

GAHC030001862025



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

Case No. : CRL.A(J)/12/2025

Sh. Malsawmkima
S/o H.T. Rohluna
R/o Phuaibuang
Saitual District, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai (Amicus Curiae)

Advocate for the Respondent : Mrs. Mary L Khiangte, APP, Mizoram for R1
Mr. Lalrokunga Pautu, Legal Aid Counsel for R-2.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Date on which judgment is reserved : **17.02.2026.**

Date of pronouncement of judgment : **27.02.2026.**

Whether the pronouncement is of the : No.
operative part of the judgment ?

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Michael Zothankhuma,J)

Heard Ms. Lalngaihsaki Fanai, learned Amicus Curiae for the appellant. Also heard Mrs. Mary L Khiangte, learned Addl. Public Prosecutor for the State of Mizoram, and Mr. Lalrokunga Pautu, Legal Aid Counsel appearing for the respondent No. 2.

2. This is an appeal against the impugned Judgment and order dated 27.09.2024 passed by a Special Judge, POCSO, Aizawl in S.C Case No. 105/2022 arising out of CrI. Tr. No. 1237/2022, pertaining to Saitual P.S Case No. 18/2022, by which the appellant was convicted under Section 6 of the POCSO Act read with Section 376 AB and Section 506 IPC for committing the offence of aggravated penetrative sexual assault, rape and criminal intimidation on a 4 year old girl.

3. The learned Trial Court also passed the sentence order dated 01.10.2024 pursuant to the conviction of the appellant vide Judgment & Order dated 27.09.2024, sentencing him to undergo Rigorous Imprisonment for 20 years and a fine of Rs. 50,000/-, in default to undergo Simple Imprisonment for 3 months under Section 6 of the POCSO Act. The appellant was also sentenced to undergo Rigorous Imprisonment for 20 years with a fine of Rs. 50,000/, in default to undergo Simple Imprisonment for 3 months in terms of Section 376 AB IPC and sentenced to undergo Rigorous Imprisonment for 1 (one) year under Section 506 IPC.

4. The learned counsel for the appellant submits that there are contradictions

in the statement made by the victim under Section 164 Cr.P.C vis-à-vis the evidence of the victim recorded by the learned Trial Court. She also submits that there is a discrepancy in the evidence of the mother of the victim (PW-1) as the actual production of the victim before the medical doctor (PW-8) was 11 days after the incident, though the testimony of PW-1 implied that the victim had been sent for medical examination one day after the incident.

5. She also submits that the evidence of the medical Doctor (PW-8) is not in consonance with the victim's medical examination report. She submits that there are many inconsistencies in the evidence of the witnesses and the sequence of evidence does not form a complete chain, to prove that the appellant had committed any offence under the POCSO Act or under IPC. She also submits that the signature of PW-1 is different in her deposition form, the FIR and in the consent form where she had allowed the victim to be examined by a medical doctor. The learned Amicus Curiae thus prays that as the evidence recorded does not justify the conviction of the appellant under Section 6 of the POCSO Act read with Section 376 AB and 506 IPC, the impugned judgment & order should be set aside.

6. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor submits that there is no infirmity with the impugned Judgment and Order convicting the appellant, inasmuch as, the testimony of the victim clearly proved that the appellant had committed the offence of aggravated penetrative sexual assault, rape and criminal intimidation on the victim. The Addl. PP also submits that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and that the Court should not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of

a fatal nature. In this regard, she has relied upon the judgment of the Supreme Court in the case of ***Lok Mal Alias Loku Vs. State of Uttar Pradesh*** reported in ***(2025) 4 SCC 470***.

7. The learned counsel for the respondent No. 2, besides echoing the submissions of the learned Addl. P.P, submits that when there was no axe to grind between the family of the victim and the appellant, there was no reason for the 4 year old victim to have made the allegation of aggravated penetrative sexual assault, rape and criminal intimidation against the appellant. He also submits that the 10 days delay in filing the FIR, especially when the appellant was a close relative becomes inconsequential, as the issue is with regard to a taboo subject which cannot be put out in the public domain easily. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***State of Himachal Pradesh Vs. Sanjay Kumar Alias Sunny***, reported in ***(2017) 2 SCC 51***.

8. The learned counsel for the respondent No. 2 also submits that though there may be some defects in the investigation, the same by itself cannot be a ground for acquittal, so long as the prosecution evidence is reliable. In this regard, he has relied upon the case of the Supreme Court in ***Yogesh Singh Vs. Mahabeer Singh & Others*** reported in ***(2017) 11 SCC 195***.

9. We have heard the learned counsels for the parties.

10. The prosecution story in brief is that an FIR dated 13.05.2022 was submitted by the mother of the victim, who is the Prosecution Witness No. 1 (PW-1) to the Officer-in-Charge of the Saitual Police Station. The FIR stated that while the victim who was 4 year old was naked on the couch on 02.05.2022 between 2 to 3 pm, she was made to sit on the appellant's lap. The appellant

then took out his private parts and tried to make the victim put it inside her mouth. He then tried to insert it inside her private parts. Since he was unable to enter her private parts, he inserted his finger inside the private parts of the victim. The appellant also threatened the victim with a knife telling her not to tell anyone about it. The FIR further stated that the victim informed her mother, the informant about the incident only on 03.05.2022. After consulting family members, the informant and her family decided to lodge an FIR. The FIR was then lodged on 13/05/2022 and the victim was sent to the Medical Officer at Saitual District Hospital on 13.05.2022, whereupon the Doctor (PW-8) conducted a medical examination on the 4 year old victim.

11. The examination of the victim showed that there were no external marks of violence on her body and the genital examination showed that there was redness and inflammation, though there was no sign of infection. The genital examination of the victim by the Doctor with regard to her hymen is reproduced herein as follows:-

"5(d) Hymen: ...inflammation with signs partial of finger/penial penetration"

12. It was only on the day the medical examination report of the victim was made on 13.05.2022 that the FIR was registered, i.e. 11 days after the incident and 10 days after the informant's family had taken a decision to file an FIR.

13. The issue that needs to be decided is as to whether there are discrepancies in the evidence of the witnesses and whether the evidence of the victim alone can be the basis for conviction of the appellant, under section 6 PCOSO Act and section 376 AB/506 IPC.

14. Pursuant to the FIR, Saitual Police Station Case No. 18/2022 was registered on 13.05.2022 under Section 6 of the POCSO Act read with Section

376AB/506 IPC. After completing the investigation, the Investigating Officer submitted a chargesheet, on finding a prima facie case against the appellant under Section 6 of the POCSO Act read with Section 376AB/506 IPC.

15. After committing the case for trial, the learned Trial Court framed charges under Section 6 of the POCSO Act read with Section 376AB/506 IPC against the appellant on 15.02.2023, to which the appellant pleaded not guilty and claimed to be tried. It may be mentioned here that the appellant had left the village where the incident took place on 07.05.2022 and was untraceable, despite the Court issuing warrant of arrest and proclamation of the appellant as an absconder being issued. The appellant was finally arrested on 15.01.2023.

16. The learned Trial Court examined 9 prosecution witnesses and 1 defence witness, who is the appellant herein. After examining the appellant under Section 313 CrPC, the learned Trial Court came to a finding that the appellant had committed the offence punishable under Section 6 of the POCSO Act read with Section 376AB/506 IPC. Further, as the appellant had been absconding and evading arrest, which required warrant of arrest and a proclamation under Section 82 of the CrPC to be issued against him by the learned Trial Court, the same was held by the learned Trial Court to be a relevant fact, for which an adverse inference could be drawn against the appellant. Thus, the learned Trial Court convicted the appellant and sentenced him as stated in the earlier paragraphs.

17. In the case in hand, it is seen that while the incident occurred on 02.05.2022, the informant had knowledge of the same on the next date i.e. on 03.05.2022. Though a decision had been taken only on 03.05.2022 by the informant's family to file an FIR, the FIR was filed only on 13.05.2022. The medical examination of the victim had also been done only on 13.05.2022.

18. The evidence of PW-1, who is the mother of the victim and also the wife of the appellant's cousin brother, is to the effect that on 02.05.2022, she had gone to a well to wash clothes with her two daughters, one of them being the victim. They got drenched in the rain and the victim went home without wearing clothes. When they reached their house, the appellant was lying down on a long chair. As there was no electricity at that time in their house, PW-1 went to her neighbour's house to pull the electric wire from her neighbor's house, before making her daughter (victim) wear her clothes. During that time the appellant made the victim sit on top of him and tried to insert his private parts into the private parts of the victim. As he was unable to penetrate the private parts of the victim, he instead inserted his finger inside her daughter's private parts. PW-1 further stated that she did not realize that the incident had taken place even when she returned, as the victim did not say anything. As the victim could not urinate on the next date, i.e. 03.05.2022, PW-1 asked the victim the reason for the same. The victim then told PW-1 that the appellant had put his finger inside her private parts and that he had tried to insert his private parts inside her private parts.

