



Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 28 of 2023 with
Crl.A. No. 29 of 2023
Crl.A. No. 32 of 2024

Date of CAV: 30.06.2026

Date of pronouncement: 15.07.2026

Cleverstrein Marngar

.....Appellant

- versus -

1. The State of Meghalaya represented by the Secretary, Government of Meghalaya, Home (Police) Department, West Khasi Hills District, Meghalaya.
2. Investigating Officer, Nongstoin Police Station, West Khasi Hills District, Meghalaya.

...Respondents

AND

Proningstar Marngar

.....Appellant

- versus -

1. The State of Meghalaya represented by the Secretary, Government of Meghalaya, Home (Police) Department, West Khasi Hills District, Meghalaya.
2. Investigating Officer, Nongstoin Police Station, West Khasi Hills District, Meghalaya.

...Respondents

AND

Basnes Ryntathiang

.....Appellant

- versus -

The State of Meghalaya through the Public Prosecutor, the High Court of Meghalaya, at Shillong.

...Respondents

**Coram:**

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance in Crl.A.Nos. 28 & 29/2023:

For the Appellant : Mr K. Ch. Gautam, Adv. with
 Ms G.C. Marboh, Adv.

For the Respondents : Mr K. Khan, AAG with
 Mr S. Sengupta, Addl PP
 Mr A.H. Kharwanlang, Addl PP

Appearance in Crl.A. No. 32 of 2024:

For the Appellant : Mr S. Chakrawarty, Sr Adv. with
 Mr E. Laloo, Adv.

For the Respondents : Mr K. Khan, AAG with
 Mr S. Sengupta, Addl PP
 Mr A.H. Kharwanlang, Addl PP

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

All the aforesaid appeals arise out of a common judgment dated 22.09.2022 and order of sentence dated 23.09.2022 passed by the learned Special Judge (POCSO), West Khasi Hills District, Nongstoin in Special (POCSO) Case No. 18 of 2016, and as such, are being decided together.



2. All the three aforesaid appellants vide the aforesaid judgment and order of conviction and sentence have been convicted for the offence punishable under Section 5(g) read with Section 6 of the POCSO Act, and are sentenced to suffer rigorous imprisonment for a period of 10 years with a fine of ₹25,000/-, in default of payment of fine, are directed to further undergo sentence of three months, simple imprisonment.

3. At the outset, we may note that there were eight accused persons, who were arrested in connection with the aforesaid offence. Since three out of eight accused were found to be Children in Conflict with Law, they were tried before the Juvenile Justice Court and the rest of the five accused were tried by the learned Special Judge (POCSO) for the aforesaid offence. All the five accused were convicted and sentenced as stated aforesaid by the trial court. It may also be noted, that the aforesaid appeals have been filed only by three of the said five accused i.e., Original Accused No. 1 - Shri Cleverstrein Marngar, Original Accused No.3 – Shri Proningstar Marngar; and Original Accused No.5 – Shri Basnes Ryntathiang and as such, we are concerned



with only three accused. Two other co-accused i.e., Original Accused No. 2 – Shri Khwarningstar Shangoi and Original Accused No.4 – Shri Shaitstar Marngar, have not filed appeals and as such, have not challenged their conviction and sentence.

4. **The prosecution case in brief is as under:**

The police of Nongstoin Police Station received a written complaint from the mother of the survivor (PW2) stating therein, that her daughter aged 15 years was raped by six assailants on 11.09.2016 at about 6.30 p.m. and that the assailants were from Mawkamoit Myriaw Syiemship village and that from the six assailants, the survivor knew the names of two of the assailants and could identify the others by face. Based on this written complaint, the police registered an FIR with the Nongstoin Police Station, being Nongstoin P.S. Case No. 84(9)2016 initially for the alleged offence punishable under Section 9(g)/10 of the POCSO Act. During the course of investigation, the statement of the survivor (PW2) was recorded and she was sent for medical examination; the sketch map was prepared where the incident took place and photographs were taken and seven accused came



to be arrested on 15.09.2016 in connection with the said FIR. Since three out of the eight accused were CCL and they were forwarded to the Juvenile Board. Another accused i.e., Accused No. 5 – Shri Basnes Ryntathiang, was arrested on 16.09.2016. The statement of the survivor and material witnesses were recorded under Section 164 Cr.P.C. TIP was also conducted and after investigation, charge-sheet was filed in the Court of the learned Special Judge (POCSO) on 30.11.2016 as against the original accused Nos. 1, 2 and 5 i.e., the three aforesaid appellants and two others for the alleged offence punishable under Section 9(g)/ 10 of the POCSO Act.

5. The trial court framed charge against the accused to which they pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case examined as many as 18 witnesses;

PW1 – Informant (mother of the survivor)

PW2 – Survivor

PW3 – Shri Sestar Syiem (who had also gone to the football ground).



- PW4 – Shri Boldingwell Marngar (who had accompanied PW5 to the football ground).
- PW5 – Hamalarisha Syiem (survivor’s friend, who saw the survivor being dragged)
- PW6 – Shri Topborlang Marbaniang (Survivor’s uncle)
- PW7 – Father of the survivor – (Panch to seizure of survivor’s Clothes).
- PW8 – Aunt of the survivor – accompanied the survivor alongwith others to the Mairang Civil Hospital. Also a Panch to seizure of survivor’s clothes.
- PW9 – Shri Phainestar Marbaniang (Panch to seizure of articles from the spot).
- PW10 – Smti. Binalin Marbaniang – Grandmother of survivor (Panch to seizure of articles from the spot of incident).
- PW11 – Shri D.M. Momin (Assistant Jailor, Panch witness to the TIP).
- PW12 – Shri Mangal Singh (Jail Warden, Panch Witness to the TIP).
- PW13 – Smt. Mildalin Lyngdoh (Seizure witness – Panch – Collection of accused samples).
- PW14 – Smt. Banrihun Lyngkhai, Staff Nurse at the Civil Hospital, Nongstoin – Panch to collection of samples of five accused).
- PW15 – Dr. Z. Marak – Doctor, who examined the survivor.
- PW16 – Shri T.T.M. Sangma (JMFC) (Magistrate, who conducted the TIP)



PW17 – WP/S.I. Fredis K. Marak (I/O)

PW18 – Dr. Bryan A. Sun, Dental surgeon, Nongstoin Civil Hospital, who gave the age estimation certificate of the survivor.

7. Thereafter, before final arguments took place, charge came to be altered on 01.04.2022 from Section 9(g)/10 of the POCSO Act to Section 5(g)/6 of the POCSO Act and opportunity was afforded to both parties to recall witnesses, if they so desired. It appears that the accused did not avail of this opportunity, however, the prosecution recalled PW1, the first informant and mother of the survivor and through the said witness, produced the birth certificate of the survivor (PW2), to prove PW2's date of birth and to establish that PW2 was a minor, at the relevant time.

8. The learned trial court thereafter, examined the accused under Section 313 Cr.P.C. All the aforesaid appellants denied the incident. The appellants did not adduce any evidence in support of their defence.



9. The trial court after hearing the learned counsel for the accused and the prosecutor, convicted and sentenced the appellant and two others as stated aforesaid in paragraph 2 of this Judgment.

10. Mr K. Ch. Gautam, learned counsel appearing for Shri. Cleverstrein Marngar and Shri. Proningstar Marngar in Crl.A. Nos. 28 and 29 of 2023, assailed the judgment and order on the following counts;

(i) that the prosecution had failed to establish the guilt of the appellants beyond reasonable doubt. Learned counsel submitted that unless the foundational facts are established by the prosecution, statutory presumptions under Sections 29 and 30 of the POCSO Act, would not arise. He submitted that the prosecution had failed to establish the foundational facts in this case; (a) that the prosecutrix was a minor; (b) that the alleged incident of sexual assault had taken place; (c) that the appellants were correctly identified in Court as being the perpetrators; and (d) that the test identification parade inspired



confidence, inasmuch as no independent witness was included in the TIP;

(ii) that there were material contradictions in the prosecutrix's evidence which went to the root of the matter, with respect to the role of the accused, their identity as to who sexually assaulted her; and several other material discrepancies;

(iii) that the belated alteration of charge after the prosecution had led its evidence without giving the accused an opportunity to recall the witness, had caused serious prejudice to the appellants thereby, vitiating the trial.

Learned counsel submitted that in this view of the matter, the appellants be given benefit of doubt and be acquitted of the offence for which they are convicted and sentenced.

11. Mr S. Chakrawarty, learned Senior Counsel supported and reiterated the submissions advanced by learned counsel, Mr K Ch. Gautam.



12. Mr K. Khan, learned AAG vehemently submitted that the prosecution had proved its case beyond reasonable doubt and that the prosecutrix's evidence could not be doubted, inasmuch as, she had no axe to grind against the appellants. Learned AAG submitted that the evidence of the prosecutrix is also duly corroborated by the evidence of her friend (PW5), who was present around the time, at the spot when the prosecutrix was pulled by the accused persons into the forest. He further submitted that PW5's evidence is further corroborated by the prosecutrix's mother (PW1), uncle (PW6) and other witnesses. He further submitted that the TIP conducted by PW16, Judicial Magistrate clearly shows that the prosecutrix had identified all the accused, except one accused i.e., the original Accused No. 2 (Khwarningstar Shangoi) and that there is no suggestion or challenge to the TIP so conducted by PW16. Learned AAG further submitted that the prosecution had, thus, proved the foundational facts required to prove its case qua the appellants, however, the appellants have not discharged the burden cast on them under Sections 29 and 30 of the POCSO Act i.e., the presumption of guilt, has not been rebutted by the appellants.



He further submitted that even the birth certificate produced by PW1, which was exhibited in evidence, was not challenged by the appellants and as such, the prosecution has proved that the prosecutrix was a minor at the relevant time i.e., 15 years of age. Mr. Khan, further submitted that the appellants cannot at the appellate stage, plead prejudice on the premise that no opportunity was given to them after the charge was altered, inasmuch as, the trial court had given them an opportunity to recall the witnesses, however, the appellants failed to do so. Mr Khan, learned AAG thus, submitted that no interference was warranted in the impugned judgment and order of conviction and sentence.

13. At the outset, we may note that there is no dispute about the proposition as canvassed by Mr K. Ch. Gautam, learned counsel and Mr S. Chakrawarty, learned Senior Counsel, that the burden is on the prosecution to prove its foundational facts which constitute an offence and it is only after the foundational facts are established that the statutory presumptions under Sections 29 and 30 of the POCSO Act, would come into play.



Thus, it is not necessary to deal with the judgments relied upon by the learned counsel for the appellants on this aspect.

14. In order to consider whether the prosecution has established its foundational facts i.e., that the alleged act of sexual assault had taken place; that the prosecutrix was a minor, and that the appellants were perpetrators of the offence, we would first advert to the evidence of the prosecutrix i.e., PW2.

15. PW2 in her evidence has on oath deposed that the incident took place on 11.09.2016. She has stated that at about 6.30 p.m. on the said date, she was sitting and chatting with her friends on the football ground i.e., with PW5 and others; that as she was about to leave, to go home, six male persons came there and forcibly pulled her from the field and that her friend (PW5) saw her being pulled; that she shouted for help but the accused persons gagged her mouth and took her to Mawia-aid and all of them forcibly committed penetrative sexual assault on her. She has stated that there were six persons who committed the crime; that she had seen their faces when they forcibly pulled her from



the field and that all the said six persons had committed penetrative sexual assault on her. She has further deposed that after the incident she became unconscious and did not know what happened thereafter. She has further deposed that she remembered that her mobile phone rang and that the accused persons answered the call and that she heard them using foul/slang language.

