Serial No. 01
Supplementary List

MLHC010004262024

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 25 of 2024

Reserved on: 26.08.2026
Pronounced on: 12.11.2026
Uploaded on: 12.11.2026

Whether the operative part or full judgment is pronounced: Full Judgment

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Shri Anthony Kharbani,
Son of Shri Dinesh Lyngdoh Mawphlang
Resident of: Umroi, Umeit, P.S: Umiam,
District: Ri-Bhoi, Meghalaya
Presently lodged in District Prison & Correctional Home,
Ri-Bhoi District, Nongpoh

…. **Appellant**

-VERSUS-

State of Meghalaya
Through Public Prosecutor

…. **Respondent**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

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i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Appearance:

For the Petitioner/Appellant(s) : Mr. S.D. Upadhaya, Legal Aid Counsel
Ms. A. Synrem, Adv.

For the Respondent(s) : Mr. R. Gurung, GA
Mr. S. Sengupta, Addl. PP

JUDGMENT:
Per W. Diengdoh, (J)

1. An incident concerning an act of rape perpetrated on the minor daughter of the complainant, wherein an FIR was filed on 27.01.2019, before the Officer-In-charge, Women Police Station, Nongpoh then Ri-Bhoi District, has set into motion the prosecution case against the accused/appellant herein.

2. It is the case of the prosecution that the complainant in the said FIR had informed the Officer In-charge, that on 26.01.2019 the survivor had disclosed to her grandparents that her father/accused had sexually assaulted her for the last 4 years, the most recent incident having occurred in the month of November, 2018. On receipt of the FIR, the Officer In-charge, Women Police Station, Ri-Bhoi District, registered a cognizable case vide Women P.S. Case No. 6 (1) 2019 under Section 5(1)(n)/6 of POCSO Act and WPSI J. Nongsiej was entrusted with the investigation of the case.

3. Accordingly, the appellant/accused was arrested on 27.01.2019 in connection with the abovementioned case and he was never enlarged on bail till the date of conviction. On investigation launched, the statement of the survivor (aged about 13 years) was recorded under Section 164 CrPC. She was also examined by a Medical and Health Officer and biological samples were lifted from the survivor as well as the accused. Upon completion of investigation, the Investigating Officer (IO) has submitted the charge sheet vide Charge Sheet No. 10/2019 dated 25.05.2019 in the Court of the Special Judge, Nongpoh, Ri-Bhoi District, finding a prima facie case well made out against the appellant/convict for committing offences defined and punishable under Section 5(1)(m)(n)/6 POCSO Act.

4. On 16.07.2019, the learned Trial Court has framed the charges against the appellant/convict for commission of offence punishable under Section 6 of the POCSO Act to which the appellant/accused had pleaded

guilty. However, the trial Court has not convicted the appellant/accused under Section 229 CrPC but proceed to record evidence of the relevant witnesses.

5. During the trial of the case, prosecution has examined 8(eight) prosecution witnesses and exhibited 13 (thirteen) numbers of documents to establish its case. After the completion of the prosecution evidence, the appellant/convict was examined under Section 313 CrPC where he has denied to have committed any offence.

6. Then the learned Trial Court heard the argument of the prosecution and the defense on the 11.06.2021 and vide judgment dated 18.06.2021 passed in Special POCSO Case No. 12 of 2019, convicted the appellant/accused under Section 5(l)(m) & (n) of POCSO Act. Consequently, vide order of sentence dated 25.06.2021 the appellant was sentenced under Section 6 of the POCSO Act to undergo rigorous imprisonment for life with fine of ₹ 10,000/- (Rupees Ten Thousand) only and in default of payment of fine to undergo further 3(three) months rigorous imprisonment.

7. In appeal before this Court, the appellant duly represented by the learned Legal Aid Counsel has assailed the impugned judgment and sentence and has submitted that the appreciation of the evidence on record does not inspire confidence to come to the conclusion that a case is made out against the appellant/accused beyond reasonable doubt.

8. Mr. S.D. Upadhaya, learned Legal Aid Counsel in his argument has raised the first objection as regard the manner in which the charge has been framed to say that the charge framed was under one head and is confined to "aggravated sexual assault punishable under Section 6 of the POCSO Act, 2012". However, the conviction is for offences said to have been committed under Section 5(l)(m) & (n) of the POCSO Act, therefore there was no specific charge framed against the appellant. This runs contrary to the provisions of Section 211 CrPC, submits the learned Legal Aid Counsel.

9. The learned Legal Aid Counsel has also submitted that the survivor in her statement before the court has alleged that she was sexually assaulted, but no specific details has been given as regard the dates, places and time. One specific statement made by the survivor is that while her mother was sleeping, the appellant forced her to sleep at about 8:00 pm and there he sexually assaulted her for the sixth time. This statement was however not put to scrutiny by the Trial Court, asserts the learned Legal Aid Counsel as such, the statement is improbable. To support this contention, the case of **Raj Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21**, para 22,23 and 32 was relied upon.

10. The learned counsel has also submitted that the survivor being a minor, a preliminary examination to find out the truth as far as her competency to depose on oath is concerned ought to have been carried out. However, no such examination was carried out, instead she was directly exposed before the court as a trial witness, as such, her evidence is vague without any facts and figures and the possibility of her being tutored cannot be ruled out. In this connection the learned Legal Aid Counsel has referred to the case of **Agniraj and Ors. Etc. v. State Through Deputy Superintendent of Police CB-CID,** reported in **AIR 2025 SC 2674**, para 25, 26, 27 and 28, and also the case of **Pradeep v. State of Haryana, AIR 2023 SC 3245**, para 8 and 9.

11. As to the medical report the learned Legal Aid Counsel has submitted that the doctor who had examined the survivor at the relevant point of time in her deposition as PW-5 has admitted in the cross-examination that she has not given her final opinion as the FSL report is awaited. Though there were samples of hair strands, saliva, nail clippings, nails scrapping, vulval swabs, vaginal swabs, pubic hair, urine, blood etc., collected from the survivor as well as the penile swab from the accused/appellant said to have been collected, however no FSL report in this regard has been brought on evidence, as such

where corroborative scientific evidence has been collected but suppressed/not adduce, therefore, an adverse inference under Section 114(g) of the Indian Evidence Act has to be drawn against the prosecution's case.

12. It is the submission of the learned Legal Aid Counsel that even in the statement of the accused/appellant recorded under Section 313 CrPC, firstly, the appellant has denied each and every allegation put to him, thereby negating any alleged plea of guilt which stood retracted, even so the learned trial judge has failed to place before the accused any incriminating circumstances to allow him to respond to the same. Therefore, any incriminating material not put to the accused under Section 313 CrPC must be excluded from consideration which was not done so vide the impugned judgment, submits the learned Legal Aid Counsel. The case of **Reena Hazarika v. State of Assam, (2019) 13 SCC 289**, para 19, 20, and 22 has been relied upon in this regard.

13. Coming to the aspect of the sentence imposed upon the appellant, the learned Legal Aid Counsel has submitted that by imposing a sentence under Section 6 of the POCSO Act, rendering the appellant to undergo rigorous imprisonment for life with fine of ₹ 10,000/- only, whereas the minimum sentence of 10 years and a maximum of imprisonment for life has been prescribed prior to the amendment of Section 6 in 2019, the post amendment language used by the Trial Court for an offence alleged to have taken place in the year 2018 cannot be contemplated, the same is hit by Article 20(1) of the Constitution of India. Further, the appellant/accused being a young man of 28 years old and a first-time offender, such mitigating circumstances has been ignored, as such, in case this Court upholds the conviction and sentences, the period of sentence may be re-look. The case of **State of Punjab v. Prem Sagar and Ors., (2008) 7 SCC 550,** para 7, 8 and 9 and the case of **Shri. Pynshngainlang Nongrum v. The State of Meghalaya**, order dated

06.07.2026 in **Crl.A. No. 10 of 2024 and Crl. A. No. 11 of 2024,** para 39, 40, 41 and 42 have been referred to by the learned Legal Aid Counsel to support this contention.

14. In view of such submission, the learned Legal Aid Counsel has submitted that the judgment and corresponding sentence impugned herein may be set aside and quashed and/or de novo trial from the stage of framing of charges be directed. In the alternative the order of sentence dated 25.06.2021 be reduced to one consonant with the unamended Section 6 of the POCSO Act, 2012.

