

GAHC030001242023



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

Case No. : CrI.A./12/2023

C.Vanramnghaka
S/o Bawiliana, Arro veng, Khawzawl, Mizoram

VERSUS

State of Mizoram and Anr.
Mizoram 2:Lalvenhim

Advocate for the Petitioner : A H Borbhuiya

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

Linked Case : I.A.(CrI.)/19/2023

Sh. C. Vanramnghaka
Arro Veng
Khawzawl
Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : A H Borbhuiya
Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte

Linked Case : I.A.(Crl.)/21/2023

Sh. C. Vanramnghaka
S/o Bawihliana (L)
R/o Arro Veng
Khawzawl

VERSUS

The State of Mizoram
R/b the Public Prosecutor
Gauhati High Court
Aizawl Bench

Advocate for the Petitioner : A H Borbhuiya
Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT AND ORDER (CAV)

Date of hearing : 22.01.2024.

Date of Judgment : 25.01.2024.

(Michael Zothankhuma, Judge)

1. Heard Mr. A. H. Borbhuiya learned counsel for the appellant. Also heard Mary L. Khiangte, learned Additional Public Prosecutor for the State.

2. This appeal has been filed against the impugned judgment and order dated 11.11.2022 passed by the Special Judge (POCSO), Champhai, in FTSC (CPI) 42/2022, arising out of Criminal Trial No. 75/2022.

3. The prosecution case in brief is that an FIR dated 16.03.2022 was submitted by Prosecution Witness No. 1 (PW-1), who is the mother of the victim. The FIR stated that the appellant had raped the victim on two occasions, once on 15.02.2022 and the second time during the beginning of March, 2022, inside the house of one Mr. Vanlalnghaka. Pursuant to the FIR, Khawzawl P.S. Case No.13/2022 was registered under Section 6 of the POCSO Act.

4. An investigation was initiated wherein the victim was taken for medical examination and the witnesses were examined by the IO. On finding a prima facie case against the appellant, the IO submitted a charge-sheet on 27.05.2022 under Section 6 of the POCSO Act, 2012. Thereafter charge under Section 6 of the POCSO Act was framed against the appellant by the learned Trial Court.

5. The learned Trial Court examined 7 (seven) prosecution witnesses and 6 (six) defence witnesses during trial. After examining the appellant under Section 313 Cr.P.C, the learned Trial Court convicted the appellant under Section 6 of the POCSO Act, vide judgment and order dated 11.11.2022 and sentenced the appellant to undergo 20 (twenty) years rigorous imprisonment with a fine of Rs.5,000/-, in default simple imprisonment for 3 (three) months.

6. The counsel for the appellant submits that the evidence given by DW-6,

who is a minor friend of the victim, is to the effect that the victim had told her while playing that the appellant did not rape her. However, as the victim's parents had already made a complaint before the police saying that the victim had been raped by the appellant, the victim told DW-6 that the victim was going to go along with the complaint made, despite knowing the same to be a false accusation. He further submits that the medical examination and the evidence given by the Doctor (PW-6) does not prove that the appellant had raped the victim. He submits that the prosecution has not been able to prove the charge of rape alleged to have been committed by the appellant, as the evidence of DW-6 demolished the case of the victim girl. He accordingly prays that the impugned judgment should be set aside and the appellant acquitted of the charge under Section 6 of the POCSO Act.

7. On the other hand, the learned Additional Public Prosecutor submits that the evidence of the victim (PW-2) has been corroborated by PW-1 (mother) and PW-3, who is a minor girl and a friend of the victim. She also submits that the evidence adduced during cross-examination of PW-3 and the evidence of DW-2 during cross-examination proved that the appellant had raped the victim. She accordingly prays that as no grounds for interfering with the impugned judgment and order having been made out, the appeal should be dismissed.

8. We have heard the learned counsels for the parties.

9. As stated earlier, the learned Trial Court examined seven prosecution witnesses and six defence witnesses.

10. The evidence of PW-1 is to the effect that her elder sister had informed her about the rape of her minor daughter. The elder sister of PW-1 had been informed by the mother of Lalhminghlui about the rape, as Lalhminghlui was a friend of the victim. PW-1 also stated that the information was passed on to her husband and when they had asked their victim daughter about it, the victim daughter stated that the appellant had raped her two times.

