

GAHC030002442025



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

Case No. : Crl.A./9/2025

Smt. Zonunmawii
Zuangtui, Aizawl

VERSUS

The State of Mizoram r/b the Secretary to Govt. of Mizoram, Home Dept. and Anr.
Aizawl2:Smt. K. Lalrinsiam

Advocate for the Petitioner : Mr Zoramchhana

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

:::BEFORE:::

HON'BLE MRS. JUSTICE MARLI VANKUNG

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

Advocate for the appellants	: Mr. Zoramchhana
Advocate for the respondents	: 1.Mr. H. Zodinsanga, Legal Aid Counsel for respondent No. 2. 2.Mrs. Mary L. Khiangte Addl. P.P., Mizoram.

Date on which judgment is reserved : **04.02.2026.**

Date of pronouncement of judgment : **11.02.2026**

Whether the pronouncement is of the : Yes.
operative part of the judgment?

Whether the full judgment has been : No.
pronounced?

JUDGMENT & ORDER (CAV)

(Mridul Kumar Kalita, J)

- 1)** Heard Mr. Zoramchhana, learned counsel for the appellant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, as well as Mr. H. Zodinsanga, learned Legal Aid Counsel, appearing for the respondent No. 2.
- 2)** This appeal under Section 415 of BNSS, 2023, has been preferred by the appellant Smt. Zonunmawii, impugning the Judgment dated 17.02.2025 as well as order of Sentence dated 27.02.2025 passed by the Court of learned Special Judge, POCSO Act, Aizawl Judicial District, Aizawl, in Sessions Case No. 82/2022, in connection with Criminal Trial No. 626/2020, corresponding to All Women P.S. Case No. 14/2022, whereby the appellant was convicted and sentenced under Section 4(1)/5(1)(a) of the Immoral Traffic (Prevention) Act, 1956, read with Section 6/16 of the POCSO Act, 2012 and Section 376/109 of the Indian Penal Code.
- 3)** The facts relevant for consideration of the instant appeal, in brief, are that on 17.03.2022, one Smt. K. Lalrinsiame, Social Worker, District Child

Protection Unit, Aizawl, had lodged an FIR before the Officer-in-Charge of All Women P.S., Aizawl, *inter alia*, alleging that, on 17.03.2022, at about 04:00 pm, she received an information over telephone from MHIP, Zuangtui, wherein it was informed that one minor girl (*hereinafter referred to as 'X' to protect the identity of the victim*), aged about 13 years, was induced into prostitution by the present appellant and her husband namely Lalrinchhana. It was also alleged in the FIR that the minor victim 'X' was sold to several males from 13.01.2022 to the last part of February, 2022.

- 4)** On receipt of the aforesaid FIR, the All-Women P.S. Case No. 14/2022 was registered under Section 4(1)/5(1)(a) of the Immoral Traffic (Prevention) Act, 1956, read with Section 376 (3) of the Indian Penal Code as well as Section 6 of the POCSO Act, 2012, and the investigation was initiated.
- 5)** Upon completion of the investigation, the Charge Sheet was laid against the present appellant (A2) and four other accused persons including the husband of the appellant namely Sh. Lalrinchhana (A1). The other accused persons against whom Charge Sheet was laid were Sh. Daniel Lalmachhuana (A3), Sh. Andrew Lalrintluanga (A4) and Sh. K. Lalbiakmawia (A5). The accused, Sh. Andrew Lalrintluanga had absconded, during the pendency of the trial court, therefore, the judgment could not be pronounced against him, however, it proceeded against the other accused persons including the present appellant.
- 6)** After considering the materials available on record as well as after hearing the learned counsel for both sides, the learned Judge, Special Court, POCSO Act, Aizawl, on 18.08.2022, framed charges under Section 4(1)/5(1)

(a) of Immoral Traffic (Prevention) Act, 1956, as well as under Section 376 and under Section 6 of the POCSO Act, 2012, against the present appellant. When the said charges were read over and explained to the appellant, she pleaded not guilty to the same and claimed to be tried. Similarly, charges were framed against other accused persons who were facing trial.

7) During trial, though, 20 prosecution witnesses were listed in the Charge Sheet by the Investigating Officer, however, to bring home the charges against the accused persons including the present appellant, the prosecution side examined 17 of the listed charge sheeted witnesses including the victim girl. The present appellant was examined by the Trial Court under Section 313 of the Court of Criminal Procedure, 1973, on 09.09.2024, during which the appellant was asked 24 numbers of questions by the Trial Court. The appellant denied the truthfulness of the testimony of the prosecution witnesses and except a few questions, she answered most of the questions in negative.

8) Ultimately, by judgment & order dated 17.02.2025 passed by the trial court, which has been impugned in this appeal, the trial court had convicted the present appellant under Section 4(1)/5(1) (a) of Immoral Traffic (Prevention) Act, 1956, read with Section 6/16 of the POCSO Act, 2012 and Section 376/109 of the Indian Penal Code. The appellant was sentenced to undergo rigorous imprisonment for a period of 20 years as well as to pay a fine of Rs. 5000/- only and in default a payment of fine to undergo simple imprisonment for 7 days under Section 6/17 of the POCSO Act, 2012. She was also sentenced to undergo rigorous imprisonment for a period of 7 years under Section 5 (a) of the Immoral Traffic (Prevention) Act, 1956.

9) The aforesaid judgment of the trial court convicting the appellant and sentencing her in the matter stated herein above has been impugned in this instant criminal appeal.

10) Before considering the respective submissions of the learned counsel for both sides, let us go through the evidence of the prosecution witnesses which is available on record.

11) The PW-1, namely Smt. K. Lalrinsiami, who is the first informant of the case, has deposed before the trial court, that she is a social worker at District Child Protection Office, Laipuitlang, Aizawl. She has deposed that on 17.03.2022 at around 04:00 p.m., she received a phone call from one Smt. Lalramthari, the President of MHIP, Zuangtui, whereby, it was informed that one minor girl was forced into prostitution by a couple who had engaged her in their residence to do domestic chores.

12) The PW-1 has further deposed that on receipt of the said information, she proceeded towards Zuangtui to enquire about the incident and met the victim girl who had stated to her that she was forced into prostitution by the present appellant and her husband Sh. Lalrinchhana. It was also told to her by the victim girl that she followed whatever the appellant and her husband asked her to do as she feared them of physically assaulting her. She further deposed that during interaction with the present appellant and her husband, she came to know that they used to take money for allowing the victim to sleep with strangers for one night at the rate of Rs. 4000/- and Rs. 1500/-. She also deposed that the victim told her that she even did not remember as to with how many numbers of persons she was asked to have forced sex.

She exhibited the FIR as exhibit P-2.

13) During cross-examination by the learned defence counsel for the present appellant (A2), the PW-1 has deposed that she did not saw the accused No. 2 actually posting advertisement about the victim girl and she also does not know what gadgets were used by the present appellant to post about the victim girl. The PW-1 was also cross-examined by the learned defence counsel for the other accused persons, during which her testimony given by her in her examination-in-chief remained, more or less, intact.

14) The PW-2 namely, the victim girl herself ('X') has deposed that she used to stay in the residence of the present appellant and her husband, at Edenthal Vengchhak, and used to help them in domestic chores. She has deposed that initially the appellant and her husband treated her very well and also celebrated her birthday on 12.01.2022, however, on the next day i.e., 13.01.2022, the appellant and her husband sent her (the victim) with one person who came in his white car. PW-2 further deposed that the present appellant told her that the person who came in the white car was her uncle and he has gone to have food with her in their house, however, the said person took her to jungle and sexually assaulted her in the jungle inspite of protest by her. She has further deposed that due to the such sexual assault, she felt pain in her private parts and blood also came out of her private parts. She has also deposed that after the said incident, the person who sexually assaulted her dropped her in front of the house of the present appellant where the she and her husband were waiting for her on the road side next to their house. The PW-2 has further deposed that she did not disclose the incident to the accused persons because she came to know that

it were they, who sent her with the said person for the said purpose.

15) The PW-2 has also deposed that from that day onwards, the appellant and her husband sent her out with different persons after having conversation on mobile phone with those persons. She also deposed that she has herself seen the chat in mobile of the appellant. She has also deposed that the appellant and her husband used to physically assault her whenever she refused to go with whom they asked her to go. During her deposition, the victim girl had also stated that she was sexually assaulted by the accused Sh. Daniel Lalhmachuana (A3) and Sh. Andrew Lalrintluanga (A4) on different occasions. She also deposed that the accused Andrew Lalrintluanga (A4) also had sexually assaulted her in the house of the appellant.

16) The PW-2 has also deposed that the accused Sh. K. Lalbiakmawia (A5) was the last person who had sexually assaulted her in his vehicle (Bolero) and on the way back home, the present appellant got into the vehicle of the A5 and consume liquor together by stopping the vehicle on the road side. She also deposed that taking this opportunity, she ran away from the vehicle and took shelter in the house of one of her friends namely, Smt. Thutiami. During her testimony, the victim girl has also stated that she does not remember all the dates when she was sexually assaulted by the accused persons.

17) The PW-2 has also deposed that when she was in the house of her friend Smt. Thutiami, the present appellant came to know about it. On this, her friend dropped her in the house of one of her relatives and from there, the victim girl went to Leithum village and from there she went to Champhai.

She also stated that she stayed at Champhai for four nights and again went back to Aizawl. She also stated that her statement was also recorded by Court which is exhibited as exhibit P1.

18) During her cross-examination by the learned defence counsel for the present appellant, she submitted that the present appellant did not advertise her by her name. She also deposed that at first, she did not see the present appellant actually posting the advertisement of her in Facebook or social media. The PW-2 was also cross-examined by the learned defence counsel of the other accused persons. During her cross-examination by the learned Defence Counsel for accused No. 1, the victim girl stated that it is a fact that the accused Smt. Zonunmawii (present appellant) received a sum of amount paid by the client from the outcome of the prostitution. Her testimony which she deposed in her examination-in-chief, more or less remained intact during her cross-examination.

19) The PW-3, namely, Smt. Zonunsangi, has deposed that the victim is her grand-daughter and she was born on 12.01.2009. She is the daughter of her son namely, Sh. Lalchhandama. It is also deposed by PW-3 that her son, Sh. Lalchhandama got divorced from his wife, Smt. Lalhriatchhungi and he alongwith the victim were living at Edenthar. She deposed that towards the end of the year 2021, when her grand-daughter refused to study properly, she was scolded and slapped by her son. Her grand-daughter enraged out of the said incident, ran out of the house. She further deposed that as she had seen the victim girl with her mother in the market together, hence, she did not worry about her. It is further deposed by PW-3 that in the month of January, 2022, the appellant alongwith her husband came to her house and

informed that the victim will now live with them. They also promised her that they would let her study and would look after her as their own child. Thereafter, the victim started living with the appellant and her husband.

20) The PW-3 has further deposed that one day, the victim called her over phone and informed her that on her birthday i.e., 12.01.2022, she would come to their home, however, when she did not come, the PW-3 enquired from the present appellant about her. However, the appellant replied that she is very busy with work and therefore, the victim could not come back to their home. PW-3 has further deposed that after a few months, she came to know that her grand-daughter(victim) no longer lives with the appellant. She has further submitted that once she got a call from the victim from the house of their neighbor namely, Bawihtei, and when PW-3 scolded her as to why she was not staying with the appellant and her husband, the victim told her that they sold her body and she was sold to many people. After that, the PW-3 came to Bawihtei's house where she met her grand-daughter. She has further deposed that the said Bawihtei and her family members later on informed NGO's like MHIP, YMA. She exhibited the seizure memo as exhibit P-3.

21) During cross-examination by the learned counsel for the appellant (A2), the PW-3 has deposed that the appellant and her husband were not her relatives. She also stated that when she came to know that the appellant and her husband used to sell the body of her grand-daughter, she immediately went to meet her. She also deposed that after her grand-daughter ran away from the present appellant and her husband, she went to Bawihtei and did not come to her house or her father's house. She was also cross-examined by the learned counsel for the other respondents during which her testimony

remained more or less intact.

22) The PW-4, namely, Lalchhanhimi, has deposed that she came to know from the friends of the victim that the appellant and her husband made her sell her body and they would beat her up whenever she refused to do so. She has also deposed that on 15.03.2022, she saw the victim at a shop and she spoke to her and during conversation, the victim stated that the couple with whom she was staying made her to sell her body for sex to different persons through phone and they would beat her up if she refused to do so. She also deposed that the victim told her that the couple used to take money directly from the customers and they would give her little bit of the money to the victim to meet her financial end. She has further deposed that to escape from this ordeal, the victim ran away from the appellant and spent two nights in her house. She has also deposed that on 17.03.2022, the appellant and her husband came to her house to take back the victim, however, the victim refused to go with them and held on the window frame as they tried to force her. She also deposed that when all these things happen, she intervened and did not allow the appellant to take victim back against her will. Later on, she informed her grandmother. She has deposed that her tenant, Tenui, after hearing about the incident, called MHIP leaders and informed them about the incident to them and MHIP leaders thereafter informed Child Protection as well as to the Police.

23) During her cross-examination by the learned counsel for the appellant (A2), the PW-4 has deposed that she has not seen the appellant sell the victim in person. She was also cross-examined by the learned counsel for the other accused person, however, her testimony during her examination-in-

chief remained more or less intact.

24) The PW-5, namely, Ms. Lalbiakdiki, has deposed that in the 2022, she was working as a home mother at Centre for Peace and Development (CPD), Aizawl. In the said home, minor children who are abused and sexually assaulted were usually kept and looked after. She has also deposed that on 19.03.2022, as requested by the Police, she accompanied the victim to the police station and at the police station, the birth certificate of the victim was seized and she put her signature on the seizure memo. The seizure memo was exhibited as Exhibit P-3 and Exhibit M-1 as the birth certificate of the victim. She was not cross-examined by the learned counsel for the appellant (A2), however, she was cross-examined by other accused persons and during cross-examination, her deposition more or less remained intact.

25) The PW-6, namely, R.C. Tlangtihlima, who has deposed that he was the seizure witness of seizure of mobile handset from the possession of the accused Sh. Daniel Lalhmachhuana (A3). No cross-examination was done of the said witness on behalf of the present appellant, however, the cross-examination done by the other accused persons were adopted by the defence counsel for accused No. 2. During cross-examination of PW-6, his testimony could not be shaken.

26) The PW-7, namely, Sh. C. Vanlalhuma, is also the seizure witness in respect of seizure of the phone of A3 namely, Daniel Lalhmachhuana.

27) The PW-8, namely, Sh.Lalfakzuala, is also another seizure witness on the vehicle bearing registration No. MZ 01R-0042, as well as the mobile

handset seized from the possession of the accused Sh. Daniel Lalhmachhuana (A3).

28) The PW-9, namely, Sh. Lalthansanga, in his testimony showed his ignorance about anything involved in this case.

29) The PW-10, namely, Sh. Lalengliana, is the seizure witness of the mobile phone seized from the possession of the accused Sh. Andrew Lalrintluanga. During his cross-examination by the learned counsel for the appellant, the PW-10 deposed that he does not know anything about involvement of the present appellant and Sh. K. Lalbiakmawia in the said case.

30) The PW-11, namely, Ms. Lalrammawii, is also another seizure witness in respect of seizure of a mobile handset from the possession of the accused Sh. Andrew Lalrintluanga. Her cross-examination was declined by the learned counsel for the present appellant.

31) The PW-12, namely, Dr. Zosangpuii, has deposed that on 17.03.2022, she was posted as gynecologist at Civil Hospital, Aizawl. On that day, a requisition was received from the All-Women Police Station, Aizawl, to conduct medical examination of the victim girl ('X'), of aged about 13 years and in a case of alleged sexual assault. She deposed that the victim consented for such medical examination and while the PW-12 was taking history of the case, the victim told her that her guardians had trafficked her multiple times for sex and she had a history of multiple sexual partners and the last incident occurred about two weeks prior to the date of examination.

She has further deposed that during her examination, the victim was found physically and mentally stable and was not under influence of any drugs or alcohol at the time of examination. She did not find any seminal stains on her clothes or any visible marks of violence on her body. She also deposed that on genital examination, there were no bruises or laceration of the external genitalia. However, there was an old rupture of the hymen. She exhibited medical examination report as Exhibit P-37 and her signature thereon as Exhibit P37 (a).

32) During cross-examination, the PW-12 has deposed that the victim herself told to her that she had been trafficked multiple times for sex and had multiple sex partners. She also deposed that the rupture of hymen could have occurred due to sexual encounters with persons other than the accused.

33) The PW-13, namely, Dr. Laldinpuii, has deposed regarding medical examination of the accused Sh. Lalrinchhana as well as the present appellant and no seminal stains or marks of violence were found over the body of the accused person. She has exhibited the medical examination report of the present appellant as Exhibit P-38. She also exhibited the medical examination report of two other accused persons namely, Sh. Lalrinchhana (A1) and accused Sh. Daniel Lalhmachuana (A3).

34) The PW-14, namely, Dr. LalrinzualiChhangte, has deposed regarding the medical examination report of accused Sh. Andrew Lalrintluanga.

35) The PW-15, namely, Dr. Thanmawii, has deposed that on 02.04.2022,

she was posted in the Emergency Department of Civil Hospital, Aizawl and on that day, she received a requisition from All Women Police Station to conduct medical examination of the accused, Sh. K. Lalbiakmawia, in case of alleged sexual assault. The medical examination report has been exhibited as Exhibit P-6.

36) The PW-19, namely, Ms. Sarah Lalrinkimi, Addl. SP, Aizawl Traffic P.S. has deposed that she was posted on 17.03.2022 as DSP (headquarters) at Aizawl and on that day, she took charge as the Officer-in-Charge of All Women Police Station, Aizawl. She further deposed that on that day, she received an FIR from one Smt. K. Lalrinsiami regarding trafficking of a young girl (victim 'X') by the present appellant and her husband and accordingly an All-Women Police Station case was registered and she initiated the investigation. She further deposed that after initiating the investigation, she arrested the present appellant after obtaining necessary permission from the learned Judicial Magistrate First Class, Aizawl. She also took steps for examination of the victim girl in Civil Hospital, Aizawl. She has further deposed that during examination, it was found that there was an old rupture in the hymen of the victim girl. She further deposed that she also recorded the statement of the victim girl and also sent her to the District Court for recording her statement by Judicial Magistrate. She further deposed that the Birth Certificate of the victim girl was seized by her.

37) The PW-19 further deposed that she also seized one black colour Redmi 9 Active mobile phone from the possession of the present appellant. Thereafter, she applied for permission from the Court to extract the Facebook Messenger communication in the phone of the accused person which was

seized and accordingly, communications were extracted in the form of screenshots. She further deposed that the present appellant and her husband had created a number of fake Facebook Messenger accounts for their communications and were mainly using an account in the name of Emily Remsangpuii. She also deposed that they were searching for customers in the Facebook Group called "*Mipa leh Hmeichhia fair taka in pay-na*". She further deposed that she obtained the call details of last five months of the mobile phone which was seized from the possession of the present appellant from the SP, CID Crime. She has deposed that she has examined the victim's paternal grandmother Pi. Zonunsangi. PW-19 has exhibited the birth certificate of the victim as well as the arrest memo of the present appellant and other accused persons. She has also exhibited the certificates under Section 65B of the Indian Evidence Act as Exhibit 35 and 36. Though, the learned counsel for A5 had cross-examined the PW-19, she was not cross-examined by other accused persons including the present appellant.

38) The PW-20, namely, Sh. LalrinpuiaChenkual, Deputy SP (Headquarters) CID (SB), has deposed that he was posted as SDPO Aizawl South on 17.03.2022. On the said date, an FIR was lodged by K. Lalrinsiami, a social worker, alleging that she received a telephone call from Zuangtui MHIP unit, informing that a couple (husband and wife) were trafficking a minor girl, who was living with them, for prostitution. He further deposed that accordingly, AWPS Case No. 14/2022 was registered under Section 4 (1)/5(1)(a) of the Immoral Traffic (Prevention) Act, 1956, read with Section 376(3) of the Indian Penal Code and Section 6 of the POCSO Act, 2012. He has further deposed that Deputy SP, Sarah Lalrinkimi took up the investigation. He also deposed that the accused persons, namely Lalrinchhana and Zonunmawii

(present appellant), were arrested during investigation and their statements were recorded. He further deposed that the mobile phone of the present appellant was also seized, and the victim, as well as both the arrested accused persons were sent for medical examination. He further deposed that the statement of the victim was recorded both by the Investigating Officer as well as by the Magistrate, and the birth certificate of the victim girl was also seized from the possession of her grandmother. He also deposed that screenshot images of the Facebook Messenger communication from the mobile phone of the present appellant were taken.

39) The PW-20 has further deposed that on 21.03.2022, he took over charge as the Officer-in-Charge of the All-Women Police Station, and at the same time, he also took over the charge of the investigation of this case. He further deposed that, after taking over charge of the investigation, he studied all the materials collected by the previous Investigating Officer, including the screenshot images of the Facebook Messenger communication extracted from the mobile phone of accused Zonunmawii (present appellant). He has deposed that from the screenshot extracts, it came to light that another accused person, namely Andrew Lalrintluanga (A5), was also involved in procuring the victim 'X' for sex. He has further deposed that during the interrogation of the accused Andrew Lalrintluanga (A4), he informed that he had communicated with Lalrinchhana (A1) and Zonunmawii (present appellant) through Facebook Messenger, and also spoken to Lalrinchhana while two of them were in Edenthal. He was also informed by the accused Andrew Lalrintluanga that accused Lalrinchhana took him to his residence at Edenthal, where he had sex with victim 'X', and thereafter he paid Rs. 3000/- to Lalrinchhana for having sex with victim 'X'.

40) The PW 20 has further deposed that he had also seized the mobile phone of accused K. Lalbiakmawia (A5), and on examination of the said phone, it was found that he was using Facebook Messenger with a different name, i.e., LbKhawlhring, to communicate with A1 and the present appellant. He deposed that from the materials collected during investigation, it came to light that the present appellant and her husband Lalrinchhana were using fake Facebook Messenger profiles to traffic the victim 'X'. He further deposed that on conclusion of the investigation, he found the *prima facie* case under Section 4 (1)/5 (1)(a) of Immoral Traffic (Prevention) Act, 1956 against the accused Lalrinchhana (A1) and the present appellant (A2) and accordingly filed charge sheet against them. He has also deposed that he also found a *prima facie* case under Section 6 of the POCSO Act, 2012, read with Section 376 (3) of the Indian Penal Code against other accused persons. He has exhibited charge sheet as exhibit P8, and he also exhibited the extracted screenshot copies of Facebook Messengers of accused Andrew Lalrintluanga (A4) and the accused Lalbiakmawia (A5) as Exhibits P31 and P32 respectively. He also exhibited the arrest memo, medical examination reports, seizure memo, sketch map of the place of occurrence at Edenthal, medical examination reports of the accused persons, the certificates under Section 65B of the Indian Evidence Act, etc.

41) The PW 20 was not cross-examined by the defense counsel for the accused No. 2, that is the present appellant. However, during cross-examination by learned counsel for accused No. 4, he has deposed that the screenshots of communication between Andrew Lalrintluanga (A4) and the accused Larinchhana (A1) and the present appellant (A2) were obtained from the phone of the present appellant.

42) After the examination of the prosecution witnesses, the accused persons, including the present appellant, were examined under Section 313 of the Code of Criminal Procedure, 1973. The present appellant was examined by the trial court on 09.09.2024. During her examination, the appellant admitted that the victim 'X' started to live with her from December, 2021, to help in household chores. However, she answered in negative when she was confronted with the evidence that she sent the victim with one male person who came in a white car, and who was introduced to the victim by her as her uncle. When she was asked in question No. 8 by the Trial Court that, in the evidence, it came to light that she openly used to chat with other accused persons in her mobile phone, she answered in the negative, and stated that the mobile phone was of her husband, Lalrinchhana, which she used to keep. She also answered in negative that she, along with the other accused, namely Lalbiakmawia (A5), consumed alcohol on the roadside after the said accused had sex with the victim girl. She also denied that she used to receive money paid by the clients for prostitution of the victim girl. She also answered in negative when she was asked the question that it is she who used to operate a Facebook account under different names. She was put many other questions by the Trial Court. However, she denied her involvement in the offense alleged in this case. Though, when the Trial Court put her question as to whether she wanted to adduce any evidence, she answered in affirmative, however, no defence evidence was led by the appellant in support of her defence.

43) Mr. Zoramchhana, the learned counsel for the appellant has submitted that the Trial Court had erred in convicting and sentencing the appellant for the offence of abetment under Section 376/109 of the IPC, as well as Section

16 of the POCSO Act, without framing any charge for abetment of such offence against the appellant.

44) He submits that the trial court had framed charges, against the present appellant, on 18.08.2022, under Section 4(1)/5(1)(a) of the Immoral Traffic (Prevention) Act, 1956, and Section 376 of the IPC, as well as Section 6 of the POCSO Act, 2012. However, no charges were framed under Section 17 of the POCSO Act, 2012 or under Section 109 of the Indian Penal Code against the present appellant.

45) The learned counsel for the appellant submits that the present appellant (A2) was convicted and sentenced for the offences of abatement of offence under Section 376/109 of Indian Penal Code as well as under Section 17 of POCSO Act, 2012 without there being any charges framed in respect of said offences. Hence, the learned counsel for the appellant submits that the appellant was highly prejudiced, as she was unaware about the accusation of abetment against her during the entire trial and was taken by surprise when she was convicted for an offence for which no charges were framed against her, and the same were never explained to her by the trial court.

46) The learned counsel for the appellant submits that Section 216 of the Code of Criminal Procedure, 1976, empowers the court to alter or add charges at any time before the Judgment is pronounced. However, without taking recourse to the said provision, the trial court convicted and sentenced the appellant under the aforesaid provisions, by taking the appellant by surprise. She submits that as the appellant was highly prejudiced for her conviction by the trial court for offences for which she was never charged,

the conviction and sentence imposed on the appellant by the impugned Judgment are liable to be set aside. Learned counsel for the appellant has cited the following rulings of co-ordinate benches of this Court in support of his submission:

- 1. "Rengsibula Vs. State of Mizoram and Anr." (Judgment dated 15.10.2025 in Crl.A. No. 11 of 2025).**
- 2. "Malsawmdawngzela@Bastina Vs. State of Mizoram and Anr." (Judgment dated 14.02.2025 in Crl.A. No. 33 of 2024).**

47) The learned counsel for the appellant has also submitted that the Trial Court had erred in law in convicting the appellant under Section 4(1)/(5)(1) (a) of the Immoral Traffic (Prevention) Act, 1956, by relying heavily on the statement of her husband, i.e., the accused, Lalrinchhana, which was recorded under Section 313 of the Code of Criminal Procedure, 1973. He submits that it is a settled law that an explanation given by a co-accused during his/her examination under Section 313 of the Code of Criminal Procedure cannot be used for convicting another co-accused for the obvious reason that the accused who gives an incriminating explanation/statement cannot be cross-examined by the co-accused against whom incriminating statements were made. In support of his submission, the learned counsel for the appellant has cited the case of "**Maheshwar Tigga Vs. State of Jharkhand**" reported in **(2020) 10 SCC 108.**

48) The learned counsel for the appellant has also submitted that the trial court had erred in convicting the appellant under Section 4 (1)/5 (1)(a) of the Immoral Traffic (Prevention) Act, 1956, without there being any evidence against her in respect of said offences. He submits that there is no evidence

on record to show that the appellant knowingly lived on the running of prostitution of the victim "X". He submits that there is no evidence to show that the appellant took any money from prostitution by victim "X". He submits that the money was taken by A1, i.e., the husband of the present appellant and nothing is there to show that the appellant ever took such money. Hence, he submits that there is no material to convict the appellant under Section 4(1) of the Immoral Traffic (Prevention) Act, 1956.

49) The learned counsel for the appellant has also submitted that there is also no evidence on record against the appellant for convicting her under Section 5(1)(a) of the Immoral Traffic (Prevention) Act, 1956. He submits that the victim "X" was given shelter by the appellant to do household chores and there is nothing on record to show that she procured victim "X" for the purpose of prostitution.

50) Learned counsel for the appellant has further submitted that the trial court also did not take into consideration the contradictions in the evidence of prosecution witnesses. He submits that the victim girl in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973, has stated that the appellant and her husband charged Rs. 4000/-, Rs. 3000/- and Rs. 2000/- for prostitution by victim, however, in the FIR different rates were stated which was also deposed by the PW-1. However, he submits that the difference in the rates stated by the prosecution witnesses makes their testimony unreliable and the trial court has erred on relying on such evidence for convicting the appellant. As such he submits that the impugned judgment is liable to be set aside and the appellant is entitled to the acquitted of all the charges and to be released immediately.

51) On the other hand, Ms. Mary L. Khiangte, the learned Addl. Public Prosecutor has submitted that the trial court has rightly convicted and sentenced the appellant after properly considering the evidence on record and as such the impugned judgment does not warrants any interference by this court in this appeal.

52) She submits that non-mentioning of charges at the initial stage under Section 109/376 of Indian Penal Code as well as Section 17 of the POCSO Act, 2012, against the present appellant, is not fatal to the prosecution case as the appellant was well aware that she was tried for inducing the minor victim to prostitution which also constitutes offence of abatement under Section 109/376 of Indian Penal Code as well as under Section 17 of the POCSO Act, 2012. She submits that the appellant has failed to show any prejudice caused to her due to non-mentioning of Section 17 of the POCSO Act, 2012 and Section 109/376 of Indian Penal Code in the memorandum of charges.

53) She submits that under Section 216 of the Code of Criminal Procedure, the Court is empowered to alter or add any charge at any time before judgment is pronounced. She submits that such alteration or adding of charges may be done even after completion of evidence, arguments and reserving of the judgment. She submits that in the instant case the appellant has failed to demonstrate any prejudice caused to her due to alteration of charges from Section 376 of Indian Penal Code to Section 376/109 of Indian Penal Code as well as from Section 6 of the POCSO Act, 2012 to Section 17 of the POCSO Act, 2012. She submits that the evidence on record clearly established that the appellant conspired and intentionally aided the

commission of rape on the minor victim "X" and she was confronted with all incriminating evidence against her during her examination under Section 313 of Code of Criminal Procedure, 1973 and was given opportunity to rebut such incriminating evidence. Hence, she submits that the appellant has not suffered any prejudice due to alteration of charges by the trial court. In support of her submission learned Addl. Public Prosecutor has cited following rulings: -

- a) "***Nallapareddy Sridhar Reddy v. State of A.P.***", reported in ***(2020) 12 SCC 467.***
- b) "***KammariBrahmaiah v. Public Prosecutor, High Court of A.P.***", reported in ***(1999) 2 SCC 522.***
- c) "***Anna Reddy Sambasiva Reddy &Ors. Vs. State of Andhra Pradesh***", reported in ***(2009)12 SCC 546.***

54) The learned Addl. Public Prosecutor has also submitted that the appellant was not convicted only on the basis of statement of her husband which was recorded under Section 313 of the Code of Criminal Procedure, 1973 but on the basis of clear and uncontroverted incriminating evidence against her on record. She submits that the evidence of prosecution witnesses including that of the victim girl clearly shows that the victim was induced to go with several adult male persons for sex in return for payment of money by those persons. She also submits that in the evidence of the prosecution witnesses clearly shows that the present appellant also took money paid by clients for prostitution by victim "X". She submits that the electronic evidence, i.e., screenshot of WhatsApp chats and Facebook

Messenger also clearly shows that the appellant along with her husband caused the victim "X" to be taken away by different men for the purpose of paid sex and the money paid against the same was received by the appellant along with her husband. She submits that the trial court has rightly considered the incriminating evidence against the appellant and convicted her under Section 4(1)/5(1)(a) of Immoral Traffic (Prevention) Act, 1956 as well as under Section 6/17 of the POCSO Act, 2012 and Section 376/109 of the Indian Penal Code and rightly imposed appropriate punishment under the aforesaid provisions. Hence, she submits that the conviction as well as sentence imposed on the appellant is liable to be upheld and this appeal is liable to be dismissed.

55) Mr. H. Zodingsanga, the learned Legal Aid Counsel, appearing for the respondent No. 2 has adopted the submissions made by learned Additional Public Prosecutor and has submitted that this appeal is liable to be dismissed.

56) We have considered the submissions made by learned counsel for both sides. We have also gone through the materials available on record. We have also gone through the rulings cited by learned counsel for both sides in support of their respective submissions.

57) On perusal of the materials available on record, it appears that the present appellant (A2) as well as her husband (A1) were tried jointly along with three other accused persons. Out of whom one accused (A4) absconded and another (A5) was acquitted on getting benefit of doubt. One of the accused, namely, Daniel Lalhachuana (A3) was convicted by the trial court under Section 6 of the POCSO Act, 2012 read with Section 376 of the Indian

Penal Code. The present appellant (A2) along with her husband (A1) were convicted under Section 4(1)/5(1)(a) of the Immoral Traffic (Prevention) Act, 1956 as well as under Section 6/17 of the POCSO Act, 2012 read with Section 376/109 of Indian Penal Code. It is pertinent to mention herein that at page No. 30 in paragraph No. 6 of the impugned judgment the trial court has mentioned the penal provisions of POCSO Act, 2012 as Section 6/16 of the said Act, whereas, in page No. 32 in paragraph No. D of the impugned judgment the penal provision of the POCSO Act, 2012 is stated to be under Section 6/17 of the said Act. For the sake of clarity, we make it clear that the later i.e., Section 6/17 of the POCSO Act, 2012 is the correct penal provision.

58) The main contention of the learned counsel for the appellant is that the no charges were framed under Section 6/17 of the POCSO Act, 2012 as well as under Section 376/109 of Indian Penal Code against the appellant, however, she was convicted and sentenced for the said offences which is illegal and has caused immense prejudice to the appellant. For deciding this contention, let us look at the relevant provision in the Code of Criminal Procedure, 1973, which deals with such a circumstance, i.e., Section 464 of the Code of Criminal Procedure, 1973 which is reproduced as follows: -

“464. Effect of omission to frame, or absence of, or error in, charge. — (1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) In the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point

immediately after the framing of the charge;

(b) In the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

59) A bare perusal of the aforesaid provision makes it clear that no finding, sentence or order of a court of competent jurisdiction shall be deemed to be invalid merely on the ground of any error omission or irregularity in framing of charge or that no charge was framed unless the court of appeal, confirmation or revision is of the opinion that if failure of justice has been in fact occasioned thereby. It also provides that if such a court is of considered opinion that a failure of justice has occasioned thereby, it may take recourse to the options provided for by in Section 464 (2) of the Code of Criminal Procedure, 1973.

60) In the instant case, if we carefully examine the memorandum of charge prepared by the trial court while framing charges against the present appellant, on 18.08.2022, it appears that following particulars of offences are mentioned therein which was also read over and explained to the appellant on that day: -

"That, you during 13th January 2022 to last part of February 2022 induced the victim aged about 13 yrs for prostitution who stays with you to several adult men for paid sexual intercourse and received Rs. 4000 per night for a whole night or Rs. 1500 if not for a whole night. The places of these offences include hotel, public place and inside your rented house at Zuanctui and you are therefore liable for charge u/s 4(1) 5(1) (a) ITPA 1956, 376 Indian Penal Code, 6 of

POCSO Act."

61) On a bare perusal of the aforementioned particulars of the offence stated in the memorandum of charge, which were explained to the appellant on 18.08.2022, it appears that though there is omission on the part of the trial court to specifically mention therein the Section 109 of the Indian Penal Code as well as Section 17 of the POCSO Act, 2012, however, in very clear terms the accusation against the appellant were described therein. The accusation was very categorical in as much as it was for inducing the minor victim to have sexual intercourse with serval adult male, at various places, against payment of money by them. The particulars of offence with which the appellant was charged and which were read over and explained to her by the trial court, clearly makes out the offence of abetment of rape under Section 376/109 of the Indian Penal Code as well as it also makes out offence of abetting aggravated penetrative sexual assault against the victim girl under Section 17/6 of the POCSO Act, 2012. Thus, it appears that the particulars of the offence with which the appellant was charged with were read over and explained to her by the trial court and it gives sufficient notice to her that she is being tried for offence of abetment of offence under Section 6 of POCSO Act, 2012 and Section 376 of the Indian Penal Code. Hence, we are of the considered opinion that mere omission to mention Section 109 of Indian Penal Code and Section 17 of the POCSO Act, 2012, in the memorandum of charges, under the facts and circumstances of this case, at the best, may be considered as an irregularity without affecting the merit of the case. More so, when the appellant has failed to demonstrate any palpable prejudice caused to her.

62) The minority of the victim "X" has not been challenged by the appellant in this appeal. While deciding the point No. 1 formulated by the trial court, in the impugned judgment, the trial court after considering the birth certificate of the victim "X" which was exhibited as Exhibit "M" as well as the uncontested testimony of PW-2 & PW-3, in that regard, came to the finding that the date of birth of the victim "X" is 12.01.2009 and at the time of the alleged incidents, she was "minor" within the meaning of Section 2(cb) of the Immoral Traffic (Prevention) Act, 1956 as well as a "child" within the meaning of Section 2(d) of the POCSO Act, 2012. As the said finding has not been challenged and since we are also of the opinion that the finding arrived at by the trial court regarding minority of the victim girl is based on the evidence available on record, no further discussion is required on the said issue.

63) As regards conviction of the appellant under Section 4(1) of the Immoral Traffic (Prevention) Act, 1956 is concerned, it appears that the trial court, apart from considering the testimony of PW-1 & PW-2 in this regard, also took into consideration the answer given by the husband of the appellant, namely, A1, to question No. 16 put to him during his examination under Section 313 of the Code of Criminal Procedure, 1973, wherein he admitted that they used to share the money with the victim also. Though, the learned counsel for the appellant has objected to such a use of statement of co-accused by the trial court for arriving at the finding of guilt of the present appellant, however, even if we do not take the said statement into consideration, there are sufficient materials on record to justify the conviction of the appellant under Section 4(1) of the Immoral Traffic (Prevention) Act, 1956. For example, the victim girl (PW2) while deposing during her cross-

examination by the learned counsel for A1, at paragraph No. 11, has categorically stated that the appellant received money paid by the client from the out come of prostitution. Said evidence remained unrebutted throughout her examination and same is sufficient to come to the finding of guilt of the appellant under Section 4(1) of the Immoral Traffic (Prevention) Act, 1956.

64) As regards conviction of the appellant under Section 5(1)(a) of the Immoral Traffic (Prevention) Act, 1956 is concerned, there are sufficient evidence on record to justify the same. The said provision penalizes any person who procures or attempt to procure a person, whether with or without his consent, for the purpose of prostitution. The Black's Law Dictionary describe the word "procure" as "*(1) to obtain(something), especially by special effort or means; (2) To achieve or bring about (a result); and (3) To obtain a sexual partner for another such as minor or a prostitute.*" In the instant case, the uncontroverted evidence of the prosecution witnesses (mainly of PW-2 & PW-3), discussed in the foregoing paragraphs of this judgment, clearly shows that the victim girl was procured by the appellant and her husband in the name of looking after her as their own child and thereafter, they induced her into prostitution. The evidence of victim girl, to the effect that she was knowingly sent, on 13.01.2022, by the appellant and her husband, with an unknown person by telling her that he is her uncle, who had committed forcible sex with her, has remained intact. Similarly, the evidence regarding the fact that the victim was subjected to sex by A3 & A4 on various occasioned and that the appellant and her husband (A1) used to physically assault the victim whenever, she refused to go with the person whom they asked her to go with, also remained intact. The electronic evidence, i.e., screenshot of WhatsApp chats and Facebook Messenger also

clearly shows that the appellant along with her husband caused the victim "X" to be taken away by different men for the purpose of paid sex. The said evidence also remained uncontroverted as the defense side failed to demolish the same during cross-examination of the prosecution witnesses. The fact that the mobile phone of the appellant was used for such soliciting purpose also remained uncontroverted. These uncontroverted evidences, in our considered opinion, are sufficient for arriving at the finding of the guilt of the appellant under Section 5 (1)(a) of the Immoral Traffic (Prevention) Act, 1956.

65) As regards the offence of abetment under Section 376/109 of the Indian Penal Code as well as Section 17 read with Section 6 of the POCSO, 2012 is concerned, the fact that the victim is a minor and she was subjected to penetrative sexual assault on 13.01.2022 by a person with whom the victim was sent by the appellant and her husband has remained intact. The fact that she was subjected to penetrative sexual assault by A3 & A4 has also remained intact. The evidence of PW2 that she was asked the go with such persons by the appellant and her husband also remained intact. Further the evidence that in event of refusal by the PW2 to accompany the men with whom she was asked to go by the appellant and her husband, she used to be assaulted by them also remained intact. Under such circumstances the offence of abetment by the appellant and her husband of the commission of the offence of penetrative sexual assault upon the victim girl by the men with whom she was sent by them stands proved.

66) In view of the discussions made and reasons stated in the foregoing paragraphs, we are of the view that the finding of guilt of the appellant, by

the trial court, under Section 4(1)/5(1) (a) of Immoral Traffic (Prevention) Act, 1956, read with Section 6/17 of the POCSO Act, 2012 and Section 376/109 of the Indian Penal Code as well as the sentence imposed on the appellant for the aforesaid offences does not require any interference by us in this appeal. We find this appeal devoid of any merit.

67) This appeal is accordingly, dismissed.

68) Send back the records of the trial court along with a copy of this judgment to the trial court.

JUDGE

JUDGE

Comparing Assistant