

GAHC030004472024



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

**Case No. : CRL.A(J)/19/2024**

Ramngaizuala  
Tlangsam, Champhai District

VERSUS

The State of Mizoram and Anr.  
Aizawl2:Sh. Lalrinchhung

**Advocate for the Petitioner** : none

**Advocate for the Respondent** : P.P./Addl.PP, Mizoram for R1

**BEFORE**

**HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

**Advocate for the Petitioner** : Mr. Joseph Lalchhanhima, Amicus Curiae

**Advocate for the respondent No.1** : Mrs. Linda Fambawl, P.P

**Date on which Judgment was reserved** : 12.05.2026

**Date of pronouncement of Judgment** : 15.05.2026

**Whether the pronouncement is of the operative part of the Judgment:** : No

**Whether the full Judgment has been pronounced** : Yes

## **JUDGMENT & ORDER (CAV)**

Heard the learned Amicus Curiae Mr. Joseph Lalchhanhima for the appellant. Also heard Mrs. Linda Fambawl, learned P.P for the State respondent No.1.

**2.** The present appeal under section 374 of the Cr.PC has been filed by the appellant, namely Ramngaizuala, impugning the judgment and sentence dated 16.02.2024 passed by the learned Presiding Judge, Fast Track Special Court, Champhai in Session Case No.48/2019 corresponding to CrI. Tr. No.429/2019, whereby the appellant was convicted under section 376(2)(I) IPC and was sentenced to undergo R.I. for 10 years and to pay fine of Rs.5000/-, and in default of payment to undergo S.I for two months.

**3.** The prosecution case in brief is that an FIR was lodged by the informant/PW 1 who is the father of the victim on 08.04.2019 at the Champhai P.S alleging that on 07.04.2019, the accused/appellant had raped his daughter who is mentally disabled. Upon receipt of the FIR, the Champhai P.S Case No.18/2019 under 6 of the POCSO Act was registered. During investigation, the I.O visited the place of occurrence which was the house of one Rami of Tlangsam, Champhai district. The I.O also examined the complainant, the victim and other witnesses and also took the victim for medical examination. The statement of the victim was also recorded under section 164 Cr.PC. During the investigation, the I.O also seized the birth certificate of the victim and found that she was 20 years and 18 days at the time of the incident and therefore a prayer for alteration of charge from section 6 of the POCSO Act to section 376 (2) (I) IPC was sent to the Chief Judicial Magistrate and the charge was accordingly altered. The victim girl was also forwarded to a clinical psychologist to make assessment of her

mental age and the Psychologist opined that the mental age of the victim is 6 years with IQ of 40 and that she is in the category of moderate retardation. Upon completion of investigation, the I.O submitted a charge-sheet against the accused/appellant under section 376 (2)(I) IPC.

**4.** After the charge-sheet was filed the case was committed to the Fast Track Special Court Champhai district. The accused/appellant appeared before the trial Court and charges were framed against him section 376 (2) (I)IPC, which was read over and explained to him to which he pleaded not guilty and claimed to be tried. Accordingly, the trial proceeded against him.

**5.** During the trial the prosecution examined 8 witnesses and exhibited 12 documents. After the closure of the prosecution evidence, the statement of the accused/appellant was recorded under section 313 Cr.PC in which the accused pleaded denial and further stated that on the day of the incident the victim had come to his house. He also stated that at that time a porn movie was being played on the T.V. The victim herself removed her clothes and applying saliva on her private part he touched it and when she told him that it was painful he immediately stopped touching. She then got angry and went home. Her mother called him to their house and told him that this was to never happen again. He did not know why they submitted FIR against him. The accused also examined his brother Ramlawmi as DW-1.

**6.** After hearing the learned counsel for the parties and after appreciating the evidence adduced, the learned trial Court convicted and sentenced the accused/appellant as stated herein above.

