

GAHC030002852025



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

Case No. : CRL.A(J)/26/2025

Sh. P. Lalhmachhuana
S/o Zothangpuia
R/o Salem Veng, Lunglei

VERSUS

The State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Mrs. H Lalmalsawmi (Amicus Curiae)

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

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the Appellant : Mrs. H. Lalmalsawmi, Amicus Curiae
For the Respondent(s) : Mrs. Mary L. Kiangte, Addl.PP, Mizoram for R-1.
: Mr.LalrokungaPautu, Legal Aid Counsel
for R-2

Date on which judgment is reserved : **17.02.2026**

Date of pronouncement of judgment : **02.03.2026**

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)

1. Heard Mrs. H. Lalmalsawmi, learned Amicus Curiae for the appellant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State and Mr. Lalrokunga Pautu, learned Legal Aid Counsel for the respondent No. 2.

2. This is an appeal against the impugned Judgment & Order dated 27.06.2023 passed by the Special Court, POCSO, Lunglei in Criminal Trial No. 87/2022, by which the appellant has been convicted under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for a period of 20 (twenty) years and to pay a fine of Rs. 5,000/-, i/d Simple Imprisonment for 1 (one) month for having sexual intercourse with the 12 year old minor girl.

3. The prosecution case in brief is that an FIR dated 30.01.2022 was submitted by PW-1 stating that her grand-daughter (12 year old) had told her on the night of 29.01.2022 that her step-father (appellant) had sexual intercourse with her ever since she was 11 years old at their house in Lunglei Salem Veng. She therefore prayed to take action against the appellant.

4. In pursuance to the FIR, All Women Police Station Case No. 0/2022 dated 30.01.2022 was registered under Section 6 of the POCSO Act read with Section 376 AB IPC. The Investigating Officer (PW-9) started the investigation and had the victim examined by a Medical Officer. Thereafter, PW-9 sent all the investigation materials that she had collected alongwith the Case Diary to the S.P, Aizawl through the Officer-in-Charge of the All Women Police Station, for transfer of the case to the jurisdictional Police Station, i.e., Lunglei Police Station.

5. The All Women Police Station Case No. 0/2022 dated 30.01.2022 was thus sent to the Lunglei Police Station, wherein the case was re-registered as Lunglei P.S Case No. 21/2022 dated 23.02.2022 under Section 6 of the POCSO Act read with Section 376 AB IPC. The case was then endorsed to the second Investigating Officer (IO), who belonged to the Lunglei Police Station, where the investigation was completed. Charge-sheet was thereafter submitted by the second I.O. of the Lunglei Police Station.

6. The learned Trial Court thereafter framed charge under Section 6 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried.

7. The learned Trial Court thereafter examined 8 Prosecution Witnesses and 3 Defence Witnesses. After the appellant was examined under Section 313 Cr.PC, the learned Trial Court came to a finding that the appellant had committed the offence under Section 5 (m) of the POCSO Act and convicted him accordingly.

8. The evidence of the informant (PW-1) is to the effect that the victim was the illegitimate child of her daughter, i.e. her granddaughter. Further, her daughter's husband was the step-father of the victim. She stated that the victim stayed with her (PW-1) in Aizawl. When her daughter came to Aizawl during March, 2020, her daughter returned to Lunglei with the victim and the victim stayed with her mother's family at Lunglei till October, 2021. During the month of October, 2021, the victim telephoned her and requested her to take her back to Aizawl stating that she felt home sick. Accordingly, PW-1 took back the victim from Lunglei to Aizawl. Sometime during the month of January, 2022, the victim told her cousin (PW-5) that the appellant had touched her with sexual intent while she was in Lunglei. The matter came to the knowledge of the victim's aunt

(PW-4), who enquired about the incident from the victim. PW-1 then stated that she saw the victim talking about the incident to PW-4 and that she was shivering. Thereafter, on PW-1 asking PW-4, PW-4 told PW-1 that the appellant had sex with the victim while she was in Lunglei. The said revelation had been made in the evening of 29.01.2022, due to which PW-1 submitted an FIR at the All Women Police Station, Aizawl on 30.01.2022.

9. In her cross-examination, PW-1 stated that the victim did not tell her about the appellant having sex with the victim. Further, she did not remember the contents of the FIR as she could not read and write. In her re-examination, PW-1 stated that though she did not specifically remember the contents of the FIR, the reason why she submitted the FIR was because the victim had been raped by the appellant.

10. The evidence of the victim (PW-2), is to the effect that she was born on 01.08.2009 and that she knew the appellant, who was her step-father. PW-2 stated that she was in Lunglei with her mother, step-father and two of her step-siblings from March, 2020 till October, 2021, during which time the appellant sexually assaulted her several times, by inserting his penis into her private parts, which resulted in bleeding. In her cross examination, the victim (PW-2) denied the suggestion that her mother had taken her to Lunglei during February, 2021. She stated that except for the month and year regarding the time when she went to Lunglei with her mother, in her judicial statement made under section 164 Cr.P.C, the rest of the judicial statement was true. Thus, there is a discrepancy as to the exact date she had gone to Lunglei with her mother. In her 164 Cr.P.C. statement and examination-in-chief, she had stated that she had gone to Lunglei in February, 2021. However, in her cross examination, she

has denied that she had gone to Lunglei on February, 2021. This discrepancy in her statement made with regard to when she went to Lunglei in 2021 and which she had admitted in her cross examination, does not go to the root of the matter and as such, cannot be said to be fatal to the prosecution case. She further stated that she did not divulge to others what had happened to her earlier, as the appellant had threatened her, by saying that he would divorce the victim's mother and he would kill the victim. PW-2 stated that she disclosed the incident to her cousin Zothansangi and PW-4. Thereafter, when her aunt (PW-4) inquired about the matter, she told the story to PW-4. PW-2 further stated that her judicial statement was recorded by a Magistrate at Aizawl, which was exhibited as Ext.P-4. She also stated that she was examined by a lady Doctor.

11. The evidence of PW-4, who is the younger sister of the victim's mother, is to the effect that PW-5 was the daughter of another sister i.e. Vanlalvuani. She came to learn from PW-5 that the appellant used to touch the private parts and breast of the victim, while she was staying with the family of the appellant in Lunglei. On PW-4 asking PW-2 (victim) in the evening of 29/01/2022 as to what had actually happened to her, the victim told her that the appellant had sexual intercourse with her several times, while she was staying with them in Lunglei.

12. The evidence of PW-5, who is the cousin sister of the victim, is to the effect that the victim used to tell PW-5's younger sister Zothansangi, about being sexually assaulted by the appellant while she was in Lunglei. During the time PW-5 was in the house of her aunt (PW-4), PW-5 asked the victim as to what had happened. Though the victim was initially hesitant to divulge anything, the victim told PW-5 that the appellant used to touch her breast and anus. PW-4 then asked the victim as to what had happened, to which the victim

stated that the appellant had sex with her several times.

13. The evidence of PW-6, who is the mother of the victim, is to the effect that she was not aware of any incident of sexual abuse committed by her husband on her daughter (victim). PW-3 stated that she brought the victim to stay with her in Lunglei in the year 2000 and PW-1 took her back to Aizawl in October, 2021. In her cross-examination, PW-6 stated that the victim's grandmother (PW-1) had demanded Rs. 1 Lakh from her husband, as a condition to remain silent about the sexual abuse and accordingly, the said amount was given to her as demanded.

14. The evidence of PW-7, who is the Medical Doctor who had examined the victim on 30.01.2022 at 2:30 p.m, is to the effect that she found the hymen of the victim torn at 2 O'clock position. Her body examination showed that everything else was normal. In the opinion of PW-7, the tear in the hymen could be because of penetrative sexual assault or due to other causes.

15. The evidence of PW-9, who is the Sub-Inspector in the All Women Police Station, is to the effect that she was made the Investigating Officer and she conducted the investigation of the case, besides getting the medical examination of the victim done at Aizawl Civil Hospital. The judicial statement of the victim was also recorded by the JMFC-III. The photocopy of the Birth Certificate of the victim was also seized, which she compared with the original and had it attested by the Officer-in-Charge. PW-9 further stated that she sent the Case Diary alongwith all the materials to the S.P, Aizawl through the Officer-in-Charge, for transfer of the case to the jurisdictional Police Station, i.e., Lunglei Police Station.

16. The evidence of PW-11, who is the Officer-in-Charge of the Lunglei Police Station, is to the effect that after the transfer of the All Women Police Station Case No. 0/2022 dated 30.01.2022 to the Lunglei Police Station, the same was re-registered as Lunglei P.S. Case No. 21/2022 dated 23.02.2022 under Section 6 of the POCSO Act read with Section 376 AB IPC. The case was endorsed to Sub-Inspector Rosy Lalfamkimi (now deceased). On completion of the investigation, Sub-Inspector Rosy Lalfamkimi submitted the Charge-sheet. PW-11 stated that he supervised the investigation as he was the Officer-in-Charge of the said Police Station.

17. The evidence of Defence Witness-1 (DW-1), who is the 10 year old son of the appellant, is to the effect that the victim had sex with his younger brother, who was aged 4 years. He also stated that the victim had sex with one Mama. In his cross-examination, DW-1 stated that he did not see the victim having sex with Mama. He further denied the suggestion that the victim did not have sex with P. Lalpekhluva, who was just 4 years old.

18. The evidence of DW-2 is to the effect that her husband was a friend of the appellant. The appellant and the victim maintained a close relationship with each other and that the victim appeared to have a weakness towards the opposite sex. She further stated that due to the allegation made by the appellant's mother-in-law (PW-1), the appellant had been made to pay Rs. 1 Lakh in order to settle their differences. Even though PW-1 had agreed to pardon the appellant, she changed her stand after she got to know that there was a provision for payment of compensation under a Govt. Scheme.

19. The evidence of DW-3, who is the neighbour of the appellant, is to the effect that the appellant was a good natured person and did not speak ill of

others. He further stated that he did not think that the appellant would have had sex with a minor girl. On the other hand, DW-3 stated that the victim appeared to be a person of loose moral character.

20. Mrs. H. Lalmalsawmi, learned Amicus Curiae for the appellant submits that it appears that the victim had been tutored to make a false accusation against the appellant, inasmuch as, there are discrepancies in the statement made by the victim under Section 164 Cr.PC vis-a-vis her testimony before the learned Trial Court. Further, the entire case seems to be a case of meeting the financial needs of PW-1, which has been corroborated by the statement of the mother of the victim (PW-6), who stated that Rs. 1 Lakh had been demanded by the grand-mother of the victim, i.e., PW-1, for keeping silent about the sexual abuse allegedly inflicted on the victim. The learned Amicus Curiae submits that the testimony of the victim is vague and shorn of material particulars and as such, the learned Trial Court erred in relying on the sole evidence of the victim for convicting the appellant. She accordingly submits that the impugned judgment should be set aside.

21. The learned APP and the Legal Aid Counsel for the respondent no. 2 submit that there is no infirmity with the findings of the learned Trial Court, inasmuch as, the sole testimony of the victim can be the basis for convicting the accused, if the same is found to be trustworthy and inspires the confidence of the Court. They also submit that there was no reason for the victim to have made a false allegation against the appellant. As such, the impugned judgment should not be interfered with.

22. We have heard the learned counsels for the parties

23. The statement of the victim made under section 164 Cr.P.C. is to the following effect:-

“P. Lalhmachhuana is my stepfather. After my mother remarried, my sister and I lived with our grandparents. My mother lived with her new family at Lunglei, Salem Veng. On February, 2021 my mother came with my step brother Lalpekhlua and they took me to Lunglei with them. My step brother Pekhlua fell ill and so my mother had to stay in the hospital with him.

Whenever my mother was not around my stepfather would cover my mouth and take off my clothes. He would touch my breasts and he would make me lie down on the bed, in the sitting room and he would insert his private part. My stepfather asked me to not tell anyone and if I tell anyone about it, he would divorce my mother and that he would kill me. My stepfather must have molested me more than 20 times.

After I returned to Aizawl in October, 2021, I informed my cousin Zo-i and elder sister Nunu-i in January, 2022. They in turn informed my aunt Lalbiakchhawni and they report it to the Police.

The above statements are all true.”

24. In the case of ***Lok Mal Alias Loku Vs. State of Uttar Pradesh*** reported in ***(2025) 4 SCC 470***, the Supreme Court held that the evidence of a prosecutrix in a case of rape is of the same value as that of a injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. Para 16 of the judgment is reproduced herein below as follows :-

“16. It is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In the case of State of Punjab v. Gurmit Singh, [\(1996\) 2 SCC 384](#), the Supreme Court observed as under:

“21... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the

prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

(emphasis supplied)

25. In the case of ***Bharawada Bhoginbhai Hrijibhai Vs. State of Gujarat*** reported in ***(1983) 3 SCC 217***, the Supreme Court held that refusal to act upon the testimony of a victim of sexual offence in the absence of corroboration in the Indian setting, is adding insult to injury. The Supreme Court further asked the question, as to why the evidence of a girl or woman who complains of rape or sexual molestation should be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion.

26. In the case of ***State of Rajasthan Vs. Smt. Kalki and Anr.*** reported in ***(1981) 2 SCC 752***, the Apex Court has held that contradictions effecting the core of the prosecution case are fatal. In the case of ***Narender Kumar Vs. State (NCT of Delhi)*** reported in ***(2012) 7 SCC 161***, the Supreme Court has held that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required, unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law, but a guidance of prudence under given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution witness. Thus, what is clear from the above, is that a conviction can be based on the sole evidence of the prosecutrix, which is trustworthy and

which inspires the confidence of the Court.

27. In the case of *RaiSandeep @ Deepu Vs. State (NCT of Delhi)* reported in **(2012) 8 SCC 21**, the Supreme Court has held that the testimony of the prosecutrix which can be relied upon for convicting an accused, must be of a sterling quality, consistent, natural and free from material contradictions. It must remain the same from the start to the end.

28. As can be seen from the evidence of PW-6 and DW-2, Rs. 1 (one) lakh had been paid to the grandmother (PW-1), so that PW-1 remains silent about the sexual abuse of the victim by the appellant. It has also been implied that due to PW-1 coming to know of the compensation scheme made for victims of sexual offences, PW-1 being greedy for the money, had filed the FIR. The above allegations against the PW-1 does not take away the fact that the issue herein lies to whether the victim had been sexually abused by the appellant just because the grandmother (PW-1) may have been guilty of being greedy, the present case is not about the PW-1 but regarding the rape of PW-2 by the appellant.

29. The evidence of DW-1, who is the step brother of the victim is to the effect that the victim had sex with her 4 years old step brother Lalpekhlua. This has also been stated by the appellant in his examination under section 313 Cr.P.C, where he has answered to question no. 19 that he knew that the victim had sexual relationship with her brother Lalruatfela and not with the appellant.

The name of the person with whom the victim had sexual relationship is different, as given by DW-1 in his testimony and by the appellant in his answer to question no. 19 in his 313 Cr.P.C. examination.

30. It is surprising that the allegation of the victim having sex with her brother is brought out for the first time in the evidence of DW-1 and in the 313 Cr.P.C. statement of the appellant. The same should have been brought out at the time of cross-examination of the prosecution witnesses. PW-6, the mother of the victim would also have known about, if the same was true. The victim and other Prosecution witnesses were never confronted with the above very serious allegation. In fact, the victim should have been severely reprimanded/admonished by PW-6 and the appellant, if it were true. The silence of PW-6 and the appellant prior to the trial on this score leads us to believe that the said allegation is not true and just an after-thought to divert the focus/issue in this case.

31. The appellant in his 313 Cr.P.C. examination has also stated that the allegation made against him was totally wrong and that he loved the victim, as much as, he loved his biological children. He also stated in the answer to question no. 23 that the victim had a weakness relating to sex and though she was young, she sent love letters to her neighbours. Further, the appellant stated that her biological daughter (DW-1) saw the victim acting in the sexy manner. Further, the victim is to ask her neighbour for sex. He further stated that the case arose due to the appellant's refusal to meet the demand of PW-1 to pay Rs. 50,000/- to withdraw the FIR. In his examination under section 313 Cr.P.C., the appellant also stated that the false allegation has been made against him because he did not allow the victim to use the mobile handset as she liked.

32. As can be seen from the allegations made by the appellant against the victim, the victim is sought to be projected by the appellant as a loose character, who has a weakness for sex. However, we have got to remember that it is not

the character of the 12 year old victim that is on trial in this case, but the issue of whether the appellant had raped the minor girl. The alleged greedy character of the grandmother and the alleged immoral character of the victim are not the issue that are to be decided, though the same can be considered to be attending factors, when considering the subject matter of rape in it's entirety. It should however be remembered that the attempt to mask the issue by the appellant and discredit the victim does not change the root of the matter.

33. In the present case, there is a delay in filing the FIR, inasmuch as, the offence had been committed upon the victim during her stay in Lunglei from March, 2020 till October, 2021, while the FIR had been filed only on 30.01.2022.

34. In the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari***, reported in ***(2004) 8 SCC 153***, the Supreme Court has held that delay in lodging an FIR in a rape case cannot be used as a ritualistic formula for discarding the prosecution case or doubting it's authenticity, when the testimony of the victim appears to be totally reliable, trustworthy and credible.

35. In the case of ***State of M.P. Vs. Ratan Singh&Ors.***, reported in ***(2020) 12 SCC 630***, the Hon'ble Supreme Court has held that there can be no hard-and-fast rule which can be applied to determine the effect of delay in filing the FIR and the Court is duty-bound to determine whether the explanation afforded is plausible enough, based on the given facts and circumstances of each case. Para 5 of the judgment of the Hon'ble Supreme Court in ***Ratan Singh &Ors. (supra)*** states as follows:-

“5. To begin with, though the incident has taken place at about 9.00 am on 30.08.1991 and though the names of all the 18 persons were known to the complainant Khilan Singh, absolutely no valid reason was forthcoming

*on record as to why there was a delay in lodging the FIR. The Courts generally will not disbelieve the version of the eye witnesses even if there is some delay in lodging the FIR, if the versions of the eye witnesses are reliable and trustworthy. However, the delay needs to be explained. This Court, in *Apren Joseph v. State of Kerala*, [\(1973\) 3 SCC 114](#), emphasised that since a promptly filed FIR reflects reduced chances of embellishment, fabrication or distortion in memory, in cases of delay in filing the FIR it is important to assess the explanation therefore, to look for possible ulterior motives, and to assess its effect on the credibility of the prosecution version. The following observations of the Court are pertinent in this regard:*

*“11. Now first information report is a report relating to the commission of an offence given to the police and recorded by it under Section 154, CrPC. As observed by the Privy Council in *King Emperor v. Khwaja Nazir Ahmad*, [[AIR 1945 PC 18](#) : ILR 1945 Lah1 : 71 IA 203] the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First information report under Section 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue unreasonable delay in lodging the FIR, therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of*

law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case."

(emphasis supplied) "

36. In the case of ***Hariprasad alias Kishan Sahu Vs. State of Chattisgarh***, reported in ***(2024) 2 SCC 557***, the Hon'ble Supreme Court held that the delay in lodging an FIR, by itself cannot be regarded as sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated to be fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of the prosecution.

37. In the above case of ***Hariprasad alias Kishan Sahu(supra)***, the Supreme Court further held that the object of insisting upon prompt lodging of the report to the police in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence.

38. In the case of ***Apren Joseph alias Current Kunjunju and Ors. Vs. The State of Kerala***, reported in ***(1973) 3 SCC 114***, the Hon'ble Supreme Court has held that FIR is very useful if recorded before there is time and opportunity to embellish, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the

explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version.

39. In the case of *Wahid Khan Vs. State of Madhya Pradesh*, reported in **(2010) 2 SCC 9**, the Hon'ble Supreme Court has held that it is a matter of common law that in Indian society any girl or woman would not make an allegation of rape, as she is fully aware of the repercussions flowing therefrom. If it is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it would be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society and it would be difficult for her to survive in Indian society.

40. In the present case, the victim is a child who was approximately between 11-12 years old at the time of the commission of the offence. It would be natural for a young child to keep to herself the trauma of being raped, especially when the perpetrator of the crime is her step-father, who holds a position of trust for the child. The victim's mother in this case is the wife of the said perpetrator of the crime and it is not surprising that there would be some reluctance on the part of the victim to blame her step-father, especially, when she has been threatened not to spill the beans or else her mother would be divorced and herself killed. We are aware that there appears to be something amiss in the prosecution case, inasmuch as, the mother had apparently not been told by the victim of the offence committed by her husband to the victim.

This is surprising as the mother should have been the first person to whom the victim should have turned to besides PW-1. However, we are unable to turn a Nelson's eye to the evidence that has been adduced and which has not been shaken by the appellant. Though there is the evidence of PW-6 to the effect that Rs.1 lakh had been paid to PW-1, the said amount of payment was only for the purpose of keeping silent with regard to the allegation of rape committed upon the victim. There is nothing to show that the alleged offence did not happen. Coming back to the issue of the delay in filing the FIR, the victim being a young girl of around 12 years of age it is very plausible for a young girl to her feelings and emotions bottled up inside her, while she was still living in the house of the perpetrator of the crime. The Opening up of the victim, little by little, initially towards her cousin and Aunt later on is not surprising, as a minor girl could need time to come out fully with the traumatic event/s. In fact, when older girls are reluctant to speak out regarding having been raped, as has been stated by the Supreme Court in the case of **Wahid Khan (supra)**, there does not appear to be any wrong in the delay on the part of the victim to come out with the allegation of rape on a much later date.

41. The only reason given by the appellant for the victim to have alleged that he had raped her was because he did not allow her to use the mobile as she liked. This does not appear to be plausible, as the victim had left his house in October, 2011 and the FIR had been filed on 31.01.2022. It is highly unlikely for a 12 year old girl to hold a grudge for so long a time and take revenge by making allegations in relation to a very heinous crime 3 months later. Thus, we do not have any reason to doubt the authenticity of the FIR, only because of the delay in filing it.

42. On considering the evidence of the victim which is corroborated by the evidence of the Doctor, which is to the effect that there was a tear in the hymen of the victim, we are of the view that a case of penetrative sexual assault has been proved by the prosecution.

43. The above being said, the next question to be decided is as to whether the appellant could have been convicted under Section 6 of the POCSO Act, inasmuch as, there is nothing to indicate the exact date, month or year in which the victim had been subjected to sexual intercourse. The evidence only reflects the fact that the victim was in the appellant's house from March, 2020 till October, 2021. The victim's date of birth being 31.07.2009, the victim would have been 12 years of age on 31.07.2021. The offence/s could have occurred prior to 31.07.2021 or on/after 01.08.2021 and till the time the victim left the house of the appellant in October, 2021. If the offences had occurred after 31.07.2021, the appellant could not be said to have committed the offence under Section 5(m) of the POCSO Act, 2012, inasmuch as, she would not have been below 12 years of age on 31.07.2021.

44. In the case of ***State of Odisha Vs. Banabihari Mohapatra and Anr.***, reported in ***(2021) 15 SCC 268***, the Hon'ble Supreme Court has held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. In the present case, two views are possible as to when the offence had occurred, which could have been prior to 31.07.2021 or from 31.07.2021. If we are to hold that the offence had occurred prior to 31.07.2021, then a case under Section 5(m) of the POCSO Act, 2012 is made out. On the other hand, if the offence had been committed from 31.07.2021, a

case of penetrative sexual assault punishable under Section 4(2) of the POCSO Act is made out.

45. In terms of the judgment of the Hon'ble Supreme Court in the case of ***Banabihari Mohapatra and Anr. (supra)***, we take the view that the offence/s had occurred subsequent to 31.07.2021 by leaning towards the appellant.

46. The learned Trial Court has however not made any finding as to why Section 6 of the POCSO Act has been applied it, except for stating that the victim was born on 31.07.2009 and was 11 years of age when the victim was subjected to continued rape on many occasions. However, the age of the victim at the time of commission of the offences is not proved by the evidence on record, inasmuch as, the victim could have been 12 years of age at the time of the offences.

47. Section 4 of the POCSO Act, 2012 states as follows:-

“4. Punishment for penetrative sexual assault.

[(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ²[ten years] but which may extend to imprisonment for life, and shall also be liable to fine.

[(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]”

48. In view of the above reasons, the conviction and sentence of the appellant under Section 6 of the POCSO Act, 2012 is set aside. The conviction and sentence of the appellant would have to be done under Section 4(2) of the POCSO Act. The charge under section 6 of the POCSO Act is accordingly altered to Section 4(2) of the POCSO Act. Though section 217 Cr.P.C. provides that whenever charge is altered by the Court after the commencement of the trial, the Prosecutor and the accused shall be allowed to recall or re-summon and examine any witness with reference to such alteration or addition, except where the Court feels that the same would be used by the prosecutor or the accused for the purpose of delay or defeating the ends of justice. In the present case, when there can be no major change in the defence only because of the change of age of the victim, there is no reason to recall a witness. Further, the non-recall of any witness would not in any way prejudice the case of the appellant herein.

49. As the penetrative sexual assault had been committed on a child below 16 years of age, the appellant is accordingly convicted under Section 4(2) of the POCSO Act, 2012, for committing penetrative sexual assault on the victim, who was below 16 years. Consequently, the appellant is sentenced to undergo Rigorous Imprisonment for a period of 20 (twenty) years and to pay a fine of Rs. 5,000/-, i/d Simple Imprisonment for 1 (one) month under section 4(2) of the POCSO Act. Consequently, the impugned Judgment and Order dated 27.06.2023 passed by the learned Special Court, Lunglei, in Criminal Trial No. 87/2022 is hereby modified to the extent indicated above.

50. Send back the TCR.

51. In appreciation of the assistance provided by Mrs. H. Lalmalsawmi, learned Amicus Curiae and Mr. Lalrokunga Pautu, learned Legal Aid Counsel, their fees should be paid by the Mizoram State Legal Services Authorities, as per norms.

JUDGE

CHIEF JUSTICE

Comparing Assistant