



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

Case No. : CrI.A./23/2025

Sh. H. Lalhmingmawia
S/o Lalnunkima, Saichal Village

VERSUS

The State of Mizoram and Anr.
Aizawl2:Smt.Zothanmawi

Advocate for the Petitioner : Mr. Victor L Ralte

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

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the appellant

: Mr. Victor L. Ralte

Mr. K. Roland

Ms. B. Lalramhnemi

Mr. Benjamin Lalrinsanga

Ms. K. Venisia

Ms. C. Lalruatfeli

Ms. H. Vanlalzami

Advocates for the respondents

: Ms. Vanneihsiami, APP



Mr. H. Zodinsanga, Legal Aid
Counsel for R2

Date on which judgment is reserved : 13.05.2026

Date of pronouncement of judgment : 13.05.2026

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

Whether the full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (Oral)

(Nelson Sailo, J)

Heard Mr. Victor L. Ralte, learned counsel for the appellant. Also heard Ms. Vanneihsiami, learned Additional Public Prosecutor for the State as well as Mr. H. Zodinsanga, learned Legal Aid Counsel for respondent No. 2.

2. This is an appeal filed by the appellant under Section 415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) against the Judgment & Order dated 16.04.2025 passed by the Presiding Officer/Judge, Fast Track Special Court (Rape & POCSO Act, 2012) Champhai in FTSC (CPI) POCSO No. 80 of 2024 corresponding to Criminal Trial No. 496 of 2015, by which the appellant has been sentenced to 15 years Rigorous Imprisonment with a fine of Rs. 5,000/-.



3. Be it stated herein that this is the second time the appellant is before this Court in appeal. The appellant had earlier filed Criminal Appeal No. 18 of 2021 before this Court challenging his conviction under Section 6 of the POCSO Act and the sentence of Rigorous Imprisonment for a term of 15 years with fine of Rs. 5,000/- with a default clause. The appeal was taken up for consideration and disposed of by a Coordinate Bench of this Court vide Judgment dated 22.02.2024, by remanding the matter back to the learned Trial Court for denovo trial after coming to a finding that despite the issue of rape being proved, the appellant was convicted under Section 6 of the POCSO Act, although charge was not framed under the said section. The further finding was that there was some technical defect since the learned Trial Judge had not given his signature in the form used for recording the statement of the appellant under Section 313 Cr.P.C.

4. On remand, the learned Trial Court framed the charges under Section 6 of the POCSO Act and also under Section 376(2)(i)(k) of the Indian Penal Code (IPC) on 21.11.2024. Upon framing the charge, the Trial Court proceeded to examine the appellant under Section 313 Cr.P.C on the same day. According to the Trial Court, as there was no fresh evidence adduced in the denovo trial, the learned Special Public Prosecutor and the learned Defence Lawyer declined to submit arguments and therefore, the denovo trial was closed. The learned Trial Court thereafter proceeded to impose upon the appellant a sentence of 15 years



of Rigorous Imprisonment along with a fine of Rs. 5,000/- vide the Judgment & Order dated 16.04.2025 which is now being assailed in the instant appeal.

5. Mr. Victor L. Ralte, learned counsel for the appellant submits that the appellant was not given any opportunity to cross examine the prosecution witnesses and that he was examined under Section 313 Cr.P.C. on the very day, charge was framed under Section 6 of the POCSO Act and also under Section 376(2)(i)(k) IPC. He further submits that by the impugned judgment and order, the learned Trial Court even without convicting the appellant had simply proceeded to hand out the sentence of 15 years Rigorous Imprisonment along with a fine of Rs. 5,000/- to him. He submits that the direction of this Court in the earlier round of appeal was to conduct denovo trial from the stage of framing of charge. Although this Court observed that the evidence already adduced can be considered by the learned Trial Court but however, the same was with a condition that either of the parties will be at liberty to adduce further evidence and can also make further cross examination of the witnesses. The said opportunity has been denied by the learned Trial Court by immediately proceeding to examine the appellant under Section 313 Cr.P.C after framing of the charge. He also submits that in the absence of any conviction under any particular provision of law, the learned Trial Court could not have simply imposed the sentence in the manner it was done. He therefore submits that



under the facts and circumstances, grave injustice has been caused to the appellant and therefore, the impugned judgment and order should be set aside and the appellant acquitted.

6. Per contra, Ms. Vanneihsiami, learned Additional Public Prosecutor submits that the error, omission or irregularity in the order passed by the Court by the Trial Court may not be reversed by the Appellate Court in view of the provision of Section 511 of the BNSS. However, upon perusal of the provision of Section 511, we find that if the Court is of the opinion that a failure of justice has occasioned due to the manner in which the error, omission or irregularity has cropped up in the order passed by the Trial Court, the Court has the power to reverse the finding and sentence. In the present case, we find that in the earlier round of appeal, this Court came to a specific finding that the impugned judgment and order of the learned Trial Court was not sustainable in view of the fact that the appellant was convicted under Section 6 of the POCSO Act without a charge to that effect being framed and moreover, there were certain technical errors in the recording of the statements under Section 313 Cr.P.C as the learned Trial Court has not appended his signature. Therefore, with such finding, the matter was remanded back for denovo trial from the stage of framing of charge.



7. Although, the judgment and order was passed on 22.02.2024, the learned Trial Court could frame the charge only on 21.11.2024 and on the very same day proceeded to examine the appellant under Section 313 Cr.P.C. It may also be seen that in the impugned judgment and order, the learned Trial Court has recorded that after the framing of charge afresh on 21.11.2024, the appellant had pleaded not guilty and had claimed for trial. Further, it was also recorded that although there was no new evidence recorded but a Birth Certificate of the victim was said to have been produced by the complainant which was not done in the earlier round of trial. Under the circumstance, it was therefore incumbent upon the Trial Court to record a specific finding on the charges framed against the appellant having regard to the fact that a denovo trial had been directed by this Court. Further, on perusal of the statements of the appellant recorded under Section 313 of the Cr.P.C, we find that against the question No. 4 put to him, he had stated that he wanted to examine one more defence witness and he had given his name and address of the proposed witness as well. The same has also been projected by the appellant at para 9 of his memorandum of appeal. However, in the impugned judgment and order of the learned Trial Court, there is no reflection of the same and all that is said is that there is no any fresh material to warrant alteration of the judgment already delivered. Hence, the previous judgment and order passed by the Trial Court is being upheld.



8. The above observation and finding of the learned Trial Court goes to show that the Trial Court took up the matter as if it was dealing with an appeal or review and not conducting a denovo trial as directed by this Court. The earlier judgment and order of the Trial Court dated 11.08.2021 in fact had already been set aside by this Court vide Judgment & Order dated 22.02.2024 and therefore, what the Trial Court was required to do was to conduct a denovo trial from the stage of framing of charge and give due opportunities to the rival parties to adduce their evidence or to cross examine the witnesses and then come to a logical finding on the guilt or otherwise of the appellant. Only thereafter, the Trial Court could have handed down the sentence on the appellant if he was convicted. However, the learned Trial Court appears to have simply framed the charges and thereafter, proceeded to pass the impugned judgment and order in terms of the earlier judgment and order. We also noticed that the recitation of paragraph Nos. 1 to 12 of the impugned judgment is the same as the earlier order and in fact, a copy paste of the earlier Judgment & Order dated 09.08.2021.

9. In the result, we find that the impugned judgment and order to be not sustainable and accordingly the same is set aside. The matter is once again remanded back for denovo trial from the stage of framing of charge as was



directed by this Court vide Judgment & Order dated 22.02.2024.

10. However, instead of remanding the matter back to the Court of Fast Track Special Court (Rape & POCSO Act, 2012), we remand the same for consideration and adjudication by the Additional District & Sessions Judge, Champhai who is also designated to try POCSO cases. Registry shall do the needful. The Court of Fast Track Special Court (Rape & POCSO Act, 2012) shall transmit the TCR to the Court of Additional District & Sessions Judge, Champhai forthwith. The learned Additional District & Sessions Judge Champhai shall make an endeavor to arrive at a logical conclusion as expeditiously as possible.

11. Mr. H. Zodingsanga, learned Legal Aid Counsel appearing for respondent No. 2 shall be entitled to a remuneration as fixed in this regard for a Legal Aid Counsel.

12. The appeal is accordingly disposed of.

JUDGE

JUDGE

Comparing Assistant