



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No.1 of 2023

Date of Hearing : 01.06.2026

Date of Decision: 26.08.2026

Wanteilang Khongkhniang,
 S/o- Alos K. Khnlian
 R/O- H/No-22, Mawthang Sohkhylung
 Vill-Mawthang Sohkhylung-793108,
 East Khasi Hills District, Meghalaya

.....Accused/Appellant

-VERSUS-

The State of Meghalaya through,
 Secretary Home (Police) Department,
 Shillong, Meghalaya.

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.K. Bhuyan, Adv.
 Mr. P.P. Medhi, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
 Mr. E.R. Chyne, GA.

Judgment and Order

Per. B. Bhattacharjee, Judge:

1. The present appeal by the appellant has been preferred against the Judgment and Order dated 11.10.2022 passed by the Special Judge (POCSO), East Khasi Hills in POCSO Case No. 21 of 2015 convicting the appellant u/s



3(a)/5(l)/6/7/9(l)/10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and u/s 354/354A/354B/375(a) falling under 375(sixthly)/376/(2)(j)(n)/450/506 of the Indian Penal Code (IPC), 1860 and sentencing him to (i) rigorous imprisonment for 20 years and fine of Rs.1,00,000 u/s 376 (2) IPC, (ii) imprisonment for 7 years and fine of Rs. 50,000 u/s 10 of the POCSO Act, 2012, (iii) imprisonment for 10 years and fine of Rs. 50,000 u/s 450 IPC and (iv) imprisonment for 7 years and fine of Rs. 10,000 u/s 506 IPC.

2. The brief fact of the case is that an FIR dated 23.11.2014 was lodged by the survivor alleging that on 20.11.2014 at around 02:30 P.M. the appellant had committed forcible rape on her while she was alone at her residence. On the basis of the FIR, a case was registered as Laban P.S. Case No. 114 (11) 2014 u/s 3/4 POCSO Act, 2012 and the matter was investigated into. After completion of the investigation, a charge sheet bearing Charge Sheet No. 14/2015 dated 20.03.2015 was filed against the appellant u/s 3(a)/4 POCSO Act, 2012 and u/s 450/506 IPC.

3. At the trial, charges were framed against the appellant u/s 3(a)/4 POCSO Act r/w Section 450/506 IPC on 03.05.2016. The appellant pleaded not guilty and claimed trial. The prosecution examined 11(eleven) witnesses and exhibited 5 (five) documents in support of its case. On 20.06.2022, charges were altered/added to include Sections 3(a)/5(l)/6/7/8 POCSO Act, 2012 and Sections 354/354A/354B/375(a) falling under 375 (sixthly) /376/(2)(j)(n) IPC. The appellant pleaded not guilty to the newly added charges. No witness was recalled or re-examined after alteration/addition of the new charges. An enquiry was conducted by the Trial Court u/s 34(2) of POCSO Act, 2012 to determine the age of the survivor and for that purpose, both the parents of the survivor, who were previously examined as prosecution witnesses, were recalled and examined as CW1 and CW2. After the closure of the prosecution evidence, the statement of the appellant was recorded u/s 313 Cr.P.C. on 09.09.2022. The appellant declined to adduce any defence



witness. The learned Trial Court after hearing the parties by the impugned Judgment and Order convicted the appellant. Hence, this appeal.

4. Mr. A.K. Bhuyan, learned counsel appearing for the appellant submits that the prosecution case is full of contradiction as the FIR refers to only one incidence whereas the charge sheet speaks about two incidences. He submits that the FIR was lodged after 3 days of the alleged incident but the prosecution failed to offer any explanation for the delay making the entire case doubtful. He submits that the learned Trial Court failed to consider contradictory statements of the survivor with regard to the date of incident as the statement recorded by the doctor showed that the survivor stated the date of first incident to be on 16.11.2014. The learned Trial Court, he submits, also erred in not appreciating the evidence of PW6 who stated that no rape had taken place. Even the evidence of medical expert (PW8), according to the learned counsel, does not support the prosecution version of the case as there was no indication of any recent tear of hymen in the medical report. It is further submitted by the learned counsel that the learned Trial Court erred in determining the date of birth of the survivor on the basis of a birth certificate dated 06.04.2015 issued after the occurrence of the incidence. He also submits that no prosecution witness was recalled after alteration/addition of charges by the Trial Court depriving the appellant to further cross-examine the witnesses which caused serious prejudice to him.

