

GAHC010234702022



2025:GAU-AS:5642

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

**Case No. : Crl.Rev.P./550/2022**

MANOJ SHARMA  
SON OF LATE BHAGIRATH SARMAH,  
RESIDENT OF VILLAGE- MAJGAON,  
BARUAH CHUBURI, P.S.- TEZPUR,  
DISTRICT- SONITPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR  
REPRESENTED BY PP, ASSAM.

2:POMPI SHARMA  
W/O- MANOJ SARMAH

WARD NO. 3  
SATSANGHA VIHAR

P.S.- RANGAPARA  
PIN- 784101

DISTRICT- SONITPUR  
ASSAM

**Advocate for the Petitioner** : MR. S K SINGH, MR B PUSHILAL

**Advocate for the Respondent** : PP, ASSAM, MS B R A SULTANA (LEGAL AID COUNSEL FOR R-2)

**:: PRESENT ::**

**HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

For the Petitioner	:	Mr. S.K. Singh, Senior Advocate.
For the Respondents	:	Mr. B. Sarma, Addl. P.P. Assam. Ms. BRA Sultana, Legal Aid Counsel.
Date of Hearing	:	22.04.2025.
Date of Judgment	:	08.05.2025.

**JUDGMENT AND ORDER (CAV)**

Heard Mr. S.K. Singh, learned senior counsel appearing for the petitioner. Also heard Mr. B. Sarma, the learned Addl. Public Prosecutor, Assam as well as Mrs. BRA Sultana, the learned Legal Aid Counsel.

**2.** This is an application under Section 397 read with Section 401 of the Criminal Procedure Code (CrPC) challenging the order dated 29.09.2022 passed by the learned Special Judge (POCSO), Sonitpur, Tezpur in Special POCSO, Case No.53/2021.

**3.** The petitioner is the husband of the Respondent No.2. They have a 12 year old girl child. The petitioner and the Respondent No.2 have a strained relationship and therefore they live separately. Their girl child lives with the Respondent No.2. A divorce proceeding is going on between them.

**4.** It may be stated that though the petitioner had a strained relationship with the Respondent No.2 and though their daughter used to reside with her mother at Rangapara, the petitioner often comes to Rangapara and gives company to his daughter by taking her out of the house of the Respondent No.2.

**5.** On 11.09.2021, the Respondent No.2 had lodged a complaint before police alleging that on 19.07.2021, the petitioner, being the father of her daughter, took her to the house of his mother during the day time. But at night, he took the girl to his rented house and applied talcum powder over her body and in that process touched her breasts. The Respondent No.2 further alleged that at that time, the petitioner tried to molest her sexually. According to the Respondent No.2, on 08.09.2021, the petitioner brought the girl to the house of the Respondent No.2 and the girl narrated the aforesaid incidents to her mother.

**6.** On the basis of the said complaint, police registered Tezpur P.S. Case No.1949/2021 under Sections 354(A) of the Indian Penal Code (IPC) r/w Section 8 of the POCSO Act. On conclusion of investigation, police filed the *charge sheet* against the present petitioner. Now, the trial is going on.

**7.** Before examination of the foresaid 12 year old girl, the petitioner had filed an application before the trial court stating that his daughter was tutored by her mother and therefore, before her examination, she should be kept in the custody of some other person. The trial court rejected the said prayer.

**8.** Therefore, the petitioner had approached this Court in Criminal Revision Petition No.337/2022. This Court has held that the order of rejection of the prayer of the petitioner was cryptic. Therefore, the said order was set aside and the matter was remanded to the trial court for deciding afresh.

**9.** This time, the trial court again rejected the prayer of the petitioner on 29.09.2022. The trial court held as under:

“Considering the best interest of the child that the victim is under the care and custody of her natural guardian, i.e. the mother and also considering the Rule Nos.15 & 16 of Rules for Recording of Vulnerable Witnesses in criminal cases, Notification No.23 dated 5<sup>th</sup> May, 2022, I am not inclined to appoint any person as guardian ad litem to the victim as the victim is under the care of her mother.”

**10.** I have considered the submissions made by the learned counsel of both sides.

**11.** Rule Nos.15 & 16 of the guidelines for recording of evidences of vulnerable witnesses, read as under:

**“15. Appointment of Guardian ad litem –**

The court may appoint any person as guardian ad litem as per law to a witness who is a victim of, or a witness to a crime having regard to his best interests after considering the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of bar/practicing advocate, except a person who is a witness in any proceeding involving the child.

