

GAHC030008622025



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

Case No. : CRL.A(J)/46/2025

Sh. Lalhriatpuia
S/o Doruma (L)
R/o Darlawn, Aizawl District

VERSUS

State of Mizoram and Anr.
Aizawl2:Ms. Laltleipui

Advocate for the Petitioner : Ms Ruth Lalruatfeli (Amicus Curiae)

Advocate for the Respondent : Mrs. Vanneihsiami, Addl.PP, Mizoram for R1
Mr. Lalrokunga Pautu, Legal Aid Counsel for R2

:::BEFORE:::

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved : **13.08.2026**

Date of pronouncement of judgment : **18.08.2026**

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

Whether the full judgment has been : N/A
pronounced?

JUDGMENT & ORDER (CAV)

Heard Ms. Ruth Lalruatfeli, learned Amicus Curiae for the appellant. Also heard Mrs. Vanneihsiami, learned Addl. Public Prosecutor for respondent No. 1 and Mr. Lalrokunga Pautu, learned Legal Aid Counsel for respondent No. 2.

2. This is a jail appeal filed against the Judgment & Order dated 17.05.2023, passed by the Judge, Special Court (POCSO), Aizawl Judicial District, Aizawl under Section 376(3) IPC read with Section 6 of POCSO Act, 2012 in SC No. 43/2019 convicting the appellant under Section 6 of the POCSO Act and the sentence Order dated 18.05.2023, wherein the appellant was sentenced to undergo Rigorous Imprisonment for a period of 10 years with a fine of Rs. 3000/- (rupees three thousand), and in default, Simple Imprisonment for 10 days.

3. The prosecution story in brief is that the aunt of the alleged victim submitted an FIR that the victim was raped by her stepfather and the latter threatened her not to disclose the matter to anybody. On the basis of the FIR, Darlawn PS Case No. 8/2018 was registered on 2.11.2018 under Section 376(3) IPC read with Section 6 of the POCSO Act, and investigation was carried out. The accused was arrested on 04.11.2018. The Investigating Officer found a prima facie case against the accused under Section 376(3) of the IPC read with Section 6 of the POCSO Act, 2012, and the accused was sent up for trial. The case was registered as Sessions Case No 43/2019 in the Court of the Judge, Special Court (POCSO).

4. The learned Trial Court found a prima facie case against the accused, i.e.,

the appellant, under Section 376(3) read with Section 6 of the POCSO Act, 2012, and accordingly charges were framed. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 10 out of the 11 cited witnesses and recorded their statements. The mother of the victim had expired during the trial.

5. On closure of the prosecution evidence, the appellant was examined under Section 313 of the CrPC, where he again pleaded innocence. The accused examined one defence witness.

6. PW-1 was the informant, who identified the accused as her brother-in-law. She stated that the victim was the stepdaughter of the accused. She stated that when she enquired from the mother of the victim regarding the change noticed in the behaviour of the child victim, the mother did not report anything untoward. About a year ago, when the mother and the stepfather of the victim separated, and there was no one to look after her, the victim was placed in the care of the CWC. At the children's home, the victim was counselled, and it came to light that the accused had sexually assaulted the victim. The informant was advised by the officials of the CWC to submit an FIR since the mother of the victim took the side of the accused.

In her cross-examination, she admitted that she did not have any first-hand knowledge about the alleged incident and that the narration regarding the incident was from hearsay. She admitted that the alleged incident came to her knowledge after the victim was placed at the childcare home. The CWC officials requested her to append her signature on the FIR, which was already prepared by the CWC.

7. PW-2 recognised the accused as the husband of her cousin. She had accompanied the complainant to the Police Station where the complainant produced the Birth Certificate in the original of the victim. She witnessed the seizure of the Birth Certificate of the victim.

In her cross-examination, she stated that she did not witness the attestation of the seized article.

8. PW-3 also identified the accused and stated that the Police had come to his residence and informed him to stand as seizure witness for the seizure of the Birth Certificate in respect of the victim. He had not seen the Birth Certificate of the victim.

In his cross-examination, he stated that the police did not produce the seized article when he appended his signature on the seizure memo.

9. PW-4 was the Medical Officer, who had examined the accused in respect of sexual potency and for medical fitness for judicial custody. The Doctor found the accused capable of sexual interaction and also found him to be fit for judicial custody.

10. The staff nurse, who was posted at the Primary Health Centre during the examination of the accused, had deposed as PW-5. She did not state anything relevant to the present case. The cross-examination of this witness was declined by the defence.

11. PW-6, who was the Sub-Inspector of Police, did not recognise the accused

present in the Court. The victim had been forwarded to this particular witness since there was no competent female officer available at the concerned Police Station. The victim had been produced before her by the IUC-AW, and she recorded the statement. The victim was forwarded for recording of judicial statements thereafter. She had also forwarded the victim for medical examination and had received the medical report.

In her cross-examination, she stated that the victim was lodged at a children's home and since the criminal proceedings originated from Darlawn Police Station, she was entrusted with the duty to record the statement of the victim at IUC-AW Aizawl. She stated that as per the medical report, the hymen of the victim was ruptured and the rupture was old.

12. The Doctor, who examined the victim, deposed as PW-7, and he stated that on receipt of a requisition from the Aizawl Police Station, she had conducted the medical examination on the victim. The victim was aged about 14 years, and she took her consent in writing and conducted the examination. She spoke to her to obtain the history of her case, and she was told that she had been sexually assaulted a number of times, the last incident being in September, 2018. On examination, the victim was found to be physically and mentally normal and genital examination showed that there was an old rupture of the hymen; there was no other injury apart from that.

During her cross-examination, the medical expert could not recollect if the victim had specified the name of the person whom she said had assaulted her. The victim had told her that the sexual assaults had commenced when she was about 11 years old.

13. The learned Magistrate who had recorded the statement of the victim under section 164 of the Cr.P.C. was thereafter examined as PW-8. She stated that the endorsement from the learned CJM was received on 05.11.2018 and the victim was produced before her on 13.11.2018. She stated that she had recorded the statement of the victim as nearly as possible in her words, and the victim was around 14 years old. She stated that the victim had recorded her statement voluntarily, that she had not been tutored, and that the victim was accompanied by her mother.

14. PW-10 is the Investigating Officer, who had received the FIR from the informant that during the year 2016-2018, on many occasions, the accused had forcibly committed penetrative sexual assault on her niece, who was 14 years old. He stated that since he was the only eligible person, in the absence of a competent female officer at the Darlan Police Station, he took up the case for investigation. During the course of his investigation, he examined the complainant and recorded her statement. Other witnesses were also examined and their statements recorded. The victim was sent to IUCAW, Aizawl, for recording of her statement and also for medical examination, as there was no female Doctor at the Darlawn Primary Health Centre. He had arrested the accused and interrogated him, and the accused had admitted his guilt before the Investigating Officer. He had seized the Birth Certificate of the victim in the presence of reliable witnesses. During the course of his investigation, he received the medical examination and the judicial statement of the victim. He had found a prima facie case under Section 376(3) of the IPC and read with Section 6 of the POCSO Act. He had accordingly submitted the charge-sheet before the Court.

During his cross-examination, he stated that during the time of the incident, the mother of the victim had left the house of the accused, but the victim, who is the stepdaughter of the accused, continued to stay with the accused.

15. PW-11 was the victim herself, and she recognised her stepfather in the Court. She claimed to be studying in Class-IX and her date of birth to be 01.11.2004. She stated that the accused had started sexually assaulting her 3-4 years ago. She did not recollect the first incident. The accused had allegedly assaulted her sexually more than 5 times. All the incidents took place in their house when no one was present at home. The immediate neighbour was at a distance of about 2 houses away. The accused had threatened her verbally and also hit her physically on some occasions; therefore, she did not dare to shout out. She resided in the house of the accused along with her mother and younger sister. She had first informed her mother, but she did not take any initiative against the accused. The accused and her mother had argued and were separated, and her aunt, that is, the complainant, had taken her away. She had informed the complainant about the incidents, and she approached the CWC, where she informed them about the incidents. She was placed in a children's home, and the FIR was filed by her aunt since her mother took the side of the accused. The Police seized her Birth Certificate, and she was produced before a lady Magistrate for recording her judicial statement. She had also undergone a medical examination.

During her cross-examination, she stated that at the time of the first incident, she was in Class-VIII and that she had repeated Class-IX for the last 3 years. She could not recollect the year when she narrated the first incident to

her mother. She admitted that the house of the informant was far away from their own house. She stated that her mother had expired in 2019 and she could not recollect the exact date and month. She had never seen her biological father. She did not know the reason why her mother took the side of the accused. She did not have any knowledge whether the complainant or other family members had claimed victim compensation.

16. On the prosecution witness having come to an end, the accused was examined under the provisions of Section 313 of the CrPC, wherein the mitigating circumstances against him had been put before him, and he had denied the allegation of sexual assault. In answer to one of the questions, he stated that he had divorced his wife and the victim had also left the house with her mother, but later on, her mother came back to him at his request. The victim had also come back with her mother; later, they again separated.

To another question, he replied that he believed the medical report of the Doctor and stated that rumor had it that when the victim was with her aunt, that is, the complainant, her husband had sexually assaulted the victim. When the accused asked the reason for not lodging an FIR, the family of the aunt had said that they were all family.

He wanted to adduce defence evidence and stated that the case was falsely implicated against him and the FIR was filed by the aunt of the victim because the victim wanted to learn to drive a scooty and he had sold the scooty as her mother was sick and he needed money.

17. The defence called in a neighbour of the accused as DW-1. He stated that

he could recognise the accused as he was his neighbour, and both the accused and his wife, that is, the mother of the victim, used to share their personal and family problems with him as he was their neighbour and a close friend. He wanted the Court to know that the victim had been with her aunt's family in Kolkata when she was very young, and the husband of the aunt sexually abused her. He came to know about this because the mother of the victim had come to him and was very upset and had told him about the aforesaid incident. He deposed that the reason for accusing the appellant herein was that they used to sell liquor in the locality and fought physically and quarrelled between themselves, as both husband and wife used to get drunk and sell liquor at the same time. The wife of the accused used to go to her parents' home out of anger for a week or two, but she never took her children, including the victim, along with her, as she fully trusted the stepfather of the victim to take care of her children. The accused had been taking care of the victim like his own child, and the witness could not believe that the accused could act sexually towards the victim, and he was very heartbroken at the accusation being faced by the accused. The witness further stated that when the mother of the victim had gone to her parents' home, the accused used to make a separate bed for the victim, and the accused would sleep with the baby alone, as the accused was very careful. The complainant, according to him, could not tolerate it and blamed the accused for being inhuman to her sister, as she supported her sister. Since the complainant could not control her sister, she used the victim and instigated her to act as a victim of the sexual assault. Thereafter, she filed an FIR against the accused to separate the accused and the victim's mother. He further stated that the complainant had made a false accusation against the accused and, when he was in prison, the mother of the victim kept drinking

heavily without eating food. Before her death, she had told the witness how heartbroken she was because of her younger sister's act of accusing her husband wrongly, and she was ashamed to meet her husband again. He stated that as a neighbour and family friend, the victim's mother had told him several times that her husband could not and would not commit such a crime against her daughter since her husband had treated the victim like his own daughter. It is only due to the desire to separate the accused and his wife that the complainant had made a mistake by taking advantage of the innocent victim and her minority.

During his cross-examination, the defence witness stated that the accused is the stepfather of the victim and they all stayed in the same house. The victim and her family had come to stay in their locality during 2010 or 2011. The family of the victim used to sell liquor, and the mother of the victim and the accused often got separated, and the children always remained with the accused in their house during such separation. He denied the suggestion that the mother of the victim had not made the statements referred to by him. It was his opinion that the accused did not commit the offence levelled against him.

18. On completion of the defence evidence, the matter was heard by the learned Trial Court and, by the Judgment dated 17.05.2023, the appellant was held guilty of the offences under Section 376 (3) and Section 6 of the POCSO Act, and by the Order dated 19.05.2023, he was sentenced as stated at the beginning of this judgment.

The learned Trial Court had referred to the different statements given by

the prosecution witnesses and also referred to the deposition adduced by the defence witness. The learned Trial Court found that the deposition of the defence witness did not help the case of the accused, inasmuch as he did not know the relationship between the accused and the victim girl. The learned Trial Court found the deposition of the victim to be straightforward and confidence-inspiring in the way she narrated how the accused had sexually molested her and also found her explanation regarding her inability to tell anyone about what the accused had done to her to be confidence-inspiring. The learned Trial Court found that nothing was made out in the cross-examination which would cast a doubt on the truth of her testimony. He also found that the medical examination report corroborated the testimony of the victim. According to the learned Trial Court, the age of the victim had been proved by the PW-2, and therefore the learned Trial Court held that the victim was 11 years old at the commission of the penetrative sexual assault upon her by the accused. The learned Trial Court held that the testimony of the prosecutrix that the accused had committed penetrative sexual assault upon her was found to be true and consistent, as the evidence of the PW-7 corroborated it.

