

GAHC030003362022



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

Case No. : CrI.A./12/2022

C. Lalhmangaiha
S/o C. Vanlalliana(L)
R/o Farm Veng, Lunglei,
Mizoram.

VERSUS

State of Mizoram and 2 Ors.
Aizawl, Mizoram. 2:H. Lalrinsangi
W/o Kenny John
R/o Farm Veng
Lunglei
Mizoram.

3:Kenny John
R/o Farm Veng
Lunglei
Mizoram

Advocate for the Petitioner : Ms. Rosalynn L Hmar

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

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Appellant : Ms. Rosalynn L. Hmar, Advocate.

Mr. Lalramdinthara, Advocate.

Mr. Lalrindika, Advocate.

Mr. R. Vanlalruata, Advocate.

For the Respondents : Mrs. Mary L. Khiangte, learned
Additional Public Prosecutor, Mizoram.

: Mr. Jordan Rohmingthanga, Legal Aid
Counsel for respondent Nos.2 & 3.

Date of Hearing : 05.09.2024.

Date of Judgment : 23.09.2024.

JUDGMENT & ORDER (CAV)

(Kaushik Goswami, J)

Heard Ms. Rosalynn L. Hmar, learned counsel for the accused/appellant. Also heard Mrs. Mary L. Khiangte, learned Additional Public Prosecutor, Mizoram, appearing for the respondent No.1 and Mr. Jordan Rohmingthanga, learned Legal Aid Counsel, appearing for the respondent Nos.2 & 3, i.e. informant/mother and father, respectively.

2. This appeal is preferred against the Judgment & Order dated 04.07.2022 passed by the Special Court, POCSO Act, Lunglei District, Lunglei in connection with CrI. Tr. No.549/2020 arising out of Lunglei P.S. Case No.62/2020 dated 15.08.2020 under Section 6 of the Prevention of Children under Sexual Offences Act, 2012 (hereinafter to be referred as "POCSO Act, 2012"), whereunder the accused/appellant was sentenced to undergo Rigorous Imprisonment for a period of 20 (twenty) years and to pay fine of Rs.5,000/- (Rupees Five Thousand) and, in default payment of fine, to undergo Simple

Imprisonment for another period of 1(one) month.

3. The case of the prosecution is that on 15.08.2020, PW-1/mother lodged an FIR alleging that the accused/appellant, in June, 2020 had made her twin daughters, aged about 5 years, suck his private part and thereafter, on 15.08.2020, he again took them to AOC to purchase petrol between 6:30 A.M to 7:00 A.M, where he touched their private parts inside the car. It is further alleged in the said FIR that the accused/appellant had inserted his finger as well in her private parts.

4. Upon receiving the aforesaid FIR, a case, being Lunglei P.S Case No.62 dated 15.08.2020, was registered under Section 6 of the POCSO Act, 2012.

5. Accordingly, PW-9 took up the investigation and visited the place of occurrence and prepared a sketch map of the crime scene. She further examined the informant, the victims "X" and "Y" other witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure, 1974 (hereinafter to be referred as "Cr.PC"). She further sent the twin victim girls to Lunglei Civil Hospital, where they were medically examined by PW-7 and, after examination she submitted a report (Exhibit P-6). PW-9 further seized the Birth Certificates of "X" and "Y" indicating their date of birth as 06.01.2014 and exhibited the same as Exhibits P-3 and P-4, respectively. She further produced the twin victim girls before PW-8 where their statements under Section 164 Cr.PC were recorded. She further arrested the accused/appellant and recorded his statement under Section 161 Cr.PC and also sent him for medical examination.

6. Upon completion of investigation, Charge-sheet No. 6/2020 was submitted on 15.08.2020 by PW-9.

7. Thereafter, the Special Court, POCSO Act, Lunglei District, Lunglei framed charges under Section 6 of the POCSO Act, 2012 and Section 376-AB of Indian Penal Code, 1860 (hereinafter to be referred as "IPC") against the accused/appellant. The accused/appellant having pleaded not guilty, the trial commenced, wherein the prosecution examined 9(nine) witnesses including the Medical Officer, the Judicial Magistrate and the Investigating Officer and exhibited 13(thirteen) documents. Details of which are reproduced hereunder:-

List of Prosecution Witnesses:-

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	H. Lalrinsangi	
PW2	X	
PW3	Y	
PW4	Kenny John	
PW5	C.Lallianzela	
PW6	Lalthianghlimi Sailo	

PW7	Dr P.C. Zonunmawii	
PW8	F. Laltlansangi	
PW9	C.Ramnunmawii	

List of Prosecution Exhibits:-

Sr.No.	Exhibit Number	Description
1	Ext. P-1/PW1 & PW9	FIR
2	Ext. P-2/PW4/PW5 & PW9	Seizure Memo of Birth Certificate
3	Ext. P-3/PW4/PW5 & PW9	Birth Certificate of X
4	Ext. P-4/PW4/PW5 & PW9	Birth Certificate of Y
5	Ext. P-5/PW7 & PW9	Medical Examination Report of X
6	Ext. P-6/PW7 & PW9	Medical Examination Report of Y

7	Ext. P-7/PW8 & PW9	Judicial Statement of X
8	Ext. P-8/PW8 & PW9	Judicial Statement of Y
9	Ext. P-9/PW9	Crime Details Form
10	Ext. P-10/PW9	Prayer for recording Judicial Statement
11	Ext. P-11/PW9	Arrest Memo of accused
12	Ext. P-12/PW9	Medical Examination Report of accused
13	Ext. P-13/PW9	Chargesheet

8. During trial, all the incriminating circumstances were put to the accused/appellant under Section 313 Cr.PC, whereupon the accused/appellant admitted that he had taken the victim girls with him to the servicing center. However, he denied the allegations of the alleged offence.

9. The accused/appellant thereafter adduced Defence Witnesses including

himself. Details of which are reproduced hereunder:-

List of Defence Witnesses:-

RANK	NAME	NATURE OF EVIDENCE
		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS PANCH WITNESS, OTHER WITNESS)
DW1	C. Lalmangaiha	
DW2	V. Vanhnuni	
DW3	C.Lalruatfela	

10. Upon completion of the trial, the Trial Court rendered its Judgment on 04.07.2022, whereby the accused/appellant was convicted under Section 6 of the POCSO Act, 2012 and sentenced thereof on 05.07.2022.

11. Ms. Rosalynn L. Hmar, learned counsel for the accused/appellant submits that there are inconsistencies in the version of "X" and "Y" as regards the commission of the offence by the convict and as such, the impugned Judgment & Order is erroneous. She further submits that while 'X' and 'Y' were

medically examined by PW-7, there were no mark of violence, seminal stains or other stains on their clothes and there were also no bruise or laceration on their private parts and as such, the allegation of sexual assault is not proved. She further submits that PW-6, due to a grudge against the accused/appellant regarding the land he purchased from them, supported PW-1 to lodge FIR against the accused/appellant.

12. She further submits that there being no penetration into the vagina of the victims, no offence under Section 3 of the POCSO Act is made out against the accused/appellant and, at best, an offence of sexual harassment can be said to be made out against the accused/appellant and hence, the conviction is liable to be altered from Section 6 to Section 12 of the POCSO Act, 2012.

13. In support of her submissions, she relies upon the following decisions of the Apex Court:

(i) ***Rajoo & Ors. Vs. State of M.P in Criminal Appeal Nos.1094 – 1098 of 2000.***

(ii) ***Raju and Others Vs. State of Madhya Pradesh, reported in (2008) 15 SCC 133.***

14. Mrs. Mary L. Khiangte, learned Additional Public Prosecutor, appearing for the State respondent submits that the prosecution has conclusively established the guilt of the accused/appellant and, therefore, the judgment of the Trial Court warrants no interference from this Court.

15. Mr. Jordan Rohmingthanga, learned Legal Aid Counsel appearing for the respondent Nos.2 & 3 submits that the testimonies of the twin victim girls are wholly trustworthy, credible and unblemished and, therefore, the conviction based on such testimonies warrants no interference from this Court. In support of his submission, he relies upon the following decision of the Apex Court in the case of ***Phool Singh Vs. The State of Madhya Pradesh***, reported in **(2002) 2 SCC 74**.

16. He further submits that the POCSO Act, 2012 is a special statute, being enacted to prevent sexual exploitation and sexual abuse of children, which are heinous crime, the legislature has provided that the Court shall presume the accused to be guilty if he is prosecuted for the offence under the POCSO Act, 2012. He accordingly submits that the accused/appellant was burdened with the onus to prove his innocence on the basis of the principle of reverse burden of proof and the accused/appellant in the present case having not been able to prove his innocence based on preponderance of probability, the conviction warrants no intervention from this Court.

17. In support of the aforesaid submission, he relies upon the decision of the Apex Court in the case of ***Bhupen Kalita Vs. State of Assam***, reported in **(2020) 5 GLR 153**.

18. We have given prudent consideration to the arguments made by the learned counsels appearing for the parties and have perused the material available on record including the citations submitted at the bar.

19. The case of the prosecution is primarily based on the testimonies of the twin victim girls "X" and "Y". In an offence involving the POCSO Act, 2012, conviction can be based on the sole testimony of the victim, provided the same inspires confidence. Keeping the aforesaid principles in mind, let us now refer and analyze the testimonies.

20. Apt to refer to the testimonies of the twin victim girls "X" and "Y".

21. PW-2/victim "X" deposed that she is 6(six) years old and that she and "Y" cut one birthday cake. She further deposed that the accused/appellant once took her to a place where his car was washed and that her sister "Y" was also present. She further deposed that accused/ appellant took them at a place where there was sown timber and that he inserted his penis into their mouth. She further deposed that on another occasion, the accused/appellant took her and "Y" in his car when he went to fill petrol and, while returning back, he stopped his car near a place where dogs used to be taken for treatment. She further deposed that he closed the car windows and inserted his fingers into her private parts. She further deposed that he also touched the thigh of "Y". She further deposed that once the accused/appellant made her lie down on their bed and he removed his pants and also hers and thereafter he tried to insert his penis into her private parts.

She further deposed that his penis did not touch her private parts. She further deposed that inside the car, in their house, the accused/appellant inserted his tongue into her mouth.

22. During cross examination, she clarified that when she made statement before the police, "Y" was standing beside her.

23. PW-3/victim "Y" deposed that the accused/ appellant inserted his penis into her mouth at a place where he got his car washed. She further deposed that later, he took them to petrol pump and while coming back, near the place where dogs used to be taken for treatment, he stopped the car, closed the glass and he touched the private parts of "X" and also touched her thigh. She further deposed that she told him that God did not allow doing such things. She further deposed that when they reached home, her parents were there and that she told her mother what the accused/appellant did to "X". She further deposed that she beg forgiveness of her mother because she was afraid that her mother would scold her. She further deposed that she saw the accused/ appellant touching the private parts of "X" by inserting his hands inside her underpants.

24. During cross examination, she denied the suggestion that the accused/appellant did not insert his penis into her mouth and that the accused/appellant also did not touch the private parts of "X" .

25. What emerges from the above testimonies of the twin victim girls is that both corroborates each other as regards the factum of aggravated penetrative sexual assault committed by the accused/appellant on two occasions, firstly, when the accused/appellant had taken them while taking his car for wash and, secondly, while taking them along for filling petrol in the car.

26. PW-2 and PW-3 both testified that the accused/appellant took them to a place where his car was washed and inserted his penis into their mouth. They also testified that on another occasion, the accused/appellant took them in his car when he went to fill petrol and while returning back, he stopped the car near a place where dogs used to be taken for treatment and after closing the car windows, he inserted his finger into PW-2's private parts and touched the thigh of PW-3. There is nothing inconsistency or improbability in their testimonies. In fact, they both have witnessed the accused/appellant committing the act of digital penetration and penetration of their mouth.

27. Apt at this juncture to refer to the relevant provisions of the POCSO Act, 2012. Section 3 of the POCSO Act, 2012, which defines penetrative sexual assault is reproduced hereunder for ready reference:-

“3. *Penetrative sexual assault.*-A person is said to commit "penetrative sexual assault" if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.”

28. Apparent that Sub Section (a) & (b) of Section 3 of the POCSO Act, 2012 defines penetrative sexual assault and it includes "A person penetrating his penis to any extent, into the mouth of a child" or "a person inserting, to any extent, any object or a part of a body, not being the penis, into the vagina of the child".

29. Sub Section (m) of Section 5 of the POCSO Act, 2012 provides that whoever commits penetrative sexual assault on a child below 12 years, the person is said to commit aggravated penetrative sexual assault. In the present case, it has clearly been established from the evidence of the twin victim girls that the accused/appellant had firstly inserted his penis into their mouth and secondly, inserted his finger into the vagina of "X" and therefore, the offence of penetrative sexual assault is made out. Further, the twin victim girls being 5 years of age at the time of the offence, such penetrative sexual assault falls under the offence of aggravated penetrative sexual assault.

30. Apt now to refer to the depositions of PW-1 and PW-4, who are the parents of the twin victim girls and they further corroborates the versions of the offence deposed by the twin victim girls.

31. **PW-1/H.Lalrinsangi** deposed that the accused/appellant is their neighbour. She further deposed that she used to feed their pigs early in the morning and that her two daughters "X" and "Y", who are twins used to accompany her. She further deposed that in the morning on 15.08.2020, her two daughters, as usual, accompanied her when she was feeding their pigs. She further deposed that her twin daughters when saw the accused/appellant

starting his car, they asked him where he was going and he replied that he was going to fill petrol and asked them whether they wanted to go along with him. She further deposed that after they asked for her permission, they went with him wearing masks. She further deposed that they did not take long and returned while she and her husband were sitting outside.

32. PW-1 further deposed that after "X" and "Y" returned, they raised their hands as a sign that they had to wash themselves. She further deposed that "X" went inside the house directly while "Y" came to them and cried and stated that the accused/appellant stopped his car near Vety. Hospital and after closing the car windows, he touched her thigh. She further deposed that thereafter "Y" covered herself and told the accused/appellant that God did not allow. She further deposed that "Y" asked her not to ask "X" about anything stating that the accused/appellant touched the private parts of "X" and inserted his finger into it. She further deposed that "Y" asked for her forgiveness stating that she did not inform her about an earlier incident. She further deposed that "Y" told her that when they accompanied the accused/appellant when he went for servicing of his car at the servicing centre between Ramthar and Farm Veng, the accused took both of them to one corner of the Servicing Centre and he penetrated his penis in to their mouth. She further deposed that she was surprised to learn about the same as they had a very good family relation and that she was confused about what she should do.

33. She further deposed that she prayed and then decided to meet Pi Zamtei, a VC Member and upon meeting her, Pi Zamtei told her to meet PW-6 and that she thereafter went to the house of PW-6 and told her about what

happened to her two daughters. She further deposed that PW-6 thereafter called a member of Child Welfare Committee who advised them to submit an FIR. She further deposed that she accordingly lodged an FIR which is Ext. P-1.

34. She further deposed that off late, her daughter "X" told her that one week back, during the absence of the accused/appellant's family members, the accused used to make her lie down on their bed and removed her pants and underpants and rubbed his penis into her private parts. She further deposed that "X" further told her that the accused/appellant used to insert his tongue into her mouth inside his car and used to give her money. She further deposed that the accused/appellant used to ask her to come every morning and used to touch her private parts daily. She further deposed that it has been a usual occurrence that the private parts of "X" more particularly and also that of "Y" used to get bruised and found red. However, she was never suspicious though she used to apply oil on the bruises.

35. During cross examination, she clarified that she did not see the accused/appellant inserting his hands or penis into the private parts of "X" or inserting his tongue into the mouth of her daughters. She further clarified that the Police did not seize any underpants of the twin victim girls. She further clarified that she never suspected the accused/appellant and also did not experience any unusual behavior of the accused/appellant, though her twin daughters used to frequently go earlier to the house of the accused/appellant, however, later on, before the matter was exposed, they had been reluctant to go to the house of the accused/appellant, especially "Y", who is a little wiser amongst the two. She further clarified that she never saw any blood stains on their underpants. She further clarified that it must be around 07:30 A.M when

they returned home on 15.08.2020 morning and they were away for about one hour. She further clarified that the accused/appellant touched the thigh of "Y" and inserted his finger into the private parts of "X" in the said morning on 15.08.2020. She further clarified that she saw that the face of "Y" was dirtied by tears in the morning when they returned home on 15.08.2020 before she cried.

36. PW-4/Kenny John deposed that he is married to PW-1 and that they have three children, i.e., one son and two daughters. He further deposed that he has been working as warden in Presbyterian English School, Farm Veng from 2007 till date. He further deposed that on 15.08.2020 morning, the accused/appellant invited his two daughters to go with him for filling petrol in his car and that after they came back home, "Y" started crying in front of his wife and that when his wife asked her why she was crying, she stated that the accused tried to touch her private parts, but she resisted as she was scared and that the accused/appellant then turned to "X" and inserted his finger into her private parts. He further deposed that on that day itself "Y" divulged that the accused/appellant had inserted his penis into her and her sister's mouth when they went for washing his car. He further deposed that his wife accordingly submitted an FIR at Lunglei Police Station on the same day.

37. During cross examination, he clarified that before the incident that happened on 15.08.2020, he had not noticed any unusual behavior of the accused/appellant towards his children. He further clarified that he was present when the accused/appellant called his twin daughters on 15.08.2020 morning and that the timing of their return after going out could be between 07:00 - 08:00 A.M. He further clarified that he noticed that his younger daughter was

crying when they came back.

38. It clearly establishes from the testimonies of PW-1 and PW-4, i.e., parents of the twin victim girls that firstly, on 15.08.2020, after being dropped at home by the accused/appellant, one of the victim girl i.e., "Y" told them that the accused/appellant tried to touch her private parts and when she resisted, he then turned to "X" and inserted his finger into her private parts when they had accompanied him for filling petrol in his car. She further told them that earlier also the accused/appellant had inserted his penis into her and X's mouth when they had accompanied the accused/appellant in his car to the service station for car wash. The said testimonies of the Prosecution Witnesses fully corroborate the versions of both the twin victim girls including the surrounding circumstances deposed by them.

39. That apart, PW-5 is the neighbour and PW-6 is the President of MHIP Farm Veng Branch (NGO), who further supports the story of the prosecution.

40. PW-5/C. Lallianzela deposed that the accused/ appellant is his neighbour and that PW-4 came to his house on 15.08.2020 morning at about 08:00 A.M in a shocked state. He further deposed that PW-4 was unable to speak initially and that he was literally weeping. He further deposed that he accordingly tried to enquire from PW-1 as to what the matter was and talked to her by phone. He further deposed that PW-1 informed him that she was in the Police Station submitting an FIR.

41. He further deposed that thereafter, PW-4 informed him that the

accused/appellant had sexually assaulted his twin daughters "X" and "Y". He further deposed that after some time, "X" and "Y" also came to his house and said that in the morning they had accompanied the accused/appellant for filling petrol in his car and on their way back, the accused/appellant stopped the car, closed all the windows, and tried to touch the private parts of "Y". He further deposed that "Y" told the accused/ appellant that such thing is not allowed by God, however, the accused/appellant went on and forcibly touched the private parts of "X". He further deposed that both "X" and "Y" informed him that the accused/appellant had inserted his penis into their mouth in a corner of the place where he took his car for servicing. He further deposed that "X" also stated that earlier too, the accused/appellant used to take them to his bedroom, remove her underpants and tried to lie on top of her.

42. He further deposed that they also stated to him that the accused/appellant also used to take them to his garage where he touched their private parts and that the accused/appellant used to try to make them bath at his house. He further deposed that he accompanied PW-1 and PW-4 to the Police Station, where they produced the birth certificates of "X" and "Y".

43. During cross examination, he clarified that he did not personally see what had happened to "X" and "Y" but he heard them stating what had happened to them.

44. PW-6/Lalthianghlimi Sailo deposed that she is the President of MHIP, Farm Veng Branch, continuously from the year 2000 till date and that on 15.08.2020 morning, PW-1 came to their house and told them that the accused/appellant had sexually assaulted "X" and "Y" inside his car near a Vety

dispensary. She further deposed that she called Pu Raltawnga, Chairman, CWC, who advised her to approach the Police and that she accompanied PW-1 to Lunglei Police Station. She further deposed that accordingly FIR was lodged. She further deposed that she thereafter went to the house of "X" and "Y" where she saw PW-4 holding "X" and "Y" and crying. She further deposed that thereafter, they all went to the Police Station and "X" and "Y" were taken for medical examination.

45. During cross examination, she clarified that she did not have direct evidence about the accused sexually assaulting "X" and "Y" and that she saw "X" and "Y" in a state of fear of the accused/appellant and she consoled them. She further clarified that she learnt about the incident from Pi Marini and not from her husband. Thus, the said two Prosecution Witnesses also fully corroborate the surrounding circumstances as deposed by the twin victim girls and their parents.

46. This takes us to the remaining testimonies which are of the official witnesses, i.e., PW-7, the Medical Officer, who examined the twin victim girls, PW-8, the Judicial Officer who recorded their statements under Section 164 Cr.PC and PW-9, the Investigating Officer.

47. PW-7/Dr. P.C. Zonunmawii deposed that on 15.08.2020 at 11:40 A.M, the victim "X" and "Y" were produced before her at Civil Hospital, Lunglei by their mother for medical examination. She further deposed that "X" stated to her that she had been allegedly touched inappropriately by the accused/appellant's finger in her genital region that morning. She further

deposed that "X" further stated that the accused/appellant had manually forced his genital part into her oral cavity in the past. She further deposed that however, "X" did not specify the date or time of the incident. She further deposed that on examining "X", she found her physically and mentally healthy as per her age and that there was no influence of alcohol or drugs at the time of examination. She further deposed that there were no marks of violence, seminal stains or other stains on her clothes and that her genital organ was well developed by her age with no pubic hair or seminal stains at the time of examination and that there was also no bruising or laceration of external or internal genitalia. She further deposed that old hymenal tear was found at 11 and 1 O'clock position.

48. She further deposed that vaginal smear was sent for lab examination and that in the lab report, no spermatozoa was found. She further deposed that "Y" also stated to her that she had been allegedly touched inappropriately by the accused/appellant by his finger in her genital that morning. She further deposed that "Y" also stated to her that the accused/appellant manually forced his genital part into her oral cavity in the past, however, she did not specify the date and time of the incident. She further deposed that during examination, she found that "Y" was physically and mentally healthy by age and that there was no influence of alcohol or drugs at the time of incident and that there were no marks of violence, seminal stains or other stains on her clothes. She further deposed that she found Y's genital organs well developed by age with no pubic hair or seminal stains at the time of examination. She further deposed that there was no bruising or laceration of the internal and external genitalia of "Y" at the time of examination. She further deposed that old hymenal tear was

found at 5 O'clock position with scarring. She further deposed that vaginal smears were sent for lab examination and in the lab report, no spermatozoa was found. She further exhibited the medical examination report of "X" and "Y" as Ext. P-5 and Ext. P-6 respectively.

49. During cross examination, she clarified that she cannot ascertain the age of the tear though it was her findings that it was an old tear. She further clarified that there could be hymenal tear for reason other than penetration. She, on being asked by the Court, further clarified that she did not believe that it was self inflicted because they were too young.

50. PW-8/F. Laltlansangi deposed that on 17.08.2020 "X" and "Y" were brought before her for recording their statements concerning Lunglei P.S Case No. 62/2020 and that they were brought by their biological parents and one friend of their father. She further deposed that at first, she had an informal chat with the children in order to make them comfortable and when she was of the opinion that they were ready to depose their statements, she interrogated them one by one in the presence of their parents. She further deposed that "X" stated before her that on 15.08.2020, the accused/appellant took them at Motor Servicing Centre and touched her private parts. She further deposed that "X" also mentioned that prior to this incident, the accused/appellant had touched her and made her mouth touch his private part.

51. She further deposed that similarly, "Y" also stated before her that on 15.08.2020, the accused/appellant took her and her sister near Vety. Office and touched their private parts inside his car. She further deposed that "Y" also

mentioned that prior to this the accused/appellant took them at a motor servicing centre which is located at Farm Veng and Ramthar area and that the accused/appellant took them in a wooden shed and made them mouth his private parts. She further exhibited the statement of "X" and "Y" recorded by her as Ext. P-7 and Ext. P-8.

52. PW-9/C. Ramnunmawii deposed that she had been posted at Lunglei Police Station from 2020 till date. She further deposed that an FIR was received from PW-1 on 15.08.2020 at Lunglei Police Station, wherein the informant alleged that the accused/appellant had made her twin daughters, aged 5 years, to apply their mouth on his penis during June, 2020 and again, on 15.08.2020, he took the twins along with him when he went to fill petrol in his car at AOC, Lunglei and on their way back, he touched their private parts and also could have inserted his fingers. She further deposed that upon registration of the FIR and the investigation being entrusted to her, she visited the two places of occurrence, i.e., a place near Vety Hospital and at JP Motor Servicing, Farm Veng and prepared Crime Details Form including drawing of sketch map. She further deposed that she examined and recorded statements of the complainant, the twin victim girls, and other witnesses and that she made requisition for medical examination of the twin victim girls and after they were examined, she received their Medical Examination Report being Ext. P-5 and Ext. P-6 respectively.

53. She further deposed that she seized birth certificate of "X" and "Y" in the presence of witnesses vide Seizure Memo, being Ext. P-2, and that she had also recorded statements of the two witnesses. She further deposed that thereafter she made prayer for recording judicial statements of the twin victim

girls and received their judicial statement duly recorded by JMFC, Lunglei District. She further exhibited her prayer for recording judicial statement of the twin victim girls as Ext. P-10 and the judicial statement of "Y" as Ext. P-7 and the judicial statement of X as Ext. P-8. She further deposed that thereafter she arrested the accused, interrogated him and also recorded his statements and sent him for medical examination and thereafter received his Medical Examination Report which is Ext. P-12. She further deposed that from the materials she collected, a prima facie case under section 6 of POCSO Act, 2012 read with 376-AB IPC was found well established against the accused/appellant and she accordingly charge-sheeted him vide Ext. P-13.

54. In her cross examination, she clarified that she was unable to ascertain the date when the accused had taken the twin victim girls to JP Motor Servicing but she was informed that it was during the month of June, 2020. She further clarified that she did not take steps to record statements of the person who was present at JP Motor Servicing (apart from the accused and the twin victim girls) during the relevant time, as she was informed by the twin victim girls that no one saw them when the accused/ appellant made them apply their mouth on his genital part. She further clarified that the complainant approached the PW-6 before lodging the FIR.

55. Reading of the above official testimonies, it is apparent that the medical examination report of the twin victim girls indicates partial hymen tear. Thus, the medical reports also corroborate the version of the twin victim girls.

56. Upon the examination of the Prosecution Witnesses being completed, all

the incriminating circumstances were put before the accused/appellant under Section 313 Cr.PC, wherein the accused/appellant admitted that the twin victim girls "X" and "Y" accompanied him when he went to JP Motor Servicing Farm Veng for servicing of his car but denied the allegation of sexual assault. In his defence, he further deposed before the Trial Court that he is quite suspicious of the role played by PW-6 as she does not like him in connection with his role in the Presbyterian Church as Tual Upa and also about her demand to him to slice out a portion of his land for way to approach her land which she purchased from him.

57. DW-1/accused/appellant deposed that since the twin victim girls are his close neighbour, he maintains a cordial relation with their family and that he considers them as his grand-daughters and that they also consider him as their grandfather. He further deposed that they used to come to his house with their parents on several occasions and that they never came without their parents. He further deposed that whenever his grand-children came from Lawngtlai, the victims often came to their house and used to play with them.

58. Regarding the alleged incident at Car Servicing Point, he further deposed that he had called the owner before he went there and enquired whether it was open or not and that the said owner told him that he almost finished servicing a car and he could be the next. He further deposed that after reaching the servicing centre, the said owner requested him to park his car in the servicing spot and he started washing his car. He further deposed that he was watching the said owner closely while he was washing his car and that he did not go anywhere. He further deposed that after the car was washed, he

drove back along with the victims who sat in the back seat of his car and dropped them in his verandah, whereafter they went back home. He further deposed that he did not sexually assault them. He further deposed that in the morning of 15.08.2020 when he was about to go to fill petrol at AOC, Ramthar, Lunglei, the alleged twin victim girls asked him where he was going and accordingly, he told them that he was going to fill petrol at AOC, Ramthar, Lunglei. He further deposed that the twin victim girls told him that they also wanted to go with him and that their mother had allowed them to go with him. He further deposed that they sat on the front seat of the car on his side and went to the petrol pump, however the same was closed and they returned back home. He further deposed that he did not sexually assault them. He further deposed that he suspected that PW-6 had played a crucial role because the mother of the two victims had approached her regarding lodging of an FIR against him. He further deposed that PW-6 had personal grudge against him regarding the land she purchased from him and that she also opposed him regarding his role as Secretary of their Church in which she is also a member.

59. During cross examination, he clarified that there was no enmity or misunderstanding between his family and that of the victims. He further clarified that the twin victim girls were with him when he went to the car servicing center and also when he went to fill petrol in his car. He further clarified that the twin victim girls used to come to his house. He further clarified that PW-6 is not related to the family of the twin victim girls. He further clarified that the parents of the victims did not go to the house of PW-6 prior to the present incident. He further clarified that PW-1 approached PW-6 as she (PW-6) was Secretary of MHIP, Farm Veng Branch.

60. DW-2/V. Vanhnuni, who is the wife of the accused/appellant deposed that their family and the family of the twin victim girls maintains good relation and that they live opposite to each other's house. She further deposed that since the victim girls are twins, she used to help their mother and that often the parents of the victims used to request her and her husband to take the twins for medical checkup and accordingly, they used to take the twin girls to the hospital in their car whenever they needed assistance. She further deposed that on the date of the incident, when the accused/appellant was preparing to move out, the twin victim girls stated that they wanted to go out with him and accordingly, her husband took them in their car and that they returned soon and there was no time for the accused/appellant to sexually assault the twin victim girls. She further deposed that it is her belief that the twin victim girls would have never followed the accused/appellant had there been any incident of sexual assault before.

61. She further deposed that she is also suspicious about the interest shown by PW-6 in taking up the issue for prosecuting her husband. She further deposed that PW-6 had grudge against her husband regarding the land she had purchased from them and that PW-6 had shown dislike towards her husband regarding the decision of the Church, posted in the whatsapp, pertaining to Covid protocol to be followed by the Church. She further deposed that ever since the FIR was lodged against her husband, she (PW-6) showed her over enthusiasm in favor of the complainants and she had gone to their house in and out and that she had also invited them for dinner several times. She further deposed that therefore, it is her belief that PW-6 had played an important role

in framing the accused/appellant wrongly.

62. During cross examination, she clarified that she knows that the twins are very clever. She further clarified that before the present case came up, the complainant's family and PW-6 did not maintain close relationship and that she did not know whether they became closer because the complainant needed her support. She further clarified that she was not present when the alleged incidents took place, i.e., inside the car near Vety Hospital and in the car servicing center.

63. DW-3/C. Lalruatfela, who is the son of the accused/appellant deposed that the allegation against his father that he had sexually assaulted the twins or either of them inside their house is not at all possible because his father goes to office every day and that there is no privacy to do such thing as some of them were always in the house. He further deposed that the alleged incident inside the car took place on Saturday on a busy road and it is most unlikely that such an incident would take place. He further deposed that the alleged incident in the car servicing center is said to have taken place where there were sown timbers but he confirmed from its proprietor that there had never been sown timber in his campus. He further deposed that the interest shown by PW-6 for prosecution of his father was because she had grudge over him because of some misunderstanding over the land she had purchased from his father. He further deposed that the twin victim girls did not show any fear or dislike of male person irrespective of the fact that victims of sexual assault usually show fear and dislike towards male person.

64. In his cross examination, he clarified that when he approached the proprietor of the car servicing center to ask him whether he would appear as witness on his father's behalf, he declined stating that he was not aware about the date or month but he affirmed that there was no sown timber in his campus. He further clarified that the present case came up on the basis of an allegation by the twin victim girls, who stated to their parents that one of them had been sexually assaulted by his father. He further clarified that he was not aware about PW-6 having good relation with the complainant's family. He further clarified that it is most probable for victims of sexual assault to approach leader of an MHIP.

65. Reading of the testimonies of the above Defence Witnesses, apparent that the accused/appellant is trying to set up a defence that PW-6, due to grudge against the accused/appellant over a land she had purchased, had instigated PW-1 to lodge the FIR against the accused/appellant. However, such defence was not taken up at any earlier point by the accused/appellant and had been raised for the first time during 313 Cr.PC examinations after the closure of the prosecution witnesses.

66. Pertinent that during the 313 Cr.PC examination, the accused/appellant admitted taking the twin victim girls in his car for washing his car. During his deposition before the Trial Court also he admitted taking both the twin victim girls along with him in his car on both the occasions, i.e., firstly, for washing the car and secondly, for filling petrol.

67. In a case of sexual assault of a minor girl, what is important to keep in

mind is that the minor girls, that too, both aged 5 years at the time of occurrence, would not ordinarily lie about being sexually assaulted. Therefore, the version of the twin victim girls has to be considered with utmost care before discarding them. In fact, if the version of the prosecutrix inspires confidence and appears to be trustworthy, credible, unblemished and of sterling quality, no further corroboration is required.

68. Apt to refer to the decision of the Apex Court in the case of **Ganesan Vs. State**, reported in **(2020) 10 SCC 573**, wherein the Apex Court has held that where the testimony of victim is found reliable and trustworthy, conviction on the basis of such testimony alone is permissible. Relevant paragraph of the aforesaid decision is reproduced hereunder for ready reference:-

"10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay, it is observed in paras 9 to 14 as under:

"9. In State of Maharashtra v. Chandraprakash Kewalchand Jain this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied

that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In State of U.P. v. Papputhis Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12).

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In State of Punjab v. Gurmit Singh, this Court 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. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394- 96&403, paras 8 &21)

'8.... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

21.... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations." (emphasis in original)

12. In State of Orissa v. ThakaraBesra, this Court held that rape not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh* this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan*.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

10.2. In *Krishan Kumar Malik v. State of Haryana*, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in *Rai Sandeep v. State (NCT of Delhi)*. In para 22, it is observed and held as under: (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him.

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

69. Reference is also made to the decision of the Apex Court in the case of ***State (NCT of Delhi) v. Pankaj Chaudhary***, reported in **(2019)11 SCC 575**, wherein the Apex Court has observed and held as under:

"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming." [State of Rajasthan v. N.K.].

70. Reference is also made to the decision of the Apex Court in the case of ***Sham Singh v. State of Haryana***, reported in **(2018) 18 SCC 34**, wherein the Apex Court has observed and held as under:-

"6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires

confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh³ (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam⁴.)"

71. Therefore, the test is to consider the testimony of the victim in the context of the facts of each case and to ascertain whether her testimony can be said to be trustworthy, reliable, credible and is of sterling quality. In doing so, whether the surrounding circumstances deposed by her are supported by other witnesses or not and the manner in which she has recounted the incident right from the beginning to the end are also, amongst others, to be taken into account.

72. It appears that the twin victim girls have corroborated each other as regards the accused/appellant putting his penis inside their mouth while they

had accompanied him for a car wash and also inserting his finger in the vagina of victim "X" and touching victim "Y" while they had accompanied him for filling petrol on 15.08.2020.

73. It appears that after the twin victim girls came back on 15.08.2020, 'Y' informed her parents about the incident, whereafter PW-1, after consulting PW-6, lodged the FIR which corroborates the version of the twin victim girls given in their deposition during trial. Further, PW-1 during her deposition before the Trial Court fully supported the surrounding facts and circumstances deposed by both the twin victim girls. Furthermore, PW-4 has also supported the surrounding circumstances to the effect that after "X" and "Y" came back on 15.08.2020, "Y" informed them about the incident and also about the earlier incident and that PW-1 had gone to meet PW-6.

74. It further appears that PW-4 thereafter went to PW-5 and the victim girls had also accompanied him to the house of PW-5, wherein the victim girls had narrated to PW-5 about the said incident of digital penetration to "X" and penetration into their mouth committed by the accused/appellant. It further appears that PW-5 corroborated the above surrounding circumstances deposed by the twin victim girls and PW-4.

75. That apart, the defence has not been able to shake the evidence of the Prosecution Witnesses, especially of the twin victim girls. In fact, the medical report indicating partial hymen tear in both the twin victim girls is further in support of the prosecution. Surrounding circumstances, thus, in light of the aforesaid deposition, stand proved.

76. Thus, in view of the continuity in the chain of events, supported by the other witnesses and the manner in which the twin victim girls had disclosed about the incident, it is conclusively established that both the twin victim girls are totally trustworthy, credible and unblemished. Therefore, we have no hesitation in accepting the testimonies of the twin victim girls as true.

77. As regards the incident of 15.08.2020, though the Trial Court has held to the effect that the allegation of the alleged victim girls that the accused/appellant had touched their private parts is not reliable in view of the discrepancies in the statement of "Y", while reporting the incident to PW-7 and PW-8, we are of the view that since the testimonies of the twin victim girls inspire confidence, no further corroboration is required. The said finding of the Trial Court, accordingly, is not acceptable to us.

78. Pertinent that, it appears from the evidences of both prosecution and defence that there was no enmity between the families of the twin victim girls and the accused/appellant and, instead, they share a cordial relation with each other. Thus, there is no reason whatsoever for the twin victim girls to falsely implicate the accused/appellant of an offence which will tarnish their image and can destroy their lives.

79. Apt that though the accused/appellant during his examination under Section 313 Cr.PC has explained that he is suspicious of the role played by PW-6, however, there is no foundation or basis whatsoever built by the accused/appellant to bolster his suspicion during the cross examination of the

Prosecution Witnesses. In fact, no suggestion or question whatsoever as regards PW-6 disliking the accused/ appellant and instigating PW-1 to lodge the FIR was either put to PW-6 or to PW-1 during cross examination.

80. Section 313 Cr.PC provides a substantial right to the accused/appellant, whereunder, after the evidence of the prosecution is adduced, all the incriminating circumstances emerging out during the trial are put to him for offering explanation. Thus, the accused/appellant was given an opportunity for offering his explanation in defence. The answers given by the accused/appellant are carefully weighed in the facts and circumstances of each case so as to find out the truth and to examine the veracity of the case of the prosecution. However, if such explanation appears to be unreasonable or false, the Court is entitled to draw adverse inferences against the accused/appellant and the same shall complete the chain of events in cases which are based on circumstantial evidence.

81. Reference is made to the decision of the Apex Court in the case of ***Sanatan Naskar & Anr. Vs. State of West Bengal***, reported in **(2010) 8 SCC 249**. Paragraph 10 and 11 of the aforesaid judgment is reproduced hereunder for ready reference:-

“10. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to

explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him.

However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of [Section 313 \(4\)](#) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under [Section 313](#) of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of [Vijendrajit v. State of Bombay](#), [AIR 1953 SC 247], the Court held as under:

"(3). As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under S.342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's

statement and excluded the exculpatory part does not seem to be correct. The statement under S.342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

11. In the light of the above stated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement recorded under [Section 313](#) of Cr.PC. In both these circumstances the Court would be entitled to draw adverse inference against the accused."

82. In the present case, there being no foundation as regards the role played by PW-6 in falsely framing the accused/appellant in the alleged offence, such answer of the accused/appellant appears to be unreasonable and false. Hence, the same stands against the accused/ appellant.

83. The argument of Ms. Hmar, learned counsel for the accused/appellant to the effect that the conviction is liable to be altered from Section 6 to Section 12 of the POSCO Act, 2012 cannot be accepted as the act of digital penetration on "X" and penetration into their mouth has been continuously committed by the accused/appellant. Therefore, the offence of aggravated penetrative sexual assault is clearly established and proved by the prosecution beyond reasonable doubt.

84. That being so, we do not find any illegality or infirmity in the conviction

of the accused/appellant by the Trial Court. Hence, we are of the considered view that there is no sufficient ground for interfering with the Judgment & Order dated 04.07.2022 passed by the Trial Court. Resultantly, the conviction of the Trial Court stands upheld. Therefore, the appeal fails.

85. This Court appreciates the service rendered by the learned Legal Aid Counsel and accordingly, his requisite fee is to be paid by the State Legal Services Authority as per existing rates.

86. Send back the Trial Court records.

JUDGE

CHIEF JUSTICE

Comparing Assistant