GAHC040010692023 2026:GAU-AP:1097-DB

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

1. CRIMINAL APPEAL NO.25(AP)2023

Shri Yangno Liyak
S/o Late Pani Liyak, Resident of Upper Liyak,
PO/PS Baming, Dist. East Kameng, Arunachal Pradesh.

……***Appellant***

-Vs-

1. The State of Arunachal Pradesh represented by the Public Prosecutor.

2. 'XXX', D/o Late Roto Londa, Resident of Senki View, Itanagar, PO/PS- Itanagar, Dist. Papumpare, Arunachal Pradesh.

3. 'YYY', D/o Tah Londa, Resident of Amang Village, Seppa, PO/PS- Seppa, Dist. East Kameng, Arunachal Pradesh.

…***.....Respondents***

2. CRIMINAL APPEAL NO.26(AP)2023

Shri Achung Bagang, S/o Shri Tachang Bagang,
Permanent Resident of Village Jayang Bagang, PO/PS Chayangtajo, Dist. East Kameng, Arunachal Pradesh.

……***Appellant***

-Vs-

1. The State of Arunachal Pradesh represented by the Public Prosecutor.

2. 'XXX', D/o Shri Tah Longdah, Resident of Amang Village, PO/PS Seppa, Dist. East Kameng, Arunachal Pradesh.

3. 'YYY', D/o Late Roto Longda, Resident of Senki View, PO/PS Itanagar, Dist. Papumpare, Arunachal Pradesh.

….*.....Respondents*

:::BEFORE:::
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
HON'BLE MR. JUSTICE BUDI HABUNG

Advocate for the appellant : Ms. N. Danggen, amicus curiae

Advocate for the respondents : Ms. T. Jini, Addl. PP
Mr. D. Panging, Sr. Adv

Date on which judgment is reserved : **03.09.2026**
Date of pronouncement of judgment : **03.11.2026**
Whether the pronouncement is of operative part of the judgment?: **NA**
Whether the full judgment has been pronounced?: **YES**

JUDGMENT & ORDER[CAV]

(Budi Habung, J.)

Heard Mr. P. K. Tiwari, learned senior counsel appearing on behalf of the appellant in Crl. Appeal No.25(AP) 2023; and Mr. Khoda Tama, learned counsel appearing on behalf of the appellant in Crl. Appeal No.26 (AP) 2023. Also heard Ms. Topi Jini, learned Addl. Public Prosecutor, Arunachal Pradesh, appearing on behalf of State and Mr. Geken Jini, and Mr. P. Wangpang, learned Legal Aid counsels for victim Nos. 1 and 2 respectively.

2. These two criminal appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973, arise out of the judgment dated 14.06.2023 and the order of sentence dated 21.06.2023 passed by the learned Special Judge (POCSO), Bomdila in POCSO Case No. 02/2017 arising out of Seppa P.S. Case No. 21/2015 under Section 363/366A/376/506/323/34 of the Indian Penal Code, 1860, *read with* Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. As both the appeals arise out of the same judgment and involve common questions of fact and law, they are taken up together for disposal by this common judgment.

4. By the impugned judgment dated 14.06.2023, the appellants, namely Achung Bagang, A1, and Yangno Liyak, A2, were convicted under Section 366A of IPC, and Section 6 of POCSO Act, read with Section 34 IPC. By the order of sentence dated 21.06.2023, each appellant was sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 10,000/- for the offence under Section 366A of IPC, read with Section 34 of IPC, and rigorous imprisonment for 20 years and to pay a fine of Rs. 25,000/- each for the offence under Section 6 of POCSO Act, read with Section 34 of IPC. In default of payment of fine, each of the convicts was directed to undergo simple imprisonment for 3 (three) months. Both the substantive sentences were directed to run concurrently.

5. In the present case, there are two accused/convicts and two victims. The appellant/convict, namely Achung Bagang, shall be referred to as A1, and appellant/convict Yangno Liyak as A2. Two victims, namely PW-3, shall be referred to as Victim No. 1, and PW-2 as Victim No. 2.

6. The prosecution case, in brief, is that during the early hours of 25.02.2015, at about 2:30 A.M., the two victim girls had accompanied the sister of Victim No. 1 to the Seppa Bazar Area to see her off on her onward journey to Longda village. While returning home, they were allegedly approached by the appellants, who were travelling in a Santro car.

7. According to the prosecution, the appellants represented themselves as police personnel and directed the victim girls to enter the vehicle. When the victim girls refused, the appellants allegedly threatened them and forcibly

dragged them inside the car and took them towards the Thungma village road towards Hari bridge, Seppa. The vehicle stopped in a curve of the road, thereafter, the victim girls were separated and taken to different locations along the road. The prosecution alleged that one appellant, A1, committed penetrative sexual assault upon Victim No. 1, while the other appellant, A2, sexually assaulted or attempted to sexually assault the other victim girl, i.e., Victim No. 2.

8. After the incident, both the victim girls escaped from their respective places and received assistance from a person passing through the area. Subsequently, PW-4, who is the elder sister of Victim No. 1, reached the spot on receipt of information. The matter was then reported to the police, leading to registration of Seppa P.S. Case No. 21/2015, under Sections 363/366A/506/323/34 of IPC, read with Section 25(1B)(a) of the Arms Act, 1959.

9. During the course of investigation, the statements of the victims were recorded under Section 164(5) of Cr.P.C. The Investigating Officer also forwarded the victims for medical examination. However, the first medical examination was not completed because the victims declined to continue with the procedure. A subsequent medical examination of the victims was undertaken; however, by then, the victims had changed their clothes and taken bath. Because of the said reason, the Investigating Officer admittedly did not send the collected exhibits for forensic examination.

10. Since the accused Yangno Liyak, A2, remained absconding, the Investigating Officer submitted the charge sheet against Achung Bagang, A1, on 21.05.2015. Subsequently, supplementary charge sheets were submitted in respect of Yangno Liyak, A2. Upon completion of the proceedings, charges were framed against both appellants for the offence under Section 366A, 363, 376,

and 506 of IPC, read with Section 34 of IPC, and Section 4 and Section 6 of the POCSO Act

11. The prosecution side examined as many as 8 (eight) witnesses. The appellants were examined and their statements recorded under Section 313 of Cr.P.C; however, the appellants declined to produce any witness in their defence.

12. Upon consideration of the evidence, the learned Trial Court held that the appellants, A1 and A2, had acted in furtherance of their common intention in taking away the two minor girls for the purpose of sexual assault and had committed aggravated penetrative sexual assault. Accordingly, the appellants were convicted and sentenced as indicated above.

SUBMISSIONS ON BEHALF OF THE APPELLANT A1 ACHUNG BAGANG:

13. Learned counsel appearing on behalf of appellant Achung Bagang, A1, adopts the general ground on behalf of the appellant and additionally submits that the conviction is unsustainable because the appellant was not effectively represented by his appointed Legal Aid Counsel at the stage of framing charges, and the prosecution witnesses, more particularly, PW-7 and PW-8, were not cross-examined. It is further submitted that the learned Trial Court relied upon evidence and documents which were not cross-examined by the defence counsel.

14. Learned counsel for the appellant A1 further submits that the medical evidence does not establish the commission of rape/aggravated penetrative sexual assault. He further submits that the Investigating Officer also failed to collect the preserved material evidence and send it for forensic examination. Furthermore, the prosecution case rests substantially upon the statement of the victims and hearsay evidence. It is, therefore, argued that the appellant Achung

Bagang, A1, is entitled to a fair trial, or else, he should be given the benefit of doubt.

SUBMISSIONS ON BEHALF OF THE APPELLANT A2 YANGNO LIYAK:

15. Learned senior counsel appearing on behalf of the appellant Yangno Liyak, A2, submits that the prosecution failed to establish the identity of the appellant beyond reasonable doubt. It is pointed out that the two women allegedly present at the place where the victims were taken inside the vehicle and the persons from whom the victim is stated to have received assistance at the time of recovery were not examined. It is further submitted that no Test Identification Parade was conducted. Further, the vehicle which is stated to have been used to carry the victims was not seized, and no biological sample was collected nor was subjected to forensic examination. Although it is stated that the vehicle used by the appellant was damaged, the same is silent in the paper book.

16. Learned senior counsel for A2 further submits that the evidence does not establish that appellant Yangno Liyak, A2, committed penetrative sexual assault upon either victim. According to the learned senior counsel, the evidence of Victim No. 2, who resisted the alleged sexual assault, does not establish rape, and the appellant cannot be convicted for the completed offence committed by others merely because he was allegedly present with the other accused.

17. Learned senior counsel further submits that there are inherent contradictions in the statement of PW-3 (victim-1), who during cross-examination by the learned counsel for A1, had deposed that the accused/appellant had shown a revolver to her while committing rape upon her, and however, during cross-examination by the learned counsel for the appellant

A2, she had deposed and clarified that the appellant A2 did not commit any crime on her. Thus, such contradictory statement makes the testimony of Victim No. 1 not reliable.

18. Learned senior counsel further submits that the fact that A2 remained unavailable to the investigating agency for a certain period. However, the same is not sufficient by itself to draw a conclusion that he is guilty and sustain the conviction. Thus, the abscondence for some period cannot be used against the appellant A2. Learned senior counsel further submits that no question was put to A2 in his examination under Section 313 of Cr.P.C regarding his absentee period. In support of his submission, the learned senior counsel relied on the decision of Supreme Court in ***Chetan vs State of Karnataka***, reported in ***(2025) 9 SCC 31***; whereby it is observed that mere absconding by itself does not constitute a guilty mind. But in the same paragraph it is observed that the act of abscondence is relevant piece of evidence to be considered along with other evidence and is a conduct under section 8 of the Evidence Act, 1872, which points to his guilty mind and the needle of suspicion gets strengthened by the act.

19. Learned senior counsel for the appellant A2 submits that as the A2 was not identified and he has not been implicated for commission of any penetrative sexual assault, he cannot be held guilty for commission of completed offence committed by another person. Therefore, it is submitted that the appellant should be acquitted by giving the benefit of doubt. In support of his submission learned senior counsel relied on the decision of ***Sharad Birdichand Sarda vs. State of Maharasthra,*** *reported in* ***(1984) 4 SCC 116***, to submit that when two views are possible, the benefit of doubt should be given the accused.

SUBMISSIONS OF THE STATE:

20. Learned Additional Public Prosecutor, Arunachal Pradesh, submits that the prosecution has proved its case beyond reasonable doubt. It is argued that the evidence of the two minor victims establishes that they were forcibly taken in a car to a certain distance in a secluded area about 1 km from the town to Thungma village, near Hari Bridge, Seppa. On reaching the desired spot, they separated the victim girls at the place of occurrence and subjected them to sexual assault. She further submits that the evidence of the victims is material, trustworthy, and consistent regarding the abduction and the conduct of the appellants. Learned Additional Public Prosecutor, Arunachal Pradesh, further submits that the absence of medical corroboration or forensic evidence is not fatal where the testimony of the victim is otherwise trustworthy. It is also contended that the appellants acted together and that the subsequent conduct of Yangno Liyak, A2, in fleeing the spot and remaining unavailable to the police lends support to the prosecution case and strengthened the points to his guilty mind.

POINTS FOR DETERMINATION:

21. Upon consideration of the rival submissions and the evidence produced in the record made available for these appeal, the following points arise for determination:

(i*). Whether the prosecution established the identity and participation of each appellant in the alleged occurrence beyond reasonable doubt.*

(ii). Whether the evidence establishes the offence of aggravated penetrative sexual assault under Section 6 of the Protection of Children from Sexual Offences Act, 2012, against each appellant read with Section 34 of the Indian Penal Code, 1860.

(iii). Whether the conviction under Section 366A read with Section 34 of the Indian Penal Code, 1860, is sustainable.

(iv). Whether the alleged deficiency in the investigation, medical examination, and conduct of the trial warrant interference with the impugned judgment and sentence.

22. The prosecution case mainly rests upon the testimony of the two victim girls examined as PW-3 (victim-1) and PW-2 (victim-2), respectively.

23. PW-1 is the Magistrate who recorded the statement of the victims under Section 164(5) of Cr.P.C. PW-4 is the elder sister of one of the victims (PW-3), while PW-5 is the medical officer who initially examined the victim girls. PW-6 is the Investigating Officer. PW-7 is the Headmaster/in-charge of the school who produced the School Admission Register showing the birth date of the victims, and PW-8 is the Doctor who examined the victim girls.

24. In cases involving sexual offences against children, the testimony of the victim must be assessed with care, sensitivity, and regard to the circumstances in which the occurrence took place. At the same time, the gravity of the accusation against the appellant cannot dispense with the requirement that the prosecution establish the guilt of each accused person beyond reasonable doubt. It is settled law that the testimony of the victim of sexual assault, if found reliable and trustworthy, can by itself sustain a conviction. Corroboration of the medical examination is not an indispensable legal requirement in every such case. The absence of such medical corroboration assumes significance only when considered with the quality of the ocular evidence and the other circumstances of the given case.

25. In the present case, as two accused are involved in commission of sexual offence with two different victims, the evidence needs to be examined separately in relation to the alleged abduction, the alleged penetrative sexual assault, and the individual role attributed to each appellant. A finding of the learned Trial Court that the appellants participated in taking the victims away does not automatically determine every question regarding the sexual offences alleged against each of the appellants.

26. PW-2 (Victim 2) deposed that while they were returning home, the appellant stopped them with a car. On seeing the appellants, they started running towards the market side. However, the appellants followed them in the car. She further stated that on seeing two unknown women, they tried to hide behind them. However, the appellants forcibly dragged them into their car and took them towards Hari bridge. Upon reaching the place, they stopped the vehicle and separated them at the place of occurrence. According to her deposition, one of the appellant, A2, attempted to assault her sexually, but she resisted with full force and escaped. Thereafter, at the main road, she found two boys on a morning walk and from their mobile phone, she contacted her elder sister, PW-4. In her cross-examination, she specifically stated that the accused attempted to commit rape on her, but she had not been raped.

27. PW-3 deposed that the appellants forcibly took the victims in their vehicle and brought them to the Thungma road bridge area. She stated that she was taken to a separate place and that Achung Bagang, A1, committed rape on her at knife point. She further described that after the commission of rape, the appellant Achung Bagang, A1, fled from the place of occurrence. Thereafter, she also ran away from the place of occurrence. Her deposition thus provides direct evidence of the alleged penetrative sexual assault by Achung Bagang, A1.

28. The evidence of PW-2 and PW-3 must be read as a whole. They are consistent in their stand. The fact that PW-2 (victim-2) did not suffer complete rape does not, by itself, discredit her testimony that, they were forcefully abducted, sexually assaulted/ or attempted sexual assault. Likewise, the evidence of PW-3 regarding the completed sexual assault must be assessed on its own merit, having regard to her identification of the perpetrator. The consistencies of the statement of PW-3 and her deposition before the Court and the materials brought out in her cross-examination are also significant for consideration. From the evidence on record, certain discrepancies appear between the First Information Report (FIR), the statements recorded under Section 164 of Cr.P.C, and the depositions before the learned Trial Court. There are also some differences regarding the precise role attributed to each appellant. Such discrepancies need proper examination and the same cannot be treated as immaterial without examination.

29. However, certain facts with regards to the incident are consistent throughout. The prosecution version attributes the completed sexual assault upon victim-1 by appellant Achung Bagang, A1. However, it appears only an attempted sexual assault has been attributed to the appellant A2 upon victim-2. The deposition of PW-3 attributes the completed rape to Achung Bagang, A1, whereas the evidence of PW-2 does not establish that she was raped by the appellant Yangno Liyak, A2. The evidence regarding the precise role of A2 must therefore be considered separately and cannot be completely linked with solely from the fact that he was allegedly present with Achung Bagang, A1. PW-4, the elder sister of Victim No. 1, deposed that she reached the place after being informed by the victim and subsequently met both the victim girls. PW-4 stated that the victims narrated the occurrence to her and that the family members

thereafter went in search of the appellants. Her testimony is relevant to the circumstances in which the victims were found at the place of occurrence immediately after the occurrence and the disclosure were made by them immediately after the alleged occurrence. However, insofar as the actual act of sexual assault is concerned, the evidence of PW-4 is not direct evidence of the occurrence of the act.

30. PW-5 is the Medical Officer. He stated that the victims were produced for their medical examination on 25.02.2015, but the examination could not be completed on that day because the victims declined to proceed with further medical examination. The Investigating Officer subsequently arranged for another medical examination of the victim girls. The second medical examination was conducted by PW-8. However, this witness did not find any external injury on the body of the victims.

31. PW-6 is the Investigating Officer of the case who submitted the Charge Sheet against the appellants. She got the victims medically examined and the statements of the victim girls recorded under Section 164(5) of Cr.P.C. She deposed that at the first instance she could not arrest Yangno Liyak, A2, and filed Charge Sheet only against Achung Bagang A2. However, after arresting the appellant A2, she filed the supplementary Charge Sheet. In her cross-examination, she stated that she did not find the accused having used any firearms during the commission of the offence and that she could not locate the two women who were said to have witnessed the victims being forcibly taken away by the appellants. She also stated that she did not send the exhibits to the forensic science laboratory for scientific opinion, but she found that the appellant Achung Bagang, A1, committed rape on Victim No. 1 and the appellant Yangno Liyak, A2, on Victim No. 2.

32. PW-7 is the Headmaster/in-charge of the Government Middle School, Longda, who had produced the School Admission Register, before the Trial Court, wherein, the date of birth of Victim No. 1 is shown as 20.10.1999 and the date of birth of Victim No. 2 is shown as 02.03.2003.

33. The brief medical report of the PW-8 after second medical examination shows that there were no external injuries found on victims. However, the absence of any external injuries on the medical examination conducted after two days of the incident does not necessarily rule out aggravated penetrative sexual assault. Equally, the medical evidence in the present case does not independently establish penetration. Its effect must be considered alongside the direct testimony of the victim concerned.

34. The record reveals that the victims as well as the Investigating Officer had admitted that the victim girls had changed their clothes and they had taken bath before undergoing the subsequent medical examination. The Investigating Officer further admitted that the clothes worn during the occurrence were not seized and that the available exhibits were not sent for forensic examination. She also admitted that the car allegedly used in the occurrence was not seized and that the women said to have witnessed the initial incident could not be traced out.

35. The above omission on the part of the Investigating Officer indicates deficiencies in the investigation. However, an acquittal of the appellants cannot follow merely because the investigation of the case was deficient. The question remains whether the evidence produced in a Trial Court establishes the offences beyond reasonable doubt. It is trite that where the direct evidence is reliable, an omission to obtain scientific corroboration is not necessarily fatal. Conversely, where the direct evidence itself is uncertain regarding the identity of the

perpetrator or the commission of the offence, the absence of corroborated material may assume greater significance.

36. Common intention is alleged against the appellants. Section 34 of the Indian Penal Code, 1860, provides as follows:

> "*34. Acts done by several persons in furtherance of common intention. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same* manner as if it *were done by him alone."*

37. As we can see, Section 34 of IPC embodies the principle of joint liability where a criminal act is done by several persons in furtherance of the common intention of all. However, the prosecution must establish participation in the criminal act and the existence of a common intention. Common intention may be inferred from the conduct of the accused and the surrounding circumstances. It need not invariably be established by direct evidence of a prior agreement among the accused.

38. In the present case, the prosecution alleges that the appellants acted together in approaching the victims on the morning of the incident. They were in the same vehicle, forcibly dragged the victim girls into the vehicle, and thereafter took them to an isolated location. Upon reaching the place of occurrence, the appellants separated the victims by taking them in different directions before the alleged sexual assaults. If these circumstances are established and the evidence demonstrates that the acts were committed in furtherance of a common intention to commit the sexual offence, liability under Section 34 of IPC, may arise even if the precise physical act was performed by only one of the participants. However, the mere presence of two accused

persons together, or their participation in an unlawful act of abduction, cannot automatically establish a common intention to commit every subsequent offence. Before attributing joint liability for the completed offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012, the nature of conduct of each accused person, the sequence of events, and the evidence concerning their respective roles must be examined.

39. In the present case, this distinction is particularly material in the appeal filed by the appellant Yangno Liyak, A2. His alleged participation in the forcible taking of the victim must be distinguished from the question of whether the prosecution has proved that the completed penetrative sexual assault was committed in furtherance of a common intention shared by him. The answer to this query must be based on the evidence of the witnesses and findings recorded by the learned trial Court, rather than on the allegation in the First Information Report (FIR) alone.

40. Learned counsels for the appellants particularly the appellant No.2 have contended that no Test Identification Parade was conducted to identify the accused. They also argued that the women allegedly present at the initial place of occurrence who had allegedly seen the appellants taking away the victims forcibly and the two boys who were stated to be present after the incident at the place of occurrence were also not examined. These omissions are relevant to the reliability of the identification particularly where the alleged incident took place in the early hours of the morning and the victims had not known the appellants beforehand. A Test Identification Parade is ordinarily an investigative procedure intended to test the capacity of a witness to identify a person not previously known to the witness. Absence of a Test Identification Parade does not invariably render an identification in Court inadmissible or unreliable. Such

identification depends on the facts and circumstances of the case and the opportunity to observe the accused and the time gap or interval before the identification and the other evidence in the given case.

41. In the instant case, the available record indicates that after the incident both victims along with their guardian went to Nyokum Hall in search of the accused persons. They found the appellant Achung Bagang, A1, and the appellant Yangno Liyak, A2, playing dice. On their identification, their brothers caught and beat them, and Yangno Liyak, A2, escaped in the midst of people celebrating Nyokum and remained absconded for a long period. Such act of fleeing and remaining absconding strengthened the doubt against and the guilt of the appellant.

42. Further, the evidence also indicates that the identity of Yangno Liyak, A2, was later disclosed by A1 during the subsequent proceedings. The evidentiary value of these circumstances must be considered separately for each appellant.

PROOF OF AGE AND THE APPLICABILITY OF THE POCSO ACT, 2012:

43. The prosecution case proceeded on the basis that both the victims were children in terms of the Protection of Children from Sexual Offences Act, 2012, at the time of the occurrence. The evidence available indicates that they were students of Class V and VI at Government Middle School, Longda. As per the First Information Report (FIR), the medical examination report recorded by the doctors, the age of Victim No. 1 was 12 years and that of Victim No. 2 was 13 years at the time of occurrence. For determination of victims age, the School Admission Register from 2005 onwards was also produced by PW-7, the headmaster in-charge of the said school. As per the school register, the name of Victim No. 2 is found entered at Serial No. 98 of the Register dated 15.06.2008

and her date of birth is shown as 20.10.1999. Similarly, the name of Victim No. 1 is found entered at Serial No. 163 of the Register dated 12.06.2010 and her date of birth is shown as 02.03.2003. The incident occurred on 25.02.2015. According to the evidence on record, the age of Victim No. 1 was 15 years 4 months 5 days and that of Victim No. 2 was 11 years 11 months 23 days at the time of occurrence. As such, both the victims were children at the time of occurrence of the incident as defined under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012.

44. The above evidence has not been rebutted during the trial. In fact, the defence side has not raised any serious questions about the minority of the victims at the time of trial as well as hearing.

45. Learned counsel for appellant Achung Bagang, A1, has contended that the appellant was not properly represented at the time of framing of charges and the material evidence was not effectively cross-examined. The record made available before the Court, however, contains substantial cross-examination of PW-1, PW-2, PW-3, PW-4, PW-5, and PW-6. However, the cross-examination of PW-7 was kept reserved on 31.03.2019, but the record does not reveal that the appellant had ever made any application for recalling of the said witnesses for their cross-examination. The defence had ample opportunity to make such an application. However, they chose not to make any such application for recalling the witnesses for cross-examination. In the absence of any such application made for cross-examination of the witnesses, it is presumed that the defence did not want to cross-examine the witnesses despite being given adequate opportunity. Moreover, the record reveals that the evidence of PW-7 is only with regard to the age of the victim, but the defence side had never raised any question regarding the minority age of the victims to any of the prosecution

witnesses, including the victims themselves. In view of the above, non-cross examination of the PW-7 does not adversely affect the merit of the case. As such no prejudice has been caused to the appellant.

46. The record further reveals that the appellants were provided with free and competent Legal Aid Counsel from the panel of legal aid counsel for the district to represent their case, who effectively represented them till the conclusion of trial proceedings before the Trial Court.

47. Under the circumstances, the mere assertion that the defence was not properly conducted does not establish that the trial was vitiated.

48. Upon examination of the record, the accused was properly and adequately represented by the competent Legal Aid Counsel; they were provided adequate opportunity to cross-examine the witnesses, and no materials relied upon by the prosecution were admitted improperly. There has been no irregularity in the proceedings. The Trial Court appears to have proceeded with due diligence in accordance with law. Thus, no right to a fair trial has been denied to the appellant. Conversely, a general allegation of inadequate representation without demonstration of material prejudice or violation of procedural fairness has been made in the present case, which is not sufficient to set aside a conviction.

49. We have heard and considered the submissions advanced by the learned counsel for the parties and perused the records.

50. Upon consideration, we find that so far as the offence punishable under Section 366A IPC read with Section 34 IPC is concerned, the evidence, taken as a whole, establishes that both appellants acted in concert. The appellants came together early in the morning in the same vehicle, chased the victims, forcibly dragged them into it, took them to an isolated place away from Seppa town,

and thereafter separated the victims. This whole sequence of acts, cumulatively viewed, is not consistent with an innocent or coincidental presence of the appellants. It clearly indicates coordinated participation in taking away the minor girls for the purpose alleged by the prosecution. The conduct of the appellants before, during, and after the taking away of the victims provides sufficient basis to infer a common intention within the meaning of Section 34 of IPC. The absence of proof that both appellants individually committed the same sexual act does not, by itself, absolve either of them of joint liability for the offence under Section 366A of IPC. Accordingly, upon being satisfied that the victims were girls below eighteen years of age they were children as defined under section 2(d) of POCSO Act, 2012, and that they were induced or forcefully taken away from Seppa to another place to do an act or subjected to sexual assault in the circumstances contemplated by Section 366A of IPC, we find no sufficient ground to interfere with the conviction of the appellants under Section 366A of IPC read with Section 34 IPC. Consequently, the conviction of the appellants in both the appeals under Section 366A of IPC is affirmed.

51. Upon an overall appreciation of the evidence on record, this Court finds that the testimony of Victim No. 1, as discussed herein above, inspires confidence and establishes the involvement of appellant Achung Bagang, A1, in the commission of the penetrative sexual assault. The testimony of Victim No. 1, being direct evidence of the occurrence, assumes considerable significance and, upon careful scrutiny, is found to be credible and consistent on the material particulars. Her evidence in so far as the forceful lifting and place of occurrence has been corroborated by the evidence of Victim No. 2. There is no cogent reason to discard or disbelieve her testimony. The manner in which the victim was forcibly taken to an isolated place and subjected to the sexual offence,

considered along with the other evidence including the evidence of PW-2 on record, lends strong support to her version. It does not suffer from any material contradiction affecting the merit of the prosecution case. The deficiencies, if any, in the medical and forensic evidence, by themselves, do not discredit the otherwise reliable testimony of the victim. Accordingly, the prosecution has established the guilt of appellant Achung Bagang, A1, beyond reasonable doubt for the offence punishable under Section 6 of the POCSO Act. The findings recorded by the learned Trial Court, insofar as they relate to the involvement of appellant Achung Bagang, A-1 in the commission of the offence, therefore, do not warrant interference.

52. In view of the foregoing discussion, this Court finds no ground to disturb the conviction of appellant Achung Bagang, A1 under Section 6 of the Protection of Children from Sexual Offences Act, 2012, as recorded by the learned Trial Court. Consequently, Criminal Appeal No. 26(AP)/2023 is dismissed, and the conviction and sentence imposed upon appellant Achung Bagang for the said offence are accordingly affirmed.

53. The evidence of Victim No. 2 is that she, along with Victim No. 1, was forcibly taken away from Seppa town to a place near Hari bridge. The vehicle was stopped, and after taking down from the vehicle, the two victims were separated by the two appellants. She has further stated that appellant Yangno Liyak, A2 removed her pants and underwear up to her knee level, but she resisted with full force, as a result of which the appellant could not succeed in committing rape upon her. Her testimony, in so far as non-completion of the act of rape upon her is found to be credible and reliable in the absence of a any contrary medical examination report, establishes that the appellant had taken active steps towards the commission of a sexual offence upon Victim No. 2.

However, the intended act could not be completed because of the victim's full resistance. The removal of her pants, considered in the context of the forcible taking away of the victim and the subsequent conduct of the appellant, is a relevant circumstance in determining his intention. The evidence establishes that the appellant intended to commit penetrative sexual assault; he even tried to remove his jeans long pants and had crossed the stage of mere preparation by commencing its execution. Thus, his act would constitute an attempt punishable under Section 18 of the POCSO Act. The failure to accomplish the act because of the victim's resistance would not, by itself, absolve him of criminal liability.

54. However, in the absence of evidence of penetration, the conviction of appellant Yangno Liyak, A2, for the completed offence under Section 6 of the POCSO Act cannot be sustained merely on the basis of the removal of the victim's pants and his attempt to remove his jeans pants. Nevertheless, the evidence establishes that the appellant made an attempt to commit aggravated penetrative sexual assault upon Victim No. 2. The evidence reveals that the appellant met the victims, chased them, and forcefully dragged them into the vehicle, and, took them in the vehicle towards Hari bridge. Upon reaching the spot, A2 took Victim No. 2 in one direction while A1 took the other victim to another side. He removed the pants of the victim up to knee level and tried to remove his jeans pants. However, due to the full resistance offered by Victim No. 2, he could not complete the act of rape. As a result, the victim escaped. Thus, it is now proved beyond reasonable doubt that the appellant A2 attempted to commit penetrative sexual assault upon prosecutrix PW-2 (Victim No. 2), punishable under Section 4 read with Section 18 of the POCSO Act. Mere removal of clothing without proof of the requisite physical contact would not by

itself establish the completed offence under Section 6.