**16. Duties of guardian ad litem:**

It shall be the duty of the guardian ad litem so appointed by court to:

(i) Attend all depositions, hearings, and trial a proceeding in which a vulnerable witness participates.

(ii) Make recommendations to the court concerning the welfare of the vulnerable witness keeping in view the needs of the child and observing the impact of the proceedings on the child.

(iii) Explain in a language understandable to the vulnerable witness, all legal proceedings, including police investigations, in which the child is involved;

(iv) Assist the vulnerable witness and his family in coping with the emotional effects of crime and subsequent criminal or non-criminal proceedings in which the child is involved;

(v) Remain with the vulnerable witness while the vulnerable witness waits to testify.”

**12.** In *Smruti Tukaram Badade v. State of Maharashtra, (2022) 18 SCC 24*, the Hon’ble Supreme Court has held as under:

“5. The fairness of the process of trial as well as the pursuit of substantive justice are determined in a significant measure by the manner in which statements of vulnerable witnesses are recorded. The dignity of person, which is an intrinsic element of Article 21 of the Constitution, cannot be left to the vagaries of insensitive procedures and a hostile environment. Access to justice mandates that positive steps have to be adopted to create a barrier free environment. These barriers are not only those which exist within the physical spaces of conventional courts but those which operate on the minds and personality of vulnerable witnesses. There is a pressing need to facilitate the salutary purpose underlying the creation of a barrier free environment where depositions can be recorded freely without constraining limitations, both physical and emotional. This requires not just the creation of infrastructure but sensitising all stakeholders.”

**13.** In the case in hand, the father and the mother of the child are maintaining a strained relationship for a long time. They live separately. The girl child lives with her mother. However, the father often comes to the house of her mother. He takes her out for outings. He also takes her to the house of his mother who lives in a separate house. The girl child sometimes stays with her grandmother for long duration of time. There is no doubt that in this case the girl child has a good relationship with her grandmother i.e. the mother of her father.

**14.** This Court has made the aforementioned Rules for best interest of the child witness. In criminal trials, the fairness as well as the pursuit of substantive justice are determined in significant measure by the manner in which statements of vulnerable witnesses are recorded.

**15.** Here, in this case, the mother of the child has been maintaining strained relationship with her father. So, there is every possibility of tutoring by the mother. At the time of filing of the FIR, the girl was 12 years old. Now, she must be 16 years old. Undoubtedly, she has a good relationship with her grandmother. She used to stay with her for a long duration of time. In a criminal trial, the court has to think about the victim as well as the accused. The fairness of the process of trial should be the pursuit of the court.

**16.** This Court is of the opinion that the learned trial court has erroneously oriented

itself and arrived at an incorrect finding. Therefore, the impugned order is bad in law.

**17.** Accordingly, the order dated 29.09.2022 passed by the learned Special Judge (POCSO), Sonitpur, Tezpur in Special POCSO, Case No.53/2021, is set aside.

**18.** The victim girl shall be given in custody of her grandmother i.e. the mother of her father. The Respondent No.2 and the present petitioner, both shall bring the girl from the house of the Respondent No.2 and they will drop the girl in the house of her grandmother. The expenses of bringing the girl to the house of her grandmother shall be borne by the petitioner.

**19.** After spending 7 (seven) days in the house of her grandmother, the grandmother shall bring the witness to the court for recording her evidence. The petitioner shall bear the travelling expenses when his mother will bring his daughter to the court. Within the aforesaid 7 days period, the Respondent No.2 shall not meet her daughter in the house of her grandmother. The Respondent No.2 also shall not meet and talk to her daughter while her grandmother would be bringing the girl to the court.

**20.** After recording her evidence, the victim girl shall go with her natural mother i.e. the Respondent No.2.

**21.** Both sides are directed to appear before the trial court on 22<sup>nd</sup> May, 2025. The interim order passed earlier shall stand vacated on that day. The trial court shall endeavour to dispose of the matter expeditiously within next 3(three) months after 22<sup>nd</sup> May, 2025.

The criminal revision petition is disposed of.

**JUDGE**

**Comparing Assistant**