

GAHC030001492025



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

Case No. : CRL.A(J)/10/2025

Sh. K. Lalmuankima
S/o K. Vanthuama
R/o Farkawn
Champhai District

VERSUS

The State of Mizoram and Anr.
Aizawl2:Sh. T. Lalnuntluang

B E F O R E

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE NELSON SAILO

For the Appellant : Mrs. H. Lalmalsawmi, Amicus Curiae
For the Respondent(s) : Mrs. Vanneihsiami, Addl. PP, Mizoram for R-1.
: Mrs. Emily L. Chhangte, Legal Aid Counsel for R-2.

Date on which judgment is reserved : **25.03.2026**

Date of pronouncement of judgment : **27.03.2026**

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

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Michael Zothankhuma, J)

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

2. This is an appeal against the impugned Judgment & Order passed by the Presiding Officer/Judge, Fast Track Special Court, Champhai in FTSC (CPI) POCSO 46/2022, arising out of Criminal Trial No. 178/2022, by which the appellant has been convicted under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 20 (twenty) years with a fine of Rs. 5,000/-, i/d Simple Imprisonment for 1 (one) month.

3. The learned Amicus Curiae submits that the case of the victim (10 years old) that she had been raped by the appellant, who was a full grown man appears to be doubtful, in view of the fact that the victim had stated that she did not experience pain during or after the incident of rape. Further, the victim stated in her cross-examination that there was no bleeding in her private parts after the incident of rape had occurred.

4. The learned Amicus Curiae further submits that the evidence of the male Doctor, who is PW-4, is to the effect that the hymen of the victim was ruptured/not intact. She submits that the examination of the victim girl should have been done by a lady Doctor, in terms of Section 27(2) of the POCSO Act, 2012 and not by a male Doctor. As such, there was violation of Section 27(2) of the POCSO Act, 2012 due to examination of the victim by a male Doctor.

5. The learned Amicus Curiae also submits that there is inconsistency in the statement made by the victim under Section 164 Cr.PC and in her testimony before the learned Trial Court. In her testimony before the learned Trial Court, the victim had stated that when she resisted the attempt by the appellant to rape her, the appellant threatened her by saying that '*If you shout, I will pull your hair*'. However, no such statement had been made by the victim in her 164 Cr.PC statement. Thus, as the victim's statement under Section 164 Cr.PC did not fully corroborate the testimony of the victim during trial, conviction could not have been made solely on the basis of the testimony of the victim, who was not a sterling witness. In this respect, she has relied upon the Judgment of the Supreme Court in the case of ***Rai Sandeep Alias Deepu Vs. State (NCT of Delhi)***, reported in ***(2012) 8 SCC 21***, wherein it has been held that when a witness evidence does not show that she is a sterling witness, the evidence of

the victim would have to be corroborated by other evidence.

6. The learned Amicus Curiae submits that there was no injury on the private parts of the victim, even though she had alleged that she had been raped by the appellant who was the full grown man. She submits that it was unbelievable that a child of ten years would not have injury in her private parts, if she had been raped by a full grown man. As the evidence did not prove that the victim had been raped by the appellant, the impugned Judgment & Order should be set aside.

7. Mrs. Vanneihsiami, learned Addl. Public Prosecutor, on the other hand submits that there is no inconsistency in the evidence of the witness, vis-à-vis her statement made under Section 164 Cr.PC. In fact, the evidence of the victim to the effect that she and the appellant had been caught by the wife of the appellant in the ground floor of the appellant's house has been corroborated by the evidence of the wife of the appellant, who is Defence Witness-3 (DW-3). The learned Addl. Public Prosecutor submits that the statement made by the victim under Section 164 Cr.PC also corroborates the testimony of the victim and just because the victim did not state the threat given to her by the appellant in her 164 Cr.PC statement did not mean that the evidence of the victim was not

reliable.

8. The learned Addl. Public Prosecutor further submits that there is no enmity between the family of the victim and the appellant, to create a doubt that the case against the appellant was a fabricated case. Further, there is no cross-examination of the victim or any other Prosecution Witnesses, to the effect that the child had been tutored to make the allegation of rape against the appellant.

9. The learned Addl. Public Prosecutor submits that absence of injury in the private parts of victim does not prove that rape had not been committed upon the victim child and in this respect, she has relied upon the case of **Lok Mal Alias Loku Vs. State of Uttar Pradesh**, reported in **(2025) 4 SCC 470**, wherein it had been held at paragraph No. 13 as follows:-

“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 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."

10. The learned Addl. Public Prosecutor further submits that no prejudice has been caused to appellant only because the victim had been medically examined by a male Doctor, instead of female Doctor, as was required under Section 27(2) of the POCSO Act. She further submits that minor irregularities and inconsistencies cannot be a reason to throw out an otherwise reliable prosecution case, unless the said irregularity and inconsistency goes to the root of the matter, which is not the case herein. She accordingly submits there being no infirmity with the decision of the learned Trial Court, the impugned Judgment & Order should not be interfered with.

