GAHC030003452023

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

Case No. : Crl.A./31/2023

Shri. M. B. Vanlalhriata,
S/o Chondida,
R/o Hunthar Veng, Aizawl,
Mizoram.

….Appellant

-VERSUS-

1. **State of Mizoram & Anr.**

….RESPONDENTS

BEFORE
HON'BLE Mr. JUSTICE BUDI HABUNG

Advocate for the Petitioner : Mr. Saurabh Pradhan, ld. Advt.

Advocate for the Respondents : Ms. Marry L. Khiangte, ld. Addl. PP & Mr. Joseph L. Renthlei, ld. Amicus Curiae

Date on which Judgment is reserved : 04.08.2026

Date of Hearing : 04.08.2026

Date of Judgment and Order : 20.11.2026

Whether the pronouncement is of the Operative part of the Judgment?

:No

Whether the full Judgment has been pronounced ? : Yes

JUDGMENT & ORDER

(CAV)

Heard Mr. Saurabh Pradhan, learned counsel for the appellant. Also heard Ms. Marry L. Khiangte, learned Additional Public Prosecutor for the State of Mizoram, appearing for respondent No. 1, and Mr. Joseph L. Renthlei, learned Amicus Curiae, appearing for respondent No. 2.

2. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 09.06.2023, passed by the learned Fast Track Special Court, POCSO Act, Aizawl, in Sessions Case No. 104/2019, corresponding to Crl. TR. No. 1582/2019, whereby the appellant was convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act"), and sentenced to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 3,000/-, with a further term of rigorous imprisonment for 3 (three) months in default of payment of the fine.

3. The prosecution case, in brief, is that the victim, who was the daughter of the appellant's wife from her previous marriage, was subjected to repeated

sexual assaults by the appellant (her stepfather) at their residence at Hunthar Veng, Aizawl, during the period from 2014 to 2016, when she was a minor. According to the victim, after committing the offences, the appellant threatened her with serious consequences, including death, if she discloses the incidents to anyone, including her mother. Owing to such threats, the victim did not disclose or report the matter at the time of its occurrence.

4. On 09.08.2019, the victim was stated to have left the house and gone to stay with a friend at Lengte. While staying with her friend, she disclosed to her the sexual assault committed against her by the appellant's stepfather. Thereafter, the said friend informed the victim's former schoolteacher (PW-3) about the incident, who advised the victim to inform her relatives and seek assistance from them. The victim subsequently contacted her paternal relative (PW-2), who was her paternal grandfather, and he took her to Aizawl. Thereafter, on 14.08.2019, the victim lodged an FIR at Vaivakawn Police Station. Accordingly, a case was registered under Section 6 of the POCSO Act and investigated into.

5. During the course of the investigation, the statement of the victim was recorded under Section 164 of the Cr.P.C. She was medically examined, and her birth certificate was obtained and seized. The medical examination of the victim revealed an old rupture of the hymen; however, no other external injury or bruise was found on the victim's body. Upon completion of the investigation, the police submitted a charge sheet against the appellant for the offence punishable under Section 6 of the POCSO Act.

6. The learned Trial Court framed a charge against the appellant under Section 6 of the Protection of Children from Sexual Offences (POCSO) Act,

alleging that the appellant had repeatedly committed forcible sexual intercourse on the victim, his stepdaughter, during the period from 2014 to 2016 at their residence in Hunthar Veng, Aizawl. The appellant denied the charge and claimed to be tried.

7. The prosecution examined a total of eight witnesses, including the victim, one of her paternal relatives, her former school teacher, her mother, the Medical Officer, the learned Judicial Magistrate who recorded the victim's statement under Section 164 of the Cr.P.C., and the Investigating Officer.

8. Upon completion of the examination of the prosecution witnesses, the appellant was examined under Section 313 of the Cr.P.C. In his statement, the appellant denied having had sexual intercourse with the victim. In his defence, the appellant examined himself as DW-1 and also examined one other witness.

9. Upon appreciation of the evidence on record, the learned Trial Court held that the charge against the appellant had been proved beyond reasonable doubt and accordingly convicted and sentenced him to undergo rigorous imprisonment for a period of 10 (ten) years and to pay a fine of Rs. 3,000/-, with a default stipulation.

10. Being highly aggrieved by his conviction and sentence, the appellant has preferred the present appeal.

11. The learned counsel for the appellant submits that the conviction of the appellant rests primarily upon the uncorroborated testimony of the victim. According to the learned counsel, the testimony of the victim suffers from material inconsistencies and contains improvements over her earlier statements. It is contended that the FIR was lodged after an inordinate delay of

approximately 5 (five) years from the alleged occurrence. It is further submitted that none of the independent witnesses examined by the prosecution had any knowledge of the alleged incident prior to the disclosure made by the victim regarding the alleged sexual assault. The learned counsel further contends that the medical evidence does not establish sexual penetration. It is argued that the finding of an old rupture of the hymen, by itself, does not establish when the injury occurred or connect the appellant with the alleged offence.

12. The learned counsel for the appellant further submits that the victim had a history of leaving her home and that the immediate reason for her leaving home in August 2019 was a disagreement with her mother (PW-5) over matters relating to her schooling. It is argued that the allegations against the appellant came to light only after the victim was reported missing on social media. In such circumstances, he argued that the possibility of the victim having been tutored by her paternal relatives cannot be ruled out.

13. The learned counsel further submits that the defence had adduced evidence in support of its case through a defence witness during the trial. However, the testimony of the said defence witness was neither discussed nor duly considered by the learned Trial Court while delivering the impugned judgment. According to the learned counsel, the failure of the learned Trial Court to consider and discuss the evidence adduced by the defence constitutes a material infirmity in the impugned judgment, thereby rendering the conviction unsustainable in law.

14. Per contra, the learned Additional Public Prosecutor opposes the appeal and submits that the victim's evidence regarding the repeated sexual assaults allegedly committed by the appellant during the period from 2014 to 2016 has

remained consistent in both her statement and her deposition before the trial court. It is argued that, although there was some delay in reporting the incident, the same has been satisfactorily explained by the victim, who allegedly faced threats to her life from the appellant if she disclosed the incident to anyone. Accordingly, the learned Additional Public Prosecutor submits that the explanation furnished by the victim for the delay deserves consideration, particularly in view of the fact that she was a minor at the time of the alleged incidents and the circumstances in which she was residing in the house with her mother and stepfather (the appellant).

15. The prosecution further submits that the absence of fresh injuries on the victim's body does not negate the allegations of repeated sexual assault, particularly when the alleged incidents had occurred several years prior to her medical examination. It is further submitted that the sexual molestation continued until the victim left the house, a fact which was not rebutted by the defence during the trial.

16. The learned Amicus Curiae, representing the victim, while supporting the submission of the learned Additional Public Prosecutor submits that the allegations made by the defence regarding the victim's character and habits are irrelevant to the question as to whether the appellant committed the alleged offence against her. In support of his submission, the learned Amicus Curiae has placed reliance on the decision in ***Lillu Alias Rajesh & Anr. v. State of Haryana***, reported in (2013) 14 SCC 643. The learned Amicus Curiae has also relied upon the decision of the Hon'ble Supreme Court in ***Phool Singh v. State of Madhya Pradesh***, reported in (2022) 2 SCC 74, with regard to the principles governing the appreciation of the testimony of a victim in cases

involving sexual offences.

17. The learned Additional Public Prosecutor has also placed reliance on the decision of the Hon'ble Supreme Court in ***Bhanei Prasad alias Raju v. State of Himachal Pradesh***, reported in 2025 SCC OnLine SC 1636, wherein it was held that the testimony of a child victim, if found to be credible and trustworthy, does not require corroboration.

18. The learned Additional Public Prosecutor has also placed reliance on the decision of the Hon'ble Supreme Court in ***Lok Mal alias Loku v. State of Uttar Pradesh***, reported in (2025) 4 SCC 470, in support of the submission that a conviction may be founded on the credible and trustworthy testimony of the victim and that the absence of injuries on the victim's body, by itself, is not fatal to the prosecution case.

19. On the basis of the rival submissions advanced by the parties and the evidence available on record, the following points arise for determination:

I. Whether the prosecution has proved that the victim was a child within the meaning of the POCSO Act at the time of the alleged occurrence;

II. Whether the testimony of the victim, considered along with the other evidence on record, establishes beyond reasonable doubt that the appellant committed the offence punishable under Section 6 of the POCSO Act;

III. Whether the delay in lodging the FIR, the medical evidence/report, the alleged inconsistencies in the victim's statements, and the defence

evidence create a reasonable doubt warranting interference with the appellant's conviction; and

IV. Whether the impugned judgment of conviction and order of sentence call for interference in appeal.

Point No. I, Regarding Age of the Victim :-

20. To prove the age of the victim the prosecution has relied upon her birth certificate, exhibited as Exhibit M.1, as well as the evidence of the victim's mother and other witnesses. The record, however, discloses certain discrepancies regarding the victim's date of birth. As per the birth certificate issued by the Department of Economics and Statistics, the victim's Date of Birth is recorded as 23.05.2003, whereas her mother stated that she was born on 12.04.2003. The judgment also contains an inconsistent reference to another date of birth. Such discrepancies ought not to have been reproduced without verification of the original documents. Nevertheless, the dates of birth emerging from the evidence clearly indicate that the victim was below 18 years of age throughout the alleged period of 2014–2016. The age of the victim at the relevant time is, therefore, established by the evidence on record, which demonstrates that she was a minor at the time of the alleged occurrence. The discrepancies regarding her precise date of birth do not, on the material available on record, affect the finding that she was a child within the meaning of the POCSO Act.

Point Nos. II & III, Credibility of the victim and the alleged inconsistencies -

21. The principal submission on behalf of the appellant is that the testimony

of the victim is not sufficiently reliable to sustain a conviction in the absence of independent corroboration. It is, however, a settled principle of law that the testimony of a victim of sexual assault does not require corroboration as a matter of law. If her evidence is credible, trustworthy and inspires confidence, a conviction may be founded upon her testimony alone. At the same time, the Court must carefully scrutinize the evidence to determine whether any material infirmity or contradiction renders it unsafe to rely upon such testimony.

22. ***In Phool Singh*** (supra), the Hon'ble Supreme Court reiterated that the conviction of an accused may be based on the sole testimony of the victim/prosecutrix, provided her deposition is found to be trustworthy and of sterling quality. The relevant portion of paragraph 8 is reproduced below:

> *"This court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this court had an occasion to consider the series of judgments of this court on conviction on the sole evidence of the prosecutrix."*

23. In ***Phool Singh*** (supra), the Court has also explained that the assessment must be based on the truthfulness and consistency of the evidence of such a witness, from the initial stage to the conclusion of the proceedings, rather than on the status of the witness. The requirement is not that every detail must remain identical in every statement, but that the core allegation, as well as the identity and role of the accused, must remain consistent and reliable.

24. The same principle finds reflection in ***Bhanei Prasad alias Raju*** (supra), wherein the Court emphasized the evidentiary value of the credible testimony of a child victim and the significance of the statutory presumption

under Section 29 of the POCSO Act, once the foundational facts necessary for its application have been established. The relevant paragraphs are reproduced below:

> "*5. The jurisprudence under the POCSO Act has evolved as a bulwark against the predatory crimes targeting the innocence of childhood. Section 29 of the POCSO Act creates a statutory presumption of guilt, once foundational facts are established. In the present case, this presumption stood unrebutted. The victim's testimony was unwavering, medically corroborated, and free from embellishment. Her disclosure, though delayed, was truthful and borne out of perennial trauma and threats she has undergone.*
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> *6. It is now well settled that the testimony of a child victim, if found credible and trustworthy, requires no corroboration. The Courts below have not merely accepted the victim's account, they have validated it through unimpeachable scientific evidence. The DNA report sealed the evidentiary chain and has dispelled all doubts in the prosecution case which is sought to be assailed by the petitioner.*
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> *13. 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. The law does not, and cannot, condone such acts under the guise of rehabilitation or reform. Incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable. When a child is forced to suffer at the hands of her own father, the law must speak in a voice that is resolute and uncompromising. There can be no mitigation in sentencing for crimes that subvert the very notion of family as a space of security."*

25. The aforesaid observations of the Hon'ble Supreme Court do not dispense with the Court's duty to assess the evidence in the particular case. Rather, the evidence must be examined in its entirety, and the applicable statutory provisions must be applied to the facts established on record.

26. In the present case, the victim identified the appellant as her stepfather and remained consistent in her allegation that she had been subjected to sexual

assault by him. In the FIR, she stated that the incidents had occurred during the period from 2014 to 2016. She specifically explained that she had not disclosed the incidents earlier because the appellant had threatened to torture or kill her if she revealed the incidents to anyone. In her statement recorded under Section 164 of the Cr.P.C., the victim disclosed that the appellant had repeatedly subjected her to sexual intercourse, including on occasions during the night and in the bathroom. In her deposition before the trial court, the victim again stated that the appellant had subjected her to sexual assault on several occasions during the period from 2014 to 2016, before she attained puberty, and that the appellant continued to touch her breasts and private parts thereafter until she left the house.

27. The fundamental allegation against the appellant is that he repeatedly subjected the victim to sexual intercourse while she was a minor. This essential allegation has remained consistent throughout. The victim's assertion that the appellant had threatened her against disclosing the incidents, as well as her explanation for not reporting them earlier, has also remained consistent in substance. The fact that the victim did not provide a detailed account of every alleged occurrence in the FIR does not, by itself, render her subsequent statements unreliable, as contended by the appellant. It is well settled that an FIR is not an encyclopedia of the incident and is not expected to contain an exhaustive narration of every detail, particularly when the informant is a child and reporting regarding sexual abuse allegedly committed by her own stepfather, with whom she was residing in the same household.

28. The appellant, while referring to the evidence of the victim, submits that she had a misunderstanding with her mother (PW-5) over money required

towards school contributions; the learned counsel for the appellant contends that this was the real reason for the victim leaving the house, rather than the alleged sexual abuse. The evidence, however, does not establish that there was any disagreement between the victim and her mother at the relevant point of time. Nevertheless, even assuming that such a disagreement existed between them, the same would not necessarily exclude the possibility that the victim had also been subjected to sexual abuse. The relevant question is whether the alleged disagreement between the victim and her mother provides a credible basis for concluding that the allegations against the appellant were fabricated.

29. The victim stated that she left the house because she could no longer tolerate the circumstances in which she was residing with her stepfather (the appellant). The evidence suggesting that there may also have been a disagreement between the victim and her mother does not, by itself, constitute a material contradiction concerning the alleged sexual assaults during the period from 2014 to 2016. The circumstances surrounding the victim's departure from the house in August 2019 and the truthfulness of her allegations regarding the earlier period are related, but two distinct, matters. The defence side failed to demonstrate how the alleged school-related disagreement between the victim and her mother, by itself, renders the victim's account of the earlier sexual assaults improbable.

30. The learned counsel for the appellant further submits that the victim did not disclose the alleged sexual assaults to her mother, her maternal uncle or any other relative before August 2019. The mother (PW-5) stated that she shared a good relationship with her daughter (the victim) and she had not received any complaint from victim against the appellant prior to that time. Defence Witness

No. 1, who is the victim's maternal uncle, similarly expressed surprise that the victim had not informed him or any other relative about the alleged incidents.

31. The absence of an earlier disclosure is a circumstance that may be considered while assessing the evidence of the witnesses; however, it cannot be treated as conclusive proof that the allegation is false. The victim was a child when the alleged incident occurred, and the accused was her stepfather and a member of the household in which she lived. Her explanation that she was threatened with dire consequences if she disclosed the incident is a relevant circumstance. A child's inability to disclose sexual abuse, particularly when the perpetrator is her own stepfather, may arise from fear, dependence, shame, or other pressures within the household. Under the circumstances, the Court must assess the explanation in the context of the evidence and cannot proceed on the assumption that a minor victim would necessarily disclose the incident to a parent or relative at the earliest opportunity.

32. The evidence of the victim's former school teacher is also relevant to the sequence of disclosure of the incident. The teacher (PW-3) stated that, after learning that the victim had gone missing and receiving information from one of her classmates, she personally spoke with the victim, who disclosed that her stepfather had been sexually assaulting her since she was in Class IV. The teacher further stated that she had not received any such disclosure while the victim was her student. These statements are not necessarily inconsistent. The teacher's evidence is that the disclosure was made only after the victim had left home and was contacted, apparently because the victim needed assistance under the circumstances. Her earlier lack of knowledge does not disprove the disclosure made at a later stage.

33. There are certain discrepancies in the evidence regarding the dates on which the victim left home, the missing report was lodged, the teacher was contacted, and the victim spoke to her paternal relative. The victim stated that she left home on 09.08.2019 and contacted her paternal relative on 10.08.2019, whereas her former teacher referred to the victim having gone missing on 11.08.2019. The evidence further reveals that the relative also spoke of receiving a call from the victim on 10.08.2019.

34. These different dates ought to have been carefully examined by the Trial Court. However, having regard to the material reproduced before this Court, the discrepancies appear to relate to the chronology of the victim's departure from home and the subsequent disclosure of the incident, rather than to the identity of the appellant or the allegation against him that the sexual assaults occurred during the period 2014–2016.

35. The non-examination of the victim’s friend from Lengte and her friend from Chanmari, which has been emphasized by the appellant, does not, however, necessarily render the prosecution case doubtful, as the prosecution is not required to examine every person who may have had some contact with the victim during the relevant period. The omission to examine a witness assumes significance only where such an unexamined witness was essential to establishing a material part of the prosecution case or where the evidence withheld could reasonably have resolved a substantial doubt regarding the occurrence of the incident.

36. In the present case, the alleged sexual assault on the victim took place years before she left her home. Further, neither of the friends alleged to have remained unexamined has been stated to have witnessed the incident of sexual

assault. Under the circumstances, their evidence would primarily have concerned the victim's association with them and the circumstances surrounding the disclosure of the incident in August 2019. The non-examination of the victim's alleged friends is a circumstance to be considered; however, it does not, by itself, discredit the victim's testimony regarding the earlier sexual assault to which she was subjected.

37. The learned counsel for the appellant further argued that the victim, who claimed to be a minor, was vulnerable to tutoring by her paternal relative. The allegation against the appellant is based principally on the fact that the victim disclosed the incident only after leaving the household and that her paternal relative accompanied her while reporting the matter to the police. However, there is no direct evidence on record to suggest that the victim was tutored to falsely implicate the appellant. There is no reason as to why a step daughter would implicate her own mother's husband at the risk of her life and career. The possibility of tutoring, as alleged by the appellant, cannot be accepted merely because the victim was assisted by a relative in approaching the police. There is no reason why her paternal father would falsely make allegation of sexual assault of her grand daughter by taking risk of damaging his own grand daughter's future. The Court must, however, examine the possibility of tutoring in light of the facts and circumstances of the case and the testimony of the witnesses.

38. On careful perusal of the record, no material contradiction has been demonstrated to establish that the allegation of sexual assault was made at the inducement or tutoring of the relative rather than being disclosed by the victim herself. The evidence of PW-2, who is the victim's paternal relative, does not

constitute direct evidence of the sexual assault on the victim. His testimony is relevant to the disclosure made to him by the victim and the subsequent lodging of the FIR. Similarly, the teacher's evidence relates to the disclosure made by the victim and the circumstances in which her assistance was sought. Neither witness claims to have witnessed the alleged occurrence. Their evidence must, therefore, be appreciated for the limited purpose for which it is relevant. The question of the appellant's guilt must principally be determined on the basis of the victim's testimony and the other admissible evidence on record.

39. The evidence of PW-5, who is the mother of the victim, is to the effect that she had a good relationship with the victim and that the victim had not made any complaint against the appellant earlier. However, this circumstance is not conclusive. The mother was not an eyewitness to the alleged incident, although it is stated to have occurred in the same house. Her lack of knowledge cannot be equated with proof that the incident did not occur; particularly, as such acts are generally committed by the assailant after ensuring that the circumstances are conducive and safe. The evidence of the victim's mother, therefore, forms part of the surrounding circumstances and has to be considered along with the victim's explanation for not disclosing the assault earlier.

40. The medical officer (PW-6) found that the victim's hymen was ruptured, which was described as an old rupture. No other external injury or bruise was found. In cross-examination, the doctor accepted that the age of the rupture could not be determined and that the medical findings alone could not establish when the rupture had occurred. The medical evidence, therefore, does not independently establish the date, time or circumstances of the alleged

penetration. The absence of fresh injuries cannot be said to be inconsistent with the allegation of repeated sexual assault occurred several years before the medical examination was conducted. The victim was examined in August 2019, whereas the alleged penetrative sexual assaults had occurred during the period from 2014 to 2016. The absence of fresh injuries at the time of examination cannot reasonably be treated as proof that penetration had not occurred during the earlier period. Equally, the absence of conclusive medical findings cannot negate the allegation of penetration where the same is otherwise supported by credible oral testimony of the victim.

41. In ***Lok Mal Alias Loku*** (supra), the Supreme Court reiterated that the testimony of a victim of sexual assault may, by itself, sustain a conviction if it is found to be reliable. The Court further observed that the absence of injuries on the victim's private parts is not invariably fatal to the prosecution case. The relevant observations are reproduced below:

> "***16.*** *It is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In the case of State of Punjab v. Gurmit Singh1, the Supreme Court observed as under:*
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> > "*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 (1996) 2 SCC 384 and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

17. *A profitable reference can also be made to the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat 2 where the Supreme Court observed as under:*

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

19. *Merely by alleging that mother of the prosecutrix was a lady of easy virtue or her husband left her, there is absolutely no supportive material brought by the appellant in his defence so as to explain why he was implicated. The court is separately required to adjudicate whether the accused committed rape on the victim or not. We find (1983) 3 SCC 217 no reason to accept the contention that the alleged immoral character of the mother of the prosecutrix has any bearing on the accused being falsely roped in on the basis of a concocted story by the mother of the prosecutrix. The question of conviction of the accused for rape of the prosecutrix is independent and distinct. It has absolutely no connection with the character of the mother of the prosecutrix and seems to be a dire attempt at using it as a license to discredit the testimony of the prosecutrix. We find no merit in these contentions."*

42. However, the applicability of the principle laid down in the aforesaid case depends on the evidence available in the case under consideration. In the present case, the medical report does not provide affirmative proof of the

alleged acts; however, neither does it contradict the victim's account. The question must ultimately be determined on the basis of the totality of the evidence on record.

43. The submission of the learned defence counsel that penetration by an adult male would necessarily result in bleeding, pain or fresh injuries cannot be accepted as a universal proposition. The nature and extent of any injury would depend on the circumstances of the act, and the absence of a particular injury does not, by itself, disprove penetration alleged to have occurred several years earlier. The Court cannot substitute assumptions regarding the physical consequences of sexual assault for an assessment of the evidence actually recorded by the trial court.

Regarding the delay in lodging the FIR -

44. The alleged incidents occurred during the period from 2014 to 2016, whereas the FIR was lodged on 14.08.2019. The delay is substantial and therefore, it requires consideration. However, delay in reporting a sexual offence, particularly one allegedly committed against a minor child by a person residing within the same household, more particularly by her own stepfather, must be assessed in the circumstances of the case rather than being treated as automatically fatal to the prosecution.

45. The victim's explanation for the delay in reporting the matter to the police is that, after committing the alleged offences, the appellant threatened to torture or kill her if she disclosed the assaults. She also stated that she was afraid and did not understand the nature and implications of what was happening to her when the incidents first began. Her further evidence is that,

although the appellant stopped committing penetrative sexual assault upon her after she attained puberty, the sexual molestation continued even thereafter. Thus, according to her testimony, the acts of sexual abuse continued over a period of time.

46. The victim further deposed that she disclosed the matter only after leaving the house in August 2019, with the assistance of her former teacher and a relative. This explanation is consistent with the nature of the relationship between the victim and the appellant and the circumstances in which the matter was ultimately reported to the police.

47. The learned counsel for the appellant submitted that the victim had sufficient time and opportunity to lodge a complaint with the police at an earlier stage and that the allegations came to light only after she left the house and was reported missing on social media. This submission, however, does not adequately account for the explanation given by the victim that the appellant had threatened her against disclosing the incidents. The fact that the victim did not disclose the incidents even to relatives with whom she had previously been close may be considered as a circumstance against the prosecution; however, it does not necessarily outweigh her explanation that she had been threatened against making such disclosure, nor does it, by itself, render her explanation improbable.

48. The Trial court was required to examine the delay with due regard to the victim's age, her alleged dependent relationship within the household, the position of the appellant in the family, and the intimidation that she claimed to have faced. On an independent assessment of the evidence, the delay in lodging the FIR does not, by itself, create a reasonable doubt sufficient to reject

the victim's otherwise credible testimony.

49. It is seen that the appellant had specifically complained that the learned Trial court had not discussed the testimony of DW-1 and DW-2. It is correct that a judgment should demonstrate that the Court has considered the material evidence adduced by the defence. Defence evidence cannot be rejected merely because it has been adduced by the accused or an interested witness. The Court must assess such evidence on the same evidentiary principles applicable to the prosecution evidence.

50. DW-1, A. Laltanpuia, who is stated to be a maternal relative of the victim, testified about the disagreements within the family. He also spoke about the victim's alleged habit of leaving home. His suspicion was that the victim had been influenced by her friends, and he believed that she had been tutored by her paternal relatives. This witness also stated that the victim had allegedly been under the influence of an intoxicating substance on an earlier occasion. However, during cross-examination, he admitted that his assertion that the victim had been tutored was merely his opinion. He was not residing in the same household where the victim resided and he did not claim to have witnessed the alleged sexual assault or to have had any direct knowledge that disproved the allegation.

51. The testimony of DW-1 may establish that there were disagreements within the family and that he had formed his own opinion about the conduct of the victim. However, it does not establish, on the basis of personal knowledge, that the victim had falsely accused the appellant of committing a sexual offence. Thus, the assertion of DW-1 that the victim would have disclosed any serious problem to him is merely an assumption about how she would ordinarily

behave, had she have a good relationship with him. Such an assumption, however, cannot replace an assessment of her actual explanation that she was afraid of the appellant and had been threatened by him with consequences if she disclosed the incident.

52. DW-2 is the appellant himself. He denied having sexual intercourse with the victim. He stated that he treated the victim as his own child and explained that, during the period, the family members slept on the same bed. He also stated that the victim had left home due to a disagreement with her mother regarding her school results and her association with friends.

53. The statement of the appellant must be considered in the context of his denial of the charge. However, the mere fact that he denied the allegation does not establish that the testimony of the victim is false. The explanation offered by the appellant must be assessed alongside the prosecution evidence and the circumstances of the case established during the trial.

54. The defence has also referred to the allegations that the victim was habituated to consuming intoxicating substances and had an improper character. Such allegations, even if made by a witness, cannot be treated as a substitute for proof of the specific act alleged against the appellant. The character of the victim, her associations with friends, or her alleged habits do not determine whether she was subjected to sexual assault.

55. In ***Lillu @ Rajesh & Anr.*** (supra), the Hon'ble Supreme Court emphasized the irrelevance of the victim's previous social experience to the question of consent and deprecated approaches that undermine the dignity of a victim. The relevant paragraphs are reproduced below:

"10. This Court while dealing with the issue in State of Uttar Pradesh v. Munshi, AIR 2009 SC 370, has expressed its anguish and held that even if the victim of rape was previously accustomed to sexual intercourse, it cannot be the determinative question. On the contrary, the question still remains as to whether the accused committed rape on the victim on the occasion complained of. Even if the victim had lost her virginity earlier, it can certainly not give a licence to any person to rape her. It is the accused who was on trial and not the victim. So as to whether the victim is of a promiscuous character is totally an irrelevant issue altogether in a case of rape. Even a woman of easy virtue has a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. A prosecutrix stands on a higher pedestal than an injured witness for the reason that an injured witness gets the injury on the physical form, while the prosecutrix suffers psychologically and emotionally.

11. In Narender Kumar v. State (NCT of Delhi), AIR 2012 SC 2281, this Court dealt with a case where the allegation was that the victim of rape herself was an unchaste woman, and a woman of easy virtue. The court held that so far as the prosecutrix is concerned, mere statement of prosecutrix herself is enough to record a conviction, when her evidence is read in its totality and found to be worth reliance. The incident in itself causes a great distress and humiliation to the victim though, undoubtedly a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The Court further held as under:

"26. Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference of the victim being a woman of "easy virtues" or a women of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to

> anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated. (Vide: State of Maharashtra & Anr. v. Madhukar Narayan Mardikar, AIR 1991 SC 207; State of Punjab v. Gurmit Singh & Ors., AIR 1996 SC 1393; and State of U.P. v. Pappu @ Yunus & Anr., AIR 2005 SC 1248).
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> 27. In view of the provisions of Sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all."

56. The present case concerns the alleged sexual assault of a child, and no adverse inference regarding the credibility of the victim can be drawn merely on the basis of allegations concerning her character or social associations. It is also necessary to distinguish between evidence relevant to a specific contradiction and the general opinion of a witness about the victim. Evidence regarding the alleged previous disagreements between the victim and her mother may be relevant to the defence plea of false implication. However, the allegation that the victim was of loose character or that she was associated with a particular friend does not establish that the allegation of sexual assault was fabricated. The Court must decide the case on the basis of the evidence relating to the alleged commission of the offence and not on the basis of assumptions about how the victim ought to behave.

57. This Court finds that, although the discussion of the learned Trial Court regarding the defence evidence was inadequate, such omission does not warrant setting aside the conviction of the appellant. Further, this Court, while exercising its appellate jurisdiction, has independently examined the material

evidence, including the defence evidence, and considered whether the same raises a reasonable doubt when assessed alongside the prosecution evidence. For the reasons stated above, the defence evidence neither establishes any direct contradiction of the victim's testimony regarding the alleged sexual assault nor provides a credible factual basis sufficient to substantiate the plea of false implication.

58. Learned counsel for the appellant has also contended that the examination of the appellant under Section 313 of the Cr.P.C. was perfunctory, as the circumstances appearing against him were not put to him in sufficient detail, and therefore, the examination was inadequate. It is to be stated that the object of examination under Section 313 of the Cr.P.C. is to afford the accused a fair opportunity to explain the material circumstances appearing against him in the evidence. The adequacy of such examination must be considered in the context of the questions actually put to the appellant and the nature of the evidence appearing against him during the trial.

59. In the present case, the appellant was questioned about his relationship with the victim, the fact that she was his stepdaughter, and the allegation that he had committed sexual intercourse with her during the relevant period. The appellant denied the allegation and stated that he had never had sexual intercourse with the victim. The available record does not demonstrate that the appellant was deprived of a fair opportunity to explain the circumstances appearing against him. Having considered the questions put to the appellant, this Court does not find that the appellant has established any specific prejudice caused to him on account of the manner in which his examination under Section 313 of the Cr.P.C. was conducted.

60. In this regard, in support of his submission, learned Amicus Curiae relied upon the decision of the Hon'ble Supreme Court in ***Nar Singh v. State of Haryana***, reported in (2015) 1 SCC 496. The relevant paragraph of the said judgment is reproduced below:

> "***16.*** *Undoubtedly, the importance of a statement under Section 313 Cr.P.C., insofar as the accused is concerned, can hardly be minimised. The statutory provision is based on the rules of natural justice for an accused, who must be made aware of the circumstances being put against him so that he can give a proper explanation to meet that case. If an objection as to Section 313 Cr.P.C. statement is taken at the earliest stage, the Court can make good the defect and record additional statement of the accused as that would be in the interest of all. When objections as to defective Section 313 Cr.P.C. statement is raised in the appellate court, then difficulty arises for the prosecution as well as the accused. When the trial court is required to act in accordance with the mandatory provisions of Section 313 Cr.P.C., failure on the part of the trial court to comply with the mandate of the law, in our view, cannot automatically enure to the benefit of the accused. Any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial, unless some material prejudice is shown to have been caused to the accused. Insofar as non-compliance of mandatory provisions of Section 313 Cr.P.C., it is an error essentially committed by the learned Sessions Judge. Since justice suffers in the hands of the Court, the same has to be corrected or rectified in the appeal.*
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> ***17.*** *So far as Section 313 Cr.P.C. is concerned, undoubtedly, the attention of the accused must specifically be brought to inculpable pieces of evidence to give him an opportunity to offer an explanation, if he chooses to do so. A three-Judge Bench of this Court in Wasim Khan v. The State of Uttar Pradesh, AIR 1956 SC 400; and Bhoor Singh & Anr. v. State of Punjab, AIR 1974 SC 1256*

held that every error or omission in compliance of the provisions of Section 342 of the old Cr.P.C. does not necessarily vitiate trial. The accused must show that some prejudice has been caused or was likely to have been caused to him."

61. The denial of the appellant during his examination under Section 313 of the Cr.P.C. cannot, by itself, be treated as evidence of guilt. Equally, such denial does not displace the credible prosecution evidence appearing against him. The conviction of an accused must stand or fall on the basis of the evidence adduced by the prosecution, considered alongside the defence evidence and the explanation offered by the appellant in response to the circumstances appearing against him. Upon such assessment, the alleged defect in the examination of the appellant under Section 313 of the Cr.P.C. does not warrant interference with the conviction.

62. The charge against the appellant is that he repeatedly committed forcible sexual intercourse with the victim during the period 2014-2016, when she was a minor and his stepdaughter, and was residing in the same household. The testimony of the victim, if accepted, establishes repeated acts of penetrative sexual assault against her by the appellant. The prosecution case was not confined to an isolated act of touching or molestation; rather, it concerned repeated acts of sexual intercourse with the victim while she was still a child.

63. The learned Trial Court convicted the appellant under Section 6 of the POCSO Act, which prescribes punishment for aggravated penetrative sexual assault as defined under Section 5 of the said Act. However, the judgment of the Trial Court refers, at one place, to clause (m) of Section 9 of the POCSO Act. Such reference appears to be inconsistent with the charge framed against the appellant under Section 6 of the POCSO Act and appears to be an inadvertent

error in the judgment.

64. The applicable statutory provision must be identified with reference to the charge framed against the appellant, the facts alleged and proved, and the statutory law applicable at the time of the alleged occurrence. The prosecution case is that the appellant repeatedly committed penetrative sexual assault upon his minor stepdaughter, and the charge was expressly framed under Section 6 of the POCSO Act. The error in referring to Section 9 of the POCSO Act does not, on the material available, demonstrate that the appellant was unaware of the essential factual allegations he was required to meet or that he suffered any prejudice in defending himself against the charge.

65. The alleged acts occurred during the period 2014–2016. The punishment applicable to the offence must, therefore, be determined with reference to the law in force at the time of its occurrence. The learned Trial Court imposed a sentence of 10 years of rigorous imprisonment on the appellant, treating it as the minimum punishment applicable to the offence charged. On the material available on record, no separate ground has been established to interfere with the sentence imposed.

66. Upon an overall consideration of the evidence, this Court finds that the testimony of the victim regarding the repeated sexual assaults during the period 2014–2016 has remained consistent with respect to the central allegation and the identity of the appellant. The delay in reporting the incident has been adequately explained by the threats allegedly extended to the victim and the circumstances in which she ultimately sought assistance from her former teacher and relative. The medical evidence neither independently establishes the alleged acts nor contradicts the victim's testimony. The evidence regarding

the victim's disagreement with her mother, as well as the testimony of the defence witnesses, has also been considered. However, such evidence, individually or cumulatively, does not create a reasonable doubt sufficient to discredit the prosecution case.

67. The learned Trial Court ought to have provided a detailed and comprehensive discussion of the defence evidence and ought to have exercised greater care to ensure consistency in its references to the statutory provisions and the victim's date of birth. However, this Court has independently reassessed the material evidence, including the evidence relied upon by the appellant. The deficiencies identified in the reasoning of the Trial Court do not, in the circumstances of the present case, discredit the essential finding of the appellant's guilt.

68. The prosecution has established beyond reasonable doubt that the appellant committed the offence for which he was charged. The conviction under Section 6 of the POCSO Act and the sentence of 10 years of rigorous imprisonment, together with a fine of Rs. 3,000/- and the default sentence imposed by the learned Trial Court, do not call for interference.

69. Accordingly, the appeal is dismissed. The judgment of conviction and order of sentence dated 09.06.2023 passed by the learned Fast Track Special Court, POCSO Act, Aizawl, in Sessions Case No. 104/2019, corresponding to Crl. TR. No. 1582/2019, are hereby affirmed.

70. Sent back the Trial Court Record.

JUDGE

Comparing Assistant