

GAHC010019392023



DB

2026:GAU-AS:9594-

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

Case No. : CRL.A(J)/22/2023

JAHANUDDIN SK @ ALI JIBAN @ RAJU DAS
S/O ELAHI SK,
VILL.- KARAIPAHAR,
P.S.- JOGIGHOPA,
DIST.- BONGAIGAON, ASSAM, PIN- 783382.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:GITA PRADHANI
D/O GOPAL CHANDRA PRADHANI

VILL.- SANTIPUR

P.S.- SERFANGURI

DIST.- KOKRAJHAR
ASSAM
PIN- 783346

Advocate for the Petitioner : MR. S BISWAS,

Advocate for the Respondent : PP, ASSAM, MS. S SHARMA, AMICUS CURIAE R-2

Linked Case : Crl.A./331/2022

SALMA BEGUM
W/O SWAMI AKTAR

VILL.- KHALPARA
RED LIGHT AREA
W/NO. 7

P.S.- SILIGURI
DIST.- DARJEELING (W.B.).

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P.
ASSAM.

2:BHOLA PRADHAN
S/O LATE KRISHNA BAHADUR PRADHAN

VILL.- SABTIPARA (PATGAON)

P.S.- SERFANGURI

DIST.- KOKRAJHAR
ASSAM
PIN-

Advocate for : MS. M R DOLAI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

Advocate for the appellants : **Mr. S. Biswas [in CrI. A.(J) 22/2023]**
Mr. M. Khan [in CrI. A. 331/2022]

Advocate for the respondents : Mr. R.R. Kaushik, Addl. P.P., Assam (R/1).
Ms. S. Sharma, Amicus Curiae (R/2)

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date of hearing : 14/07/2026

Date of Judgment : 14/07/2026

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

1. Heard Mr. S. Biswas, learned counsel for the appellant Jahanuddin Sk. @Ali Jiban @ Raju Das in Crl. A. (J) 22/2023 and Mr. M. Khan, learned counsel for the appellant Salma Begum in Crl. A. 331/2022. Mr. R.R. Kaushik, learned Addl. PP appears for the State respondent, while Ms. S. Sharma, learned Amicus Curiae appears for the respondent No.2 in both the appeals.

2. The two appellants have made a challenge to their conviction vide the impugned Judgment dated 04/11/2022 passed by the learned Special Judge (POCSO), Kokrajhar in Case No. Special 29/2020, arising out of Serfanguri P.S. Case No.49/2020, for having trafficked the victim girl into a brothel for prostitution, run by the appellant Salma Begum and for having abetted aggravated penetrative sexual assault on the victim by the customers who visited the brothel.

3. The appellant, Jahanuddin Sk has been convicted and sentenced under Section 6/17 of the POCSO Act, 2012, Sections 370/370(A)/372/366/419 IPC and under Section 5 of the Immoral Traffic (Prevention Act), 1956 [hereinafter referred to as 'the IT (P) Act']. The other appellant, Salma Begum has been convicted and sentenced under Sections 6/17 of the POCSO Act, 2012 and under Section 370/370(A)/372 IPC. The appellant Salma Begum has also been convicted and sentenced under Sections 3/4/6 of the IT(P) Act.

4. Section 17 of the POCSO Act relates to abetment of an offence, while Section 6 is the punishment to be inflicted for having committed the offence under Section 5(1) of the POCSO Act. Section 370 IPC relates to trafficking of persons, while Section 370(A) IPC relates to exploitation of a trafficked person. Section 372 IPC provides for punishment for selling minors for the purpose of prostitution and Section 366 IPC provides the punishment for kidnapping, abducting or inducing any woman with intent that she may be compelled or knowing it to be likely that she will be compelled to

marry any person against her will or in order that she may be forced or seduced to illicit intercourse. Section 419 IPC provides for punishment for cheating. Section 3 of the IT(P) Act provides for punishment for keeping a brothel or allowing premises to be used as a brothel. Section 4 of the IT (P) Act provides for punishment for living on the earnings of prostitution, while Section 5 provides for punishment for procuring, inducing or taking a person for the sake of prostitution. Section 6 provides the punishment for detaining a person in the premises where prostitution is being carried out.

5. The learned counsels for the appellants submits-

- a) That the Prosecution has failed to prove that the victim was sold for the purpose of prostitution.
- b) That the Prosecution has failed to prove that the appellant Salma Begum was operating a brothel.
- c) That the Prosecution has failed to prove that any seizures were made from the house of the appellant Salma Begum, because they obtained the signatures of the seizure witnesses on a blank piece of paper.
- d) That the victim was not kidnapped by the appellant Jahanuddin Sk, inasmuch as, they had been in a relationship for 6 years and that the victim had eloped with him. As such, it cannot be said that the appellant Jahanuddin Sk had induced the victim to go to the house of the appellant Salma Begum for the purpose of prostitution.
- e) That the victim was only kept in the house of the appellant Salma Begum for some time.
- f) That the victim was not a sterling witness and she had developing her story in her Section 164 Cr.PC statement and ultimately in her testimony before the learned Trial Court.
- g) That the evidence of the victim was full of contradictions and she was not a credible witness, as her statement under Section 161 Cr.P.C did not make a mention of she being subjected to sexual intercourse by customers in the brothel.

- h) That the age of the victim has not been proved, inasmuch as, the author of the birth certificate did not adduce evidence in the Court, to prove the contents of the original birth certificate of the victim issued in terms of Section 12 of the Registration of Births and Deaths Act, 1969 (hereinafter referred to as the “1969 Act”).
- i) Further, the Doctor’s evidence showed that as per the radiological examination done upon the victim, she was 18 to 20 years old.
- j) That there was no injury mark on the body of the victim.
- k) That there was no evidence showing that any sexual intercourse had occurred between the appellant Jahanuddin Sk and the victim.
- l) That there was nothing in the evidence to show that any of the offence under Section 3 of the POCSO Act, 2012 has been committed by the appellant against the victim.
- m) That the birth certificate which has been issued under the Registration of Births and Deaths Act, 1969 was not a birth certificate that could be considered as substantive evidence, inasmuch as, the same was not reflected as a document that could be used for determining the age of the victim as per Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*herein after referred to as “JJ Act”*).

6. As such, the counsels for the appellants submit that the appellants could not have been convicted under Section 6/17 of the POCSO Act and accordingly, the impugned judgment should be set aside. In support of their submissions, the learned counsels for the appellants have relied upon the following judgments- i) ***Tomaso Bruno & Another Vs. State of Uttar Pradesh***, reported in ***(2015) 7 SCC 178 [Para 21-26, 42 & 43]***; ii) ***Rai Sandeep @ Deepu Vs. State (NCT of Delhi)***, reported in ***(2012) 8 SCC 21 [Para 22]***; iii) ***Narender Kumar Vs. State (NCT of Delhi)***, reported in ***(2012) 7 SCC 171 [Para 20-22, 28-31]***; iv) ***Alamelu & Another Vs. State represented by Inspector of Police***, reported in ***(2011) 2 SCC 385***

[Para 40-43, 44-47]; v) P. Yuvaprakash Vs. State represented by Inspector of Police, reported in (2024) 17 SCC 684 [Para 8-19]; vi) Rajak Mohammad Vs. The State of Himachal Pradesh, reported in 2018 0 Supreme (SC) 1124.

7. On the other hand, the learned APP submits that the birth certificate of the victim was admitted as an exhibit after comparing it with the original and the contents of the same were never put to challenge by the appellants. Further, the birth certificate of the victim having been issued in terms of the Registration of Births and Deaths Act, 1969, the same was substantive evidence, to prove the age of the victim in terms of the judgment of the Coordinate Bench of this Court in *Criminal Appeal No.126/2023, Saiful Islam Vs. State of Assam and Anr.*, which had been made in terms of the decision of the Supreme Court in the case of *Birad Mal Singhvi vs. Anand Purohit*, reported in *1998 Supp SCC 604; Ravinder Singh Gorkhi Vs. State of Uttar Pradesh*, reported in *(2006) 5 SCC 584* and *Harpal Singh and Anr. Vs. State of Himachal Pradesh*, reported in *(1981) 1 SCC 560*.

8. The learned Addl. PP submits that there is no reason for the victim to have foisted a false case on the appellants and neither have the appellants given any reason as to why the victim should fabricate a false case against them. The learned Addl. PP further submits that there are two statements made by the victim under section 161 Cr.PC. The first 161 Cr.PC statement made by the victim was on the date she was recovered from the house of the appellant Salma Begum, i.e, on 04/08/2020. In the first section 161 Cr.PC statement which was made in Bengali language, the victim did not make a mention that she had been forced to undergo sexual intercourse with customers in the house of the appellant Salma Begum. However, in the second section 161 Cr.PC statement made by the victim in the Assamese language on 05/08/2020, the victim narrated the fact that she had been subjected to forceful sexual intercourse by customers in the house of the appellant Salma Begum, besides having sexual intercourse with Jahanuddin. He also submits that the Section 164 Cr.PC statement made by the victim corroborates the testimony of the victim, that she had been made to have sexual intercourse with customers in the brothel of the appellant Salma Begum, which was located in a red light area in Siliguri. He submits that the date of birth of victim was 05/02/2004, while the incident occurred on 30/07/2020. He also submits that the fact that the victim had been induced to go to the brothel by deceit having been proved, there was no infirmity with the decision of the learned Trial Court in convicting the appellants.

