked the daughter of her brother-in-law about her whereabouts, and the latter told her that the victim was in the house of her brother-in-law. Thereafter, Sumaiya, the daughter of her brother-in-law, went to the house of the accused and knocked on the door. The accused then opened the door, and they saw that the victim was there in a half-naked condition. She was not wearing her frock. Thereafter, her daughter ran away to the house of a neighbour, and her husband brought her home. Subsequently,

her husband lodged this case.

6. In her cross-examination, she deposed that the house of the accused is adjacent to her house. The accused uses her land to enter and exit. The accused demanded that the pathway be treated as part of his house. There is a dispute between them and the accused regarding the pathway. The accused has three sons and three daughters-in-law. The accused has one granddaughter and two grandsons who reside in the same house. There are about 8–10 persons residing in the house of the accused. Her house is situated on the eastern side, and the house of the accused is situated on the western side. On the western side of the accused's house is the house of her other brother-in-law, whose name she does not know, and four persons also reside in that house. On the northern side of the accused's house is the house of a person whose name she cannot remember. On the southern side is the house of another person whose name she cannot remember. All their neighbours are their relatives.

She denied that there are land disputes between them and others. She also denied that the victim was not found in a half-naked condition and that she was wearing her frock.

She had not witnessed the incident in this case. Her daughter had also not stated anything to her about the incident. She denied that this case is a false

case.

She brought her daughter from the house of one of their neighbours, namely, Jamila, who is her sister-in-law, at 12:00 PM. The area where her house is situated is thickly populated. About 200–300 persons reside in their locality. She cannot state the names of the neighbours. She also cannot say who have been cited as witnesses by the I.O. She denied that she deposed falsely that day. The police came to the place of occurrence. She was not present when the police came. She cannot say whether the police seized anything in connection with this case or not. She denied that the accused is not involved in this case.

7. PW-4/Mofizul Hoque, in his evidence-in-chief, stated that he knows the informant in this case. He also knows the victim, who is the daughter of the informant. He knows the accused, Safiuddin Ali, who was present at the dock that day. The incident took place about 11 months ago. His house is adjacent to the houses of both the informant and the accused. On the day of the incident, his wife called him and told him that she had heard some hue and cry from the house of the complainant and asked him to come home. When he came home, he found many people gathered at the house of the complainant. He does not know what had happened at the house of the informant or why the accused was apprehended.

8. In his cross-examination, he stated that he does not know anything about the case. He also does not know why the hue and cry took place at the house of the informant.

9. PW-5/Salim Ali, in his evidence-in-chief, stated that the informant in this case is his brother and the victim is his niece. He knows the accused, Safiuddin Ali, who was present at the dock that day. The incident took place about one year ago. At the time of the incident, the victim was about 10 years old. His house is adjacent to the houses of both the informant and the accused. On the day of the incident, he was present at his grill shop. Thereafter, his wife called him and asked him to come home. When he came home, he came to know from his wife that the accused had tried to commit rape upon the victim. When he came home, he did not find the accused or the victim there. Thereafter, he went to the police station and found the victim there.

10. In his cross-examination, he stated that, at the time of the incident, he was present at his shop. The name of his wife is Sainuri Khatun. She called him from a mobile phone, but the police did not collect her phone number from him. When he returned home, he did not find the victim or the accused there, nor did he find any proof of any incident. He denied that the accused did not try to commit rape upon the victim. He did not state where he went after returning

home. He denied that the informant had a land dispute with the accused. He cannot state the exact date and time of the incident. The police did not make his wife a witness in this case. He denied that his wife did not call him on the date of the incident. He also denied that his brother had lodged this case falsely in conspiracy with him. He denied that the accused is not related to this case.

11. PW-6/Tasmina Khatun, in her evidence-in-chief, stated that the informant in this case is her brother. She also knows the victim. She knows the accused, Safiuddin Ali, who is also her brother and was present at the dock that day. The incident took place about one year ago. On the day of the incident, she was present at her father's house. The house of the accused is situated near her father's house. She was preparing to go back to her matrimonial house at Natabari. Then her sister-in-law, who is the mother of the victim, came to her parents' house and asked her about the whereabouts of the victim girl. She replied that the victim was not at her parents' house and might have been playing with her daughter. However, her daughter replied that the victim was not with her. Thereafter, the mother of the victim searched for her, but she could not be found. After that, the mother of the victim started crying and stated that the victim had been ruined. Then all the neighbourhood people gathered there. Thereafter, the father of the victim brought her from the house of her paternal aunt. At the time of the incident, the victim was about 7 years

old. At that stage, the witness was declared hostile.

12. In her cross-examination by the prosecution, she denied having stated before the police that the mother of the victim came crying and alleged that the accused, Safiuddin, had committed a misdeed with the victim girl. She further denied having stated that, initially, she did not believe the allegation, but later, when she asked the victim, the victim told her that her uncle had asked her to bring a 'bidi' for him and that, when she brought the 'bidi', her uncle pulled down and removed her pant. Thereafter, he made her sit on the bed, separated her legs and pushed her backwards. Then her uncle removed his 'lungi' and inserted his penis into her vagina. Thereafter, her stomach was paining and she suffered bleeding. She resisted the act, but he did not stop. However, she did not know what her uncle had done to her. Thereafter, they brought the victim to the police station. She denied that, as the accused is her brother, she had deposed falsely before the Court that day in order to save him. She also denied that she was present at the place of occurrence and had witnessed the incident.

13. In her cross-examination by the defence, she stated that she had not stated before the police that the mother of the victim came crying and alleged that the accused, Safiuddin, had committed a misdeed with the victim girl. She further stated that she had not made any statement regarding the alleged

incident involving the victim and her uncle, as narrated above. The informant is also her brother.

14. PW-7/Sumaiya Sultana, in her evidence-in-chief, stated that the informant in this case is her paternal uncle. The victim is her sister and the daughter of the informant. She knows the accused, Safiuddin Ali, who is also her paternal uncle and was present at the dock that day. The incident took place about one year ago. On the day of the incident, at about 10:00–11:00 AM, the mother of the victim was searching for her daughter, but she could not be found. She was also searching for the victim and went to the house of the accused in search of her. There, she found the victim lying on a bed inside the house of the accused. The victim was naked, and the accused was lying over her body. At that time, the accused was committing rape upon the victim. Thereafter, she returned home. When the victim returned from the house of the accused, she asked her about the incident, and the victim told her that the accused had committed rape upon her. Thereafter, she informed the mother of the victim about the incident. The police recorded her statement.

15. In her cross-examination, she stated that the house of the accused is situated adjacent to their house. She denied that there are land disputes between the accused and the informant. At the time of the incident, she was

playing outside her house. She went to the houses of Sahera Bibi and Hamida in search of the victim. The accused has four sons, three of whom are married. The eldest son of the accused has three children, while the second eldest son has one child. The wife of the accused is alive. All of them reside together in the house of the accused.

She denied that she had deposed falsely that she was also searching for the victim and had gone to the house of the accused in search of her, where she found the victim lying on a bed, naked, with the accused lying over her body.

She denied that there are land disputes between her family and the accused and that, for that reason, this case was filed to harass the accused. She also denied that she had not stated before the police that the victim was naked. She further denied that she did not visit the house of the accused on the relevant day.

She had not seen the police taking any wearing apparel of the victim. On the day of the incident, she went to school to appear for an examination. She was a student of Class VII at Sankar Azan Adarsha Vidyalaya, which is situated at M.K. Road. She went to school alone that day. The informant is her own uncle. She denied that the accused did not commit rape upon the victim. She also denied that she had deposed falsely that day.

16. PW-8/Dr. Safiya Begum, in her evidence-in-chief, stated that on 05.03.2024, she was working as a Medical and Health Officer at Dhubri Medical College & Hospital, Dhubri. On that day, upon police requisition, she examined the victim, a resident of Bidyapara, Bhatigaon Part-2, P.S. and District Dhubri, Assam, aged about 8 (eight) years, who was brought by LNK 210 Runu Bala Ray in connection with Bazar TOP GDE No. 63 dated 05.03.2024. Upon examination, she recorded the following findings:

At the time of the examination, the victim narrated the brief history of the case and stated before her that, on 05.03.2024, during the morning hours, the accused had asked her to bring a bidi for him from a shop. When the victim came to the house of the accused to give him the bidi, the accused undressed the victim by removing her pants and made her sit on a chair. Thereafter, the accused separated the victim's legs and inserted his male organ into her vagina. According to the victim, ejaculation took place outside the vagina. Thereafter, the victim urinated and cleaned her genitals with water following the sexual assault.

6. The M.O. further deposed that upon examination, she found the hymen of the victim intact, but there was redness around the vulva with fresh fourchette tear with slight bleed. There was also evidence of stain detected on

her undergarment, but no spermatozoa or gonococcus was detected upon microscopic examination of the smears pertaining to the vaginal swabs taken over the hymen and the perineum.

According to the opinion of the Medical Officer, there was no evidence of recent sexual intercourse. However, there is evidence of recent genital manipulation detected on her person.

7. During cross-examination, the M.O. stated that redness around the vulva may be caused due to infection also. She further stated that there is no exact time of the occurrence mentioned in the narration of the victim before her body or wearing garments. Accordingly, he submitted his report. Ext. P-4/PW-9 is the medical examination report, and Ext. P-4(1) to P-4(9)/PW-9 are his signatures.

8. The Medical Officer's findings regarding the victim's medical examination remained unchallenged during cross-examination.

9. PW-9 is the doctor who examined the accused/appellant. The said P.W deposed that no evidence of sexual intercourse was detected on the person of the accused/appellant; that he had sustained injuries on his body; and that no stains were detected on his body or wearing garments.

10. It is pertinent to reproduce herein the statement of the accused person, as recorded by PW-9, which is as follows:

> *"At the time of the examination the person narrated that the survivor is known to him. She visited him on her own in the morning hours on 05.03.2024. He confessed to have undressed her and then he touched her vulva and vagina and denied any kind of penetration. Thereafter, she left and he too left for fishing. Later, when he returned home, he saw the family members of the survivor were engaged in a fight with his daughter-in-law. Police was informed by the father of the survivor about the incident and the accused was then brought to the police station."*

11. During cross-examination, it was suggested to PW-9 that the accused did not state so before him, which suggestion was denied.

12. PW-10/SI Utpal Roy stated in his evidence-in-chief that on 05.03.2024 he was posted as I/C of Bazar TOP at Dhubri. On that day they have received a verbal information from the informant namely [redacted] that his minor daughter was sexually assaulted by the accused person namely Safiuddin Ali @ Basu. After receiving the information they made a GD entry being numbered as 63 dated 05.03.2024. The victim was brought to the police station by the complainant. On the basis of the GD entry the victim was sent for medical treatment. Then he proceeded to visit the place of occurrence and apprehended

the accused Safiuddin. He has prepared the sketch map of place of occurrence. Ext. P-5/PW-10 is the sketch map and Ext. P-5(1)/PW-10 is his signature.

On that day they have received the written ejahar. They have informed the matter to CWC and as per advice of CWA they kept the victim at Child Care Home, Bilasipara. On 06.03.2025 the accused was forwarded to judicial custody after arrest.

Thereafter, he recorded the statement of complainant and seized the birth certificate of victim. Ext. P-2 is the seizure list and Ext. P-2(2)/PW-10 is his signature. Thereafter, the statement of victim was recorded and sent to Court for recording her statement.

