

GAHC030002542024



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

Case No. : CRL.A(J)/13/2024

Sh. Lalhmingsanga
S/o Thanghuama,
R/o Sairang Saron Veng, Aizawl District

VERSUS

The State of Mizoram and Anr.
Aizawl2:Smt. Laledenmawii (Informant

Advocate for the Petitioner : None

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

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGEMENT & ORDER (CAV)

Date : 29-11-2024

(M.K. Kalita, j.)

- 1.** Heard Ms. Emily L. Chhangte, learned Amicus Curiae for the appellant and Ms. Vanneihsiami, learned Additional Public Prosecutor appearing for the State of Mizoram for the respondent No. 1 as well as

Mr. Lalramdinthara, learned Amicus Curiae for the respondent No. 2.

2. This jail appeal has been registered on receipt of an appeal petition from the appellant, Lalhminghsanga, who is currently detained in the Central Jail, Aizawl. The appeal petition has been forwarded to this Court through the Special Superintendent Central Jail, Aizawl. The appellant has impugned the judgment dated 06.12.2023, passed by learned Special Judge, (POCSO Act), Aizawl in S.C. No. 64/2019 (Criminal Trial No. 783/2019), whereby the appellant has been convicted under Section 6 of the POCSO Act, 2012 read with Section 376-AB of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of Rs. 5,000/- (Rupees five thousand), in default of payment of fine, to undergo further simple imprisonment for 1(one) week.

3. The facts relevant for adjudication of this jail appeal, in brief, are as follows:-

i. That on 03.04.2019, the mother of the victim-girl lodged an FIR before the Officer-In-Charge of Aizawl Police Station, *inter alia*, alleging that his daughter 'X' (real name of the victim is not disclosed to protect her identity), aged about 10 years, went to Church on 31.03.2019, which was a Sunday. On that day, at around 9:30 AM, she went to drink water outside the beginners' department's room located below Armed Veng Presbyterian Church Courtyard.

ii. It is stated in the FIR that just as the victim 'X' was about to go back inside the Church and unknown person held her hand and took her inside the toilet. He sexually abused her by putting her private parts inside her mouth.

iii. On receipt of the said FIR, the Aizawl P.S. Case No. 92/2019 was registered under Section 376-AB of the Indian Penal Code read with Section 6 of the POCSO Act, 2012 and investigation was initiated.

iv. On completion of investigation, after finding sufficient material against the present appellant, charge-sheet was laid against him under Section 376-AB of the Indian Penal Code and Section 6 of the POCSO Act, 2012. The appellant was arrested during the course of investigation and he faced the trial remaining in custody.

v. On 2nd July, 2019, charges under Section 376-AB of the Indian Penal Code read with Section 6 of the POCSO Act, 2012 were framed against the appellant. When the said charges were read over and explained to the appellant, he pleaded not guilty and claimed to be tried.

4. To bring home the charges, the prosecution side examined 9(nine) out of 10(ten) witnesses listed in the charge-sheet. The appellant was examined under Section 313 of the Code of Criminal Procedure,

1973, during which he denied the truthfulness of the testimony of the prosecution witnesses and pleaded his innocence. However, he declined to adduce any evidence in his defence. Ultimately, by the judgment which is impugned in this appeal, the appellant was convicted and sentenced in the manner as described in Paragraph No. 2 of this judgment hereinbefore.

5. Before considering the rival submissions made by learned counsel for both the sides, let us go through the relevant evidence which is available on record.

6. PW-1, who is the mother of the victim 'X' as well as the first informant of the case, namely, Laledenmawii, has deposed before the Trial Court on 29.07.2019 as well as on 05.09.2019. In her testimony, the PW- 1 has deposed that the victim is her daughter and she was forcibly taken by one unknown person to bathroom of the Church premises on 31.03.2019 and forcibly made the victim to suck his private parts. She has also deposed that the victim out of remorse and fear did not inform anybody on the day of incident. However, on the next morning, she narrated the incident to her grandmother. PW-1 has also stated that the elder sister of the victim, who was sleeping with the grandmother, came and informed her and when the PW-1 questioned the victim she narrated the entire incident to her.

7. PW-1 has further deposed that on Monday, when the victim narrated the incident, the victim's father, along with PW-1 and Young Mizo Association leaders went to Aizawl Police Station. They were

referred to Investigative Unit for Crimes against Women (hereinafter referred to as 'IUCAW'). On next day, i.e. on 02.04.2019, PW-1 submitted a formal complaint before the Aizawl Police Station. PW-1 has also deposed that the date of birth of the victim 'X' is 19.12.2009 and the birth certificate of the victim was produced before the police and same was seized. She exhibited the FIR as Exhibit P-1 and her signature as Exhibit P-1(a). She also exhibited the seizure memo as Exhibit P-2 and the photocopy of the birth certificate as Exhibit M-1. She has also deposed that she also witnessed the seizure of red coloured shirt with black coloured stripes belonging to the appellant from the possession of appellant. The seizure memo of the shirt is exhibited as Exhibit P-3 and the shirt was exhibited as Exhibit M-2.

8. During cross-examination, she has deposed that the seizure of the shirt was made at Central Jail and during the seizure the appellant Lalhminganga was not present.

9. PW-2, who is the victim-girl "X", has deposed before the Trial Court that she does not remember the exact date of incident, but she remembers that it was a Sunday. She has also deposed that she did not know the accused before the incident. She has stated that on the day of the incident she had gone to the church little bit early and was looking for her younger sister, who was in beginners' class in Sunday school. She has deposed that she had gone to the corridor near the beginners' class and there was nobody in the vicinity. She has deposed that the accused was across the beginners' class room and he called her and forcibly took her to female bathroom. She has also deposed that the accused took out

his private parts and made her suck it. He threatened to strangle her if she did not obey. The victim-girl also deposed that the accused put her private parts in his mouth and a white liquid came out and he washed her clothes which were soiled. Thereafter, the accused left that place by going down the steps. The victim-girl has deposed that she did not inform anybody on the day of the incident, however, on the next day, she informed her grandmother. She has also deposed that her statement was recorded by the police and also by the Magistrate. She has also deposed that her date of birth is 19.12.2009 and she was studying in Class-IV.

10. During cross-examination, she has deposed that the accused did not forcibly drag her, however, he threatened her verbally. She has also stated that at that time there was no one in and around the bathroom area. She has also deposed that her mother inquired about her general condition, but, she did not dare to inform her about the incident. The victim-girl (PW-2) has also deposed that the police produced the photograph of the accused (appellant) and she identified him and later on, he was arrested and after his arrest, the accused was produced in her residence where she identified him from a distance. She has denied the suggestion that she has been tutored to give her testimony.

11. PW-3, Vanlaldusaka, has deposed that he knows the accused (appellant), who used to frequently visit the top floor of the house, where he was residing. PW-3 has also deposed that on 31.03.2019, at about 9:30 AM, when he was going to attend the church, on the way, he saw the accused Lalmingsanga sitting on the step near the church. He noticed that he was wearing a red shirt with blue stripes. He has also

deposed that on the next day, the mother came to him and informed him that the accused was wearing a red shirt with blue stripes, but she did not know the identity of the person. On this the PW-3 informed her that on the previous day, he saw Lalhminghsanga wearing red shirt with blue stripes.

12. During cross-examination PW-3 has stated that the victim is the daughter of his father's younger brother. He has answered in negative to the suggestive question that he has falsely identified the accused. He also deposed that he has no enmity with the accused.

13. PW-4, F. Zarzokima, has deposed that during the early part of April, 2019 the mother of the victim-girl was summoned to Aizawl Police Station for seizure of birth certificate of the victim. The mother produced the original birth certificate of the victim at the police station and he accompanied her. He exhibited the photocopy of birth certificate as Exhibit-M-1 as well as the seizure-list as Exhibit-P-2.

