



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 38 of 2024

Date of Decision: 06.05.2026

Shri Slander Mawlein
 Son of (L) Trip Kharsyiem,
 (Convict presently serving sentence in Correctional
 home & Prisons, Shillong)
 Resident of Ktiehthawiar Village,
 P.S. Nongstoin,
 District West Khasi Hills,
 Meghalaya

.... Appellant

Vs.

The State of Meghalaya
 Through the Commissioner & Secretary
 To the Government of Meghalaya,
 Department of Home (Police),
 Civil Secretariat, Shillong.

.... Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge.
Hon'ble Mr. Justice B. Bhattacharjee, Judge.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

Appearance:

For the Petitioner/Appellant(s) : Ms. P. Chettri, LAC.



For the Respondent(s) : Mr. R. Gurung, GA.

Per W. Diengdoh, J:

JUDGMENT

1. The appellant having been convicted and made to serve a cumulative sentence of 10(ten) years rigorous imprisonment with fine of ₹ 30,000/- (Rupees thirty thousand) for an offence punishable under Section 6 of the POCSO Act, and rigorous imprisonment of 1(one) year with fine of ₹ 5,000/- (Rupees five thousand) for an offence punishable under Section 506 Part-I IPC, relatable to Judgment and Sentence dated 03.01.2024 passed by the learned Special Judge, (POCSO), Nongstoin, West Khasi Hills District in Special (POCSO) Case No.11 of 2019, has now approached this Court, with this instant appeal, with a prayer to set aside and quash the impugned judgment of conviction and related sentence.

2. The prosecution case emanates from the filing of an FIR before the Officer-in-Charge, Nongstoin Police Station on 07.12.2018 by the complainant, who has alleged that the appellant herein, has committed sexual penetration on her minor daughter (name withheld) aged about 10(ten) years on 04.12.2018, at his house.

3. On receipt of the said FIR, a case was registered being Nongstoin P.S Case No. 99 (12) 2018, under Section 5(m)(n)/6 of the POCSO Act, read with



Section 506 IPC, investigation commence with the recording of the statement of the complainant and the survivor. The accused/appellant was also arrested on that day itself, that is, 07.12.2018. In course of investigation, all the formalities that is, forwarding of the survivor as well as the accused for medical examination, collection of the birth certificate of the survivor as well as facilitation of recording of the statement of the complainant and the survivor respectively, before the Magistrate under Section 164 CrPC, have been completed. Thereafter, charge sheet was filed, with the Investigating Officer (I/O) sending the accused/appellant to face trial before the competent court of jurisdiction.

4. On the case being taken cognizance of by the learned Special Judge, (POCSO) on 09.05.2019, charge under One Head was framed against the accused/appellant, the charge being under Section 5(m)(n) of the POCSO Act, punishable under Section 6 of the said Act. The court has then examined 9(nine) prosecution witnesses including the complainant, the survivor and the doctor who has medically examined the survivor and the accused/appellant. About 9(nine) documents were also exhibited which includes the FIR and statement of the complainant and survivor made under Section 164 CrPC. The photocopy of the birth certificate of the survivor was also produced as Paper Mark- 1.



5. On completion of the recording of the deposition of all the 9(nine) prosecution witnesses, the statement of the accused/appellant made under Section 313 CrPC, was recorded. When asked as to whether he wish to adduce evidence, the accused/appellant answered in the negative.

6. The argument on behalf of the prosecution and the defence, was then heard by the learned Special Judge, (POCSO), after which the said impugned judgment and sentence was passed.

7. Heard Ms. P. Chettri, learned Legal Aid Counsel (LAC) appearing for the appellant, who has submitted that the impugned judgment and sentence meted out to the accused/appellant was based on mis-appreciation of evidence, wherein vital contradictions in the conduct and statement of the survivor have not been taken into account and the relevance of medical findings ignored which has resulted in miscarriage of justice.

8. It is the contention of the learned LAC that the prosecution's case has been found wanting mainly on three counts, the first being the contradiction in the survivor's statement before the police when her statement was recorded under section 161 CrPC in which she has stated that the accused carried her to his house, and there he laid her on the bed and took off her panty as well as his pants and touched her private parts with his penis.



9. When she was before the Magistrate to record her statement under section 164 CrPC, she has stated that the accused carried her to the bed and took out his penis and laid on top of her. He did the same thing the second time when he took off her dress and panty and laid down on her.

10. In her evidence before the court, the survivor has stated that the accused carried her inside the house and took her to his bed, then he opened his trouser fully and pulled down his underwear. When she tried to scream, he gagged her mouth with a cloth and came on top of her where he put his penis inside her vagina.

11. In all the three statements made, the survivor has given different versions of how the incident happened, as such, under such contradictions, her evidence not being wholly reliable, the same has to be discarded, submits the learned LAC.

12. On the second count, the learned LAC has submitted that the learned Trial Judge has completely ignored the value of the medical evidence. Leading this Court, to the evidence of PW-8, the doctor who has medically examined the survivor as well as the accused/appellant, what could be understood from the said evidence is that the doctor had examined the survivor on 07.12.2018 and according to him, no abnormality was detected. Importantly, the hymen is found to be intact and no injuries are seen on her private part. As far as the findings



upon the examination of the accused/appellant are concerned, this doctor has clearly stated that “.... *on genital examination I found that there is no evidence of recent sexual activity and there is no injury on this person at the time of examination....*” This according to the learned LAC is proof that there was no penetrative sexual assault committed upon the survivor by the accused/appellant.

13. Referring to the case of **State of H. P. v. Gian Chand (2001) 6 SCC 71**, para 14, the learned LAC has submitted that, the Hon’ble Supreme Court has observed that “.... *it is now well settled that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on...*”. Since the ocular testimony of the survivor did not match with the medical evidence, as such, her evidence cannot be taken as wholly reliable, submits the learned LAC.

14. As to the third count, the learned LAC has submitted that, the accused/appellant has been convicted mainly for an offence punishable under Section 6 of the POCSO Act, which speaks of punishment for aggravated penetrative sexual assault, whereas evidence would suggest otherwise, the prosecution has therefore failed to prove its case beyond reasonable doubt.



15. The learned LAC has however submitted that even, if this Court is inclined to hold the view that the accused/appellant is indeed guilty of the offence charged, at the most, the punishment for such offence should not be one under Section 6 of the POCSO Act, but could be altered to one under Section 9(m) and (n) punishable under Section 10 of the said Act. The case of **Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808**, para 25 has been referred to in this regard.

16. Per contra, Mr. R. Gurung, learned GA, appearing for the State respondent, while resisting the contention and submission made by the learned LAC, and in support of the impugned judgment and sentence, has submitted that the evidentiary foundation has established the commission of the offence by the accused/appellant, the prosecution having discharge its initial burden by presenting cogent evidence to prove its case.

17. The fact that the FIR lodged by the mother of the survivor, who has exhibited the same as Exhibit-P1, which has detailed the manner in which the accused/appellant has sexually assaulted her minor daughter, has not been disputed by the accused/appellant, the same has confirmed the happenstance of the incident as reported, submits the learned GA.

18. In the statement under Section 164 CrPC recorded before the Magistrate, both the complainant/mother as well as the survivor have given



consistent statement, laying down the facts as it is. Therefore, there is no doubt that the accused/appellant had committed the act of sexual assault upon the survivor, submits the learned GA.

19. The learned GA has also submitted that the survivor in her evidence has lucidly narrated what had happened on the day of the incident, how the accused/appellant, who is her uncle had called her to play with the other children and that after sending the other children away, he has carried her to his bed, removed her pants, partially removed his own, gagged her mouth and then inserted his penis in her vagina, thus the act of sexual assault has indeed taken place. This piece of evidence has not been contradicted or shaken by the defence/accused. As such, the testimony of the survivor being reliable, there is no need even to seek corroboration of the same. The case of **State of H.P. v. Sanjay Kumar, (2017) 2 SCC 51**, at para 31, has been cited, wherein the Hon'ble Supreme Court has observed that, “.... *By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused....*”

20. Another aspect of the contention raised by the learned GA is with regard to the extra-judicial confession of the accused/appellant, where he has



voluntary confessed to have committed the offence, when he was present in a family gathering at the residence of the mother of the survivor (PW-1). This fact was also corroborated by PW-5, the uncle of the survivor who, in his evidence has stated that the accused has admitted that he has committed a mistake by raping the minor girl as he was drunk. This admission of the accused was also heard by PW-6, the grandfather of the survivor who was present at the said meeting. Even PW-7, the grandmother of the survivor who was also present at the said meeting, has confirmed that the accused has admitted to have committed the offence. Under such a situation, the extra-judicial confession made by the accused/appellant being voluntary and before witnesses who have no enmity with him, the same can be relied upon to convict the accused, further submits the learned GA. To support this contention, the case of **Jagroop Singh v. State of Punjab, (2012) 11 SCC 768**, para 29 was referred to.

21. Having heard the argument advanced by the learned counsel for the respective parties, the facts having been narrated hereinabove, the same need not be repeated except, if so required.

22. This is a case where an allegation has been made that the accused/appellant had committed aggravated penetrative sexual assault on the minor daughter of the complainant. The complainant on being told about the incident by her minor daughter, had initially informed about the same to her



family members, including her parents and siblings. Evidence would show that there was a clan meeting and the decision was taken to file the FIR. The FIR was then filed about 4(four) days after the incident.

23. Before we examine or appreciate the evidence on record as to whether the accused/appellant had indeed committed the offence, the fact that the survivor is the own niece of the accused/appellant is not denied, in fact, most of the witnesses who are family members of the survivor have confirmed the fact that she is the daughter of the sister of the wife of the accused/appellant. When this aspect of the matter has gone uncontradicted, this Court will hold that the survivor is related to the accused/appellant, of course, by marriage.

24. The fact that the survivor is a minor girl below the age of 12(twelve) years, the same being proved in evidence on the production of the birth certificate of the survivor showing her date of birth as 07.05.2008, such certificate not being contradicted or challenged by the accused/appellant at the trial, the same becomes admissible and could be relied upon. Therefore, this Court can safely say that the survivor was below 12(twelve) years old at the time when the incident had taken place.

25. Coming to the relationship of the accused/appellant and the survivor, the fact that he is the own uncle of the survivor, has been brought on record by non-other than his wife who had deposed as PW-3, when she had



confirmed and identified the accused/appellant as her own husband and the survivor as the daughter of her younger sister.

26. To the contention of the learned LAC that the prosecution has failed to prove its case beyond reasonable doubt since the factum of the incident has not been clearly ascertained, the same being seen from the glaring contradiction found in the statement of the survivor, before the police, before the Magistrate, and finally before the Court, this Court, has perused all the three statements made by the survivor.

27. In her statement made under Section 161 CrPC, the survivor has stated that the accused/appellant came and carried her to his house, then he laid her on the bed, took off her panty and also took off his pant and touched her private part with his penis. In her statement made under Section 164 CrPC, she has once again stated that the accused carried her to the bed and took out his penis and laid down on top of her. She has also stated that he also took off her dress and panty and laid down on her again, thereafter, she fell asleep and did not know what had happened, she got up when the accused poured water on her entire body. In her evidence before the court as PW-2, among others, she has again stated that the accused/appellant carried her inside the house and took her to his bed, he then open her long pant as she was not wearing any underwear at that time, he then open his trouser fully and pulled down his underwear up to his



knees, when she tried to scream and shout for help, he gagged her mouth with a cloth. He came on top of her and put his penis inside her vagina, thereafter, she woke up only when he slapped her face and found that her head was wet with water.

28. Though the survivor may not have uttered the same words on all three occasions, what has been noticed is that the foundational fact that the accused/appellant had carried her to his bed and open her pants as well as his own, thereafter, he had either touched or inserted his penis in her vagina, has not been contradicted by the accused/appellant in the cross-examination of the survivor. Therefore, in the absence of effective contradiction, the essence of the statement or assertion made by the survivor as regard the manner in which the offence was committed, cannot be doubted by this Court.

29. In this connection, the case of **Phool Singh v. State of MP (2022) 2 SCC, 74**, para 8, relied upon by the learned GA would be relevant as in a very elaborate manner, the Hon'ble Supreme Court has spelt out how the sole testimony of a witness and under what circumstances could be relied upon by the court, particularly that of a survivor of sexual assault. In this respect, it would be, but proper for this Court to reproduce the said para as under:

“8. In *Ganesan v. State*, (2020) 10 SCC 573, this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the



prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paras 10.1 to 10.3, it is observed and held as under: (*Ganesan v. State*, (2020) 10 SCC 573 (2020) 10 SCC 573, SCC pp. 578-82)

"10.1. Whether, in the case involving sexual harassment, molestation, etc. can there be conviction on the sole evidence of the prosecutrix, in *Vijay v. State of M.P.*, (2010) 8 SCC 191, it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

‘9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

"16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act



similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”

10. In *State of U.P. v. Pappus*, (2005) 3 SCC 594, this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a



higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

11. In *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

“8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of



the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

12. In *State of Orissa v. Thakara Besra*, (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (*sic* destroys) the whole personality



of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622, this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* (2010) 2 SCC 9 placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan*, (1951) SCC 1213.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.'

10.2. In *Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130, it is observed and held by this Court 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.

10.3. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21. In para 22, it is observed and held as under: (SCC p. 29)



‘22. * In our considered opinion, the “sterling witness” should be of a very high quality and calibre 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 every one 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 such similar tests to be applied, can it 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.’ ”

(emphasis in original)

30. In the light of the testimony of the survivor, another aspect of the matter to be considered is whether the contention of the learned GA that the accused/appellant has also voluntarily admitted to have committed the offence, such extra - judicial confession can be relied by this Court, the same can be taken note of by this Court.

31. In the case of Jagroop Singh (supra) cited by the learned GA, the Supreme Court has reiterated the settled position of law that extra-judicial confession, if true and voluntarily, can be relied upon by the court to convict the accused for the commission of the crime alleged. As has been pointed out, the accused/appellant in this case had appeared before a meeting of the family members which included the complainant, the survivor, the brother of the complainant, the father-in-law of the accused/appellant as well as the mother-in-law of the accused/appellant, wherein in their respective deposition before the court as prosecution witnesses, has stated that the accused/appellant had confessed to have committed the offence, though PW-5, the brother of the complainant, in his evidence has stated that the accused/appellant has stated in the meeting that he has committed a mistake by rapping the minor girl as he was



drunk. In cross-examination, when confronted, this witness has reiterated whatever he has stated in his chief as far as this assertion is concerned. Similarly, PW-6 the father-in-law of the accused/appellant, in his deposition, has stated that *“...After that the clan members enquired from the accused but they did not force him nor threatened him and the accused admitted by saying that “please forgive me as I have made a mistake...”*”.

32. The admission of the accused/appellant, though denied in his statement under Section 313 CrPC, in the face of the evidence of the survivor as regard the factum of the offence, would in the opinion of this Court be considered as voluntarily and made without threat promise or inducement. Therefore, such confession deserves acceptance by this Court.

33. Coming to the contention raised by the learned LAC, that even, if this Court would find the accused/appellant guilty of the act alleged, in view of the findings noted in the medical examination report that the hymen of the survivor is not torn which means that there is actually no penetration, the accused/appellant may at the most be convicted of a lesser offence other than the present sentence meted out to him.

34. The offence said to have been committed by the accused/appellant is found under Section 5(m)(n) of the POCSO Act, punishable under Section 6 and



additionally for the offence punishable under Section 506 Part-I IPC, the former carrying a sentence term of 10(ten) years.

35. In the evidence of the survivor, she had stated that when the accused/appellant laid on top of her, he touched her vagina with his penis. Though there may not be actual deep penetration of the penis to have ruptured the hymen, nevertheless, the legal understanding of what “*penetration*” conveys, has been found in a number of judicial pronouncements on the subject. In the case of **Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635**, the Supreme Court at para 5 has observed that “...*to constitute the offence of rape, penetration, however slight, is sufficient...*”. Under such circumstances, in the context of the facts of the case of the accused/appellant, this Court is of the considered opinion that penetration by the accused/appellant has taken place, and as such, the provision of Section 3(a), POCSO Act, which says that a person is said to commit penetrative sexual assault, if he penetrates his penis, to any extent, in to the vagina, ... of a child. The fact that the survivor is said to be below 12(twelve) years old at the time when the offence was committed, and also that the accused/appellant is the uncle of the said survivor, therefore, the provision of Section 5(m)(n) of the POCSO Act, are attracted. The punishment meted out to him under Section 6 of the POCSO Act is therefore justified.



36. In view of the above findings and observations, this Court, has come to the conclusion that the impugned judgment and sentence suffer from no legal or factual infirmities. The same is hereby affirmed.

37. This appeal is accordingly dismissed as devoid of merits and is hereby disposed of.

38. Sent back the Trial Court records.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge