

GAHC030005792025



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

Case No. : CRL.A(J)/39/2025

Sh. Muantea
S/o Khoichangrai
R/o Kawrthindeng
Lawngtlai District

VERSUS

State of Mizoram and Anr.
Aizawl2:Smt. Lalhming

Advocate for the Petitioner : Mr. Victor L Ralte (Amicus Curiae)

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

BEFORE

HON'BLE MR. JUSTICE SOUMITRA SAIKIA
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 19.08.2026
Date of pronouncement of judgment :
Whether the pronouncement is of the : N/A
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. Victor L Ralte, learned Amicus Curiae for the appellant. Also heard Mr. Jordan Rohmingthanga, learned Legal Aid Counsel for the informant as well as Ms. Vanneihsiami, learned Addl. Public Prosecutor for the respondent.

2. This jail appeal has been preferred challenging the Judgment & Order dated 20.10.2023, passed by the learned Special Judge, POCSO, Lunglei in CrI. Tr. No. 292/2022 in connection with Lawngtlai P.S. Case No. 22/2022, under Section 506 Indian Penal Code (IPC), 1860 read with Section 6 of the POCSO Act.

3. The prosecution story in brief is that on 04.08.2022 at 11:30 a.m., an FIR was received from Smt. Y, a resident of Kawrthindeng, Lawngtlai District, to the effect that the accused, who is her ex-husband, repeatedly threatened her and also assaulted her, including her son aged about 14 years. In the FIR, the complainant further stated that the accused had sexually assaulted their 3 (three) daughters, XI (12), X2 (10) and X3 (7), in the year 2020. The complainant also stated that the accused had sexually assaulted their daughters in the month of April 2022, while she was admitted in hospital. A request was made by the complainant to take necessary legal action against the accused. Hence, Lawngtlai P.S. Case No. 22/2022 dated 04.08.2022 under Section 6 of

the POCSO Act, 2012, read with Sections 376(3)/506 of the Indian Penal Code (IPC), 1860, was registered and investigated by Inspector Zoramsanga Sailo.

4. In course of investigation, the I.O. examined witnesses, visited the place of occurrence, and had the victim medically examined, and on conclusion of the investigation, submitted the charge-sheet. The learned Court below, after hearing the parties, framed a charge under Section 6 of the POCSO Act, read with Section 506 of the Indian Penal Code (IPC), 1860, against the accused person, which was read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

5. The prosecution examined as many as 7 (seven), out of 9 (nine), witnesses and recorded their statements. On closure of the prosecution evidence, the incriminating prosecution evidence was put to the accused in his examination under Section 313 Cr.P.C. He again pleaded innocence and stated that a false charge was framed against him.

6. At this stage, the evidence on record may be discussed:

7. PW-1 Smt. Y is the complainant, who is also the mother of X1, X2 and X3. She got married to Muantea in the year 2007. They had six children. X1 is their second eldest daughter, while X2 and X3 are their third and fourth daughters. Her husband is the breadwinner of their family. PW-1 identified the accused.

The complainant stated that X1 was born on 10.02.2011, X2 on 17.07.2013 and X3 on 15.06.2015 at Kawrthindeng village, where they resided. One day, when X1 was around 3 years old, PW-1 was shocked to hear her proposing to her father to have sex. When PW-1 enquired about the matter, her husband told her that there was nothing serious since X1 was just a minor. In the month of April, 2020, the accused quarreled with and physically assaulted her. She went to her parent's house (tlan) and stayed there for about a couple of weeks. After her return, she was astonished to hear X2 rebuking X1 that the accused used to have sexual intercourse with her. When PW-1 enquired about the matter from X2, the latter told her that she had seen the accused having sexual intercourse with X1 with her own eyes. PW-1 also asked X1 about it, and the latter also confirmed that her father used to have sex with her. PW-1 told the victims that they would go to hell for their past evil deeds. At that time, X2 and X3 also disclosed to PW-1 that the accused had sexual intercourse with them.