13. On completion of investigation, he submitted the charge sheet, under Section 376 IPC read with Section 6 of the POCSO Act, which he exhibited as P-6/PW-10, wherein exhibit P-6(1)/PW-10 is his signature.

14. During cross-examination, he stated that the ejahar was received on 05.03.2024. He visited the place of occurrence at about 11:00 AM. He has not made Sofikul Islam, Raju, Ibrahim Ali and Bodior Rahman as witness whom he has shown in the sketch map. He has visited the place of occurrence along with

his 2-3 staff. He cannot remember their names right now. He has not taken the family details of the accused PW-1/[redacted] did not state before him that on the day of incident he went to pay electricity bill and villagers saw the accused took the victim to his house and locked the door of his house.

He collected the birth certificate of the victim girl from the complainant but he did not make any seizure witness. He has given the zimma of original birth certificate to the complainant. He did not verify the authenticity of the birth certificate from Dharmasala Block PHC. He knows that both the parties are close neighbor of each other but he does not know whether they are relative or not. When he reached the place of occurrence for the first time he did not fine the accused and his family members but other people were present in the locality. There are other 4-5 houses near the place of occurrence. When he went to place of occurrence for the first time for investigation he did not find anyone present there. He has not given any note in the case diary about the numbers of children of complainant. He has not seized any wearing apparel of the victim except the birth certificate of the victim. He has not seen any seized articles that day in the court. He has not made Gitanjali Pathak as witness in this case with whom the victim was taken for medical examination.

Submissions on behalf of the appellant:

15. Dr. P. Agarwal, learned Legal Aid Counsel appearing for the appellant, submitted that, upon a perusal of the evidence of the victim, it is evident that all she had stated was that the accused/appellant had committed a "misdeed" with her. There was no allegation of any penetrative sexual assault. Therefore, the learned Trial Court fell into error in convicting the appellant for the offence of aggravated penetrative sexual assault by placing reliance on the statement of the victim recorded under Section 183 of the BNSS, which is not a substantive piece of evidence. In her statement before the Magistrate, the victim had stated that the accused/appellant had used his finger, but she did not state so before the Court. Furthermore, the victim had given contradictory versions before the Medical Officer and the Magistrate. Before the Medical Officer, she stated that the accused had penetrated his male organ into her vagina, but gave a different account before the Magistrate. Therefore, her testimony lacks credibility.

16. Learned counsel also pointed out that PW-7, who is a prime prosecution witness, claimed to have gone in search of the victim and, upon going to the house of the accused, found the victim lying naked on a bed, with the accused lying over her and committing rape upon her. However, during cross-examination, she stated that she was a student of Class VII, that her school was situated at M.K. Road, and that she had gone to school on that day to appear for her examination.

17. It was submitted that the normal school timing was from 9 a.m. to 1 p.m., and the alleged incident had also taken place during that period. Therefore, PW-7 could not have witnessed the incident in the manner deposed to by her.

18. It was further submitted that the medical evidence also does not conclusively establish that there was any degree of penetration.

19. Per contra, Ms. B. Bhuyan, learned Senior Counsel and Additional Public Prosecutor, submitted that the victim was a very young child of about 8 years of age and could not depose specifically as to the actual act committed by the accused/appellant. She had, however, used the word "misdeed", which is commonly understood to mean an act of a sexual nature.

20. It was further submitted that this was supported by the fact that the victim had also stated in her deposition that, when she started crying, the accused/appellant had gagged her mouth. Moreover, the medical evidence also supported the allegation that a sexual act had been committed and that the act was penetrative in nature.

21. Ms. S. Nath, learned Legal Aid Counsel, strenuously urged that the medical evidence, which revealed a tear of the fourchette and redness of the vulva, together with the medical opinion that there had been genital manipulation, clearly indicated that the accused/appellant had inserted his finger into the

victim's vagina. It was further submitted that even a slight degree of penetration is sufficient to constitute penetrative sexual assault.