55. Now the question to be decided is as to whether the appellant should have been convicted under Section 18 of the POCSO Act, which provides for punishment for attempt to commit an offence under the POCSO Act.

56. Section 18 of the POCSO Act states as follows:

> *"18. Punishment for attempt to commit an offence. — Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with fine, or with both."*

57. The other issue to be decided is whether the appellant should have been convicted under Section 8 of the POCSO Act for the offence under Section 7 of the POCSO Act.

58. Section 7 of the POCSO Act is reproduced herein below:

> "*7. Sexual Assault. — Whoever, with sexual intent, touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration, is said to commit sexual assault."*

59. A bare perusal of Section 7 and Section 18 of the POCSO Act and the act committed by the appellant as per the evidence of the victim leads us to believe that the offence under both sections has been committed by the appellant. Keeping in view the evidence of the victim girl who stated that the appellant had

tried to rape her but could not succeed, we find that sexual assault and attempt to commit penetrative sexual assault in terms of Section 4 read with Section 18 of the POCSO Act, 2012, is attracted.

60. On considering the above facts, we are of the view that the charge under Section 6 of the POCSO Act should be altered to Section 4 read with Section 18 of the POCSO Act, in terms of Section 216 of the Code of Criminal Procedure (now Section 239 of the Bharatiya Nagarik Suraksha Sanhita). Accordingly, the charge framed against the appellant under Section 6 of the POCSO Act is altered to Section 4 read with Section 18 of the POCSO Act.

61. In view of the above, the counsel for the appellants and the respondents could have been asked as to whether they want to recall or re-summon any of the witnesses regarding the alteration of the charge, for examining them in view of the altered charge. However, the same is not done, as the only difference between the charge framed under Section 4 and the attempt to cause penetrative sexual assault would not have changed the defence taken by the appellant during trial. No prejudice has been caused to the appellant in terms of Section 217 of the Code of Criminal Procedure, as the punishment under Section 4 read with Section 18 is lesser than the punishment under Section 6 of the POCSO Act.

62. In view of the fact that no charge had been framed against the appellant under Section 8 of the POCSO Act for the offence under Section 7, and keeping in view that the appellant has already been found to be guilty for having attempted to cause penetrative sexual assault on the victim, we do not intend to proceed any further with regard to the sexual assault being made by the appellant on the victim.

63. On considering the facts of this case and the evidence of the witnesses, we do not find any reason to doubt the evidence of the prosecutrix (Victim No. 2), which we find to be trustworthy, and which inspires our confidence. Thus, we do not find any ground to interfere with the impugned judgment and order, except for the conviction and sentence under Section 6 of the POCSO Act. As such, we hold that the prosecution has been able to prove the guilt of the appellant beyond reasonable doubt for having attempted to cause penetrative sexual assault on the victim.

64. Keeping in view the provisions of Section 18 of the POCSO Act, 2012, we hereby convict the appellant Shri Yagno Liyak in Crl. Appeal No. 25(AP)/2023, under Section 4 *read with* Section 18 of the POCSO Act, 2012, and sentence him to undergo rigorous imprisonment for 10 (ten) years with a fine of Rs. 20,000/- (twenty thousand), and in default of payment of fine, to undergo simple imprisonment for 3(three) months. Consequently, the conviction and sentence in respect of the appellant Shri Yagno Liyak under Section 6 of the POCSO Act, alone, as per the impugned judgment and order, is set aside. As observed earlier, we do not find any reason to interfere with the conviction and sentence of the appellant under Sections 366A of IPC. The period of detention already undergone as Under Trial Prisoner and as a convicted person in terms of the impugned judgment and order shall be set off against the new sentence passed herein.

65. The impugned judgment and order dated 14.06.2023 and the order of sentence dated 21.06.2023 passed by the learned Special Judge, Bomdila in POCSO Case No. 02/2017 is hereby modified to the extent indicated hereinabove.

66. Both the Criminal Appeal No. 25(AP) 2023 and Criminal Appeal No. 26(AP)

2023 accordingly stand disposed of.

67. Send back the TCR.

68. In view of the assistance provided by the learned Legal Aid Counsels for the respondents No. 2 and 3, their fees should be paid by the Arunachal Pradesh State Legal Services Authority, as per their guidelines and norms.

JUDGE **JUDGE**

Checked & Verified

Digitally signed
by Mihin Yama
Date: 2026.11.05
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