PW-1 thereafter immediately informed her family members while one Lalchhuankimi took the victim to the hospital. PW-1 was then informed that the victim had been raped after a medical examination had been conducted by the Doctor. PW-1 was thereafter advised to report the incident to the Police. However, as the appellant was a blood relative, it was suggested that the appellant should leave the village Phuaibuang and the incident should not be reported to the police. The appellant was not happy with the decision and instead decided to lodge an FIR at the Saitual Police Station on 13.05.2022.

In her cross examination, PW-1 stated that the appellant used to drink

liquor and even got intoxicated. She admitted that she did not see the incident.

19. The evidence of PW-2, who is the 4 year old victim, is to the effect that she knew the appellant as he used to come to their house and speak to her parents. PW-2 further stated that her mother had gone to the spring and while she was away, the appellant had come to their house. He lay down on a long chair. Thereafter, he took out his penis and tried to insert it into the victim's vagina. The appellant also threatened the victim with a knife and told her that he would slaughter her and bury her under the ground if she told anyone about the incident. PW-2 then stated that the appellant inserted his penis into her vagina. Further, the appellant had also put his penis into the mouth of the victim, which was really bad. He also inserted his finger into her vagina and it caused a lot of pain. PW-2 further stated that she told her parents and paternal grandmother about what the appellant had done. Her mother checked her private parts and took her to the hospital and also to the Police Station.

In her cross examination, PW-2 stated that when the appellant touched her vagina, only the two of them were present in the house.

20. In her statement made under Section 164 CrPC, the victim stated that the appellant had inserted his finger into her vagina and that the appellant had put his penis into her mouth. This statement made under Section 164 Cr.P.C. corroborates PW-2's evidence that the appellant inserted his finger into her vagina and that he had put his penis into her mouth. However, the victim had not made any statement under Section 164 CrPC that the appellant had tried to insert his penis into her vagina, though the testimony of the victim before the Trial Court is to the effect that not only did the appellant try to insert his penis into her vagina, but his penis also penetrated her vagina.

21. As can be seen from the evidence of the victim (PW-2), the victim was taken to the hospital by her mother (PW-1) for medical examination. However, the evidence of PW-1 is to the effect that one Lalchhuankimi took the victim to hospital for medical examination. This discrepancy, in our view, is not fatal to the prosecution case, as the same does not touch upon the core issue of the case, when there is no denial of the fact that the Doctor had examined the victim, i.e. whether the appellant had committed the offence under section 6 POCSO Act read with section 376 AB and 506 IPC.

22. In the testimony of the victim, it has been recorded that the appellant tried to insert his penis into the victim's vagina. One sentence later, it has again been recorded by the learned Trial Court that the appellant had inserted his penis inside the victim's vagina. This discrepancy in our view seems to be a typographical error, in view of the fact that the victim has apparently said two different things in her testimony, i.e. on one hand the appellant had tried to insert his private parts into the vagina, while on the other hand the appellant had inserted his private parts into the victim's vagina. This in our view appears to be due to the fact that the insertion of the appellant's penis, as per the victim's statement under Section 164 Cr.P.C, is into the mouth of the victim. In any event when the evidence that the appellant had inserted his finger into the vagina of the victim is corroborated by her statement under Section 164 Cr.P.C and the medical evidence, we find that the offence under Section 3(b) read with Section 5(m) of the POCSO Act, 2012 has been made out.

23. The evidence of PW-3, who is the President of the Village Council, Phaibuang is to the effect that he knew the appellant, though he had shifted to some other village. During the time of the incident, the appellant had visited Phuaibuang Village. He also stated that he was the seizure witness to the

seizure of the birth certificate of the victim by the police.

24. The evidence of PW-4, who is a member of the Phuaibuang Village Council, is also to the effect that he was a witness to the seizure of the victim's birth certificate by the Police and also a knife from the victim's house.

25. The evidence of PW-5 is to the effect that she was the President of Phuaibuang MHIP Branch (which is a 'Women Organisation/NGO'). PW-5 stated that on 04.05.2022, the victim had come alongwith her parents to her house carrying a letter wherein the victim's father had requested them to organize a procession against the rape committed by the appellant against the victim and to have him evicted from the village. The MHIP Committee then decided that it would be against the child's interest to organize a procession and felt it would be proper to file an FIR against the appellant instead. PW-5 stated that they had spoken to the child and the child had told them that the appellant had come to their house when her parents were away. He had seated the victim on his lap and touch and fondled her vagina, inserting his finger inside her private parts which caused pain and swelling. Further, the victim told PW-5 that the appellant had tried to make her suck his private parts. After having a look at the victim private parts with the permission of her mother, she saw redness and sign of injury. Thereafter, the victim was taken to hospital and wherein the Doctor confirmed that rape had occurred. There was a family consultation with regard to whether an FIR should be filed and thereafter, the victim's mother filed the FIR at the Saitual Police Station on 13.05.2022.

26. PW-6, who is the elder brother of the victim gave his testimony before the learned Trial Court on 16/01/2024 and also on 08/04/2024. In his testimony given on 16/01/2024, PW-6 stated that he had been told by his mother that his younger sister has been assaulted. Further, his mother (PW-1) had told him that

the elders of the family had met and they decided to pardon the appellant. However, his mother filed an FIR at the Saitual Police Station while he was present. At that time, his younger sister was in a miserable state of mind and was scared and did not have the courage to tell him that the appellant had raped her. However, the victim later told PW-6, how the appellant had threatened her against speaking out, saying that he would kill her with a knife. After the FIR was filed, the victim was taken to a hospital for medical examination.

27. In his testimony on 08/04/2024, PW-6 added some more facts which had not been stated by him during the recording of his evidence on 16/01/2024. PW-6 stated that on 08/04/2024, when PW-6 asked the victim about the assault, the victim told him that the appellant made her sit on his lap and touched her private parts. The appellant also inserted his finger inside her vagina, which caused pain and swelling. He also stated that the victim told him that the appellant had tried to make her suck his penis.

28. The evidence of PW-8, who is the Medical Officer at Saitual District Hospital, is to the effect that on 13/05/2022, he conducted a medical examination on the 4 year old victim. There was no external marks of violence on her body and that her genital area showed that there was reddishness and inflammation, though there was no sign of infection.

29. The evidence of PW-9, who was the Investigating Officer of Saitual Police station, is to the effect that PW-1 had filed an FIR on 13/05/2022, stating that the appellant had sexually assaulted her 4 year old daughter on 02/05/2022 and that PW-1 came to know about the same only the next day, when the child had complained of pain while passing urine. PW-9 further stated that she examined the complainant and recorded her statement and that of the victim. The birth

certificate of the victim was seized and judicial statement of the victim was taken by the JMFC, Aizawl. The IO also recorded the statement of the witnesses. The appellant was also proclaimed as an absconder by the Court on 07/07/2022 as he had absconded. PW-9 further stated that the appellant was arrested on 15/01/2023 in Saitual. PW-9 also stated that a charge sheet was filed against the appellant on 29/07/2022 under section 6 of the POCSO Act read with section 376 AB/506 IPC and a supplementary charge sheet was also filed on 05/06/2023.

30. The appellant was also examined as Defence Witness-I (DW-I). In his evidence, the appellant stated that the victim's mother had asked him whether he could brew local liquor when the father of the victim cancelled their plan to go to the jhum land. On the appellant telling the mother of the victim that he could brew local liquor, the appellant was requested to make local liquor and he accordingly made 4 (four) bottles of liquor, with the promise that he would be given an equal share of the local liquor. However, after making the liquor, the victim's mother was not ready to share the liquor. The appellant then snatched one bottle from the victim's mother and poured some of it for consumption in a glass. The victim, who was running around in the meantime, kicked his glass and split the liquor. The victim fell down and started to cry. The victim's mother then pulled up the child and left the house. During the time the appellant was brewing liquor, the victim's father had gone out of the house. When the victim's father returned to the house, he was woken up by the victim's father and both had a meal. The appellant then went out with the victim's father in the night and did not return to the victim's house. DW-I also stated that he did not commit sexual assault upon the victim.

31. In the examination of the appellant under section 313 Cr.P.C., the

appellant denied all the evidence that had been adduced against him and he also denied that he had absconded.

32. In the case of ***Surendra Mishra Vs. State of Jharkhand*** reported in **(2011) 11 SCC 495**, the Supreme Court had held that the act of the accused in running away from the scene of the crime subsequent to the commission of the offence, clearly suggest that he knew that whatever he had done was wrong and illegal.

33. In the case of ***Lok Mal alias Loku Vs. State of Uttar Pradesh*** reported in **(2025) 4 SCC 470**, the Supreme Court held that it is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix.

34. In the case of ***State of Punjab Vs. Gurmit Singh & Ors*** reported in **(1996) 2 SCC 384**, the Supreme Court held that the Court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. It further held that in the background of the entire case, the Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual offences.

35. In the case of ***Yogesh Singh Vs. Mahabeer Singh and others*** reported in ***(2017) 11 SCC 195***, the Supreme Court held that the evidentiary value of medical evidence is only corroborative and not conclusive and hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence.

36. In the case of ***State of Himachal Pradesh Vs. Sanjay Kumar alias Sunny*** reported in ***(2017) 2 SCC 51***, the Supreme Court has held that whenever a charge of rape is made by a victim, wherein the victim is a child, it can by no means suggest that the said charge should be treated as gospel truth and that the accused person must be convicted. It further held that while taking all due precautions, which are necessary to find out the truth and to ensure that the deposition of the victim is trustworthy, the case has to be dealt with sensitively and one has to take stock of the realities of life as well. The Supreme Court further held that the various studies show that more than 80% of the case of sexual abuse, the perpetrators have been an acquaintance with the victim and not a stranger. The danger is more within than outside.

37. In the case of ***Rai Sandeep alias Deepu Vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***, the Supreme Court has held that only the evidence of a sterling witness whose version can be accepted by the Court without any corroboration, can be the basis of punishing a guilty. It held that the sterling witness should have consistency of statement right from the starting point till the end and there should not be any prevarication in the version of such witness. The said version should consistently match with the version of every other witness.

38. In the case of ***Ganesan Vs. State Represented by its Inspector of Police***, reported in ***(2020) 10 SCC 573***, the Hon'ble Supreme Court has held

that the testimony of a child victim of sexual assault, if it is cogent and confidence inspiring, requires no corroboration. It further held that Courts must not adopt a hyper technical approach, as sexual offences are committed in secrecy and often without witnesses.

39. In the present case, the victim's statement under Section 164 Cr.P.C. and her testimony during trial are slightly different to the effect that in her testimony the victim (PW-2) stated that the appellant had tried to insert her penis into her vagina and thereafter, stated that the appellant had inserted his penis inside her vagina, besides also inserting his finger in her vagina. This insertion of the penis into the vagina is not corroborated by her statement given under Section 164 Cr.P.C. As stated in the earlier part of the judgment, this discrepancy appears to be due to a typographical error where the insertion of the appellant's penis was not into the vagina, but into the mouth of the victim. However, even if it held that there was no mistake in the recording of the evidence, the same cannot help the cause of the appellant. This is due to the fact it is proved that the appellant inserted his penis into the mouth of the victim and also inserted his fingers into the vagina of the victim. Thus the appellant is guilty of committing the offence under section 3(b) and 5(m) of the POCSO Act. In the case of ***R. Shaji Vs. State of Kerala***, reported in ***(2013) 14 SCC 266***, it has been held that statements under Section 164 Cr.P.C. can be used for both corroboration and contradiction.

40. The child (victim) being 4 years old, it was necessary for the learned Trial Court to have asked preliminary questions to the child, so as to satisfy itself that the child could understand the questions put to it and give rational answers to the same. This would have been in consonance with the decision of the Hon'ble

Supreme Court in the case of ***Pradeep Vs. State of Haryana***, reported in ***AIR 2023 SC 3245***.

41. In the case of ***Pradeep (supra)***, the Supreme Court has held that the proviso to Section 4(1) of the Oaths Act provides that unless satisfaction as required by the proviso is recorded, an oath cannot be administered to a child witness below 12 years. However, in view of Section 118 of the Evidence Act, the Trial Judge was under a duty to record his opinion that the child was able to understand the questions put to her. The Trial Judge must also record his opinion that the child witness understands the duty of speaking the truth and state why he is of the opinion that the child understands the duty of speaking the truth. The Supreme Court further held that before recording the evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him/her, with a view to ascertain whether the minor can understand the questions put to him/her and is in a position to give rational answers.

Para 9 of the judgment in ***Pradeep (Supra)*** is reproduced below as follows:-

"9. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the

preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

42. In this case, it appears that the learned Trial Court was satisfied that the victim could give a proper testimony, as the conviction has been made on the basis of the evidence of the victim. Though the learned Trial Court has not recorded the preliminary questions and answers that may have been asked for from the victim and answered by her, prior to recording her evidence, the absence of the same cannot be said to vitiate the trial. It is not a mandatory requirement that the preliminary questions and answers have to be recorded by the learned Trial Court in terms of the judgment of the Supreme Court in ***Pradeep (Supra)***, as the Supreme Court has stated the recording of the same was "advisable" only. Further, preliminary questions had been put to the victim and her answers were also recorded, at the time of recording the victim's statement under section 164 Cr.P.C. On perusing the victim's statement under section 164 Cr.P.C. and her testimony before the learned Trial Court, we are of the view that the victim understood the questions put to her and could give rational answers to the same. Besides the above, the Supreme Court in ***State of U.P. Vs. Krishna Master*** reported in ***(2010) 12 SCC 324*** has held that a child of tender age is always receptive to abnormal events which take place in his/her life and would never forget these events for the rest of his/her life. The child could be able to recapitulate correctly and exactly when asked about the same in the future. Having stated the above, what we find is that in her evidence and statement under Section 164 Cr.P.C, the victim had stated that the appellant had inserted his penis into her vagina. Further, the testimonies of PWs-1, 5 & 6, is to the effect that they had been told by the victim (PW-2) that the appellant had inserted his finger into her vagina. The testimony of the

above 3 witnesses, in our view, corroborates the testimony of the victim that the appellant had inserted his finger into the vagina of the victim girl. Further, the evidence of the Doctor (PW-8) is to the effect that the genital examination of the victim showed that there was reddishness and inflammation, though there was no sign of infection. This also corroborates the fact that the appellant had inserted his fingers into the vagina of the victim. The appellant had also put his penis into the mouth of the victim.

43. With regard to the delay of 10 days in filing the FIR, we are of the view that the same is explained by the fact that the perpetrator of the crime was the cousin of the victim's father, which required some family deliberation, that actually occurred. Further, the appellant had also absconded for more than 7 months prior to being arrested on 15.01.2023. The act of absconding by the appellant, which required the learned Trial Court to issue Warrant of Arrest and Proclamation of the appellant being an offender, leads us to believe that the appellant knew that what he had done with the victim was illegal and wrong. Keeping in view all the above facts, we hold that the delay in lodging the FIR does not prejudice the appellant or the trial. Further, in the case of ***State of Himachal Pradesh Vs. Shree Kant Shekari***, reported in ***(2004) 8 SCC 153***, the Supreme Court has held that delay in lodging an FIR in a rape case cannot be used as a ritualistic formula for discarding the prosecution case or doubting its authenticity, when the testimony of the victim appears to be totally reliable, trustworthy and credible.

44. In the present case, the prosecution case is found to be reliable, keeping in view the corroboration of the testimony of the victim with regard to the appellant's finger penetrating her vagina and insertion of his penis into her

mouth. The same is also corroborated by the evidence of the Doctor and the evidence of the other witnesses, who were informed of the said act by the victim.

45. There is also no whisper of any enmity between the family of the victim and the appellant, for the 4 year old victim to have fabricated a fatal case against the appellant.

46. As stated earlier, the examination of the appellant under Section 313 Cr.P.C resulted in the appellant giving a blanket denial with regard to the evidence adduced against him, regarding inserting his penis into the victim's mouth and inserting his finger into it. He has also denied running away in his examination under section 313 Cr. P.C, saying that there was no reason for him to do so, which is an outright lie.

47. In the case of ***Rajkumar vs. State of M.P.***, reported in **(2014) 5 SCC 353**, the Supreme Court has held that complete denial or silence or non-explanation of an incriminating material by an accused, would entitle a Court to draw an adverse inference against an accused, as may be permissible in accordance with law.

48. In the case of ***Wajir Khan vs. State of Uttarakhand***, reported in **(2014) 5 SCR 353**, the Supreme Court has held that in a case based on circumstantial evidence where no eyewitness is available, the principle that when an incriminating circumstance is put to the accused and the accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances

to make it complete. In the present case, the eyewitness is the victim, whose evidence has the same value as that of an injured witness.

49. Though there are minor contradictions and discrepancies in the evidence of the prosecution witnesses, the minor contradictions and insignificant discrepancies cannot be a ground to throw out an otherwise reliable prosecution case, when the same does not go to the root of the matter.

50. On considering all the above reasons we are of the view that there is no ground to interfere with the impugned judgment and order passed by the Special Judge, POCSO, Aizawl in S.C Case No. 105/2022 arising out of CrI. Tr. No. 1237/2022.

51. The appeal is accordingly dismissed.

52. Send back the T.C.R.

53. In appreciation of the assistance provided by Ms. Lalngaihsaki Fanai, learned Amicus Curiae, her fee should be paid by the Mizoram State Legal Services Authorities, as per norms.

JUDGE

CHIEF JUSTICE

Comparing Assistant