14. PW-5, George Lallawmsanga Ralte, has deposed that he is posted as Warder at Central Jail Aizawl and he knows the accused (appellant), who was remanded to Central Jail. He has deposed that he does not remember the exact date of Test Identification Parade (hereinafter referred to as 'TIP') in respect of the accused. He has submitted that the wearing apparel of the accused was produced from the ward and handed over to him. It was kept on a pile on his table. The PW-5 has deposed that the victim had identified the accused during TIP. He also deposed that the victim had mentioned that the shirt worn by the

accused on the day of alleged offence was red in colour and the Investigating Officer seized the red shirt with blue stripes. The Investigating Officer seized the shirt in his presence. He exhibited the seizure memo as Exhibit-P-3 and his signature thereon as Exhibit P-3(a). The red and blue colour shirt which was seized was exhibited as Exhibit-M-2. During cross-examination, PW-5 has deposed that he was not certain of the seized article as it was not clearly displayed to him.

15. PW-6, Dr. Zosangpuii, has deposed that on 02.04.2019, he had received one requisition from police for medical examination of the victim-girl, who was produced before him and was accompanied by her mother, who had given consent on her behalf. PW-6 has deposed that on examination of the victim, he found her physically and mentally healthy and on examination of her private parts, he found the hymen to be intact and did not find any sign of physical injury. He exhibited the medical examination report as Exhibit-P-4 and his signature thereon as Exhibit-P-4(a).

16. During cross-examination, PW-6 has deposed that he does not know whether any offence was committed or not. He has also deposed that the age determination test of the victim girl was not carried out.

17. The prosecution side did not examine the witness, who was listed as PW-7 in the charge-sheet, as he failed to appear before the Court in spite of service of summons on him.

18. The PW-8, Ms. Renee Lalremsiami, the Chief Judicial Magistrate Lawngtlai, has deposed that in the year 2019, she was posted as Judicial Magistrate First Class-II at Aizawl. She has also deposed that on 03.04.2019, she was entrusted to record the statement of the victim girl under Section 164 of the Code of Criminal Procedure, 1973 by the Chief Judicial Magistrate, Aizawl. She has deposed that she recorded the statement of the victim-girl on 04.04.2019. She has also stated that at the time of the recording of the statement of the victim-girl, she was aged about 10 years. PW-8 has also deposed that she recorded the statement of the victim-girl in verbatim. She has also stated that before recording the statement she made the victim understand that she was free to give the statement and was not compelled by anyone and that she was comfortable in giving the statement. She exhibited the statement of the victim-girl as Exhibit-P-7 and her own signature thereon as Exhibit-P-7(a). Her cross-examination was declined by the defence side.

19. PW-9, Lalhriatpuii, has deposed that she was working as Chief Judicial Magistrate, Siaha District. On 24.04.2019, while she was working as Judicial Magistrate First Class, Aizawl, she was endorsed to conduct TIP with regard to the present case. She has also deposed that the TIP was conducted on 26.04.2019 at 2:00 PM at the Central Jail premises in presence of witnesses, namely, C. Vanlaltlana, Assistant Jailer, Central Jail and Lalrinawma Royte. She has deposed that all necessary arrangement and precautions were taken during TIP proceedings and at the time of conducting TIP, the Investigating Officer was removed from the Central

Jail premises. She has exhibited the Test Identification Parade Report as Exhibit-P-6 and her signatures thereon as Exhibit-P-6(a) to (c).

20. During cross-examination she has deposed that at the time of conducting TIP, the victim-girl was 10 years old and except pointing towards the accused by her finger and pointing out the designated number in the placards, the victim did not mention anything at the time of conducting TIP.

21. PW-10, R. Lalthanpuui, has deposed that in the year 2009, she was posted at IUCAW as Sub-Inspector of Police. She has deposed that on 02.04.2019, an FIR was lodged by Laledenmawii stating that the accused has sexually assaulted her daughter by putting his male organ inside her mouth forcefully. She has deposed that the case was registered as Aizawl P.S. Case No. 92/2019 under Section 6 of the POCSO Act, 2012 and she was entrusted to investigate into the case. PW-10 has deposed that during investigation, she came to know that as the victim told about the incident to her grandmother only on the morning of the next day, i.e. 01.04.2019 and after confirming from the victim and discussion with the family members and local NGO, the FIR was lodged after a delay of 2(two) days. She also deposed that during investigation, she had recorded the statement of the victim-girl and other witnesses. The PW-10 has also deposed that as the name of the accused was not written in the FIR, however, as the victim was sure that she can identify the accused, hence, she was showed the photographs of habitual offenders kept in the police record and while showing the said photos victim identified Lalhminganga. PW-10 has also deposed that the

accused Lalhminga was a habitual offender in connection with sexual assault cases earlier also and was arrested for sexual offences on earlier occasions also. She has deposed that as the accused was familiar case for the police, he could be easily apprehended and was brought to the police station. PW-10 has further deposed that after arresting the accused a TIP was conducted at the Central Jail in presence of Judicial Magistrate, Aizawl 1st Class, where the victim had identified the accused. The PW-10 has deposed that the wearing apparel of the accused at the time of the incident, i.e. red colour shirt with black/dark blue colour stripe was seized by him at Central Jail from the accused. He has also deposed that she seized the photocopy of the birth certificate of the victim-girl and returned the original birth certificate to his family. She has also deposed that after thorough investigation, sufficient materials were found against the accused (appellant) under Section 376-AB of the Indian Penal Code read with Section 6 of the POCSO Act, 2012. She exhibited the charge-sheet as Exhibit-P-5 and her signature thereon as Exhibit-P-5(a). She also exhibited the photocopy of birth certificate as Exhibit-M-1 and the red colour shirt with dark blue colour stripes as Exhibit-M-2.

22. During cross-examination, she has deposed that the incident took place on Sunday, i.e. on 31.03.2019, however, the FIR was lodged on 02.04.2019. She has also deposed that there was no other eye-witness of the incident, except the victim-girl herself. She has also deposed that she was present at the time of conducting TIP at the Central Jail on 26.04.2019.

23. During his examination under Section 313 of the Code of Criminal Procedure, 1973, the appellant has denied the truthfulness of the testimony of the prosecution witnesses and has pleaded his innocence. He has denied that he wore a red shirt with blue stripes on the date of alleged incident. He has also stated that he has been mistakenly implicated in the case by the victim and the other witnesses. However, he declined to adduce any evidence in his defence.

24. Ms. Emily L. Chhangte, learned Amicus Curiae, for the appellant, has submitted that the FIR in this case was lodged belatedly after about two days of the incident. She has submitted that the sole eye-witness in this case is the victim girl herself, who has deposed as PW-2. She submits that the appellant was not known to the victim before the alleged incident and the evidence on record as to how the victim girl identified the appellant being assailant is insufficient and not reliable. She has deposed that the victim girl never stated before anybody as to, what the assailant was wearing on the day of alleged incident, however, the evidence on record suggests that the appellant was apprehended on the basis of red and blue stripe coloured shirt, which he was allegedly wearing on the date of alleged incident. She has also submitted that the Test Identification Parade of the appellant was conducted after he was shown to the victim girl by the police. Hence, she submits that the Test Identification Parade has lost its relevance. She has submitted that the victim girl has not properly identified the appellant, which cast doubt regarding the involvement of the appellant in the alleged offence. She submits that the appellant is entitled to get the benefit of doubt and has

submitted that the appellant may be acquitted by setting aside the conviction and sentence imposed on him.

25. On the other hand, Ms. Vanneihsiami, learned Additional Public Prosecutor, has submitted that the victim girl has clearly identified the appellant during the Test Identification Parade as is evident from the testimony of PW-9, who conducted the Test Identification Parade. She also submits that the appellant was wearing a red coloured shirt with blue stripes on the date of incident, which is revealed by the prosecution witnesses and same was seized from possession of the appellant. She also submits that PW-3 has also deposed that he saw the appellant wearing red coloured shirt on the date of alleged incident.

26. Learned Additional Public Prosecutor has also submitted that the victim, in her testimony, has made categorical statement implicating the appellant in the offence involved. Learned Additional Public Prosecutor has submitted that from the testimony of prosecution witnesses, there remains no doubt regarding the involvement of the appellant in the offence involved in this case. She further submits that the appellant has been rightly convicted by the Trial Court and as such, the conviction and sentence imposed on the appellant does not warrant any interference by this Court in this appeal.

27. We have considered the submissions made by the learned counsel for both the sides. We have also gone through the materials available in the records of the Trial Court, which were requisitioned in connection with this appeal.

28. Though, the testimony of PW-2 (victim girl) is categorical to the extent that she was subjected to oral penetrative sexual assault on the date of alleged incident. However, the assailant was not known to her. The evidence regarding this fact is also corroborated by her statement which was recorded under Section 164 of the Code of Criminal Procedure, 1973. As she was below the age of 12 years on the date of alleged incident, the offence perpetrated on her was of aggravated penetrative sexual assault.

29. However, the most pertinent question in this case is as to who was the perpetrator of the said offence on the victim girl. Was it the present appellant? Was he properly identified by the victim girl or is there sufficient evidence on record which unerringly points towards the involvement of the appellant in the offence perpetrated on the victim girl.

30. On perusal of the impugned judgment, it appears that the Trial Court, for arriving at the conclusion that the appellant was properly identified by the victim girl, has relied on the testimony of the victim girl, wherein she has stated that the police had produced photographs of the accused from which she identified the accused and later on, after his arrest, he was produced in her residence, where she identified him from a distance. The Trial Court also relied on the evidence regarding Test Identification Parade of the appellant, wherein the victim girl had identified the appellant. The Trial Court also relied on the testimony of PW-3 as a piece of corroborative evidence to come to the conclusion that the appellant was seen at the place of occurrence at the relevant time.

31. Let us examine as to whether there is sufficient evidence on record regarding identity of the present appellant of his being involved in the alleged offence.

32. In paragraph No. 6 (xi) of the impugned judgment, the Trial Court has rightly discarded the evidence regarding wearing apparel which the appellant was alleged to have been wearing on the date of alleged incident. The Trial Court has rightly done so as the victim girl has nowhere stated that the perpetrator was wearing a red coloured shirt with blue coloured stripes.

33. Let us examine as to whether sufficient materials are available on record to come to the conclusion that there was a proper dock identification of the appellant by the victim girl in Court during the trial. Section 36 of the POCSO Act, 2012 provides as follows:-

“Section 36-Child not to see accused at the time of testifying.-

(1) The Special Court shall ensure that the child is not exposed in anyway to the accused at the time of recording of the evidence, while at the same time ensuring that the accused is in a position to hear the statement of the child and communicate with his advocate.

(2) For the purposes of sub-section (1), the Special Court may record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.”

34. From above, it can be assumed that while testifying before the Court as PW-2, the victim girl was not exposed to the appellant during trial and that the victim girl was not in a position to see the accused at

the time of testifying before the Court.

35. The evidence of prosecution witnesses, including that of the victim girl (PW-2) clearly shows that the appellant was not known to the victim girl before the alleged incident. Hence, proper dock identification of the perpetrator of the offence is very important in this case to arrive at any conclusion of guilt of the appellant in this case. However, on meticulous perusal of the testimony of the PW-2, it appears that in her testimony, she has neither named the appellant nor there is any indication that there was proper dock identification of the appellant by the victim girl or that the face of the appellant was shown to her and she affirmed him to be the perpetrator of the offence.

36. In her entire deposition, she has referred to the perpetrator as the "accused", however, there is nothing in her testimony to show that the appellant was identified in the Court by the victim girl at the time of recording her statement. Unfortunately, neither the prosecution side nor the Trial Court made any effort for dock identification of the appellant by the victim girl when the testimony of the victim was recorded by Trial Court.

37. If we consider the Exhibit-P-7, which is the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973, it appears that though she has vividly described the alleged offence before the Magistrate, however, nothing could be revealed by her regarding the identity of the perpetrator.

38. This leaves us with the identification of the appellant by the victim girl during Test Identification Parade.

39. It is pertinent to mention herein that the evidence regarding Test Identification Parade is not a substantive piece of evidence, it is only used as a piece of corroborative evidence to corroborate the evidence given by the witness during trial. The identification of the accused in dock is always regarded as the substantive piece of evidence, which may be corroborated by the evidence regarding identification of the accused in Test Identification Parade. In this regard the observations made by the Supreme Court of India in the case of "**Gireesan Nair Vs. The State of Kerala,**" reported in "**2023 1 SCC 180**" is relevant. Same is quoted herein below:-

"29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391] ; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj [State of H.P. v. Lekh Raj, (2000) 1 SCC 247, para 3 : 2000 SCC (Cri) 147] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402])."

40. In the instant case, the victim girl (PW-2) has categorically stated in her testimony that the appellant was identified by her when

police had produced the photographs of the accused. She has also deposed that the appellant was produced in her residence after his arrest where she identified him from a distance. Thus, it appears that the appellant was shown to the victim girl before conduct of the Test Identification Parade.

41. The Apex Court in the case of "**Gireesan Nair Vs. The State of Kerala**" (*supra*) has observed as follows –

"30. It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay (Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, para 45 : (2010) 2 SCC (Cri) 1150] and Suresh Chandra Bahri v. State of Bihar [Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60]).

31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept "baparda" to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via

media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

32. *If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh [Chunthuram v. State of Chhattisgarh, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1955) 1 SCR 903 : AIR 1955 SC 104]).*

33. *It is significant to maintain a healthy ratio between suspects and non-suspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sine qua non that the non-suspects should be of the same age-group and should also have similar physical features (size, weight, colour, beard, scars, marks, bodily injuries, etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428: 1999 SCC (Cri) 1452] and Ravi v. State [Ravi v. State,*

(2007) 15 SCC 372 : (2010) 3 SCC (Cri) 730]).”

42. Thus, in the instant case, caution which was required to be taken before the conduct of Test Identification Parade by the Investigating Officer was not taken by him, rather, he took the appellant after his arrest to the residence of the victim girl, where he was shown to be the victim before his formal identification during Test Identification Parade. Thus, as the victim had the opportunity to see the appellant before conduct of Test Identification Parade, the evidence regarding Test Identification Parade in this case cannot be regarded as admissible as a valid piece of evidence in the light of the observations made by the Apex Court in the case of “**Gireesan Nair Vs. The State of Kerala (supra)**”.

43. Though, non conduct of a Test Identification Parade may not prejudice the case of prosecution in a case where there is proper identification of the accused in the dock and the identification is done by a witness whose testimony is of sterling nature. However, in the instant case, we have seen that no dock identification of the appellant was done by the victim, in the Court, during trial. In a case where the perpetrator was an unknown person and the sole eye-witness is only the victim herself, proper identification of the perpetrator through lawful mode is a necessity before arriving at a conclusion of guilt of the appellant in this case, which has not been done in the instant case. The appellant could not have been convicted on the basis of a very doubtful evidence regarding his identity.

44. For the reasons discussed in the foregoing paragraphs, we are of the considered opinion that the evidence on record regarding the identity of the present appellant as having being involved in the alleged offence is insufficient to come to the conclusion of his guilt. He is, therefore, entitled to get benefit of doubt in this case, which we give to him.

45. The impugned judgment of conviction and sentence under Section 6 of the POCSO Act, 2012 read with Section 376-AB of the Indian Penal Code against the present appellant is accordingly set aside.

46. The appellant be set at liberty forthwith, if not required to be detained in connection with any other case.

47. We record our appreciation to the assistance rendered by learned Amicus Curiae appointed by this Court.

48. The Registry of the Principal Seat shall forthwith take steps for transmitting the records of this case to the Registry of the permanent Aizawl Bench of this Court, which shall send back the records of the Trial Court to the Trial Court, along with a copy of this judgment.

49. The Registrar, Aizawl Bench, Gauhati High Court is authorized to sign the release order of the appellant in connection with this case.

50. This appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant