GAHC030003692026

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

Case No. : Crl.A./14/2026

Sh. Lalrindika
S/o Lalrokima, R/o Ramthar Veng, Aizawl, Mizoram

VERSUS

The State of Mizoram and Anr.
Aizawl2:Sh. Lalramchhan

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

Advocate for the Respondent : P.P./Addl.PP, Mizoram

:::BEFORE:::

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MRS. JUSTICE HELEN DAWNGLIANI

Date on which judgment is reserved : 11.11.2026

Date of pronouncement of judgment : 13.11.2026

Whether the pronouncement is of the Operative part of the judgment : NA

Whether the full judgment has been Pronounced : Yes

Judgment & Order(CAV)

(Helen Dawngliani,J)

Heard Mr. Lalpianfela Chawngthu, learned counsel for the appellant. Also heard Mrs. Vanneihsiami, learned Additional Public Prosecutor for the State, and Mr. Lalramdinthara, learned Amicus Curiae for respondent No. 2.

2. This appeal is filed under Section 415 of the BNSS 2023, against the Judgment & Order dated 20.11.2025, passed by the learned Presiding Officer, Fast Track Special Court (POCSO Act, 2012) in Sessions Case No. 25/2022, arising out of Criminal Trial No. 233/2022, under Section 6 of the POCSO Act, 2012, by which the appellant was convicted and sentenced to undergo imprisonment for 20 years, with a fine of ₹2,000, and in default thereof, to further undergo Simple Imprisonment for one month.

3. FACTS OF THE CASE

3.1. The brief facts of the case, as unfolding from the charge sheet, is that on 14.01.2022, at about 3:00 p.m., the All Women Police Station received an FIR from one Lalrinchana, a permanent resident of Damparengpui who was residing in Armed Veng, Aizawl. The informant stated that his niece, 'X' (aged 15 years), was sexually assaulted by her cousin brother multiple times from 2017 until the first part of 2022 at the house of the accused, where she was also residing. The

report further disclosed that the victim was subjected to sexual intercourse multiple times. Based on this information, All Women Police Station Case No. 1/2022, dated 14.01.2022, under Section 6 of the POCSO Act, was registered against the appellant.

Upon completion of the investigation, a prima facie case under Section 6 of the POCSO Act was found to be well-established against the accused/appellant, and a charge sheet was accordingly submitted under Section 173 of the Code of Criminal Procedure (CrPC).

Charges were framed under Section 6 of the POCSO Act, to which the accused pleaded not guilty and claimed trial.

3.2. During the course of the trial, the prosecution examined 7 witnesses. The accused was examined under Section 313 of the CrPC/ Section 351 of the BNSS, and 2 witnesses were examined by the defence. Thereafter, the learned counsels were heard, and the impugned Judgment & Order dated 20.11.2025, convicting and sentencing the accused as aforementioned, was passed.

4. EVIDENCE ADDUCED DURING TRIAL

4.1. The evidence recorded during the course of the trial is briefly highlighted below:

(i) PW-1/Lalramchhana stated that after the parents of the victim passed away in 2014 and 2021 respectively, the victim lived with her paternal aunt (the mother of the accused). He stated that while visiting Aizawl from Damparengpui, he received a phone call from the victim regarding the sexual assault, which she reported had started in 2017 and continued until the beginning of 2022. Upon learning of the incident, he filed an FIR on 14.01.2022. He also stated that at the time of lodging the FIR, they produced the birth certificate of the victim. the police made a photocopy and returned the original to them. His knowledge of the events is limited to the information he received from the victim.

ii) PW2/'X'(victim) stated that she was born on 27.06.2006. Following the death of her parents (her father in 2015 and her mother in 2021), she lived with the family of the accused, as the mother of the accused is her paternal aunt. She stated that the accused sexually assaulted her starting in 2017, when she was barely 11 years old, by touching her breasts and private parts. From 2021 onward, the accused indulged in sexual intercourse with her inside their house multiple times. She did not disclose this to anyone because she did not know that what was being done to her was a crime.