5. The learned counsel for the appellant next submits that the survivor in her evidence as well as statement u/s 164 disclosed that she informed about the occurrence of the incident to few persons and named them, but none of the named persons was examined as a witness by the prosecution in the case. In addition, he submits that despite seizure of the clothes by seizure list (exhibit-3) and saliva swab, vaginal swab and blood sample by seizure list (exhibit-5) of the survivor, the seized items were not sent for forensic examination by the investigating authority. Non-examination of the persons named by the survivor and absence of forensic examination of the seized articles, according



to him, raises serious doubt about the prosecution case and calls for drawing of an adverse inference.

6. The learned counsel for the appellant also submits that the Trial Court has committed a gross error in framing charges and proceeding with the trial against the appellant without determining his age as the appellant was a minor at the time of the incident. He further contends that the learned Trial Court has failed to appreciate the provision of Section 29 and 30 of the POCSO Act, 2012 in its proper perspective and convicted the appellant without there being any cogent and trustworthy evidence. He submits that the learned Trial Court believed the narration of the survivor with regard to the incident of 20.11.2014, but disbelieved the incident of 09.11.2014 and 16.11.2014 and, in such a situation, could not have convicted the appellant. He submits that the quantum of punishment awarded by the Trial Court is far beyond any reasonable justification as the appellant is a young man and has no previous criminal record. He, thus, submits that the learned Trial Court has erred in law and facts in failing to appreciate the materials on record and came to a perverse finding and prays that the conviction and sentence of the appellant be set aside and quashed.

7. The following decisions are relied on by the learned counsel for the appellant in support of his submission: -

- i. *Tomaso Bruno and Another V. State of Uttar Pradesh*, (2015) 7 SCC 178 (para 21,42)
- ii. *Govindaraju @ Govinda V. State by Srirampuram P.S. & Anr., Criminal Appeal No. 984 of 2007* (para 39,45), (Supreme Court of India).
- iii. *The State, Govt. of NCT of Delhi V. Tufail*, CRL. L.P. 303/2019 (para 7,8) (High Court of Delhi)
- iv. *State of Rajasthan V. Bhanwar Singh*, (2004) 13 SCC 147 (para 6)
- v. *Raju V. State of M.P.*, (2008)15 SCC 133 (para 21)
- vi. *Kuna Alias Sanjaya Behera V. State of Odisha*, (2018) 1 SCC 296 (para 19)
- vii. *Thulia Kali V. The State of Tamil Nadu*, (1972) 3 SCC 393 (para 12,13,14)
- viii. *Manirul Islam V. State of Assam*, (2021) 6 GLR 55 (para 51,53)



- ix. *State of Rajasthan V. Ghewar Singh and Ors., DB Criminal Death Reference Nos. 1, 167 and 201/2018 (para 17-19), (Rajasthan High Court)*
- x. *Ramanand V. State of Uttar Pradesh, AIR 2022 SC 5273(para 117)*
- xi. *Biju Saikia V. The Stat of Assam, Crl. Appl (J)/2/2021 (para 38-44), (Gauhati High Court)*
- xii. *Reena Hazarika V. State of Assam, (2019) 13 SCC 289 (para 19,20)*

8. Conversely, Mr. N.D. Chullai, learned AAG appearing for the State-respondent supports the conviction and sentence of the appellant and submits that the decision of the Trial Court does not suffer from any infirmity or illegality. He submits that there was no delay in lodging the FIR as it was lodged within 3 days of the occurrence of the incident. The question of delay, according to him, in an offence involving sexual assault against a minor is not very vital as per the settled propositions of law. He submits that the evidence of the survivor (PW1) clearly indicates that she was raped by the appellant and there was no rebuttal of the same by the appellant in cross-examination of the survivor. The evidence of the survivor, he submits, is well supported by PW4 who stated that the mother of the appellant came to seek forgiveness from the survivor's parents as the appellant had committed a mistake. He submits that the evidence of PW6 that on 20.11.2014 while the survivor came for tuition, she was crying and informed that the appellant did bad thing to her corroborates the testimony of the survivor. In addition, he submits that PW8, the doctor who conducted medical examination of the survivor, opined that the survivor was sexually assaulted.

9. The learned AAG further submits that there is no contradiction between the statements of the survivor recorded during the course of the investigation and her evidence before the Trial Court. He submits that the survivor was all along consistent in narrating the facts of the incident and she was not confronted with her previous statements u/s 161 and 164 Cr.P.C. by the appellant at the time of the cross-examination. He submits that absence of



forensic report of the seized articles in the present case is of no consequence as the testimony of the survivor is sufficient to sustain conviction of the appellant. He submits that non-examination of the persons named by the survivor does not weaken the prosecution case as the evidence of PW5, PW6 and PW9 is sufficient to prove that the survivor had informed them about the wrongdoings of the appellant after the incident. He submits that no particular number of witnesses is required to prove a fact and it is the quality of the evidence and not the quantity that is material.

10. In support of his argument, the learned AAG has placed reliance on the following decisions: -

- i. *Marbet Nongsiej V. State of Meghalaya, Crl. A. No. 2 of 2019 (para 52, 57, 67, 68, 70)*
- ii. *State of Himachal Pradesh V. Prem Singh, (2009) 1 SCC 420 (para 6)*
- iii. *Bharwada Bhoginbhai Hirjibhai V. State of Gujarat, (1983) 3 SCC 217 (para 9,10,11)*
- iv. *Rajan V. State of Harayana, (2025) SCC OnLine SC 1952 (para 32 IV, VI, VII, XI, XII, XIII)*
- v. *Vijay V. State, (2019) SCC OnLine Del 10485 (para 20)*
- vi. *Paramjeet Singh V. State of Uttarakhand, (2010) 10 SCC 439 (para 21 to 30)*
- vii. *Arjun Sonar V. State of Arunachal Pradesh, (2025) SCC OnLine SC 2065 (para 6)*
- viii. *State of Himachal Pradesh V. Raghubir Singh, (2024) SCC OnLine SC 940 (para 10)*
- ix. *Deepak Kumar Sahu V. State of Chhattisgarh, (2025) SCC OnLine SC 1610 (para 5.5.5, 5.5.6, 5.5.7, 5.6, 5.8)*
- x. *Ganesan V. State, (2020) 10 SCC 573 (para 10)*
- xi. *Sanjay Darjee V. State of Sikkim, (2025) SCC OnLine Sikk 95 {para 7 (iii), 7 (iv)}*
- xii. *Imran Islam Bora V. State of Assam, (2023) SCC OnLine Gau 5365 (para 12, 13, 15,16)*
- xiii. *Sushil Kumar Tiwari V. Ram Sah, Criminal Appeal No. 3813 of 2025 arising out SLP (Crl) No. 18377 of 2024 (para 26, 27), (Supreme Court of India)*

11. Analysis of the prosecution evidence reveals that PW1, the survivor, in her deposition stated that on 20.11.2014 when she was busy in her household work, the appellant, who was staying in an adjacent house, came to her house



and enquired about the whereabouts of her mother and brother. While she was taking cloth from the bed, the appellant entered the house again and told her to give him a kiss, which she rejected. The appellant pulled her hands and forcibly kissed her. He also tried to pull her skirt down and in the process the skirt was torn. He pulled down his pant half way and pulled her to bed. She tried to resist him and pushed him but was not successful and he was raping her in standing position and also inappropriately touched upper body parts. She was shocked and when she came out of shocking stage, realised that her skirt was wet and the appellant after committing the rape left the house. She went to her mother's bedroom and cleaned herself. After sometimes she went for tuition where she narrated the incident to her friend. On the next day in school, she narrated the incident to her best friend. She also informed the matter to her tuition teacher and the appellant's girlfriend. Her tuition teacher advised her to report the matter at home. When she reached home after tuition, her elder sister saw her crying and came to know about the incident from her upon enquiry. Later, her sister called her father, mother, the house owner and also the appellant. The appellant denied the allegation and there was a huge argument, scolding at the appellant. The matter was informed to her grandmother who advised to report the incident to the police. She was taken to Ganesh Das Hospital for medical examination. She exhibited the FIR as Exhibit-1 and her statement u/s 164 Cr.P.C. as Exhibit-2.

12. The survivor in her deposition further stated that the incident narrated in the FIR was not the first incident as the appellant had earlier raped her in the same month of November, 2014 in his house and threatened her not to reveal the incident to anybody or else he would spoil her name by saying that she had willingly gone to him.

In her cross-examination, the survivor stated that both she and the appellant were tenants in the house of PW7. She stated that in the year 2014 she was studying in Class VIII. She and the appellant were very close friends and she used to ask for help from him for project work. Her mother also loved



the appellant. The appellant used to give her lift while going to school. She denied that the appellant came to her house asking for fire matches on 20.11.2014. While confirming the statements made in her chief, she stated that she narrated the incident to her tuition teacher and her family members and later on 23.11.2014 she went to file the FIR before the police. She stated that she did not shout for help when the appellant committed rape on her as she was in a state of shock. While the police took her for medical examination, she had changed her clothes.

There was no attempt by the appellant to rebut the narrative of the survivor with regard to the incident of 20.11.2014. The appellant did not even try to establish that he did not visit the resident of the survivor on that particular date. In fact, the suggestion put forward to the survivor in her cross-examination that the appellant went to her place on 20.11.2014 asking for fire matches confirms the presence of the appellant in the house of the survivor at the time of the incident. Furthermore, despite the fact that there was no mention of occurrence of any other incident other than that of 20.11.2014 in the FIR, the appellant did not cross-examine the survivor to disprove her assertion in the evidence with regard to occurrence of the former incident.

In her re-examination, the survivor stated that she informed about the incident to the girlfriend of the appellant i.e. PW9. She also stated that she told PW5, the cousin of PW9, that the appellant raped her. The appellant declined to cross-examine the survivor on the re-examination.

13. PW2, the mother of the survivor, in her deposition stated that after 2 to 3 days of the incident, the survivor told her that the appellant came to their house when she was in her in-law's place and after making an enquiry about her and her eldest son's whereabouts, raped the survivor. On the day when the survivor stated her about the incident, the appellant was present in her house. She scolded him why he committed such a heinous crime against the survivor though she treated him as her own son, the appellant did not reply and kept quiet. Later, she called her house owner and narrated the incident and they



advised her to report to the police. She along with her relative went to file a complaint to the PS and the appellant at that time fled away. She stated that the survivor did not inform the matter on the day of the incident as she was scared of the appellant.

In her cross-examination, PW2 admitted that she had not witnessed the incident but came to know from her daughter after three days. The appellant while cross-examining PW2 did not try to contradict the fact that he was present at the time when the survivor disclosed the incident to PW2 and that he was scolded by PW2. The appellant also did not dispute the fact that he fled away when PW2 went to file the complaint.

PW2 was again recalled and examined as CW2 for determination of age of the survivor where she stated that the survivor was born on 23.04.2000 at Ganesh Das Hospital, Shillong. She exhibited Exhibit-C2 as the birth certificate of the survivor issued by the Registrar of Birth and Death, Shillong Municipal Board and stated that the birth was registered on 07.09.2000 and the certificate was issued on 06.04.2015. The appellant declined to cross-examine CW2 to dispute the date of birth of the survivor.

14. PW3, the father of the survivor, in his deposition stated that he was informed by his son that the survivor was raped by the appellant. On getting the information, he went to the appellant's house and gave him 2/3 slaps and thereafter their landlord came and stopped him. He also stated about going to the Laban PS and reporting the matter to the police.

In his cross-examination, PW 3 stated that he did not see the occurrence but heard it from his son. He did not know that the survivor was having a love affair with the appellant. The statement that he went to the house of the appellant and slapped him 2/3 times after coming to know of the incident, was not sought to be disturbed in his cross-examination by the appellant.

PW3 was again examined as CW1 on the issue of determination of age of the survivor where he stated that the survivor was born on 23.04.2000 and exhibited the Secondary School Leaving Certificate of the survivor dated



23.05.2017 as Exhibit-C1 showing the date of birth of the survivor on 23.04.2000. In his cross-examination, he answered in affirmative the question as to whether the same date of birth was given at the time of admission of the survivor in school.

15. PW4 in her deposition stated that she went to the house of the survivor after being informed of the incident by PW3. On reaching the house of the survivor she saw one lady, who, she later came to know was the mother of the appellant. The mother and father of the survivor told PW4 that the mother of the appellant came to seek forgiveness as her son, the appellant, had committed a mistake and proposed to allow the appellant to marry the survivor. PW4 stated that the parents of the survivor wanted to report the matter to the police, but they did not know how to go about as they are illiterate. She enquired about the incident from the survivor and the survivor narrated the incident to her. Before going to the police station PW4 was told that the survivor still had the clothes which she was wearing at the time of the incident. PW4 stated that the FIR was written by her and exhibited her signature on the FIR as Exhibit- 1/2. She also exhibited Exhibit- 3, the seizure list, and Exhibit- 3/1 as her signature.

In her cross-examination, PW4 stated that the FIR was read over to the survivor before being lodged with the police. She admitted that the mother of the appellant did not tell her that she asked for forgiveness and proposed to make the appellant marry the survivor, but was informed of the same by the parents of the survivor. She remembered that the police seized one skirt and one black cycling short.

16. PW5 in his deposition stated that he did not know anything about the case, but one day the survivor told him that the appellant had done bad thing to her without telling what bad thing was done. He told the survivor to report the matter to her parents.

In his cross-examination, PW5 confirmed that the survivor told him one day after the incident, but he could not remember the exact date. He stated that



he and survivor were friends since childhood and he knew the appellant who was his neighbour. He did not know whether the survivor and the appellant were having a love affair.

17. PW6 in her deposition stated that she was taking private tuition at her residence and the survivor was her student. On 20.11.2014, the survivor came for tuition at about 5 P.M. and started crying. On repeated enquiry, the survivor informed that her neighbour, the appellant, did bad thing to her. PW6 enquired what bad thing was done, the survivor said that the appellant touched her body. PW6 advised the survivor to inform her parents.

In her cross-examination, PW6 stated that on the day of the incident when the survivor came for tuition, she looked sad and was crying. PW6 stated that the survivor narrated the incident privately in absence of other students. She could not say if the survivor was in a relationship with the appellant.

18. PW7 in her deposition stated that the appellant was a tenant in her house. The survivor was also a tenant in her house. She stated that the father of the survivor had a brawl with the appellant and from there she learnt that the appellant had committed rape on the survivor.

In her cross-examination, PW7 stated that the appellant was a tenant in her house for one year. He did not create any trouble when he was staying as a tenant and there was no complaint against him. She admitted that she had not seen the incident but heard about it. She did not know if the appellant was in a relationship with the survivor.

19. PW8, the Medical Officer, in her deposition stated that on 23.11.2014 she conducted medical examination of the survivor. She had also recorded the history of the case narrated by the survivor. The survivor narrated that on 20.11.2014 while she was washing utensils in her house, her neighbour came and sexually assaulted her. The survivor resisted. The survivor also stated that she was sexually assaulted on 16.11.2014 in the house of the appellant. PW8 medically examined the survivor and on general examination she found everything was normal, but on examination of survivor's genital part, she



found that her hymen was torn with 8 O' clock position. It was an old tear. PW8 collected the biological sample of the survivor and handed over to the police. After examining the survivor, PW8 prepared a report and exhibited the same as Exhibit-4. She opined that the survivor was sexually assaulted. She also exhibited Exhibit-5.

In her cross-examination, PW8 admitted that she did not find any medical evidence of recent sexual intercourse.

20. PW9 in her deposition stated that she knew the survivor who is her relative. The survivor disclosed to her that she was raped by the appellant. The survivor was 14/15 years old and studying in Class VIII at the time of the incident. PW9 stated that she did not know the appellant and had not seen him also.

In her cross-examination, she stated that she knew the survivor right from her childhood. She could not say if the survivor had a liking for the appellant. She stated that the survivor narrated the incident to her near her house.

21. PW10, the investigating officer, in her deposition stated that on 23.11.2014 an FIR was lodged by the survivor alleging that she was raped by the appellant. The FIR was registered and the case was endorsed to her for investigation. She took the survivor to Ganesh Das Hospital for medical examination and seized the biological sample of the survivor collected by the doctor vide Exhibit-5. She examined the survivor and thereafter the survivor's statement was recorded u/s 164 Cr.P.C. The mother of the survivor produced the wearing apparels of the survivor which were seized vide Exhibit-3. She visited the place of occurrence and examined four witnesses. On 10.12.2014, she handed over the case diary to the O/C Laban PS as she availed maternity leave.

In her cross-examination, PW10 admitted that the FIR was filed three days after the incident. She stated that her investigation commenced from 23.11.2014. She admitted that the survivor had taken bath and changed her



clothes after the incident. She also admitted that the seized articles were not sent for forensic analysis by her and she did not find any witness to the incident. She denied the suggestion that the survivor and the appellant were having an affair and the FIR was filed because of misunderstanding between them.

22. PW11, a police officer, in her deposition stated that she could not recollect the date when the case was endorsed to her for submission of charge sheet as all the formalities observed in conducting the investigation in the case was carried out by PW10 who later proceeded for maternity leave. After she received the C/D she observed that the formalities in the investigation had been completed by the previous I/O and the matter was discussed with O/C Laban PS for further steps. The O/C went to meet the S.P. for approval and accordingly she was directed to file charge sheet against the appellant. Before filing the C/S she had gone through the C/D including the statements of witnesses u/s 161 Cr.P.C. and the statement of the survivor u/s 164 Cr.P.C. She stated that it was evident from record that a *prima facie* case was found well established against the appellant. She had never seen the appellant.

In her cross-examination, she admitted that she did not take part in the investigation of the case. She also could not remember charge sheet was filed after how many days of handing over of the case to her.

23. The appellant's statement was recorded u/s 313 Cr.P.C. by the Trial Court where he denied all the accusations against him. However, he admitted that he went to the house of the survivor on 20.11.2014 to take matchsticks but did not enquire about her mother and brother. He also admitted that the father of the survivor slapped him after two or three days but not on 20.11.2014.

24. The statement of the survivor was recorded u/s 161 and 164 Cr.P.C. during the course of the investigation of the case. The survivor was not confronted with her previous statement at the time of her cross-examination



by the appellant. With regard to the incident of 20.11.2014, the survivor in her statement u/s 164 Cr.P.C stated: -

“.....On 20th November, 2014 while I was washing utensils at home at around 2:30 in the day time,(appellant) entered our house. He asked about the whereabouts of my mother and elder brother. I told him that my mother had taken my younger brother for a walk and that my elder brother had gone to the toilet outside. In fact my elder brother was not home but I lied as I was scared of(appellant).(appellant) went outside. I remembered that I had to wash some clothes as told by mother so I went to the bedroom to take the clothes.(appellant) suddenly entered and asked me to kiss him and I said “NO”. He however pulled me and kissed me on my lips. He started touching my body and tried to take off my skirt. He covered my mouth and he managed to pull my skirt till it got torn. He pulled down his zip and he tried to pull me to the bed but I fought back. He made me stand near one chair and he held me tight. He took out his penis and I lost consciousness and I could not understand. When I regained consciousness I found my panty and skirt pulled down to my knees and they were wet with some white discharge. It was disgusting. I changed my clothes and I had a wash. I told about this incident to my friendin the tuition. The following day I told about the incident to three of my classmates, &..... They told me that I should tell my family. I did not dare tell my family as I was scared. In the tuition I just cried & my tuition teacher asked me the reason why. I told her and she advised me to tell my family. I then told my family after this(appellant) however made accusations against me.”

25. Comparison of the aforementioned statement of the survivor with her evidence before the Trial Court does not show any notable contradiction in so far as her narrative in relation to the incident of 20.11.2014 is concerned. The only difference appears to be in relation



to the date of the alleged first occurrence which finds no mention in the FIR. The survivor in her statement disclosed the date of first occurrence to be on 09.11.2014, whereas, in her evidence she did not mention any specific date and only stated in the same month of November 2014. However, the above discrepancy does not go to the root of the accusation made in the FIR and no way has the effect of dislodging the credibility of the evidence of the survivor in the case. Thus, the contention of the appellant that the discrepancy in the date of first occurrence casts a doubt in the entire prosecution case deserves no acceptance, more particularly, when the appellant had chosen not to confront the survivor with the above fact in her cross-examination to relate it with the incident mentioned in the FIR to attach element of falsity in the version of the survivor.

26. With regard to the contention of the appellant that the learned Trial Court erred in proceeding with the trial of the case without first determining the age of the appellant who was a minor at the time of the incident, it is seen that the appellant did not take any such plea before the Trial Court during the course of the trial. Although, the plea of juvenility can be raised at any point of time, the same has to be supported by some material. The appellant has neither made any assertion with regard to his date of birth in the present appeal nor placed any document before this Court in support of his plea of being a minor. Hence, the contention deserves no consideration.

27. The contention of the appellant that the birth certificate (Exhibit-C2) should not have been accepted by the Trial Court for determining the age of the survivor as it was issued only on 06.04.2015, after the occurrence of the incident, has no merit as the evidence of CW2 and the Exhibit-C2 clearly project that the birth of the survivor was registered on 07.09.2000, i.e. just after few months of her birth. Simply because the birth certificate of the survivor was obtained on a later date,



it cannot be termed suspicious to disprove the prosecution case. Moreover, there is nothing on record to show that the appellant had disputed the date of birth of the survivor in the cross-examination of CW1 and CW2.

28. The plea of the appellant that the denial of opportunity to cross-examine the witnesses after the alteration/addition of charges by the Trial Court has highly prejudiced the appellant finds no support from the materials on record. The record of the Trial Court reveals that on 20.06.2022 charges were altered/added to include Section 3(a)/5(1)/6/7/8 POCSO Act, 2012 and Sections 354/354A/354B/375(a) falling under 375 (sixthly) /376/ (2)(j)(n) IPC. Thereafter, on 23.06.2022, the parties were heard by the Trial Court on whether proceeding immediately with the trial would prejudice the appellant in his defence or the prosecution in conducting the case. Both the parties agreed and preferred to proceed with the trial and did not express any desire to recall any witness for the purpose of examination or cross-examination. The plea of the appellant, as such, has no leg to stand and is hereby rejected.

29. As pointed by the learned counsel for the appellant, the police in the present case did not send the seized material for FSL examination highlighting a flaw in the investigation. However, the survivor should not suffer or lose justice due to omission or lapses by the investigating agency. The absence of FSL report is not a ground for drawing an adverse inference against the prosecution or for discarding a case of penetrative sexual offence against a minor survivor provided the testimony of the survivor is consistent, credible and unblemished by major contradiction. An FSL report is only a corroborative piece of evidence. It is not substantive proof on its own and its absence does not automatically nullify a reliable first-hand account. The absence of physical injuries, an intact hymen or missing forensic traces does not disprove penetration or sexual assault, as physical tearing or wounds do



not occur in every instance. In the instant case, in absence of any contradiction, the evidence of the survivor is found to be consistent, trustworthy and reliable. Thus, the question of drawing adverse inference on account of failure on the part of the investigating agency to send the seized article for FSL examination does not arise.

30. Coming to the issue of non-examination of the persons who were informed of the incident by the survivor, the statement u/s 164 and the evidence of the survivor reveals that a number of persons were informed of the incident by the survivor. It is true that all the persons named by the survivor have not been examined as witnesses, but some of them i.e. PW5, PW6 and PW9 were examined as witnesses and their evidence before the Trial Court confirmed that the survivor had informed them of the bad thing done to her by the appellant after the incident. The law values the quality of evidence over the number of witnesses examined. Although, the survivor did not disclose that she was raped and only stated that the appellant had done bad thing to her without disclosing the actual offence in details to PW5, PW6 and PW9, such non-disclosure or partial disclosure cannot be termed as a contradiction to the prosecution version of the case and the testimony of the survivor. After all, a victim of sexual offence of the age of the survivor cannot be expected to share every detail of the incident to everyone by overcoming the severe shock and trauma and fear of social stigma.

31. The decisions of *Tomaso Bruno and Another (supra)* and *Govindaraju @ Govinda (supra)* relied on by the learned counsel for the appellant in support of his contention of drawing adverse inference are not applicable in the present case as it is not a case where the prosecution has failed to produce the best evidence. The absence of FSL report with regard to the seized article and non-examination of all the witnesses



named by the survivor, in the facts and situation of the present case, are not fatal to the prosecution case.

32. The decisions of *Tufail (supra)* and *Bhanwar Singh (supra)* also have no application in the present matter as the version of the survivor does not suffer from any contradiction insofar as the allegation against the appellant is concerned. Similarly, the case of *Raju (supra)* is also not applicable in the present case as the facts and situation of the said case is not identical to the present case in hand.

33. Paragraph 19 of the case of *Kuna Alias Sanjaya Behera (supra)* lays down proposition of law with regard to appreciation and acceptability of evidence in criminal trial. The paragraph reads as under:-

“That conviction can be based on a testimony of a single eyewitness if he or she passes the test of reliability and that it is not the number of witnesses but the quality of evidence that is important, have been propounded consistently in Anil Phukan, Ramji Surjya, Patnam Anandam and Gulam Sarbar with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise.”

The above proposition, in fact, goes against the contention of the appellant that since all the persons named by the survivor in her statement was not examined, the prosecution is not been able to prove its case beyond reasonable doubt.

34. The law laid down in the case of *Thulia Kali (supra)* with regard to delay in lodging FIR was in the context of an offence u/s 302/379 IPC. However, the case of *Prem Singh (supra)*, referred by the learned AAG, was delivered in the context of sexual offence wherein the Apex Court held: -

“6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before



coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. In that score, learned counsel for the appellant is right that the High Court has lost sight of this vital distinction.”

In the present case there is nothing on record to suggest that the delay of 3 (three) days in lodging the FIR has resulted in introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. The plea of delay, as such, deserves no consideration.

35. The decision of *Manirul Islam (supra)* was rendered in a case where the testimony of the prosecutrix was found to be full of contradiction and unreliable. The case of *Biju Saikia (supra)* was decided by noticing material contradictions/omissions /improvement in the version of the prosecution witnesses. Hence, the above decisions have no application in the present case. The case of *Ghewar Singh and Ors. (supra)* concerns offence of gang rape and as such is not relatable to the facts and circumstances of the instant case.

36. The plea raised on behalf of the appellant basing on the decision of the case of *Ramanand (supra)* is also not tenable in view of the fact that the appellant was not represented by a Legal Aid counsel before the Trial Court. The case record reveals that the appellant was all along represented by a counsel of his choice at the trial. Merely because the trial has not ended in the expected line of the appellant, he cannot come up with a plea that the counsel representing him was not experienced/competent.

37. The case of *Reena Hazarika (supra)* does not apply in the present case as the statement of the appellant recorded u/s 313 Cr.P.C. does not show that any specific defence was taken by him. The learned counsel for the appellant has also not pointed out to any specific defence



taken by the appellant after conclusion of the prosecution evidence. Thus, the question of non-consideration of defence taken u/s 313 Cr.P.C. does not arise.

38. The Apex Court in the case of Ganesan (supra) observed as under: -

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay v. State of M.P., it is observed in paras 9 to 14 as under : (SCC pp.195-98)

“9.....

10.....

*11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing **FIR** for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under.....*

8.....

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 molestation.'

12.....

13.In State of H.P v. Raghubir Singh this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan.

14.....”

39. The position which emerges from above is that in cases involving sexual offence, minor contradictions or insignificant discrepancies in the statement of a victim should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual offence is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court should examine the broader probability of a case and not get swayed away by minor contradiction or insignificant discrepancies to throw out an otherwise reliable prosecution case. Furthermore, the delay in filing FIR for sexual offence cannot be equated with the case involving other offences. The delay in case of sexual assault may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof.

40. The present case is not a case where the prosecution has failed to establish the foundational facts. The prosecution case is firmly established by the evidence of PW1(survivor) and well supported by other prosecution witnesses in so far as the post incident events with regard to scolding and slapping of the of the appellant are concerned. The appellant has not made any allegation of hostility or vindictiveness



on the part of the survivor in making of the accusation against him in order to render the statement and the evidence of the survivor doubtful. The totality of the circumstances appearing in the case does not disclose that the survivor had a strong motive to falsely involve the appellant and, therefore, there should not be any hesitation on the part of this Court in accepting her evidence adduced during the course of the trial.

41. Furthermore, as noted earlier, the appellant in his statement u/s 313 Cr.P.C. admitted that he went to the house of the survivor to take matchstick on 20.11.2014. However, he did not say anything as to what happened thereafter, whether he collected matchstick from the house of the survivor or not. The appellant further stated that the father of the survivor (PW3) slapped him two or three days after 20.11.2014 without telling the reason for which he was slapped. The failure on the part of the appellant to offer any explanation or defence further strengthens the prosecution version of the case.

42. For what has been discussed above, there is no merit in the present appeal and the same is hereby dismissed.

43. The Trial Court record be returned forthwith.

44. Let an authenticated copy of this Judgement and Order be furnished to the parties immediately.

(B. Bhattacharjee)
JUDGE

(W. Diengdoh)
JUDGE

Meghalaya
26.08.2026
"Abhinandan,PS"