GAHC030004332025

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

Case No. : CRL.A(J)/37/2025

Sh. Lalmalsawma
S/o Chhuanvawra, Laisawral Bunghmun

VERSUS

The State of Mizoram and Anr.
Aizawl2:X (the prosecutrix

Advocate for the Appellant : Mr. Johny L Tochhawng (Amicus Curiae)

Advocate for the Respondents: Mrs. Mary L. Khiangte, Addl.PP, Mizoram for R1
: Mr. Jordan Rohmingthanga, Legal Aid Counsel for R2

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved	: **16.09.2026**
Date of pronouncement of judgment	: **16.11.2026**
Whether the pronouncement is of the operative part of the judgment ?	: NA.
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

(Rajesh Mazumdar, J)

Heard Mr. Johny L. Tochhawng, learned Amicus Curiae for the appellant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State respondent and Mr. Jordan Rohmingthanga, learned Legal Aid Counsel for respondent No. 2.

2. This appeal has been preferred by the appellant against the judgment dated 21.02.2023 passed by the learned Judge, Special Court (POCSO Act), Lunglei Judicial District, Mizoram, in Crl. Tr. No. 120/2021, convicting him for the offence of aggravated penetrative sexual assault under Section 5(l) and (m), punishable under Section 6 of the POCSO Act, and against the order dated 28.02.2023, by which he has been sentenced to rigorous imprisonment for 20 (twenty) years and to pay a fine of Rs. 5,000/-, with simple imprisonment for 1 (one) month in default, the period of detention undergone, recorded as 1 year 4 months and 8 days, being set off under Section 428 Cr.P.C.

FACTS

3. An FIR was submitted by X (the prosecutrix) at Bunghmun Police Station on 03.01.2021 with a complaint that the accused (her biological father) had penile-vaginal sex with her against her will since the latter part of 2015. He would physically assault her if she refused to yield. On one occasion, he had beaten her on the arm, causing ”profuse bleeding", and she sometimes suffered from recurring dysuria (urinary tract infections). Though she reminded him that she was her daughter, he forcibly continued having sex with her. As he

threatened to kill her, she did not dare to disclose the matter to others. She would cry and suffer silently while he had sex with her, as she was scared of being beaten. She wanted to report him but did not do so because he threatened to kill her and also himself. Though she wanted to live elsewhere, she knew that he would trace her out. She also stated that her father definitely had sex with her more than forty times. She finally decided to lodge the FIR against him because of the mental agony and physical assaults she was subjected to.

The FIR was registered as Bunghmun P.S. Case No. 1/2021 dated 03.01.2021 under Section 6 of the POCSO Act, and the investigation of the case was conducted by the PW-9.

INVESTIGATION

4. Information about the registration of the case was immediately given to the Chairman, Child Welfare Committee, Lunglei District, and the Committee had made arrangements for conveyance of X from Laisawral to Lunglei. X and PW-2 were examined, and their statements were recorded. The place of occurrence was visited promptly in order to apprehend the accused. A Crime Details Form was filled out, and a sketch map of the crime scene was prepared. The original birth certificate of X was seized from the accused in the presence of the witnesses. The accused was apprehended, interrogated, and formally arrested. X and the accused were separately brought to the Civil Hospital, Lunglei, for medical examinations. The PW-6 conducted the examinations, and the samples collected were sent to FSL, Mizoram, for examination. The medical examination of X indicated that her hymen was ruptured and torn at 6 O'clock. The FSL report indicated that semen was found in the anal swab of X and in her underwear. Judicial statement of X was recorded by a Judicial Magistrate. The victim's aunt (PW-3), to whom X had disclosed the incidents, was examined and

her statements recorded. From the materials collected, a prima facie case under Section 6 of the POCSO Act was found to be established against the accused, and a charge-sheet was laid against him.

