GAHC030006092024

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

Case No. : CRL.A(J)/32/2024

Sh. Khamliana @Zakhamliana
R.I. Convict
Central Jail, Aizawl

VERSUS

State of Mizoram and Anr.
Aizawl2:Smt. Lalchhanhimi (Informant

Advocates for the appellant : Ms. Valentina Laldinpuii, Amicus Curiae

Advocates for the respondents : Mrs. Vanneihsiami, Addl. PP, Mizoram for R-1

: Mrs. Emily L. Chhangte, Legal Aid Counsel for R-2

BEFORE

HONOURABLE MR. JUSTICE PRANJAL DAS

Date on which judgment is reserved : **24.02.2026**

Date of pronouncement of judgment : **03.03.2026**

Whether the pronouncement is of the operative part of the judgment ? : No.

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Ms. Valentina Laldinpuii, learned Amicus Curiae for the appellant. Also heard Mrs. Emily L. Chhangte, learned Legal Aid Counsel for the respondent No. 2 and Mrs. Vanneihsiami, learned Addl. Public Prosecutor appearing for the respondent No. 1.

2. The convict-appellant Sri Khamliana, alias Zakhamliana, has preferred the present criminal appeal against the Judgment dated 20.03.2023, by which he was convicted under Section 376(2)(f)(l)(n) of IPC in S.R. No. 91/2018**,** arising out of Darlawn PS Case No. 5/2018. For such conviction, the learned Trial Court, vide Order dated 21.03.2023, sentenced him to rigorous imprisonment for 10 years and to pay a fine of Rs. 5,000/-, and in default, to undergo simple imprisonment for 2 months**.**

3. On 13.04.2018, Lalchhanhimi, Counsellor, One Stop Centre, Durtlang North, Social Welfare, lodged an FIR that the girl, namely 'X', was repeatedly raped by her stepfather, Zakhamliana, from 2016 till April 2018 at their residence. It was further stated in the FIR that the girl was mentally retarded**,** and the police authorities were requested to take action. On the basis of the FIR, Aizawl PS Case No. 0/2018 was registered under Section 376(2)(f)(e) IPC.

However, later, the territorial jurisdiction was found to be different, and the case was transferred with the permission of the Court to Darlawn Police Station, whereupon Darlawn P.S. Case No. 5/2018 was registered under Section 376(2)(f)(l)(n). Investigation was started**,** during which the appellant was arrested. After completion of investigation, the I.O. submitted the charge-sheet against the appellant under Section 376(2)(f)(l)(n) IPC, vide C.S. No. 6/2018 dated 21.06.2018. After the usual formalities, vide Order dated 28.06.2018**,** the Court of the learned Additional Sessions Judge, Aizawl framed charge against the appellant under the same Section, i.e., Section 376(2)(f)(l)(n) IPC.

4. The charge being denied by the appellant led to the commencement of the trial**,** in which the prosecution examined nine (9) witnesses, including the informant, the M.O. and the I.O. The wife of the appellant, who stated that she was the biological mother of the victim, adduced evidence as DW-1. The victim herself was examined as Court Witness No. 1 (CW-1). It may be mentioned herein that after completion of the prosecution evidence and before commencement of the defence evidence, the appellant, as accused, was duly examined under Section 313 Cr.P.C. After appreciating the evidence adduced at the trial and hearing the parties, the learned Trial Court convicted and sentenced the appellant, as already narrated above**.** Aggrieved by the same, the

present appeal has been filed.

5. Ms. Valentina Laldinpuii, the learned Amicus Curiae, appearing for the convict-appellant, has taken the Court through the evidence and other relevant materials on record. She submitted that the prosecution had failed to prove the case during the trial and hence, the conviction and sentence of the appellant were erroneous. It was submitted that the statement of the accused during his examination under Section 313 Cr.P.C. was corroborated by DW-1, the wife of the appellant. It was submitted that there were lacunae in the prosecution case and that the learned Trial Court had incorrectly taken the prosecutrix to be a sterling witness. It was submitted that though the incident was alleged to have taken place from the year 2016, the FIR was lodged only on 13.04.2018 without any explanation for the delay. Further, no exact dates were mentioned regarding the alleged incidents.

6. It was submitted that the medical report did not reveal any injuries and rather indicated that the victim was habituated to sexual intercourse. It was submitted that there was a mention of an induced abortion of the victim earlier, but the materials did not attribute it to the appellant. It was submitted that the learned Trial Court failed to consider the events leading up to the complaint and

the learned Amicus contended that the appellant was falsely implicated in the case. It was submitted that the sketch map exhibited during the trial did not tally with the places of rape stated by the victim. It was contended that the victim had also alleged that she was subjected to rape on a ginger field, but the same did not find corroboration from the other prosecution witnesses. Though the victim was projected to be suffering from a disability, her disability certificate was not produced before the Court during the trial. In her deposition, the prosecutrix did not state about her stepfather, the appellant, threatening to break her jaw. It was submitted that, if at all anything had happened, it was a consensual relationship between the appellant and the victim and that she was a major.

7. Summing up her submissions, the learned Amicus contended that the prosecution story during the trial was doubtful and, therefore, the impugned Judgment and Order required to be interfered with. In support of her submissions and contentions, the learned Amicus appearing for the appellant cited the following decisions:

(1) ***Kali Ram vs. State of Himachal Pradesh,*** *reported in* ***(1973) 2 SCC 808.***

(2) ***Rai Sandeep @ Deepu vs. State (NCT of Delhi),*** *reported in* ***(2012) 8 SCC 21.***

(3) ***State of Karnataka vs. Mapilla P.P Soopi,*** *reported in* ***(2003) 8 SCC 202.***

(4) ***Abul Hussain Laskar vs. State of Assam,*** *reported in* ***(2017) SCC OnLine Gau 578.***

8. On the other hand, Mrs. Vanneihsami, the learned Addl. Public Prosecutor, submitted that there was no delay in lodging of the FIR, as the incident took place over a sustained period up to 2018 and the FIR was lodged promptly in April 2018 after the episode was revealed. It was submitted that the testimony of the prosecutrix and that of PW-8 were reliable. It was submitted that the medical evidence indicated rape and that the disability certificate of the victim girl was exhibited during the trial and was not disputed by the defence. It was also submitted that as the girl was suffering from a disability, any consent given by her was vitiated consent in terms of the statutory provision under Section 375 IPC. Referring to Section 114-A of the Evidence Act, the learned Addl. Public Prosecutor submitted that the burden shifted to the appellant during the trial to show that the victim had consented**,** but that he failed to discharge the said burden. In support of her contentions, the learned Addl. Public Prosecutor

cited the following decisions:-

(1) ***Bhanel Prasad alias Raju vs. State of Himachal Pradesh,*** *reported in* ***2025 SCC OnLine SC 1636.***

(2) ***State of U.P vs. Pappu Alias Yunus & Anr.,*** *reported in* ***(2005) 3 SCC 594 : 2005 SCC (Crl.) 780 : 2004 OnLine SC 1504.***

(3) ***Chaman Lal vs. State of Himachal Pradesh,*** *reported in* ***(2020) 17 SCC 69 : (2021) 3 SCC (Crl.) 229 : 2020 SCC OnLine SC 988.***

9. Also heard Ms. Emily L. Chhangte, learned Legal Aid Counsel representing the informant. Besides adopting the submissions of the prosecution, the learned counsel for the informant further submitted that the appellant, who was the step-father of the girl, took advantage of her disability in committing the crime. It was submitted that the statement of the prosecutrix was duly corroborated by the other PWs. It was submitted that the learned Trial Court rightly held that the prosecutrix was a sterling witness. It was also submitted that there was no discrepancy in her statement recorded before the learned JMFC during the investigation. Summing up her submissions**,** the learned Legal Aid Counsel contended that no false implication had been made and that the impugned

Judgment & Order deserves to be upheld and confirmed. In support of her submissions the learned Legal Aid Counsel cites the following decision:-

(1) ***Sham Singh vs. State of Haryana,*** *reported in* ***(2018) 18 SCC 34.***

DISCUSSION AND DECISION

10. In any prosecution pertaining to sexual offences, the testimony of the victim is very crucial as these offences by its very nature are unlikely to have many eyewitnesses. It is also a well-settled proposition under our law that if the testimony of the victim of a sexual offence is found to be trustworthy and reliable, a conviction can be based solely upon it. The position of a victim of sexual offence has been held to be not like that of an accomplice and more like an injured eyewitness.

