

GAHC030002392024



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

Case No. : CRL.A(J)/11/2024

Lalremruata
Sawleng, Aizawl District

VERSUS

The State of Mizoram and Anr.
Aizawl2:Sh. R. Lalmalsawm

Advocate for the Petitioner : Mr. C Tlanthianghlina (Amicus Curiae)

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

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing : **21.11.2024**

Date of judgment : **10.12.2024**

JUDGMENT & ORDER (CAV)

(MarliVankung, J)

Heard Mr. C. Tlanthianghlma, learned Amicus Curiae representing the appellant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the respondent No. 1 and Mr. Lalramdinthara, learned Legal Aid Counsel for respondent No. 2.

2. The instant Criminal Appeal has been preferred from jail against the Judgment and Order dated 13.11.2023 passed by the Fast Track Special Court, POCSO Act, 2012, Aizawl in S.C. No. 17/2021, by which the appellant was convicted under Section 6 of the POCSO Act, 2012 and sentenced to undergo Rigorous Imprisonment for a term of 20 years and pay a fine of Rs 2000/-, in default to undergo Rigorous Imprisonment for 2 months. Aggrieved by the said conviction and sentence imposed upon him, the appellant has filed the instant Criminal Appeal.

3. Brief facts of the case is that on 19.11.2020, the informant Mr. R. Lalmalsawma filed a written FIR stating that the accused/appellant Lalremruata had sexual intercourse with his daughter multiple times. The informant requested that action be taken against the accused/appellant, Lalremruata. An all women P.S. Case No. 47/2020 dated 19.11.2020, under section 6 of the POCSO Act, 2012 was registered and duly investigated into. During investigation, the case IO visited the place of occurrence and also examined and recorded the statement of the witnesses. The victim was forwarded to the Medical Officer, Civil Hospital, Aizawl for necessary medical examination and the medical report revealed that the hymen of the victim girl was ruptured. The Birth Certificate of the victim was also seized, wherein the date of birth of the

victim girl was shown as 18.02.2003, making her 17 years and a few months at the time of the incident. The accused/appellant on interrogation had also admitted that he had sexual intercourse with the victim. The case IO found *prima facie* case under Section 6 of the POCSO Act against the accused/appellant and submitted his charge sheet.

4. The learned Trial Court on 03.03.2021, framed charge against the accused/appellant under Section 6 of the POCSO Act, to which the accused/appellant pleaded not guilty and claimed for trial. During trial, as many as 7 prosecutions witnesses were examined. The accused/appellant in his examination under Section 313 CrPC did not deny the evidence that on 18.11.2020, he had gone to the house of Shri. R. Lalsawmliana (informant, father of the victim) and stated that he had sex with the victim several times. The accused/appellant further explained that he did not know the age of the victim and that the victim had stated to him that she had attained the age of 18 years. Thereafter, accused/appellant produced 1 (one) defence witness. After considering the evidence on record and after hearing both the parties, the learned Trial Court found the accused/appellant guilty of the charge under Section 6 POCSO Act and accordingly, had sentenced him to undergo Rigorous Imprisonment for 20 years with a fine of Rs. 20,000/-, i.d to undergo R.I for 2 months. Aggrieved, the appellant has filed the instant jail appeal.

Submissions made by the learned counsels:

5. Mr. C. Tlanthianghlina, learned Amicus Curiae representing the appellant, submitted that the impugned Judgment & Order dated 13.11.2023 is liable to be set aside and quashed, since the statement of the prosecutrix is not reliable, wherein, in her deposition before the learned Trial Court, she had stated that the accused/appellant had sex with her more than 5 times at different places,

however the prosecutrix could not mention the date, time or the month when the accused/appellant had sex with her. Further in her statement recorded under Section 164 Cr.P.C, she had stated that the accused/appellant got out from jail in April 2020 and resided next to their house, at her grandmother's house and the first incident took place inside her grandmother's bedroom against her will, post this he had raped her about four more times. However, in her examination-in-chief in the court, she deposed that the accused/appellant had sex with her for the first time in 2019 in her grandmother's house, but during her cross-examination, she had again admitted that the appellant had sex with her when he was released from jail from the month of April 2020. Thus, it is clear that the prosecutrix is not speaking the truth regarding the time of the incident and her deposition cannot be relied upon. The learned Amicus Curiae submitted that the accused /appellant had sex with the prosecutrix only after she had attained the age of 18 years, which was after he was released from jail, in the month of April 2020 and that it was consensual sex between both the parties.

The learned Amicus Curiae, further submitted that the Protection of Children from Sexual Offences Act, 2012 was amended in 2019, wherein, before the amendment, the minimum punishment u/s 6 of POCSO Act was 10 years, and after the 2019 amendment, the minimum term of sentence is 20 years which is w.e.f 16.08.2019. Since the prosecutrix did not remember the date or month, when the accused/appellant had sex with her, the benefit should go in favour of the accused/appellant and it should be presumed that the incident occurred before the amendment of the Protection of Children from Sexual Offences Act, 2012. The sentence imposed upon the accused/appellant should therefore be reduced from Rigorous Imprisonment for 20 years to Rigorous

Imprisonment for 10 years, which is the minimum term of sentence under section 6 POCSO ACT, 2012 before the 2019 Amendment.

The learned Amicus Curiae also submitted that in the Judgment & Order dated 13.11.2023, the Trial Court had stated that the accused/appellant had committed an offence under Section 9 (n). If that is the case, the conviction should be under section 10 of the POCSO Act and the learned Trial Court had erred in convicting the appellant u/s 6 of the POCSO Act, 2012.

6. Per contra, Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, submitted that though the victim girl/prosecutrix deposed that she did not remember the date and time of the offence in her deposition, it is proved that the accused/appellant had sex with her since he had revealed this fact himself on 18.11.2020 night, which is seen from the depositions of PW Nos.1, 2 & 3, who were present at the place and heard the accused appellant declared that the victim girl was the girl with whom he had sex several times. The victim girl had also stated that the accused/appellant had sex with her for the first time in the house of her grandmother in the year 2019 and after that he had sex with her more than 5 times in different places. The learned Addl. Public Prosecutor submitted that even though the prosecutrix cannot recollect the date or the month, however, her deposition clearly revealed that the accused/appellant had sex with her for the first time during the year 2019 and he also had sex with her when he was released from jail in April 2020. She submitted that the accused/appellant was in jail for committing an offence under MLPC Act and must have been imprisoned for a few months only. The learned Addl. Public Prosecutor further submitted that since the date of birth of the prosecutrix is recorded as 18.02.2003, she would be 18 years only in the month of February

2021. It is seen that when the FIR was filed on 19.11.2020, she was only 17 years & 9 months. The learned Addl. Public Prosecutor also submitted that the accused/appellant had clearly admitted having sexual intercourse with the victim girl in his examination under Section 313 CrPC, which is corroborated by the depositions of PW Nos. 1, 2 & 3 and by the medical evidence which also showed that the hymen of the victim girl was ruptured & old. Thus, it is clearly proved that the accused/appellant had sexual intercourse with the victim while she was below 18 years.

The learned Addl. P.P also submitted that the accused/appellant was the brother of the grandmother of the victim/prosecutrix and was a therefore close relative and thus, he was rightly charged under Section 6 of the POCSO Act for committing an offence under Section 5 (n) of the POCSO Act. She submitted that the learned Trial Court at Para 18 of the judgment had mentioned 'Section 9 (n)' which is a typographical mistake.