11. Mrs. Emily L. Chhangte, the learned Legal Aid Counsel for the respondent No. 2 reiterates the submission of the learned Addl. Public Prosecutor and submits that the appellant being the neighbor of the victim, the appellant held a place of trust in the mind of the victim girl. However, the appellant had broken the trust of the little girl by committing a heinous crime upon her. She submits that most of the time, rape is committed by persons known to the victim and in view of the horrific crime committed by the appellant, there is a dire need to have a survivor-centric approach towards victims of sexual violence, particularly

the children, keeping in view the traumatic long-lasting effects of such victims. In this respect she has relied upon the judgment of the Supreme Court in the case of ***State of Himachal Pradesh Vs. Sanjay Kumar Alias Sunny***, reported in ***(2017) 2 SCC 51***, which at paragraph No. 30 states as follows:-

“30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevent such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the

children, keeping in view the traumatic long-lasting effects on such victims.”

She accordingly submits that the present appeal should be dismissed.

12. We have the learned counsels for the parties.

13. The case in brief is that the informant (PW-1) submitted an F.I.R dated 29.06.2022 to the Officer-in-Charge, Dungtlang Police Station, stating that his 10 year old daughter had been sexually molested by the appellant. As told by his daughter to her mother (PW-2) and grandmother which was conveyed to him, they had reasons to believe that she had in fact been raped. The F.I.R also stated that the victim had mentioned that the appellant had sexual inter-course with her since the year 2021.

14. In pursuant to the F.I.R, DTLNG Police Station Case No. 10/2022 was registered on 29.06.2022 under Section 6 of the POCSO Act read with Section 376 AB IPC. The Investigating Officer thereafter had the statement of the victim recorded under Section 164 Cr.PC before the Judicial Magistrate First Class, Champhai and also had the victim medically examined by a Doctor. After completing the investigation, the Investigating Officer (PW-9) submitted the charge-sheet, on finding a prima facie case under Section 6 of the POCSO Act

read with Section 376 AB IPC against the appellant.

15. The learned Trial Court framed charge under Section 6 of the POSCO Act, 2012 against the appellant, to which he pleaded not guilty and claimed to be tried. The learned Trial Court thereafter, examined 7 Prosecution Witnesses and 11 Defense Witnesses. The learned Trial Court then came to a finding that the prosecution had been able to prove the offense under Section 6 of the POSCO Act against the appellant and convicted him accordingly. The appellant was sentenced to undergo Rigorous Imprisonment for 20 (twenty) years with a fine a Rs. 5,000/-, in default to undergo Simple Imprisonment for 1 (one) month.

16. The evidence of PW-1, who is the informant and also the father of the victim, is to the effect that the incident of rape by the appellant on the victim between April 2021 to mid May 2022 was first informed by the victim to the mother and the grandmother. PW-1 also stated that on asking the victim about the incident, the victim told him that the appellant had raped her several times. Sometimes the incident of rape took place in the office of the appellant and sometimes in the residence of the appellant. In his cross-examination, PW-1 admitted that on the night of 28.06.2022, he beat the victim and asked her where she had got the money. It was only then that his daughter disclosed to him about the incident of rape. It may be stated here that the evidence of the

PW-5 (victim) shows that the victim had been told to buy "Kuhva" (betel nut/leaf) for Rs. 20/-. However, the victim came back with "Kuhva", dildar and frooti. On PW-1 asking the victim, where she got the money to buy dildar and frooti, the victim blurted out that the appellant used to give her money after raping her.

17. The evidence of PW-2, who is the mother of the victim, is to the effect that the victim was born on 13.11.2011 and that the Police seized the victim's Birth Certificate. PW-2 stated that on the night of 28.06.2022, her victim daughter disclosed to her that the appellant used to rape her and give her money. PW-2 also stated that the victim told her that the incident of rape took place in the office of the appellant's classroom and sometimes in the residence of the appellant. In her cross-examination, PW-2 stated that the victim made a disclosure about the rape committed by the appellant, after she had been beaten by her father.

18. The evidence of PW-3 is to the effect that he was a witness to the seizure of the victim's Birth Certificate by the Police on 29.06.2022.

19. The evidence of PW-4 is to the effect that he was a Medical Officer who conducted the medical examination of the victim on 29.06.2022 at PHC,

Khawbung. As per his examination, he found that the hymen of the victim was ruptured/not intact. In his cross-examination, PW-4 also stated that the hymen could be ruptured by some other act or due to an accident.

20. The evidence of PW-5, who is the victim, is to the effect that in the month of April 2021, while she was playing with her friends, the appellant called her and on going to him, the appellant held her hand and took her to his under-construction house, which was near her house. Inside the constructed toilet, the appellant started to touch her private parts and gave her Rs. 20/-. In the beginning of March 2022, during examination holidays, the appellant called her and took her inside the under-construction house. PW-5 then stated that every time the appellant took her to his under construction house, the appellant used to touch her private parts and used to lick the same. He then removed the victim's pants and underwear and inserted his penis inside her private parts. PW-5 stated that as far as she could remember, the appellant inserted his penis into her private parts more than 10 times. PW-5 further stated that after raping her, a white discharge came out from his penis and he used to give her (PW-5) Rs. 10/- to Rs. 50/-. When PW-5 told the appellant that he did not want to do such things, the appellant threatened her by saying 'If you shout, I will pull your hair'. PW-5 stated that due her fear of the appellant, she did not disclose the

incident to anyone.

21. PW-5 in her evidence further stated that in the month of April 2022, the appellant used to take her on a bike towards her school. Before dropping her to school, he used to take her to the High School where he was working and used to rape her. She further stated that one time when the accused was about to touch her private parts at his under-construction house, the appellant's wife, Aunty Lawmi, saw them and the appellant stopped trying to touch her private parts. Aunty Lawmi asked them what they were doing and the appellant told her they were doing nothing. After the incident, Aunty Lawmi told her if she disclosed the incident to anyone, the appellant and the victim would go to jail. As she was scared, PW-5 did not disclose the incident to anyone. PW-5 also stated that after the appellant had finished construction of his house, the appellant used to take her inside his house and raped her on his bed, during the absence of the appellant's family members.

22. PW-5 in her evidence further stated that on 28.06.2022 at night, her father sent her to buy betel nut/leaf (Kuhva) for Rs. 20/- and while returning back, PW-5 bought dildar and frooti. Her father then asked her from where she got the money to buy dildar/frooti. She then disclosed the source of the money and told her father, mother and grandmother that the appellant used to rape

her. During cross-examination of PW-5, though PW-5 stated that she never visited the residence of the appellant but went to the under-construction house, the facts remains that the residence of the appellant and the under-construction house are one and the same house. The evidence of PW-7, who is a Sub-Inspector of Police, is to the effect that she recorded the statement of the victim.

23. The evidence of PW-9, who is the Investigating Officer, is to the effect that an F.I.R was submitted on 29.06.2022 by PW-1 and accordingly, DTLNG P.S Case No. 10/2022 was registered. During his investigation, he found a prima facie case against the appellant under Section 6 of the POCSO Act read with Section 376 AB IPC and accordingly submitted charge-sheet.

24. The learned Trial Court thereafter, recorded the evidence of 11 Defense Witnesses, which is basically to the effect that the appellant was a reliable and a good person. Amongst the Defense Witnesses, the wife of the appellant (DW-3) also gave her evidence, which corroborates the evidence of PW-5, regarding the appellant and the victim standing together in the ground floor of their house. The extract of the evidence of DW-3 is as follows:-

“I remember one time when I went down to the ground floor of our house, we keep our dogs in there and I went down there to check on them. When I

reach the place, the door was wide open, and just inside the door my husband was there and beside him the victim was standing. When I asked what they were doing, the victim replied to me that she was going to leave town and she asked my husband for some pocket money and I asked her if he gave it to her and she said that he did not give her any money. I had no suspicion towards them. I believed in my opinion all the things the victim said happened to her were fabricated stories and had no base in the truth."

25. The statement of the victim recorded under Section 164 Cr.PC by the Judicial Magistrate First Class, Champhai, is to the effect that the appellant used to take her to his house and his school, where he raped her many times. The appellant also used to give money to the victim. The statement of the victim under Section 164 Cr.PC also speaks of DW-3 finding the appellant and the victim together in the appellant's house. Further it also speaks of DW-3 threatening the victim that if she disclosed the incident about the appellant touching the victim to anybody, the victim and the appellant could be jailed. The 164 Cr.PC statement further speaks of the victim's father sending the victim to purchase betel nut/leaf (kuhva) and her father beating her up as she had also bought dildar and frooti. Her father asked her where she has got the extra money to buy the said articles. Thereafter, the victim confessed to her parents that the appellant used to give her money and in return, he would rape her.

26. In his examination under Section 313 Cr.PC the appellant has denied

raping the victim.

27. As can be seen from the evidence recorded by the learned Trial Court, the victim has not spoken about experiencing any pain or bleeding from her vagina or there being any injuries on her private parts, despite being raped by a grown man. Though it is expected that the victim would have experienced some pain and there could have been some bleeding, we cannot say for certain as to whether pain or bleeding would occur in all cases of rape. We cannot speculate on such issues as it is quite possible that the child victim did not suffer any pain or bleeding. Just because the victim stated in her cross-examination that she never experienced pain in her private parts and that she had not menstruated or had blood coming out from her private parts does not prove that rape had not occurred.

28. We have also noticed that there is no whisper from anybody, to the effect that there is any enmity between the family of the victim and the appellant. It is also not the case of the appellant that the child had been tutored to make a false allegation of rape against the appellant. The defense taken by the appellant in the trail and even in this appeal, is only with regard to the fact no rape had occurred. However, we are of the view that the statement of the victim under Section 164 Cr.PC has corroborated the testimony of the victim given

during trial. Further, the fact that the appellant and the victim were found together in the ground floor of the appellant's house by the appellant's wife, shows that there has been corroboration of the testimony of the victim by the appellant's wife.

29. In the case of *State of Himachal Pradesh (supra)*, the Supreme Court held that it can by no means be suggested that whenever a charge of rape is made involving a child, it has to be treated as the gospel truth and that the accused person has to be convicted. At the same time, after taking all due precautions, where it is found that the prosecution's version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases. In such a situation, one has to take stock of the realities of life as well. The Supreme Court further held that various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims, who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The Supreme Court further held that the strongest among those is the fear of attracting social stigma. The Supreme Court thus held that the time was right to bring about significant reforms in the criminal justice system and that there was a dire need to have a survivor-centric

approach towards victims of sexual violence, particularly the children, keeping in view the traumatic, long-lasting effects on such victims.

30. In the case of ***Lok Mal Alias Loku (supra)***, the Supreme Court held that merely because in the medical evidence, there were no major injury marks, this cannot be a reason to discard the otherwise reliable evidence of the prosecutrix. It further held that it is not necessary that in each and every case where rape is alleged, there has to be injury to the private parts of the victim and it depends on the facts and circumstances of a particular case. Absence of injuries on the private parts of the victim is not always fatal to the case of the prosecution. In the present case, the rape had occurred for more than a year, between April 2021 and May 2022. Further, the hymen of the victim had ruptured. Thus, with numerous occasions of rape having occurred, it is possible that any injuries that might have been there initially would have disappeared at the time of the medical examination. As such, the absence of injury cannot be a ground to throw out an otherwise reliable prosecution case.

31. In the case of ***Rai Sandeep Alias Deepu (supra)***, the Supreme Court held that a sterling witness should be of a very high quality and caliber, whose version should be unassailable. The consistency of the statement of the sterling witness should be the same from the starting point till the end and that if there

are several significant variations in her statement under Section 164 Cr.PC and her deposition in Court, a conviction cannot be made in the absence of any supporting evidence. In the present case, we find the evidence of the victim to be truthful and reliable, and it inspires the confidence of the Court.

32. Besides the above, the evidence of DW-3 has corroborated the evidence of the victim with regard to the appellant and the victim being found together in the appellant's house. The statement of the victim under Section 164 Cr.PC also corroborates the victim's testimony during trial. Just because the victim did not mention in her statement under Section 164 Cr.PC about the threat given by the appellant to the effect that if the victim shouted, he would pull her hair, we find the same to be a minor inconsistency, not touching upon the root cause of the case. In any event, it is settled law that conviction can be founded on the testimony of the prosecutrix alone, unless there are compelling reasons for seeking corroboration. Minor inconsistencies cannot be a reason to throw out an otherwise reliable prosecution case. The evidence of the prosecutrix is that of an injured witness and we find that there has been no major inconsistency or discrepancy in the evidence given by the victim vis-à-vis her statement under Section 164 Cr.PC. There is also no whisper to the effect that the victim is a child who concocts stories. As such, we do not find any reason to doubt the

prosecution case.

33. With regard to the submission of the learned Amicus Curiae with regard to the examination of the victim by a male Doctor, which is in violation of Section 27(2) of the POCSO Act 2012, as the medical examination of a girl victim is to be done by a female Doctor, we find that the medical examination had been done in the PHC at Khawbung Village. It is very likely that the male Doctor, who examined the victim, was the only Doctor in the Village. The said issue of whether a female Doctor was present in Khawbung Village could have been clarified, if the Doctor (PW-4) had been examined on that issue. The same was not done during cross-examination of the Doctor. In any event, it is not the case of the appellant that the medical examination report of the victim was wrong, and as such, no prejudice can be said to have been caused to the appellant, due to PW-4 examining the victim.

34. For all the reasons stated above, we do not find any ground to interfere with the impugned judgment and order passed by the learned Trial Court.

35. The appeal is accordingly dismissed.

36. Send back the TCR.

37. In appreciation of the assistance provided by the learned Amicus Curiae and the Legal Aid Council for the respondent No. 2, their fees should be paid by the State Legal Services Authority, as per norms.

JUDGE

JUDGE

Comparing Assistant