11. In the impugned Judgment, the learned Trial Court has, in support of these principles referred to the decisions of the Supreme Court rendered in ***Krishna Kumar Malik Vs. State of Haryana,*** reported in ***(2011) 7 SCC 130; Narender Kumar Vs. State (NCT of Delhi)*** reported in ***(2012) 7 SCC 171, Sham Singh Vs. State of Haryana,*** reported in **2018 SCC OnLine SC 1042.**

12. During the trial pertaining to the instant matter, the victim girl was examined as Court Witness being CW-1. In her deposition, she stated that she knew the accused person, who was her stepfather and she used to live with him and her mother at Vanbawng. She stated that when her mother married the appellant, she had lived with her mother's elder sister, but when she grew up, she started living with her mother and the appellant. CW-1 stated that the appellant had been repeatedly raping her by inserting his penis into her vagina and threatened to kill her and said that he would stab her on her neck if she disclosed the matter to anyone. She stated that she was frightened of him, but she told her mother about the incident. However, her mother accused her of telling lies. She further testified that the appellant assaulted her when she informed about the incident to her mother. CW-1 deposed that the appellant raped her at their ginger farm and also inside their house multiple times.

13. CW-1 further stated that as she was frightened of her stepfather, the appellant and her mother, she ran for help to their MHIP President, Nu Thakungi and begged her to help her and shelter her from her mother and the appellant and that, she also informed the MHIP President about the incident. Thereafter, the MHIP President sent her to the One Stop Centre at Durtlang and sent her there and at the One Stop Centre, she was received by the staff and they took her to the Police Station. CW-1 stated that the Police seized a photocopy of her

Disability Certificate from her possession and also forwarded her for recording her statement before JMFC, Aizawl. The testimony of CW-1 in her cross-examination is found to be consistent with her deposition in her examination-in-chief. She reiterated in cross-examination that the appellant used to commit rape upon her, stating that she used to do this in the morning, daytime and night time at their residence and the ginger farm.

14. She dispelled the suggestion that the appellant never committed rape upon her and also dispelled the suggestion in this context that she had wrongly implicated him for any dislike for him, for scolding. She specifically denied the suggestion that she had sexual intercourse with the appellant with her consent. This assumes significance because in the same cross-examination, she admitted frankly that before the alleged incident, she had sexual intercourse with the four persons named therein, who were all from Durtlang, Aizawl and this was while she was living with her uncle. She also admitted frankly that she used to consume liquor and loiter around, and sometimes her mother and the appellant used to look for her. She denied the defense suggestion that she had deposed falsely before the Court.

15. The statement of PW-9, C. Vanlalnghakmawia, the main Investigating Officer of the case, has stated about forwarding the victim girl to record her

judicial statement at the Aizawl District Court and the learned JMFC, who recorded the said statement of the victim during investigation, namely T. Lalhmachhuana, adduced evidence during the trial as PW-4. In his deposition, he stated about receiving a requisition from Police for recording the statement of the victim in connection with Aizawl P.S Case No. 0/18. It may be mentioned herein that the case was originally registered at Aizawl, but due to different territorial jurisdiction, it was sent to Darlawn, where it was investigated and charge-sheet late by the Police of Darlawn P.S.

16. From the statement of the learned JMFC as PW-4, it emerges that after recording the statement, he read over the same to the victim, who admitted the statement to be correct and PW-4 has deposed that the statement contains a full and true account of the statement made by her. PW-4 proved and exhibited the said statement as Exhibit P-5 and his signature thereon as Exhibit P-5(a) and (b) respectively. I do not find anything contradictory emerging in the cross-examination of PW-4. Thus, it is satisfactorily proved that the statement of the victim girl was recorded during investigation before learned JMFC and exhibited as Exhibit P-5.

17. In her statement before learned JMFC recorded under Section 164 Cr.PC, the victim girl stated that her stepfather Zakhamliana had been having sexual

intercourse with her since 2016 against her will. She further stated that she used to sleep on the long couch and that he would come near her after her mother goes off to sleep; that he would threaten her with a knife and even threatened to kill her if she informs anyone about the incident.

18. The victim further stated that she had informed her mother about what happened, but her mother did not believe and said that her father would not do such a thing and instead would rebuke her. The victim further stated that she informed Mrs. Thakungi about the matter and she decided to take further action. I do not find any contradiction between the statement of the victim recorded before learned JMFC and her deposition during the trial.