11. The evidence of PW-2, who is the victim, is to the effect that on 15.02.2022, while her friends and herself had gathered in the house of one friend Jessica for studying school lessons, she went to the house of the appellant to babysit his granddaughter. However, the appellant on coming home took her inside the bedroom of Marini and suddenly touched her breast. The appellant had also tried to take off her pant which she refused and the victim fled away. On the same night she went to the house of the appellant as she had been invited by one U Puitei. The appellant was not at home and at around 8:00 p.m. she left the house of the appellant and was proceeding towards her house. Near the construction site of U Dex-a, the appellant called her from the construction house and the appellant then took off her pant and her underpant. Thereafter the appellant inserted his penis into her private parts. Afterwards the appellant gave the victim Rs.100/- which she refused to spend on herself and gave it to her friends. The victim (PW-2) further stated that the second incident happened in the month of March. However, she could not recall the exact date of the incident. In the second incident, she along with her friends had gathered on the roof of her friend Jessica's house, whereupon the appellant called her and when she entered the house, the appellant asked to go upstairs to collect

pumpkin seeds. The appellant then followed her and took her to the room of Marini. The accused then took off her pant and her underpant and made her lie on the long chair. Thereafter the appellant mounted her and inserted his penis into her private parts. After that the accused went to the bathroom and washed himself and then told her to go to the bathroom and wash herself. After she washed herself and put on her clothes, she joined her friends and narrated the incident to them.

In her cross-examination, PW-2 stated that she was brought before the Judicial Magistrate First Class on 29.03.2022, wherein her statement was recorded. She also stated that she disclosed the incident first to her friend Lalhminghlui (PW-3). She also did not deny the suggestion that there were some persons inside the residence of Marini but she could not recall the exact number of persons. She also did not deny the suggestion that her parents used to sell illegal liquor and that the appellant and his wife did not visit their house in search of liquor. She denied the suggestion that she was tutored by anyone before coming to the learned Trial Court. She also stated that she did not know whether her parents were having any enmity or hatred against the family of the appellant, though they were annoyed with the appellant because of the instant case. P.W.2 also stated that the appellant had given her Rs.100 on the night of the incident in the month of March.

12. The evidence of PW-3, who is the friend of the victim and also a minor, is to the effect that she was the first person to whom the victim had narrated the incident. When she went to collect the debt from their neighbour U Sawmi, the victim had gone along with her and frequently stated that "*pasal ka nei theilo ang*", which means that I will not be able to have a husband. PW-3 further

stated that as she had suspicion that the victim might have been sexually molested by the appellant, as the victim frequently went to the house of the appellant for babysitting, she asked the victim about her relationship with the appellant, whereupon the victim told her that the appellant had sexual intercourse with her in the house under construction in their locality. PW-3 further stated that with regard to the second incident, she along with the victim and other friends were on the roof of the house of their friend Jessica. After a while the appellant called the victim. Though the victim asked PW-3 and others to accompany her, they refused to follow the victim as they were afraid of the appellant. Thereafter the appellant and the victim went to the house of the appellant, where the appellant committed sexual intercourse again with the victim. PW-3 stated that she received all the information directly from the victim herself.

In her cross-examination, PW-3 stated that she did not remember whether it was in the month of February or March that they had gone to collect the debt from their neighbour U Sawmi. PW-3 further stated that the victim had stated that she would not be able to have a husband about three times on their way to collect the debt from their neighbour. PW-3 also stated that the victim did not disclose the exact date on which the appellant had sexually assaulted her. She also stated that they had been waiting for the victim for less than half an hour in respect of the second incident and that the victim had disclosed the incident to them on the date of the second incident.

13. The evidence of PW-4, who is the seizure witness is to the effect that he was a seizure witness to the seizure of the birth certificate of the victim.

14. The evidence of PW-5 is to the effect that he was a witness to the arrest of the appellant.

15. The evidence of PW-6, who is a Doctor is to the effect that he conducted the medical examination upon the victim on 16.03.2022. During his examination, he found that the hymen of the victim was ruptured. Further, there was no bruise or injury on the body of the victim. The victim had changed her clothes and had already taken bath after the incident. The medical report was exhibited as Exbt.P7 and he identified his signature as P7(a).

16. The evidence of PW-7, who is the IO is that he conducted the investigation in respect of the FIR submitted by PW-1. In his evidence, the IO stated that the victim told him that she was afraid to disclose the incident to her parents and as such, she told her friend Lalhminghlui (PW-3) to convey the incident to others. The victim was then forwarded to Medical officer, District Hospital, Khawzawl for medication examination, where it was revealed that her hymen was ruptured. The victim was also brought before the CJM, Champhai for recording her statement. He also stated that on interrogation the appellant had admitted that he had sexual intercourse with the victim on two occasions.

In his cross-examination, the IO stated that it was beyond his knowledge regarding the selling of illegal substances by the victim's family. He also stated that just because of the appellant's position in society, it was not believable that the appellant would be involved in the case. However, it amazed him that the appellant had confessed before him regarding his involvement in the case. PW-7 then exhibited the statement of the victim made under Section 164 CrPC as

Exhibit P-8, amongst other documents.

17. The evidence of DW-1 is to the effect that he was working in the building where the sexual intercourse was alleged to have occurred between the appellant and the victim. However, he did not know whether the appellant had sexual intercourse with the victim.

18. The evidence of DW-2, who is the daughter-in-law of the appellant is to the effect that the victim and her friends frequently came to their residence as they were well known to her. One day, the victim while having conversation with her friends had stated that she had sexual intercourse with one person, but not with her father-in-law (appellant). When DW-2 heard it she asked the victim whether she had told the incident to her parents or not. The victim replied that she did not disclose the incident to her parents because she was afraid that they will rebuke her for going out on the street frequently. DW-2 also stated that the victim did not come to their residence on 15.02.2022.

However, in her cross-examination, DW-2 stated that she did not have any corroborating evidence to prove that the victim did not come to their residence on 15.02.2022. DW-2 also stated in her cross-examination as follows:

“It is a fact that besides 15.02.2022 I do not know whether the accused had committed sexual intercourse upon the victim or not”.

DW-2 also stated that the appellant could not have committed any sexual intercourse in their residence, as she was always in the house. However, in the re-cross-examination, DW-2 stated that since their bedroom was in the upper floor, there was a possibility and a chance that she did not know what happened

downstairs, with regard to the things and acts done by her father-in-law.

19. The evidence of DW-3, who is the wife of the appellant, is to the effect that there was no chance for the appellant to have any sexual intercourse with the victim in their residence, as there were labourers working in the house and there was no time to do such an act. She also stated that the appellant took a leading role for reduction of selling of illegal substances in their locality and that the victim's family had been frequently expelled from their locality for the same. DW-3 stated that the instant case was manufactured against her husband by the victim's family.

In her cross-examination, DW-3 admitted to the fact that the victim came to their residence several times.

20. The evidence of DW-4 has no relevance to the facts of the case, as he stated that he and the appellant had gone out together for collecting bamboo without being sure of the exact date when they had gone for collecting bamboo.

21. The evidence of DW-5, who is the owner of the house where the occurrence allegedly happened on 15.02.2022, is to the effect that what was alleged to have occurred in the house could not have occurred, as the house was under construction.

However, in the cross-examination, DW-5 stated that he did not know what had happened in the said house, since he was not in the said place at the time the incident allegedly occurred.

22. The evidence of DW-6, who is a minor girl, is to the effect that she is a friend of the victim. While playing badminton in front of the residence of one Rinfela, the victim stated that the appellant did not rape her. However, since her parents had already made a complaint to the police, the victim stated that she would say she was raped by the appellant, even if it was a false accusation.

In her cross-examination, DW-6 stated that there was no other person when the victim told her that the appellant did not rape her. She also stated that she was not tutored to make such a statement in the Court.

23. The examination of the appellant under Section 313 Cr.P.C is to the effect that the appellant did not rape the victim and he had no knowledge of the date of birth of the victim. He also stated that the allegation made against him was totally false and fabricated. The same was done due to long standing enmity between the appellant and the victim's family.

24. The Trial Court on considering the evidence adduced by the witnesses came to a finding that the evidence of the victim was reliable and trustworthy and that the credibility of her statement was not shaken. The learned Trial Court has however not made any discussion with regard to the deposition of DW-6, whose evidence is against the evidence given by the victim. Further, the learned Trial Court has apparently also taken into consideration the statement made by the appellant to the police under Section 161 Cr.P.C, while coming to a finding that the appellant is guilty of the crime in question.

25. It is settled law that a statement/confession made before a police officer is inadmissible as evidence in view of Sections 25 and 26 of the Evidence Act and as such the same cannot be the basis for coming to any finding against an accused. The same is not a substantive piece of evidence. Statements under Section 161 Cr.P.C can only be used for the purpose of contradicting a witness during trial. It cannot be used to convict an accused.

26. The statement made by the victim under Section 164 CrPC has been corroborated by her evidence, which is to the effect that she was raped by the appellant. Further, the hymen of the victim has been found to be ruptured.

27. The evidence recorded by all the defence witnesses, except for DW-6, does not appear to help the case of the appellant. Only the testimony of DW-6 has to be considered, keeping in view the fact that DW-6 had stated that the victim was not raped by the appellant, on being told by the victim herself. The question that arises for consideration is whether the evidence of PW-2 and PW-3 are reliable and whether the evidence of DW-6 is not reliable. We have also keep in mind the fact that the victim and the minor witnesses, i.e. PW-2, PW-3 and DW-6 are minor children.

28. In the case of ***State of Himachal Pradesh vs. Sanjay Kumar @ Sunny***, reported in ***(2017) 2 SCC 51***, the Supreme Court has held that the testimony of the victims in cases of sexual offences is vital and unless there are compelling reasons, which necessitate looking for corroboration of a statement, the Court should find no difficulty to act on the testimony of the victim of a

sexual assault alone to convict the accused. In the present case, the prosecution witnesses were not confronted with any suggestion that there was enmity between the family of the victim and the appellant so as to provide a motive for making a fabricated case against the appellant. It is only the evidence of the wife of the appellant, i.e. DW-3, who has for the first time, tried to bring out a case that as the victim's family were selling illegal substances, due to which the victim's family were frequently expelled from their locality on the action taken by the appellant and the NGO of the village, that resulted in a fabricated case being made against the appellant.

29. When you juxtapose the testimony of PW-2 and DW-3, the evidence of the victim (PW-2) will carry more weight as she is the victim who endured the ordeal of rape, provided that her testimony inspires the confidence of the Court. One other issue to be decided is as to whether the learned Trial Court could have decided the case on the basis of the testimony of the victim alone, even though corroborated by medical evidence.

30. The victim PW-2 was a child of 11 years at the time the alleged incident occurred. PW-3 who is a friend of the victim is 14 years of age. While another minor girl i.e. DW-6 was 13 years of age at the time the incident occurred. The issue of administering oath to children below 12 years of age has been answered by the Supreme Court, to the effect that while keeping in view the fact that at the time of recording the evidence of a child below 12 years, the Trial Judge should be satisfied that the minor child understands the duty of speaking the truth, understands the question put to the child and is capable of giving rational answers.

31. In the case of ***Narender Kumar vs. State (NCT of Delhi)*** reported in ***(2012) 7 SCC 171***, the Supreme Court has held that once the statement of the prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based on the solitary evidence of the prosecutrix and no corroboration would be required unless compelling reasons which necessitate the Court for corroboration of a statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. In the present case, there appears to be corroboration of the testimony of the victim's testimony, keeping in view the evidence of PW-3 and the evidence of the Doctor, who stated that the hymen of the victim had ruptured. Though the Doctor did not find any injury on the body of the victim, absence of injury on the victim cannot be a factor that leads the Court to absolve an accused in a case of rape, in terms of the judgment of the Supreme Court in the case of ***State of UP vs. Pappu @ Yunus & Another***, reported in ***(2005) 3 SCC 594***.

32. In the case of ***Pradeep vs. State of Haryana*** reported in ***AIR 2023 SC 3245***, the Supreme Court has held that the proviso to Section 4(1) of the Oaths Act provides that unless satisfaction as required by the proviso is recorded, an oath cannot be administered to a child witness below 12 years. However, in view of Section 118 of the Evidence Act, the Trial Judge was under a duty to record his opinion that the child was able to understand the questions put to her. The Trial Judge must also record his opinion that the child witness

understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. The Supreme Court further held that before recording the evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him/her, with a view to ascertain whether the minor can understand the questions put to him/her and is in a position to give rational answers.

Para 9 of the judgment in ***Pradeep (Supra)*** is reproduced below as follows:-

“9. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court.”

33. In the present case, the victim (PW-2) has not been asked preliminary questions, by the learned Trial Court Judge, before recording her testimony, with a view to ascertain whether the minor victim can understand the questions put to her and is in a position to give rational answers. The form in which the

evidence of the minor has been recorded does not record the opinion of the learned Trial Judge that the child witness understands the duty of speaking the truth. Further, there is nothing to show that the learned Trial Judge is of the opinion that the minor child is in a position to give rational answers.

34. We have noticed that prior to recording the statement of the victim by the Magistrate under Section 164 Cr.P.C, the Magistrate had asked preliminary questions with regard to allegation of rape by the victim against the appellant. Thereafter the statement of the victim was recorded by the learned Judicial Magistrate First Class, Champhai. On perusing the statement made under Section 164 Cr.P.C by the victim, we find the same to be in consonance with her testimony given during the trial. The statement made by the victim under Section 164 Cr.P.C has been exhibited as P-8. However, there is nothing to show that the learned Trial Court Judge was satisfied that the victim could understand the questions put to her or that she could give rational answers to the same.

35. Cases under Protection of Children from Sexual Offences Act, 2012 have to be dealt with carefully and sternly. However, as the punishment is harsh and provides for lengthy periods of imprisonment, the Court would have to be very careful, while considering the evidence adduced by the witnesses and coming to a finding with regard to the guilt or acquittal of an accused. As such, the Court would have to be extra careful while recording the evidence of the witnesses. Unless the Court are careful while recording the evidence of the witnesses and record their testimony as nearly as possible in the words used by the witnesses during trial, there is a probability of recording the witness evidence, which is not in sync with what the witnesses actually say or mean during recording of

evidence. As can be seen from the evidence of DW-2, DW-2 has basically stated that the victim had stated that she had sexual intercourse with a person, but not with the appellant. The evidence of DW-2 in her cross examination is also to the effect that the appellant could not have had sexual intercourse with the victim in their residence. However, the evidence of DW-2 in her cross examination at one point implies that she did not know whether the appellant had sexual intercourse with the victim, except on 15.02.2022. The recording of the portion of the cross examination of DW-2 where the implication has been made is reproduced below as follows:-

“It is a fact that besides 15.02.2022, I do not know whether the accused had committed sexual intercourse upon the victim or not”.

36. Besides the above, we have noticed other instances in the evidence of the other witnesses, including the prosecution witnesses, which appears to indicate that the learned Trial Court might not have recorded the testimony of the witnesses as close as possible to what they said or were trying to say. In this regard, it would be profitable to look at the law laid down by the Supreme Court in ***Naim Ahmed Vs. State (NCT of Delhi), Criminal Appeal No. 257/2023***, wherein it has held that it would be impermissible for the learned Trial Court to consider testimony only in English if the witness gives evidence in vernacular. In the present case, the evidence of the witnesses was recorded in the English language, though there is nothing to show that the language of the Court is English. What was said exactly by the witness during evidence can be gleaned in the Trial Court, in terms of the text and tenor of the evidence and the demeanor of the witness. The victim and the witnesses being from

Khawzawl and the victim being 11 years old at the time of the incident, it appears to us that the witnesses had in all probability given their evidence in the Mizo language /vernacular. However, their evidence was recorded in English by the learned Trial Court. The evidence of PW-3 also shows the use of Mizo words instead of English words, to give clarity to what the witness stated. On perusing the Section 164 CrPC statement given by the victim, we find that the said statement is made in the Mizo vernacular language, which reinforces our belief that the victim who is a minor girl of 11 years was comfortable in using the Mizo language.

37. Sections 276 and 277 of the CrPC provides the manner and language to be used while recording evidence, which is as follows:-

*“**276.** Record in trial before Court of Session.-(1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court or, under his direction and superintendence, by an officer of the Court appointed by him in this behalf.*

2[(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion take down or cause to be taken down, any part of such evidence in the form of question and answer.]

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.

***277.** Language of record of evidence. In every case where evidence is taken*

down under section 275 or section 276,-

(a) if the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) if he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record.

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation."

38. In the case of ***Naim Ahmed (Supra)***, the Supreme Court has held that the evidence of the witness has to be taken down in the language of the Court as required under Section 277 CrPC. If the witness gives evidence in the language of the Court, it has to be taken down in that language only. If the witness gives evidence in any other language it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court may be prepared. It is only when the witness gives evidence in English and is taken down as such, and a translation thereof in the language of the Court is not required by any of the parties, then

the Court may dispense with such translation. If the witness gives evidence in the language other than the language of the Court, a true translation thereof in the language of the Court has to be prepared as soon as practicable.

39. Section 272 CrPC provides that for the purposes of the Code of Criminal Procedure, the State Government may determine what shall be the language of the Court within the State other than the High Court. However, the State Government has not determined the language of the Courts in terms of Section 272 CrPC within the State of Mizoram. As such, there is nothing conclusive to show that the English language is the language of the Courts within the State of Mizoram, other than the High Court and Supreme Court, which is covered by Article 348(1)(a) of the Constitution of India.

40. The Supreme Court in ***Naim Ahmed (Supra)*** has held in paragraphs 24 and 25 as follows:-

“24. We are apprised that in some of the trial courts the depositions of the witnesses are not being recorded in their language and are being recorded in English language only, as may be translated by the Presiding officer. In our opinion, the evidence of the witness has to be taken down in the language of the court as required under Section 277 Cr.P.C. If the witness gives evidence in the language of the court, it has to be taken down in that language only. If the witness gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the court may be prepared. It is only when the

witness gives evidence in English

and is taken down as such, and a translation thereof in the language of the court is not required by any of the parties, then the court may dispense with such translation. If the witness gives evidence in the language other than the language of the court, a true translation thereof in the language of the court has to be prepared as soon as practicable.

25. *The evidence of the witness has to be recorded in the language of the court or in the language of the witness as may be practicable and then get it translated in the language of the court for forming part of the record. However, recording of evidence of the witness in the translated form in English language only, though the witness gives evidence in the language of the court, or in his/her own vernacular language, is not permissible. As such, the text and tenor of the evidence and the demeanor of a witness in the court could be appreciated in the best manner only when the evidence is recorded in the language of the witness. Even otherwise, when a question arises as to what exactly the witness had stated in his/her evidence, it is the original deposition of the witness which has to be taken into account and not the translated memorandum in English prepared by the Presiding Judge. It is therefore directed that all courts while recording the evidence of the witnesses, shall duly comply with the provisions of Section 277 of Cr.PC."*

As stated in the earlier paragraphs and on perusing the evidence of the witnesses, a doubt has arisen as to whether the witnesses had actually stated what they had stated in their cross examination at the time of recording of their evidence. The tenor of the witnesses statements could be lost in the absence of

the evidence not being recorded in the language in which the witnesses are comfortable, keeping in mind the fact that there is no language of the Court notified under Section 272 CrPC.

41. In view of the above reasons, we direct that in criminal cases in the State of Mizoram pertaining to criminal Courts, the Courts would require the evidence of the witnesses to be recorded in the language of the witness, as may be practicable and then get it translated in the language of the Court for forming a part of the record, as and when a notification is made by the State Government, regarding the language of the Court to be used in criminal Courts within the State. This direction has been made only in respect of criminal Courts, in view of the fact that the language of the District Courts dealing in matters pertaining to civil cases, would be governed by Section 137 of the Code of Civil Procedure.

42. Coming back to the case in hand, as no preliminary questions were asked by the Trial Court Judge to the victim, so that it could be said that the Trial Court Judge was satisfied that the minor was able to understand the questions to her and was able to respond to them rationally, besides understanding the importance of speaking the truth, we are of the view that it would not be safe to rely the testimony of the victim, in the absence of such a certification made by the learned Trial Court Judge. Further, the evidence of the witnesses not having been recorded in the language of the witnesses, as it does not appear to us that English was the language of the witnesses, we are of the view that the evidence of the witnesses should be recorded in the language of the witnesses. If the witnesses can communicate in English, even though they know some other language, the same would not be a bar in deciding the case at hand.

However, in the event the witnesses are unable to communicate in English, it would not be safe to decide the case on the basis of the evidence recorded in the English language, keeping in view the fact that there is no notification made by the State Government stating that English is the language of the District Courts for the purposes of the Code of Criminal Procedure under Section 272 CrPC.

43. Accordingly, we are of the view that the entire matter should be decided denovo from the stage of examining the prosecution witnesses. However, as stated earlier, if the witnesses are/were able to communicate in English, the evidence already recorded by them earlier would remain and there would not be any need/requirement for recording their evidence afresh. Accordingly, the case is remanded back to the learned Trial Court for taking evidence of the witnesses afresh, subject to the observation made above. Consequently, the impugned Judgment & Order dated 11.11.2022 passed by the Special Judge (POCSO), Champhai in FTSC (CPI) 42/2022, arising out of Criminal Trial No. 75/2022 is hereby set aside.

44. A copy of the Judgment & Order should be circulated to all the District Courts within the State.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant