GAHC030002012026

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

Case No. : CRL.A(J)/5/2026

Sh. C. Lalthansanga
S/o Duguram
R/o Teirei/Hruaitluang village
Mamit District

VERSUS

The State of Mizoram and Anr.
Aizawl

2:Smt. Lalrimawi

BEFORE
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MR. JUSTICE NCHUMBEMO MOZHUI

Advocate for the Appellant: Mr. Jordan Rohmingthanga, Amicus Curiae

Advocate for the Respondents: Mrs. Linda L. Fambawl, P.P
Mr. Lalrokunga Pautu,
Legal Aid Counsel

Date on which judgment is reserved : 04.11.2026
Date of pronouncement of judgment : 10.11.2026.

Whether the pronouncement is of the
Operative part of the judgment? : No

Whether the full judgment has been
Pronounced? : Yes

JUDGEMENT AND ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. Jordan Rohmingthanga, learned Amicus Curiae for the appellant. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State and Mr. Lalrokunga Pautu, learned Legal Aid Counsel for the respondent No.2/informant.

[2.] This is an appeal from jail filed by the appellant against the judgment and order dated 12.06.2024, passed by the Court of Presiding Officer, Fast Track Special Court (Rape and Protection of Children From Sexual Offence) Act, Aizawl in SC No.70/2021 corresponding to Criminal Trial No.1111/2021, by which the appellant was convicted under Section 6 of the POCSO Act and sentenced to

undergo rigorous imprisonment for 20 years and to pay a fine of Rs.5,000/- with a default clause.

[3.] The case of the prosecution in brief is that the informant who is the mother of the victim on 22.07.2021 lodged an FIR at the West Phaileng Police Station alleging that her daughter who was of the age of 15 years was raped by the appellant in his residence in Teirei village where she had travelled and as a result, her daughter had become pregnant. She therefore requested that a legal action be taken against the appellant as per law. As a result, WPLG PS Case No.18/2021 dated 22.07.2021 under Section 6 of the POCSO Act was registered and investigated into. During the course of the investigation, the case I/O visited the place of occurrence, drew a sketch map of the same, examined the complainant, the victim and two prosecution witnesses. He also seized the Birth Certificate of the victim in presence of the two witnesses. The judicial statement of the victim was recorded under Section 164 Cr.PC by the Judicial Magistrate, First Class, Mamit District and the confessional statement of the appellant was also recorded by the Judicial Magistrate, First Class, Aizawl. The I/O also made intimation about the case to the Child Welfare Committee Mamit without delay. The appellant was apprehended and was interrogated wherein, he admitted his guilt. He was formally arrested and sent for medical examination. Likewise, the victim was also sent for medical examination. The case I/O upon finding the

prima-facie case well established against the appellant under Section 6 of the POCSO Act submitted the charge-sheet.

[4.] The learned Trial Court thereafter framed charge under section 6 of the POCSO Act and to which the appellant partially admitted the charge saying that he had sexual intercourse with the victim in his residence and that it was she who had taken the initiative to have sex. The trial was nevertheless conducted the trial in which as many as 7 prosecution witnesses were examined out of the 10 prosecution witnesses that was cited, including the prosecutrix herself. As for the appellant, he did not lead any evidence and only cross examined the prosecution witnesses who were examined in the trial. The appellant was also examined under Section 313 Cr.PC wherein he denied of having committed rape upon the victim. The learned Trial Court upon closure of the evidence and after hearing the parties vide the impugned judgment and order convicted and sentenced the appellant in the manner already stated in the preceding paragraph.

[5.] Mr. Jordan Rohmingthanga, learned Amicus Curiae submits that as per the FIR lodged by the informant, the appellant was said to have committed rape upon the victim on 27.04.2021 but in the deposition of the informant as PW-1 during the trial she stated that her daughter had gone to Teirei to stay with her

aunty in the month of February or March and after staying there for about two weeks, she came back. As per the victim, in her deposition during the trial, she did not recollect the month when she had gone to stay in the house of the appellant at Teirei. He therefore submits that there are inconsistencies with regard to the date or time when the incident of rape had occurred. He however submits that the appellant had partially admitted of having sexual intercourse with the victim but stated that it was the victim who had taken the initiative.

[6.] Mrs. Linda L. Fambawl, learned Public Prosecutor submits that the victim had gone to Teirei to stay with her paternal aunt who was the wife of the appellant and from the evidence of the victim, it is clear that the appellant had forcefully committed sexual intercourse with the victim and threatened her not to reveal about the same. It was only after persistent attempts were made by her mother that she revealed that the appellant had committed sexual intercourse with her. As a result, the victim became pregnant and ultimately gave birth to a baby boy on 04.10.2021. She submits that the appellant himself had partially admitted of having committed sexual intercourse with the victim at the time of framing of the charge apart from his admission in the confessional statement recorded under Section 164 Cr.PC. She submits that since there is no dispute with regard to the age of the victim that she was under age and therefore, irrespective of there being any initiation from her side or consent to

have sexual intercourse, the same is irrelevant. Since the appellant committed the act upon a minor girl, he is liable to be punished under Section 6 of the POCSO Act as rightly decided by the Trial Court. She submits that the evidence of the prosecution more particularly, the mother/informant, the Doctor and the seizure witnesses and the case I/O corroborate with each other apart from others and therefore, the impugned judgment and order is only sustainable and may not be interfered with by this Court. In support of her submission, the learned Public Prosecutor has relied upon the case of ***Satish Kumar Jayanti Lal Dabgar v. State of Gujarat (2015) 7 SCC 359***.

[7.] Mr. Lalrokunga Pautu, learned Legal Aid Counsel for the respondent No.2 submits that he adopts the arguments of the learned P.P. He further submits that the prosecution has been able to prove the foundational facts about the incident while connecting the same to the appellant. He submits that foundational facts includes the age of the victim, the fact of the occurrence, the birth of the baby boy to the victim in view of the commission of sexual intercourse by the appellant and therefore, the appellant was rightly convicted and sentenced by the learned Trial Court. He therefore submits that the impugned judgment and order may not be interfered with by this Court.

[8.] We have heard the submissions made by the rival parties and we have

perused the materials available on record including the TCR. In order to find out the sustainability or otherwise of the conviction of the appellant, we may examine the evidence led by the prosecution as below:

[9.] PW-1 is the informant and the mother of the victim. In her deposition before the Court she stated that the victim was born on 04.10.2006 and sometime in the month of February or March, 2021, she had gone to Teirei to visit her aunty, who is the wife of the appellant where she stayed for about two weeks. After her return, since the victim did not ask her any money to buy sanitary napkins for some time she suspected that there was something wrong with her. Moreover, the victim did not mingle with her friends and hardly went out anywhere. After noticing changes in her appearance especially around her belly, she suspected that she might be pregnant. After persistently asking the victim she revealed that the appellant was responsible for her pregnancy and he had threatened her not to disclose anything to anyone or else she would face dire consequences. According to the victim, the appellant had quietly entered into her room where she was sleeping and committed penetrative sexual assault on her in spite of her protest and resistance. PW-1 upon coming to learn about such incident along with her husband informed the village council. Further, after consulting with family members, they decided to lodge a complaint against the appellant. Accordingly, they went to the police station along with some village

council members on 22.07.2021 and they took the Birth Certificate of the victim along with them. A photo copy of the Birth Certificate was submitted at the Police Station. The victim thereafter delivered a baby boy in the month of October, 2021. Since she wanted to resume her studies and also in view of their financial condition, the baby was surrendered for adoption before the competent authority. PW-1 in her cross-examination reiterated what she had stated in her examination-in-chief.

[10.] PW-2 is the victim herself and she in her examination-in-chief stated that she had gone to stay in the house of the appellant at Teirei and she cannot recollect the month but it was in the year 2021. She stayed there for two weeks and came back. According to her, one night the appellant came to the place where she was sleeping and after putting his hands over his mouth and in spite of the protest and resistance given by her, he committed penetrative sexual assault on her and he then verbally threatened her if she disclosed about the incident to anyone she would face dire consequences. She left the house next morning without informing anybody but her two cousins who were the children of the appellant. When she reached home she did not disclose about the incident to anybody but when she missed her period for a month, her mother enquired because she did not ask any money to buy sanitary napkins. The victim did not answer but later on there were some changes in her appearance

and her belly became bigger and therefore, her mother asked whether she had sex with anyone. By this time she disclosed that the incident had happened on her visit to Teirei. She was then taken to West Phaileng Police Station by her mother and some persons and her statement was recorded in the Court at Mamit. She was medically examined at West Phaileng Public Health Centre and she delivered a baby boy in the month of October, 2021. The victim in her cross-examination stated that she did not depose falsely and that she did not remember the exact date, month and time about the alleged incident.

[11.] PW-3 is the seizure witness to the seizure of the Birth Certificate of the victim. According to him he saw the contents of the certificate and noticed that the victim was born on 04.10.2006. He stated that he was the Treasurer of the Village Council of Damparengpui and the parents of the victim reported the matter in the Village Council stating that the victim stayed in the house of the appellant at Teirei for some time as the wife of the appellant is the paternal aunt of the victim. PW-3 also narrated that the mother of the victim noticed changes in the behavior and appearance of the victim and after persistent queries, the victim disclosed that she was pregnant. That the family of the victim after consulting amongst themselves decided to lodge a complaint against the appellant in West Phaileng Police Station. The PW-3 exhibited the seizure memo, his signature and photo copy of the Birth Certificate. In his cross

examination, he admitted that the police did not seized the original Birth Certificate and likewise, the original copy was not produced before the Court except for a photo copy.

[12.] PW-5 is also the seizure witness who witnessed the seizure of the Birth Certificate of the victim. According to him he had a glance of the Birth Certificate and he put a signature in the seizure memo.

[13.] PW-7 is the Doctor who examined the victim. According to him on 22.07.2021 at 02:00 pm, he examined the victim as there was a requisition from the Officer-in-Charge at West Phaileng Police Station. PW-7 exhibited the examination report of the victim and his signature as Exbt. P-4 and P-4(a) respectively. As per the medical report, the pregnancy conducted upon the victim tested positive and fetal heart rate was found and recorded. In his cross-examination, PW-7 stated that the victim told him that the alleged incident took place in the month of April, 2021 and that she was about 3(three) months pregnant when she was produced before him.

[14.] PW-9 is the Chief Judicial Magistrate who had recorded the confessional statement of the appellant. He stated that on 13.08.2021 while being posted as Judicial Magistrate First Class at Aizawl Judicial District, Aizawl, the appellant was brought before him for recording confessional statement.

That after observing all the formalities he recorded the confessional statement of the appellant. In his cross examination, he stated that he had given the appellant time for reflection under the supervision of Court staff before recording the confessional statement. He also warned him that the confessional statement made by him may be relied upon for his conviction. Further, he denied that there was any threat from the police leading to the confession made by the appellant.

[15.] PW-10 is the case I/O who deposed that he was endorsed with the case for investigation after registration of the FIR on 22.07.2021. During the course of the investigation, he examined the complainant, the victim and two prosecution witnesses besides the seizure witnesses and recorded their statements. Original Birth Certificate of the victim was produced to ascertain the age of the victim and a copy of the same was seized in presence of the two witnesses. He submitted that judicial statement of the victim was recorded by the Judicial Magistrate First Class and likewise, the confessional statement of the appellant was recorded. Upon finding the prima-facie case well established against the appellant, the case I/O therefore submitted the charge-sheet. In his cross examination, PW-10 stated that FIR was submitted after lapse of three to four months prior to the incident. He also admitted that the DNA profiling was not conducted after the victim gave birth to ensure as to whether the appellant

was the father of the child or not. He also stated that he initially seized the Birth Certificate of the victim but later on gave back the same to the victim's family by way of Zimmanama and retained a photo copy of the same and annexed it to the charge-sheet.

[16.] From the above deposition of the prosecution witnesses it may be seen that the delay in filing the FIR was on account of victim having withheld about the incident. According to her, the reason for withholding the fact of occurrence about the incident was on account of the threat made by the appellant. However, the complainant who is also the mother of the victim upon noticing the changes in the behavior and appearance of the victim, upon persistently asking her what had happened to her, the victim disclosed that the appellant had committed sexual intercourse with her. As per the evidence on record, about three months had lapsed since the occurrence of the incident when the FIR was lodged. The evidence of PW-1, PW-2, PW-3 and PW-10 amongst others are consistent to the fact that the victim had stayed in the house of the appellant for about two weeks in the earlier part of 2021 as the wife of the appellant is her paternal aunty. That it was during her stay in the appellant's house that the incident had happened and the evidence of the aforesaid prosecution witnesses corroborate about this fact. Further there is no dispute and in fact, a clear corroboration that the victim was minor at time of

the incident and she was born on 04.10.2006. The seizure witnesses who are PW-3 and PW-5 also corroborate to the version of the other witnesses that the victim was underage at the relevant time.

[17.] It may also be seen that the appellant himself in his confessional statement had admitted that he had sexual intercourse with the victim on three occasions. Likewise, at the time of framing of the charge. the appellant had partially admitted that he had sexual intercourse with the victim but explained that the victim had initiated the move. Section 2(d) of the POCSO Act defines "child" means any person below the age of eighteen years. Section 5 deals with aggravated penetrative sexual assault and as per Section 5 (j) (ii), whoever commit penetrative sexual assault on a child and makes the child pregnant as a consequence of sexual assault amounts to the commission of aggravated penetrative sexual assault. It may further be seen that a an aggravated penetrative sexual assault is also said to be committed under Section 5(n) of the POCSO Act when a penetrative sexual assault is committed on a child by a person who is the relative of the child through birth or adoption or marriage or guardianship or in foster or having domestic relationship with the parent of the child or who is living in the same or shared household with the child. In the instant case, the appellant undoubtedly is the husband of the paternal aunty of the victim and therefore, the act committed by him will also attract Section 5(n)

of the POCSO Act apart from Section 5 (j)(ii).

[18.] It may be seen that in his examination under Section 313 Cr.PC, the appellant denied commission of sexual penetration upon the victim but except for giving a plain denial, stating that it is not true, he has not offered any further explanation nor led any evidence in his defence. He further did say that his statement before the Police was due to fright but however, the fact remains that he had also made a confessional statement before the Chief-Judicial Magistrate wherein, no such explanation or reason has been spelled out. Therefore, the appellant cannot have any benefit from his denial in his examination under Section 313 Cr.PC. The appellant has also stated that the victim had initiated the act while charge under Section 6 was being framed against him.

[19.] The Apex Court in ***Satish Kumar Jayanti Lal Dabgar (Supra)*** in the given facts and case has held that the legislature in this wisdom has introduced the sixth description on the commission of rape in Section 375 of the Indian Penal Code with sound rational and important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is Civil Law or Criminal Law, the consent of a minor is not treated as valid consent. That a minor girl can be easily lured into giving consent for such an act without understating the

implications thereof. Such a consent therefore is treated as not an informed consent given after understanding the pros and cons as well as the consequences of the intended action. Further, as already mentioned in the preceding paragraph the victim undoubtedly was a minor at the time of the incident. We also find that the testimony of the victim before trial and during the trial to be cogent, truthful and reliable. It is also a settled position in law that the testimony of the victim in a case of rape can be acted upon without any corroboration, if the same is found to be reliable and truthful. In the present case, the victim had no reason to implicate the husband of her paternal aunt in the matter and there are no materials to even suggest that there was some enmity between the families. He being the uncle of the victim since she was the niece of his wife, instead of protecting her interest and welfare, he has indulged himself in the commission of the crime. Therefore having regard to the provision of Section 5(j) (ii) of the POCSO Act and also Section 5 (n) of the same Act and in the light of the evidence led by the prosecution, we find no reason to interfere with the impugned judgment and order rendered by the learned Trail Court.

[20.] In the result, we do not find any merit in the appeal and the appeal is accordingly dismissed.

[21.] Registry to return back the TCR immediately. For the valuable services rendered by Mr. Jordan Rohmingthanga, the learned Amicus Curiae, the Mizoram State Legal Services Authority shall provide him the fees as prescribed in this regard.

JUDGE **JUDGE**

Comparing Assistant