**7.** The first ground taken by Mr.Joseph Lalchhanhima, the learned Amicus Curiae is that the trial Court was under an obligation to conduct a

competency assessment in terms of section 118 of the Indian Evidence Act to determine whether the victim is capable of understanding questions and giving rational answers as it is an admitted fact that the victim is a downs syndrome patient with sub normal intelligence and IQ of 40. The learned Amicus Curiae has placed reliance on the report of the clinical Psychologist/PW-7 in the Psychological assessment report dated 02.05.2019/exhibit P/5, wherein the finding is shown as "*the patient obtained a Mental Age(MA) of 6 years with IQ = 40*". Therefore, the trial Court was required to adopt a procedure similar to that used for a child witness and thereby put preliminary questions to the witness to assess whether she understands ordinary questions, whether she can distinguish truth from falsehood, whether she can give rational answers and whether she can communicate intelligibly. Learned Amicus Curiae argues that the trial Court did not put any questions to the victim to make an assessment regarding her capacity to testify before recording her evidence. Relying on the case of ***Pradeep vs State of Haryana, (2023) 19 SCC 221***, learned Amicus contends that the Apex Court in *Rai Sandeep* held that learned trial Court was under a duty to record his opinion that the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. 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. Therefore, the role of the Judge who records the evidence is very crucial. In the instant case the victim's mental age is at par with a 6-year-old child and therefore, the law mandates that the trial Court should have made the preliminary assessment regarding her capacity to

depose. Having not done so, the conviction of the accused/appellant could not have been made on the basis of the testimony of the victim/PW-2.

**8.** The second ground which the learned Amicus Curiae has raised is that the medical examination report of the victim reveals that the hymen was ruptured. However, the PW-6/M.O, who examined the victim, stated in her testimony that upon examination seminal stain was present and she had sent the same for laboratory examination. In her cross-examination the PW-6 stated that rupturing of the hymen happened before the incident took place and that the rupture of the hymen was old and not fresh. The learned Amicus submits that inspite of sending the semen sample for chemical analysis the FSL report with regard to the semen sample was not produced or exhibited during the trial. By referring to the illustration (g) to section 114 of the Indian Evidence Act, the learned Amicus submits that the non-production and non-exhibition of the FSL report is prejudicial to the prosecution as they have withheld the same. The learned Amicus further submits that the mother of the victim/PW-3 in her testimony had deposed that she found blood in the underwear of the victim when she checked the same, thereby insinuating that the victim was subjected to forceful sexual intercourse for the first time, which is however contradictory to the medical report as well as the testimony of the PW-6 who deposed that the hymen rupture was old and not fresh. In this regard, the learned Amicus Curiae relied on the case of ***Rai Sandeep @ Deepu vs State (NCT of Delhi) in (2012) 8SCC 21***. By relying on the *Rai Sandeep* case, learned Amicus submits that the testimony of the prosecutrix has to be of "sterling quality" to enable the trial Court to base a conviction on her testimony alone. According to the learned Amicus, the Apex Court in *Rai Sandeep (supra)* held

that the "sterling witness" should be of a very high quality and calibre whose version should be unassailable. And such a version should have co-relation with each and every of the other supporting materials, such as the scientific evidence and expert opinion. To be more precise, the version of the said witness should remain intact while all the other supporting evidence 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. Accordingly, the learned Amicus has argued that when the testimony of the victim is tested on the principles laid down in *Rai Sandeep*, the same has failed to pass any of the tests, moreover when the medical report and the testimony of the Doctor did not corroborate the version of the victim. Hence, the victim in the instant case cannot be termed as a "sterling witness" as her testimony has failed to inspire the confidence of the Court in order to arrive at a finding of guilt against the appellant/ accused. Learned Amicus has therefore prayed that the accused/appellant should be given benefit of doubt and the judgment and sentence dated 16.02.2024 passed by the learned Fast Track Special Court, Champhai in Sessions Case No.48/2019 may be quashed and set aside.

**9.** Ms. Linda Fambawl, learned P.P on the other hand argues that the victim is not a minor and she is 20 years old. And therefore, there is no necessity of assessment of her competence to depose. Learned P.P. submits that the intellectual disability of the victim does not make her incompetent per se. During the recording of her deposition, the victim was accompanied by her birth mother who could understand what she was trying to say and they were capable of communicating with each other. It was the mother who

translated whatever her daughter narrated before the Court.