9. Ms. S. Sharma, the learned Amicus Curiae for the respondent No.2 (victim) submits that the seizure list made with regard to the article seized in the brothel shows that 5 condoms were seized. Further, the victim had identified the appellant Salma Begum and had seen her giving Jahanuddin Sk Rs.500 for expenses for tea. Thereafter, the appellant Jahanuddin Sk left, telling the victim that he would return by night. However, he did not return. Instead, the victim was subjected to sexual intercourse by unknown persons.

10. The learned counsel for the respondent No.2 (victim) submits that the evidence of PW-15, who is the Sub-Inspector of Police at Siliguri P.S. and the evidence of PW-16, who is a lady Constable at Siliguri P.S, is to the effect that they had recovered the victim from the house of the appellant Salma Begum, which was in a red light area at Khalpara. She also submits that the medical report and the evidence of the Doctor have proved that the hymen of the victim was ruptured, which corroborated the fact that the victim had been subjected to sexual intercourse by customers in the brothel. She also submits that if the appellants were not guilty of having committed any offence against the victim, they should have adduced evidence and brought in defence witnesses from around the area, to prove that the brothel run by the appellant Salma Begum was not a brothel. However, the same was not done. The counsel for the respondent No.2 thus prays that the impugned judgment should not be interfered with.

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

12. The brief facts of the case is that the victim, who was working in the house of the informant (PW-3) as a maid servant, on the pretext of going to a pharmacy to buy medicines met the appellant Jahanuddin SK and eloped with him. The appellant Jahanuddin SK however sold her in a brothel located at Khalpara, Siliguri, run by the other appellant Salma Begum. The victim was thereafter rescued by the police, after staying for 3 days in the brothel. On the basis of the FIR lodged by PW-3 on 31/07/2020 before the in-charge Patgaon Police Outpost, Patgaon, which was sent to the Officer-in-Charge of the Serfanguri Police Station, Serfanguri Police Station case no. 49/2020 under section 366 IPC was registered. After the investigation of the case was completed by PW-22 and PW-23, a charge sheet was submitted against both the appellants under section 120(B)/109/366(A)/ 369/376(D)/370(4)/372/373/419 IPC

read with section 6 of the POCSO Act and section 3/4/5/6 of the Immoral Traffic (Prevention) Act.

13. The learned Trial Court thereafter framed charges against the appellant Jahanuddin Sk under section 366/370/370(A)/372/419 IPC read with section 6/17 of the POCSO Act and section 5 of the IT(P) Act. In respect of the other appellant Salma Begum, charge under section 3/4/6 of the IT(P) Act, section 370/370(A)/372 IPC and section 6/17 of the POCSO Act was framed against her. Both the appellants pleaded not guilty to the charges framed against them and claimed to be tried.

14. The learned Trial Court thereafter examined 23 Prosecution Witnesses and after examining the appellants under section 313 Cr.P.C., it came to a finding that the appellant Jahanuddin Sk was guilty of the offence under section 366/419/370/370(A)/372 IPC, section 6/17 of POCSO Act, read with section 5 of Immoral Traffic (Prevention) Act. The learned Trial Court also found the other appellant Salma Begum to be guilty under section 370/370(A)/372 IPC read with section 3/4/6 of Immoral Traffic (Prevention) Act and section 6/17 of POCSO Act.

15. The appellants were accordingly convicted of the charges mentioned in the preceding paragraphs and they were sentenced by the learned Trial Court as follows :-

“A. Accordingly, accused Jahanuddin Sk @ Ali Jiban @ Raju Das and accused Salma Begum are sentenced to Rigorous Imprisonment for 20(twenty) years each and to pay fine of Rs.20,000.00 (Rupees Twenty thousand) only each. In default they shall suffer another Rigorous Imprisonment for 2(two) years each under section-6/17 of the POCSO Act, 2012.

B. Both the accused are sentenced to Simple Imprisonment for 7(seven) years each and to pay fine of Rs.5,000.00 (Rupees Five thousand) only each. In default another Simple Imprisonment for 1(one) year each under section-370 of IPC.

C. Both the accused are sentenced for Rigorous Imprisonment for 7(seven) years each and to pay fine of Rs.5,000.00 (Rupees Five thousand) only each. In default another Simple Imprisonment for 1(one) year each under section-370(A) of IPC.