15. Mr. R. Gurung, learned GA submitting on behalf of the State respondent has maintained that the conviction of the appellant was based on cogent evidence and proof beyond reasonable doubt as far as the commission of the offence is concerned, the fact being that the survivor who is the biological daughter of the appellant in her testimony both before the Magistrate concerned and in her evidence before the Trial Court has given a vivid account of how the sexual assault was perpetrated upon her. Though she may not be able to cite the exact date and time of previous assault, she has clearly cited the latest act of taboo committed by the appellant which took place sometime in the month of November 2018. The testimony of the survivor qualifies as one of sterling quality and was therefore believed by the Trial Court. The case of **Ganesan v. State Represented by its Inspector of Police, (2020) 10 SCC 573,** para 5.2 and 10.1 as well as **State of Punjab v. Gurmeet Singh (1996) 2 SCC 384,** para 8 and 21 was referred in support of this contention.

16. On the issue of sentence and period of the same, the prayer of the appellant for leniency may not be allowed, taking into consideration the relationship between the appellant and the survivor being the father and daughter, as such, as was held in the case of **Bhanei Prasad @ Raju v. State**

of Himachal Pradesh, 2025 SCC OnLine SC 1636, wherein at para 13 and 15 the Apex Court has observed that for the incestuous sexual violence committed by a parent, the same deserved the severest condemnation, wherein at para 13 of the same judgment it was also observed that *"When a father who is expected to be a shield, a guardian, a moral compass, becomes the source of the most severe violation of a child's bodily integrity and dignity, the betrayal is not only personal but institutional…."*.

17. The learned GA has also submitted that the testimony of the survivor was duly corroborated by that of the complainant who is her mother and who has filed the FIR. Though being the wife of the appellant in her cross-examination she has denied any motive to falsely implicate him. PW-6 and PW-7 are the grandfather and grandmother respectively of the survivor, PW-6 has confirmed the fact that at that time when the last incident occurred the survivor has fled to their house and has revealed the repeated sexual assault perpetrated upon her by the appellant, PW-7 has also supported this evidence.

18. Further, the learned GA has submitted that basically PW-5 who is the medical doctor who has examined the survivor at the relevant point of time, she has noted that the survivor was found with her hymen ruptured, though no external injuries were noted, this could be because of the fact that the last assault was two months prior to the period when the information was received. Even if assuming that the FSL report in this regard was not placed before the court, in the light of the oral evidence adduced, any FSL report would not materially affect the outcome of the investigation and the findings thereof. As such, there are no discrepancies found in the testimony of the survivor and other prosecution witnesses and even if there are discrepancies the same are minor and would not materially affect the case of the prosecution.

19. As to the age of the survivor the learned GA has submitted that the birth certificate relating to the age of the survivor was produced before the

Trial Court as Exhibit-P3. This piece of evidence was not contested by the defence/accused as such the fact that the survivor was below 12 years during the commission of the offence at different times, that the survivor was 12 years or below at the time when the offence was committed, the same has been proved by the contents found in the said birth certificate, which shows the age of the appellant as below 12 years at the time when the last sexual assault occurred.

20. In the light of the above the learned GA has submitted that the conviction and sentence imposed upon the appellant may not be set aside by this Court, the same being just and proper.

21. This Court has considered the submission made and has examined the FIR filed, the brief facts stated by the complainant therein, who is also the mother of the survivor is that, on 26.01.2019 at about 08:30 am the appellant/husband of the complainant had asked the survivor to accompany him to Myrdon village for meeting with relatives. Her daughter refused to go with him and on his insistence, she ran away to her grandparents' house and there she related to them how the appellant had sexually assaulted her for the last four years, the most recent being in the month of November 2018.

22. Based on the FIR a police case was registered, and investigation was launched, needless to say the appellant was found to have committed the offence of aggravated penetrative sexual assault upon his minor daughter and after the prosecution evidence was led, his statement was recorded under Section 313 CrPC, then, upon hearing the parties the learned Trial Court has convicted the appellant and sentenced him to life imprisonment with fine.

23. The initial objection of the appellant through the learned Legal Aid Counsel is that when the charges were framed, no specific charges with details were noted as to how the alleged offence was committed and there was also no specific detail as to the number of times, the date and place where such

alleged act of sexual assault was perpetrated by the appellant.