19. Both these statements are consistent and cogent as regards the commission of intercourse upon her by her stepfather. In both these statements, she has stated about such intercourse being committed upon her without her consent.

20. One aspect of the prosecution story is that the victim girl suffered from a disability by way of mental retardation. PW-9, the main I/O in his deposition has stated about the previous I/O seizing photocopy of a Disability Certificate of the victim from the possession of the victim in the presence of two reliable witnesses at Aizawl Police Station, IUCAW.

21. In this context, the testimony of SI R. Lalthanpuii, who adduced evidence as PW-6 may be seen. She has testified that during investigation, she seized photocopy of Disability Certificate of the victim from the possession of the victim in the presence of two reliable witnesses at Aizawl Police Station. She proved the seizure memo regarding such seizure as Exhibit P-3 and her signature thereon as Exhibit P-3(c). She also proved as Exhibit M-1 the said Disability Certificate of the victim. In cross-examination, she admitted that the Disability Certificate is not original. However, she clarified that the original Disability Certificate was produced at IUCAW and photocopy was made and duly attested by the DSP, IUCAW. She denied the suggestion in this regard that at the time of seizure, the original Disability Certificate was not produced before her.

22. Even in the FIR exhibited as Exhibit P-1, the informant stated that the victim is mentally retarded. Ideally, the original copy of the Birth Certificate should have been seized and duly exhibited during the trial for proper evidentiary value. However, it does emerge from the testimony of PW-6, as mentioned above that the original Disability Certificate was produced and a photocopy was made and attested by the DSP of Police. As the said Disability Certificate, despite being a photocopy, purportedly obtained in the aforesaid circumstances was exhibited during the trial as Exhibit M-1, I deemed it necessary to have a careful look at it and upon doing so, I find that it mentions

a disability of mental retardation and the percentage of disability has been mentioned as 70%.

23. During investigation, the victim was medically examined and in this regard, the M.O, namely Dr. Lalbiakdiki testified as PW-3 and in her testimony also, she has stated that the victim was found to be having low IQ and mentally abnormal and she was advised psychiatric consultation. Thus, on the basis of the aforesaid evidence, it can be held that the victim girl suffered from some disability of a mental nature.

24. In his testimony, the main I/O PW-9 has deposed about forwarding the victim to the Medical Officer for medical examination and subsequently receiving the medical examination report of the victim during investigation.

25. I now go back to the testimony of the Doctor/PW-3 again. In her deposition during the trial, she has stated that on 13-04-2018, the victim was brought before her by the Police for medical examination and that she gave a history of previous multiple sexual intercourse and induced abortion in 2017 due to rape. Upon physical examination, she found her to be having low IQ and mentally abnormal as already mentioned earlier. She also stated that upon examination, she did not find any bruise or laceration on her private parts. However, she mentioned that the hymen was found to be ruptured, with the

rupture being an old one. PW-3 proved the medical examination report as Exhibit P-4 and the signature therein as Exhibit P-4(a).

26. As regards the Disability Certificate, both PW-1 Lalchhanhimi as well as PW-2 Ramdinpuii Ralte have testified about the Police seizing the photocopy of the original Disability Certificate from the victim in their presence, with PW-1 even stating that the original Disability Certificate was produced by the victim and same was photocopied and attested by a competent authority. PW-1 proved the property search and seizure form as Exhibit P-3 and her signature thereon as Exhibit P-3(a). She also proved the Certificate as Exhibit M-1. In cross-examination, she stated that as per the Disability Certificate, the victim is 70% mentally retarded.

27. PW-2 has also stated about Police seizing the Disability Certificate from the victim with the original produced by the victim and same was photocopied and attested by a competent authority. PW-2 stated about being a seizure witness and she proved her signature as Exhibit P-3(b) and the seizure memo as Exhibit P-3. She also proved the material object, the certificate as Exhibit M-1. More importantly, PW-2 in her cross-examination stated about seeing the original Disability certificate of the victim when it was produced by the victim before the Women Cell. Going back to the testimony of the M.O/PW-3, I find that cross-

examination was declined.