On the night of 31.12.2021, while she was sleeping on the floor with her

paternal aunt, the accused came home, whispered to her, and asked her to go to her bedroom. He followed her and indulged in sexual intercourse with her. On the following day, her aunt became suspicious, questioned her about what had happened with the accused the previous night, and she made a full disclosure. However, instead of scolding the accused, her aunt instructed her to go to Champhai immediately. It was then that she informed her paternal uncle (the informant) at Armed Veng, Aizawl, and on 13.01.2022, her paternal uncle picked her up from the house of the accused, after which the FIR was lodged.

During cross-examination, she stated that when her relatives suspected and questioned her regarding her affair with Lalrindika, she merely stated that they had sexual intercourse. She also stated that as siblings, she used to sleep with the accused, but he had never behaved inappropriately with sexual intent toward her. She further stated that her statement before the police was made upon the dictation of the complainant and not of her own volition, and that she simply repeated her statement before the court in terms of her earlier police statement. She stated that her allegations regarding the accused indulging in sexual intercourse were the result of interrogation and family pressure. However, she also maintained that she and the accused did indulge in sexual intercourse, adding that if her aunt had not been suspicious, she would not

have divulged their sexual relationship.

iii) PW3/Dr. Lalremruati Hmar, who is a gynaecologist examined the victim on January 14, 2022. As per her examination, the victim was found to be physically and mentally normal, and her hymen was ruptured at the time of the examination. The witness further stated that a ruptured hymen does not necessarily mean it was caused by sexual intercourse with the accused, as it can also be caused by sports activities.

iv) PW4/Dr. Thanmawii, who is a Medical Officer, posted at Emergency Department, Civil Hospital, Aizawl stated that on 14.01.2022, she examined the accused. Upon examination, the accused was found to be physically and mentally sound, with normally and fully developed genital organs. Based on the statement of the accused and her examination, she opined that the accused was sexually potent and capable of performing sexual intercourse.

v) PW5/Lalengliana & PW6/Lalthanpuia are the seizure witnesses. Both witnessed the seizure of the victim's birth certificate. According to PW-5, the birth certificate was brought to the All Women Police Station by the victim herself, where it was seized by the case Investigating Officer (IO), ASI Vanhmingthangi.

vi) PW6/Lalthanpuia stated that he is related to the complainant and that he saw the case IO seize the birth certificate of the victim from the complainant. As per the birth certificate, the age of the victim was recorded with the date of birth as 27.06.2006. He also confirmed that a photocopy was made from the original birth certificate.

vii) PW8/Vanhmingthangi, who is the sub-inspector of police and the Investigating Officer (IO) deposed that during the investigation, she examined the informant and the victim, forwarded the victim for medical examination, and received the medical report. She stated that the victim's birth certificate was produced as proof of age, and she prepared and seized a photocopy of it. She visited the place of occurrence, arrested the accused, and gave intimation to the learned Special Judge under the POCSO Act and the Child Welfare Committee (CWC) within 24 hours. The statement of the victim was recorded by the Judicial Magistrate First Class (JMFC). She also forwarded the accused for medical examination, and on 15.01.2022, the accused was sent to judicial custody after his statement was recorded. During cross-examination, she admitted that there were no specific findings regarding the exact time of the occurrences between 2017 and 2022, and she confirmed that the informant was initially informed about the incident via telephone by the victim.

5. The accused was then examined u/s 313 Cr.PC/351 BNSS and two witnesses were examined by the defence.

5.1. DW No.1/Lalfakmawii is the paternal aunt of the victim. She stated that on the night of 31.12.2021, she was in the house of her elder sister with whom the victim was living. She stated that on that night she spread the mat and slept on the floor with the victim. When the accused acme home he took the victim to his room and on the next day she asked the victim why the accused took her to his room and as to whether they indulged in sex but the victim told her that the accused did not do anything to her. She stated that the FIR is lodged by the maternal uncle of the victim and she believed that the FIR has been filed because of family dispute and that they have a lot of family quarrels. The victim is staying with her and is growing up well. She withstood cross examination.

5.2. DW No.2/R.Lalrinfela is the elder brother of the accused. He also stated that the victim was living with their family. He deposed that after the FIR was filed he went to the house of the informant and asked the victim why the FIR was lodged against the accused to which the victim replied that she did whatever the informant told her to do and he asked them to withdraw the case but by then the matter had already been taken up by the CWC and so it could not be closed and he further stated that even after the FIR was lodged the

victim oft and on used to stay in their house.

6. ARGUMENTS OF THE Ld. COUNSELS

6.1. Mr. Lalpianfela Chawngthu, Ld. Counsel for the appellant submitted at the outset that the victim cannot be considered as a sterling witness and she has not maintained consistency nor withstood cross examination. The Ld. Counsel argued that though in the examination-in-chief, the victim deposed that from the year 2011 when she was about 11 years old the accused began to sexually assault her by touching her breast and private part and that from the year 2021 the accused began to indulge in penetrative sexual assault for multiple times, during cross examination she stated " *7.Ka chhungten accused Lalrindika nena min rinhlelh a min dawp avangin accused Lalrindika nen chesual angin ka insawi ta a ni."(As my family suspected my relationship with Lalrindika and interrogated me I stated that I have indulged in sex with him)*. "8. *Unau anga kan inkawm chhungte hriatpuia kan riak dun tih bakah chuan accused Lalrindika hi hmeichhiat mipatna rawngkaiin ka chungah a khawsa ngailo"(Apart from me sleeping with the accused as siblings with the knowledge of my family, the accused have not sexually misbehaved with me).* " *9. Police Station a ka statement an record hi keima duh thu a sawi ka ni lo in ka putea (Lalramchhana) te sawi rawh min tih anga sawi ka ni".(My statement before the*

Police was not voluntarily made by me, I have spoken in the manner as desired by my maternal uncle Lalramchhana). Then she was re-examined by the Ld. Spl. PP wherein she deposed if her family members were not suspicious of her relationship with the accused she would not have spoken of the sexual intimacy between them, however, when she was further cross examined she deposed that the reason why she deposed that she indulged in sexual intercourse with the victim was because she was cornered and interrogated. The Ld. Counsel therefore submitted that the evidence of the victim is not reliable and as such she cannot be regarded as a sterling witness.

6.2. The Ld. Counsel next submitted that the age of the victim has not been proved. In this regard the Ld. Counsel submitted that from the evidence of the seizure witnesses it is clear that seizure was made of the photocopy of the birth certificate. The same photocopy of the document was exhibited in the Court for prove of the age of the victim without producing the original and the content of the birth certificate is also not proved. It is argued that the POCSO Act can be applied only when the victim is a minor below 18 years. So age of the victim is a crucial issue for determination of offence under the POCSO Act. But in the case at hand the age is not proved by documentary evidence.

6.3. It is also argued by the Ld. Counsel that even though the family of the

victim/accused became suspicious of the relationship between the accused and the victim from the night of 31.12.2021 and the victim was apparently questioned on 1.1.2022, the prosecution has failed to explain why the FIR was lodged only on 14.01.2022.

6.4. In support of his submissions, the Ld. Counsel has placed reliance on the decision of a co-ordinate bench of this Court Judgment & Order dt. 16.10.2024 in Crl.A. No. 4/2023 (J. Sanglura v. State of Mizoram). (ii) the decision of the Ld. Single Bench of this Court vide Order dt. 11.12.2025 in Crl.A. No. 46/2024 (Lalpekhlua v. State of Mizoram).

6.5. On the other hand, Mrs. Vanneihsiami, Ld. Addl.PP rebutting to the argument that the prosecution has failed to prove the age of the victim argued that from the evidence on record more particularly the evidence of PW No.5/Lalengliana and PW No.6/Lalthanpuia, who are the seizure witness, it is proved that the original birth certificate was produced in the All Women Police Station and the Investigating Officer made a photocopy and seized the photocopy and returned the original to the victim/complainant. Similar statement was also made by PW No.1/Lalramchhana (complainant) and PW No.2/Victim. The Ld. Addl.PP submitted that during the course of trial, there was no insistence from the defence to produce the original birth certificate of

the victim and that no objection was raised by the defence either on the birth certificate itself or its content. As such, the Ld. Addl.PP submitted that the age of the victim has been sufficiently proved.

6.6. As regards, the challenge on the ground of delay in lodging the FIR, the Ld. Addl.PP submitted that the reason for delay is explained by the victim in her evidence wherein she stated that when she made a disclosure to her aunt (paternal aunt), her aunt (paternal aunt) told her to go back to Champhai immediately and she did not scold the accused and that she could not immediately leave as her aunt (paternal aunt) was sick and so she informed her maternal uncle who was staying in Aizawl to take her out from where she was living and so she was taken out of her house by her maternal uncle/complainant on 13.1.2022 and the FIR was lodged on 14.1.2022. As such, from the time the complainant gained knowledge of the incident(s) there was no delay in lodging the FIR.

6.7. The Ld. Addl.PP further submitted that the victim have consistently stated that in her pre-trial statement and in the course of evidence that from the year 2017 she was subjected to sexual assault by the accused and that from the year 2021 she was subjected to penetrative sexual assault by the accused in their house multiple times and it is also clearly proved that on the night of

31.12.2021 while she was getting ready to sleep with her aunt (DW No.1) on the floor of their house, the accused came home and told her to go to his bedroom which raises suspicion on her aunt and which resulted in her disclosure on the next day.

6.8. It was also argued by the Ld. Addl.PP though admittedly the victim was rebutted and shaken in her cross-examination, she was not declared a hostile witness.

6.9. The Ld. Addl.PP therefore submitted that since the age of the victim is proved and that she was a minor at the time of the sexual assaults and penetrative sexual assaults, the question of the victim giving her consent does not arise. In view thereof, the Ld. Addl.PP submitted that no reasonable ground has been made out to set aside and quash the judgment and order.

6.10. Mr. Lalramdina, Ld. Amicus Curie for the respondent No.2 (who has passed away in the year 2024) supplemented the submissions made by the Ld. Addl.PP and further submitted that though apparently the victim did not maintain consistency in her cross-examination that does not make her a wholly unreliable witness and this Court would have to rely on those statements where she remained consistent. In other words, the Ld. Counsel argued that just

because the victim was rebutted in some portions of her statement that alone does not render her a totally unreliable witness. In this regard, the Ld. Amicus Curie has placed reliance in the case of ***TG Krishnamurthy & Ors v. State of Karnataka*** reported in ***(2023) LiveLaw(SC) 671*** wherein it was held that the principle of "*Falsus in uno, falsus in omnibus" (False in one thing, false in everything)* does not have application to the courts in India. It is the duty of the courts to remove the chaff from the grain in its pursuit for truth.

6.11. The Ld. Amicus Curie further submitted that the prosecution has proved the foundational facts and the statement of the victim is also supported by medical evidence where there is finding of an old hymenal tear.

6.12. It was further argued by the Ld. Amicus Curie that taking the evidence of the prosecution as a whole, there is clear proof of the foundational facts and that it is a fit case where presumption u/s 29 POCSO Act 2012 can be drawn against the accused. On this, the Ld. Amicus Curiae has relied on the decision of a co-ordinate bench of this Court in its Judgment & Order dt. 29.10.2019 in Crl.A.(J) No.55/2018 wherein it was observed that presumption does not absolve the prosecution from its burden of proving the guilt of an accused beyond reasonable doubt but it lessens that burden to some extent and puts a corresponding burden on the accused.

6.13. The Ld. Amicus Curie therefore submitted that considering the case in its entirety and the evidence adduced by the prosecution as well as the defence, there is no ground to interfere with the judgment and order passed by the Ld. Trial Court and thus prayed to dismiss the appeal.

ANALYSIS , DISCUSSIONS AND DECISION WITH REASONS

7. From the materials placed on record as well from the submissions made by the parties, we are of the view that at the outset it would be apposite to reproduce the decision of the Hon'ble Supreme Court in the case of ***Rai Sandeep alias Deepu v. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21*** which dealt with the meaning of a sterling witness as follows :-

" *22. 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."

7.1. It is, however, necessary to clarify that the expression 'sterling witness' is not an independent legal requirement for recording a conviction in a case of sexual assault. A victim who does not satisfy the stringent test of a sterling witness is not, for that reason alone, to be disbelieved. The Court is required to examine the entire evidence and determine whether the testimony, notwithstanding any inconsistencies, inspires confidence and establishes the guilt of the accused beyond reasonable doubt.

7.2. The principle that the Court must separate the truth from exaggerations or inconsistencies is also well recognized. In this regard, the submission of the Ld. Amicus Curiae relying upon the decision in ***T.G. Krishnamurthy & Others v. State of Karnataka***, reported in ***(2023) LiveLaw (SC) 671***, that the principle of *falsus in uno, falsus in omnibus* does not apply in India, is well founded. Nevertheless, the application of that principle does not relieve the Court of its obligation to examine whether the remaining portion of the

testimony is sufficiently reliable to form the basis of conviction.

7.3. Keeping the aforesaid principles in view, we proceed to examine the testimony of PW No.2, the victim, which constitutes the principal evidence against the appellant.

7.4. On a careful examination of her deposition, we find that although the victim initially supported the prosecution case during her examination-in-chief, her statements during cross-examination substantially departed from the prosecution version on material aspects of the alleged sexual assault.

7.5. In her examination-in-chief, the victim stated that the appellant had started sexually assaulting her from the year 2017 by touching her breasts and private parts and that from the year 2021 onwards, he had repeatedly subjected her to sexual intercourse. She further narrated an incident alleged to have occurred on the night of 31.12.2021, when the appellant came home, asked her to go to his bedroom and thereafter indulged in sexual intercourse with her.

7.6. However, during cross-examination, the victim made certain significant statements which cannot be regarded as mere minor inconsistencies or discrepancies arising from the ordinary fallibility of human memory. In particular, she stated that when her family members suspected her relationship with the

appellant and questioned her regarding the same, she stated that she had indulged in sexual intercourse with him.

7.7. She further stated: *"Unau anga kan inkawm chhungte hriatpuia kan riak dun tih bakah chuan accused Lalrindika hi hmeichhia tmipatna rawngkaiin ka chungah a khawsa ngailo."* The substance of this statement is that, apart from sleeping together as siblings with the knowledge of their family members, the appellant had never behaved towards her in a sexually improper manner.

7.8. More significantly, she stated that her statement before the police was not made voluntarily and that she had spoken in the manner suggested by her maternal uncle, the informant, Lalramchhana. The relevant portion of her testimony reads: *"Police Station a ka statement an record hi keima duh thu a sawi ka ni lo in ka putean (Lalramchhana) sawi rawh min tih anga sawi ka ni."*

7.9. The substance of the above statement is that she had not made her statement before the police of her own volition but had spoken as instructed by her maternal uncle.

7.10. It is true that upon being re-examined by the learned Special Public Prosecutor, the victim stated that had her family members not suspected her relationship with the appellant, she would not have disclosed their sexual intimacy. However, when further cross-examined, she again stated that she had

made the allegation of sexual intercourse because she was cornered and was interrogated by her family members.

7.11. Thus, the testimony of the victim reveals that she has not merely resiled from some peripheral details of the occurrence but has substantially contradicted the prosecution version concerning the very nature and circumstances of the alleged sexual relationship and the manner in which the allegations came to be made.

7.12. We are conscious of the fact that a victim of sexual assault may, for various reasons, be reluctant to disclose the incident or may not be able to narrate the occurrence in a consistent manner. The Court must, therefore, exercise caution before drawing an adverse inference merely from minor discrepancies or variations in the testimony of a victim. However, in the present case, the contradictions are not just confined to minor details. The victim has in fact specifically stated that the appellant had never behaved in a sexually improper manner towards her, that she had made the allegation of sexual intercourse upon being questioned and pressurized by her family members and that her statement before the police was not voluntary.

7.13. The above statements strikes at the very foundation of the prosecution's case. They create a serious doubt as to whether the allegations made by the

victim in her examination-in-chief represent her actual experience or whether the same were made under the influence of the circumstances and questioning by her family members.

7.14. We have also considered the testimony of PW-1, the informant. It is evident from his deposition that he had no personal knowledge of the alleged incidents and that his knowledge was derived entirely from the information allegedly communicated to him by the victim over the telephone. His evidence, therefore, does not independently establish the alleged sexual assault.

7.15. The evidence of DW-1, the paternal aunt of the victim, is also relevant in the context of the disclosure allegedly made on 01.01.2022. She specifically stated that when she questioned the victim regarding the appellant taking her to his bedroom on the previous night and asked whether they had indulged in sexual intercourse, the victim told her that the appellant had not done anything to her.

7.16. Although the evidence of DW-1 is that of a relative of the appellant, the relationship of a witness with either party is not, by itself, a ground for rejecting the testimony. Her evidence is required to be assessed on its own merits. We find that her testimony on this particular aspect is consistent with the doubts emerging from the cross-examination of PW-2.

7.17. DW-2 also deposed that when he questioned the victim after registration of the FIR as to why the case had been instituted against the appellant, the victim stated that she had done whatever the informant had instructed her to do. Though this statement is not a substantive evidence of the alleged occurrence, it assumes relevance when considered along with the victim's own admission during cross-examination that her police statement was made in accordance with the instructions of her maternal uncle.

7.18. We do not consider the evidence of DW-1 and DW-2, merely on account of their relationship with the appellant, sufficient by itself to disprove the prosecution case. Nevertheless, their evidence cannot be altogether disregarded, particularly when it finds some support in the material portions of the victim's own testimony.

7.19. We have also considered the medical evidence of PW No.3/Dr. Lalremruati Hmar. The doctor found that the hymen of the victim was ruptured at the time of examination. However, the doctor specifically stated that a ruptured hymen does not necessarily establish that the same was caused by sexual intercourse with the appellant and that such rupture may also occur due to other activities, including sports.

7.20. Therefore, the medical evidence, at best, establishes the physical

condition of the victim at the time of examination. It does not establish the identity of the person responsible for the rupture, the time when it occurred or the circumstances in which it occurred.

7.21. On an overall consideration of the evidence of PW No.2, we are unable to regard her testimony as one which is wholly reliable or sufficiently consistent on the core allegations to sustain the conviction without dependable corroborative evidence.

7.22. We reiterate that the victim need not invariably satisfy the test of a sterling witness for her testimony to be accepted. However, where her testimony contains material contradictions touching upon the very occurrence of the alleged offence, and where the other evidence does not provide satisfactory corroboration, the Court cannot simply rely upon the examination-in-chief while disregarding the material admissions elicited during cross-examination.

7.23. In the present case, the contradictions are of such a nature that they create a reasonable doubt regarding the truthfulness of the allegations of penetrative sexual assault attributed to the appellant.

8. The next challenge is on the age of the victim. In the present case, the prosecution relies upon the birth certificate of the victim, wherein her date of birth is recorded as 27.06.2006. However, the manner in which the said

document was produced and proved during the trial requires careful examination.

8.1. From the evidence of PW-1, PW-2, PW-5, PW-6 and PW-8, it emerges that the original birth certificate was allegedly produced before the Investigating Officer, who made a photocopy thereof and returned the original to the person who produced it. Neither the original birth certificate nor a certified copy issued by the competent authority was produced before the learned Trial Court. Further, no official from the authority which allegedly issued the birth certificate was examined to establish its issuance, authenticity or the correctness of the date of birth recorded therein.

8.2. Under the provisions of Sections 61 to 65 of the Indian Evidence Act, 1872, the contents of a document are ordinarily required to be proved by primary evidence, and secondary evidence may be admitted only in the circumstances and subject to the conditions prescribed by law.

8.3. In the present case, although the prosecution witnesses stated that the original was shown to the Investigating Officer and a photocopy was prepared, there is no satisfactory explanation or evidentiary foundation establishing the circumstances under which the original was returned and why the original or an authenticated copy could not be produced before the Court. The prosecution

has also not established that the photocopy was a true and accurate reproduction of the original through any legally acceptable mode of proving such a document.

8.4. It is also relevant that the document was not proved through the authority which issued it. No official or competent person from the concerned registration authority was examined to establish that the birth certificate was in fact issued by that authority and that the date of birth recorded therein was based upon the relevant official records.

8.5. The evidence of PW No.5 and PW No.6, who are merely seizure witnesses, establishes at best that a photocopy of the birth certificate was seized by the Investigating Officer. Their testimony does not establish the correctness of the date of birth recorded in the document. Similarly, the evidence of PW-8, the Investigating Officer, establishes that she received and seized the photocopy after allegedly verifying the original. However, she is not the author or issuing authority of the birth certificate, and her act of preparing or seizing a photocopy cannot substitute the legal requirement of proving the contents and authenticity of the document.

8.6. In this regard, we may refer to the decision of the Hon'ble Supreme Court in ***P. Yuvaprakash v. State Rep. by Inspector of Police,*** reported in

(2023) INSC 626, wherein the Hon'ble Supreme Court considered the requirements for determination of the age of a victim in a case under the POCSO Act. The Hon'ble Supreme Court held that the determination of age in such cases must be undertaken in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Court explained the statutory hierarchy of documents contemplated under Section 94(2), namely, the date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination board, followed by the birth certificate issued by a corporation, municipal authority or Panchayat, and thereafter medical age determination in the absence of the prescribed documents. The decision emphasizes that the age of the victim cannot be determined merely on the basis of documents which do not satisfy the statutory requirements.

8.7. We are conscious that the decision in ***P. Yuvaprakash (supra)*** does not lay down that every birth certificate must invariably be proved by examining its issuing authority or that a photocopy can never be received in evidence. The admissibility and mode of proof of a particular document must depend upon the applicable law of evidence and the circumstances in which it is tendered.

8.8. Nevertheless, in the present case, the prosecution has relied upon an

unauthenticated photocopy, without producing the original or a certified copy and without establishing the necessary foundation for receiving the photocopy as secondary evidence. There is also no evidence from the issuing authority to establish the authenticity of the document or the correctness of the date of birth recorded therein.

8.9. The mere fact that the defence did not insist upon production of the original document or raise an objection at the time of its exhibition cannot, in the circumstances of this case, relieve the prosecution of its fundamental burden of establishing the age of the victim beyond reasonable doubt.

8.10. It is well settled that marking a document as an exhibit does not, by itself, dispense with the requirement of proving its contents where such proof is legally necessary. The failure of the defence to object to the marking of a document may, in an appropriate case, have a bearing on its mode of proof. However, it cannot automatically confer authenticity upon a document whose source and contents have not been satisfactorily established.

8.11. We are, therefore, of the considered view that the photocopy of the birth certificate, in the manner in which it was produced and proved in the present case, does not furnish a sufficiently reliable basis for conclusively determining the age of the victim.

9. The next consideration would be whether with the evidence in hand, there can be presumption against the accused u/s 29 POCSO ACt?

9.1. The presumption under Section 29 is a rule of evidence and not a substitute for proof of the essential ingredients of the offence. It cannot be used to presume the very facts which the prosecution is required to establish as the foundation for invoking it.

9.2. The statutory presumption cannot be invoked merely because an accused has been charged with an offence under the POCSO Act. The prosecution must first establish the foundational facts necessary for attracting the statutory presumption. The presumption cannot be employed to cure the failure of the prosecution to establish the basic ingredients which bring the alleged conduct within the scope of the Act.

9.3. In the present case, the prosecution has failed to satisfactorily establish the age of the victim through legally acceptable evidence. Further, the testimony of the victim, which constitutes the principal evidence regarding the alleged penetrative sexual assault, suffers from material contradictions and does not inspire the confidence necessary to sustain the conviction.

9.4. In such circumstances, the presumption under Section 29 cannot be

invoked to fill the gaps in the prosecution case or to substitute proof of the essential foundational facts.

10. We have also considered the submission of the learned Additional Public Prosecutor that the delay in lodging the FIR has been satisfactorily explained.

10.1. It is true that the victim has stated that after disclosing the incident to her paternal aunt, she was asked to leave the house and go to Champhai. She further stated that as her aunt was unwell, she could not immediately leave and had to contact her maternal uncle, who subsequently took her away on 13.01.2022. The FIR was lodged on 14.01.2022.

10.2. In the circumstances, we do not consider the interval between the alleged disclosure and the lodging of the FIR, by itself, sufficient to discredit the prosecution case. Delay in lodging an FIR in cases involving sexual offences cannot be viewed in isolation, particularly where the victim is a child and is dependent upon family members.

10.3. However, the explanation for the delay cannot, by itself, resolve the material contradictions in the testimony of the victim or cure the deficiencies in proving her age.

CONCLUSION

11. Upon an overall appreciation of the evidence on record, we find that the prosecution case suffers from two significant deficiencies.

Firstly, the testimony of the victim, though initially supporting the prosecution during examination-in-chief, was materially contradicted during cross-examination on the very issue of whether the appellant had sexually assaulted her. Her statements that the appellant had never behaved inappropriately towards her, that the allegation of sexual intercourse was made upon being questioned and cornered by her family members, and that her police statement was made in accordance with the instructions of her maternal uncle, raise serious doubts regarding the truthfulness of the allegations. These are not minor discrepancies which can be brushed aside as insignificant variations. They go to the root of the prosecution case. The medical evidence does not independently establish that the appellant was responsible for the ruptured hymen or that the alleged penetrative sexual assault had taken place.

Secondly, the prosecution has failed to establish the age of the victim through satisfactory and legally acceptable evidence. The only documentary evidence relied upon for this purpose is a photocopy of the birth certificate, the original of which was neither produced before the Court nor was its authenticity

and contents established through any legally acceptable mode of proof.

12. We are, therefore, unable to agree with the learned Trial Court that the prosecution has established the charge under Section 6 of the POCSO Act beyond reasonable doubt.

13. It is a settled principle of criminal jurisprudence that the burden of proving the guilt of an accused rests upon the prosecution throughout the trial, and the accused is entitled to the benefit of every reasonable doubt arising from the evidence on record. The possibility of an offence having been committed cannot be a substitute for proof of its commission by the accused.

14. In the present case, the prosecution has not been able to establish beyond reasonable doubt either the age of the victim, which is a necessary foundational fact for attracting the POCSO Act, or the commission of the alleged penetrative sexual assault by the appellant. The conviction and sentence imposed by the learned Trial Court, therefore, cannot be sustained.

15. We accordingly hold that the appellant is entitled to the benefit of doubt.

ORDER

16. In view of the discussions and findings recorded hereinabove, the present criminal appeal is allowed.

17. The Judgment and Order dated 20.11.2025 passed by the learned Presiding Officer, Fast Track Special Court (POCSO Act, 2012), in Sessions Case No. 25/2022, arising out of Criminal Trial No. 233/2022, convicting the appellant under Section 6 of the Protection of Children from Sexual Offences Act, 2012, and sentencing him to undergo imprisonment for 20 (twenty) years and to pay a fine of ₹2,000/-, with a further sentence of Simple Imprisonment for one month in default of payment of fine, is hereby set aside and quashed.

18. The appellant who is in confinement shall be released forthwith, if his detention is not required in connection with any other case.

19. The fine amount, if already deposited, shall be refunded to the appellant in accordance with law.

20. Let the TCR be returned along with a copy of this Judgment.

21. With the above order, the appeal stands disposed of.

22. For the valuable assistance rendered by the learned Amicus Curiae, Mr. Lalramdinthara, he shall be paid fees by the Mizoram State Legal Services Authority at the rate fixed in this regard.

JUDGE **JUDGE**

Comparing Assistant