**10.** Learned P.P further submits that the testimony of the victim is corroborated by the medical report which is exhibit P-4. A perusal of the medical report would show that there was laceration on her external genitalia. The Pw-6/M.O also deposed that there was seminal stain on the victim's private part and laceration was present on her external genitalia. The examination of the victim under section 161 Cr.PC as well as section 164 Cr.PC is consistent with her testimony before the Court. Learned P.P has also submitted that the defence has also not denied the presence of the victim in the house of the accused on the day of the incident. The accused himself in his 313 Cr.PC statement admitted that the victim was in his house on the day of the incident. On being asked whether he had any other things to say before the Court, he replied "*it was one Sunday when I asked the victim over to my house. At that time porn movie was being played on the TV. She herself removed her clothes, and applying my saliva on her private part I touched it and when she told me that it was painful, I immediately stopped touching it. She then got angry and went home. Her mother called me at her home and told me that this was to never happen again. I do not know why they submitted FIR against me*". The entire prosecution evidence therefore corroborates with each other to arrive at the conclusion that it was the accused/appellant who had raped the victim and no one else.

**11.** The learned P.P. has relied on the case of ***Chaman Lal vs State of Himachal Pradesh, (2020) 17 SCC 69*** to support her submission that in the instant case the victim is a person suffering from downs syndrome and the accused has taken undue advantage of the mental illness of the victim and therefore as held by the Hon'ble Supreme Court in the case of *Chaman*

*Lal (supra)*, the person suffering from mental disorder or mental sickness deserves special care, love and affection and they are not to be exploited. However, in the present case, the accused has exploited the victim by taking advantage of her mental incapacity. Learned P.P submits that no interference is called for against the impugned judgment and sentence dated 16.02.2024 in Sessions Case 48/2019.

**12.** Before considering the rival submissions of the learned counsel for both the sides, it is necessary to go through the evidence of the prosecution witnesses available on record:-

(i) The PW-1 is the father of the victim and the complainant. He deposed that the victim is his second youngest child. On 07.04.2019, while he was in a house near high school at Tlangsam he was told that the accused must have molested the victim. He reached home and his wife told him what had actually happened. During this time they heard that the accused was headed towards the Police station to surrender himself. When they reached the Police station the accused was already in police custody. They had a discussion and he decided to lodge the FIR. On being cross-examined, PW-1 stated that he did not see anything with his own eyes but he heard all that he knows from the victim.

(ii) PW-2 is the victim. She deposed that she knows the accused person and stated "*I know who raped me. He resides downhill below our house. He invited me over to his house and I decided to go there. He made me watch porn on the TV. He watched it with me and he made me lie down on the long chair. He touched my breasts and I found it hurting. He took off my pant and he tried to have sex with me from my behind. I cried as I find it painful. He asked me to stop crying and he had sex with me on my*

*private part and I told him that it hurts. He asked me to stop crying promising to take me to Aizawl, however I continued to cry. He told me not to tell anyone however I told the entire incident to my mother later. (The victim is a Down's syndrome person, she cannot speak clearly and as she can communicate in a sign language with her birth mother, she translated whatever her daughter narrated before the Court and the victim's statement/deposition is recorded in this manner).*

*The victim gets very emotional and she cried out loud time and again while deposing before the Court.*

*Cross examination by learned defence counsel*

*I know the person who raped me (this she narrated clearly on her own). I used to call him Asiama's father.*

*He invited me to watch TV and when I entered he closed the door. (She imitated how he asked her to take off her pant and she continued saying that she took off her pant as instructed).*

*When asked if she likes Asiama's father, she responded negative".*

(iii) PW-3 is the mother of the victim. She deposed that on the day of the incident she was at home with the victim and did not go the church. As she was not feeling well, she slept after a while. The victim went out after she slept and came back after some time and went out again. After she got up, she went to her neighbour Madini's residence where she found her daughter in tears. Madini told her that something was not right. She took her daughter home and on the way they met the accused and he signalled to the victim not to say anything. She called the accused to her house and upon reaching him she asked him what had happened. The accused

responded by saying that he did not touch her but was only playing with her and gave her a pat on her buttocks. In the meantime, the victim pointed at the accused like she was saying that he touched her. The accused responded saying "Nuno, I did not touch you". The accused left soon after and she took her daughter inside the room and questioned her further. The victim told her that the accused took her inside his house and took off her pants, kissed her and made her lie down on the chair and forcefully had sexual intercourse with her. She complained that her private parts hurt and when she checked her underwear she found blood in it.

(iv) PW-4 is the Police Officer who has recorded the section 161 Cr.PC statement of the victim. She deposed that she recorded the statement of the victim at the child corner room at Champhai police station. Her statement was recorded in the presence of her mother. Her mother translated the victim's statement. The victim stated that on 07.04.2019 she went to her friend Nate's house during morning church service time. When she returned home after sometime the accused invited her to his house saying "Nuno come to our house". After she went inside the accused locked the door and watched TV. The accused touched her breast and kissed on her lips and laid her down on the bench. He took off her pants and started touching her private parts. She told him that her vagina was paining and he said "hug me" and pulled her. She told him that her anus is also paining and asked him to let her go. Then she put on her underpants and went home. Her mother was sleeping during this time so she told her aunty as soon as she reached home. The victim then went to her friend Madini's place and she was weeping. It was then that her mother came and asked her what had happened.

(v) PW-5 is the Doctor who examined the accused. He deposed that the accused told him that he knew the victim personally and on the day of the incident he called the victim inside the shop and inserted his finger to her vagina. In his examination he saw scratches on the right side of his neck and on the right side of mandible.

(vi) PW-6 is the Doctor who examined the victim. She deposed that she examined the victim in the presence of her mother. The victim was a case of downs syndrome with sub normal intelligence and she could not explain the exact nature of the incident. However, she stated that the accused penetrated her but she cannot differentiate whether the penetration was on her vagina or anus. In her examination she found seminal stain on the private parts of the victim and laceration on her external genitalia and her hymen was ruptured. On being cross-examined, the PW-6 stated that the rapture of the hymen was old and not fresh.

(vii) PW-7 is the clinical Psychologist who conducted the psychological test on the victim. She deposed that the prosecutrix is capable of expressing facts in general. However, due to her intellectual disability, she is not capable of deciding what is good and what is wrong. In her cross-examination PW-7 stated that the victim has talking problem and it is hard to understand what exactly she is trying to say.

(viii) PW-8 is the Investigating Officer. She deposed that during investigation she visited the place of occurrence, and recorded the statement of the accused person, complainant and the witnesses. The accused person stated before the I.O that on 07.04.2019 when he was watching TV, the power supply went off. So he went out and saw the victim and took her to his house. He locked the door and took off the

victim's pants, touched her vagina and inserted his right middle finger into it. He reported himself at the police station on the night of 07.04.2019 as he was afraid of the victim's relative. The victim girl was sent for medical examination and the medical report showed that her hymen was ruptured, seminal stain was present and laceration was present on the external genitalia at the time of examination. The original birth certificate of the victim was seized and it was found that she was born on 16.04.1999 which proves that she was 20 years and 18 days at the time of the incident. The victim was also sent to the clinical Psychologist for assessment of her mental age and the Psychologist opined that the mental age of the victim is 6 years with IQ=40. He stated that a prima facie case under section 376 (2) (I) IPC was found well established against the accused person and the charge-sheet was accordingly filed. On being cross-examined PW-8 stated that the accused never confessed before her that he had inserted his penis into the vagina of the victim.

**13.** The brother of the accused person Mr. Ramlawmi was examined as DW-1. He deposed that on 07.04.2019 he had gone to his shop in the evening and was watching TV with the accused in his shop. The uncle of the victim pulled open the door of their shop and stormed inside the shop with other 5 people. They started assaulting his brother/accused and he told them that if his brother had done anything against them to please take him to the Police station instead of assaulting him there. He then hired an Autorickshaw for his brother and sent him to Champhai Police station. However in his cross-examination DW-1 stated that he did not know anything about what had happened between his brother and the victim.

**14.** The Court has considered the submissions of the learned counsel for

the parties, and perused the evidence adduced before the trial Court.