22. We have given our anxious consideration to the rival submissions.

23. The victim, in her deposition before the Court, categorically stated that the accused had brought her inside his house and locked the door. This was not challenged in cross-examination. PW-3, the mother of the victim, deposed that Sumaiya Sultana, the daughter of her brother-in-law, went to the house of the accused and knocked on the door. The accused then opened the door, whereupon they saw the victim there in a half-naked condition, without her frock. The victim then ran away to the house of a neighbour. Sumaiya Sultana, who was examined as PW-7, also deposed that the mother of the victim was searching for her and that she was also doing the same. She went to the house of the accused and found the victim lying on a bed in a naked condition, with the accused lying over her.

24. Although, during cross-examination, the defence elicited from her that she had gone to school on that day to appear for her examination, nothing could be elicited from her as to the time during which she was present at school so as to rule out the possibility of her presence at the place of occurrence, as deposed to by her. Her evidence could not be shaken in any other manner during cross-

examination.

25. From the evidence of the aforesaid witnesses, it is evident that the victim was found in the house of the accused, that the door was locked from inside, and that the accused was also present there.

26. However, the version of PW-7 to the effect that the accused/appellant was lying on top of the victim, who was in a naked condition, and was committing rape upon her at that time is difficult to accept in view of the statement of the victim before the Magistrate, wherein she had only stated that the accused had put his finger into her vagina. Thus considered, the allegation that the accused had committed rape by penetrating his male organ into the victim's vagina cannot be sustained.

27. The learned Trial Court did not elicit any explanation as to what the victim meant by the word "misdeed".

28. In this regard, therefore, the Court has to rely upon the medical evidence, which clearly indicated genital manipulation, though no evidence of sexual intercourse was found.

29. At this stage, we may take into account what the accused/appellant had stated before PW-9, the doctor who examined him. According to PW-9, the accused/appellant stated that he had undressed the victim and touched her

vulva and vagina, while denying any kind of penetration. This statement of the appellant can be regarded as an extra-judicial confession, which can be used to corroborate the evidence of the victim, who stated that the accused had committed a "misdeed" with her. Although it was suggested to PW-9 that the accused/appellant had not made such a statement before him, there is no reason to believe that PW-9, the Medical Officer, who did not know the accused or the informant, would falsely depose in this regard.

30. However, in view of the fact that the prosecution has not adduced sufficient evidence or placed any medical literature either before the Trial Court or at the appellate stage to establish conclusively that the injuries found upon medical examination of the victim could be caused only by penetration, the benefit of doubt must go to the accused. Although the defence had raised a plea of false implication on account of a land dispute between the informant and the accused, and suggestions in this regard were made to the prosecution witnesses and denied, the accused himself, in his statement in defence, did not utter a word about any land dispute between him and the informant. Furthermore, PW-6, who is the sister of both the informant and the accused and who was declared hostile, did not depose during her cross-examination by the defence regarding any land dispute between the informant and the accused, nor was any such suggestion made to her by the defence. Moreover, the plea of

false implication can also be safely ruled out on account of the positive evidence adduced by the witnesses, the medical evidence, and the statement made by the appellant before the Medical Officer.

31. Resultantly, we are of the view that a case of aggravated sexual assault has been made out against the accused/appellant rather than one of aggravated penetrative sexual assault. Accordingly, we alter the conviction to one under Section 10 of the POCSO Act and set aside the conviction and sentence recorded by the learned Trial Court under Section 6 of the POCSO Act. Further, we sentence the appellant to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 15,000/-, in default of payment of fine, to undergo simple imprisonment for 2 (two) months. The fine amount shall be paid to the victim as compensation. The period of detention already undergone shall be set off.

32. The appeal stands partly allowed to the aforesaid extent. The Trial Court Record be sent back.

33. We record our appreciation for the assistance rendered by the learned Legal Aid Counsel appearing for the appellant as well as the learned counsel appearing for respondent No. 2.

JUDGE **JUDGE**

Comparing Assistant