TRIAL

5. This Court received the Charge-sheet on 10.08.2021, and charges under sub-section (l) & (m) of Section 5 read with Section 6 of the POCSO Act were framed against him on 08.09.2021. The accused pleaded not guilty and claimed to be tried. Nine prosecution witnesses were examined; the accused was also examined in order to enable him to explain the circumstances appearing against him in evidence, and two defence witnesses were also examined during the trial of the case.

PROSECUTION EVIDENCE

6. Victim:

The PW-1 (X) testified that the accused was her father and she was born on 23.07.2005. As her parents divorced in the year 2014, she lived with her father and younger brother, and they slept together in one bed. She remembered that her father made sexual advances after they occupied a new house during the latter part of the year 2015, and she tried to avoid sleeping beside him. He started having penile-vaginal sex with her during that year, and she used to feel pain, cry, hate him, and lose her respect for him. He sexually assaulted her intermittently thereafter till 01.01.2021, but she did not disclose his behaviour as he threatened to kill her and would commit suicide too. On 29.12.2020 evening, her father had beaten her, so she ran to the house of the PW-3 and stayed overnight. The next morning, assuring that she would keep it secret, the PW-3 enquired how he used to be with her, and for the first time, she disclosed her father's actions. She returned and stayed at home for about

two days but left the house again as he continued sexually assaulting her. She stayed in the house of a relative for some time and reported the matter to members of the MHIP when they had a meeting in the house of the PW-2 on 03.01.2021. She submitted an FIR at Bunghmun Police Station because she wanted him to get reformed and also for her safety. She was brought to Lunglei on 04.01.2021, where she was medically examined with her consent, and she appended her signature on a paper before the doctor. Her statement was also recorded by a Magistrate. She identified Ext. P-1 as the FIR, Ext. P-2 as her judicial statement, which was affirmed to be true, and Ext. P-3 as her original birth certificate.

During cross-examination, she stated that the FIR was typed by the PW-9 as per her narration. She admitted that her father had looked after her and her brother after her parents divorced. She stated that her father had severely assaulted her physically once during December 2020, as he saw her with her boyfriend in the Community Hall, and she decided to lodge an FIR against him as she was too frustrated. In her Judicial Statement, the PW-1 stated that her biological father had sexual intercourse with her since the latter part of 2015. After the divorce of her parents during 2015, she lived with her father and her younger brother. She did not remember the exact number of times her father had sex with him; she stated that it would be about 40 times. In the past, her father used to drink alcohol, and as he threatened to kill her if she disclosed it, she did not dare to speak out. He would be jealous of her boyfriends, because of which he often assaulted her physically. Her father had seen her standing with her boyfriend. She was rescued by her uncle, who was also their neighbour. As her uncle's wife (PW-3) persistently enquired about her problems, she disclosed that her father used to assault her sexually. None of her relatives dared to come to her defence, and even the young boys of her village had long been suspicious of her father's actions. Later on, she had informed the MHIP,

but was advised not to lodge a complaint, saying that the perpetrator was her father. However, after pondering over the matter, she decided to proceed to lodge the FIR instead of living as her father's wife.

7. Secretary, Laisawral Branch MHIP:

The PW-2, who was the erstwhile Secretary, Laisawral Branch MHIP from 2019 till March 2021, and the President by the time she deposed before the Court, testified that she knew the accused who hailed from the same village. X came to her house on 03.01.2021, informed her that the accused had sexually assaulted her since she was ten years old, wanted to make her his wife, and threatened her not to disclose the sexual assaults to anyone. She also stated to her that he had physically assaulted her on 29.12.2020 evening and requested her to help her lodge the FIR. She accompanied X to Bunghmun Police Station to lodge the FIR on 03.01.2021 and also to Lunglei on 04.01.2021.

During cross-examination, she said that she and the accused lived in a separate locality. The accused brought up his two children (including X) as a single father. The accused was not an alcoholic, though he was known to drink sometimes. She was not aware of the incident before X had told her about it.

8. Neighbour of the victim:

The PW-3 testified that the accused is her neighbor. X came to her house on 29.12.2020 at midnight, complaining that her father physically assaulted her. She made her spend the night in her house. The following day, while they were chatting, X disclosed that her father used to assault her sexually. The next evening, the elder brother of the accused and she accompanied X back to her house. On 03.01.2021 (Sunday) evening, X returned to her house and told her about how she reported her problems to the MHIP, and that the MHIP was willing to help her.

During cross-examination, she stated her ignorance as to whether the reason why the accused had physically assaulted X on 29.12.2020 was that she went out on a date with her boyfriend. Even though the accused was her immediate neighbor, she was not aware of the actions of the accused before X had told her. She also stated that the accused looked after X and her younger brother as a single parent.

9. Cousin of the victim:

The PW-4 testified that the accused was his first cousin. On 03.01.2021, he witnessed the seizure of the original birth certificate of X by a police officer who came to his village. He exhibited the certified copy of the seized birth certificate and its seizure memo as Ext. P-3 and Ext. P-10 respectively.

During cross-examination, he stated that he was not aware of the allegation against the accused earlier. No one occupied the house of the accused as of now. The younger brother of X lived with his paternal uncle after his father's arrest.

10. Another Cousin of the victim:

The PW-5 testified that the accused was his first cousin. On 03.01.2021, he witnessed the seizure of the birth certificate of X from the accused by a police officer. He exhibited a certified copy of the birth certificate of X and its seizure memo as Ext. P-3 and Ext. P-10 respectively.

During cross-examination, he stated that X's younger brother stayed with his uncle (elder brother of the accused) after the arrest of his father. He did not know the whereabouts of X's mother.

11. Doctor who examined the victim and the accused:

The PW-6 testified that she examined X on 04.01.2021 at Civil Hospital,

Lunglei following the request she received from the Officer-In-Charge, Bunghmun Police Station vide letter dated 04.01.2021. As per her statement, X told her about the ordeal she had gone through and stated to her that her father had been having sexual intercourse with her ever since her mother left them. She stated that the last intercourse was on 01.01.2021. The PW exhibited the requisition letter she received from the Police as Ext. P-4. On examination, X was mentally stable and well oriented to time, place and person. There was an abrasion at the posterior fourchette and an old hymenal tear at the 6 O'clock position. As requested, she collected the following samples for examination, viz., (i) vaginal smear (ii) two vaginal swabs (iii) two anal swabs (iv) two vulval swabs, and (v) blood sample. The samples were handed over to the Police except (i), which was tested at Civil Hospital, Lunglei, as indicated in the medical examination report. She exhibited the medical examination report as Ext. P-5 (13 sheets).

She also examined the accused, as she had also received a requisition for his medical examination. He stated to her that he had been having sexual intercourse with X since 2017 and the last intercourse was on 25.12.2020 at around 09:00 PM. He fought with X, and she reported the incident to his brother; following a complaint against him, he was brought by the Police for examination. He was mentally stable and well oriented to time, place and person. On local examination, the penis was found to be normal, not circumcised, and without smegma. She collected the following samples for examination, viz., (i) blood sample (ii) penile swab (iii) urethral swab and (iv) pubic hair. In her opinion, the accused was potent and could perform sex. She exhibited the requisition for his medical examination as Ext. P-6 and the medical examination report as Ext. P-7.

During cross-examination, she stated that an ‘old hymenal tear’ means

that the tear was not recent and could have happened 72 hours earlier or more. She admitted that she did not find spermatozoa when X was examined. Though spermatozoa could be detected in the anus for around seven days by simple microscopy, it could, however, be found even after seven days through advanced machines like PCR. She did not find any document showing consent of the accused to drawing of samples. She admitted that there was no document in the case record showing that drawing of the samples was witnessed.

12. The Forensic doctor:

The PW-7 testified that he was the Assistant Director, FSL, Mizoram and that he received six biological exhibits for DNA examination from the Officer-In-Charge, Lunglei Police Station on 06.01.2021 viz., (i) Exhibit A: Vaginal swab of a victim (ii) Exhibit B: Anal swab of a victim (iii) Exhibit C: under wear of victim (iv) Exhibit D: Penile swab of accused (v) Exhibit E: Blood sample of a victim and (vi) Exhibit F: Blood sample of the accused. After examination of the said exhibits, the results were as follows: (i) Semen not detected from Exhibit A; (ii) semen detected from Exhibits B & C; (iii) Exhibit D not examined for presence of semen as it did not have evidential value. Exhibits B & C and Exhibits E & F were examined for DNA profiling and the following observations were made; (i) complete female genetic profile generated from Exhibit E (ii) complete female genetic profiles generated from female fractions of Exhibits B & C (iii) complete male genetic profile generated from Exhibit F (iv) complete male genetic profiles generated from male fractions of Exhibits B & C, (v) male genetics profiles of Exhibits B & C generated matched with the genetic profile generated from Exhibit F, and (vi) female genetic profiles of Exhibits B & C, generated matched with the genetic profile generated from Exhibit E. On the basis of the above observations, it was concluded that semen stains from Exhibits B & C (i.e. anal swab of the victim and underwear of the victim) were that of the accused, i.e.

Exhibit F. He exhibited the forensic report he prepared, which was forwarded vide covering letter dated 28.01.2021 as Ext. P-8 (3 sheets). He also exhibited the forwarding letter dated 28.01.2021 as Ext. P-9.

During cross-examination, he admitted that the said exhibits were sealed. He did not know whether sealing of the exhibits was witnessed or not. The official seal appearing in the exhibits was not legible. He admitted that the instruments used for DNA profiling were of Thermo Fisher Scientific Company. He denied that the findings made using the instruments produced by Thermo Fisher Scientific Company were not always accurate. He denied that the software used and PCR kits were incompatible. He admitted that the allelic distribution table for Exhibit C was not shown separately in Annexure A as it was identical with the allelic distribution table for Exhibit B, and that it was possible to detect semen even after ten days from an anal swab, even if the sample was collected after a bath or passing of stool by the person from whom the sample was collected. However, the chance of detecting semen decreases with the passing of time.

13. Chairman of the Child Welfare Committee:

The PW-8 testified that he was appointed as Chairman, Child Welfare Committee, Lunglei (CWC) in the year 2017 and continued to hold the office till 19.09.2021. He did not know the accused who was in the Court. Information was received by the CWC from Bunghmun Police Station regarding the present case. Considering that it would be in the interest of X, the CWC admitted her to Baptist Church Orphanage, Serkawn. During cross-examination, he stated that he was not sure whether the day the information was received by the CWC was on 21.03.2021.

14. The Investigating Officer:

The PW-9 testified that the FIR was received from X on 03.01.2021 at about 04:30 PM, complaining that her father had sexually assaulted her from the latter part of 2015 till 01.01.2021. The FIR (Ext. P-1) was registered as Bunghmun P.S. Case No. 01/2021 under Section 6 of the POCSO Act. He took up the investigation as the only eligible officer posted in the Police Station. The complaint was intimated to the concerned Child Welfare Committee within 24 hours. He examined and recorded statements of X and PW-2, who had accompanied her. He went to the place of occurrence at Laisawral and prepared the Crime Details Form (Ext. P-11). He apprehended the accused and accompanied him to Bunghmun Police Station. He seized the birth certificate (Ext. P-3) of X from the accused in the presence of witnesses and prepared the Seizure Memo (Ext. P-10). He interrogated and recorded statements of the accused and arrested him because he admitted to the crime. He exhibited the Arrest Memo as Ext. P-12. X was taken to Lunglei for medical examination by vehicle arranged by the CWC, while the accused was also taken to Lunglei for the same purpose by the Police. Both of them were examined by a medical officer at Lunglei Civil Hospital. Ext. P-4 and Ext. P-6 are letters of requisition for medical examination of X and the accused, respectively. Ext. P-5 and Ext. P-7 are the Medical Examination Reports of the complainant and the accused, respectively. The report in respect of X indicated that her hymen was not intact. As requested, vaginal swab, anal swab, stained underwear and blood sample of X were collected. Penile swabs and blood samples of the accused were also collected. The collected samples were sent to FSL, Mizoram for DNA profiling. He received the FSL Report (Ext.P-8) vide forwarding letter dated 28.01.2021 (Ext.P-9) indicating that the seminal stain in the anal swab and underwear of X was that of the accused. He had also made a prayer for recording Judicial Statements of X. Ext. P-13 is his application, and Ext. P-2 is the Judicial Statement of X recorded by a JMFC. From the materials collected, he found a

prima facie case of commission of an offence under section 5 (l) & (m) of the POCSO Act and charge-sheeted the accused under Section 6 of the POCSO Act and Ext. P-14 is the Charge-sheet.

During cross-examination, he agreed that the accused did not have a previous criminal record. He was not aware of the suggestion that the genesis of the case was because the accused saw X and her boyfriend dating in December, 2020. He agreed that, as indicated in the medical examination report of X, she had changed her clothes. He agreed that it is indicated in the medical examination report of X that semen was not found on the anus of the victim. Samples were collected from X on 04.01.2021 for FSL examination. He did not know who collected the penile swab and blood sample of the accused for FSL examination. No one witnessed the collection of the samples from X or the accused. He did not know whether a Sample Authentication Form for DNA profiling was prepared in respect of X and the accused. He did not know whether the accused consented to the collection of his blood sample for DNA profiling. He sealed the samples collected for FSL examination and marked the samples as Ext. F and used the Lunglei P.S. seal. He agreed that he did not get back the samples sent to the FSL. He did not remember whether the samples were packed after it was sealed. He agreed that he did not examine X's younger brother during the investigation. He agreed that the accused looked after his children after he was separated from his wife in 2014. He agreed that X did not return home after leaving her house because the accused physically assaulted her after he saw X dating her boyfriend, Lalkrosmawia. During re-examination, the PW stated that although semen was not found from the anal swab of X during her examination at Lunglei Civil Hospital, the anal swab was collected and sent for FSL examination. Even though X did not return home to stay with the accused, he knew that she went to her house to collect her clothes.

EXAMINATION OF ACCUSED

15. He stated that he got divorced in February 2015, looked after his son and X, and lived together with them. He denied making sexual advances to X, and he also denied having penile-vaginal sex with X or continuing to have sex with her. He contended that X had made false allegations against him at the instance of some person. He claimed that X hardly spent the night at home as she used to stay with her friends. He also denied threatening X not to reveal what he did to her.

He had beaten X on 29.12.2020 because she did not return home till late in the evening. When he went searching for her, he saw her with her boyfriend in the hall, and both of them physically assaulted him inside the Hall. She spent that night in the house of her uncle (PW-5), who brought her back home on 30.12.2020 evening. He discontinued assaulting her thereafter as she discreetly and voluntarily left home with her clothing on 02.01.2021, and stayed in the house of her aunt. He was of the notion that she planned to go to Aizawl to stay with her mother. He was not aware of "X" having a meeting with MHIP members in the house of the PW-2. The accused stated that the accusation of sexually assaulting X since she was 10 years old was completely wrong. While affirming that X had spent the night on 29.12.2020 in the house of the PW-3, he asserted that even if X had allegedly told the PW-3 that he used to assault her sexually, he reiterated that he had not done so. He claimed ignorance of stating to the PW-6 that he had sexual intercourse with X since 2017 and that the last intercourse was on 25.12.2020 evening. When questioned regarding the medical examination report of X indicating that there was abrasion at posterior fourchette and old hymenal tear at 6:00 O'clock position, he asserted that he did not doubt that X was having sex with her boyfriends. He contended that X had made false allegations against him because he had physically assaulted her

in the presence of her boyfriend on 29.12.2020. He stated his wish to adduce defense evidence by examining his son and his younger sister as his witnesses.

DEFENCE EVIDENCE

16. Son of accused and brother of victim:

DW-1 testified that the accused was his father and X was his elder sister. He was 8 years old when his parents divorced in 2015. He lived in Laisawral with his father and X. The three of them slept together in one bed, with him in the middle. He had no knowledge of his father having sex with his sister. The house they lived in was small, and he would have known if an act of sexual intercourse had happened between his father and X. His father used to go to jhum and also for hunting and used to be away from home occasionally. When he was away, he and X used to spend the night at home or sometimes in the house of the PW-3 and aunt Remkungi. X used to have boyfriends, and he knew that she was in love with Lalkrosmawia and also with one JCB Operator. During the Christmas Season of 2020— 2021, X did not return home until late in the evening one day. He went to search for her with his father and found her inside the Community Hall with Lalkrosmawia. When they saw them, Lalkrosmawia caught hold of his father, and in the meantime, X assaulted him (the accused). X used to go out and did not return home till late in the evening on several occasions. He and his father used to go and search for her. X considered the accused to be jealous of her boyfriends. His father loved him & X and cared for them. He looked after them and guided them even after his divorce from his mother. His younger sister died in 2014, and her parents divorced in 2015.

During cross-examination, he agreed that he was not at home day in and day out. He did not know what happened in the house during his absence. He denied that his father overreacted to X having boyfriends. He was not aware of X being uncomfortable at home.

17. Sister of accused and aunt of victim:

DW-2 testified that the accused is her elder brother. She was born and brought up in Laisawral and got married at Dengsur. Since childhood, her elder brother maintained a good moral character, especially with respect to the opposite sex. His good character was noticeable to all his family members. Her elder brother (accused) had a wife who used to cause immense problems in the family circle and also in society. Because of her misbehavior, she was expelled from Laisawral by MHIP Laisawral Branch, and she was in prison, to her knowledge. Her brother used to look after his son and daughter with due care. X used to study in Aizawl but could not continue her studies because of COVID and returned to Laisawral, and later continued her studies at Lungsen. She talked with X during April, and X told her that when she had boyfriends, her father used to get angry and would assault her physically. X kept quiet and refused to answer when she asked her whether the allegation that her father used to have sex with her was true.

During cross-examination, she stated that the prosecutrix did not state to her that her father had not had sex with her.

Findings of the learned Trial Court:

18. The learned Trial Court, after discussing the evidence, found the testimony of X to be consistent and of sterling quality, held that the circumstantial evidence of PW-2 and PW-3 corroborated her disclosure, that the birth certificate Ext. P-3 established minority, and that medical evidence of abrasion at the posterior fourchette and an old hymenal tear at 6 o'clock position further supported the prosecution. The FSL report, Ext. P-8 (semen in anal swab and underwear matching the appellant) was discarded out of abundant caution for want of allegation of anal sex and non-compliance with standard norms in collection and sealing. The appellant was accordingly convicted and sentenced

as above.

Discussions and conclusions

19. We have carefully examined the entire record, including the FIR, the judicial statement of X (Ext. P-2), the oral evidence of all PWs and DWs, the medical and FSL reports, and the statement of the appellant under Section 313 of the Cr.P.C. We have also considered the principles laid down by the Hon'ble Supreme Court in the decisions placed before us, including the long line of authorities (including ***Rai Sandeep v. State (NCT of Delhi)***, reported in ***(2012) 8 SCC 21),*** which make it clear that the version of the prosecutrix must be of sterling quality—consistent from the initial statement to the end, free from prevarication, and capable of withstanding searching cross-examination without creating reasonable doubt as to the factum of occurrence, the sequence, or the identity of the perpetrator.

20. In ***Rai Sandeep v. State (NCT of Delhi),*** reported in ***(2012) 8 SCC 21,*** the Apex Court observed that the truth of the statement made by a witness is relevant when the evidence is questioned. 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, would be relevant. 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 however strenuous it may be, and under no circumstances 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 correlation with other supporting materials 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. The version of the said witness on the core spectrum of the crime should remain intact. At the same time, 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.

In ***Krishan Kumar Malik v. State of Haryana,*** reported in ***(2011) 7 SCC 130,*** the Apex Court held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. In that case, there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was held necessary to get her evidence corroborated independently.

21. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration when the statement of the victim is consistent from the beginning to the end, minor inconsistencies excepted. A victim's testimony is usually enough for sexual offence cases, and conviction undoubtedly can be recorded on the sole evidence of a victim of crime in the event the evidence survives scrutiny through the well-settled legal

principles as established by the Courts in a catena of decisions.

22. The foundation of the prosecution case is the sole testimony of X (PW-1). She stated that after her parents' divorce she lived with the appellant and her younger brother in one bed; that sexual advances began in the latter part of 2015 after they occupied a new house; that penile-vaginal intercourse continued intermittently until 01.01.2021; that she disclosed the matter for the first time to PW-3 on 30.12.2020 after being beaten on 29.12.2020; and that she finally approached PW-2 (MHIP) and lodged the FIR on 03.01.2021 because of mental agony and physical assaults. In cross-examination, she admitted that the immediate trigger for lodging the FIR was the severe physical assault by the appellant on 29.12.2020 when he found her with her boyfriend in the Community Hall, and that she was "too frustrated."

23. The defence has consistently maintained that the allegations are false and motivated by the physical assault of 29.12.2020 and the appellant's disapproval of X's boyfriends. DW-1 (younger brother of X, aged about 8–9 years at the relevant time) deposed that the three of them slept in one bed with him in the middle; that the house was small; that he would have known if any act of sexual intercourse had taken place; that the appellant used to go for jhum and hunting and was occasionally away; that X used to have boyfriends (including Lalkrosmawia); and that on 29.12.2020 they found X with Lalkrosmawia inside the Hall, whereupon Lalkrosmawia caught hold of the appellant and X assaulted him. He stated that the appellant loved and cared for both children even after the divorce. In cross-examination, he admitted he was not at home day in and day out, but denied that the appellant over-reacted to X having boyfriends.

24. DW-2 (younger sister of the appellant) deposed to the good moral

character of the appellant, the problematic conduct of X's mother (who was expelled by the local MHIP), and that when she spoke to X in April, X told her that the appellant used to get angry and assault her physically when she had boyfriends, but kept quiet and refused to answer when asked whether the allegation of sexual intercourse was true. In cross-examination, she stated that X did not affirm that the appellant had not had sex with her.

25. The medical evidence (PW-6) records an abrasion at the posterior fourchette and an old hymenal tear at 6 o'clock position. PW-6 herself clarified that an "old" tear means it could have occurred 72 hours or more earlier. No spermatozoa were found on clinical examination. The appellant told PW-6, which appears to be an admission recorded by the doctor, that he had sexual intercourse with X since 2017 and last on 25.12.2020, but this evidence of the doctor has been contradicted by his consistent denial in the statement made under Section 313 of the Cr.P.C. and throughout the trial. The FSL report (PW-7) detected semen matching the appellant's DNA profile in the anal swab and underwear of X. The Trial Court itself discarded this report for two reasons: first, that there was no allegation of anal sex and second, that there was non-compliance with standard norms regarding collection, sealing and witnessing of biological samples. We find no reason to reopen that finding; the FSL evidence, having been discarded by the Trial Court on valid grounds, cannot be pressed into service to strengthen an otherwise doubtful case.

26. The disclosures made by the PW-2 and PW-3 are a repetition of previous statements of the prosecutrix herself. They do not constitute independent corroboration of the factum of sexual assault. PW-4 and PW-5 witnessed the seizure of the birth certificate. The Investigating Officer (PW-9) admitted that he

did not examine the younger brother of X (a vital witness who was living in the same small house and sleeping in the same bed), that samples were collected without documented consent of the appellant and without independent witnesses, and that the genesis of the FIR was linked to the physical assault after the appellant saw X with her boyfriend.

27. Applying the test of a "sterling witness" laid down in ***Rai Sandeep (supra)*** and reiterated in the authorities relied upon by the prosecution, we find that the version of X, though consistent with regard to the disclosures to PW-3, suffers from material infirmities when tested against the surrounding circumstances. The foundational facts pointing to the guilt of the appellant are not found proved beyond reasonable doubt.

The admitted immediate precipitating cause for the FIR was the physical assault of 29.12.2020 in the presence of her boyfriend and with regard to the allegations relating to the persistent and consistent sexual assaults, the delay of more than five years in disclosing her ordeal even to her relatives, including her aunt, whom she used to admittedly visit regularly and also during her stay away from the paternal homestead, is sought to be explained by threats allegedly issued by the appellant herein. This Court cannot ignore the admitted facts that the alleged victim had been maintaining boyfriends and often stayed out late or even stayed out. There is no allegation that the appellant had ever restrained the victim from free movement to any place of her choice or to any person of her choice. There is undisputed material in evidence that the appellant had been looking after both children as a single parent after the divorce. The non-examination of the younger brother of the victim, who resided in the same house and who slept in the same bed in a small house throughout the alleged

period, is a serious lacuna in the prosecution case. It is also noticed that the alleged victim has avoided any reference to the whereabouts of her brother when the alleged assaults were perpetrated and, in fact, she has not for once stated any approximate time of the day or night when the assaults took place, and therefore, no presumption can be drawn as to the whereabouts of the brother, who has also stated that he has no knowledge of any sexual assault. The defence evidence of DW-1, which is crucial, has not been shown to be false or interested in a manner that would justify its rejection.

28. It is true that the law does not require corroboration of the testimony of a child victim if it is of sterling quality; however, there are caveats, which would depend on the facts of each case. The testimony should inspire confidence beyond reasonable doubt. In the present case, the possibility that the allegations were made out of frustration and anger following the physical assault by the father/accused in a public place in the presence of the brother of the alleged victim and her boyfriend and the appellant's disapproval of X's relationships cannot be ruled out on the material on record. The medical findings of an old hymenal tear and abrasion are consistent with sexual activity, but in our considered view, they do not, by themselves, establish that the appellant was responsible for such activity. The younger brother of the victim has indicated two boyfriends of the victim, one of whom had also assaulted the appellant in the presence of the minor brother. The FSL report, which was discarded even by the learned Trial Court, does not assist the prosecution in framing guilt of the appellant to a degree which can be said to be beyond reasonable doubt.

29. The learned Trial Court has proceeded on the premise that once the

testimony of the prosecutrix is found broadly consistent and the delay in reporting the assault is explained by fear, conviction must follow. The settled principles of law do not mandate conviction in every case of delayed disclosure by a child against a parent. Each case is required to be appreciated on its own facts. On the facts of the present case, we are unable to hold that the prosecution has established the foundational facts for presumption of guilt of the appellant beyond reasonable doubt.

30. Consequently, the appeal is allowed. The judgment of conviction dated 21.02.2023 and the order of sentence dated 28.02.2023 passed by the learned Special Court (POCSO Act), Lunglei, are set aside. The appellant is acquitted of the charges under Section 5(l) & (m) read with Section 6 of the POCSO Act. He shall be released forthwith if not required in any other case.

31. The records of the learned Trial Court shall be returned forthwith along with a copy of this order.

32. The learned Amicus Curiae and the learned Legal Aid Counsel would be entitled to their fees as per norms.

JUDGE **JUDGE**

Comparing Assistant