GAHC030003282026

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

Case No. : Crl.A./11/2026

Sh. Ali Hussain
S/o Abdul Wahab, R/o 291, Brahman Shasan,
Part-II, karimganj District, Assam-788722

VERSUS

The State of Mizoram and Anr.
Through Secretary to the Government of Mizoram,
Home Department, Aizawl

2:Sh. Zonunthar a
S/o Kawlhuliana (L)
R/o Chaltlang Ruamveng, Aizawl, Mizoram

BEFORE
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI

Advocate for the appellant : Mr. Jordan Rohmingthanga

Advocate for the respondent No.1 **:** Ms. Vanneihsiami,Addl. P.P

Advocate for the respondent No.2 : Mr. H. Zodinsanga, Legal Aid counsel

Date on which judgment is reserved **: 28.10.2026**

Date of pronouncement of judgment **: 02.11.2026**

Whether the pronouncement is of the operative part of the judgment : N/A

Whether the full judgment has been pronounced : Yes

JUDGMENT / ORDER (CAV)

Date : **02-11-2026**

Heard Mr. JordanRohmingthanga , learned counsel for the appellant. Also heard Ms. Vanneihsiami, the learned Addl. P.P appearing for State and Mr. H. Zodinsanga, learned Legal Aid counsel appearing for the respondent No. 2.

2. The present appeal has been filed under section 415 of the BNSS, 2023, against the impugned Judgment &Order dated 09.04.2026 and the sentence order dated 15.04.2026, passed by the learned Special Judge, POCSO Act, Aizawl District in Sessions Case No. 47 of 2024 (Crl.) Trial No. 666 of 2024, u/s 8 of the POCSO Act, 2012, All Women P.S Case No. 23 of 2024, dated 18.03.2024by which the appellant was convicted and sentenced to suffer rigorous imprisonment for a period of 3(three) years and 6(six) months and to pay a fine of Rs. 2000/- (Rupees two thousand only).

3. The learned counsel for the appellant submits that the challenge to the conviction and sentence imposed upon the appellant are on the ground that the learned Trial Court erred in law by not considering the defense version in its proper perspective and objectively and wrongly discarded the circumstantial evidence as put forth by the defense. Also, there was material contradiction in placing sole reliance on the testimony of the victim despite the presence of defense witnesses whose testimonies were not properly appreciated.

3.1. The learned counsel for the appellant submits that the defense witnesses or the contradictions in the sole testimony of the victim and the surrounding circumstances-cast a reasonable doubt on the guilt of the accused, the cardinal principle of criminal law dictates that the benefit of that doubt must go to the

accused, leading to an acquittal.

3.2. The learned counsel for the appellant also submits that the learned Trial Court could not have simply ignored such contemporaneous evidence led by the accused as it showed a highly probable version of innocence which directly casts a doubt on the version of the victim/prosecutrix.

3.3. The learned counsel further submits that the medical evidence/corroborative evidence does not support the case of the victim substantive evidence, as there was no signs of struggle on body of victim at the time of incident at around 01:00 PM and examination at 6:20PM on 18/03/2024.

3.4. It is also further the contention of the learned counsel that the uncontroverted evidence that the accused was found on the construction floor till his arrest after alleged incident highly probabalizes, the hypothesis of the defense which has been corroborated by the statement of PW-1 who said that accused was apprehended at their house and PW-3 who stated that she approached the accused scolded him at the construction floor after the victim informed her about the incident.

3.5. Also, it is contended by the learned counsel that the statement/evidence of the accused (DW-1) is to the effect that he never talked to the victim before the incident and that he barely saw the victim before the incident. The same is consistent with the evidence of the PW-3, as she deposed that the victim did not watch over the workers on other days. Such a corroboration does lend credence to the probability that the case of the prosecution is fabricated, meeting the test of preponderance of probability. PW-3 statement is itself

contrary to the case of the victim as she deposed to the effect that on other days the victim did not watch over the workers thus there was no question of earlier incidents.

3.6. The learned counsel also submits that the statement/evidence of the accused witnesses DW-2 & DW-3, who were also employed by the father of the Victim alongwith the accused, stated that the accused had spat from the balcony on the alleged date of incident due to Ramadan and the victim had shouted from below right after the same. Further that the accused went down and came back up shortly thereafter and continued to work. Further, they did not see or hear any commotion/shouting or struggle and that they would have heard such as they were close by. Such contemporaneous evidence tendered by the defense which was unrebutted highly probabalizes the version of the defense meeting the standard of proof. As such, the impugned judgment & sentence was not sustainable and accordingly, the appellant should be acquitted of the charges framed against him.

4. In support of his submission, the learned counsel for the appellant relies on the decisions in the cases of;

(i) ***Ram Narain SinghVs. State of Punjab***, reported in ***1975 4 SCC 497***, wherein the Hon'ble Supreme Court held has that where the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, this is a most fundamental defect in the prosecution case and unless reasonably explained it is sufficient to discredit the entire case.

(ii) ***State of U.P****Vs.* ***Gambhir***, reported in ***(2005) 11 SCC 271***, wherein the Hon'ble Apex Court held has that it is well settled

that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred.

(iii) ***Gautan Biswas****Vs.* ***State of Assam & Another***, in Crl. A No. 197/2021 with I.A(Crl.) No.521/2021,wherein the Co-ordinate Bench of this Court held has that after going through the evidence of the prosecutrix, it is evident that the statement of the prosecutrix at every stage has improved, changed and has contradicted its earlier statement and the testimony of the prosecutrix suffers from material inconsistency and as per the settled law conviction cannot be based on such testimony of the prosecutrix which is not worthy of credence.

(iv) ***Krishan Kumar Malik****Vs.* ***State of Haryana***, reported in ***(2011) 7 SCC 130***, wherein the Hon'ble Apex Court held has that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

(v) ***Rai Sandeep*** *Vs.* ***State NCTD***, reported *in* ***(2012) 8 SCC 21***, wherein the Hon'ble Apex Court held has that in our considered opinion, the 'sterling witness' should be of a very high quality and caliber 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 everyone 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 similar such tests to be applied, it can 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."

(vi) **Partap** Vs. **State of U.P**, reported in **1976 2 SCC 798**, wherein the Hon'ble Apex Court held has that it is well settled that the burden on the accused is not as onerous as that which lies on the prosecution. While the prosecution is required to prove its case beyond a reasonable doubt, the accused can discharge his onus by establishing a mere preponderance of probability.

(vii) **Kali Ram**Vs. **State of H.P**, reported in **1973 2 SCC 808**, wherein the Hon'ble Apex Court held has that one of the cardinal principles which has always to be kept in view in our system is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove

> the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal. Leaving aside the cases of statutory presumptions, the onus is upon the prosecution to prove the different ingredients of the offence and unless it discharges that onus, the prosecution cannot succeed.

5. Per contra, Ms. Vanneihsiami, learned Addl. P.P for the State submits that though there is no infirmity in the decision of the learned Trial Court in convicting the appellant/accused. The learned counsel taking into the record and more particularly on the statement of the victim under section 164 of Cr.P.C and her deposition before the Court on 30/09/2024, whereby it has been clearly stated that the accused/appellant had come down and asked for a plastic bag and sat near the victim. The accused/appellant asked for the phone number of the victim and on refusal grab her hand and pull her down to the ground and thereafter, put his hand inside her shirt and grab her right breast. Thereafter, after much struggle she managed to run out of the house.

5.1. It is the submission of the learned Addl. P.P for the State that during the entire trial and the statement before the Court, there is no discourse in the statement of the victim and the same is not rebutted by the defense counsel which would indicate that the statement of the victim has accepted.

5.2. In support of her submission, the learned Addl. P.P for the State relies on the decision in the case of ***Deepak Kumar Sahu Vs. State of Chhattisgarh***, reported in ***2025 SCC Online SC 1610***, wherein the Hon'ble Apex Court held that:

"*5.5 In cases of offences committed under Section 376, IPC, when the story of the victim girl as told in the evidence is found credit-worthy, the apparent insufficiency of medical evidence pitted against acceptable testimony of the victim, the latter would prevail. In State of Punjab vs. Gurmit Singh [(1996) 2 SCC 384] it was observed:*

In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.

5.5.3. The medical evidence may not be available in which circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction.

"*The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement.Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix." (Para 11)*

5.5.6. The credible and reliable evidence of prosecutrix could not be jettisoned for want of corroboration including the corroboration by medical report or evidence. The Court observed in Manga Singh (supra) that "in absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix". It was stated that it is well settled that in

the cases of rape it is not always necessary that external injury is to be found on the body of the victim.

5.6. It is an opt-reiterated dictum of law that in cases of rape, the testimony of the prosecutrix alone may be sufficient and sole evidence of the victim, when cogent and consistent, could be properly used to arrive at a finding of the guilt. In the State of Himachal Pradesh vs. Manga Singh, (2019) 16 SCC 759, this Court in terms stated that conviction can be rested on the testimony of the prosecutrix alone.

The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement.Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix." (Para 10).

5.3. The learned Addl. P.P, therefore further submits that the impugned judgment and sentence order dated 09/04/2026 and 18/04/2026 passed by the learned Special Judge, Special Court, Aizawl Judicial District, Aizawl should not be interfered with.

6. Mr. H. Zodinsanga, learned Legal Aid counsel appearing for the respondent No.2, submits that the statement of the appellant under section 313 of Cr.P.C contradicts with the deposition made before the Court on 01/12/2024, inasmuch as the appellant/accused had stated that he had approached the victim asking for polythene bag but on the other hand, the accused/appellant has stated that he went down to seek for forgiveness as the spit fell near the victim. Apparently, the appellant/accused has made out a concocted story to prove his innocence to

absolve himself from the commission of offence. However, the fact remains that as per the statement of the DW-2 & DW-3, the appellant/accused had gone downstair wherein the victim was sitting and beyond the fact they are not aware as to what had actually happened as per their statement.

7. Heard the learned counsel for the parties at length.

8. The brief fact of the case shows that an FIR dated 18/03/2024 had been submitted by the prosecution witness-1, who is the father of the victim to the Officer-in-Charge, All Women Police Station, Aizwal District. The FIR stated that the appellant/accused on the day of occurrence had pulled his daughter and grab her breast by putting his hand inside her top. Even on other days, the appellant/accused had often teased her daughter using indecent words.

9. Pursuant to the FIR, All Women Police Station, Aizawl District Case No. 23/2024 dated 18/03/2024 u/s 8 of POCSO Act r/w section 354/354A(2) IPC was registered against the appellant/accused.

10. After the investigation was completed, the I.O (PW-8) submitted the charge sheet dated 13/05/2024, on finding at *prima facie* case against the appellant/accused u/s 8 of POCSO Act r/w section 354/354A(2) IPC was filed.

11. Thereafter, the learned Trial Court framed one charge under section 8 of the POCSO Act, to which the appellant/accused pleaded not guilty and claimed to be tried.

12. The learned Trial Court thereafter, examined 8 prosecution witnesses and after examining the appellant/accused u/s 313 of Cr.PC, the learned Trial Court came to the finding the appellant/accused was guilty of the charge of sexual assault punishable u/s 8 of the POCSO Act r/w section 354/354A(2) of IPC. The learned Trial Court found it necessary to punish him under the above provision

of law and as such, sentence him to 3 years and six months with fine, in default, 2 months.

13. The evidence of the PW-1, who is the father of the victim, is to the effect that on 18/03/2024 while he was in his working place, he received a phone call from his daughter/victim that the appellant/accused had hold her arm and put his hand inside her shirt and grabbed her breast.

14. The evidence of the PW-2 (victim) is to the effect that on the day of the incident i.e. 18/03/2024, as requested by the family she stay at home and just after the lunch as she was sitting alone at the sitting room, the appellant/accused came to her and sat beside her. The appellant/accused asked for her phone number and on refusal he indecently said "I love you, I want you". Thereafter, he caught hold of her hand and put his other hand inside her shirt and grabbed her breast. Further, he pulled her and after much struggle she managed to escape and run out of the house to her relative place in the same colony and narrated the incident. Thereafter, the neighbor came and scolded the accused/appellant and she informed her father about the incident through mobile phone.

In her examination-in-chief, the victim stated that the accused/appellant used to disturb her and teased her using indecent words and stared at her while she was cooking and sundry the clothes.

15. The evidence of PW-3 is to the effect that she is the aunt of the victim and she resides in the same colony of the victim. On the day of the incident i.e., 18/03/2024, the victim came running inside her house crying and told her that the accused/appellant had pulled her arm and put his hand inside her shirt and grabbed her breast. She also stated that the victim told her that the

accused/appellant used to disturb her by teasing her using indecent words.

16. The evidence of PW-8, who is I.O is to the effect that on the registration of the FIR dated 18/03/2024 by the PW-1, investigation was carried out and she had recorded the statement of the victim under section 164 of Cr.P.C. She also stated that she had examined the victim, prior to the recording of her statement, to ensure that she was able to narrate the incident. When the victim was examined she narrated that on 18/03/2024, after having lunch, while she was sitting in her house, the accused/appellant came and sat beside her and asked her mobile number and talk to her indecently by using "I love you, I want you". When the victim refused, the accused/appellant hold her hand with one hand and put his other hand inside her shirt and grabbed her breast. After a lot of struggle, she managed to escape from the house and fled away to her aunt's place and narrated the incident. The victim further stated that the accused/appellant used to disturb her and tease her with indecent words and often stared at her while she was cooking or sundry the clothes outside, which made her life miserable.

In her cross-examination, PW-8 stated that the judicial statement was recorded by the Judicial Magistrate 1st Class, Aizawl.

17. The examination of the appellant/accused under section 313 of Cr.P.C is to the effect that he was innocence and a false case has been foisted against him.

18. In the present case, the fact that the victim has been sexually assaulted by the accused/appellant is quite apparent, in view of the evidences of the prosecution more particularly, the prosecutrix/victim that the accused/appellant had hold her hand and put his other hand inside her shirt and grabbed her breast which corroborates with her testimony and the statement has not been

rebutted by the accused/appellant and that has been consistency and corroborates with the statement of the prosecution witness. during the entire trial and proceedings. Thus, this Court has no reason to doubt the fact that the appellant/accused had committed the offence of sexually assaulting the victim which attracts the provision of section 8 of POCSO Act, 2012 convicting the accused/appellant.

19. The decisions relied by the learned counsel for the appellant rendered in the cases of *Ram Narain Singh (supra), State of U.P (supra), Gautan Biswas (surpa), Krishan Kumar Malik (supra), Rai Sandeep (surpa), Partap (supra) and Kali Ram (supra)* cannot be accepted by this Court on the ground that the benefit of doubt cannot be given to the accused/appellant because of the fact that there has been constant consistency as to the statement of the victim as to the alleged offence and there has not been discourse during the entire trail and proceedings.

20. This Court has also taken into consideration of the story of the victim/prosecutrix as told in the evidence is found credit worthy, the apparent insufficiency of the medical evidence pitted against the acceptable testimony of the victim, the latter would be prevail. The solidary testimony of the victim would be sufficient in the present case which corroborates with the deposition of the prosecution witness.

21.The section 164 of Cr.P.C statement of the victim is to the following effect;

> "*On 18.03.2024 at around 1:00 p.m, I stayed at home alone. As we have continued some construction work upstairs, there were non-mizo workers who were working there. In the afternoon, one of the workers named Ali Hussain came downstairs and asked me for a*

plastic bag. Knowing that I was home alone he came and sat near me. He asked me for my phone number and said "I want you, I love you." I responded saying he was shameless and I tried to go away from him. He pulled me on the ground as I struggled and he made me sit on the chair. He held my hand and refused to let go of me. He put his hand inside my top and he grabbed my right breast. He then felt my body and I fortunately managed to ran out of the house and I went to the house of my neighbor who happens to be a relative. He has often teased me verbally even on other days and he would be angry at me as I refused to give him my mobile number. One evening, he grabbed my hand while I was at home. He however did not make any move that day as my aunt was also at home."

22. The statement made under section 164 of Cr.P.C does not contradict the testimony made by the victim when she was sexually assaulted. The factum of the victim being sexually molested by the accused/appellant has remained as per the record. Thus, this Court find that the victim testimony that she has been sexually assaulted has been rebutted.

23. In view of the reasons stated above, the conviction by Judgment &Sentencing order dated 09/04/2026 and 15/04/2026 respectively under section 8 of the POCSO Act is not interfered with.

24. The appeal is accordingly dismissed.

25. No order as to costs.

26. Send back the TCR.

JUDGE

Comparing Assistant