24. The learned Legal Aid Counsel has submitted that the appellant was found guilty and convicted for committing offences detailed under Section 5(l)(m)(n) of the POCSO Act 2012, but as has been submitted, how and in what manner the said offence was committed by the appellant and, has not been spelt out by the learned Trial Court while framing the charges. This has caused prejudice to the appellant and as such the trial is vitiated.

25. This contention cannot be sustained on the ground that even an omission to frame a charge cannot absolve the accused of the liability for commission of such offence, where such irregularity can be cured. The Supreme Court in the case of **Pynchemalangaki Bareh v. State of Meghalaya, 2026 SCC Online SC 1821,** at para 43, 48 and 54 has observed as follows:

> "43. This Court in *Sandeep Yadav v. Satish* [2026 SCC Online SC 474], reiterated this position, relying on Rafiq Ahmad alias Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300], wherein Court held that when a charge of a major offence is not made out, conviction for a minor offence even in the absence of the charge for the said minor offence can be sustained. It has also been held that the purpose of framing of charge is to put the accused to notice regarding the offence for which he is being tried. It was further held that non-framing of a charge or defects therein would not *ipso facto* vitiate the trial and that the question must always be examined in the facts of each case to determine whether prejudice or failure of justice has been occasioned.
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> 48. The appellant/accused was convicted by the Trial Court for a grave offence under Section 4(2) of the POCSO Act, providing a minimum sentence of twenty years. In a question before this Court on conviction under Section 304B in a trial for offence under Section 302 of the IPC, in the absence of charge framed under Section 304B of the IPC, this Court in *Shamnsaheb M. Multtani v. State of Karnataka* [(2001) 2 SCC 577], on a conjoint reading of Section 222 of the Cr.P.C. and Section 464 of the Cr.P.C. held that such conviction would be valid even if there is any omission or irregularity in the charge, provided there was no failure of justice. This Court

held:

> "15. Section 222(1) of the Code deals with a case "when a person is charged with an offence consisting of several particulars". The section permits the court to convict the accused "of the minor offence, though he was not charged with it". …
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> 16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as minor offence vis-à-vis the other offence."
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> 54. There is a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment making reference to each one of them. Therefore, in view of Section 464 of the Cr.P.C., it is possible for the Appellate Court or Revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself."

26. Coming to the contention that the allegation made by the survivor are vague and uncertain inasmuch as she has alleged that she was sexually assaulted by the appellant on seven occasions, however the time, date, month and year has not been mentioned, except for the sixth time when the sexual assault was perpetrated upon the survivor while she was sleeping with her mother, this, according to the learned Legal Aid Counsel has cast doubt on the veracity of the survivor's testimony, as such her testimony is not of a sterling character, the case of **Rai Sandeep @ Deepu v. State (NCT of Delhi) (2012) 8 SCC 21,** para 22, 23, and 32 have been relied upon by the learned Legal Aid

Counsel, such observations are worth mentioning herein as follows:

> “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.
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> 23. On the anvil of the above principles, when we test the version of PW 4, the prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests mentioned above. There is total variation in her version from what was stated in the complaint and what was deposed before the court at the time of trial. There are material

variations as regards the identification of the accused persons, as well as the manner in which the occurrence took place. The so-called eyewitnesses did not support the story of the prosecution. The recoveries failed to tally with the statements made. The FSL report did not co-relate the version alleged and thus the prosecutrix failed to instil the required confidence of the court in order to confirm the conviction imposed on the appellants.

32. In the decision in *Krishan Kumar Malik v. State of Haryana* [(2011) 7 SCC 130] in respect of the offence of gang rape under Section 376(2)(g) IPC, it has been held as under in paras 31 and 32: (SCC p. 138)

> "*31*. No doubt, it is true 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. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove*, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.
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> *32***.** Indeed, there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the Public Prosecutor on the ground that she has been won over by the appellant."
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> (emphasis added)

27. In this regard, this Court has re-examined the evidence of the survivor when she has deposed as PW-2 in her examination-in-chief she has categorically stated in detail how the appellant had sexually assaulted her, in fact from the first to the seventh occasion, she has described the manner in which he had sexually assaulted her, the place of occurrence which is mostly a jungle and as to the sixth occasion when the appellant had committed the offence while she was sleeping with her mother, the survivor has clearly stated

that it took place at around 08:00 pm. In the cross-examination, the appellant/accused has not been able to contradict or demolish the evidence of the survivor as regard to the number of times she was sexually assaulted by him and there is also no suggestion to say that such sexual assault has not taken place. Therefore, the failure of the appellant to contradict or to challenge the veracity of the statement of the survivor has to be taken as unrebutted.

28. Further, to consolidate the proposition that the allegation of sexual assault does have substance, a glance and the evidence of the doctor would also be useful when in her evidence as PW-5 she has confirmed that the hymen of the survivor was ruptured. The fact that the hymen rupture was old would only confirm the fact that the sexual assault upon the survivor took place sometime in the past, as has been stated by her the last time she was sexually assaulted was in the month of November 2018. In the face of such corroboration, this Court would deem it proper to accept the testimony of the survivor as truthful and accurate.

29. This being the case, even while relying solely on the testimony of the survivor, amongst other evidence, this Court is convinced that the accused/appellant is guilty of the commission of the crime of sexual assault. His conviction by the Trial Court in this regard has to be upheld. The case of Ganesan (supra) cited by the learned GA is worth mentioning herein, the same reads as follows:

> "10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [(2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)
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> > "*9. In State of Maharashtra v. Chandraprakash Kewalchand Jain* [(1990) 1 SCC 550] 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 is 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. Pappu* [(2005) 3 SCC 594] this 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* [(1996) 2 SCC 384], 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. Thakara Besra* [(2002) 9 SCC 86], this Court held that rape is 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* [(1993) 2 SCC 622] 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.* [(2010) 2 SCC 9] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [1951 SCC 1213].
> *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."

30. Furthermore, as regard the age of the survivor, PW-1 who is the mother of the survivor in her evidence has stated that Exhibit-P3 is the birth certificate of her minor victim daughter. PW-4 is police personnel attached to Nongpoh Women Police Station in the year 2019 in her deposition she has stated that she was a seizure witness to the seizure of the birth certificate (Exhibit-P3), this piece of evidence has not been controverted by the appellant/accused during trial. As such, the same would remain a valid document on record, on perusal of the said birth certificate it is seen that it refers to the birth of a female child on 19.04.2006 to the parents whose name corresponds to the name of the mother (PW-1) and the father (appellant/accused), the name of the child being the survivor herein. If

calculation is to be made, then in the year 2019 when the FIR was filed the child would have been 13 years. However, evidence would reveal that the act of sexual assault was committed about 4 years ago and continued till the child was about 12 years or so, therefore it can safely be said that the child was less than 12 years old when she was first sexually assaulted. The provision of Section 5(m) of the POCSO Act would therefore be attracted in this case. Similarly, the fact that the appellant is a relative of the child, being her biological father and also that he had committed penetrative sexual assault on the survivor more than once, therefore the provision of Section 5(n)(l) is also attracted.

31. The next contention raised by the learned Legal Aid Counsel is with regard to the quantum of sentence, it may be recalled that the appellant was sentenced to undergo rigorous imprisonment for life with fine of ₹ 10,000/- (Rupees Ten Thousand) only. This sentence according to the learned Legal Aid Counsel is disproportionate with the offence involved and that the learned Trial Court has failed to consider the provision of Section 6 of the POCSO Act which stipulates punishment for aggravated penetrative sexual assault to be for a term of not less than 10 years, but which may extent to imprisonment for life and fine, however the learned Trial Court without taking note that the alleged offence was committed prior to 2019, that is, the pre-amendment period has instead applied the provision of Section 6 prevalent to the post amendment period, that is, imprisonment for life to mean for the remainder of natural life. This in effect is a violation of the provision of Article 20(1) of the Constitution of India.

32. The learned Legal Aid Counsel has also argued that the Trial Court has failed to consider the mitigating circumstances as regard the appellant, that he was a first-time offender and is still young with no criminal antecedent. His social status and backwardness and being an illiterate person, he should

be given the chance for reform and to lead a normal life as a good citizen after serving his punishment. The imposition of life imprisonment for the remainder of his natural life is, therefore, disproportionate and may be suitably modified or altered by this Court. The case of **Prem Sagar (supra)** has been relied upon by the learned Legal Aid Counsel in this case, which is reproduced herein below as:

> "7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.
> 8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.
> 9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The superior courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine."

33. From what have been submitted before this Court concerning the sentencing part, this Court would agree that the sentence imposed upon an accused on his conviction has to be carefully considered taking into account the aggravating and mitigating circumstances, the observation of the Supreme Court in the case of **State of Madhya Pradesh v. Bablu, (2014) 9 SCC 281,** at para 14 and 16 is illuminating at the most when it was observed as follows:

> "14. In *Hazara Singh v. Raj Kumar* [(2013) 9 SCC 516], this Court

has observed that: (SCC p. 521, para 10)

> "*10*. ... it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict."

This Court further observed that: (SCC p. 521, para 11)

> "*11*. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

16. A three-Judge Bench of this Court in *Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat* [(2009) 7 SCC 254], observed as follows: (SCC p. 281, paras 99-100)

> *"99.* ... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.
>
> *100.* Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

34. One of the cardinal principles of the sentencing policy is

'reformation', in this context taking into account the age of the appellant and his societal background, this Court is of the considered view that the punishment meted to him is too harsh.

35. At this juncture it would not be out of place to refer to the case of **V.M. Abdulkhader @ Kader v. State of Kerela & Anr., in Crl. A. No. 1022 of 2019,** where in presumably similar facts and circumstances as the case herein, the Kerala High Court at para 28 has observed as follows:

> "28. The accused is none other than the father of the minor victim, who is supposed to protect her from any such sexual harassment from anybody else. In spite of that, he had committed rape/ penetrative sexual assault on his minor daughter repeatedly, for a period of more than two years. In the above circumstance, he does not deserve any leniency. However, considering the entire facts, we hold that this is not a fit case in which the accused is liable to get the extreme punishment like imprisonment for life, which shall mean imprisonment for the remainder of his natural life or death, as more heinous situations may arise warranting such punishments. In the above circumstance, considering the entire facts, we hold that rigorous imprisonment for a period of 20 years will be sufficient to meet the ends of justice to both the prosecution as well as to the accused. The points are answered accordingly."

36. As regard the power of this Court to alter or modify the term of sentence imposed by the Trial Court, it may not be out of place to refer to the case of **Shiva Kumar alias Shiva alias Shivamurthy v. State of Karnataka, (2023) 9 SCC 817**, at para 11, 12, 13 and 14 of the same the Supreme Court has observed as follows:

> "11. What is held by the Constitution Bench in *V. Sriharan* [(2016) 7 SCC 1], cannot be construed in a narrow perspective. The Constitution Bench has held that there is a power which can be derived from IPC to impose a fixed-term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an

alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.

12. In a given case, while passing an order of conviction for an offence which is punishable with death penalty, the trial court may come to a conclusion that the case is not a "rarest of the rare" case. In such a situation, depending upon the punishment prescribed for the offence committed, the trial court can impose other punishment specifically provided in Section 53 IPC. However, when a constitutional court finds that though a case is not falling in the category of "the rarest of the rare" case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixed-term sentence so that the benefit of statutory remission, etc. is not available to the accused. The majority view in *V. Sriharan*, [(2016) 7 SCC 1] cannot be construed to mean that such a power cannot be exercised by the constitutional courts unless the question is of commuting the death sentence.

13. This conclusion is well supported by what the Constitution Bench held in para 104 of its decision, which reads thus: (*V. Sriharan* case, [(2016) 7 SCC 1] (SCC pp. 101-102)

> "*104*. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. *By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed*."
>
> (emphasis supplied)

14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a fixed

> period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A CrPC."

37. In view thereof, this Court hereby modify and alter the sentence imposed upon the appellant to the extent that instead of having to undergo life imprisonment, he will now be subjected to rigorous imprisonment for the period of 25 years cumulatively. The quantum of fine of ₹ 10,000/- (Rupees Ten Thousand) only and in default of payment of fine to undergo 3(three) months rigorous imprisonment is however maintained.

38. This appeal is accordingly disposed of to the extent indicated hereinabove as far as the quantum of sentence is concerned, the part dealing with the conviction of the appellant not being disturbed.

39. Let copy of this judgment be given to the appellant free of cost.

40. Let the related Trial Court's records be sent back.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge

Meghalaya
12.11.2026
"Tiprilynti–PS"

Verified
Digitally signed by: TIPRILYNTI KHARKONGOR
Signed On: 12-11-2026 18:17:15 IST