

GAHC030000382023



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

Case No. : Crl.A./4/2023

Sh. J. Sanglura
S/o Sapbela (L)
R/o Chhingchhip Venglai, Serchhip District, Mizoram.

VERSUS

The State of Mizoram and Anr.
Aizawl. 2:Smt. Liankhumi (Informant

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

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

::: B E F O R E :::

THE HON'BLE MR. JUSTICE NELSON SAILO
THE HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of Hearing : 18.09.2024

Date of Judgment : 16.10.2024

J U D G M E N T & O R D E R (CAV)

(Nelson Sailo, J)

Heard Mr. Lalpianfela Chawngthu, learned counsel for the appellant, Ms. Mary

L. Khiangte, learned Addl. Public Prosecutor for the State and Mr. T. Lalzekima, learned Legal Aid Counsel for respondent No. 2.

[2.] This is an appeal filed by the appellant against the Judgment & Order dated 19.09.2022 passed by the Presiding Officer, Fast Track Special Court, POCSO Act, Aizawl in S.C Case No. 30/2019 corresponding to Criminal Trial No. 332/2019 by which the appellant was convicted under Section 6 of the POCSO Act and sentenced to undergo Rigorous Imprisonment for 20 years with a fine of Rs. 10,000/- and in default to undergo further Rigorous Imprisonment for six (6) months.

[3.] The case of the prosecution in brief is that an FIR was lodged on 19.09.2018 by the complainant (PW-1) to the effect that the appellant on 05.09.2018 had sexual intercourse with the prosecutrix who is her grand-daughter and that he had also earlier committed sexual intercourse with her in the year 2016 and in the month of July, 2018 as well. As a result, Serchhip P.S Case No. 78/2018 dated 19.09.2018 under Section 6 of the POCSO Act was registered and investigated into. Upon the conclusion of the investigation, the case I/O (PW-10) finding a prima facie case under Section 376(3) IPC read with Section 6 of the POCSO Act to be well established against the appellant, filed the chargesheet.

[4.] The Trial Court then framed the charge under Section 6 of the POCSO Act against the appellant on 13.06.2019, which was denied by him and he claimed to

be tried. Trial therefore commenced and during which, the prosecution examined as many as eight (8) prosecution witnesses including the prosecutrix while the defense examined two (2) defense witnesses including the appellant himself. After the appellant was examined under Section 313 Cr.PC and the parties were heard, the learned Trial Court convicted and sentenced the appellant in the manner as already stated herein above. Aggrieved with the same, the appellant has filed the instant appeal.

[5.] Mr. Lalpianfela Chawngthu, learned counsel at the outset submits that the conviction of the appellant was on the basis of the statements recorded under Section 161 Cr.PC and also the statements of the prosecutrix recorded under Section 164 Cr.PC. In this connection, he has drawn the attention of this Court to paragraph No. 17 of the impugned Judgment & Order. The learned counsel submits that the statements recorded under Section 164 of the Cr.PC is not a substantive evidence and that it can only be used to corroborate the statements of a witness and/or to contradict a witness. Similarly, the statements recorded under Section 161 Cr.PC cannot be relied upon to convict an accused and that statements made under the said provision are made without administering an oath. He submits that in the absence of substantive evidence, the appellant could not have been convicted and sentenced by the learned Trial Court through the impugned Judgment and Order. In support of his submission, the learned counsel relies upon

the case of *Ram Kishan Singh Vs. Harmit Kaur & Anr. (1972) 3 SCC 280* and the Judgment & Order dated 25.01.2024 passed by a Coordinate Bench of this Court in Criminal Appeal No. 12/2023 (*C. Vanramnghaka Vs. State of Mizoram & Anr.*).

[6.] The learned counsel further submits that although the complainant in the FIR has mentioned that the incident happened on 05.09.2018 but in her evidence during the trial, she has nowhere mentioned about the incident having happened on 05.09.2018. Similarly, the said date is not to be found in the evidence of the prosecutrix (PW-2) herself. Although PW-4 and PW-5 in their evidence during the trial had mentioned that the incident happened on 05.09.2018 but since the complainant and the prosecutrix have not said anything about the incident happening on 05.09.2018 in their evidence, there is clearly a missing link and therefore, the benefit of doubt should be given to the appellant.