D. Both the accused are sentenced for Simple Imprisonment for 10(ten) years each and to pay fine of Rs.5,000.00 (Rupees Five thousand) only each. In default another Simple Imprisonment for 2(two) years each under section-372 of IPC.

E. Accused Jahanuddin Sk is sentenced to Simple Imprisonment for 10(ten) years and to pay fine of Rs.5,000.00 (Rupees Five thousand) only. In default another Simple Imprisonment for 2(two) years under section-366 of IPC.

F. Accused Jahanuddin Sk is sentenced to Simple Imprisonment for 3(three) years under section-419 of IPC.

G. Accused Jahanuddin Sk is further sentenced to Rigorous Imprisonment for 7(seven) years and to pay fine of Rs.2,000.00 (Rupees Two thousand) only. In default another Rigorous Imprisonment for 1(one) year under section-5 of the Immoral Traffic(Prevention) Act, 1956.

H. Moreover, accused Salma Begum is sentenced to Rigorous Imprisonment for 3(three) years and to pay fine of Rs.1,000.00 (Rupees One thousand) only. In default another Rigorous Imprisonment for 5(five) months under section-3 of the Immoral Traffic (Prevention) Act, 1956.

I. Accused Salma Begum is sentenced to Simple Imprisonment for 1(one) year under section-4 of the Immoral Traffic (Prevention) Act, 1956.

J. Accused Salma Begum is further sentenced to Simple Imprisonment for 10(ten) years and to pay fine of Rs.5,000.00 (Rupees Five thousand) only. In default another Simple Imprisonment for 2(two) years under section-6 of the Immoral Traffic (Prevention) Act, 1956.”

16. The evidence of PW-1, who is the mother of the victim is to the effect that the victim was raised in the residence of her maternal uncle (PW-3). About 4 months back, the wife of PW-3 had called her and asked her whether the victim had come to her residence, to which she replied in the negative. Thereafter, PW-1 went to the residence of PW-3 and started searching for the victim. As the victim was not found, PW-3 lodged an FIR. PW-1 also stated that Police recovered her daughter about 4-5 days later. On enquiring from her daughter as to the reason for her going missing, her daughter replied that the appellant Jahanuddin, who identified himself as Raju Das, took her to Siliguri where she was sold to Salma Begum. Further, she was raped by some unknown persons. PW-1 also stated that her daughter

(victim) was then aged about 17 years.

17. The evidence of PW-2, who is the victim, is to the effect that about 10-11 months back, the appellant Jahanuddin came into contact with her, as he was working as a Painter in their village. He identified himself as Raju Das and used to talk to her over phone. PW-2 also stated that she fell in love with the appellant Jahanuddin Sk. One day, Jahanuddin called her on her mobile and asked her to bring her documents for a Court marriage. Accordingly, she took her birth certificate, caste certificate and other school documents and went to Kokrajhar High School alone. Jahanuddin was waiting there. Then they boarded a Tempo and thereafter changed to a bus. While on the bus, Jahanuddin gave her water, due to which she became partly unconscious. When she regained her senses, she found herself in the residence of a lady, whom Jahanuddin identified as his sister. They stayed there for the night and on the following day, the victim was taken by Jahanuddin to the residence of the other appellant Salma Begum. Jahanuddin then identified Salma Begum as his sister. PW-2 further stated that she saw Jahanuddin taking Rs. 500/- from Salma Begum for expenses for tea. Thereafter, Jahanuddin left PW-2, telling her that he would return by night. Jahanuddin however did not return. Salma Begum then gave her some short dresses, which PW-2 refused to wear. The infuriated Salma Begum then beat PW-2 with a stick and told PW-2 that Jahanuddin had sold her to Salma Begum. That night, PW-2 was forced to have sexual intercourse with 3 unknown persons. When she refused to have sexual intercourse the next day, Salma Begum again beat her. On the following day, two more persons had sexual intercourse with PW-2. On the 4th day, the Police recovered PW-2 and she was taken to the Police Station at Siliguri. Thereafter, she was brought to the Patgaon Police Outpost. She was also taken to Kokrajhar Civil Hospital for medical examination. She was also produced before the Judicial Magistrate for recording her statement. PW-2 further stated that Salma Begum had informed her that Jahanuddin was not Raju Das, a Hindu boy as claimed by him. PW-2 also stated that she had given her school documents, caste certificate and other documents to Jahanuddin Sk.

18. In her cross examination, PW-2 stated that she told the Police that she had informed Raju Das that if he did not marry PW-2, PW-2 would be married to one Budhu Nath, with whom her parents had arranged her marriage. She also denied the suggestion that she did not tell the police that she was forced to have sexual intercourse with three unknown persons or that Salma Begum had beaten her up when she refused to subject herself to having sexual intercourse. She also denied the suggestion that she did not tell the Police that two more persons had committed

sexual intercourse with her. She also denied the suggestion that she did not inform the Police that it was Salma Begum who informed her that Jahanuddin was not a Hindu boy as claimed by him. PW-2 also stated that her statement was recorded by the Police on 2/3 occasions. She also stated that she was allowed to talk to her mother from Siliguri.

19. The evidence of PW-3 (informant) is to the effect that he did not know the appellants. He stated that the victim used to stay in his residence since her childhood. He also stated that the parents of the victim had also stayed in their house prior to shifting to a different place. On 30/07/2020, while he was in his grocery shop, his wife asked him as to where the victim was. When he went back to his house during lunch break, he called the victim on her mobile number, which was not answered. Later the mobile was found to be switched off. Thereafter, his wife and the victim's mother started looking for the victim, but could not find her. The mother of the victim then received a call on her mobile and the person on the other side of the mobile, informed the victim's mother that the victim was with him and she was safe. PW-3 stated that he lodged the FIR on the next day and after six days, the victim was recovered and brought to the Patgaon Police Outpost. On going to the Patgaon Police Outpost and enquiring about the reason for the victim going missing, he came to learn that the victim was recovered from the red light area of Siliguri.

20. The evidence of PW-4 (wife of PW-3) is to the effect that she did not know the appellant but she knew the victim, who stayed in their residence. One day she noticed that the victim was not at home and on enquiry from her mother-in-law, she was told that the victim had gone to purchase medicine. As the victim did not return for some time, PW-4 called the mother of the victim, who told her that the victim had not come to their residence. Thereafter, the victim's mother came to the residence of PW-4 and they started looking for the victim. PW-4 stated that the mother of the victim informed her that in the evening, the victim's mother had received a call from a boy stating that the victim was with him and she was safe. On the following day, her husband lodged an FIR at the Patgaon Police Outpost. After the victim had been recovered by the Police, PW-4 was informed by the victim that she had been taken to Siluguri where she was beaten up and raped by some persons.

21. The evidence of PW-5, 6, 7 & 8 is to the effect that they came to learn that the victim, who had gone missing, had been taken to Siliguri and sold to a brothel.
22. The evidence of PW-9 is to the effect that she heard that the victim had eloped and later came to know from the mother of the victim that she had been recovered from Siluguri.
23. The evidence of PW-10 is to effect that he heard the victim had been taken to Siluguri and sold to a brothel. Further, he had signed the seizure list as a seizure witness, which showed that the birth certificate of the victim had been seized by the Police. The seizure list was exhibited as Ext-4, while the birth certificate was exhibited as Material Ext.-2 and Material Ext-3 was the HSLC mark sheet. Material Ext. 2 showed the date of birth of the victim to be 05/02/2004.
24. The evidence of PW-11 and PW-12 are to effect that they came to know that the victim was missing and that she had been recovered from Siluguri.
25. The evidence of PW-13 is to effect that some Police officials had come to his residence and asked him to show them the residence of Jahanuddin, who was his nephew. On taking the Police to the residence of Jahanuddin, Jahanuddin was arrested from his house and his mobile was seized by the Police. PW-13 signed on the seizure list and the mobile phone was exhibited as Material Ext-4.
26. The evidence of PW-14, who is the wife of PW-13, is to the effect that her husband had taken the Police team to the residence of Jahanuddin and came to learn that Jahanuddin had been arrested.
27. The evidence of PW-15, who is a Sub-Inspector of Police at Siliguri Police Station, is to the effect that on 04/08/2020, he was posted at Khalpara Police Outpost. A Police team from Assam sought their assistance to recover a girl trafficked in the red light area at Khalpara. PW-15 accompanied the Police team from Assam and recovered the victim from the residence of

Salma Begum, who was arrested from her house.

28. The evidence of PW-16, who is a lady Constable in the Siliguri Police Station, is to the effect that on 04/08/2020, she was posted at Siliguri Police Station. PW-16 stated that she and another lady constable accompanied the Police team and recovered the victim from the residence of the appellant Salma Begum, which was in a red light area.

29. The evidence of PW-17 is to the effect that the police had arrested Salma Begum from the red light area and when asked whether she knew Salma Begum, she stated that she knew the appellant Salma Begum. PW-17 also stated that she was the seizure witness to the seizure list which was exhibited as Ext.6.

30. The evidence of PW-18 is to the effect that she worked as a maid in the house of Salma Begum. As PW-18 stated that she did not know anything about the case, the learned Special P.P. sought leave of the Court to cross-examine PW-18, which was allowed. PW-18 stated that Salma Begum's residence was in the red light area. She also denied the suggestion that she told the police that she knew Salma Begum dealt in prostitution. PW-18 further stated that she gave a thumb impression on a blank paper and nothing was seized in her presence by the police.

31. The evidence of PW-19 and PW-20 are to the effect that they worked in the Darbar Mahila Samiti, which works for the welfare of sex workers. On being asked whether they knew the accused, they said yes.

32. The evidence of PW-21 who was posted as Senior Medical and Health Officer at RNB Civil Hospital, Kokrajhar on 06/08/2020, is to the effect that on examining the victim, she found the hymen of the victim was ruptured and that the vaginal canal easily admitted two fingers. Her final opinion on the victim was as follows:-

"Final opinion:- After all clinical examination ossification test and spermatozoa test the following

points are noted:

- 1. The age of the girl is 18 to 20 years.*
- 2. No injury mark found on her body and private parts.*
- 3. She has been exposed to sexual intercourse multiple times before 36 hours.*

Exhibit-P7/PW21 is the Medical report and Exhibit-P7(1)/PW21 is my signature. 3"

33. The evidence of PW-22, who is the Sub-Inspector of Police, is to the effect that on 31/07/2020, he was posted at Patgaon Outpost as in-charge. On that day, PW-3 lodged an FIR stating that his maid servant had gone missing since 31/07/2020 and did not return till evening. Accordingly, PW-22 made GD Entry No.461 dated 31/07/2020 and forwarded the case to the O/C Serfanguri P.S, who registered Serfanguri P.S case No. 49/2020 under Section 366 IPC. PW-22 then conducted the investigation, wherein he seized one Birth Certificate, one Registration Card, one Original Admit Card, one OBC Caste Certificate, one Samsung mobile handset and 4G Airtel SIM of the victim. He also seized the mobile handset with SIM belonging to the appellant Salma Begum. He also seized 5 packets of Nirod condom from the room of Salma Begum. He also seized Nokia 105 mobile handset from the appellant Jahanuddin. PW-22 stated that except for filing the charge-sheet, he conducted the entire investigation. He also stated that he recorded statement of the victim at Khalpara TOP on 04/08/2020 and on 06/08/2020.

34. The evidence of PW-23 is to the effect that the Case Diary of Serfanguri P.S. Case No. 49/2020 was handed over to him and after collecting the certificate under Section 65(b) of the Indian Evidence Act from the Cyber Cell of the S.P Office, he submitted the charge-sheet against the appellants.

35. The statement of the victim recorded under Section 164 Cr.P.C is as follows:

"My name is xxxxxxxx and I am aged 17. I have known Jahanuddin for 6 years. He works as a painter. He told me that his name is Raju Das. I fell in love with Jahanuddin as I knew him as Raju Das. I thought that he was a Hindu. He told me that he would marry me. Since I was minor, he took my birth

certificate, caste certificate, admit card and registration certificate of Matric Examination from me in order to get the marriage registered. On 31/07/2020, on being asked by Raju @Jahanuddin, I went Patgaon market taking the certificates along. A tempo (auto rickshaw) arrived there. A woman wearing 'Burqa' came in that tempo (auto rickshaw). She asked me whether I would go by that tempo (auto rickshaw). I went to Halang Bazar by that tempo (auto rickshaw). Raju @Jahanuddin came there. The woman alighted from the vehicle. Raju gave me some water to drink and I fell asleep after drinking the water. I did not know what happened thereafter. When I could open my eyes a little, I found myself in a line bus. Raju @Jahanuddin was also with me. He took me by a bus and kept me in a hotel. We stayed in separate rooms in the hotel that night. On the following day, we were hanging out and I was not able to utter any word. He took me to the house of his sister Salma Begum and keeping me inside the house, they locked the door from the outside. Salma gave me some short dress to wear but as I denied, Salma assaulted me. Customers visited at night. Since I refused to engage myself in such bad act, I was assaulted. Salma runs a brothel in her house. Four persons committed sexual intercourse with me. When the said persons arrived I came to know that I was in Siliguri. I stayed in the house of Salma for three days. I was forced to commit bad act with four persons in the first two days.

Raju snatched my mobile phone and kept it with him. After leaving me in the house of Salma, he went back. When I was in the house of Salma, Raju allowed me to talk with my family through conference call. When my mother asked me whether I was in Siliguri, I replied in the affirmative. Then Raju assaulted me. Three days later, the police rescued me. Now, I will go with my parents."

36. The examination of the appellants under Section 313 Cr.P.C shows that they have made a blanket denial of the evidence adduced and have taken the stand that the entire evidence adduced against them was false.

37. In the case of ***P. Yubaprakash (supra)***, the Supreme Court had held that wherever a dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "JJ Act").

38. The first issue to be decided is as to whether the Birth Certificate of the of the victim which has been issued under the Registration of Births and Deaths Act, 1969 (*herein after referred to as the 1969 Act*) could be relied upon for proving the age of the victim, as Section 94 of the JJ Act, does not make a mention of such a certificate being a valid document for proving the age of victim or a child in conflict

with law. In the first instance, it is noticed that the learned Trial Court at page 56 of the impugned judgment, has held that the learned Defence Counsel did not raise any objection regarding the age of the victim. Further, the Birth Certificate of the victim issued under the 1969 Act had been compared with the original and had been exhibited by the Prosecution. Though Section 94 of the J.J Act does not provide for proving the birth of a victim or a child in conflict with law, by relying upon a Birth Certificate issued under Section 12 of the 1969 Act, a Coordinate Bench of this Court, in the case of ***Saiful Islam vs. The State of Assam & Another, (Criminal Appeal No.126/2023)*** has held that the date of birth recorded in the Birth Certificate issued under 1969 Act, has to be presumed to be correct, in terms of Section 79 of the Evidence Act. The Coordinate Bench held that this presumption has to be made in terms of the judgments of the Supreme Court in the case of ***Ravinder Singh Gorkhi vs. State of Uttar Pradesh***, reported in ***(2006) 5 SCC 584*** and in the case of ***Birad Mal Singhvi vs. Anand Purohit***, reported in ***1998 Supp SCC 604***.

39. Paragraphs 26, 27 and 28 of the judgement of the Coordinate Bench of this Court in ***Saiful Islam (Supra)***, is reproduced herein below as follows :-

“26. Chapter IV with heading, ‘Maintenance of Records and Statistics’, has provided in Section 16 for every Registrar to keep in the prescribed form a registrar of births for the registration area or any part thereof in relation to which he exercises jurisdiction. Subject to the rules framed by the State Government, any person, as per Section 17[1], may inter alia [a] cause a search to be made by the Registrar for any entry in a register of births; and [b] obtain a certificate of birth from such Registrar and issue in such form and manner as may be prescribed. As per subsection [2] of Section 17, all certificates given under Section 17 shall be certified by the Registrar or any other officer authorized by the State Government to give such certificates as provided in Section 76 of the Indian Evidence Act, 1872 [‘the Evidence Act’, for short], and shall be admissible in evidence for the purpose of proving the birth to which the entry relates. As per Rule 8 of the Assam Registration of Births and Deaths Rules, 1999, framed under the 1969 Act, the extracts of particular from the register relating to births to be given under Section 12 of the 1969 Act shall be in Form no. 5 and Rule 13 has prescribed for the fees payable under Section 17 with certification in the manner provided for in Section 78 of the Evidence Act.

27. Section 35 of the Evidence Act has laid down that an entry in any public or other official book,

register or record or an electronic record, stating a fact in issue or relevant fact, and made by public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or record or an electronic record is kept, is itself a relevant fact. What documents are public documents are mentioned in Section 74 of the Evidence Act. Section 76 of the Evidence Act has provided for giving of certified copies of public documents with certification along with the date, subscribed by the public officer with his name and his official title and if such certificates are sealed by the public officer authorized by law to make use of a seal then they are called certified copies. Section 77 has laid down that such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

28. *On the presumption as to genuineness of certified copies, Section 79 of the Evidence Act has inter alia laid down that the Court shall presume to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as any evidence of any particular fact and which purports to be duly certified by any authorized officer, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf. The court shall also presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such paper.”*

40. In view of the decision of a Co-ordinate Bench of this Court in ***Saiful Islam (supra)***, we hold that for determining the age of a victim under Section 94 of the JJ Act, the date of birth recorded in the certificate issued under 1969 Act can also be used for determining the age of the victim. As there was no objection to the contents of the victim’s birth certificate issued under the 1969 Act, the Prosecution has been able to prove that the victim was below 18 years of age, at the time she was raped.

41. In the case of ***Alamelu (Supra)***, the Supreme Court referred to other judgments of the Supreme Court and held that mere production and marking of a document as an Exhibit by a Court cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence, i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in it. However, in the facts of this case and keeping in view the decision of the Coordinate Bench in ***Saiful Islam (Supra)***, we hold that the contents of the victim’s Birth Certificate can be held to be proof of her date of birth.