28. During the investigation, the accused was also examined by a Medical Officer of PHC, Darlawn and the said Medical Officer, Dr. C. Vanlalremsiama, adduced evidence as PW-5. He has stated in his evidence that the genital organs of the appellant were fully developed and matured and he was capable of performing sexual activities normally. He reiterated the same in cross-examination about the appellant having sexual maturity and capable of performing sexual activities. PW-5 proved the medical report as Exhibit P-6 and his signature thereon as Exhibit P-6(a).

29. As mentioned above, the FIR was lodged before the Aizawl Police Station and Aizawl P.S case No. 0/2018 was registered. But subsequently, a prayer was made before the Court through the office of the SP, Aizawl District for transferring the case to the jurisdictional Police Station, which was Darlawn Police Station and upon being allowed, the case was transferred there.

30. PW-6 proved his prayer petition before the SP, Aizawl as Exhibit P-7 and his signature thereon as Exhibit P-7(a). PW-6 has also stated about Lalchhanhimi, Counsellor, One Stop Centre, Durtlang North, Social Welfare Department lodging the FIR before the Aizawl Police Station, with the allegation that the victim girl had been repeatedly raped by her stepfather, Khamliana, the

present appellant during 2016 to April 2018. This corroborates the statement of the victim made in her statement before learned JMFC about being subjected to rape by her stepfather from 2016 onwards till 2018.

31. PW-7 is a Police official ASI Ramfangzauva and he has testified about being deputed to apprehend the appellant in connection with this case and accordingly, he proved the arrest memo as Exhibit P-8 and his signature thereon as Exhibit P-8(a). He also referred to the medical examination of the appellant, opining that he was capable of performing sexual activities.

32. In her statement before learned JMFC, the victim girl has mentioned about revealing about the incident to Thakungi. In this context, Lalthakungi had used evidence as PW-8, in which she stated that she was the President of MHIP North Khawlek in 2018 during the time of the incident and that, on 12.04.2018 at around 6:00 am, the victim girl came running inside the house and begged her to help her, saying that she was afraid of her mother and stepfather and she further told PW-8 that her stepfather might kill her if she sees her and asked her to shelter the victim at a safe place.

33. PW-8 further testified that on 12.04.2018, MHIP had an emergency meeting, during which the victim was asked about the incident and she stated that her stepfather had been raping her several times without her consent and

when she informed about the same to her mother, her mother accused her of telling lies and she was even assaulted by her mother. PW-8 stated that the victim further informed them that her stepfather had threatened her not to disclose about the incident and that if she does so, he threatened to kill her. PW-8 testified that the victim revealed that she was scared of her stepfather and mother and she was fed up of living with them and requested and begged the MHIP committee members to keep her at a safe place, away from her mother and stepfather.

34. PW-8 testified that accordingly, she informed the incident to the One Stop Centre, Durtlang and they advised to send the victim to the One Stop Centre and she accordingly arranged the same. In cross-examination, she stated that she knew the victim from birth and she has also stated about her mental retardation; however, it is also stated that she could speak normally and answer the questions put to her. PW-8 clarified that the victim generally behaved normally and sometimes had mental problems.

35. This part of the testimony of PW-8 is significant as it corroborates the statement of the victim that she reported about the incident to PW-8 in a manner described by her, that she went running to PW-8 and requested her to save her from her stepfather and mother. Another important aspect that

emerges from the cross-examination of PW-8 is that though the victim is stated to have some mental disability but she was capable of speaking and answering questions properly and that, generally she behaved normally, but sometimes she had mental problems. PW-8 specifically repelled the suggestion that the victim did not tell that the appellant used to rape her and threatened to kill her, if she disclosed about the incident. I find that the testimony of PW-8 lends corroboration to the testimony of the victim adduced during the trial and also her statement recorded before learned JMFC.

36. Now, I take up the testimony of PW-1, who is the informant of the case. She stated that on 13.04.2018, the victim approached them at the One Stop Centre, Durtlang, stating that she had been repeatedly raped by her stepfather, the appellant, during 2016 to April 2018 and threatened to kill her if she disclosed about the incident. PW-1 stated about the victim being somewhat mentally unstable and having a Disability Certificate. She has stated about taking her to the Aizawl P.S, Women's Cell and lodging the FIR, which she exhibited and proved as Exhibit P-1 and her signature thereon as Exhibit P-1(a). She proved the FIR form as Exhibit P-2 and her signature thereon as Exhibit P-2(a). She repelled the suggestion in cross-examination that she was deposing falsely.

37. From the testimony of the victim, the learned the Trial Court has rightly stated that though the victim candidly stated about her having sexual intercourse with several other persons whom she named and also about having liquor and roaming around, but she specifically denied the suggestion that the appellant was having sexual intercourse with her, with her consent. In examination-in-chief also, she clearly stated that the appellant had sexual intercourse with her against her consent.

38. In her statement before learned JMFC also, she stated about the appellant having intercourse with her since 2016 onwards to 2018 against her will. The learned Trial Court has rightly held that - her candidness about her other relations, but clearly denying any voluntariness with regard to the sexual acts committed by the appellant - makes her testimony reliable. The medical evidence found her hymen to be ruptured, though the tear has been found to be an old one. Thus, the medical evidence does not foreclose the possibility that she was subjected to sexual intercourse.

39. The statement before learned JMFC has been cogently proved by the I/O as well as by the Magistrate himself and the contents of the statement lend strong corroboration to the testimony of the victim during the trial. The testimony of PW-5 proved that the appellant was capable of sexual activities.

PW-3, the M.O, who examined the victim also stated about history of multiple sexual intercourse, including induced abortion due to rape.

40. Though the Birth Certificate in original was not adduced in evidence and photocopy was adduced without really building the foundation for secondary evidence, but nonetheless, it has also emerged from the testimony of the witnesses that the original was produced and photocopy made and attested by a DSP of Police, whereafter, the photocopy was seized by the Police. The evidence on record including the medical evidence as well as the certificate indicates and proves that the victim was having some disability. However, the testimony of PW-8 is very significant as she has clearly stated about the victim being able to understand, speak properly and answering questions put to her during the meeting regarding the incident. PW-8 has also stated about the victim behaving normally in general, but sometimes having mental problems. Therefore, I do not find any material to have serious doubts that the victim was incapable of speaking the truth during her deposition and in her statement before the learned JMFC.

41. The testimony of the victim about reporting to PW-8 stands corroborated by the testimony of PW-8. The contents of the allegations made by the victim in her testimony find corroboration from the testimony of PW-8, inasmuch as, she

described the narration of the incident made by the victim to her and which tallies with what has been stated by the victim herself. The testimony of PW-8 about sending the girl to the One Stop Centre is corroborated by the testimony of PW-1 from the One Stop Centre at Durtlang.

42. In the case of ***State of UP Vs. Pappu alias Yunus (supra)*** relied upon by the prosecution, it has been held in para 11 that *even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone.* In the instant case, based on the evidence and materials, I am also of the opinion that in some ways the appellant took advantage of some mental disability of the victim despite being her own stepfather. In this regard, para 19 of the decision in ***Chaman Lal (supra)*** may be reproduced herein below:-

> "*19. Even as per clause fifthly of Section 375 IPC, "a man is said to commit rape", if with her consent when, at the time of giving such consent, by reason of unsoundness of mind, is unable to understand the nature and consequences of that to which she gives consent. As observed hereinabove, even it is not the case on behalf of the accused that it was a case of consent. On evidence, it has been established and proved that the victim was mentally retarded and her IQ was 62 and she was not in a position to understand the good and bad aspect of sexual assault. The accused has taken disadvantage of the mental*

sickness and low IQ of the victim."

43. In ***Lok Mal alias Loku Vs. State of Uttar Pradesh (supra)*** relied upon by the prosecution, it has been held in para 13 that merely because in the medical evidence there are no major injury marks, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix and it is not necessary that in each and every case of rape there should be injury to the private parts of the victim. The relevant Para 13 may be reproduced herein below:-

> "*13. Merely because in the medical evidence, there are no major injury marks, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It is not necessary that in each and every case where rape is alleged there has to be an injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. We reiterate that absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. According to the version of the prosecutrix, the accused overpowered her and pushed her to bed in spite of her resistance and gagged her mouth using a piece of cloth. Thus, considering this very aspect, it is possible that there were no major injury marks."*

44. The prosecution also referred to this decision in support of its contention that if the testimony of the victim is found to be trustworthy, conviction can be based thereupon. Para 16 of this judgment may be reproduced herein below:-

> *16. It is a settled principle of criminal jurisprudence that the evidence*

of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In State of Punjab v. Gurmit Singh², the Supreme Court observed as under: (SCC p. 403, para 21)

"21.... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

45. In support of its contention that the conviction should be upheld and the sentence also left unaltered, the prosecution also referred to the decision of ***Bhanei Prasad alias Raju (supra)*** in which it was stated in para 13 as follows:-

"*13. When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but*

institutional. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security."

46. In support of its contentions, the learned counsel for the appellant drew attention to para 6 of the decision in ***Sham Singh (supra).*** The said paragraph may be reproduced herein below:-

"6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires

confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh³ (SCC p. 403, para 21).]"

47. The decision of ***Kali Ram (supra)*** relied upon by the appellant does not in my view come to the aid of the appellant's case. In ***Rai Sandeep (supra),*** the conviction was reversed due to the totally conflicting versions of the prosecutrix. However, in the instant case, the contradictions in the cross-examination of the prosecutrix has been harmonized with the other parts of the prosecution evidence, including the testimony of the prosecutrix in her examination-in-chief, her statement before the learned JMFC and the medical evidence, amongst others.

48. The aspect of delay discussed in ***Mapilla P.P Soopi (supra)*** would not apply in the instant case as it has been found that the victim suffered sustained sexual assault from 2016 till 2018 and the FIR was lodged in April 2018. The decision in ***Abul Hussain Laskar (supra)*** relied on by the appellant side also

does not come to its aid as the testimony of the victim has been found to be reliable and supported by other prosecution evidence. Moreover, considering the sustained nature of the alleged offences and the lodging of the FIR in April 2018, the aspect of delay has not been found to be significant to dent the prosecution case.

49. Now going back to the facts of the instant case, I find that the victim has cogently stated about being subjected to sexual intercourse without her consent in her deposition before the trial, which finds corroboration from her statement made before the learned JMFC. She has categorically dispelled the suggestion that such sexual act of her stepfather, the appellant, was with her consent. In the same vein, she has however admitted about sexual intercourse that she indulged in with a few other persons that she named.

50. The medical evidence has found that the hymen was ruptured, thus revealing the possibility that she was subjected to sexual intercourse. A partial disability of the victim has also emerged from the evidence on record, including the testimony of the Doctor, the testimony of PW-8 on the Medical Certificate, the testimony of the I/O and also the seizure witness. The testimony of PW-5 has proved the ability of the appellant to perform sexual activities. The testimony of PW-8 about being reported about the incident by the victim lends

corroboration to her testimony regarding the same. PW-1 lends testimony to the deposition of PW-8 about sending the girl to the One Stop Centre represented by PW-1.

51. To sum up the discussion, it can be stated herein that in the instant case, the testimony of the victim is not only found to be trustworthy, but it is also corroborated by other parts of the prosecution evidence like the testimony of the Doctor, the I/O, and the testimony of PW-8 and PW-1.

52. In my considered opinion, during the trial, the prosecution succeeded in proving that the appellant, who was the own stepfather of the victim committed multiple sexual intercourse upon her despite her disability. Hence, I do not find any infirmity in the conviction of the appellant under section 376(2)(f),(l) & (n) of IPC and such conviction is therefore upheld and confirmed.

53. The appellant has committed a heinous crime of committing multiple rape upon his own stepdaughter and that too, a girl who was suffering from some disability. Therefore, in such matters, there is no scope for any leniency and accordingly, I do not find any reason to lower the sentence. Hence, the sentence imposed by the learned Trial Court is also upheld and confirmed. Consequently, the impugned Judgment dated 20.03.2023 and sentence dated 21.03.2023 passed by the learned Additional Sessions Judge, Aizawl in SR Case

No. 91/2018, arising out of Darlawn P.S Case No. 5/2018, is hereby upheld and confirmed.

54. From the Judgment and Order passed by the learned Trial Court, I do not find any direction for victim compensation. Considering the ordeal suffered by the victim girl and also considering her disability, it would be just and proper to grant her some victim compensation. Therefore, the learned Secretary, District Legal Services Authority, Aizawl, is requested to conduct the stipulated inquiry and award suitable and adequate victim compensation to the victim of this case, in exercise of powers under Section 396 BNSS, read with the provisions of the Mizoram Victim Compensation Scheme. For this purpose, a copy of this Judgment and Order shall be sent to the learned Secretary, DLSA, Aizawl Judicial District, for information and a needful.

55. Resultantly, the instant criminal appeal stands dismissed and disposed of.

JUDGE

Comparing Assistant