GAHC030001392025

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

Case No. : CRL.A(J)/8/2025

Sh. John Lalhruaizela
S/o Lalhmangaiha
R/o Vaitin, Aizawl District
Mizoram

VERSUS

State of Mizoram
Aizawl

2: Sh. J. Lalniropui,
S/o- Sh. Rammawia (L),
R/o- Vaitin Vengchha

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant : Ms. H. Lalmalsawmi, Amicus Curiae.

For the Respondents : Ms. Vanneihsiami, Addl. P.P., Mizoram
: Mr. Lalrokunga Pautu, Legal-Aid-counsel
(for respondent No. 2)

Date of Hearing : **27.04.2026**

Date of Judgment : **30.04.2026**

JUDGMENT & ORDER

1. Heard Ms. H. Lalmalsawmi, the learned Amicus Curiae for the appellant. Also heard Ms. Vanneihsiami, the learned Additional Public Prosecutor for the State and Mr. Lalrokunga Pautu, learned Legal-Aid-counsel appearing for the respondent No. 2.

2. This Jail Appeal has been registered on receipt of an appeal petition submitted by the appellant, namely, *John Lalhruaizela*, who is presently serving out his sentence at Central Jail, Aizawl. The appellant has filed this jail appeal on being aggrieved by the judgment and order dated 25.04.2023, passed in Criminal Trial No. 364/2016, by the Fast-Track Special Court, (POCSO Act), Aizawl. By the impugned judgment, the appellant was convicted under Section 6 of the POCSO Act, 2012 and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.3,000/- (Rupees Three thousand) and in default of payment of fine to undergo further rigorous imprisonment for a period of three months.

3. The facts relevant for consideration of the instant jail appeal, in brief, are that on 30.12.2015, the father of the victim girl had lodged an FIR before the Officer-in-charge of Sakawrdai Police Station, *inter alia*, alleging that during the month of September, 2015, her minor daughter of eleven years of age was raped by the present appellant.

4. On receipt of the said FIR, Sakawrdai P.S. Case No. 21/2015 was registered under Section 6 of the POCSO Act, 2012 and investigation was initiated. During the course of investigation, the Investigating Officer recorded

the statement of the victim girl and other witnesses. He also got the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure, 1973. The victim girl was also medically examined by the doctor. Ultimately, on completion of the investigation, charge-sheet was laid against the present appellant under Section 6 of the POCSO Act, 2012.

5. By order dated 21.10.2016, the learned Special Judge, POCSO Act, Aizawl framed the charge under Section 6 of the POCSO Act, 2012 against the present appellant. When the said charge was read over and explained to him, the appellant pleaded not guilty and claimed to be tried. During the course of the trial, the prosecution side examined seven prosecution witnesses. After completion of the examination of the prosecution witnesses, the appellant was examined under Section 313 of the Code of Criminal Procedure, 1973, during which he admitted having sexual act with the victim girl. However, he alleged that it was the victim who instigated the said sexual act and later on, due to misunderstanding, she made a complaint to her mother. The appellant also adduced evidence of three defence witnesses in support of his defence. Ultimately, by the judgment dated 25.04.2023, the learned Judge, Fast Track Special Court (POCSO Act) had convicted and sentenced the appellant in the manner which has already been described in the paragraph No. 2 herein above.

6. Before considering the respective submissions made by learned counsel for both sides, let us go through the evidence adduced by the prosecution side as well as by the defence side in support of their respective cases.

7. The PW-1, namely, J. Lalniropuia, who is the first informant of this case, has deposed that the victim girl is his daughter and she was born in the

year 2004. He further deposed that in the month of December, 2015, the victim girl complained about the pain in her vagina. He further deposed that when his wife inquired the victim about the pain, she told her that in the month of September, 2015, the appellant had sexually assaulted her. The PW-1 has further deposed that as at that time, he was in his residence, he heard what victim has stated to her mother. He further deposed that he consulted the matter with other family members and sent a messenger to the appellant to beg for forgiveness. However, when the appellant's family did not do so, he lodged an FIR to the police on 30.12.2015. He exhibited the FIR as Exhibit- P1.

8. During cross-examination, the PW-1 has admitted that the FIR was lodged after three months. He also admitted that he was willing to forgive the appellant. He also deposed that his daughter was studying in Class-VI.

9. The PW-2 and PW-3, namely, VL Rinpuii and Lalrempuii are the seizure witness of the seizure of the birth certificate of the victim girl by the police. Their deposition regarding the seizure of the birth certificate of the victim girl more or less remained uncontroverted during their cross-examination.

10. The PW-4, namely, Dr. Lalbiakdiki, who examined the victim girl on 31.12.2015, has deposed that on a requisition from Sakawrdai Police Station, she conducted medical examination of 11 years old victim girl who was allegedly sexually assaulted. She deposed that the victim girl had already bathed several times after the incident and there was no mark of any violence on her body. She further deposed that the genital examination showed no signs of any bruise or laceration. She, however, deposed that hymen was found ruptured but it was not a fresh injury. She exhibited the medical examination report of the victim girl as Exhibit-P3.

11. During cross-examination, she has deposed that in the case of victim girl, the rupture of hymen was old rupture and a cycling injury would not rupture the hymen unless it resulted in direct injury into the vagina.

12. The PW-5, namely, Lallawmpuii, SI of police has deposed that on 31.12.2015, she was posted as SI at IUCAW and since no competent female officer was there at Sakawrdai police station, she recorded the statement of the victim at IUCAW premises. She also took steps for getting the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973. Her cross-examination was declined by the defence.

13. The PW-6, namely, Zirtluanga, has deposed that on 30.12.2015, he was posted as the Officer-in-charge of Sakawrdai Police Station. On that day, he received an FIR from the father of the victim girl alleging that in the month of September, 2015, his eleven years old daughter had been sexually assaulted by the present appellant. He further deposed that after registering said FIR, he took up the investigation himself and visited the place of occurrence and examined the complainant, seized the birth certificate of the victim girl and also recorded the statement of the victim. He further deposed that after completion of the investigation, charge-sheet was laid against the present appellant under Section 6 of the POCSO Act. He had exhibited the seizure memo as Exhibit P-2 and the charge-sheet as Exhibit P-4.

14. During cross-examination, PW-6 has deposed that the reason for delay in filing of the FIR was not mentioned in it. However, in his statement recorded under Section 161 of the Code of Criminal Procedure, 1973, the complainant had stated that as victim had informed about the alleged offence belatedly, the FIR was immediately filed thereafter. He further deposed that the

appellant was not sent for a medical examination.

15. The victim girl deposed before the trial court as PW-7. At that time of her deposition before the trial court, she was thirteen years of age. The PW-7 has deposed that her five years old cousin went to the house of the appellant and when she was informed that her cousin was fell asleep in the house of the appellant, she went there and took her cousin to the house of her cousin. She further deposed that the appellant followed her inside her cousin's house and when she laid her cousin in the bed, the appellant forcibly dragged her by holding her hand and pulled up her skirt and took off her panty and made her to lie down on bed. Thereafter, the appellant inserted his male organ into her private part. She further deposed that she tried to shout for help but the appellant covered her mouth with his hand. She also deposed that the appellant discharged white fluid from his private part and at that time, there was no one present in the house of her cousin. She has further deposed that after sexually assaulting her, the appellant threatened her not to disclose the matter to anyone. She has further deposed that thereafter she narrated the incident to her mother; however, she cannot recollect the exact date of the same.

16. During her cross-examination, the victim girl has deposed that when the accused/appellant dragged her by holding her hand and pulled her skirt, she did not shout for help. She also admitted that the appellant did not threaten to assault or kill her if she discloses the matter to anyone.

17. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973. During his examination, though he admitted that the victim girl came to his house to take the child of her paternal aunt, however, he denied that he followed her. He also denied that he pulled down the skirt of the

victim girl and made her lie down on bed. He, however, stated that the victim girl used to come to his house and used to open his pant and touch his penis on several occasions. He also admitted that he committed sexual inter-course with the victim girl. However, he said that it was the victim girl who committed sex with him by removing his pants. He also stated that it is the victim girl who initiated the sexual acts with him and later on, when she had a misunderstanding with him, she complained against him to her mother. He also stated during his examination under Section 313 of the Code of Criminal Procedure, 1973 that he would be adducing evidence in his defence.

18. The DW-1, Mr. B. Laldinsanga, has deposed that in the mid of September, 2015, he was present in the house of the present appellant. He has deposed that on a particular night when he was present in the sitting room of the house of the appellant, the appellant was sleeping on a bed separated by cloth curtain. At that time, the victim came to the residence of the appellant and tried to wake up the appellant who was sleeping on the bed. He further deposed that the appellant asked the victim to go away.Thereafter, the victim went out of the residence and later on, the DW-1 came to know that the victim's parents had lodged the FIR against the appellant in the month of December of the same year.

19. During cross-examination, DW-1 has deposed that he does not know as to whether the cousin of the victim was sleeping in the bedroom of the house of the accused. He, however, has stated that the victim lifted her cousin brother and went out from the room of the accused after five to six minutes and went out of the house.

20. The appellant examined himself as DW-2. He has deposed that in

the month of September, 2015 while he was sleeping, the victim came to his house and at that time, his niece, one of his cousins, Jeho, one neighbor and his mother were present there. Later on, the victim tried to wake him up, however, he refused to get up by waving his hand asks her to go away. He further deposed that later on an FIR was lodged against him of having sexual intercourse with the victim. He deposed that he used to treat the victim as his own sister and have good relationship with their family. He deposed that he is innocent and false allegations were made against him.

21. The DW-3, who is the father of the appellant, has deposed that in the mid of September, 2015 he along with his son and his friends were present at their residence at Vaitin. He further deposed that on the particular night he was sleeping on his bed in his house, which was separated by a cloth curtain. At that time, victim came to their house and tried to wake up the accused. The accused told her to leave her alone. He deposed that nothing untoward had happened there. However, a false FIR was lodged against his son.

22. During cross-examination, the DW-3 deposed that victim is his neighbor and she often used to visit them. He also admitted that his son i.e., the appellant also often used to visit the house of victim since her brotheris his friend.

23. Ms. H. Lalmalsawmi, learned Amicus Curiae has submitted that the conviction of the present appellant has beenbased only on the testimony of minor victim girl. However, she submits that there are several discrepancies in the trial as well as in the statement of the victim girl which does not makesher as a trustworthy witness.

24. The learned Amicus Curiae for the appellant has submitted that from the evidence on record, it is apparent that there has been a delay in lodging the FIR. She submits that whereas the alleged incident had occurred in the month of September, 2015, however, the FIR was lodged on 30.12.2015 i.e., almost three months after the date of alleged incident and no explanation for the delay has been stated in the FIR. She further submits that though it is apparent from the evidence on record that the victim girl had disclosed about the incident for the first time to her mother, however, she has not been made a prosecution witness in this case, which creates doubt on the veracity of prosecution story.

25. The learned Amicus Curiae for the appellant has further submitted that there is also discrepancy in the testimony of the victim girl while she deposed before the trial court as PW-7 on 08.05.2017 as well as her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 and her statement recorded by police under Section 161 of the Code of Criminal Procedure, 1973. She submits that while deposing as PW-7, the victim girl has stated that her cousin Jeho Lalramhlua went to the house of accused and one of his friends informed the PW-7 that her cousin was sleeping in the house of the accused. Whereas, while giving statement before the Investigating Officer, under Section 161 of the Code of Criminal Procedure, 1973, the victim girl had stated that she along with her cousin went to the house of Hruaizela where her cousin brother went off to sleep.

26. The learned Amicus Curiae for the appellant submits that though this discrepancy appears to be minor, however, same makes a dentinto the credibility of victim as a prosecution witness. The learned Amicus Curiae for the appellant also submits that the medical evidence also does not corroborates the testimony

of the victim girl as no injury or bruise mark of any kind was found in the private parts of the victim girl. She submits that the PW-1, who is the father of the victim girl, has deposed that the FIR was lodged by him when he came to know that the victim girl was complaining of pain in her private parts and thereafter disclosed the reason for such pain. However, during her medical examination conducted by the doctor during the course of investigation, no injury or bruise laceration etc., was noticed which would lend support to the plea of the prosecution side that when the victim was suffering from pain in her private parts, on inquiry by her mother, she disclosed the truth of being sexually assaulted by the present appellant. She submits that the possibility of tutoring of the minor victim while she deposed before the trial court as PW-7 cannot be ruled out.

27. The learned Amicus Curiae for the appellant has further submitted that before recording her statement by the trial court, no preliminary examination of minor victim was done by putting her questions to ascertain as to whether she was able to understand questions put to her and give rational answers to the same. She submits that in absence of the preliminary questioning of the minor witness by the trial court at the time of recording her deposition, the testimony of the victim girl gets tainted and same cannot be relied upon. In support of her submissions, the learned Amicus Curiae for the appellant has cited a ruling of the Apex Court in the case of "***Pradeep Vs. State of Haryana***", reported in "***(2023) 19 SCC 221***".

28. She has also submitted that though the victim girl has reportedly informed about the alleged incident to her mother on 27.12.2025. However, the FIR was lodged by the father of the victim girl on 30.12.2025 i.e., three days

after getting the knowledge about the incident. She submits thatsaid delay has also not been explained by the informant, which further cast doubt on the veracity of the prosecution's story.

29. The learned Amicus Curiae submits that the guilt of the accused must be proved beyond reasonable doubt. However, in the instant case, by relying solely on the uncorroborated testimony of minor prosecutrix, the trial court had erred in convicting the present appellant, therefore, she prays for setting aside the impugned judgment of the trial court and set the appellant at liberty.

30. On the other hand, Ms. Vanneihsiami, the learned Additional Public Prosecutor for the State respondent has submitted that there is no infirmity or illegality in the impugned judgment of the trial court. She submits that it has rightly convicted and sentenced the appellant after considering the evidence against the appellant on record in its true perspective.

31. The learned Additional Public Prosecutor submits that in a sexual offence involving minor, it is not unnatural for the minor victim to suffer from shame and fear and to delay the disclosure of such offence, even to their near relatives. She submits that the victim has explained in his testimony that it was due to fear of the appellant, the victim initially did not disclose the incident to anyone. However, when she suffered from pain and her mother inquired about the incident, she disclosed the same first to her mother, from whom ultimately the father also came to know about the incident.

32. She submits that since the appellant is the friend of the victim's brother and since there is no whisper about any enmity between them, there is

no reason for the victim girl to falsely implicate the present appellant in the present case. She submits that mainly because the witness is a child, her evidence cannot be rejected. She also submits that though medical evidence could not find marks of any injury. However, it found the hymen of the victim in a torn condition, which itself corroborates the testimony of the victim girl. She further submits that the fact that no preliminary questioning was done of the victim girl by the trial court before recording her testimony, in itself, cannot be a reason to discard the testimony of the victim girl in toto.

33. The learned Additional Public Prosecutor submits that as from the testimony of victim girl before the court as well as her statement recorded under Section 164 and 161 of the Code of Criminal Procedure, 1973, it appears that she was able to rationally gave the answer to the question posed to her. She further submits that her testimony has remained consistent throughout the trial and, therefore, for minor discrepancies which do not touch the core of the issue i.e., whether she was sexually assaulted by the present appellant or not, her testimony cannot be discarded. She submits that the present appellant, during her examination under Section 313 of the Code of Civil Procedure, 1973 has categorically admitted to have indulged in sexual intercourse with the victim girl, which leaves no room for doubt regarding his involvement in the offence alleged in this case. In support of her submission, learned Additional Public Prosecutor has cited following rulings: -

(i) "***Yogesh Singh Vs.MahabeerSingh and others***", reported in "***(2017) 11 SCC 195***"

(ii) "***Rai Sandeep @DeepuVs. State (NCT of Delhi)"*** reported in "***(2012) 8 SCC 21***"

34. The learned Additional Public Prosecutor submits that it is a settled

principle of criminal jurisprudence that the evidence of a prosecutrix in case of a rape is of the same value as that of an injured witness and conviction can be made on the basis of sole testimony of the prosecutrix. In support of her submission, she has cited a ruling of the Apex Court in the case of "***Lok Mal @ Loku Vs. State of Uttar Pradesh***", reported in "***(2025) 4 SCC 470***".

35. She has also submitted that the prosecution side has been able to establish the foundational factsin the case showing sufficient materials against the present appellant under Section 6 of the POCSO Act, 2012. As such, the presumption under Section 29 of the POCSO Act that the present appellant has committed the offence alleged against him has to be drawn. She also submits that though the appellant has adduced three defence witnesses, however, he has failed to rebut the statutory presumption drawn under Section 29 of the POCSO Act, 2012 against him.

36. On the other hand, Mr. Lalrokunga Pautu, learned Legal-Aid-counsel appearing for the respondent No. 2 has submitted that he fully supports and adopts the submissions made by learned Additional Public Prosecutor. He also submits that there is nothing on record to show that the victim girl had any kind of animosity against the present appellant. Therefore, there was no reason for her to make false accusation against the appellant who is her brother's friend. In support of his submission, learned legal-Aid-counsel for the respondent No. 2 has cited a ruling of a Division Bench of this court in the case of "***Budheswar Hazarika Vs. State of Assam, Represented by the Public Prosecutor***" reported in "***2024 SCC OnLine Gau 130***".

37. I have considered the submissions made by learned counsel for both sides and have gone through the materials available on record. I have also gone

through the rulings cited by learned counsel for both sides in support of their respective submissions.

38. On perusal of the impugned judgment, it appears that the trial court apart from framing charge under Section 6 of the POCSO Act, 2012 against the present appellant had formulated three points for determination, namely, (i) Whether the victim was a minor at the time of alleged sexual assault? (ii) Whether the accused has committed the offence of aggravated sexual assault upon the victim? (iii) Whether the accused is liable to be convicted and sentenced under the charged section of law.

39. Regarding first point for determination, it appears that the appellant does not have much grievance in the trial court holding that the victim was a minor at the time of the alleged incident, which occurred in the month of September, 2015. Moreover, the evidence on record including that of the father of the victim/complainant of this case as well as the birth certificate of the victim girl, which was exhibited as Exhibit-M1 clearly indicates that the date of birth of the victim was 14.09.2004. As such, at the time of alleged offence, she was only 11 years of age. This court, therefore, finds no infirmity in the conclusion arrived at by the trial court regarding the fact of minority of the victim girl at the time of alleged incident.

40. As regards the remaining points for determination formulated by the trial court, it appears that there is only one eye-witness to the offence alleged in this case i.e., the victim girl herself. It is also obvious that as the offence involved in this case is a sexual offence, the perpetrator would not commit it in presence of any onlooker, therefore, possibility of availability of independent eyewitness apart from the victim is very rare in such cases.

41. It appears that the medical examination of the victim girl has not supported the prosecution case, which is not a very surprising fact as the victim girl was examined by the doctor i.e., PW-4 about three months after the date of alleged incident. Under such circumstances, it is not a matter of surprise that no bruise, laceration or any mark of violence was found on victim's body. However, her hymen was found ruptured. Though, the rupture of hymen may not always be due to sexual intercourse. However, had hymen been found intact, it would have totally discarded the possibility of any sexual intercourse with the victim girl, which is not the case. As the hymen was found ruptured, there is a possibility that said rupture was due to subjecting the victim girl to sexual intercourse.

42. As discussed earlier, in a belated medical examination of a rape victim, the relevance of medical examination itself diminishes and as such, much weightage may not be given to the medical examination of the victim girl which was done after three months of the alleged sexual inter-course. It appears that the evidence on record shows that the victim girl first confided about the incident with her mother, which is not very unnatural for a minor girl to do so. It is also not very unnatural that if a minor girl of 11 years of age is threatened by the perpetrator, she would be initially reluctant to disclose the incident to anyone as has been done in this case. However, that in itself does not diminishes the probative value of the testimony of the victim girl as her statement recorded under Section 164 of Code of Criminal Procedure, 1973 corroborates her testimony as regards the fact of subjecting her to sexual inter-course by the appellant.

43. Moreover, the appellant himself has stated that he had sexual inter-

course with the victim girl, though he tried to shift the blame to the victim girl that it was she who had committed sexual inter-course with him after instigating him. This stand taken by the appellant during his examination under Section 313 of the Code of Criminal Procedure, 1973 is not believable in as much as there is no material on record justifying any reason for the victim girl to falsely implicate the petitioner with such an allegation of committing forcible sexual inter-course with her.

44. This Court is in agreement with the submissions made by the learned Additional Public Prosecutor as well as the learned legal-aid-counsel for the respondent No. 2 that there is no material on record to show that there was any reason for the victim girl to make false allegation against the appellant having forcible sexual intercourse.

45. This Court is also in agreement with the submissions made by the learned Additional Public Prosecutor that evidence of a prosecutrix in case of a rape is of the same value as that of an injured witness and conviction can be made on sole testimony of the prosecutrix. The evidence of defence witnesses are also of no help to the appellant inasmuch as they have narrated the incident in the house of the appellant, whereas the alleged offence of subjecting the victim girl to sexual inter-course by the appellant was committed in the house of the cousin of the victim girl. The victim girl has clearly stated in her testimony that the appellant had threatened her though during her cross-examination, she has denied that the appellant threatened her of assaulting her or killing her but that does not diminish the value of her testimony that she was threatened by the appellant not to disclose the incident to anyone. Merely not threatening the victim with assault or of killing her would not make any other kind of

threatening a valid one.

46. The father of the victim girl has clearly indicated that at the first instance he expected that the appellant would seek forgiveness and, therefore, some time was taken for filing an FIR even after the fact of commission of the alleged incident came to his knowledge. This conduct may not be very unnatural considering the religious belief followed by the informant. Hence, the prosecution case cannot be discarded merely because of delayed reporting of the incidentby the minor victim to her parents.

47. Further, it also appears thatthough it is always advisable for the trial court to conduct preliminary questioning of a child witness before administrating oath to such a witness and before recording the deposition of such a witness as to whether such a witness is able to understand the sanctity of oath as well as able to give rational answers to the questions posed to such witness. However, mere not putting such preliminary questions to the witness by the Judicial Officer concerned, would not diminish the probative value of the testimony of such a witness, if otherwise, it appears that such a child witness was able to give rational answers to the questions posed to him as well as able to face the cross-examinations by the defence side.

48. In the instant case, the victim girl was thirteen years of age when her deposition was recorded by the trial court. Though, there is no indication that any preliminary questioning was done by the trial court. However, on perusal of the testimony of the victim girl, it appears that she has very clearly narrated the incident which happened on the date of the incident whereby she was subjected to sexual intercourse by the appellant. It also appears that her statement given to the Investigating Officer under Section 161 of the Code of

Criminal Procedure, 1973 as well as her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 and her testimony given before the trial court as PW-7, more or less remained consistent. As such, this Court does not find any ground to disbelieve her testimony.

49. The testimony of the victim girlas discussed in Paragraph Nos. 15 and 16 of this judgment hereinbefore clearly indicates that she was subject to penetrative sexual assault by the appellant and as the victim girl was below the age of 12 years when the alleged offence was committed, the trial court has rightly convicted the appellant under Section 6 of the POCSO Act, 2012 and sentenced him with rigorous imprisonment of ten years with fine.

50. Thus, this Court is of the considered opinion that the trial court can also not be faulted with in relying upon the sole testimony of the victim girl and convicting the appellant under Section 6 of the POCSO Act and sentencing him in the manner already indicated in this judgment hereinbefore.

51. In view of the discussions made and the reasons stated in the foregoing paragraphs of this judgment, this Court is of considered opinion that this appeal is devoid of any merit and does not warrant any interference in the impugned judgment of conviction and sentence imposed on the appellant.

52. Before parting, this Court also appreciate the assistance rendered by learned Amicus Curiae for the appellant as well as the learned Legal-aid-counsel for the for the respondent No. 2. The learned Amicus Curiae for the appellant shall be paid Rs.9,000/- (Rupees Nine Thousand only) as honorarium by the Mizoram State Legal Services Authority. The Legal-aid-counsel for the respondent No. 2 shall be paid fees as per the rates prescribed by the Mizoram

Legal Services Authority in the relevant rules.

53. Accordingly, this appeal is dismissed.

54. Send back the trial court records to the trial court along with a copy of this judgment.

JUDGE

Comparing Assistant