7. Mr. Lalramdinthara, learned Legal Aid Counsel for respondent No. 2 submitted that the accused/appellant being a close relative of the victim/prosecutrix had committed an offence under Section 5 (n) of the POCSO Act and therefore, the learned Trial Court had rightly convicted the Accused/Appellant under Section 6 of the POCSO Act. The FIR was filed on 19.11.2020 and the victim was then only 17 years and 9 months and therefore, the learned Trial Court had rightly convicted the accused/appellant under Section 6 of the POCSO Act. He further submitted that the FIR was filed in the month of November 2020 whereas, the amendment of Section 6 of the POCSO Act was w.e.f from 16.08.2019. He submitted that the evidence of the prosecutrix also revealed that the accused/appellant had sex with her after he

was released from Jail in the month of April 2020, which is after the amendment of the POCSO Act. Thus, there was no ground to interfere with the sentence of the accused/appellant to undergo Rigorous Imprisonment for 20 years.

Deposition of the witnesses before the Trial Court

8. We have considered the submissions made by the learned counsels for both the parties and perused the documents on record. In order to fully appreciate the submissions made by the learned counsels for both the parties, the evidence adduced before the learned Trial Court is briefly highlighted herein under:

9. PW No. 1, R Lalmalsawma deposed to the effect that the accused, Lalremruata, was related to them and resided in Sawleng village. The prosecutrix is his daughter and she was born on 18.02.2003. On 18.11.2020, he along with his family including the prosecutrix had visited his father, whose house was not far and returned home at around 9:00 PM. They had all gone to sleep when the accused/appellant entered their house by knocking on the door. The accused/appellant started playing and disturbing his younger daughter, who was trying to sleep. The prosecutrix asked the accused to stop disturbing her sister, but he refused to listen to her. His younger daughter then called him saying that she was feeling sleepy but the accused/appellant continued disturbing her. PW No. 1 intervened, asking his younger daughter to sleep downstairs and told the accused to leave. However, the accused refused and was pushed out of the house by him and the prosecutrix and he was shouting with anger that he will not move from there. When PW No. 1 was about to bolt the door, the accused/appellant pushed open the door again and grabbing the prosecutrix by her hair, he pulled her outside shouting that she was the girl with whom he had sex many times earlier (*'victim' hi vawi tam tak ka tih tawh hnu*

anilh hi). Tea, alias Zothantluanga, came and freed the victim/prosecutrix from the accused. The accused started abusing and hitting them by throwing anything he could grab around him. The accused was shouting and disturbing them without listening to anyone, so PW No. 1 ran on foot to Salem Beat Post and reported the matter to the police, and the accused was apprehended by one police personnel on the same night. He then asked the prosecution about what the accused/appellant had said and she told him that the accused/appellant had sex with her in the year 2019 and even after that on 2/3 occasions. The prosecutrix told him that she had not disclosed the incidents earlier, due to fear and the accused being related to their family. She stated that after the first incident he became bold when she did not disclose about the first incident and called her whenever he came to Tlanghmingthanga's house. PW No.1, who was shattered by this information, made a verbal complaint on 19.11.2020, which was put into writing by the Police personnel. The FIR is exhibited as Exbt – P1. The copy of the Birth Certificate was exhibited as Exbt. M-1 and the original was returned by the Court on the same day.

During the cross examination, he stated that his daughter was 17 years and 9 months old at the time of the alleged incident. He admitted that he was not present in the sitting room when the accused disturbed his younger daughter. He stated that his daughter, the victim/prosecutrix was with him when the accused started abusing and hitting them and when the accused shouted that the prosecutrix was a girl with whom he had sex many times earlier. He admitted that no criminal case was registered against the accused for the physical violence on 18.11.2020. He admitted that the victim had informed him about the first time the accused had sex with her, but he could not recall the year. He stated that he had no personal knowledge about the rumour that the

accused was released from jail at the relevant time.

10. PW No 2 is the victim/prosecutrix, who deposed to the effect that the accused/appellant, is the brother of her maternal grandmother. During 2019, the accused Lalremruata was in her grandmother's house after being released from jail. Her house is located next to her grandmother's house at Salem Veng, Aizawl. She was born on 18.02.2003. On 18.11.2020, she and her family visited their grandfather Tlanghmingthanga, whose house was close to theirs. They returned home around 9:00 pm and the family went to bed. Later, the accused knocked on the door and she opened the door. The accused entered the house and sat beside her younger sister, Lalhluzuali, who was sleeping in the sitting room and started talking and touching her sister. They asked the accused/appellant to leave since they were all feeling sleepy, but he refused and continued to tickle and touch her sister. After sometime Te-a@ Zothantluanga, one of their relatives, who also living with her grandparents came and asked the accused to go home with him, which he refused. Her sister then called their father and despite the family's requests to him to leave, he refused. The accused's behaviour annoyed their father, leading to an argument. PW No. 2 and her father then pushed the accused/appellant to go out and the accused grabbed her hair and pulled her out and punched her. Her father intervened, separating them. The same night she along with her father had gone to the Beat Post to report the matter. In the meantime, the accused talked about the sexual assault which he had committed on her earlier. In his anger, he stated that he was the girl with whom he had sex a number of times earlier (Vawi tam tak ka tih hnu). She further deposed that the accused had sex with her for the first time in 2019 at their grandmother's house. This incident was followed by more than five instances of sexual assault at different places. She deposed that

she felt shy and scared to disclose the incidents to her parents. Taking advantage of this, he had sex with her whenever he wanted and she followed his instruction due to fear of her parents. However, the accused himself later disclosed the sexual assaults committed by him during his argument with their father. An FIR was lodged, and her statement was recorded by a woman police officer. Her judicial statement was also taken by a Magistrate and she was medically examined.

During the cross examination, PW No. 2 stated that she was 17 years and 9 months old at the time of the alleged incident. She admitted that the accused was released from jail in April 2020 and that his case related to the MLPC Act. However, she did not have personal knowledge about the case. She admitted that the accused began staying in her grandmother's house after his release from jail in April 2020, which was when the alleged offenses occurred. She admitted that, in her judicial statement she stated that the accused had sex with her about four times and that in her examination-in-chief, she stated that the accused had sex with her more than five times at different places. She stated that she could not recall the exact date of the first incident, but stated that it occurred during noon inside the bedroom of her grandmother's house. She also could not remember the details of the second and third incidents. She admitted that she did not remember when and where the accused had sex with her for the fourth time.

11. PW No. 3, Tlanghmingthanga stated that the accused, Lalremruata, is his wife's brother. On the night of 18.11.2020, the accused/appellant went to the house of the prosecutrix and disturbed them. He also physically assaulted the victim/prosecutrix. He and his family heard some commotion and went to the

victim's house. He heard the accused/appellant shout that the victim was the girl he had sex with multiple times earlier. He repeated the sentence twice. When the police arrived he informed them of the accused's statement, which the accused/appellant did not deny.

In his cross-examination, he denied the suggestions that he did not go to the house of the victim on the night of 18.11.2020.

12. PW No.4, H. Lalthlanfela and PW No. 5 Lalhmunsiami are the seizure witnesses to the seizure of the Birth Certificate of the prosecutrix exhibited as Exh M-1, which was seized on 26.11.2020 from the possession of the victim's father at their residence.

13. PW No. 6, Dr. B. Lalduhawma, stated that on 19.11.2020, while on duty at Civil Hospital Aizawl, he received a requisition from the investigation unit for Crime against Women, to examine the victim in an alleged sexual assault. The victim was accompanied by lady Police personnel, and consent was given by the victim. After a thorough examination of the victim's body, the doctor found that her hymen was ruptured (old). The medical examination report of the victim was exhibited as Exbt-P6.

During the cross-examination, he admitted that no examination was conducted to determine who caused the defloration of the victim's hymen, and that no DNA examination was conducted.

14. PW 9, T. Lalnuntluangi deposed to the effect that on 19.11.2020, a written FIR was received from R. Lalmalsawma s/o Tlanghmingthanga of Salem Veng stating that Lalremruata s/o Manliana of Sawleng P/A Salem Veng, Aizawl had sexual intercourse with his minor daughter multiple times since June, 2020.

Hence, All Women PS C/No 47/2020 dt.19.11.2020 U/S 6 POCSO Act, 2012 was registered and he was endorsed to investigate the case. During the investigation, he visited the PO and drew a sketch map. The victim/prosecutrix, who appeared at the All Women PS on her own volition, was examined and her statement was recorded. She stated that the accused had forced her to have sexual intercourse with him for the first time, at the residence of her grandfather Pu Tlanghmingthanga and he had sex with her for about 4 times since June 2020. She further stated that she did not know the exact date of the incidents. The investigating officer forwarded the victim to the Medical Officer, Civil Hospital, Aizawl for necessary medical examination, and the medical examination was conducted by Dr. B. Lalduhawma. The medical report revealed that the victim's hymen was deflorated. The judicial statement of the victim/prosecutrix was recorded by Smt. Lalthansiami Hnamte, JMFC Aizawl. The accused/appellant was apprehended and on being interrogated, he admitted his guilt, stating that he had sexual intercourse with the prosecutrix for about 5 times since June 2020. He further stated that he knew the victim was a minor and also knew that having sexual intercourse with a minor was a criminal offence. The accused was sent to the Medical Officer, Civil Hospital, Aizawl for necessary Medical Examination. The Original Birth Certificate of the victim was seized from the possession of the complainant R. Lalmalsawma at his house, in the presence of reliable witnesses, and their statements were recorded. The Investigating Officer (IO) submitted a final report and charge sheet before the Court, on finding a *prima facie* case under Section 6 of the POCSO Act 2012 against the accused.

The following exhibits were submitted:

Exbt P4 (5 pages): The final report submitted by the IO.

Exbt P5: The arrest form.

Exbt P3: The seizure memo.

Exbt M1: A photocopy of the victim's birth certificate.

Exbt P6: The medical examination report of the victim.

Exbt P7: The medical examination report of the accused.

Exbt P2: The judicial statement of the victim recorded by LalthansiamiHnamte, JMFC Aizawl.

In his cross-examination, he admitted that the FIR was received at the All Women PS after a delay of five months from the date of the alleged incident, which occurred in June 2020. As per Exbt M1, the victim was 17 years and 4 months old at the time of the alleged incident. He denied that the victim appeared to be of a major age based on her appearance, and denied that there was a romantic affair between the accused/appellant and the prosecutrix at the time of the alleged incident, although the accused/appellant stated that there was an affair. He admitted that the victim could not specify the exact time of the alleged sexual intercourse and admitted that the accused's DNA sample was not collected for examination.

15. The accused/appellant in his examination under section 313 CrPC did not deny that the prosecutrix was related to him, by stating that the mother of the girl was their relative. He admitted that he visited the house of the victim at around 9:00 PM on 18.11.2019. He did not deny the evidence that he had sexual intercourse with the victim for the first time at the residence of the grandfather (Tlanghmingthanga) of the victim. He explained that he did not know the age of the victim and the victim had stated that she had attained the age of 18 years and he stated that he had sexual intercourse with the victim 4 or 5 times in their house.

16. DW No 1, Lallawmkimi stated that she knows the accused/appellant and the victim is the grand-daughter of their elder sister, Lalrothangi. The victim's family resided near Lalrothangi's residence in Salem Veng, Aizawl. DW No.1 would often stay with Lalrothangi's family. The accused /appellant Lalremruata stayed with Lalrothangi's family in 2020, during which, he and the victim had a romantic affair. The victim had already quit her education and appeared to be of age, based on her physical appearance. She also claimed to have attained the age of majority.

During cross examination, she stated that Lalremruata, accused/appellant, was their elder brother and after being detained in judicial custody, the accused /appellant told her that the victim claimed to have attained the age of majority and he mentioned about having an affair with the victim after being arrested by the police.

Findings and decision thereof:

17. We have considered the submissions made by the learned counsels for both the parties and we have also perused the documents on record.

It is seen that in the birth certificate of the prosecutrix, which is exhibited as Exbt-M1, her date of birth is recorded as on 18.02.2003. The correctness or the authenticity of her birth certificate is not under challenge and therefore, we find that, if the prosecutrix was born on 18.02.2003 and when the FIR was filed on 19.11.2020, she was aged about 17 years and 9 months. The prosecutrix was therefore a child as described under section 2 (d) of the POSCO Act, 2012 at the time of the alleged incident of sexual assault.

18. We have noted that the accused/appellant in his statement under section

313 Cr.P.C had not denied that he had gone to the house of the prosecutrix on 19.11.2020 night and he has even stated that he had sexual intercourse with the victim 4 or 5 times,. His only explanation was that the prosecutrix had stated that she had attained 18 years of age.

19. The Apex court in **Sanatan Naskar & Another Vs. State of West Bengal; AIR 2010 SC 3507** and in a number of other cases has held *that a statement made under section 313 Cr.P.C, cannot be regarded as a substantive piece of evidence but the courts may rely on a portion of the statement of the accused and find him guilty in consideration of other evidence against him led by the prosecution. But such statement of under section 313, Cr.P.C should not be considered in isolation but in conjunction with the prosecution evidence and conviction cannot be based merely on the statement of accused under section 313, Cr.P.C.*

In **Rafiq Ahmad @ Rafiq Vs. State of U.P.; AIR 2011 SC 3114** the court observed:- *"It is true that the statement under section 313, Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence....."*

In light of the above decisions of the Apex Court, the prosecution evidence adduced before the learned Trial Court is scrutinised. We find that the PW No.2, who is the prosecutrix has testified how accused/appellant came to their house on 18.11.2020 night and disturbed her family. The accused then pulled her out by grabbing her hair and punching her. Her father intervened, separating them. The accused had then loudly stated that he had sexual intercourse with her several times before. The prosecutrix further deposed that the

accused/appellant had sex with her the first time in the house of her grandmother in the year 2019 and that he had sex with her more than five times at different places. The victim had also stated that she felt shy and scared to disclose about the incident to her parents since the accused/appellant was also related to them. It is seen that the actions of the accused/appellant came to light only when accused/appellant himself, on 18.11.2020 night, had stated that he had sex with the prosecutrix many times earlier, which resulted in the filing of the FIR by the informant. The testimony of the prosecutrix is corroborated by the deposition of PW No.1, who is the informant and father of the prosecutrix. He deposed that on 18.11.2020 at around 9.00 PM. the accused/appellant came to their house and disturbed his family. When he was made to leave he had assaulted the prosecutrix by grabbing her hair and pulling her out of the house. The accused in anger had shouted that he had sex with the prosecutrix many times earlier ('victim' hi vawi tam tak ka tih tawh hnu anih hi). When he enquired about this statement, his daughter revealed that the accused/appellant had sexually assaulted her 2/3 times. He then filed the FIR against the accused. The deposition of PW 3, also corroborates the evidence of PW No. 1 & PW No.2, who deposed that on hearing some commotion, he had gone to the house of the prosecutrix and there he heard the accused/appellant shout, saying that the prosecutrix was the girl with whom he had sex many times earlier and that he repeated this sentence twice. Further, it is seen that the statement of the prosecutrix recorded under section 164 Cr.P.C is consistent with her deposition in the court to the fact that the accused/ appellant had sexual intercourse with her. PW No. 6, the medical doctor who examined the victim girl also deposed that the hymen of the victim girl was ruptured (old).

In the case of **Sansar Chand vs. State of Rajasthan**, reported in

(2010) 10 SCC 604, the Supreme Court held that there is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material.

In **State of Punjab Vs. Gurmit Singh**, reported in **(1996) 2 SCC 384**, the Apex Court had held that *in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.*

Thus, in view of the above, we find that there are no grounds to doubt the veracity of the testimony of the prosecutrix which was not shaken during her cross examination. The testimony of the prosecutrix is further corroborated by the evidence adduced by PW No. 1, 3 & 6. The admission made by the accused/appellant in his statement recorded under section 313 Cr.P.C is also confirmed by the prosecution evidence. We are, therefore, of the considered view that it is clearly established that the accused/appellant had sexually assaulted the prosecutrix when she was below the age of 18 years.

20. We also find that the prosecutrix in her deposition as PW. No.2 had deposed that the accused/appellant is the brother of her grandmother, which is not a disputed fact. The accused/appellant is thus a relative of the prosecutrix

through blood and therefore, we find that the accused/appellant had committed the offence of aggravated sexual assault u/s 5 (n) of the POCSO Act punishable u/s 6 of POCSO Act.

21. Having come to the above conclusion, the next issue that requires to be looked into is, whether the Protection of Children from Sexual Offences Act, 2012 (also referred to as POCSO Act, 2012), before its amendment in 2019, would be applicable while considering the period of sentence to be imposed upon the accused/appellant.

It is seen that before the amendment of the POCSO Act, 2012, the minimum term of sentence under section 6 of POCSO Act, 2012 was 10 years, whereas, after the amendment w.e.f 16.08.2019, the minimum term of sentence under section 6 of the POCSO Act, 2012 is 20 years. We find that the prosecutrix deposed that she does not remember the date or time when the appellant had sexually assaulted her, but she has stated that the accused/appellant had sex with her in the year 2019 and after that, he had sex with her on more than five occasions. In her cross-examination, she admitted that the accused/appellant began to stay in the house of Pu Tlanghmingthanga (grandfather of the prosecutrix) after he was released from jail in the month of April 2020, it was at that time that the accused/appellant had committed the alleged offence. In the statement of the prosecutrix recorded under section 164 Cr.P.C, she has also stated that after the accused/prosecutrix was released from jail in the month of April 2020, he resided next to their house in the house of her grandmother. She then stated that the first incident of rape was in her grandmother's bedroom. Post this he had raped her more than four times. It is also noted that the accused/appellant in his examination under 313 CrPC had also admitted that

he had sexual intercourse with the victim for the first time, at the residence of the grandfather (Tlanghmingthanga) of the victim and that he had sex with the prosecutrix four or five times after that. DW 1 has also stated that the accused/appellant stayed with the family of Lalrothangi (grandmother of the prosecutrix) in the year 2020 and that the accused and the victim used to have a romantic affair. From the above projections, it can be safely construed that the accused/appellant also had sex with the victim after his release from Jail in April 2020, when he was staying with the grandmother/grandfather of the prosecutrix, which is clearly after the amendment of the POCSO Act in 2019, wherein, the amendment of the Protection of Children from Sexual Offence (amendment Act), 2019 (25 of 2019) is applicable w.e.f 16.08.2019.

22. Therefore, for the reasons as discussed above, we find no grounds to interfere with the Judgment & Order of the Fast Track Special Court, POCSO Act dated 13.11.2023, convicting the accused/appellant under section 6 of the POCSO Act, 2012 and sentencing him to undergo Rigorous Imprisonment for 20 years and to pay a fine of Rs 2000/-, in default to undergo Rigorous Imprisonment for 2 months.

23. Accordingly, Crl.A No. 11 of 2024 stands dismissed and disposed of.

24. In appreciation of the services rendered by Mr. C. Tlanthianghlina, learned Amicus Curiae, a remuneration of Rs. 9500/- may be paid by the Mizoram State Legal Services Authority and in appreciation of the services rendered by Mr. Lalramdinthara, learned Legal Aid Counsel, his fee shall be paid to him by the Mizoram State Legal Services Authority, as per the prescribed norms.

JUDGE

JUDGE

Comparing Assistant