GAHC030006532024

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

Case No. : CRL.A(J)/37/2024

Sh. Sangkunga
S/o Siamkhuma
R/o Kawlbem
Saitual District

VERSUS

State of Mizoram and Anr.
Aizawl2:Sh. Liansuanpau

Advocate for the Petitioner : Mrs. Emily L. Chhangte (Amicus Curiae)

Advocate for the Respondent : Ms. Vanneihsiami, Addl.PP, Mizoram for R1
: Mr. H. Zodinsanga, Legal Aid Counsel for R2

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG
HONOURABLE MR. JUSTICE PRANJAL DAS

Date on which judgment is reserved : ***03.03.2026***

Date of pronouncement of judgment :***22.07.2026***

Whether the pronouncement is of the operative part of the judgment ? : *N/A*

Whether the full judgment has been pronounced? : *Yes*

JUDGMENT & ORDER (CAV)

(*Pranjal Das,J*)

Heard Ms. Emily L. Chhangte, learned Amicus Curiae for the appellant. Also heard Ms. Vanneihsiami, learned Addl. Public Prosecutor for the State, and Mr. H. Zodinsanga, learned Legal Aid Counsel for respondent No. 2.

2. The instant criminal appeal has been preferred by the convict appellant, namely, *Sh. Sangkunka*, aggrieved by the judgment and order dated 02-07-2024, passed by the Special Judge, POCSO, Aizawl, Mizoram in Sessions Case No. 92 of 2023(being Criminal Trial No. 1622 of 2023), arising out of Ngopa PS Case No. 9 of 2023. By the said impugned judgment and order, the convict appellant was convicted under Section 6 of the POCSO Act. 2012 and he was sentenced to rigorous imprisonment for 20 (twenty) years.He was given the benefit of set-off and informed about his right of appeal. Subsequently, while serving out the sentence, the convict appellant preferred the appeal from jail, whereupon the learned Amicus Curiae was appointed to represent his case before this Court.

3. The prosecution case, in brief, was that on 28-06-2023, the parent of the alleged victim girl, stated to be aged only 6 years lodged an FIR alleging that the informant's 6 year old daughter was complaining of pain in her private parts from the beginning of the year, and that on 15-06-2023, they had gone to Aizawl for a check-up regarding her cough and injury on her head. But on the night of 18-06-2023, she felt immense pain in her private parts after urinating, and therefore, the

informant's wife decided to check on it, and upon doing so, noticed a visible hole in her private part. She then started questioning the informant's daughter, who then revealed that the convict appellant, who was their upper-east neighbour, made him touch his private part, and that he also inserted his private part inside hers.The informant requested for legal action against the convict appellant, who had sexual intercourse with her minor daughter.

4. On the basis of the aforesaid complaint, *Ngopa PS Case No. 9 of 2023*, was registered under Section 6 of the POCSO Act, read with Section 376ABIPC and investigation started. During the investigation, the IO, apart from the usual steps, also got the statement of the victim girl recorded before the learned JMFC and she was also taken for medical examination. After completion of the investigation, the IO submitted the chargesheet against the convict appellant vide CS No.7 of 2023, dated 28-08-2023, under Section 6 of the POCSO Act, read with Section 376ABIPC.

5. Subsequently, vide order dated 05-10-2023, the learned Trial court framed charges against the convict appellant under Section 6 of the POCSO Act, read with Section 376ABIPC. The charges being denied by the accused led to commencement of the trial.

6. During the trial, the prosecution examined 7 witnesses, including the informant, victim, MO and IO. After completion of prosecution evidence, the convict appellant was examined under Section 313CrPC. The defence did not leadany evidence.

7. After completion of trial, the convict appellant as accused was

convicted and sentenced, as narrated earlier. Hence, the present appeal.

8. *Ms. E.L. Chhangte*, learned Amicus Curiae appearing for the convict appellant, submits thatone Rintei was not examined by the prosecution during the trial. It is further submitted that the accused was falsely implicated in the case and that, there is contradiction with regard to the aspect of the visit of the convict appellant to the house. It is further submitted that in the statement under section 164 CrPC, there is no mention about finding any coin sized hole in her private parts.It is further submitted that preliminary questions were not put to the victim before examining her. It is submitted that there is also a contradiction between PW2 and the statement of the victim under section 164 CrPC. It is submitted that there was no sentence hearing.It is further submitted that one vital neighbor witness was not examined and that the convict appellant was not given a chance to adduce defense evidence. In support of her contentions, the learned Amicus Curie relies on the following decisions:-

(i) Pradeep Vs. State of Haryana reported in *(2023) 19 SCC 221;*

(ii) Samsul Haque Vs State of Assam reported in *(2019) 18 SCC 161;*

(iii) Nar Singh Vs. State of Haryana reported in *(2015) 1 SCC 496;*

*(iv) Ajay Pandit @ Ajit Vs. State of Maharashtra*reported in *(2012) 8 SCC 43.*

9. On the other hand, *Ms. Vanneihsiami*, learned Additional Public Prosecutor representing the State submits thatthe prosecution case has

been adequately proved. She further submits that only because no preliminary questions before recording the deposition of the victim, would not vitiate the judgment in terms of the relevant case law. It is also submitted that incriminating materials were put to the accused. In support of her contentions, the learned Additional Public Prosecutor relies on the following decision:-

*(i) Dattu RamraoSakhare Vs. State of Maharashtra*reported in *(1997) 5 SCC 341.*

10. Further, *Mr. H. Zodinsanga*, the learned Legal Aid Counsel for the respondent no. 2 informant also submits thatthe convict appellant has committed a heinous crime of committing rape upon a girl as young as six years. The learned Legal Aid Counsel supporting the impugned judgment submits that there is no merit in the appeal.

11. We have perused the appeal memo, the evidence on record during the trial, the exhibited documents and other relevant materials.We have considered the submissions of the learned counsels of both the sides and perused the decisions cited at the time.

12 During the trial, the statement of the victim girl which was recorded before the learned Judicial Magistrate during investigation, was exhibited as *Exhibit P5*. Upon perusal of the statement, we find that the same was recorded in question and answer format. The girl stated that she knew the convict appellant and upon being asked as to what he did to her, she stated that the convict appellant made her touch his private part and then inserted his private part inside her private part, which hurt her.She further stated that she almost cried but she could not as he

pointed a knife at her and that the said incident had happened on their couch at their residence. She further stated that it hurt her when he did that act. She also stated that he told her that he would do the same thing again if she tells her parents about it, but she stated that later she told them as she was scared to tell them earlier.

13. During the trial, the victim was examined as *PW6* in which she stated her parents name and that she was six years old studying in KG-II in school. She stated that she could not recall the exact time when the accused had sexually assaulted her but it is the last month of last year, stating further that the accused is her nearby neighbor. Describing the incident, *PW6* stated that on that day she was playing outside her home alonewhereupon the accused called her to go to him telling that he would give some guava. Accordingly, she went to him, whereupon, he took her to his bedroom, made her lie on the long bench, took off her pants and then let her play with his penis and then inserted his penis inside her vagina.He also threatened to cut her with a knife if she told her parents about what the accused had done. She further stated that he did not give her anything nor any guava.

14. She further testified that when she went to Aizawl for medical checkup, she felt pain in her vagina while urinating and so her aunt and mother asked her about it, whereupon, she told them as to what the accused had done to her.In cross-examination, she stated that the house of the accused is just next to their house and that he is unmarried and staying with his father. She stated that they have guavas and butterfruits in their garden. She stated that she had never paid visit to the house of the accused.

15. She reiterated in cross-examination that the accused penetrated his organ once in her private part and that there was bleeding in her private part when he did so. She stated that she did not tell about the incident to her parents at the relevant time nor did she complain of pain in the private parts. She, however, denied the suggestion that she did not tell her aunt and mother about how the incident took place.She also reiterated that the accused threatened to cut her with a knife if she told her parents about the incident. She denied that she is deposing falsely or that the accused has been falsely implicated.

16. Dr. Lalmalsawma, Medical Officer, was examined during the trial as *PW7,* in which he testified that on 28.06.2023 at about 9.40 pm, the victim was brought by the police for examination regarding alleged rape - whereupon he proceeded to examine the victim in the presence of staff nurse after taking the consent from the mother of the victim. He proved the medical examination report as *Exhibit P4* and his signature as *Exhibit P4(a)*.

17. In cross-examination he stated that there was no sign of injury on the private parts of the victim at the time of medical examination and that the medical report revealed the absence of hymen, clarifying that the hymen absence happened long time ago. He also stated that absence of hymen could happen due to several reasons apart from sexual intercourse.

18. It is a well settled position of law that in a trial for offence of rape, it is permissible to record the conviction on the sole testimony of the prosecutrix; provided the same is found to be trustworthy and reliable. If the testimony of the prosecutrix is of sterling character, that itself is

sufficient to record the conviction. Thus, in such offences, the testimony of the prosecutrix is most important and corroboration is not essential,if testimony is reliable and corroboration can only be a rule of prudence.

19. In the case of ***Rai Sandeep Vs State of N.C.T. of Delhi*** reported in ***(2012) 8 SCC 21***, the Hon'ble Supreme Court had discussed the traits of a sterling witness in para 22, which is reproduced herein below:-

> "***22.*** *In our considered opinion, 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. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. 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. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness*

qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged." (emphasis added)

20. When we carefully peruse the statement of the victim girl recorded before the learned Judicial Magistrate during the investigation, and her testimony before the Trial court during the trial – we find that her statement is cogent and consistent. The statement and the testimony of the victim girl describe the incident in a very similar or identical terms, thereby lending consistency to it. The victim has implicated the convict appellant in both her statements before the Judicial Magistrate as well as her testimony during the Trial. In both the statements, the victim girl has stated about being subjected to penetrative sexual assault by the convict appellant. She has also consistently stated about threatening by the convict appellant which explains why she did not report the matter to her parents after the incident.

21. The testimony of the victim girl about being asked by her mother has been corroborated too by her mother who has testified during the trial as PW2. Mother of the victim as PW2 has stated about her daughter complaining about some pain in her private parts and that,

she had some difficulty in passing urine. PW2 has stated about going for check up of the victim girl in connection with her health issues and she has stated about a hole in her private parts, and upon asking her, the victim told her mother about the incident. Subsequently, her husband lodged an FIR at the police station on 28.06.2023. In cross examination, she reiterated that the victim girl had told her about the appellant committing penetrative sexual assault upon her and threatening of the victim girl by the convict appellant. She denied that the accused has been falsely implicated in the case.

22. PW1 and PW2, parents of the victim both have stated in their testimony about knowing the convict appellant and during the trial, they have identified the accused in the dock as well. It has emerged from the testimony of both of them that the convict appellant used to stay in their locality. PW1, the father of the victim has testified about going to Aizawl for check upof the health issues of her daughter and her daughter having pain in her private part while urinating. He also stated about her aunt and mother finding a hole in her private part and upon asking her, she narrated about the incident. PW1 proved the FIR lodged by him as P1 and his signature as P1 (a).

23. We find that the testimony of PW1 and 2 have remained largely unshaken in the cross examination and their testimony lends corroboration to the testimony of their daughter vis-a-vis the incident.PW1, father of the victim has exhibited the original birth certificate of the victim as M1.

24. In this context, it may be mentioned that PW3, namely Lalramhluna, is a seizure witness to the birth certificate and has stated

in his deposition that as per the certificate, the victim was born on 23.04.2017. In this context, it may be mentioned herein that the alleged incident is stated to have taken place in 2023, and going by the same, the victim at the time of the incident would be around six years of age, which tallies with the testimony of the victim herself.

25. PW4, H. Thangnunmawia, is another person of the locality who also happens to be the President of YMA and he has also exhibitedas *Exhibit M1* (the original birth certificate of the victim girl). The testimony of the PW3 and PW4 have remained unshaken in cross examination. He has also stated about the date of birth as 23.04.2017, as per the certificate.

26. PW5, Lalnunzira, Inspector, the IO of the case has stated about registration of the case pursuant to the complaint dated 28.06.2023. He has stated about producing the victim before the learned Judicial Magistrate. He has also stated about seizure of the original birth certificate, thereby lending corroboration to the testimony in this regard of PW3 and PW4. PW5 has proved the chargesheet submitted by him as P6 and his signature as P6(a).

27. Though the PW7/Medical Officer has testified in his cross examination that there was no sign of injury on her private part and he also tried to explain the absence of hymen in the minor girl due to reasons other than sexual intercourse - however, it has to be kept in mind that due to the threatening of the accused, the incident had not come to light immediately, and only at the time of medical check up of the victim girl at Aizawl, the matter came to light. Therefore, it is clear that the victim was not immediately examined by the Medical Officer

after the incident and there was some time gap. In any case, in the face of cogent testimony of the prosecutrix herself, absence of injury may not be a determinative factor on the question of rape.

28. It is also well settled that absence of hymen is again not a determination factor on the question of sexual assault. However, in the instant case, the medical evidence about its absence in the victim girl aged only about six years is significant and lends corroboration to the testimony of the victim about being subjected to rape by the convict appellant.

29. In our considered view, in the face of clear, cogent and consistent testimony of the victim girl – from her statement before the Judicial Magistrate and her testimony before the Trial – we do not think that there is any such contradiction between the ocular evidence of the victim and medical evidence of PW7, so as to dislodge the prosecution case itself. Rather, we are of the opinion that the findings of medical examination fit in with the testimony of the prosecutrix and both can co-exist.

30. In *Pradeep* (supra) relied on by the learned Amicus Curiae for the convict appellant, the Hon'ble Supreme Court has emphasised the importance of the Trial Judge asking some preliminary questions to the child witness to ascertain his understanding. There is no doubt about the utility of such an examination known as the *voir dire*. In the instant case, the learned Magistrate recording the statement of the victim girl under section 164 CrPC has resorted to some preliminary questioning, but the Trial Judge has not done so.In our understanding, the decision in *Pradeep*(supra) does not say that in the event of failure to resort to

the preliminary questioning, the entire evidence of the child witness would be vitiated and liable to be discarded.

31. In this context, in the case of *Dattu RamraoSakhare*(supra), relied upon by the prosecution, the Hon'ble Apex Court has said that a child witness found competent to depose can be relied upon, provided the child witness is able to understand the questions and give rational answers therein. In the instant case, in our considered opinion, upon perusing and appreciating the statement of the child witness recorded before learned Magistrate and the testimony of the child witness during the trial - we are satisfied about the evidence being cogent and reliable.Therefore, we have proceeded to rely upon the said testimony, despite the absence of *voir dire*in the trial with regard to the said child witness.

32. In the case of *Samsul Haque* (supra) and*Nar Singh* (supra),the Hon'ble Supreme Court has emphasized the importance of the examination of the accused under section 313 CrPC and of putting the incriminating circumstances to him.There is no doubt about the said proposition and the same is now well settled. In the instant case, though the learned Trial Judge has conducted the examination under section 313 CrPC, but the same ought to have been more elaborate. Nevertheless, the basic allegation about him committing penetrative sexual assault upon the minor victim has been put to him.

33. Now, in the face of cogent testimony of the victim supported by other prosecution evidence and the circumstances of this case about a sixyearold girl child being subjected to the traumatic and heinous act of rape by an adult - we are not inclined to set aside the judgment and

remand it on the ground of any inadequacies in the examination under section 313 CrPC.

34. In *Ajay Pandit* (supra) relied upon by the learned Amicus Curiae, the Hon'ble Supreme Court delved into the aspect of sentence hearing after referring to the decision in *Allauddin Mian*(supra).In our considered understanding, the decision in *Allauddin Mian*(supra) was in the context of death sentence. In the instant case, the learned Trial court has imposed the minimum sentence of 20 (twenty) years rigorous imprisonment for the conviction of the accused under section 6 of the POCSOAct.

35. In view of the overall circumstances and the reasons stated in the preceding paragraphs - we are not inclined to make any interference in the impugned judgment on the ground of any infirmity with regard to the aspect of sentence hearing.

36. Upon perusing the entire materials on record and the submissions – we come to the considered finding that at the relevant time when the daughter of the informant was a minor girl in her tender years, aged approximately about six years - she was subjected to penetrative sexual assault by the convict appellant.

37. Under the provision of POCSO Act, as the convict appellant has committed such a despicable act upon the girl of tender years (six years) - the said act in terms of the provisions of the POCSO Act definitely comes within the ambit of *aggravated penetrative sexual assault*,which carries a minimum sentence of imprisonment for 20 (twenty) years.

38. Thus, in the backdrop of the above discussion, the impugned judgment and order dated 02.07.2024, passed by the learned Special Judge, POCSO, Aizawl in Sessions Case No. 92 of 2023 (being Criminal Trial No. 1622 of 2023), arising out of Ngopa PS Case no. 9 of 2023 is **upheld and confirmed**.

39. Consequently, the instant criminal appeal stands **dismissed**.

40. This Court records its appreciation for the efforts rendered by the learned Amicus Curiae for the convict appellant as well as the learned Legal Aid Counsel for the informant. They shall be entitled to their usual fees.

41. Return back the original TCR to the learned Trial Court.

42. A copy of this judgment and order shall be furnished to the Superintendent of Jail where the appellant is housed, for bringing it to his notice.

JUDGE **JUDGE**

Comparing Assistant