

GAHC030000562021



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

**Case No. : CRL.A(J)/5/2021**

Lalpianga  
Mizoram

VERSUS

State of Mizoram  
Mizoram

**Advocate for the Petitioner** : Ms. Lalngaihsaki Fanai (Amicus Curiae)

**Advocate for the Respondent** : Mrs. Linda L Fambawl (Addl.PP, Mizoram)

**BEFORE**  
**HONOURABLE MR. JUSTICE NELSON SAILO**  
**HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

**JUDGEMENT**

**Date** : 23.02.2023  
(Nelson Sailo, J)

Heard Ms. Lalngaihsaki Fanai, learned Amicus Curiae for the appellant and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for the State respondent.

**2.** This is an appeal from jail filed by the appellant against the Judgment & Order dated 07.06.2019 passed by the Court of Special Judge, POCSO Act,

2012, Lunglei, Mizoram convicting him under Section 6 of the POCSO Act and sentencing him to undergo Rigorous Imprisonment for 12 years and to pay a fine of Rs. 10,000/- and in default thereof to undergo further Simple Imprisonment for 6 (six) months.

**3.** The case of the prosecution in brief is that an FIR was lodged before the Officer-in-Charge of Lawngtlai Police Station on 20.11.2017 by one Smt. R. Lalthianglimi (complainant) to the effect that the daughter of her elder sister, who was aged 14 years was raped by her step-father (the instant appellant) ever since she was 11 years old from the year 2014. The last incident occurred during the latter part of October, 2017. The appellant threatened her niece (the victim) not to reveal to anyone about the incident and he threatened to kill her, her mother and her younger siblings if she revealed to anyone about the incident. She however revealed the incident to the paternal aunt of the complainant on the night of 13.11.2017. In this regard, the family after discussing about the matter decided to lodge the FIR. The complainant also stated that the FIR could not be lodged sooner since they stayed at a far off place. The appellant was a resident of Kawlchaw village and he raped the victim at home and also in the forest. As such, the complainant requested that necessary action may be taken.

**4.** As a result, LTI P.S Case No. 72/2017 dated 20.11.2017 under Section 6 of the POCSO Act was registered and investigated into. Upon completion of the investigation, the Investigating Officer, having found a prima facie case well established against the appellant submitted the Final Report/Charge-sheet No. 10/2018 on 09.02.2018 before the Court. Thereafter, charge was framed against the appellant under Section 6 of the POCSO Act to which, the appellant pleaded

not guilty and claimed for trial. As such, trial commenced and the prosecution examined as many as 8 (eight) prosecution witnesses while the defense examined only 1 (one) defense witness. The appellant was also examined under Section 313 CrPC and after the parties were heard, the learned Trial Court, by the impugned Judgment & Order and the Sentence Order convicted and sentenced the appellant in the manner as already stated herein above.

**5.** Ms. Lalngaihsaki Fanai, learned Amicus Curiae submits that there were no eye witnesses to the alleged crime and that the prosecution failed to prove the case against the appellant beyond any reasonable doubt. As such, the impugned Judgment & Order and the Order of Conviction are vitiated and liable to be set aside. Referring to the deposition of DW-1 (mother of the victim), the learned Amicus Curiae submits that the victim started residing with them at Kawlchaw from Class-VI onwards. Before that, she was with them when she was 7 years of age for a short while and then she went back to her father's house at Lawngtlai, where she had also resided earlier. The father of DW-1 was serving with the Mizoram State Transport and therefore, was posted at different towns. Therefore, the learned Amicus Curiae submits that there is no surety and prove that it was the appellant who committed the alleged crime. She also submits that from the evidence of DW-1, it can be clearly seen that DW-1 denied of having taken the victim to the Doctor at BRTF Camp for pregnancy test. She also did not purchase any drugs to terminate the pregnancy and her husband also did not instruct her to purchase any drugs. Therefore, there are no materials to implicate the appellant to the alleged crime.

**6.** The learned Amicus Curiae further submits that the filing of the FIR is an afterthought as there is considerable delay in filing the same. The same appears

to be only a fabrication, since the families of the victim on the maternal side were not happy with the appellant due to his drinking habits. The learned Amicus Curiae also submits that there is no medical evidence to implicate the appellant and there is also no FSL examination report to support the case of the prosecution. Besides, there being no corroboration in the testimony of the prosecution witnesses, the evidence led by the prosecutrix is not of a sterling quality. The appellant with DW-1 has 4 (four) children and one of them expired in the month of November, 2018. Therefore, considering the fact that he is the sole bread earner of the family, Court should take a lenient view of the matter and acquit the appellant from the charge.

**7.** The learned Amicus Curiae also submits that there exist two possible views in the given facts and circumstances of the case and one such view is for giving the appellant the benefit of doubt. She submits that when two views are possible, the view which is in favour of the accused person should be adopted. Even on this count, the appellant should be given the benefit of doubt and be acquitted from the charge. In support of her submissions, the learned Amicus Curiae has relied upon the following authorities:-

*(i) Prakash Chand Vs. State of Himachal Pradesh, (2019) 5 SCC 628.*

*(ii) Rai Sandeep alias Deepu Vs. State (NCT of Delhi), (2012) 8 SCC 21.*

*(iii) Harijana Thirupala and Others Vs. Public Prosecutor, High Court of A.P, Hyderabad, reported in (2002) 6 SCC 470.*

**8.** Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor on the other hand

submits that there is no infirmity in the conviction of the appellant. Referring to the evidence of PW-1 (complainant), she submits that the complainant was informed over telephone by her friends residing at Kawlchaw West that they suspected something untoward happening in the family of the accused and they informed PW-1 over telephone. PW-1 then informed her aunty Smt. Zikpuui at Siaha (PW-5) and also told her that she will be going to Siaha. When PW-1 arrived at Siaha, her other relatives had already escorted the victim from Kawlchaw West to Siaha. The victim had informed about the forcible sexual inter-course committed upon her by the appellant to her aunty and other relatives and further, the victim had also been forced to terminate her pregnancy. According to PW-1, when she asked the victim to narrate about the incidents which befell her, the victim was initially frightened but then narrated about the incidents.

**9.** The learned Addl. Public Prosecutor submits that the evidence of PW-1 is corroborated by the evidence of PW-6, who had gone to Kawlchaw to pick up the victim. According to the evidence of PW-6, when he reached Kawlchaw to pick up the victim, her mother and the other siblings, the appellant did not permit him to take the victim but only her mother. Suspecting that something untoward might have happened between the appellant and the victim, he forcibly picked up the victim alone. In his cross examination, PW-6 stated that when he asked the victim whether the appellant had sexually assaulted her, she did not reply but started weeping. The learned Addl. Public Prosecutor therefore submits that it is clear that the appellant had sexually assaulted the victim and the statement of PW-6 is corroborated by the evidence of PW-5.

**10.** The learned Addl. Public Prosecutor further submits that the statement of the victim was recorded by the Judicial Magistrate under Section 164 of the Cr.PC and thereafter during the trial. The statements and version of the victim has been consistent throughout with the allegation that it was the appellant who had committed rape upon her. Even the statement of the victim before the medical Doctor also corroborates what she had narrated before trial and during trial. Under the circumstances, she submits that the testimony of the victim is trustworthy, corroborated by other prosecution witnesses and is therefore, nothing sort of sterling quality. The appellant himself has also admitted his commission of the crime which can be seen from the appeal filed by him from jail. In short, the appellant has not pleaded his innocence but has only prayed for reduction of the sentence. Under the facts and circumstances, the learned Addl. Public Prosecutor submits that there is no merit in the appeal and the impugned Judgment & Order and the Sentence passed by the learned Trial Court should be up-held. In support of her submission, Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor relied upon the following authorities:-

(i) *State of Himachal Pradesh Vs. Sanjay Kumar Alias Sunny*, reported in (2017) 2 SCC 51.

(ii) *Ganesan Vs. State represented by its Inspector of Police* , reported in (2020) 10 SCC 573.

**11.** We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record including the LCRs.

**12.** As may be noticed, it is the case of the prosecution that the appellant, who is the step-father of the victim committed rape upon the victim, who was a minor from the year 2017 and the last incident occurred in the latter part of 2017. The appellant threatened the victim not to reveal what he did to her and said that he would kill her mother, her younger siblings and herself if she did. However, the victim revealed what had befallen her to her paternal aunt Smt. Zikpuui on the night of 13.11.2017. The family members upon discussing the issue decided to submit an FIR on 20.11.2017 before the Officer-in-Charge, Lawngtlai Police Station. In order to appreciate whether the conviction of the appellant can be sustained and also the sentence imposed upon him, let us examine the evidence that was led during the trial.

**13.** PW-1 is the complainant and the maternal aunt of the victim. In her examination-in-chief, she deposed that since the biological mother and the biological father of the victim did not get married legally, all the certificates of the victim bear the name of her grandfather as her father. She stated that she resides in Aizawl and sometime during the month of September/October, 2017, she was informed over telephone by her friends residing at Kawlchaw West that they suspected something untoward happening in the family of the accused/appellant. They informed her that the appellant would beat up the victim and her mother often and therefore, they requested her to take some steps. She then informed her aunty Smt. Zikpuui at Siaha and told her that she would be going to Siaha. Before she reached Siaha, her other relatives had already escorted the victim from Kawlchaw West to Siaha. The victim informed her aunty about the forcible sexual inter-course committed by the appellant upon the victim and the other relatives but she did not narrate about the

termination of pregnancy. PW-1 on arriving Siaha found the victim to be very frightened and therefore, she coaxed her to narrate everything without fear. The victim then informed her that the appellant made her terminate the pregnancy. She was afraid that if the appellant came to know of any report to the Police, he would carry out his threat to kill her mother and her siblings. PW-1 stated that at first, they intended to submit an FIR at Siaha, but since the place of occurrence was under the jurisdiction of Lawngtlai, she proceeded to Lawngtlai Police Station and submitted the FIR. She also stated that she stood as a seizure witness of the Birth Certificate of the victim. She exhibited the Birth Certificate of the victim, the FIR, her signature in the FIR, the seizure memo and her signature in the seizure memo as M. Exhibit-1, Exhibit P1, Exhibit P1(a), Exhibit P(ii) and Exhibit P(ii)(a) respectively. In her cross examination, she stated that the mother of the victim did not inform them about the pregnancy of the victim or the termination thereof as she had no suspicion on the appellant.

**14.** The victim was examined as PW-2 and in her examination-in-chief, she stated that she was born on 17.02.2003 and was living with her step-father since her childhood along with her biological mother and other siblings at Kawlchaw West. She stated that sometime in the year 2014, the appellant requested her to accompany him in the jungle to look for vegetables. In the jungle, the appellant told her to take off her pants and when she refused, he hit her on her backside with his dao and threatened to kill her if she refused. She reluctantly took off her pants and the appellant forcibly had sexual inter-course with her. He threatened her that if she narrated the incident, he would kill her mother and her siblings. After this, until a complaint was lodged before the Police, the appellant forcibly had sexual inter-course with her many times in the

jungle and also at home when no one was present. She stated that she did not remember the number of occasions he had sexual inter-course with her and that it was almost a daily affair. In the year 2015, she attained puberty and that the appellant continued having forcible sexual inter-course with her even after she attained puberty. In the year 2017, she complained of headache and vomiting and she was taken to the Doctor in the BRTF Camp. Her urine was tested and she was found positive in the pregnancy test. She did not disclose as to who had caused the pregnancy, since she was afraid of the threat made by the accused. Her mother also suspected other persons and not the appellant. The appellant instructed her mother to go and purchase the medicine at Siaha for terminating the pregnancy and accordingly, the pregnancy was terminated. The people of the village suspecting that there was some untoward incident informed her paternal relatives at Siaha. Her paternal relatives summoned her to Siaha where she was questioned by her grandmother Smt. L. Zikpuii. She narrated all the incidents to her grandmother and a complaint was lodged before the Lawngtlai Police Station by her maternal aunt. She stated that she was taken to Lawngtlai Police Station and her statement was also recorded by the Judicial Magistrate and that she was also medically examined at Lawngtlai Civil Hospital.

**15.** Smt. L. Zikpuii was examined as PW-5 and in her examination-in-chief, she stated that she knew the appellant who was present in the Court and that the victim was her granddaughter from the paternal side. She stated that her brother informed her over telephone that the mother of the victim desired to be brought to Siaha and therefore, she should go to their village (Kawlchaw West) to pick her up. However, as she was indisposed, she sent her son Sh. F.C

Rohlupaia and his companion Sh. Lalropaia to pick up the mother of the victim as well as the victim herself. The mother of the victim however did not want to come to Siaha and therefore, her son brought back the victim alone to Siaha. On arrival at Siaha, the victim took bath and went to sleep and she noticed that the victim was holding her stomach as if in pain. Even the next day, she found the victim holding her stomach in pain and therefore, she enquired about it from her. The victim on being asked said that she was having stomach ache. The following day, she again enquired from the victim as to why her stomach was paining and this time, the victim informed her that the appellant had sexually assaulted her in the year 2014 in the jungle and thereafter, several times both in the jungle and at home when nobody was present. The appellant had also threatened her not to reveal the same to anybody. She further stated that she was forced to take pills by the appellant for terminating the pregnancy and the medicine was allegedly purchased by her mother from Siaha. In her cross examination, PW-5 reiterated what she had stated in her examination-in-chief.

**16.** Sh. F.C Rohlupaia was examined as PW-6 and in his examination-in-chief, he stated that he knows the accused person present in the Court and that he does not remember the exact date, but it was a Sunday when he was instructed by his mother (Smt. L. Zikpuui) to pick up the victim and her children along with the victim. When he reached the village, the appellant told him to pick up the victim's mother only and leave the victim behind. This raised his suspicion and therefore, he forcibly picked up the victim alone. The mother of the victim stayed back, since the appellant did not allow the other siblings to be picked up. In his cross examination, PW-6 stated that when he had gone to pick up the victim, upon asking the victim as to whether the appellant had sexually

assaulted her, the victim did not reply but started weeping. Besides this, PW-6 reiterated what he had stated in his examination-in-chief.

**17.** Dr. Ngurnunzami Sailo, who examined the victim on 20.11.2017 was examined as PW-3. In her examination-in-chief, she stated that she received a requisition from the Police to medically examine the victim and she accordingly examined her. During examination, the victim informed her that the appellant, who is her step-father, committed raped upon her several times and the first time was in the forest/jungle. PW-3 stated that she recorded the report made by the victim in her examination report. She also found swelling of her left wrist and that her hymen was ruptured at 6 O'Clock position and it was an old rupture. PW-3 exhibited the medical examination report and her signature as Exhibit P V and P V (a) respectively.

**18.** Smt. Lawmzuali, mother of the victim was examined as DW-1 by the defence. In her examination-in-chief, she stated that the appellant is her second husband, whom she married in the year 2004 and together they have 4 (four) children. The victim was her daughter from her earlier marriage and she was residing with her father at Siaha and Lawngtlai. She resided with them from the time she was 7 years old and in between, she resided again with her father at Lawngtlai. Her father was serving with Mizoram State Transport and therefore, he was posted to different towns. When the victim was studying at Class-VI, they brought her to Kawlchaw to reside with them and it was during such time that the alleged incident was said to have occurred. After the incident, she was taken to Siaha to reside with her grandmother. She further stated that she did not recollect any incident about the victim being taken to the Doctor at the

BRTF Camp for pregnancy test. She also denied of having purchased any drugs to terminate the pregnancy of the victim and that her husband also did not instruct her to purchase any drugs. In her cross examination, she stated that it was not true that there was sufficient opportunity in the jungle or otherwise for the appellant to commit the alleged offence. She also denied about the alleged termination of pregnancy of the victim.

**19.** The judicial statement of the victim under Section 164 Cr.PC was also recorded on 21.11.2017 by the Chief Judicial Magistrate, Lawngtlai and he was also examined as PW-4 during the trial. From the statement of the victim recorded under Section 164 Cr.PC and also her statement recorded during the trial, it is seen that her version that she was sexually assaulted by the appellant since the year 2014 is consistent. Likewise, the fact that due to repeated sexual assault even after she attained puberty, she became pregnant and was forced to terminate her pregnancy by the appellant by making her consume pills. The version of the victim is also duly corroborated by the version of PW-1, PW-3, PW-4, PW-5 & PW-6 in particular apart from the other prosecution witnesses. The medical evidence also reveals that the hymen of the victim was ruptured at 6 O'Clock position and that it was an old tear.

**20.** The learned Amicus Curiae had submitted that from the evidence of DW-1, it could be seen that the victim was not regularly residing with the appellant, her mother and her other siblings at Kawlchaw West. However, from the evidence of DW-1, it is seen that the victim resided with the appellant, her mother and her other siblings when she was about 7 years old and thereafter, residing with her grandfather at Lawngtlai. However, she again came to reside

with the appellant, her mother and her other siblings when she was studying in Class-VI and it was during such time that the alleged incident must have happened according to DW-1 herself. The other submission made by the learned Amicus Curiae is that there is a delay in filing of the FIR. It may however be seen that since the victim was put under threat by the appellant and she was staying with him at Kawlchaw West and therefore, she was in fear to report the matter to anyone. It was only after she was brought to Siaha from Kawlchaw West that she could muster up the courage to reveal about the sexual assault committed upon her by the appellant. Upon coming to learn about the incident which befell the victim, the family members decided to file the FIR at Lawngtlai Police Station.

**21.** The Apex Court in the case of *Tulshidas Kanolkar Vs. State of Goa*, reported in (2003) 8 SCC 590 held that delay in lodging the FIR cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. Therefore, mere delay in filing the FIR does not in any way rendered the prosecution version brittle.

**22.** The Apex Court in the case of *State of Punjab Bs. Gurmit Singh and Others*, reported in (1996) 2 SCC 384 in the given facts of that case held that Courts cannot overlook the fact that in sexual offences delay in the lodging of

the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the Police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. In the present case as well, as can be seen, the victim on having been threatened did not have the courage to report the matter to anyone including her mother. However, after she was taken to Siaha, she somehow could reveal what had happened to her on being coaxed. The family after giving a thought about it decided to file an FIR in the Police Station under whose jurisdiction the alleged offence had occurred. The explanation for the delay in our considered view only justifies the delay in filing the FIR.

**23.** The Apex Court in the case of *State of Himachal Pradesh Vs. Sanjay Kumar Alias Sunny (Supra)* at paragraph No. 31 held as follows:-

*“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be*

*believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {[See Bhupinder Sharma v. State of Himachal Pradesh](#)[4]}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove."*

**24.** From the above abstract, it can be seen that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. If the Court finds it difficult to accept her version, it may seek corroboration from other evidence which lends assurance to her version. In the instant case, it may be seen that the version of the victim has been consistent right from the time her juridical statement was recorded till she was examined as prosecution witness during the trial. As already stated in the foregoing paragraphs, the version of the victim is also duly corroborated by the other prosecution witnesses. As such, the narrative of the victim does inspire confidence that she had been sexually violated by the appellant on many occasions.

**25.** As regards medical evidence, it may be seen that as per the prosecution, the last incident of sexual assault happened sometime in the month of October whereas, the victim was medically examined subsequently only on 20.11.2017 and therefore, it is obvious that there can be no fresh signs of rape. Even the medical report indicates that samples were not collected for FSL examination in view of the fact that the tearing in the hymen was an old tear.

**26.** The learned Amicus Curiae had also submitted that the evidence of the victim is not of a sterling quality and cannot be relied upon. The Apex Court in *Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*, (2012) 8 SCC 21 in the given

facts of this case held that “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end. In the present case as well, as already noticed herein above, the victim has made consistent statement that she had been sexually assaulted by the appellant and that any discrepancies pointed out by the learned Amicus Curiae are insignificant and cannot be fatal to the case of the prosecution.

**27.** Thus, upon due consideration of the case in its entirety, we are of the considered view that the conviction of the appellant can be sustained. However, as regards the sentence imposed upon him, having regard to the fact that the minimum sentence that can be imposed for conviction under Section 6 under the un-amended POCSO Act was 10 years and also coupled with the fact that the appellant has no past criminal records and family to look after, we are of the view that the ends of justice would be made if the sentence imposed upon the appellant is reduced to 10 years Rigorous Imprisonment instead of 12 years and the remaining part of the sentence imposed by the learned Trial Court should remain.

**28.** It is ordered accordingly.

**29.** In view of the conclusion arrived at, we do not find it necessary to dwell upon the authorities relied upon by the learned Amicus Curiae.

**30.** With the above observation and direction, the appeal stands disposed of. In appreciation of the valuable assistance rendered by the learned Amicus Curiae, she shall be paid a fees of Rs. 9,000/- (Rupees Nine Thousand) only by the Mizoram State Legal Services Authority.

**JUDGE**

**JUDGE**

**Comparing Assistant**