42. It is also settled law that that a conviction in a rape case can be recorded on the sole,

uncorroborated testimony of a victim, provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence.

43. In the case of *Tomaso Bruno (supra)*, the Supreme Court held that the principle underlying Section 106 of the Evidence Act is that the burden to establish those facts which are within his personal knowledge is cast on the person concerned, and if he fails to establish or explain those facts, inference may be drawn against him. The Supreme Court further held that where the evidence has not been properly appreciated and findings are perverse, the findings can be interfered with.

44. In the case of *Narendra Kumar (supra)*, the Supreme Court held that if 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. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. The Supreme Court also held that the prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. It further held that the Court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in isolation.

45. In the case of *Rai Sandeep (supra)*, the Supreme Court held that the 'sterling witness' should be of a very high quality and calibre, 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. 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.

46. The evidence recorded by the learned Trial Court goes to show that the victim was in love with Jahanuddin and that they had eloped. However, Jahanuddin had sold the victim to a brothel owner, the appellant Salma Begum, thereby showing that there was no love for the victim on the part of the appellant Jahanuddin. Further, the fact that the appellant Jahanuddin had by a false promise of love and

affection induced the victim to elope with him, by telling the victim that his name was Raju Das, a Hindu boy. This deception by Jahanuddin on the victim girl clearly shows the illegal intention of the appellant Jahanuddin, to lure a minor girl into the prostitution, by falsely promising marriage on the ground of being in love with the minor victim.

47. The evidence of the Siliguri police personnel, such as PW-15 and 16 shows that the victim had been recovered from the brothel of the appellant Salma Begum, which was in a red light area. The fact that the victim was subjected to sexual intercourse has also been proved by the evidence of PW-21 (doctor), who had testified that the victim had been exposed to sexual intercourse multiple times before 36 hours. It may be stated here that the victim had been rescued on 04.08.2020, while the medical report had been made on 06.08.2020. As the victim had been missing for a few days prior to the recovery and as she was rescued from the brothel on 04.08.2020, it is clear that the victim had been subjected to sexual intercourse during her stay in the brothel.

48. Though, the victim in her first statement made under Section 161 Cr.P.C, has not clearly stated that she had been subjected to sexual intercourse in the brothel, the statement states that a boy used to keep vigil and that there were old and the new customers. Further, whenever the victim cried, the appellant Salma Begum threatened her, saying that she would send the victim to an even worse place. The above implies that the victim was subjected to sexual assault in a brothel. The second statement of the victim under Section 161 Cr.P.C clearly records that she had been sold to customers to engage in illegal acts. The statement of the victim under section 164 Cr.P.C is to the effect that she had sexual intercourse with customers in the brothel. Thus, there is no contradiction in the statements made by the victim under section 161/164 Cr.P.C and her testimony before the court. In any event, the appellants never confronted the testimony of the victim with the statements made by her under section 161 Cr.P.C, at the time of cross examination of the victim. Thus, in view of the above reasons, we do not find any reason to doubt the truthfulness of the testimony of the victim and in fact, her testimony inspires the confidence of the court.

49. On going through the evidence and the impugned judgment, we find that the learned trial court has properly appreciated the evidence and that the appellants have failed to establish that the prosecution case is a fabricated case. We would also like to add that it is settled law that absence of injury marks on the body of the victim, does not mean that the victim had not been raped.

50. The above being said, we find that there is no evidence to prove that the victim and the appellant Jahannuddin had sexual intercourse. In any event, Jahanuddin has not been convicted under Section 6 of the POCSO Act, but has rightly been convicted under Section 6/17 of the POCSO Act, as he was the person who sold the victim to the brothel owner for prostitution.

51. As such, we find that the prosecution has proved that the victim was sold for the purpose of prostitution by the appellant Jahanuddin in the brothel run by the appellant Salma Begum. As, the victim had been induced by the appellant Jahanuddin with a false promise of marriage and had sold her to the brothel owner, the deceitful means by which the victim has been sold to the brothel, for compelling her to undergo illicit intercourse with customers, also attracts Section 366 IPC.

52. In view of the reasons stated above, we do not find any reason to interfere with the impugned judgment. The appeals stand dismissed. Send back the TCR.

53. In appreciation of the assistance provided by the learned Amicus Curiae for the respondent No. 2, her fees should be paid by the High Court Legal Services Committee.

JUDGE

JUDGE

Comparing Assistant