[7.] The learned counsel further submits that PW-4 in her cross-examination had also stated that the prosecutrix is slightly mentally challenged and that she was in the habit of relating lies and therefore what she said was not always believed. The learned counsel submits that in view of such evidence and the missing link between the evidence led by the prosecution witnesses, the impugned Judgment & Order convicting the appellant cannot be sustained and should be set aside. The learned counsel also submits that the learned Trial Court had convicted and sentenced the appellant on the same day without sentence hearing. Therefore,

there is gross violation of the principles of natural justice and even on this ground, the impugned Judgment & Order should be set aside. In support of his submission, the learned counsel relies upon the case of *Allauddin Mian & Ors. Vs. Sharif Mian & Anr. AIR 1989 SC 1456*.

[8.] Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the prosecutrix was examined under Section 164 Cr.PC wherein, after few basic primary questions were put to her and which she could easily answer. The prosecutrix stated that on 5th of September, which was a Teachers' Day, she and her friend (PW-5) had gone to the house of the appellant to drink water and while they were about to go back to the School, the appellant pulled her back to his kitchen and after pulling down her underwear, he thrust his private part between her thighs repeatedly. Similarly, during the trial, the prosecutrix in her cross-examination also stated that on Teachers' Day in the year 2018, she along with her friend (PW-5) had gone to the house of the appellant to ask for money and the appellant had given Rs. 30/- to them.

[9.] The learned Addl. Public Prosecutor further submits that the said incident which happened on 05.09.2018 was also stated by PW-4 in her evidence during the trial, in her examination-in-chief as well as during her cross-examination. Likewise, PW-5 also made similar statements regarding the incident which happened on 05.09.2018. She therefore submits that the statements of the prosecutrix have

been clearly corroborated by the statements of PW Nos. 2, 4 & 5 and therefore, the statements of the prosecutrix recorded under Section 164 Cr.PC can be considered to be a substantive evidence since it is corroborated by the statements of other prosecution witnesses during the trial.

[10.] The learned Addl. Public Prosecutor further submits that PW-1 was said to have submitted an application for withdrawal of the case but the fact remains that the offence which was committed is not a compoundable offence and therefore, the application for withdrawal of the case has no relevance. She also submits that the prosecutrix belongs to a poor family which can be seen from the fact that she has been kept in a SSA Hostel, which is meant for BPL family. That as the prosecution has proved the foundational facts, the impugned Judgment & Order should be upheld by this Court.

[11.] Mr. T. Lalzekima, learned Legal Aid Counsel for the respondent No. 2 submits that he tried to find out about the veracity of the application which was said to have been submitted by the complainant for withdrawal of the case. In his effort, he has come to learn that the complainant expired on 16.06.2022 and that he was informed that an application for withdrawal of the case was indeed submitted as agreed to by the relatives of the prosecutrix. The learned Legal Aid Counsel submits that his submissions are therefore limited to the information which he could gather.

[12.] 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 lower court records. In order to see as to whether the conviction of the appellant under Section 6 of the POCSO Act and the sentence imposed upon him can be sustained or not we may proceed to examine the evidence led by the parties in the case.

[13.] PW-1, who is the complainant in her examination-in-chief stated that the prosecutrix is her grand-daughter, who was staying in SSA Hostel, Chhingchhip and studying in Class - VI in Govt. Middle School, Chhingchhip at the relevant time. She was asked to come to the hostel by some teachers of the Hostel namely, Madam Thlengi, Ahmachhuani and Tevuli as they noticed some changes in the behavior of her grand-daughter. When the teachers confronted the prosecutrix, she disclosed that on 15.09.2016, she and her father had gone to attend the marriage of one of their relatives from her father's side at Ramhlun North, Aizawl and they stayed in the house of the appellant who was her father's friend and was staying with his son. At night, her father had gone out after dinner and likewise, the son of the appellant as well. She and the appellant were alone at home and at that time, the appellant came close to her and pulled down her pants and had sex with her after closing the door. She did not make any sound since the appellant threatened her not to disclose the incident to anyone. In the year 2018, around the first week of August, while her mother was at Chhingchhip PHC, her father asked her to go to

the house of the appellant. Though she refused, her father insisted and later on he accompanied her to the house of the appellant. In the house of the appellant, the appellant pulled her in the bedroom and had sex with her again while her father was reading a book. PW-1 stated that on the next day, she went to the police station and lodged an FIR verbally, which was put down in writing by the police personnel and she put her signature. She stated that she also told the police personnel that the father of the prosecutrix was hard of hearing.

[14.] During the cross-examination, PW-1 stated that she is the one who submitted the FIR in the Serchhip Police Station and that she did not know whether the appellant had actually committed an offence or not. She further stated that she had submitted a letter for withdrawal of the case on 04.11.2018, which was countersigned by the President, Village Council, Chhingchhip. In the said application, she had stated that she mistakenly implicated the appellant and that the appellant had no involvement in the case. She therefore prayed before the Court to withdraw the case and that she really regretted filing of the case. She also stated that the family decided not to pursue the case as they did not find any fault with the appellant.

[15.] PW-2, who is the prosecutrix during her examination-in-chief stated that her date of birth is 27.02.2016 and that she had studied up to Class-VIII. She stated that since she has to tend the fields along with her family members, she

stopped going to school from that year. She further stated that she knew the appellant who is residing in Chhingchhip and who is acquainted with her father. In the month of September, 2016, the appellant came to their village and stayed in their home. At night, the appellant requested her father that she should sleep alongside him and to which her father agreed. At night, the appellant closed her mouth with his hand and pulled down her pants and had penetrative sexual intercourse with her. She could not cry out and that her father being deaf, could not hear properly and therefore was not aware about it. The next day, she did not inform her parents since the appellant threatened to kill her. Again, in the month of September, 2016, she accompanied her father to attend marriage at Kulikawn and her father took her to the house where the appellant was staying and they spent the night there. During the night, her father had gone down stairs to make a visit and the appellant closed the door and forcibly had sexual intercourse with her. In the month of July, 2018, her mother had sustained burnt injury and she was treated in the hospital at Chhingchhip. During this time, her father visited the house of the appellant and also took her along. Inside the house of the appellant, her father was reading newspaper and at that time, the appellant pulled her to the bedroom and had sexual intercourse with her. In the year 2018, she was in the hostel and the cook and one of the teacher suspecting that something had happened to her, questioned her and she therefore informed them about what befell her. She further stated that her statements were recorded by a female police

in uniform at Serchhip Police Station. She was also sent to Serchhip hospital for medical examination and her judicial statements was also recorded by the Magistrate at Serchhip.

[16.] In her cross-examination, PW-2 stated that her father was hard of hearing but if one spoke to him in a loud voice, he could hear. She stated that it was a fact that during the sexual assault, the appellant had closed her mouth with his hand and she could not shout. She also stated that the son of the appellant was also inside the house at Kulikawn when the incident happened in the month of September, 2016. She could however not cry out since her mouth was covered by the appellant. She further stated that it was a fact that on Teachers Day in the year 2018, she along with her friend (PW-5) had gone to the appellant to ask for some money and the appellant gave them Rs. 30/-. She also stated that it was a fact that the cook of the hostel had suspected that something untoward had happened to her since she had some money with her in the hostel.

[17.] PW-3, who is the Warden of the hostel where the prosecutrix stayed in her examination-in-chief stated that during the month of September, 2018, she was the Warden of the hostel and she knew the appellant who was residing just above the hostel premises. That she cannot recollect the exact date, but the police had come to the SSA Girls Hostel in connection to the alleged offence committed against the prosecutrix. A photocopy of the Adhaar Card of the prosecutrix was seized in her

presence. The date of birth recorded in the Adhaar Card was 27.02.2006 and the prosecutrix was studying in Class-VI at the relevant time. She exhibited the Seizure Memo, her signature and the photocopy of the Adhaar Card as Exhibit P1, Exhibit P-1 and Exhibit M-1. In her cross-examination, she stated that the prosecutrix was admitted to the hostel in the month of April, 2018 and that to her knowledge, she was in the habit of telling lies on few occasions. She also stated that she had noticed slight difference in the behavior of the prosecutrix after the said incident as she appeared to be shy and kept to herself. She also stated that she had learned about the incident from PW-4, who is the cook of the hostel. She also stated that it was to her knowledge that the prosecutrix had been sexually assaulted even on earlier occasions.

[18.] PW-4 in her examination-in-chief stated that the appellant is the immediate neighbor of the SSA Girls Hostel in Chhingchhip and she was serving as a Cook in the hostel. The prosecutrix was a boarder of the hostel and on Teachers Day i.e., 05.09.2018, the teachers of the school report to the Warden of the hostel that the prosecutrix was in possession of certain amount of money and requested the Warden to enquire from the prosecutrix as to how she got the money. The Warden therefore instructed her to enquire from the prosecutrix and in doing so, the prosecutrix informed her that she had gone to the house of the appellant along with other hostellers. That while returning, the appellant called the prosecutrix

back and had penetrative sexual intercourse with her. The prosecutrix also informed her that the appellant on earlier occasions also had sexually assaulted her and he had given her money. In her cross-examination, PW-4 stated that the prosecutrix was slightly mentally challenged and she was in the habit of telling lies. She also stated that the prosecutrix was accompanied by her friend (PW-5) and she was not aware of what transpired after she had left. She also stated that there was no reaction regarding the alleged incident from the local NGO or any protest due to the alleged incident.

[19.] PW-5 in her examination-in-chief stated that she was presently studying in Class-VI and was 11 years of age. During the time of the incident, she was a boarder of the SSA Girls Hostel, Chhingchhip and it was Teachers' Day in the year 2018 when she was invited by the prosecutrix to accompany her to the house of the appellant to ask money for Teachers' Day. When she indicated that they should go back to the school since it was getting late, the appellant detained the prosecutrix and embraced her while she was waiting outside. After a short while, the prosecutrix came out of the house and she saw the appellant give her Rs. 30/-. In her cross-examination, PW-5 stated that the prosecutrix later informed her that the appellant had sexually assaulted her and she could not cry out since the appellant had closed her mouth. She also stated that the prosecutrix occasionally asked money from the appellant since her parents were residing at Phulmawi and

that she considers the appellant to be her 'Pu' (Uncle/Grandfather).

[20.] PW-7 who is the father of the prosecutrix in his examination-in-chief stated that he used to visit and stay in the house of the appellant and sometimes with his daughter. He was informed about the sexual assault on her daughter and that her daughter was born in the year 2006. In his cross-examination, he denied the suggestion that the prosecutrix was not fully capable mentally. He also denied that the prosecutrix was sexually assaulted by someone else before the appellant had committed the same. He also stated that he did not have direct knowledge about the sexual assault.

[21.] PW-8 in her examination-in-chief stated that she knows the appellant and the prosecutrix. She worked as a Clerk in the SSA Girls Hostel, Chhingchhip and the prosecutrix was in Class-VI then. The police came to the hostel and seized the Adhaar Card of the prosecutrix and she was a witness to the seizure by putting her signature in the prepared Memo. In her cross-examination, she stated that she does not know anything about the incident except that she had witnessed seizure of the Adhaar Card.

[22.] PW-10 is the case I/O who in her examination-in-chief stated that she was posted at Serchhip Police Station as Sub-Inspector of Police in the year 2018. She was functioning as Reader, SDPO and was appointed as I/O in the case. She stated that an FIR was filed on 19.09.2018 by PW-1 stating that she had been informed

by the hostel Warden (PW-3) of the SSA School in Chhingchhip that her granddaughter was not behaving normally. The Warden said that she had spoken to the prosecutrix and she had informed her that the appellant had raped her three (3) times. From what the prosecutrix told the Warden, the first rape happened in Kulikawn when the prosecutrix travelled with the appellant to Aizawl. The second time was in Chhingchhip while her mother was unwell and admitted in hospital. The third incident happened in the house of the appellant when the prosecutrix had gone there with her friend. A case was registered at Serchhip Police Station under Section 6 of the POCSO Act read with Section 376(3) IPC. She examined the informant and the prosecutrix and also sent her for medical examination. She was produced before the Court where her statements were recorded by the Chief Judicial Magistrate. The prosecutrix did not have a Birth Certificate but her Adhaar Card was seized to know her age. She visited the place of occurrence and from her investigation, she found a prima facie case well established under Section 6 of the POCSO Act read with Section 376(3) IPC against the appellant and filed the chargesheet.

[23.] In her cross-examination, she stated that the father of the prosecutrix was examined and his statements recorded during the investigation where he admitted that he was present on the two (2) occasions of rape upon her daughter but he was not aware of the incident as he was deaf. She also stated that she agreed with

the Doctor's report that there was no indication of any injury apart from the damage to the hymen. She also agreed that there was no outward sign on the behavior of the prosecutrix and the only reason that suspicion was that she was having some money i.e., Rs. 30/- in her possession.

[24.] The appellant examined himself as DW-1 and in his examination-in-chief he stated that after the demise of his wife, he and his son (DW-2) permanently shifted from Chhingchhip to Kulikawn in the year 2018 and they have been staying there ever since. The father of the prosecutrix is a very close friend of his and that he never failed to visit him when he visited Aizawl while they were staying in Kulikawn. Sometimes, he came alone and sometimes, he was accompanied by the prosecutrix and they had a great bond. On 14.09.2016, the prosecutrix along with her father came to attend their relative's marriage in Aizawl and stayed in their rented place. That during that time, her father as well as his son were present and it was not possible for him to perform any unwelcome act upon the victim. Another allegation has also been made against him that he raped the prosecutrix in the year 2018. In this regard, he stated that she came to their residence at Chhingchhip with one of her friend, whom he did not remember and the prosecutrix had asked him to give her Rs. 30/- for buying a gift for her teacher on Teachers' Day. Due to their close acquaintance and without any ill intention, he gave Rs.30/- to the prosecutrix for the purpose of buying gift for her teacher on

Teachers' Day. During this time, his son was also present and he witnessed everything. The complainant had also stated in her deposition during the trial that she had submitted a letter for withdrawal of the case on 04.11.2018 and that the same was countersigned by the President of the Village Council of Chhingchhip. As per the withdrawal letter, she had stated that she had mistakenly implicated him in the case and therefore clarified that he had no involvement in the case.

[25.] In his cross-examination, DW-1 stated that he did not deny the fact that the prosecutrix had visited him with her father on two (2) occasions and with her friend on one (1) occasion in his residence i.e., on 14.09.2016, in the month of August, 2018 and 05.09.2018. He also stated that he did not deny the fact that he had given Rs. 30/- to the prosecutrix on 05.09.2018. He also denied that he had pulled back the prosecutrix while she was going out of his residence on 05.09.2018.

[26.] DW-2, who is the son of the appellant in his examination-in-chief stated that the father of the prosecutrix is a very close friend of his father and that he never failed to visit them when they were staying in Kulikawn, Aizawl. He was sometimes accompanied by his daughter and that they had a great bond. On 14.09.2016, the prosecutrix and her father came to Aizawl to attend marriage ceremony of their relative and they stayed at their place in Kulikawn, Aizawl. He was present and was awake inside the room during the occurrence of the alleged

incident. He did not hear anything or any sound coming from the living room of their house and the house they rented was only 12 Sq.ft and the living room and bedroom being separated by a curtain. He could see the living room from his bed and if any unusual incident did happen to the prosecutrix, it will be easily audible and be seen. He was therefore confident that the allegations made against his father were totally wrong and baseless. DW-2 further stated that another allegation made against his father was that on 05.09.2018, he was present inside the house and was aware that the prosecutrix and her friend came to their house in the morning and his father gave her Rs. 30/- to buy a present for the teacher since it was Teachers' Day and that nothing unusual happened on that morning. Since the father of the prosecutrix and his father were good friends, the allegations made against his father were completely false and baseless.

[27.] In his cross-examination, he stated that he did not deny the fact that the prosecutrix visited their residence on 14.09.2016, 05.05.2018 and in the month of August, 2018. He stated that he was sleeping in his room when his father gave the prosecutrix Rs. 30/- in the kitchen. However, he did not personally see him handing over the money to her. He also stated that as he was sleeping in his room and did not see anything going on between the appellant and the prosecutrix. On being re-examined by the defense counsel, he stated that even though he did not personally witness the presence of the prosecutrix and her friend inside their residence but

however, he could hear the voices of those inside their residence though he could not make out what they said.

[28.] It may be seen that PW-1 is the complainant and grand-mother of the prosecutrix. According to her, she was asked to come to the hostel by some of the teachers namely, Madam Thlengi, Ahmachhuani (PW-3) and Tevuli, who informed her that they had noticed certain changes in the behavior of her grand-daughter and that she disclosed about the incidents that happened to her on 15.09.2016. However, PW-1 in her evidence nowhere stated that she had asked the prosecutrix about what happened to her. Her knowledge and information is only from what was narrated to her by the teachers from the hostel.

[29.] It may further be seen that in her cross-examination, she stated that she did not know whether the appellant had committed the offence or not. She further stated that it was a fact that she had submitted a letter for withdrawal of the case dated 04.08.2018, which was countersigned by the President, Village Council, Chhingchhip of Serchhip district where it was written that she had mistakenly implicated the appellant for committing the said offence. She also stated that the appellant has no involvement in the case and prayed before the Court to withdraw the case and that she really regretted filing the case. She further stated that there family decided not to pursue the case as they did not find any fault on the part of the appellant in the case. PW-1 despite her statement made in her cross-

examination was not declared a hostile witness. It is settled law that under Section 154 of the Evidence Act, the testimony of a hostile witness would be admissible in evidence, if the witness is declared a hostile witness and is cross-examined with the permission of the Court. However, PW-1 for reasons best known to the prosecution was not declared a hostile witness and with the major contradictions in her evidence, her evidence has only become unreliable for the prosecution.

[30.] PW-3 is the Warden of the hostel who according to PW-1 is the one who informed her about the incident. However, PW-3 in his examination-in-chief merely stated that the prosecutrix is a boarder in the hostel and that the police had come to the hostel in connection with the alleged offence committed against the prosecutrix and seized a photocopy of the Adhaar Card of the prosecutrix in her presence. PW-3 did not say anything about the incident or what she came to know from the prosecutrix herself. She also did not say anything about the information she gave to PW-1 when she came to the hostel since according to PW-1, she was asked to come to the hostel in connection with what befell the prosecutrix who is her grand-daughter. In her cross-examination, she stated that the prosecutrix was in the habit of telling white lies on few occasions. She also stated that she had learned about the alleged incident from PW-4, who is the Cook of the hostel. However, it may be seen that according to PW-1, she had come to know about the incident from PW-3, Madam Thlengi and Tevuli.

[31.] PW-4, who is the Cook of the hostel in her evidence stated that on the instruction of the hostel Warden, she had enquired from the prosecutrix about the incident, who accordingly informed her. In her cross-examination, she however stated that the prosecutrix was slightly mentally challenged and she was in the habit of relating lies and that they did not always believe what she told them. She also stated that the prosecutrix was accompanied by PW-5 to the house of the appellant but PW-5 was not aware of what transpired after she left.

[32.] PW-5, who is the friend of the prosecutrix and who had accompanied her to the house of the appellant stated in her evidence that the appellant detained the prosecutrix by embracing her and she went outside. After short while, the prosecutrix come out from the house and she saw the appellant giving her Rs. 30/-. As regards the sexual assault upon the prosecutrix, PW-5 apparently did not see the incident but according to her, the prosecutrix had informed her later on. PW-7, who is the father of the prosecutrix also stated that he used to visit the house of the appellant and sometimes with his daughter. He denied that his daughter is not fully capable mentally and that had no direct knowledge about the sexual assault upon her. He also stated that the prosecutrix would tell lies sometimes but he could not exactly say when. PW-8 is the Clerk working in the SSA Girls Hostel where the prosecutrix was a boarder at the relevant time. She had no knowledge about the incident and only that she had only witnessed the seizure

of the Adhaar Card of the prosecutrix.

[33.] PW-10 is the case I/O who stated that the statements of the prosecutrix under Section 164 Cr.PC was recorded by the Magistrate concerned. In her cross-examination, she stated that the father of the prosecutrix i.e., PW-7 on being examined during the investigation admitted that he was present on the two (2) occasions of rape mentioned by his daughter but he was not aware about the incident and that he was deaf. He also admitted that the son of the appellant (DW-2) was present when he visited the house of the appellant with his daughter. He agreed that there was no reason as to why DW-2 would not know about the incident.

[34.] Coming to the evidence of the prosecutrix, it may be seen that although the FIR has specifically mentioned one of the date of the incidents to be 05.09.2018 but PW-2 has nowhere in her evidence mentioned about the said date in her examination-in-chief. In her cross-examination, she stated that when the incident happened in Kulikawn in the month of September, 2016 in the house of the appellant, DW-2 was also present. Likewise, DW-2 was also present in the house when the incident happened in the month of July, 2018. DW-2 however in his evidence stated that the house which his father rented in Kulikawn, Aizawl was only 12 Sq.Ft and the living room and the bedroom was separated only by a curtain. He could see the living room from his bed and therefore, if any incident

ever happened as alleged by the prosecutrix, they would be easily visible and audible.

[35.] It may therefore be seen from the evidence led by the prosecution that there are inconsistencies about the time and dates when the alleged incidents had happened. None of the witnesses including PW-5, PW-7 and DW-2 had seen or heard anything about the incidents although they were supposed to be in close proximity when the alleged incidents had occurred.

[36.] The prosecutrix herself is said to be in the habit of telling white lies. Despite the claim that the incidents have occurred since the year 2016, the prosecutrix did not divulge the same to anyone and it was only when the teachers in the SSA Girls Hostel, Chhingchhip noticing some changes in her behavior confronted her and asked what was wrong with her and only then did she disclose about the incidents that happened to her. It is a settled law that the statements of a victim in a sexual assault or rape alone could be sufficient to establish the guilt of the accused person but however, the same is subject to the version of the victim being truthful, trustworthy and one which inspires the confidence of the Court. The same in the instant case from the materials available on record only appears to be lacking. In criminal jurisprudence, when two (2) views are possible i.e., one view against the accused and the other in favor of the accused, the view which is favorable to the accused has to be adopted.

[37.] In respect of the statements of the prosecutrix recorded under Section 164 Cr.PC, it may be seen that the same alone cannot be considered to be substantive evidence in the absence of corroboration from the evidence of the prosecution witnesses. The version of the prosecution witnesses including the prosecutrix herself are found to be with variance and are inconsistent. Therefore, the 164 statements alone cannot be relied upon in isolation to the other evidence led during the trial. The Apex Court in *Ram Kishan Singh* (supra) in the given facts of that case has held that a statement under Section 164 Cr.PC is not substantive evidence and that it can be used to corroborate the statement of a witness or to contradict a witness.

[38.] In the present case, as already stated herein above, in the absence of cogent and reliable evidence led by the prosecution, which is acceptable to the Court, the statements made under Section 164 Cr.PC alone cannot be the basis for the conviction and much less the statements made under Section 161 of the CrPC. Therefore, upon due consideration of the case in its entirety, we are of the considered view that the appellant is only entitled to be given the benefit of doubt. In view of the findings arrived at, the issue raised on denial of sentence hearing by the learned counsel for the appellant, need not be gone into.

[39.] Having come to the above conclusion, the impugned Judgment & Order dated 19.09.2022 is found to be unsustainable and the same is set aside. The

appellant is directed to be released, if he is not wanted in connection with any other case.

[40.] For the assistance rendered by the learned Legal Aid Counsel Mr. T. Lalzekima, he shall be paid fees by the Mizoram State Legal Services Authority as per the rates applicable.

JUDGE

JUDGE

Comparing Assistant