GAHC030007182024

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

Crl.A.(J) No.42 of 2024

Sh. H. Lalfamkima

.....***Appellant***

-Versus-

State of Mizoram & Anr.

.....***. Respondents***

B E F O R E
HON'BLE MR. JUSTICE PRANJAL DAS

For the Appellant : Mr. Victor L. Ralte, Amicus Curiae
For the Respondent(s) : Mrs.Vanneihsiami, Addl.PP, Mizoram for R-1.
Mr.H. Zodinsanga, Legal Aid Counsel for R-2/Informant.

Date on which judgment is reserved : **26.02.2026**
Date of pronouncement of judgment : **02.03.2026**
Whether the pronouncement is of the operative part of the judgment ? : N/A
Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

1. Heard Mr. Victor L. Ralte, learned Amicus Curiae appearing for the convict appellant. Also heard Mrs. Vanneihsiami, learned Addl. Public Prosecutor for the State of Mizoram and Mr. H. Zodinsanga, learned Legal Aid Counsel for the respondent No. 2/informant.

2. The convict appellant, Mr. H. Lalfamkima has preferred the instant criminal appeal from jail against the Judgment & Order dated 17.02.2023 passed by the learned Special Judge, FTSC POCSO Act, 2012, Champhai, Mizoram in - *Sessions Case No. 81/2017 [Crl. Trial No. 769/2017], arising out of Khawzawl P.S. Case No.16/2017* - by which, he was convicted under Section 4 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act, 2012) and for such conviction, the convict appellant was sentenced to undergo R.I for 7 (seven) years and imposed with a fine of Rs. 5,000/-, i.d. S.I for 1 (one) month.

3. On 21.02.2017, the informant, who is stated to be the father of the victim girl, submitted a complaint before the Khawzawl Police Station with the allegations that her 9 year old daughter was raped by the convict appellant belonging to Khawzawl Vengthar at Khawzawl Helipad. On the basis of the FIR, Khawzawl P.S. Case No. 16/2017 was registered on 21.02.2017 under Section 4 of the POCSO Act and investigation started. After completion of investigation, the I/O upon finding materials submitted charge-sheet against the convict appellant under Section 4 of the POCSO Act. He listed 7 witnesses in the Charge-sheet. Subsequently, vide order dated 16.10.2017, charge was framed

against the convict/appellant under Section 4 of the POCSO Act. The charge being denied by the accused led to commencement of the trial, during which, 5 witnesses were examined by the prosecution including the victim, Medical Officer and her parents. Thereafter, the accused was examined under Section 313 Cr.PC. The defence did not lead evidence. After completion of trial, the accused was convicted and sentenced as described above and aggrieved by the same, he has filed the instant appeal.

4. Mr. Victor L. Ralte, the learned Amicus Curiae for the convict appellant, has taken the Court through the depositions of the witnesses adduced during the trial. It is submitted that in her testimony, the victim has clearly stated that the accused did not insert his finger or private parts into her private parts and therefore, the accused could not have been convicted for penetrative sexual assault under Section 4 of the POCSO Act.

5. Referring to the testimony of the Medical Officer, the learned counsel submits that medical examination was conducted several days after the date of the alleged incident and the finding of the Doctor also does not indicate commission of rape.

6. It is submitted that the statement of the victim girl recorded before the Magistrate during investigation was not exhibited. It is submitted that the testimony of the parents of the victim, including her father who was the informant, is hearsay evidence and they cannot be relied upon to attribute guilt to the accused. The learned counsel contends and submits that apart from contradictions between the testimony of the victim and the medical evidence, the testimony of the victim herself also suffers from contradictions, apart from

her aforesaid statement dispelling the possibility of penetrative assault.

7. The learned counsel submits that the conviction of the appellant under section 4 of the POCSO Act is incorrect in law and facts and should be set aside by allowing this appeal.

8. On the other hand, Mrs. Vanneihsiami, the learned Additional Public Prosecutor primarily contends that there is no infirmity in the impugned Judgment and Order and that it requires no interference in the appeal. It is submitted that the testimony of the victim, which was adduced during the trial, is cogent and reliable and that her testimony has not been rebutted during the trial.

9. It is also submitted by the learned Additional Public Prosecutor that the accused could not put forth any explanation regarding the incident in his examination under Section 313 Cr.PC. It is also submitted that the minor contradictions in the testimony of the witnesses including the victim cannot be used to defeat the prosecution case. It is also submitted that there is no evidence of any kind to show any false implication of the accused during the trial.

10. In support of her contention, referring to the decision of the Hon'ble Supreme Court in the case of ***Lok Mal @ Loku Vs. The State of Uttar Pradesh,*** reported in ***(2025) 4 SCC 470,*** the learned Additional Public Prosecutor submits that it is well settled that conviction in a sexual offence case can be recorded on the sole testimony of the victim. Summing up her submissions, the learned Additional Public Prosecutor prays for dismissal of the

appeal, contending that it is devoid of merits.

11. Mr. H. Zodinsanga, learned Legal Aid Counsel appearing for the informant adopts the submissions of the prosecution and further contends that the testimony of the victim girl and the rest of the prosecution evidence is reliable and the learned Trial Court has rightly recorded conviction and sentenced the appellant for the heinous crime of committing such an assault upon a girl of 10 years.

12. I have perused the impugned judgment, the grounds of appeal, the evidence on record and other relevant materials. I have considered the submissions of the learned counsels on both the sides and also perused the decision cited at the bar.

13. The victim girl had adduced evidence as PW-2 during the trial. In her depositions, she stated that at the relevant time she was studying in Class-IV in a school and that she knew the accused person. On the day of the incident, after going home, she changed clothes and was standing on the roadside nearby their house, whereupon, the accused came on a scooter and invited her to join him on the scooter and then lifted her on his scooty. PW-2 further testified that first they proceeded to his house and then to Helipad and there, both of them got down and the accused took her to the backside of one small house among the bushes and made her sit on the ground and pulled down her pant and he also pulled down his pant. PW-2 stated that he touched and played with her vagina, whereupon, she felt a big pain. PW-2 also stated that he also rubbed his penis on her vagina and tried to push his penis into her vagina, whereupon, she again felt a big pain due to which she wept. Thereafter, the

accused gave her Rs. 120/-, took her back on his scooter and proceeded home and left her midway.

14. From her examination-in-chief, it is revealed that the accused sexually assaulted her by touching her private parts and rubbing his own private parts against hers. In her examination-in-chief, victim has stated about the accused trying to push his private part into hers and causing pain to her. However, in cross-examination, she stated that accused did not insert his finger into her vagina and did not insert his penis into her vagina. However, she stated that she felt a big pain on her vagina when he pushed his penis against her vagina.

15. The testimony of the Medical Officer may be seen, who had examined the victim a few days after the incident. Dr. Thanmawii is the Medical Officer and she testified as PW-6, during which she stated that on 21-02-2017 at around 2:40 pm while she was on duty at Community Health Centre, Khawzawl, the victim was brought for examination with a history of rape on 08-02-2017. PW-6 stated that though she found her physically and mentally healthy, but upon examination found blood stained discharge on her undergarment, which was old stained. She also found redness on her Labia Minora near Vaginal Orifice. More importantly, PW-6 stated that her hymen was ruptured. She proved the medical report as Exhibit P2 and her signature as Exhibit P2(a).

16. In cross-examination, she clarified that in normal course, redness or minor injury on Lavia Minora near Vaginal Orifice can happen, but it is very rare. She admitted that there was a delay of 12 days between medical examination and the day of incident. She clarified in cross-examination that her examination revealed that nature of the injury indicated rape.

17. In her testimony, the victim as PW-2 reiterated in cross-examination about experiencing pain due to the sexual act of the accused and stated in cross-examination about experiencing such pain when he pushed his penis against her vagina. However, one contradiction emerges in her testimony, inasmuch as, she stated that he did not insert his finger into her vagina and also did not insert his penis into his vagina. This in a way does not tally with the finding of the Medical Officer who not only found redness on her Vaginal Orifice and blood stain on her undergarment, though old - but also and more importantly, found her hymen to be ruptured.

18. In the FIR lodged by the father of the girl, her age has been mentioned as 9 years. There is no statement regarding the age of the victim in her own testimony or in the testimony of the Doctor. The informant who is the father of the victim has adduced evidence as PW-1 and her mother has adduced evidence as PW-3. In none of their testimony, there is any statement regarding the age of the victim. However, PW-1, her father has referred to her as a little girl and PW-3, her mother, has also referred to her as such a small girl.

19. In the testimony of the I/O who has deposed as PW-7, it is mentioned that the age of the girl at the time of the incident is 9 years. The I/O as PW-7 has also stated about seizing the Birth Certificate of the victim. However, though the seizure memo pertaining to the same has been exhibited as Exhibit P 4 and his signature as Exhibit P 4(a) - but only the photocopy of the Birth Certificate is mentioned and is exhibited as Exhibit P M 1. Nevertheless, upon perusing the same, I find that the date of birth in that Birth Certificate is mentioned as 30-07-2008.

20. The defence has not disputed the minority of the victim girl nor has any question been put in cross-examination regarding her age. Going by the age indicated in the Birth Certificate, the age of the victim and the date of the incident would be approximately 9 years and it tallies with the statement made in the FIR and the statement of the I/O in his deposition. Nevertheless, the evidentiary value of the Birth Certificate would be rather weak as it has been exhibited as a photocopy without laying the foundation for adducing secondary evidence. Nonetheless, there is no dispute from the materials and lack of cross-examination in this regard about the minority of the victim and therefore, it can be held that at the time of the incident, the victim was a minor girl of approximately 10 years.

21. It has been revealed from the testimony of PW-3, the mother of the victim girl, that she came to know about the incident only after a week and from her husband. It appears that though she has not stated in so many words, but it is revealed from her testimony that she came to know about the incident from her husband that the victim girl, their daughter, told him about the accused taking her to the Helipad, where he assaulted her by touching her private parts and playing with it and rubbing his penis on her private parts.

22. The informant adduced evidence as PW-1 and has stated that he is the father of the victim girl. He has stated about finding Rs. 120/- with his minor daughter, which tallies with the testimony of the victim girl that after the incident the accused gave her Rs. 120/-. The informant reveals in his testimony that he was not convinced about such a little girl having the money and kept on asking her about how she came to have the money and eventually, his daughter confided in him and told him about how on the day of the incident the accused

took her to the Helipad and touched her private parts. PW-1, the father of the victim, has stated that his daughter told him that the accused had inserted his penis into her vagina. PW-1 exhibited the FIR as Exhibit P 1 and his signature as Exhibit P 1(a).

23. Thus, from the testimony of PW-1 about being reported to by his daughter, it emerges that the accused not only sexually assaulted the victim by touching her private parts but also inserted his private parts into her vagina. The findings of the Medical Officer, especially the rupture of the hymen and redness and tenderness on the vaginal orifice cannot be brushed aside at all. Considering the tender age of the girl of approximately 9/10 years, it was extremely unlikely that she was sexually active. Therefore, the rupture of the hymen or the tenderness or redness upon her private parts cannot be explained in any other way except by the sexual assault committed by the accused. Even in her cross-examination, the victim girl has clearly stated about the accused trying to push his penis into her private parts and reiterated the same in her cross-examination including the aspect of her feeling a lot of pain.

24. As regards her statement about the accused not inserting his finger or private parts, the same can only be interpreted by holding that due to her tender years, the victim girl did not understand the full nature of the criminal and sexual acts she was subjected to by the accused. Therefore, in such a situation, her testimony has to be seen in the context of the findings of the Medical Officer and the testimony of her father to whom she is stated to have reported about penetration. At the cost of repetition, it may be mentioned herein that the rupture of the hymen of such a tender-aged girl cannot be explained in any other manner but the sexual act attributed to the accused.

25. Paragraph -16 of the decision in ***Lok Mal v. State of U.P., (2025) 4 SCC 470 (para 16)*** referred to by the learned Additional Public Prosecutor may be reproduced herein below, in support of the well-settled proposition that if the testimony of the victim is found to be trustworthy, a conviction can be based upon it:-

> *"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 Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , the Supreme Court observed as under : (SCC p. 403, para 21).***
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> > *"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."*
> >
> > *(emphasis supplied)*

26. In the instant case, it is not just the testimony of the victim which implicates the accused but the testimony of the Medical Officer is equally

important and incriminating to attribute guilt to the accused. In sexual assault upon victims of tender years - *who may not even be in a position to understand the nature of the criminal act committed upon them* - the medical evidence assumes an even greater importance. For the purpose of constituting rape or penetrative sexual assault, slightest penetration would be sufficient. In this context, a reference may be made to the decision in ***Wahid Khan v. State of M.P., (2010) 2 SCC 9 (para 19)*** and the relevant paragraph reproduced herein below:-

> *"19.It was also contended by learned counsel for the appellant that since hymen of the prosecutrix was found to be intact, therefore, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC. Explanation to Section 375 reads thus:*
>
> *"Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."*
>
> *It has been a consistent view of this Court that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial."*

27. In her cross-examination, though the victim did not interpret the sexual act of the accused as a penetration, but in view of the medical evidence and the position of law regarding the nature of penetration required to constitute rape, it can be said that at the time of the incident, the accused did indeed commit penetrative sexual assault upon her, even though perhaps the victim was incapable of understanding its full nature. Consequently, I come to the considered finding that there is no infirmity in the conclusion of the learned Trial

Court that the accused was guilty of penetrative sexual assault punishable under Section 4 of the POCSO Act.

28. Consequently, the conviction of the appellant under Section 4 of the POCSO Act is hereby upheld and confirmed. As regards the sentence of 7 years imprisonment and fine of Rs. 5,000/-, the circumstances of the crime cannot be overlooked. Committing sexual assault and that too, a penetrative sexual assault - upon a girl of tender years has to be taken very strictly and punished adequately. There is no scope for any misplaced sympathy or undue leniency regarding the same. It is the bounden duty of the criminal justice system and society at large to protect young children, especially girls, from any kind of sexual abuse or assault. In such view of the matter, I do not find any scope for interference with the sentence and accordingly, the same is also upheld and confirmed.

29. Consequently, the Judgment and Order dated **17.02.2023** passed by the learned Special Judge, FTSC POCSO Act, 2012, Champhai, Mizoram in - *Sessions Case No. 81/2017 [Crl. Trial No. 769/2017], arising out of Khawzawl P.S. Case No.16/2017* - is hereby **upheld** and **confirmed**. Resultantly, the Instant Criminal Appeal stands **dismissed**.

30. The Trial Court has already directed victim compensation in terms of the Victim Compensation Scheme of Mizoram. It is hoped that the District Legal Services Authority of Champhai would do the needful for awarding suitable victim compensation to the girl, in terms of the provisions under 396 of BNSS (earlier Section 357A Cr.P.C), read with the relevant provisions of the Mizoram Victim Compensation Scheme. For this purpose, a copy of this judgment and

orders shall be sent to the learned Secretary, DLSA, Champhai, for the needful.

31. A copy of this judgment and order shall be sent to the learned jail authority, where, the convict/appellant is lodged and the outcome of the appeal shall be brought to the notice of the convict/appellant and he shall be informed about the provision for appeal to the Hon'ble Supreme Court. It shall also be informed to him that such an appeal to the Hon'ble Apex Court can be preferred by him through legal-aid also. Further, considering regarding the projected health condition of the convict/appellant pursuant to his neurosurgery, the jail authority shall make arrangements for his necessary treatment, as and when required.

32. The Court records its appreciation for the services of the learned Amicus Curiae and the learned Legal Aid Counsel. They shall be entitled to their usual fees.

32. The Instant Criminal Appeal stands **disposed** of accordingly.

JUDGE

Comparing Assistant