8. In the month of April, 2022, the accused quarreled with her again. Thereafter, PW-1 went to her parental house and stayed there for about two months. After some time, she returned. Her eldest son being sick, PW-1 took him to Lawngtlai for medical treatment and stayed there for about a week. When she returned, her daughters complained to her against their father, stating that the accused had sexually assaulted them. PW-1 sought advice from

Ms. Zoremsangi. Ms. Zoremsangi advised her to seek the help of the Child Welfare Committee (CWC in short), Lawngtlai. The complainant, along with her children, went to the office of the CWC at Lawngtlai, and the CWC officials took the victims for medical examination at Lawngtlai District Hospital. The Medical Officer stated that they had been sexually assaulted. She discussed the matter with the CWC officials and decided to submit an FIR. She went to Lawngtlai Police Station on 04.08.2022 with her children under the guidance of the CWC officials and submitted an FIR. Ext. P-1/1 and Ext. P-1/2 are her signatures. Ext. P-2, Ext. P-3 and Ext. P-4 are the medical examination reports in respect of X1, X2 and X3. Ext. P-2/1, Ext. P-3/1 and Ext. P-4/1 are her signatures, which she appended while giving consent for medical examination. The Child Dedication Certificate of X1 and the Birth Certificates of X2 and X3 were produced by her at Lawngtlai Police Station. The same were photocopied, and the originals were returned to her. Ext. P-5, Ext. P-6 and Ext. P-7 are the said certificates.

9. In the cross-examination by the learned Defence Counsel, she stated that the FIR was written by a Police Officer on the basis of her statement. She further stated that she had heard from her children about their complaints of sexual assault by their father during April, 2022 and June, 2022, but she submitted the FIR in the month of August, 2022. She also stated that she had not seen her husband having sexual intercourse with any of her children. She

was not aware of her children being sexually assaulted by any other person except her husband (the accused). She denied that she had not informed her relatives about the complaints of her children against their father soon after she came to know about them. She also denied that she had falsely implicated her husband due to separation. However, she stated that she did not divorce her husband.

10. PW-2 X1 was born on 20.03.2011. She identified the accused, who is her father. She was studying in Class-III at Govt. Primary School, College Veng, Lawngtlai. She stayed in a Home at Lawngtlai with her two younger sisters, X2 (9 years) and X3 (7 years). They were ten siblings, comprising 4 boys and 6 girls. She is the 6th amongst them. This includes 4 of their step-siblings, i.e., her mother's children with her previous husband. They belonged to Kawrthindeng village. She did not remember when she had begun to stay at the Home. Anu Hrili and Anu Da-i looked after them at the Home. At the Home, they got up at 05:30 a.m., had tea, studied, went to school, came back to the Home, studied, played, had dinner, attended devotion, studied and slept at 7:30 p.m.

11. This witness stated before the Court that her father had sexually assaulted her several times. She saw her father's penis. Her father inserted his penis into

her private part, and she felt pain. The incident happened at night when her mother was not at home, as her mother had gone to Nghalimlui after having a fight with her father. Her father told her not to disclose to anybody about the sexual assault committed upon her and warned that he would kill her if she disclosed it to anybody. Her father used to beat her mother and also tried to kill her with a knife. She informed her mother about the sexual assault committed upon her by her father. Her mother made a complaint to the police at Bungtlang. The last time her father committed sexual assault upon her was while her brother was admitted to the hospital at Lawngtlai. Once, she had an argument with her sister X2. The latter warned her to tell her mother about her father having sex with her, and she then told her mother.

Ext. P-8 is her Judicial Statement and Ext. P-8/1 is her thumb impression.

12. In the cross-examination by the learned Defence Counsel, she denied that she had not seen her father's penis since it was dark and that her siblings had not known that her father had sexually assaulted her. She further denied that her mother had a boyfriend and that Anu Hrili and Anu Da-i told her what to say in Court. She also denied that her father had not sexually assaulted her.

13. PW-3 X2's birthday is 17th July. Anu Hrili took care of her at the Home. She identified the accused, who is her father. She was studying in Class-III in a

Primary School.

14. This witness stated before the Court that her father had sex with her several times by inserting his penis into her private part. The incident happened when her mother was not present in their house, during the day time as well as at night. Her father warned her not to tell anyone and threatened to kill her if she disclosed it to anybody.

15. Ext. P-9 is her judicial statement, and Ext. P-9/1 is her thumb impression. In the cross-examination led by the learned Defence Counsel, this witness denied that her father used to go out of the house daily. At night, they put off the lights. She further denied that her mother told her to say that her father had sexually assaulted her.

16. PW-4 X3 did not know her birthday. She identified the accused, who is her father. She was studying in Class-I in a Primary School.

Ext. P-10 is her judicial statement, and Ext. P-10/1 is her thumb impression.

17. This witness stated before the Court that her statement is correct and that her father sexually assaulted her once on the bed in their house while her elder siblings were watching TV, and she felt pain. At that time, her mother was not in their house.

18. In the cross-examination, this witness denied that her mother had told her to say that her father had sex with her. She further denied that her father had not had sex with her. She also denied that her father had not inserted his penis into her private part. It was denied by her that her father had not sex with her sisters.

19. PW-5 Ms. Saimawii Sailo was born in the year 1988. She passed Master of Social Work from Tripude College of Social Work, Nagpur. She is unmarried. She works as a Protection Officer under the District Child Protection Unit, Mizoram, and has been posted at Lawngtlai since 2013.

20. On 04.08.2022, PW-5 stated that she had accompanied X1, X2 and X3 to Lawngtlai Police Station around noon and produced the original Baptismal Certificate of X1 and the original Birth Certificates of X2 and X3 to the Investigating Officer. The certificates showed that X1, X2 and X3 were born on 10.02.2011, 17.07.2013 and 15.06.2015, respectively. The original certificates she produced were photocopied, and the original certificates were returned to her. She was present when the original certificates were photocopied. Ext. P-5, Ext. P-6 and Ext. P-7 are the photocopied certificates. Ext. P-11 is the Seizure Memo, and Ext. P-11/1 is her signature. She witnessed the seizure with Ms. ZD. Lalnunpuii, who is her colleague, and she is well acquainted with her signature.

Ext. P-11/2 is the signature of Ms. ZD. Lalnunpuii.

21. In her cross-examination, she stated that the mother of X1, X2 and X3 had handed over to her the three certificates. It was denied by her that Ext. P-5, Ext. P-6 and Ext. P-7 are not the photocopies of the originals.

22. PW-7, Dr. Ngurnunzami Sailo, is the Medical Officer. She deposed that on 04.08.2022, at around 12:30 p.m., the victims, namely X1 (12), X2 (10) and X3 (7), from Kawrthindeng, were brought by a female police officer and their mother for medical examination at District Hospital, Lawngtlai. As narrated by their mother, her children were sexually assaulted multiple times by their own father, Muantea, when she was away from home. It was revealed when the children quarreled and shouted at each other. The mother asked them one by one, and they told her that each of them had sexual intercourse with their own father multiple times.

23. The victim X1 was examined and found to have an old hymenal tear at the 8 O'clock and 5 O'clock positions. Ext. P-2 is the Medical Examination Report, and Ext. P-2/2 and Ext. P-2/3 are her signatures.

24. The victim X2 was examined and found to have an old hymenal tear all around. Ext. P-3 is the Medical Examination Report, and Ext. P-3/2 and Ext. P-3/3 are her signatures.

25. The victim X3 was also examined and found to have an old hymenal tear all around. Ext. P-4 is the Medical Examination Report, and Ext. P-4/2 and Ext. P-4/3 are her signatures.

26. Apart from the hymenal tears, she did not find any other injury in their genital area. According to this witness, hymenal tear can also be caused by other reasons apart from penile-vaginal intercourse.

27. PW-9, Inspector Zoramsanga Sailo, the I.O., deposed that an FIR was received at Lawngtlai Police Station on 04.08.2022 from Smt. Y of Kawrthindeng, alleging sexual assault upon the victims by the accused, who is her husband. Ext. P-1 is the FIR, and Ext. P-1/3 and Ext. P-1/4 are his signatures. The FIR was registered as Lawngtlai P.S. Case No. 22/2022 under Section 376(3) and Section 506 of the Indian Penal Code (IPC), 1860, read with Section 6 of the POCSO Act. As there was no female police officer to take up the case, he conducted the investigation.

28. The I.O. examined and recorded the statement of the complainant on the same day as the FIR was registered. The victims were medically examined at the District Hospital, Lawngtlai, on his request. Ext. P-2, Ext. P-3 and Ext. P-4 are the Medical Examination Reports in respect of X1, X2 and X3. He also examined and recorded the statements of X1, X2 and X3 and seized the Child

Dedication Certificate of X1 and the Birth Certificates of X2 and X3, marked as Ext. P-5, Ext. P-6 and Ext. P-7, respectively, from the complainant. Ext. P-11 is the Seizure Memo, and Ext. P-11/3 is his signature.

29. PW-9 visited the place of occurrence at Kawrthindeng on 05.08.2022, i.e., the dwelling house of the accused and his family. He informed the Chairman, Child Welfare Committee, Lawngtlai District, and the Judge, Special Court (POCSO Act), Siaha, about the case.

30. PW-9 submitted a prayer for recording the judicial statements of X1, X2 and X3 before the Judge, Special Court (POCSO Act), Siaha. Ext. P-8, Ext. P-9 and Ext. P-10 are their judicial statements.

31. PW-9 returned the original Child Dedication Certificate of X1 and the original Birth Certificates of X2 and X3 to the complainant on 20.09.2022. Ext. P-15 is the Zimanama.

32. A prima facie case being found under sub-sections (1) & (m) of Section 5, punishable under Section 6 of the POCSO Act, and Section 376(3) IPC read with Section 506 IPC against the accused, PW-9 charge-sheeted the accused accordingly. Ext. P-16 is the charge-sheet, and Ext. P-16/1 and Ext. P-16/2 are his signatures.

33. In his cross-examination, he stated that he was present when the

complainant submitted the FIR. The complainant did not mention the date when she came to know about the alleged sexual assault of her children by the accused in the FIR. He denied that there was delay in lodging the FIR. X1 did not inform him about being sexually assaulted by the accused during the year 2019 before the COVID-19 pandemic. He denied that he was dressed in full uniform while recording the statements of X1, X2 and X3. He also denied that none of their relatives was present when he recorded their statements. He was not aware whether the complainant had falsely implicated the accused and X1, X2 and X3 because she had an affair. He did not enquire whether X1, X2 and X3 had already been sexually assaulted when he went to the place of occurrence. He denied that he did not find a prima facie case against the accused. He also denied that he had perfunctorily submitted the charge-sheet.

34. The accused, in his examination under Section 313 Cr.P.C., denied the incriminating evidence and took a plea that he had no sexual intercourse with X1, X2 and X3. He stated his wife had illicit relation with some other guys Shri Samsona of Tuidangtlang and Shri Denga of Kawrthindeng which he came to know from her ex-husband Shri Maizarai @ Hmangaiha. It was also known by his step daughter. The complainant without his permission used to go to Lawngtlai and Vaseikai and spent days together and she could have brought makeup and ornaments even when she had left him without money. He also

stated that the complainant had wanted to divorce him and remarry another person. Hence, the complainant wrongly imputed him which resulted in registration of the present case.

35. Mr. Victor L Ralte, learned Amicus Curiae, confined his submissions within a very narrow compass.

36. The learned Amicus Curiae has drawn the attention of the Court to the depositions of the victims, who were below 12 years of age at the time of their deposition and, evidently, they were examined on solemn affirmation, but no effective preliminary questions were put to them in order to ascertain their capacity to depose as competent witnesses.

37. A perusal of the deposition of PW-2 shows that she was aged about 11 years at the time of deposition and she deposed that she was born on 20.03.2011 and stated the names of her mother and father and that she was studying in Class-III at Government Primary School at College Veng, Lawngtlai. Similar depositions were made by the two remaining victims, i.e., PW-3, aged about 9 years at the time of deposition, and PW-4, who was 7 years of age at the time of deposition, She stated that she did not know her date of birth.

38. From the above, it is not ascertainable as to whether the aforesaid answers were elicited from the aforesaid child witnesses by way of test questions or

were simply introductory statements.

49. The learned Amicus Curiae has referred to the decision of the Apex Court in ***Pradeep vs. State of Haryana, (2023) 19 SCC 221***, it was held as follows:-

10. *We have carefully considered the submissions. The fate of the case depends on the testimony of the minor witness Ajay (PW1). Under [Section 118](#) of the Evidence Act, 1872 (for short, "the [Evidence Act](#)"), a child witness is competent to depose unless the Court considers that he is prevented from understanding the questions put to him, or from giving rational answers by the reason of his tender age. As regards the administration of oath to a child witness, [Section 4](#) of the Oaths Act, 1969 (for short "[Oaths Act](#)") is relevant. [Section 4](#) reads thus:*

"4. Oaths or affirmations to be made by witnesses, interpreters and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that where the witness is a child under twelve

years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of [Section 5](#) shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

12. *Under the proviso to subSection (1) of [Section 4](#), it is laid down that in case of a child witness under 12 years of age, unless satisfaction as required by the said proviso is recorded, an oath cannot be administered to the child witness. In this case, in the deposition of PW1 Ajay, it is mentioned that his age was 12 years at the time of the recording of evidence. Therefore, the proviso to [Section 4](#) of the Oaths Act will not apply in this case. However, in view of the requirement of [Section 118](#) of the Evidence Act, the learned Trial Judge was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth.*

13. *Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put*

to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.

In the facts of the case, the preliminary examination of the minor is very sketchy. Only three questions were put to the minor on the basis of which the learned Sessions Judge came to the conclusion that the witness was capable of giving answers to each and every question. Therefore, the oath was administered to him. Following are the questions put to him:

“Q. In which school you are studying?

Ans. I am studying in Govt. Primary School, Barwashni.

Q. What is occupation of your father?

Ans. My father is a Pujari in a Mandir named Hanuman, at Gohanba.

Q. Should one speak truth or false?

Ans. Truth.”

40. In the aforesaid case, however, although the Hon’ble Court was of the view that the preliminary examination of the minor was very sketchy, the said

evidence was not discarded, and the matter was decided on merits after considering the evidence on record.

41. The learned Addl. Public Prosecutor has submitted that the appellant is the biological father of the three minor victims and his offence is of a particularly heinous nature, and the testimonies of the victims stood the test of cross-examination and were consistent throughout, as is evident from their statements before the Magistrate and before the Court. None of their statements could be contradicted by reference to any previous statement of the said victims before the police or the Magistrate. Moreover, the medical evidence in respect of all the three victims clearly indicated hymenal tears, which supported the prosecution case, and the appellant, who examined himself as DW-1, admitted the fact that the three daughters were minor children and that they did not have boyfriends and that he did not suspect anyone to have been involved in causing their hymenal tear.

42. By way of his defence evidence, the appellant can hardly be said to have rebutted the presumption under Section 29 of the POCSO Act, since the prosecution had established the foundational facts.

43. As already adverted to hereinbefore, the decision in ***Pradeep (supra)*** cannot be regarded as an authority for the proposition that mere failure of the

Court to put preliminary questions to the child witnesses would render their evidence incapable of acceptance. In fact, the learned Amicus Curiae does not even contend so.

44. Furthermore, Mr. Jordan Rohmingthanga, learned Legal Aid Counsel, has placed reliance on the decision of the Apex Court in ***P. Ramesh vs. State, (2019) 20 SCC 593***, wherein it has been held as follows:-

“13. Section 118 of the Evidence Act 1872 deals with the competence of a person to testify before the court. [Section 4](#) of the Oaths Act 1969 requires all witnesses to take oath or affirmation, with an exception for child witnesses under the age of twelve years. Therefore, if the court is satisfied that the child witness below the age of twelve years is a competent witness, such a witness can be examined without oath or affirmation. The rule was stated in Dattu Ramroo Sakhare v. State of Maharashtra, where this Court, in relation to child witnesses, held thus:

“5. ... A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under [Section 118](#) of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. 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 any other competent witness and there is no likelihood of being tutored."

14. *A child has to be a competent witness first, only then is her/his statement admissible. The rule was [laid down in](#) a decision of the US Supreme Court in *Wheeler v United States*⁷, wherein it was held thus:*

"... While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which- will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record the decision of the trial judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous..."

15. *In [Ratansinh Dalsukhbhai Nayak v State of Gujarat](#)⁸, this Court held thus:*

"7. ... The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his

understanding of the obligation of an oath. 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 that 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, shaped 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.” (emphasis supplied)

16. *In order to determine the competency of a child witness, the judge has to form her or his opinion. The judge is at the liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capability to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. 9 A child becomes incompetent only in case the court considers that the child was unable to understand the 8 (2004) 1 SCC 64. Subsequently, relied upon in [Nivrutti Pandurang Kokate v State of](#)*

Maharashtra (2008) 12 SCC 565 *Dalsukhbhai Nayak v State of Gujarat* (2004) 1 SCC 64 questions and answer them in a coherent and comprehensible manner. 10 If the child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”

45. While it is true that the learned trial court did not embark upon a preliminary exercise to ascertain the intelligence and understanding of the child witnesses so as to determine their capability to depose as witnesses and no effort was made to determine their understanding of the questions put to them in Court, But from the depositions of the witnesses themselves, it appears that they were quite capable as well as intelligent enough to depose as witnesses in terms of Section 118 of the Evidence Act. Although child witnesses are quite amenable to tutoring, in the instant case, there are three child witnesses, and they have squarely implicated the appellant, who is their own father.

46. In the case of *Bhanei Prasad @ Raju vs. State of Himachal Pradesh, 2025 SCC OnLine SC 1636*, the Apex Court had observed that no daughter, however aggrieved, would fabricate charges of this magnitude against her own father merely to escape household discipline.

47. In the present case, the defence stand appears to be that the wife of the appellant had estranged relationship with him and this led her to lodge the FIR.

However, there is no explanation as to why his own daughter would falsely implicate him for that reason in the commission of such a heinous offence, particularly since the informant got divorced from the appellant in the year 2014, as stated in the FIR, whereas the occurrences are of the years 2020–2022. Furthermore, as submitted by the learned Addl. Public Prosecutor, the versions of the victims are also corroborated by the medical evidence.

48. That being said, our attention has been drawn to the sentence imposed by the learned trial court. It appears that the learned trial court, after convicting the appellant under Section 6 of the POCSO Act, sentenced him to undergo rigorous imprisonment for 10 (ten) years and also to undergo simple imprisonment for one year in view of his conviction under Section 506(1) IPC, and also directed the sentences to run consecutively. We are of the view that the ends of justice would be met if the sentences aforesaid are directed to run concurrently. We accordingly so order.

49. In view of the above discussion, while interfering with the sentence as aforesaid, we dispose of the appeal by affirming the conviction recorded by the learned trial court.

JUDGE

Comparing Assistant