

GAHC030001962020



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

Case No. : Crl.A./7/2020

Ibomcha
S/O Tanubabu, Silchar Barak, Cachar District
C/o Salem Veng, Lunglei, District, Mizorma

VERSUS

State of Mizoram and Anr
Mizoram 2:Bishoran

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Ms Linda L Fambawl

Linked Case : I.A.(Crl.)/9/2020

Ibomcha
S/O Tanubabu
Silchar Barak
Cachar District C/o Salem Veng
Lunglei
District
Mizorma

VERSUS

State of Mizoram
Aizawl
Mizoram

2:Bishorani
d/o Bishojit
Ramthar Veng

Aizawl
Mizoram

Advocate for the Petitioner : Mr B Lalramenga
Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 12-06-2023

Heard Mr. B. Lalramenga, learned counsel for the appellant along with Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for the State respondent.

2. This is an appeal against the Judgment & Order passed by the learned Special Court, POCSO Act, Lunglei Judicial District, Lunglei dated 20.03.2020 in Criminal Trial No.224 of 2018 reference Lunglei P.S. Case No.116/2018 dated 26.06.2018, wherein the appellant was convicted under Section 4 of the POCSO Act and for sentenced to undergo 7 (seven) years Simple Imprisonment with a fine of Rs.1,000/- (Rupees One Thousand) id SI for 1 (one) week.

3. Facts of the case in brief is that on 26.06.2018 at 11:10 AM a written FIR was received from the alleged victim who will be referred as 'X' henceforth (17) years by Lunglei Police Station, to the effect that in the month of March 2018, the present appellant had entered the house of the 'X' while her other family

members were away. According to the 'X' 's FIR, the appellant then pusher her down on a bed and sexually assaulted her by holding both her hands and had sex with her against her will and as a result, she requested the Police to take appropriate action against the present appellant. Hence, the Lunglei Police State Case No. 116 of 2018 dated 26.06.2018 U/s 4 of POCSO Act, 2012 was registered against the appellant. After the investigation was completed, a Chargesheet along with its annexures/enclosures was submitted before the Ld. Trial Court against the present appellant for trial. On framingcharge under section 4 of POCSO Act, the appellant pleaded not guilty and claimed for trial.

4. The learned Trial Court after hearing the deposition of 6 (six) prosecution witnesses examined the convict/appellant under Section 313 Cr.PC, wherein the convict appellant denied the evidence adduce against him and thereafter, the evidence of 3 (three) defence witnesses were also recorded. The learned Trial Court after considering the evidence on record and hearing both the parties convicted the appellant under Section 4 POCSO Act and sentencing to undergo S.I 7 years with a pay fine of Rs. 1000/- id one week. Aggrieved by this the instant appeal has been filed.

5. The learned counsel for the Mr. B. Lalramenga submits that there several grounds for setting aside the impugned Judge and order dated 20.03.2020.

Firstly, there is delay in filing of the FIR wherein the incident is said to have occurred during the month of March, however the FIR was filed in month of June i.e. 26.06.2018, no explanation has been given for the above delay in the FIR. The learned counsel also submits that there are many inconsistencies in the testimony of the prosecutrix, however, the learned Court had relied on the sole testimony of the prosecutrix. He submits that from the statement of the victim girl recorded under Section 161 Cr.PC and the judicial statement recorded under 164 Cr.PC and also from her deposition recorded before the Court, several consistencies can be made out. The alleged victim girl in her deposition had mentioned the date of the incident as on 20.03.2018 however, this was never mentioned in her statement under 161 nor in her judicial statement recorded under 164 Cr.PC. In the judicial statement she mentions that the appellant had touch her chest, however in her deposition before the Court she says that the appellant had touched her breast. In her statement recorded under 164 Cr.PC she had mentioned that she was so frightened she could not scream and that their house was in a secluded place and no one could have heard her scream, however, during her cross-examination in the Court she had stated that she lived in her house with other people living below their house. The alleged victim girl had also mentioned about a male friend to whom she had first disclose the incident and on his advice she had informed her mother in the early part of

June. However, there is no mention about this male friend anywhere else in the deposition. In her deposition recorded by the Court she had stated that she directly told her mother about the incident. The learned counsel led the court through the inconsistencies in her statements with regards to the incident and submits that the prosecutrix therefore cannot be considered a sterling witness.

6. The learned counsel for the appellant further submits that the medical report of the victim girl shows that there were no injury marks present and that the hymen was torn old tear and submits that in the statement of the 'X' recorded under 161 Cr.PC she had stated that she had a boy-friend before and that she had sexual intercourse with her boy friend before the alleged incident. Therefore, the tear of the hymen can be explained as the 'X' admitted that she had sexual intercourse with her boy friend. No injury marks were present however, the victim girl had mentioned that the appellant was rough when he had raped her. Under such circumstances, some injury marks should have been marked on her. The delay in filing the FIR has not been properly explained though she has deposed that she kept quiet after the incident because she was ashamed and depressed, however, in her cross examination she had stated that she had gone to Church and mingled with the society and therefore the explanation given for delay in filing the FIR cannot be accepted.

7. In support of his submission he has cited the decision of the Court of this **Co-ordinate Bench** of this Court in **2021 Vol 3 GLT page 128 paras 33 & 34**, he has also cited the decisions of the Apex court in **Santosh Prasad v. State of Bihar**, reported in **(2020) 3 SCC 443**, **Mussaiddin Ahmed v. State of Assam**, **(2009) 14 SCC 541** : **Krishan Kumar Malik v. State of Haryana**, reported in **(2011) 7 SCC 130**, **Krishan Kumar Malik v. State of Haryana**, reported in **(2011) 7 SCC 130**.

8. With regards to the age of the X, the learned counsel submits that the birth certificate of the victim is doubtful, wherein she was shown to be aged 17 years 6 months that the name of the mother of the X has been wrongly recorded in the birth certificate is different from the name of her mother recorded in her judicial statement.

9. He further submits that during the investigation of the case, call records were not taken evidence though the alleged victim had mentioned that the appellant had called several times over the phone. The learned counsel also submits that from the evidence of DW-1 and DW-2, it can be seen that there was enmity between the mother of the victim and the appellant since the appellant had not allowed the mother of the victim girl to collect money under the projects that the money was needed for building the church.

10. And for the above reasons, the appellant should be given the benefit of doubt and written of the charge under Section 4 of the POCSO Act by setting aside the Order by the learned Special Court, POCSO Act, Lunglei Judicial District, Lunglei dated 20.03.2020 in Criminal Trial No.224 of 2018 reference Lunglei P.S. Case No.116/2018 dated 26.06.2018.

11. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor on the other hand submits that the victim girl is a starling witness since her statement recorded under 161 Cr.PC, written statement recorded under 164 Cr.PC and her deposition recorded before the court are consistent with regards to the incident of rape. Her statement is consistent as to how the appellant had committed the offence of rape on her and other inconsistencies pointed out are minor inconsistencies while the incident of rape has been consistent throughout. Minor inconsistencies such as age, the date mentioned by the learned counsel for the appellant does not negate the evidence with regards to the commission of rape upon the alleged victim. She further submits that in the medical report, it is not possible for signs of injury, the incident had happened during the month of March and the victim was examined only on 30th May, 2018 and therefore signs of injury was not expected to be found since the X was not examined immediately after the commission of the offence.

12. The learned Addl. Public Prosecutor further submits that the mother of X is not a necessary witness since the X herself has deposed of the incident in the Court, the age of the X in the birth certificate can be accepted and she is clearly a minor since she is said to be a student of Class-XII. In the charge framed against the accused, he has also admitted that the X girl is a minor. With regards to the delay in filing the FIR she has explained the reason for her delay in filing the FIR by stating that she was shy and ashamed of the incident as can be seen from the statement recorded under Section 161 Cr.PC. The accused himself has also admitted holding her on her shoulder and that the deposition of the accused trying to show that there was enmity between the mother of the X and the accused does not hold whether since it is unlikely that the minor victim would risk her reputation by filing a false case of rape for such flimsy reasons.

13. The learned Trial court has rightly relied on the sole testimony of the 'X' girl which has been consistent in her statement recorded under Section 161 Cr.PC, her judicial statement recorded under Section 164 Cr.PC and her deposed in the Court. In support of her submission she has relied on the decision of the Apex Court in **Narender Kumar vs. State (NCT of Delhi)** reported in **2012 7 SCC 171 paras 20 & 21** and **State of Punjab vs. Gurmit Singh & Others** reported in **1996 2 SCC 384 para 8.**

14. Having heard the submissions made by both the parties, the evidence adduced in the Court is herein perused carefully. The statement of the PW-1 On 16 May 2019 is reproduced below:

“I know the accused Ibomcha Singh who is present in Court today. Around 20th March, 2018, I received a phone call from Ibomcha Singh. He asked me if my parents were at home and I replied that they were not. He said that he would visit me but I said that I had to clean the house. Because I replied that way, I thought he would not come to our place but he returned up after a little while. I was in the bedroom and he came inside. He came and held me from behind. He made me sit on the bed with him. He pulled me and pushed me down on the bed. I was frozen with fear and could not even shout. I told him to let me go but he did not. He held me down. I was wearing a black t-shirt and pants. He pulled down my pants and underwear and had sex with me inserting his penis in my vagina. I did not tell my mother about the assault till the month of June, 2018. I could not sleep in the nights. I did not want to attend school and I could not concentrate on my studies. I did not like to speak to anybody including my own parents and had even thought of committing suicide. I stopped mixing with my classmates and kept to myself. I developed a problem of memory loss and started falling back in my studies as I could not give proper attention. As I could not sleep properly, my health got bad. I was always very tired. I did not have any appetite and lost a lot of weight. My wish is that the accused should be punished properly for what he did to me so

that he does not repeat the offence against any other woman and learns how to respect them. I went to Lunglei Police Station and filed an FIR against Ibomcha Singh.”

15. During cross examination she denied that the case was filed because of some personal enmity between the accused and her mother and she denied the suggestion that the accused never came to their house and committed the offence of rape against her, she admitted that in the month of May, 2018 she had help her parents for the Silver Jubilee Programme held in the Church and that she could not absence herself from Sunday School, however she admit her excuses sometimes saying that she is unwell and stayed at home instead of going to Sunday School.

16. PW No.2 : F. Lalhruitluanga and PW No.3 Lalthabuanga are the seizure witnesses when the birth certificate of the X was seized from the house of the X. And PW- No.3

17. PW No. 4 is Dr. Lalrinmuani Sailo who is the Medical officer and Surgeon at the Civil Hospital who on 26.06.2018 at around 6:00 P.m. had medically examined the victim girl. On her medical examination she did not find any physical injuries other than an old tear of her hymen. The tear in the hymen would indicate that she had sexual intercourse earlier. PW No.4 also stated that the victim girl had told her that the appellant/convict came and had sex with her

forcefully, the witness also deposed that the appellant/convict was also produced for medical examination and he had admitted before her that played with the victim girl with his hand and joke with her but denied having sexual intercourse with her. The convict/appellant was found to be capable of engaging in sexual intercourse normally.

18. PW No. 5 V.L Malsawma deposed that on 26.06.2018 an FIR was filed by X stating that the convict/appellant had raped her around the 20th March, 2018. She did not state the exact date of the assault but she had stated before him that the delay in filing the FIR was because she was ashamed to speak out about the incident. She had fallen into depression and was not eating properly. This was noticed by her mother and when asked she finally revealed what had happened. She stated that when both her parents were not in the house and she had just finished her bath, convict appellant had come to the house and pushed her on the bed and had sexual intercourse with her against her will. She also stated that she had previously had sexual intercourse with another person. He arrested the convict/appellant who denied having sexual intercourse with her but admitted holding her on her shoulder. The birth certificate of the girl was seized. She was then sent her to Court for medical examination and for her statement to be recorded by the judicial Magistrate. She tried to obtain the CDR

details from the phone of the X which could not however be retrieved as her phoned was not functioning properly. However, he was transferred to Aizawl before the completion of the investigation.

19. PW-No.6 Deposed that the case was investigated by V.L. Malsawma and on his transferred the case was handed over to him for investigation. He examined the case record and it appeared that the appellant/convict had actually committed rape on the victim, he phone dis opinion from the document such as statement of the witnesses and the medical report accordingly submitted the charge-sheet on cross-examination. He admitted that he did not visit the P.O. and that he did not examine the witnesses himself nor that he interrogates the accused.

20. DW-No.1 Ibomcha Singh is the appellant/convict who has deposed before the Court that he was working at Meitei Christian Fellowship at Lunglei and was holding the post of Secretary in the fellowship. The mother of X was a committee member of the fellowship and he used to accompany Xs mother to various houses to pray since she believed that she got some commands from God. They used to receive lots of gifts since it was believed that they were sent by God. The appellant/convict believe that X's mother was using him to make money so he stopped accompany her however X's mother tried to make him

accompany her to some Mizo houses, where she said she had seen visions from God of her preaching. He then shouted at her for taking money and tried to stop her because of this they began to have a dispute. On 15th June, 2018 X's mother then called him to her house and told him that he had molested her daughter, he denied this and X's mother told him that he should resign from his work as Evangelist within two weeks and leave Lunglei otherwise she would make a report to the Synod Office and to the Police. The father of X also came from the bed room and started beating and assaulting him. Thereafter, he left their house after which he explained what had happened to the Synod Office. However, on 26.06.2018 evening at around 6:00 PM the police came and arrested him, he deposed that he was implicated in the case because of X's mother.

21. During cross-examination he denied that he was in romantic relationship with 'X' and denied that used to phone and message her telling her about the strange relationship with his wife.

22. DW No.2 C. Lalzawmliana deposed that around the month of July, the appellant/convict had come to his house with a Pastor in connection with a Criminal allegation against him and that he was called by the Synod Moderator in-charge of the South, namely Rev. R.C. Lalnghakliana who had asked him to

submit his resignation because of the allegation. DW No.2 stated that he had personally gone and spoke to Rev. R.C. Lalnghakliana asking him to give the appellant/convict an opportunity to explain himself. Thereafter, on hearing the appellant/convict, the order that he should resign was also cancelled. However, he was arrested by the police and not allowed on bail. The father of X was the Vice Chairman of Meitei Christian Fellowship but he and his wife discontinued their activities with the fellowship after this incident. He believes that the allegation against the appellant convict was motivated by X's mother who was involved in collecting funds improperly for her own purposes.

23. DW No. 3 Lalhlimpuii Hnamte deposed that he knew the appellant/convict who was a good character, however she did not know about anything about the case.

24. On perusal of the impugned Judgment and order of the trial court, it is seen that the learned trial court had relied on the sole testimony of the prosecutrix 'X' for convicting the appellant under section 4 POCSO Act , finding her to be a sterling witness.

The Apex court in a similar case in ***Santosh Prasad v. State of Bihar***, (**supra**) held as follows:-

”5.2. From the impugned judgments and orders passed by both the

courts below, it appears that the appellant has been convicted solely relying upon the deposition of the prosecutrix (PW 5). Neither any independent witness nor even the medical evidence supports the case of the prosecution. From the deposition of PW 1, it has come on record that there was a land dispute going on between both the parties. Even in the cross-examination even PW 5, prosecutrix had admitted that she had an enmity with Santosh (accused). The prosecutrix was called for medical examination by Dr.Renu Singh, Medical Officer and PW 7 Dr.Renu Singh submitted injury report. In the injury report, no sperm as well as RBC and WBC were found. Dr.Renu Singh, PW 7 Medical Officer in her deposition has specifically opined and stated that she did not find any violence marks on the body of the victim. She has also categorically stated that there is no physical or pathological evidence of rape. It is true that thereafter she has stated that possibility of rape cannot be ruled out (so stated in the examination-in-chief). However, in the cross-examination, she has stated that there was no physical or pathological evidence of rape.

5.3. *As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the*

accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

5.4. *Before considering the evidence of the prosecutrix, the decisions of this Court in Raju [Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] and Rai Sandeep [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , relied upon by the learned advocate appearing on behalf of the appellant-accused, are required to be referred to and considered.*

5.4.1. *In Raju [Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] , it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)*

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in *Gurmit Singh* case [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

5.4.2. In *Rai Sandeep* [*Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , this Court had an occasion to consider who can be said to be a "sterling witness". In para 22, it is

observed and held as under: (SCC p. 29)

“22. In our considered opinion, the “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, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the

version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.

5.5. *With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?*

5.4.3. *In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130: (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

6. *Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the*

alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall the accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4.00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW 1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW 5, prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the

appellant and the accused is to be given the benefit of doubt.”

25. In the instant case since the learned Trial court has also relied on the sole testimony of the prosecutrix, the evidence of the prosecutrix is first scrutinized. This court finds that there are variations in the statement of 'X' in her statement recorded under 161 Cr.P.C and her Judicial Statement recorded under section 164 Cr.P.C which were reproduced verbatim by the learned trial court in the impugned judgment and order. It is noticed that in her statement under 161 Cr.P.C 'X' statement that she stated that the appellant came into her room and hugged her and told that he loved her and pulled her towards the bed against her will. He removed her pants, he touched her vagina against her underwear and then took off her underwear and had sexual intercourse with her". This detail was not mentioned in her judicial statement and her deposition in the court. In her statement under section 164 Cr.P.C she has also stated that the appellant after he raped her, told her that his semen did not enter her and there was nothing to worry about as she will not get pregnant. This was not mentioned in her deposition in the court or in her statement under section 161 Cr.P.C. In her statement under section 164 Cr.P.C she has also stated that she told her male friend about the incident who told her to tell her parents and thus she told her mother in the early part of June, however, there was no mention of

this male friend in her deposition in the court. In her deposition she also states that on the morning of that day, she had received a phone call from the appellant asking her if her parents were at home, which is not stated in her other statements. Because of these discrepancies in her statements, this court finds that the testimony of the prosecutrix does not inspire confidence and cannot be considered a sterling witness.

26. For the above reasons this court finds it necessary to examine the other prosecution evidence available on record to corroborate the statement of 'X'. The prosecution witnesses examined are PW1 the prosecutrix herself, PW 2 & 3 who are the seizure witnesses of her birth certificate, PW 4 the medical doctor who examined the prosecutrix, PW 5 the first case I.O and PW 6 who is the second I.O on the transfer of PW 5. It is seen that no independent witnesses examined since the mother of 'X' or the male friend of 'X' to whom 'X' informed of the incident have not been made prosecution witnesses. The phone record of the phone calls between the victim 'X' and the appellant have not been included as evidence. This court finds that the medical examination report cannot be relied on to support the case of the prosecutrix since the incident is said to occur during the month of March 2018 and the medical examination was done on. The prosecutrix in her statement recorded under 161 Cr.P.C has also stated that she had previous sexual intercourse with her male friend before the

alleged incident. The delay in filling the FIR has also not been explained sufficiently. Even if the prosecutrix was hesitated to file the FIR immediately being shy or depressed as stated by her, it is strange that no steps was taken by her mother, who was told of the incident in the early part of June, the FIR was filed only on 26.06.2018 by the prosecutrix herself. There is no explanation for the delay even after the mother was informed of the incident. It is also noted from the evidence of the defence witness that there was some strained relationship between the mother of 'X' and the appellant. The difference in the name of the mother of 'X' as recorded in the birth certificate and the name of her mother stated by the prosecutrix 'X' also remains unexplained.

27. For the above reasons, this court is constrained to hold that the appellant should be given the benefit of doubt finding that the prosecution has failed to prove, beyond any reasonable doubt, the guilt of the appellant under section 4 POCSO Act. The Judgment & Order passed by the learned Special Court, POCSO Act, Lunglei Judicial District, Lunglei dated 20.03.2020 in Criminal Trial No.224 of 2018 reference Lunglei P.S. Case No.116/2018 is set aside and quashed. The appellant on acquittal of the charge under section 4 POCSO Act shall be released from jail immediately and set at liberty unless required in some other case.

28. Crl.A No.7 of 2020 is thus allowed and stands disposed of.

JUDGE

Comparing Assistant