**15.** The prosecution case rests upon the testimony of the victim/Pw-2, the mother of the victim/PW-3, the Doctor who examined the victim/PW-6 along with the exhibit P-4/medical examination report of the victim and also the 313 Cr.PC statement and the section 164 Cr.PC statement of the victim.

**16.** In the case of *State of Punjab vs Gurmit Singh and Others* reported in **(1996) 2 SCC 384**, the Apex Court has held that if the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. It is settled law therefore that if the testimony of the victim is found to be natural, consistent and cogent, it can be acted upon even in the absence of corroboration. The prosecutrix in a case of sexual assault stands at par with that of an injured witness and bears great weight as it is unlikely that the victim of such an offence would falsely implicate another person while protecting the real perpetrator.

**17.** The victim in the instant case is no doubt a person with downs syndrome and according to the report of the clinical Psychologist dated 02.05.2019/exhibit P-5 she is a patient with a mental age of 6 years with IQ=40. However, this Court is of the view that even a mentally challenged person, who is able to understand the questions put to him and gives rational answers, can be a competent witness under section 118 of the Indian Evidence Act. The evidence of mentally challenged witness cannot be discarded merely because of mental disability. Mental retardation would not ipso facto render a witness incompetent. Normally a person with downs syndrome would have a problem with speech as speech advancement is delayed in such persons. However, such persons can communicate

effectively with their family members and loved ones and often use signs and gestures along with speech for communication. In the instant case it has been observed that the mother of the victim has been present with her throughout the trial starting from the time when she was medically examined; during her 164 Cr.PC statement recording and during her deposition before the Court. The trial Court has recorded clearly and specifically that the victim can communicate in a sign language with her birth mother who narrated her statement to the Court and the victim's deposition was recorded in this manner.

**18.** The Hon'ble Supreme Court in the case of ***Smruti Tukaram Badade Vrs State of Maharashtra*** in ***2022 SCC Online SC 78*** laid down comprehensive guidelines for the establishment of at least one Vulnerable Witness Deposition Centers in all Districts across the country. The Apex Court also expanded the definition of 'vulnerable witness' in ***Smruti Tukaram*** beyond just child witnesses to include survivors of sexual assault, individuals with mental illnesses and those with hearing/speech impairments. In pursuance to these directions all High Courts have framed guidelines for recording the evidence of vulnerable witnesses. The courts have to deal with such individuals as "vulnerable witnesses" and have specific protocols to ensure that their testimony is recorded. Under these guidelines the trial Court can appoint a 'support person' to assist the vulnerable witness, whether minor or major, to testify or attend judicial proceedings. The trial court can appoint the mother as a "support person" to help the victim communicate. The trial Court has therefore taken the assistance of the mother of the victim as a 'support person' to interpret. The victim in this case is a vulnerable person who has fallen prey to the lust of

the appellant who has taken advantage of the fact that she is vulnerable and they were alone in the room. This Court is of the view that the testimony of the victim is reliable and inspires the confidence of the Court. Under section 118 of the Indian Evidence Act, even a lunatic person is competent to testify. The appellant is placing reliance on technicalities, which in my view is not a plausible ground to discard the otherwise consistent and reliable testimony of the victim who is a 'vulnerable witness'.

**19.** This Court further finds that the version of the victim during the testimony before the Court is corroborated by her statement recorded under section 161 Cr.PC and 164 Cr.PC and also by the medical examination report and the testimony of PW-6/M.O. In all the three statements, the victim has mentioned about the sexual assault upon her by the accused. The consistency in her statements throughout the trial lends credibility to her version. In the cross-examination the defence was not able to rebut her testimony. Therefore, the plea by the appellant about the lack of corroboration has no substance. In fact the victim herein is found to be a "sterling witness" in terms of the definition as given in the case of *Rai Sandeep (supra)*.

**20.** In view of the above discussions, this Court is of the view that the learned trial Court has appreciated the evidence correctly and arrived at the finding of guilt of the appellant/accused. Accordingly, the conviction and sentence of the appellant is not interfered with.

**21.** The court records its appreciation for the services rendered by the Amicus Curiae. He is entitled to the prescribed fees.

**22.** Appeal is dismissed.

**23.** Registry to send back the TCR.

**Comparing Assistant**

**JUDGE**