16. PW2 has further deposed that after the incident, the accused persons asked her to go home on her own and threatened her not to disclose the incident to anybody; that the accused persons left the place of occurrence after which, she contacted her uncle (PW6) and asked him to pick her up from the place of occurrence as the accused persons had committed an offence on her. PW2 has further deposed that her uncle (PW6), mother (PW1) and her friend (PW5) picked her up from the place of occurrence; that she went home on foot with her uncle (PW6), her mother (PW1) and her friend (PW5); that on reaching her home, she narrated to her family members about the incident.



17. She has further deposed that she informed the police of the incident after two days after which, the police recorded her statement at Nongstoin Police Station and she was taken for medical examination to Nongstoin Civil Hospital, accompanied by her mother (PW1). She has deposed that her statement was also recorded under Section 164. She has identified the statement as well as her thumb impression appearing on the said 164 statement.

18. PW2 has further deposed that since she knew the accused persons by face, she identified them in the TIP and has identified her thumb impression on the said TIP form. PW2 also deposed that she led the Police Officer to the place of occurrence, pursuant to which photographs were taken of the place. To the question put by the Court, she has stated that all “the accused are present in Court’s chamber today”.

19. In her cross-examination, PW2 has stated that while she was at the football ground, one CCL called her on her phone and



she was chatting with him, as he was her friend. She has stated that prior to the incident, her male friends had left the place and that she too was on her way with PW5. It has come in the cross-examination that six accused persons dragged her from the football ground, however, she has denied that she did not raise any hue and cry when the accused persons dragged her. She has reiterated in her cross-examination that she identified the accused by face, as she did not know their names.

20. Infact, from a perusal of the cross-examination of PW2, it is evident that there is nothing in the cross, which discredits her testimony. In the cross-examination of PW2, it has further come that the accused raped her from 6.30 p.m. to 10.30 p.m. PW2 has denied the suggestion that she had disclosed before the doctor that she was raped by eight persons.

21. The aforesaid evidence of the prosecutrix is duly corroborated by her friend (PW5), who was present with the prosecutrix, when she (PW2) was pulled by the accused persons. PW5 was also a minor, aged about 15 years at the time of the



incident. In her examination-in-chief, she has deposed that she did not know the accused persons, however, she knew the survivor (PW2), as she was her friend. She has stated that on the day of the incident, she and PW2 had gone for a walk to the football field known as Madan Purno; that on the way they met two of their male friends, Bahlung Syiemshangoi and Bahrit Marngar (PW4), who also accompanied them to the football field; and, that they were there till about 5.30 p.m. She has stated that her male friend, Bahlung went home ahead of them and as they were preparing to leave, PW2 got busy talking on the phone; that when she and Bahrit (PW4) started walking ahead, she saw some male persons around six or seven of them, pulling PW2's hands; that PW2 cried for help; and that as she was scared to help her, she went and informed her mother of what had happened. PW5 has further stated that after the incident, when she visited PW2, PW2 disclosed to her that the accused persons had gang raped her. PW5 has also identified her statement given before the Magistrate under Section 164 as well as her thumb impression thereon.



22. In the cross-examination of PW5, it has come that PW2 was talking on her phone, however she did not know with whom she was talking to, and, that when PW2 was talking to somebody on her mobile, she was sitting with Bahrit. To the Court question, she has stated that soon after the incident, she informed PW2's mother that PW2 was dragged by some persons; that she alongwith PW2's mother went in search of PW2; that they found PW2 sitting alone near the washing pond from where they brought her home and when they reached home, PW2 narrated the incident. She has stated that PW2 was taken to the hospital where she was hospitalised, as she was gang raped by the accused persons.

23. The evidence of PW5 clearly fortifies and corroborates PW2's evidence that PW5 was present with PW2 (prosecutrix) on the football ground when she was dragged by the accused persons into the forest. Admittedly, PW5 has not identified or named the accused. Being a young girl and as it appears from her evidence, she was scared to help PW2 and as such, immediately went to inform PW2's mother about PW2 being



dragged by the accused persons. PW5's conduct of immediately informing PW2's mother of the same, lends credence to PW2's testimony, of her being dragged by persons into the forest.

24. PW3 (Sestar Syiem) and PW4 (Boldingwell Marngar) have also corroborated the fact, that PW2 was dragged from the football ground. PW3 (Sestar Syiem) in his examination-in-chief deposed that he alongwith his friend PW4 (Boldingwell Marngar) had gone for a walk to Myriaw village at about 3.30 p.m.; that although he did not see PW2 and PW5, he learnt that they too were present at the football field; that his relative informed him that the victim was dragged by some unknown people from the football ground; that when he reached home, he received a call from the minor victim girl informing him that she was raped, however, he did not go to help her. He has identified his statement recorded under Section 164 (Exhibit-P-7 and the signature bearing thereon.



25. It has come in the cross-examination of PW3 that he learnt about the incident from PW5; that there was no human habitant near the football ground but only an empty shed, a club and one school. To the Court's question, PW3 deposed that in his statement recorded under Section 161, he had stated that he had received two missed calls from the victim girl, and when he called her back, she asked for help, pursuant to which he, Boldingwell Marngar (PW4) and PW5 went towards the football ground; that PW4 told him that the victim was dragged from the football ground by some unknown persons and hence, he and Boldingwell Marngar (PW4) went towards the jungle but could not find the accused persons and hence, returned home.

26. The evidence of PW4 (Boldingwell Marngar) is on similar lines. He has deposed that he knew the victim girl; that the incident took place on a Sunday when he went in the evening for a walk with his friend; that he left the village alongwith PW3 (Sestar Syiem) at about 4 to 4.30 p.m.; that on the way to Myriaw village, he called PW5 and requested her to go for a walk with him; that on reaching Myriaw village, he alongwith his friend



(PW3) directly went to the place where the football ground is situated, where he met PW5 and PW2; that he sat alongwith PW5 on the footpath while PW2 was sitting at a distance from them playing with her mobile, while PW3 was standing at a different location away from them; that after about half an hour or more of sitting on the footpath, he told PW5 that they should return home; that while they were returning, PW2 requested them to wait for her, but he told PW5 that they should leave and let PW2 come on her own; that when he and PW5 started walking home slowly, thinking that PW2 would follow them at a short distance, he heard the victim girl calling out to PW5 to help her; that he heard voices of some men and that out of fear, they ran for their lives and did not dare to help PW2; that on the way they met PW3, who informed him that he received a call from PW2, asking for help, pursuant to which they looked for the victim girl, but could not find her. PW4 has further deposed that they tried to contact her on phone, however, her phone was picked up by one male person, who asked, who was calling and cut the call; and that thereafter, they tried calling PW2, but her phone was coming switched off, pursuant to which they returned home.



27 There is nothing substantial that has come in the cross-examination of PW4 to discredit his testimony with respect to what transpired on that day i.e., that PW2 was pulled by some persons into the forest. The said evidence clearly establishes that PW2 was dragged by some unknown persons into the jungle.

28. The aforesaid evidence of PW2, PW5 and others is duly corroborated by PW6, the uncle of the prosecutrix.

29. PW6 has deposed that he had called the prosecutrix a couple of times, and that the prosecutrix disclosed a different place, every time he called her. He has stated that finally when the prosecutrix was traced and he questioned her as to why she lied, she disclosed that she has no option but to follow the instructions given by the boys from Nongjlak village, as they had threatened her that if she told the truth, they would kill her and some of them had even slapped her. PW6 has stated that his niece (PW2) informed him that the accused alongwith one known person “Kohphit” had committed penetrative sexual assault on



her. He stated that he took Kohphit's number from the prosecutrix and tried calling him up, however, the said person gave evasive answers on every occasion. He has further stated that his sister (PW1) later informed him, that she was taking the prosecutrix to the hospital, as she was complaining of pain. He has identified his statement recorded under Section 164 and his signature thereon.

30. It is pertinent to note that there is no cross-examination with respect to most of what has come in the examination-in-chief of the said witness. The evidence of the said witnesses is also duly corroborated by PW1 (mother of the prosecutrix). She has further stated that on the day of the incident, her minor daughter asked for permission to go for an evening walk to the football ground alongwith her friend (PW5); that after some time, PW5 returned looking for her, however, she was not at home and that it was only around 6.50 p.m. when PW5 met her in of one of her neighbours' house, sitting and chatting; that PW5 informed her that some male persons had pulled her minor daughter from the football ground where they were sitting and



that she did not know where those male persons had taken PW2 and hence, being scared, had rushed to inform her (PW1). PW1 has further stated that pursuant to the information received from PW5, she tried calling her daughter as she was carrying her mobile handset with her, but she could not get through; that she informed her brother (PW6) about the incident, who also tried to contact PW2 from his cell phone; that as her daughter was not giving proper information, she and her brother had no clue where her daughter was and as such, they decided to wait. PW1 has further deposed that at about 10.30 p.m., her daughter (PW2) called on her brother's cell phone and informed him that she was in Mawtungtung village, pursuant to which they immediately left to fetch PW2; that on reaching Mawtungtung, they found PW2 sitting all alone; that she could not walk by herself and that she and her brother supported her to walk back home; that on reaching the house, PW2 narrated that she was forcibly pulled by some male persons from the playground and has taken to the jungle and forcibly raped by those male persons; that on asking, she (PW2) replied that she saw six of them and that she could identify their faces though she did not



know their names. PW1 has further stated that on the next day, her daughter was unable to sleep and was complaining of pain pursuant to which she took her daughter to the doctor. The reason given for not taking her daughter to the doctor was that she was very poor and did not have money and had to borrow money from her neighbour, to take her daughter to the doctor.

31. PW1 has further deposed that when she took PW2 to the Civil Hospital, Mairang, the doctor at the Civil Hospital, Mairang after hearing about the incident advised her to go to Mairang Police Station; that on reaching Mairang Police Station, the Police Officer directed her to go to Nongstoin Police Station, as they were not authorised to take up the case; that she informed the police that she did not have money to travel to Nongstoin, pursuant to which, the Police Officer provided a vehicle from Mairang Police Station and accordingly, she, her husband, her younger sister and her daughter proceeded to Nongstoin Police Station; that on reaching Nongstoin Police Station, and on narration of the incident, an FIR was registered; and that thereafter, she accompanied a Woman Police Officer, who took



her daughter to the Civil Hospital, Nongstoin for medical examination. She has given the date of birth of her daughter as 27.12.2000.

32. When PW1 was recalled after alteration of the charge, she produced the original birth certificate of her daughter, to show that PW2 was a minor at the relevant time. It is a matter of record, that at the time when PW1 was first examined she had not produced the birth certificate of the minor daughter, however, later, after the charge was altered and PW1 was again re-examined, she produced the birth certificate of PW2 issued by the Registrar, Myriaw PHC, Department of Health and Family Welfare, Government of Meghalaya, which was marked, after tallying with the original certificate. There is no challenge to the birth certificate, which was produced and as such, the date of birth of the prosecutrix has gone unchallenged. It is the matter of record, that PW1 had applied for PW2's birth certificate only after charge-sheet was filed, however, we do not find that anything turns on it, as the documents i.e., birth certificate nor the prosecutrix's age has *per se* been challenged.



33. The medical evidence of PW15, also fortifies the fact, that the prosecutrix was sexually assaulted. PW15 was working as a Medical and Health Officer at Nongstoin Civil Hospital at the relevant time. He examined PW2, aged 15 years, who was brought by her mother (PW1) and a woman police WPC on 13.09.2016 at around 12.50 p.m. for medical examination. PW15 after taking the consent of PW2 and her mother (PW1), started the process of medical examination; he took the history of the case from the minor victim girl (PW2); who disclosed, that on 11.09.2016 at 3 p.m. afternoon, she alongwith three of her friends had gone to the football field; that they sat there for one hour or so, suddenly, six people dragged her to the nearby jungle; that her three friends managed to escaped; that they brought her to a secluded place, one by one, six of them raped her; that they left her alone in the jungle warning her not to disclose the incident to anybody; that she was in pain and could not walk; that her mother picked her up late in the evening; that the names of the accused persons were not known to her (PW2) but she knows them by face; and that she had taken a bath,



changed her clothes after the incident, washed and kept them at home.

34. On general physical examination, PW15, Dr. Marak found that there was swelling on the left jaw and cheek, a punch and scratch on the left side of the neck. PW15 – Dr. Marak has deposed that PW2 (survivor) has disclosed that the accused persons had threatened her verbally and all of them had touched her body, punched, slapped her and that scratch marks were found on the left side of her neck. PW15 has further deposed that PW2 disclosed that the accused persons had completed the penetration by penis and ejaculated inside her vagina and anus and all of the accused persons had kissed, licked and sucked her breasts. On local genital examination, PW15 found that the minor victim girl was bleeding from both vagina and anus and white discharge present on her vagina. Since the victim girl had already taken bath, changed her clothes, he requested the police to collect her clothes from PW2's residence. He has stated that he did not find any semen on the body of the minor victim girl as she had already taken bath. PW15, however, found tears on



her fourchette and introitus at 6 O'clock and 7 O'clock positions, her hymen torn, peri-anal (surrounding of the anus) tears seen at 10 O'clock and 12 O'clock positions. He stated that he collected oral swab, scalp hair, nail scrapings, nail clippings, and blood for grouping and blood for DNA analysis and handed over the samples to the police.

35. In conclusion, PW15 has stated that after conducting the medical examination on the survivor (PW2), he found that (1) there were signs of recent sexual assault; (2) that there were penetrative injuries in her private parts, and (3) there are physical assault signs on her neck and left cheek.

36. It is pertinent to note that there is no cross-examination with respect to the disclosure made by PW2 to the doctor and as deposed to by the doctor.

37. There is nothing in the cross-examination to dislodge what is disclosed to by PW2 to PW15. Thus, from the aforesaid



evidence, the prosecution has clearly established that PW2 was sexually assaulted.

38. Now coming to the identification of the accused, the prosecution examined PW11, Assistant Jailor District Jail Shillong, PW12, Shri Mangal Singh, Jail Warden and PW16, Mr T.T.M. Sangma, Judicial Officer, to prove the Test Identification Parade. PW16, Mr T.T.M. Sangma, a Judicial Officer, conducted the TIP on 01.10.2016 at the District Jail Shillong. The said TIP was conducted in a special room in the jail opposite to the Legal Care and Support Centre, which was dedicated specifically only for conducting TIPs. PW16 has deposed that the prosecutrix had correctly identified all the suspects, except Khwarningstar Shangoi (Original Accused No. 2, who has not filed an appeal). He has stated that the TIP was conducted in the ratio of 2:12 and that the accused were lined up with other jail inmates of similar height and build; and that the TIP was conducted in the presence of the Assistant Jailor and the Warden of District Jail Shillong. He has identified the TIP form filled up by him i.e., Exhibit P-5 and his signature thereon.



39. There is no cross-examination on the aforesaid TIP conducted by PW16, except to the effect, that the Jail Warder and District Jailor were made witnesses. PW16 has deposed that he believed that they were independent witnesses in the case and as the District Jail Shillong is a high security place, public would not be permitted to enter.

40. PW11 (Shri D.M. Momin) – Assistant Jailor and PW12 (Shri Mangal Singh) – Jail Warden are the Panchas, who were present when TIP was conducted. PW11 has deposed that he was officiating as an Assistant Jailor at the District Jail Shillong at the relevant time; that on 01.10.2016, TIP was conducted by JMFC, Mr T.T.M. Sangma at District Jail Shillong in a special room; that he was present at the time when the victim identified the suspects; that PW2 identified all the accused, except Khwarningstar Shangoi (Original Accused No. 2); and that the suspects were made to stand in the ratio of 2:12. PW11 has identified his signature on the said document. It has come in the cross-examination of PW11 that in the room provided for TIP, only he, the Magistrate, one Warder, Mangal Singh and the



victim were present. The evidence of PW12, Warder of the District Jail Shillong is in similar lines.

41. Admittedly, TIP is not substantive evidence, but only serves for corroborative purpose. At the outset, we may note, that the Jail Warden and Jailor are not police. At least, nothing is brought on record that both, PW11 and PW12 came from the Police Department. PW11 and PW12, although public servants, are part of the Prisons Department and not the Police Department. Hence, the mere presence of the Warder and Jailor would not vitiate the TIP, for the reason spelt out by PW16 for taking these witnesses. It is admissible, but its weight is weak. As noted above, TIP is not substantive proof of guilt by itself, but has corroborative value. No doubt, ideally PW16 ought to have involved independent witnesses, however, in the facts, considering the evidence of these witnesses, their cross, we do not find that the TIP will be vitiated only because of non-inclusion of independent witnesses. In the cross-examination of these witnesses and PW2 (survivor), there are no suggestions of tutoring, false implication or of PW2 having seen the accused



before the TIP, or that police were present, etc. In the instant case, PW2 (survivor) has categorically stated that the “accused persons are present in Court’s chambers today.” The fact, that she did not point specifically towards each of them with her finger does not, in the facts, dilute the identification. In the facts, PW2 corroborates her identification in the TIP, by identifying the accused in Court. Also, there is no challenge raised by the defence to the procedure adopted in the TIP, either during the cross-examination of the Magistrate (PW15) or of PW2 (survivor). The fact remains that the victim (PW2) has identified all the accused except Khwarningstar Shangoi (Original Accused No. 2) and that the same is recorded in the TIP. Even otherwise, identification of the accused is fortified by their identification in Court by PW2. The fact remains, that PW2 has deposed that all the accused were present in the Court’s chamber, albeit, without specifically pointing out to each of them. Though much ado, was made by learned counsel for the appellants with respect to the manner of identification by PW2, we, in the facts, find the prosecutrix’s evidence to be credible and trustworthy. There is nothing on record, to show why PW2 would falsely implicate the



appellants. Infact, there is no suggestion of false implication or any other reason that has come on record, for the prosecutrix to falsely implicate the appellants.

42. It is well settled that if the prosecutrix's evidence is found to be truthful and credible, conviction can be based on her sole testimony. In the facts, we not only find that the prosecutrix's evidence to be credible, trustworthy and inspiring confidence, but the whole incident as it happened, is duly corroborated by the evidence of other witnesses, as stated hereinabove.

43. Much ado, is also made by the learned counsel for the appellant that the belated alteration of charge and non-recall of the witnesses pursuant thereto, had caused serious prejudice to the appellants and as such, the trial stands vitiated. It is well settled that under Section 216 CrPC, the trial court is empowered to alter or add any charge, at any time before the judgment is pronounced. It is pertinent to note, that an opportunity was afforded to the appellants to recall the witnesses, however, they failed to do so. On 01.04.2022, an



opportunity was given to both, the appellants and the State. The Roznama shows, that appellants refused the said opportunity, however, the State recalled PW1 and brought the birth certificate of the prosecutrix on record. The same is a matter of record. In this light of the matter, the appellants cannot now cry prejudice having been caused to them having waived their right. The Apex Court in the case of **P. Kartikalakshmi v Sri Ganesh & another** reported in **(2017) 3 SCC 347** has observed that “...it is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the



charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

44. Admittedly, both, appellants and the prosecution were given an opportunity to recall witnesses, however, the appellants did not avail of the opportunity, whereas, the State/prosecution recalled PW1.

45. Considering the aforesaid, we find that no prejudice whatsoever caused the appellants as contended by them.

46. In view of what is stated aforesaid, we do not find any merit in the appeal. We find that the prosecutrix has established the foundational facts against the accused, i.e., that the survivor (PW2) was a minor; that the incident of rape happened; and that the appellants were the perpetrators of the same. However, the accused have failed to rebut the presumption under Sections 29 and 30 of the POCSO Act. Thus, we find that the trial court has



rightly convicted the appellants for the offences with which they are charged and as such, no interference is warranted in the impugned judgment and order.

47. Accordingly, all Appeals stand dismissed.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice