



GAHC030000912025



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

Case No. : CRL.A(J)/6/2025

Sh. Lalfela
S/o Lalhmingthanga
R/o Rimawi Veng, Bairabi North
Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl2:Sh. Brojendr

For the Appellant : Ms. H. Lalmalsawmi, Amicus Curiae

For the respondent No.1 : Ms. Mary L. Khiangte, Addl. P.P. Mizoram

For the respondent No.2 : Ms. Emily L. Chhangte, Legal Aid counsel

BEFORE-
HON'BLE MRS. JUSTICE MARLI VANKUNG
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date of hearing
&
Date of judgment : **24.09.2025**

JUDGMENT & ORDER (ORAL)

(R. Mazumdar, J)

Heard Ms. H. Lalmalsawmi, learned Amicus Curiae for the appellant. Also heard



Ms. Mary L. Khiangte, learned Addl. P.P for the State and Ms. Emily L. Chhange, learned Legal Aid Counsel for the respondent No.2.

2. The present appeal has been preferred by the appellant, who is presently serving the sentence imposed upon conviction under Section 6 of the POCSO Act, 2012, assailing the judgment & order dated 25.07.2022, passed by the learned Judge, Fast Track Court-cum-Addl. District & Sessions Judge, Kolasib District, Kolasib in S.C(K) No. 30/2020, arising out of Crl. Tr. BBI. No. 114/2020. The appellant, by the aforesaid order, was convicted and by order dated 26.7.2022 he was sentenced to undergo rigorous imprisonment of 20 years and to pay a fine of Rs. 20,000/- and in default of payment of the fine, to undergo further rigorous imprisonment for 10 months.

3. Records received from the Trial Court reveal that an FIR was lodged before the Officer-in-Charge of the Bairabi Police Station, Bairabi by the grandfather of the victim on 18.06.2020 alleging that his granddaughter had been repeatedly raped by her father since January 2020 every time he got drunk and that his granddaughter was six months pregnant. The informant disclosed that the victim was 16 years old. In the FIR, it was stated that the accused lived in a separate house with the victim and that towards the end of the year 2020, the informant had brought his granddaughter to his home when he realized that she was pregnant.

Investigation of the case was thereafter taken up by the concerned authority and the birth certificate of the victim was seized in the presence of the witness. The accused was arrested and interrogated. The charge under Section 6 of the POCSO Act was framed against the accused/appellant herein on 18.11.2020 by the Trial Court. The appellant denied the charges and claimed trial.

6(six) prosecution witnesses were examined during the trial. The complainant appeared as PW-1 and the victim appeared as PW-2. Police Constable PC Lalengzuali appeared as PW-3, 2(two) Doctors involved in the investigation appeared as PW-5 & 6 respectively and the Investigating Officer of the case appeared as PW-7. PW-4, who was a Judicial Officer who recorded the statement of the victim, was exempted from



examination.

On the prosecution evidence being closed, the accused was examined under the provisions of Section 313 of the Cr.PC on 25.05.2022 where he denied allegations leveled upon him.

4. On evaluating the evidence led and after considering the arguments made on behalf of the prosecution and the defence, the learned Trial Court came to a finding that the victim was a child and was also the daughter of the accused and that the accused had committed aggravated penetrative sexual assault on the victim several times resulting in the victim becoming pregnant.

Accordingly, the accused was convicted for committing aggravated penetrative sexual assault of the child, for which he would be liable to receive sentence under Section 6 of the POCSO Act, 2012. The aforesaid finding of conviction had been arrived at on 25.07.2022 and the learned Trial Court heard the appellant on the sentence. By order dated 26.07.2022, the sentence which is already referred to herein above was imposed on the accused.

5. Ms. H. Lalmalsawmi, learned Amicus Curiae appearing for the appellant has submitted that the impugned judgment & order dated 25.07.2022 deserves the interference of this Court in appellate jurisdiction for more than one reasons. However, one aspect of the matter which has been argued has gripped the attention of the Court, which in our opinion will have a material bearing on the conclusions arrived at by the learned Trial Court and therefore, the same is addressed first.

6. The learned Amicus Curiae has submitted that the Trial Court committed grave and manifest error when it proceeded on the basis that the defence had denied to cross-examine the complainant, the victim and several other vital witnesses.

The learned Amicus Curiae has submitted that a bare perusal of the records and orders passed by the learned Trial Court would reveal that the defence did not deny to cross-examine the informant and the victim, rather the cross examination had been deferred. She has referred to the impugned judgment & order itself to show that at



paragraph-8 of the judgment, the Trial Court had recorded that the cross-examination of PW-2 & 3 stood deferred and yet at the discussion portion of the judgement, the Trial Court noted that the accused had declined to cross-examine the informant, who was the PW-1 and the victim, who was PW-2. The learned Amicus curiae has submitted that the denial of opportunity to the defence to cross-examine the informant and the victim had caused serious prejudice in the defense of the accused and in fact, had denied him the opportunity to put up a complete defense in his favour. She submitted that this fact alone is sufficient to vitiate the conclusions arrived at by the learned Trial Court. She submitted that it is a fit case where the conclusion arrived at by the learned Trial Court ought to be interfered with and the matter may be remanded back so that the accused can avail complete and fruitful opportunity by putting up his defense by cross-examining the witness produced by the prosecution. The learned counsel has thereafter submitted that there is no other basis for the learned Trial Court to have convicted the accused/appellant.

7. Ms. Mary L. Khiangte, learned Addl. P.P appearing for the State has submitted that the contention raised on behalf of the appellant does not merit any consideration by this Court since it is apparent that the defence did not make any attempt to cross-examine the prosecution witness when they were adducing evidence and later on also, no attempt was made to recall the witnesses for cross-examination. The learned Addl. P.P has submitted that the defence in its volition did not cross examine vital prosecution witnesses and therefore, raising such a ground at this stage will not assist the case of the appellant. She has submitted that the said argument of "absence of opportunity to cross-examine" was not taken up before the learned Trial Court. She has further submitted that the judgment which has been assailed in the present appeal is a detailed judgment and had taken into consideration all aspects of the matter and therefore, there is no requirement of any interference of this Court. She has referred to the case of **Sovaram Singh Prajapati -vs- State of Uttar Pradesh**, reported in **2025 SCC Online 351** and **Just Rights for Children**



Alliance and Another -vs- S.Harish & Others, reported in **2024 SCC Online 2611** to buttress her submission.

8. The submissions made by the learned counsel appearing for the contesting parties have received due consideration of this Court. The records received from the Trial Court have also been perused meticulously.

9. The Charge-sheet in this case was put up before the Trial Court on 20.08.2020. The charge was framed against the accused on 18.11.2020. The charge under Section 6 of the POCSO Act was read over and explained to which the appellant pleaded not guilty and claimed for trial.

10. PW-1, 2 & 3 appeared before the Court on 15.12.2020. The order sheet of the Trial Court reflects that the three witnesses were examined and cross-examination was deferred, fixing 29.12.2020 for Prosecution Evidence. The Court had been adjourned on 29.12.2020, 11.01.2021 & 20.01.2021. The order sheet for 20.01.2021 recorded that there were no witnesses present and summon were directed to be issued to the PW-1, 2 & 3. On the next date fixed i.e. 04.02.2021, when no witness was present, the Court was adjourned and summons were directed to be issued to the PW-4 & 5. Thereafter, the PW-5 appeared on 11.02.2022 when she was examined and cross-examined and discharged. PW-6 appeared on 03.03.2021, when he was examined and discharged as cross-examination was declined. Different dates were fixed for the PW-4 to appear and adduce evidence and after several dates on 12.05.2022, the Trial Court recorded that since PW-4 is a Judicial Officer who recorded judicial statements, it was not necessary for him to adduce evidence. Prosecution evidence was then closed and the orders further recorded that the accused was asked whether he had any witness to produce, where he submitted that he did not have any defence witness to produce. He was examined under the provisions of Section 313 of the Cr.P.C on 25.05.2022. Written arguments were submitted by the learned P.P on 08.06.2022 and the written arguments on behalf of the accused was submitted on 17.06.2022.



11. From the above, it is seen that the proceeding relating to leading evidence by the prosecution had taken place during the period when the Country was reeling under the Covid pandemic. In those circumstances, the cross-examination of PW-1 & 2 had been deferred. In fact, the order dated 15.02.2020 records that the accused had been produced through video conferencing and the order does not record the presence of the defence counsel on that day. Thereafter, the records reveal that although initially summons were issued to the PW-1, 2 and 3 respectively, on and from 04.02.2021 summons were not issued to the said witness to adduce evidence i.e. to face cross-examination.

12. When a person is accused of committing an offence encompassed by the provisions of Section 5 of the POCSO Act, 2012, which in turn is punishable under the provisions of Section 6 of the same Act, the Special Court is required to presume, that such person has committed the offence, unless the contrary is proved.

It cannot be gainsaid that cross examination is one of the most important tools in the hands of an accused to contradict the evidence led against him, more so when there already exists a presumption against his innocence. The Apex Court, in **Gopal Saran -vs- Satyanarayan reported in 1989 (3) SCC 56** held as follows: *"The purpose of cross-examination of a witness is to test the veracity of the statement made by a witness in his examination-in-Chief and where a witness is not cross examined, for his non availability, it will be unsafe to rely on examination in chief of such a witness."*

13. In the present case, fact remains that the PW no. 1 and 2 did not face cross examination. The records do not reveal that the cross-examination of the said witnesses were denied by the defence at any point of time, rather it was recorded to have been deferred in the absence of the counsel for the accused on 15.12.2020. The reasons for the PW-1 and PW-2 not attending the Court after they had participated in the examination in chief are not discernible from the records. No reasons have been assigned in any of the orders as to why the said witnesses were not summoned to



appear after 04.02.2021. This Court also takes note of the fact that the learned Trial Court had recorded in its judgment that cross-examination of the PW no. 1 and 2 had been denied, which conclusion is not supported by the contemporary records produced before this Court.

14. In other circumstances, the only result of the non-presentation of the PW-1 and PW-2 for cross-examination would have indicated that evidence adduced by them was not reliable. However, the circumstances of the present case are unique and peculiar. On the one hand, the deferment of the cross-examination of PW 1 and PW 2 can be traced to the Covid-19 Pandemic period, and on the other hand, the appellant had faced prejudice and his defence suffered in the absence of the opportunity to cross examine vital witnesses as the allegations relate to committing offences under the POCSO Act 2012. Therefore, we are of the considered view, that to balance the scale of equities for both the prosecution and the defence, the matter deserves to be remanded back to the learned Trial Court to allow the defence opportunity of cross examination insofar as the PW-1 and PW-2 are concerned, before reaching a conclusion of guilt or otherwise of the accused.

15. Though, other arguments had also been led by both counsels appearing for the contesting parties, in view of our decision to remand the matter back to the learned Trial Court, the other arguments do not require our consideration at this stage and are thus left open.

16. In the result, the judgment dated 25.07.2022, passed by the Learned Judge, Fast Track Court-cum-Addl. District & Sessions Judge, Kolasib District, Kolasib in S.C (K) No. 30/2020, arising out of CrI. Tr. BBI. No. 114/2020 convicting the petitioner and the order dated 26.07.2020, imposing sentence upon the accused/appellant herein are set aside and quashed. The matter is remanded back to the Learned Judge, Fast Track Court-cum-Addl. District & Sessions Judge, Kolasib District, Kolasib to give effective opportunity of cross examination to the defence by summoning the PW No. 1 and PW 2 for the said purpose and thereafter, come to a conclusion in accordance



with law. In view of the fact that the appellant has been languishing in custody on and from 19.06.2020, it is expected that the proceedings will be taken up with due urgency by the Learned Trial Court.

17. Registry to forthwith communicate this order to the Fast Track Court-cum-Addl. District & Sessions Judge, Kolasib District, Kolasib.

18. We record our appreciation for the assistance rendered by Ms. H. Lalmalsawmi, learned Amicus Curiae and her fee of Rs. 9,000/- is to be paid by the State Legal Service Authority, Mizoram.

19. The appeal is disposed of.

JUDGE

JUDGE

Comparing Assistant