19. PW-1, who was the informant and the aunt of the alleged victim, is an apparent hearsay witness. According to her statement, when the mother and the stepfather of the victim separated after a fight, the victim was placed in the care of the CWC and thereafter in a children's home. It was in the children's home that the victim was counseled, and the alleged incident came to light. It was on the advice of the officials of the CWC that she agreed to put her signature on the FIR, which the CWC had already prepared. PW-2 was only a witness to the seizure of the Birth Certificate of the victim, and she could not

depose with regard to the alleged sexual assault. PW-3 could not recollect if he had stood as a witness during the seizure of the Birth Certificate of the victim, and in fact he did not see the Birth Certificate of the victim. PW-4 had examined the accused medically and could only certify that the accused was capable of sexual activity. His evidence does not in any manner support the case of the prosecution. So is the case with the deposition of PW-5, who was a nurse and present during the medical examination of the accused. PW-6, a Police Officer, had interacted with the victim after she was produced before her at IUCAW, and she had recorded her treatment. She had forwarded the victim to the judicial officer for recording of her statement and also sent the victim for medical examination. The deposition of this witness also does not aid the case of the prosecution. PW-7 was the Medical Officer who had examined the victim. According to her, the victim was aged about 14 years, and on examination, the victim was found to be physically and mentally normal, and a genital examination showed that there was an old rupture of the hymen. There were no other signs of injury apart from that. The witness could not recall whether the victim had specified the name of the person whom she accused of assaulting her, and the victim had told the witness that the sexual assaults had commenced when she was about 11 years of age. PW-8 was the learned Judicial Magistrate, who had recorded the statement of the victim under Section 164 of the CrPC. It is evident from her deposition that she received the endorsement from the learned CJM for recording the statement on 05.11.2018 and the victim was produced before her on 13.11.2018. PW-10 was the Investigating Officer, who described the action taken by him after receipt of the FIR. In his statement before the Court, PW-10 alleged that after the arrest of the accused, he had interrogated him and the accused had admitted his guilt

before the investigating officer. A reference to the charge-sheet would show that while drawing out the brief facts of the case leading to the submission of the charge-sheet, it was recorded that the accused had denied the allegations of having sexual intercourse with the victim. From the above, it is clear that none of the prosecution witnesses, whose statements have been considered till now, have supported the allegations made by the victim, save and except the fact that the victim was a minor as per her Birth Certificate and that she had an old tear in her hymen. In these circumstances, the statement of the victim during the trial assumes importance.

20. In ***Dattu Ramrao Sakhare vs. State of Maharashtra***, reported in **(1997) 5 SCC 341**, the Apex Court held that a child witness, if found competent to depose to the facts and reliable, such evidence could be the basis of conviction. It was further held that the evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like that of any other competent witness and there is no likelihood of being tutored.

21. In ***Ratansinh Dalsukhbhai Nayak vs. State of Gujarat***, reported in **(2004) 1 SCC 64**, the Apex Court held as follows:

“7. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are

pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

22. In ***Raju vs. State of M.P.***, reported in **(2008) 15 SCC 133**, it has been held that insofar as allegations of rape are concerned, the evidence of prosecutrix must be examined as that of an injured witness whose presence at the spot is probable, but it can never be presumed that the statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely.

23. In ***Rai Sandeep vs. State (NCT of Delhi)***, reported in **(2012) 8 SCC 21**, the Supreme Court explained “sterling witness” as follows :

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber 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 everyone 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 similar such 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."

24. As per the deposition of the alleged victim, the accused had started sexually assaulting her three or four years back. She could not recollect the first alleged incident. According to her, the accused had sexually assaulted her more than five times. All the incidents took place in the house when no one was present. She resided in the house with the accused, her mother and her younger sister. According to the victim, she had informed her mother, but she did not take any initiative against the accused. According to her, she had informed the complainant about the incidents, and thereafter the complainant had approached the CWC, where they took her to a children's home. She has deposed that the aunt had lodged an FIR since her mother stood by the accused.

In her cross-examination, she has stated that she could not understand why her mother took the side of the accused. The victim, in her statement, has not in any manner described how the accused sexually assaulted her. She has not alleged the penetration of any part of her body by any of the organs of the accused, and in fact she has not even indicated the manner of a sexual assault, if any, committed upon her by the accused. The only term used by the victim is a sexual assault. It is my considered opinion that the prosecution has failed to elicit the very manner of a sexual assault on the alleged victim.

25. The presumption of guilt embedded in Section 29 of the POCSO Act, 2012, is subject to the prosecution bringing home the “foundational facts” in the trial. Section 29 of the POCSO Act creates a rebuttable presumption that the accused committed the offence once he is prosecuted under specific sections. However, the prosecution must first prove foundational facts, namely that the victim is a child, that the accused was present at the relevant time/place, and that some sexual act occurred in circumstances linking the accused to it. The presumption does not operate if these facts are not credibly proved, and even where the presumption arises, the accused can rebut it by pointing out inconsistencies, leading contrary evidence, or offering a plausible alternative narrative. It is also settled that the effective rebuttal can be brought home by the accused on a preponderance of probabilities, and not by proving the circumstances beyond reasonable doubt.

26. Once the prosecution is able to bring home the allegations and the accused fails to rebut the presumption, then, by operation of the provisions of Section 30 of the POCSO Act, 2012, the existence of a guilty mind of the accused is presumed and rebuttal, if any, by the accused has to be proved

beyond reasonable doubt, and preponderance of probabilities would not aid the accused.

27. Statutory presumptions cannot substitute substantive evidence. Such assumptions cannot act as a shield to protect a prosecution case that is weak, inconsistent, or inherently doubtful. A fair trial of the accused is a constitutional guarantee. Statutory presumptions provide procedural advantage to the prosecution, but judicial caution prevails where the evidence is potentially tainted, and the possibility of fabrication cannot be brushed aside. It would be unsafe to rely on the victim's uncorroborated testimony without scrutiny.

28. In the present case at hand, the victim, in her deposition, had stated that her mother stood by the accused with regard to the allegations leveled against the accused. At this juncture, a reference to the deposition of the defense witness would assume paramount importance. The defense witness clearly stated that the mother of the victim trusted the stepfather of the victim in taking care of the children, and that, despite being the stepfather of the victim, he had been taking care of her like his own child. This witness was very clear in his deposition that even when the mother of the victim used to go away to her parents' home, the accused used to make a separate bed for the victim, and the accused would sleep with the baby alone. The witness, who claimed to be a close friend and neighbor, has also stated that the complainant could not tolerate the fights between the accused and the mother of the victim, and the complainant used to blame the accused for being inhuman towards the mother of the victim. He has also clearly stated that after the complaint had been made, the mother of the victim was much saddened and heartbroken by the acts of her younger sister. He has been eloquent in stating that prior to her

death, the deceased mother of the victim had told him many times that her husband could not and would not commit any act of sexual crime against her daughter since the husband had treated the victim as his own daughter. This witness has gone to the extent of opining that it was only the desire of the complainant to have the accused and his wife separated and that the complainant took advantage of the victim and used her to have the accused locked up behind bars. The deposition of this witness could not be shaken during the cross-examination.

29. It has been held in ***Munshi Prasad and others vs. State of Bihar***, reported in ***(2002) 1 SCC 351***, that the evidence tendered by defence witnesses cannot always be termed to be tainted by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and trustworthiness ought also to be attributed to the defence witnesses on a par with that of the prosecution.

30. I have considered the materials on record and I am of the considered and firm opinion that in the present case, the evidence of the minor victim is not of "sterling quality", inasmuch as the nature of the assault had not been proved during the trial. It is on record that the victim had been kept in custody of the CWC and thereafter, at the behest of the CWC, the informant had appended her signature to the FIR, which had been prepared by the CWC, on 02.11.2018. The accused was arrested on 04.11.2018. The requisition for recording the statement of the victim under Section 164, Cr.P.C was received by the concerned Magistrate on 05.11.2018, and the statement itself was recorded on 13.11.2018. The prosecution has not explained the cause of the delay or the whereabouts of

the minor during the intervening period. The above, considered in juxtaposition with the deposition of the defence witness regarding the ill-will harboured by the informant against the appellant and the admitted position that the mother of the victim herself had stood by the accused, has led this Court to conclude that the prosecution had failed to prove any intent or act of sexual nature on the part of the accused upon his minor step-daughter and rather, the defence has, on preponderance of probabilities, earned the benefit of doubt.

31. Accordingly, the impugned Judgment & Order dated 17.05.2023, passed by the Judge, Special Court (POCSO), Aizawl Judicial District, Aizawl under Section 376(3) IPC read with Section 6 of POCSO Act, 2012 in SC No. 43/2019 convicting the appellant under Section 6 of the POCSO Act and the sentence Order dated 18.05.2023, wherein the appellant was sentenced to undergo Rigorous Imprisonment for a period of 10 years with a fine of Rs. 3000/- (rupees three thousand), and in default, Simple Imprisonment for 10 days deserves interference and is accordingly set aside. The accused is acquitted of the charges leveled against him.

32. The appeal is accordingly allowed. The appellant, namely Sh. Lalhriatpuia is to be released from jail custody forthwith, if not required in any other case.

33. Registry to return the records of the learned Trial Court along with a copy of this order.

JUDGE

Comparing Assistant