



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

Case No. : CRAPL/1/2023

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA NAGALAND

Advocate for the appellant : Mr. M. Das Gupta & Mr. Medo Vero.
Advocate for the respondent : Mr. V. Zhimomi, Public Prosecutor.
Mr. Sentiyanger, *Amicus Curiae*.

BEFORE
HON'BLE MR. JUSTICE PRANJAL DAS

Date on which judgment is reserved : **09.06.2026**

Date of pronouncement of judgment : **20.07.2026**

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

Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Date : 20-07-2026
(Pranjal Das, J)

Heard Mr. Manas Das Gupta, learned counsel along with Mr. Medo Vero, learned counsel for the appellant. Also heard Mr. V. Zhimomi, learned Public Prosecutor for the State respondent No. Mr. Sentianger, learned *Amicus Curiae* for the respondent No. 2/informant.

2. The instant criminal appeal has been filed under Section 374 Cr.P.C against the judgment and order dated 11-04-2023 passed by the learned Special Judge (POCSO), Mon, Nagaland in G.R. Case No. 12 of 2022, arising out of Mon Women P.S. Case No. 1 of 2022. By the said impugned judgment and order, the appellant was convicted under Section 354 (A)(1)(i) of IPC, read with Section 12 of the POCSO Act. For his such conviction, the appellant was sentenced to 1(one) year 1(one) month and three weeks imprisonment.

3. The prosecution case in brief is that on 20.02.2022, a Zero FIR was forwarded to Mon Women police station by the O/C of Aboi P.S. about a complaint lodged by the mother of the victim, stating that the present accused, serving as G.T.(science) at G.M.S., Chaocha Chingnyu had sexually exploited her minor daughter under the pretext of treating her using stethoscope and applying ointment with his bare hand over her body, pressing her breast, stomach and private parts and also inserting his fingers there.

4. On the basis of the FIR, Mon Women P.S. case No. 1 of 2022 was registered under section 376(b)/354 I.P.C. r/w section 6 of the POCSO Act and investigation was initiated. After completion of investigation, a charge-sheet was filed against the appellant under section 354 I.P.C. r/w section 8 of the POCSO Act.

5. Thereafter, the learned trial court framed charges against the accused under section

354 I.P.C. r/w section 8 of the POCSO Act and upon the charge being denied, the trial commenced. During the trial, the prosecution examined 13 witnesses, including the victim, M.O. and I/O. After completion of the prosecution evidence, the appellant was duly examined under section 313 Cr.P.C. The defence did not adduce any evidence. After completion of trial, the appellant was convicted and sentenced as mentioned above. Hence, the appeal.

6. The learned counsel for the convict appellant submits that the foundational facts were not proved and that there was no gesture on the part of the accused to attract the sections under which he has been convicted. It is submitted that the victim and her brother had come for admission, but the question is why they came in the evening. It is submitted that the ingredients of sexual harassment are not met and that there was no intention or premeditation on the part of the accused. It is submitted that the use of stethoscope, even if it was there, was not illegal. It is submitted that the accused never misused the stethoscope. It is further submitted by the learned counsel for the appellant that the trial court erred in convicting the appellant for the sections for which he was not charged. The learned counsel reiterates his submission that use of stethoscope was not an illegal act. It is submitted that the appellant was convicted on presumptions.

In support of his contentions, the learned counsel for the appellant relies on the following decisions –

(i) Main Pal vs. State of Haryana, reported in Crl. Appl. No. 1696 of 2010.

(ii) Sujit Biswas vs. State of Assam, reported in Crl. Appl. No. 1323 of 2011.

(iii) Sangar Aboina Sreena vs. State of Andhra Pradesh, order dated 23.04.1997.

(iv) Shamnsaheb M. Multtani vs. State of Karnataka, Crl. Appeal No. 907 of 1998.

7. On the other hand, the learned public prosecutor submits that there is no illegality in the judgment and that the appellant not being a medical practitioner was not authorized to use a stethoscope. It is submitted by the prosecution that the testimony of the prosecution witnesses is cogent and that there is no contradiction between the testimony of the victim and the brother. The prosecution submits that the impugned judgment and order may be upheld and confirmed.

8. The learned *Amicus Curiae* appearing for the respondent No. 2/informant submits that the sentencing undertaken by the learned trial court indicates that the offence for which the appellant was convicted is a lesser offence. It is submitted by the learned *Amicus Curiae* that the brother, though present in the room where the incident took place, was not focusing on the body of his sister when the appellant was purportedly examining her. It is submitted that the stethoscope was used to commit a sexual offence. Summing up his submissions, the learned *Amicus Curiae* submits that the appellant as accused during the trial was unable to discharge the presumption under the POCSO Act and that he was rightly convicted and sentenced.

The learned *Amicus Curiae* representing the respondent No.2/informant in support of his contentions cites the following decisions –

(i) *Dehal Singh vs. State of Himachal Pradesh*, reported in (2010) 9 SCC 85.

(ii) *Ranjit Singh vs. State of H.P.*, reported in MANU/HP/0511/2020.

9. The original TCR as called for is received. A paper book has also been prepared and placed before the Court.

10. I have perused the appeal memo, the impugned judgment and order, the evidence on record before the trial court and other relevant documents and exhibits. I have considered the submissions of the learned counsels on both the sides.

11. During the trial, the victim girl adduced evidence as PW2. In her testimony, she

stated that she had taken admission in Class VI in her village's GMS but she did not attend the school due to the incident. After the incident, her parents took her to another school, where she is attending the GMS and continuing her studies. Testifying further, PW2 stated that on 17.02.2022, she was taken by her brother to the house of her teacher Om Prakash for school admission. She stated that she had gone to the house in the evening as the appellant had told her brother to come in the evening. PW2 further testified that on reaching the residence of the appellant, he told her to lie on the bed as he had to conduct a medical check upon her and accordingly, she removed her slipper and laid on the bed. Thereafter, the appellant put stethoscope by placing it on his ears and started touching her abdomen and breast with his palm. He did not use the stethoscope while examining her body though it was placed on his ears. PW2 testified that thereafter the appellant inserted his fingers inside her pant and started touching her private parts and inserted his fingers inside her vagina. After some moments, she was told to get up from the bed and sit on the bench. Thereafter, he applied an ointment on her abdomen. PW2 stated that he did not ask her whether she was having any ailment nor did she tell him that she was having any health problem. Thereafter, she saw the appellant writing in the register and they were asked to go home. PW2 stated that on the way back home, she did not tell anything to her brother as she was feeling shy and did not have the courage to narrate the incident. After reaching home, she took bath and changed her clothes and at that time she was feeling nervous, angry and embarrassed due to which she started shivering and crying. She also testified that as the appellant had caressed her abdomen, she was feeling a bit uneasy after taking bath. Her mother started questioning her as to what had happened and thereupon, she narrated the incident which took place at the house of the appellant. After two days, she was taken by the police to the hospital and examined by a doctor. She proved as Exhibit-P/2, the clothes which she was wearing at the time of the incident. During her deposition, she identified the accused present in the courtroom as the person who had sexually molested her.

12. In cross-examination, PW2 reiterated that the accused did not use stethoscope on her. She further stated in cross-examination that on 17.02.2022, when her brother came

back from the field after 6 pm, they went to the place of the appellant for admission. She admitted in cross-examination that her brother was sitting in the same room where she was there. She further stated in cross that her abdomen started paining after she took bath at home. She admitted that she was not pressed or touched by the appellant very hard. Though the statement of the victim girl recorded before learned judicial Magistrate during investigation is available in the record, but it is not clear as to whether it was exhibited during the trial. Nevertheless, in her statement, the victim girl stated that on 17.02.2022, she had gone with her brother to do for her admission to her teacher's house at Hoya Colony and her teacher's name is _____, who had taught her maths and social science the previous year. She stated that the appellant had specifically told them to come in the evening and accordingly, they went. It was also the last date for admission, so they were rushing. She further stated that on reaching his house, the teacher told that he would treat her and took her inside the room and made her lie on a bed. He had a stethoscope with him and he told her to show him her stomach. Thereupon, she pulled up her blue skirt just enough to show her stomach. She stated that she was holding her shirt, but the appellant pulled it up, exposing her breast and started caressing and massaging her all over the body. He also put his hand inside her pants. The victim further stated in her statement that she was holding her clothes, but the appellant managed to put his hand inside and started fingering her and thereafter, he put his hand on her back and started massaging her again and put some green colored medicine on her abdomen and then used his clothes to wipe her feet. She stated that she did not say anything, but she did feel good when he was doing all these things to her.

13. The relative brother of the victim girl, who was supposedly present with her at the time of the incident, adduced evidence during the trial as PW3. Thus, PW3 Wanpang Konyak testified that the victim is his relative and on 15.02.2022, he had gone to the school to take admission for his children and after taking admission, Rs 200/- was left with him. He stated that he knew that the victim had not taken admission and so he approached the accused for the victim's admission and at that time, the appellant accused was the teacher in charge of the GMS in their village. He further testified that

the appellant told him to come next day to his residence for the said purpose and so on 16.02.2022, he went to his residence, but he told him to come on 17.02.2022 along with the victim and so on the next day, i.e. 17.02.2022, at around 6pm, he took the victim for admission to the residence of the appellant along with Rs 200/-. Testifying further, PW3 stated that after reaching his residence, he called him out and the appellant told him to come inside the room and upon entering the room, he saw a bench placed near the door and on the opposite side, there were two beds, one of which was a smaller one and on the smaller bed, he saw a pillow and a stethoscope. PW3 testified that after the admission was done on paying Rs 200/-, they were told to pay the remaining amount of Rs 300/- on a later day and then the appellant told him that he will have to check the victim for any disease ailments, whereupon he thought that it was part of some school admission procedure. PW3 testified that the victim was made to lie down on the smaller bed and the appellant started to examine her using a stethoscope upon her. He stated that as he was sitting on the bench and the appellant examining the victim with his back towards him, he could not exactly see on which part of the body the appellant had examined or touched. He stated that at that time he felt a bit awkward and he went out to pass urine and by the time he returned, the appellant had finished the examination. PW3 stated that thereafter, he gave them eight cups of rice uniform for the victim and one pen. He dropped the victim at her house and went to his house. After some time, around 9/9.30 pm, the victim's father called him to his house and upon going there, he noticed that the victim was frightened and shivering, whereupon the victim's mother told him that accused had touched her breast and private parts while conducting check-up and that then only he realized that the appellant had conducted the check-up with bad intention. PW3 identified the appellant in the courtroom during deposition as the same person/teacher, to whom he had taken the victim for admission in the school.

14. In cross-examination, he stated that he was the cousin brother of the victim and also reiterated that he went to the house of the appellant at 6 pm for admission. He stated about the admission fee being Rs.500/- and he paid Rs.200/- in advance and accused accepting the same. He stated in cross-examination that the victim was fine on the day

when the admission was done. He stated that he had not seen the accused touching the victim or any sound from the victim. He admitted that the victim did not complain to him of any pain or sickness while returning. He stated that it is only his presumption that the small bed inside the room was for medical check-up.

15. Mother of the victim girl adduced evidenced as PW1. She is also the informant of the case and she testified that on 17.2.2022, her daughter had gone to her teacher, Om Prakash, in his residence for admission purpose and that she had gone in the evening as the accused had told them to come only in the evening to his residence. She stated that her husband was a sick person and she has to look after her minor children and she sent her daughter along with Wanpang to the house of the appellant and when she returned, she noticed that her daughter looked a little exhausted and initially she thought that she was tired by walking. But she then started to cry and told that she wants to take bath. PW1 told her that it was cold and already late but she insisted on taking bath. After the bath, she started shivering and crying and told that she was having abdominal pain – whereupon, she asked what had happened and she was looking frightened. Initially, she hesitated but upon asking her, she narrated the incident which happened at the residence of the appellant. PW1 testified that her daughter told her that the appellant had put stethoscope on his ears but did not use it and instead used his hand touching her abdomen and breast and also private parts and that he inserted his fingers inside her vagina. Upon hearing this, PW1 stated that she called Wanpang and upon reaching, she asked how such a thing could happen in his presence – whereupon, the said Wanpang stated that the appellant told him that he must examine the victim for any kind of diseases and therefore, he did not raise objection and that soon after the examination started, he went out of the room to attend nature's call. PW1 stated that she reported the matter to the V.G. of the village and on the next day with the help of student leaders, she wrote the FIR where she put her initials. She exhibited the FIR as Exhibit-P5. She identified the appellant as the teacher who had sexually molested her daughter. She also exhibited as Exhibit-P2 the clothes worn by her daughter that evening while going to the house of the appellant for admission. PW1 stated that she and her husband are not

literate persons and they are poor persons and taking advantage of their ignorance, the accused should not have molested her innocent minor girl.

16. In cross-examination, she stated that the incident took place on 17.02.2022 and a FIR was lodged on the next day. She stated that Wangpang is the cousin brother of the victim. She reiterated in cross-examination that after taking the bath, her daughter started shivering. In cross-examination, she reiterated that she was told by her daughter that she was molested by the appellant who fingered her private parts also.

17. PW4 is *B. Khamlep* who was an evaluation inspector in the evaluation department at the relevant time and he received information from one student leader while he was at Mon that one minor girl of the village was sexually molested by her teacher. Subsequently, he came to the village and talked to the mother of the victim who narrated about the incident but the victim did not talk as she was feeling ashamed and depressed. He testified about the student leader seizing some medicines and other items from the residence of the accused and which were later handed over to the police and he signed the seizure list in his connection which he proved during the deposition. He stated that he knew the accused very well as he was residing in the village for many years and also identified him in the courtroom at the time of his deposition. In cross-examination, he stated that the parents of the victim were illiterate.

18. PW5 is one *P. Nokshem* who testified that he was holding the post of VG Naik in the village and on 17.02.2022 at around 9 pm, the mother of the victim called him to their place immediately and upon reaching, she told him that in the evening her daughter had gone to the house of the accused accompanied by one relative and after coming back she started crying and told that the accused applied ointment and massaged her body and also touched her private parts. During deposition, the witness identified the accused present in the courtroom.

19. PW6 *M. Noklem* stated that at the relevant time he was holding the post of Action Committee Chairman of CCSU and on 17.02.2022 at around 9/9.30 pm, the VG of the village informed that a minor girl was molested by the appellant that evening in the

house of the appellant/accused. Subsequently, he along with others went to the house of the accused and upon searching his room found a good number of medicines and medical equipments like syringes, dish etc. including one stethoscope. He stated that he took out those medicines and submitted the same in the VG camp. He further stated in his deposition that during search of the room of the appellant, the witness saw a good number of medicine strips and few ointments on the table.

20. PW7 C. Pangyao Konyak testified that at the relevant time he was Executive Chairman of Choaha Chingyu Students' Union and on 17.02.2022 at around 9.30 pm, he was informed by the VG that the appellant who was a teacher posted in their village molested a minor girl and applied some kind of medicine on her body. Subsequently, he along with others on the next day went to the house of the accused and upon searching his room found medicines, medical equipments and also one stethoscope. These materials were taken to the VG camp. During deposition, he identified the appellant as the accused.

21. PW8 WPC *Manya* stated that at the relevant time she was posted in Mon Women police station as constable and while performing duty in the morning on 28.02.2022, the appellant was produced by the police of Aboi PS and she came to know that the accused was arrested on allegation of molestation of a minor girl. PW8 identified the accused in the courtroom. She exhibited the arrest memo as Exhibit-P4 and her signature thereon as Exhibite-P4A. She stated that she accompanied the I/O to the village for examination of the victim. She stated that in her opinion the minor victim would be about 12 to 13 years of age.

22. PW9 WPC Ngonyei testified that she was posted as woman police constable at the Mon Women police station at the relevant time and while doing duty on 20-02-2022, the appellant was produced at the police station and some clothes were seized from him. She saw some clothes in the police station which were stated to have been seized from the accused. She escorted the accused to the jail and upon reaching there, some police personnel showed her a box carton containing some medicines stating that these were

seized from the accused. She proved those seized medicines and items as Exhibit P3. She identified the accused in the courtroom during deposition.

23. PW10 is another WPC Aphon, who was posted in the Mon Women police station at the relevant time and she also stated about the appellant being brought to the police station by Aboi police and he was arrested for molesting a minor girl who was his own student. She exhibited the seized items as Exhibit-P3 and her signature as Exhibit-P3A on the seizure list. She mentioned the items as medicines, blood pressure machine, steel tray, stethoscope, etc. and stated that she was told that it was seized from the residence of the appellant.

24. PW11 is *Dr. Pangkhat Konyak* who testified that in 2022, while being posted at DH Mon, at 6.50 pm on 20-02-2022, a minor girl was brought by police personnel, some NGOs and accompanied by her mother. When he proceeded to take the history of the incident, the girl was scared and reluctant to narrate. He stated that he conversed with the in her dialect. The MO was explained by the mother what was conveyed by the victim, stating that the accused made her lie on a bed and started to touch her breast and private parts. Subsequently, he gave her pen, books and few cups of rice and went back home. PW11 stated that during examination, he did not see any physical injuries, including any injuries on her private parts and that her hymen was intact.

In cross-examination, he stated that the victim's mother stated that the appellant had molested the victim and touched her private parts. He reiterated in cross-examination that he did not find any injuries on the private parts of the victim and her hymen was intact.

25. PW12 is another MO, *Dr. Chimang*, who was posted at district hospital, Mon at the relevant time. On 20-02-2022, at around 1.30 am, Om Prakash Sah was brought to the hospital for examination by police, who told that he was accused of molestation. Upon examination, he found a bruise mark on the left temple and that apart did not find any significant injuries. The accused was medically examined by PW12, who exhibited the medical report as Exhibit-P1 and his signature thereon as Exhibit-P1A. He identified

the accused in the courtroom at the time of his deposition. In cross-examination, he reiterated that he found a bruise mark on his left temple and no other significant injuries or bruises.

26. PW13, *Shekhulu Dozo*, is the investigating officer of the case. In her deposition, she stated that she is the investigating officer of the case and that on 20-02-2022, zero FIR was forwarded to Women PS Mon by the OC of Aboi PS, along with the accused and seized material and on receipt of the same, Mon Women PS Case No. 1 of 2022 was registered under Section 376B/354 IPC, r/w Section 6 of POCSO Act and it was endorsed to him for investigation. PW13 has stated about the routine steps of investigation. He stated that upon examining the victim, she revealed that the accused conducted medical examination on her using stethoscope and touched her breast and private parts. Further stating that though her cousin brother was sitting on the bench in the room, he could not see the accused touching her body as he was sitting behind the accused. PW13 stated that during investigation, he recorded the statements of witnesses, visited the place of occurrence and took photographs which he exhibited. He stated that the stethoscope purportedly used by the appellant while touching the body of the victim was seized by student leaders along with other medicines and medical equipment from his quarter immediately after the incident and that he seized the same vide Exhibit-P3A upon being produced at the police station by the Aboi police. He stated that during investigation, he ascertained that these items were seized from the residence of the accused by the student leaders. He exhibited his signature on the seizure memo as Exhibit-P3(c) and P3(d) and seizure list exhibited as Exhibit P3(a). He also stated about seizing the clothes worn by the victim. PW13 stated that the accused did not produce any documents to show that he had knowledge of medical science or that he was qualified to medically examine any person. After completion of investigation, he submitted charge-sheet against the appellant under Section 354 IPC read with Section 8 of the POCSO Act. He exhibited the charge-sheet as Exhibit- P9 and the signature thereon as Exhibit-P9A. He also exhibited his signature as Exhibit-P5B on the FIR Exhibit-P5. He identified the accused in the courtroom at the time of his deposition.

27. In cross-examination, he stated that they received the zero FIR three days after the incident. He stated that he found that the stethoscope was not in working condition. He stated that the accused is a graduate teacher in the school and sometimes he uses stethoscope as a demonstration in the Class. PW13 was re-examined by the prosecution and during such re-examination he stated that during investigation he ascertained that the seized stethoscope belongs to one person named Bijoy who was residing in the village some years back and at that time he was residing with the accused. PW13 stated that during examination the accused did not say anything to justify his using of stethoscope to medically examine the victim even though he was not a medical practitioner.

28. With regard to the re-examination, PW13 was also cross-examined further and in such cross-examination he stated that he did not know the said Bijoy pharmacist personally but came to know him that he was running a pharmacy at the Chaoha Chingnyu village, through the statement of Khamlep (PW4) in the instant case.

DISCUSSION

29. I have perused the appeal memo, the evidence on record, the exhibited documents and other relevant materials. I have considered the submissions of the learned counsel for the petitioner, the prosecution and also the learned *Amicus* appearing for the informant. I have perused the decisions cited at the Bar.

30. During the trial, charges were framed against the appellant under section 354 IPC, read with Section 8 of POCSO Act. However, upon completion of trial, he was convicted and sentenced under section 354 A 1(i) IPC, read with section 12 of the POCSO Act.

31. Section 354 IPC criminalizes the act of using assault or criminal force upon a woman with intent to outrage her modesty. Section 8 of the POCSO Act imposes punishment by way of imprisonment and fine for the act of committing sexual assault upon a minor. Sexual assault under the POCSO Act is defined in section 7, which may

be reproduced herein below –

Sexual Assault- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

32. On the other hand, section 354 A IPC explains the ingredients of sexual harassment and punishment for sexual harassment. The said section 354 A IPC may be reproduced herein below –

Sexual harassment and punishment for sexual harassment.- (1) A man committing any of the following acts –

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

33. It may be mentioned herein that in this case, the appellant has been convicted and

sentenced, amongst others, under section 354 A 1(i) IPC, which criminalizes the act of make physical contact and advances involving unwelcome and explicit sexual overtures.

34. Under the POCSO Act, sexual harassment is defined in section 11 and section 12 of the Act provides the punishment for sexual harassment. Both section 11 and section 12 of the POCSO Act may be reproduced herein below –

11. Sexual harassment.-A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.- Any question which involves "sexual intent" shall be a question of fact.

12. Punishment for sexual harassment. Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

35. During the trial, the testimony of the victim girl as PW2 shows that under the pretext of conducting medical examination with a stethoscope, the appellant made her expose her abdomen and thereafter further lifted her clothes to expose her breast and then he massaged her abdomen, breast and touched her private parts and even inserted his finger in her private parts. The testimony of the victim girl as PW2 in her examination-in-chief is clear and cogent that the appellant did this act with her at the time of purported examination with a stethoscope. In her statement recorded before learned JMFC also during investigation, she has described the act of the appellant on almost identical lines. However, it appears that unfortunately the prosecution did not exhibit the said statement of the victim girl recorded under section 164 Cr.P.C. and therefore, I am not taking that into account.

36. Nevertheless, the testimony during the trial is clear and cogent. The testimony of the victim is clear and cogent in her examination-in-chief and such testimony of the victim girl remains completely unshaken in cross-examination. It has emerged from the evidence produced by the prosecution that the appellant was a teacher and he was not medically qualified in any manner to conduct medical examination. In fact, the victim in her testimony has stated that though he put the stethoscope on his ears but while touching her inappropriately on her abdomen, breast and private parts, he did not use the stethoscope at all. Therefore, it is clear from her testimony that not only the appellant was not a doctor qualified to conduct medical examination, but the use of the stethoscope at the time of examination was merely a pretext to touch and explore the body of the victim girl in an inappropriate manner. Another statement that has emerged from the testimony of the victim girl is that the appellant applied an ointment on her abdomen and she clearly stated in her testimony that she was not having any ailment nor did she tell him about any health problem. It has already been mentioned above that the

prosecution evidence clearly shows that the appellant was not a qualified medical personnel to conduct any medical examination upon the victim girl and that was not related to her seeking admission in the school for which she had gone to the house of the appellant.

37. The learned counsel for the appellant has contended as to why the victim girl had gone to the house of the accused in the evening. On this point, it has emerged from the testimony of her accompanying relative that the appellant called them in the evening to his house for the purpose of the admission to the school. The victim girl has clearly stated about being accompanied by her relative cousin brother who adduced evidence as PW3. It does not emerge from the testimony of PW3 about the improper acts of the appellant. However, it has emerged from the testimony that he was waiting in the room and the appellant was conducting the examination on the victim girl with back towards him and after a little while he, upon feeling a little uncomfortable, went out to urinate and when he came back, the examination was already over. The victim did not tell him anything on the way back due to shyness and she revealed only to her mother when she kept asking her insistently upon seeing her anxiety to take bath, despite the cold and thereafter crying and shivering. Only at that point the victim who was mentally distressed due to the improper act of the appellant revealed the incident to her mother who then informed other people. The testimony of the prosecutrix about reporting the incident to her mother is corroborated by her mother who is also the informant and adduced evidence as PW1. She has also stated about being reported about the incident on the lines described by the victim girl in her own testimony. PW1 stated about calling the accompanying cousin brother and this has also emerged from the testimony of PW3 that he was asked to come quickly to their house in the night on the same day by the mother of the victim girl.

38. One interesting aspect that emerges from the examination of the appellant under section 313 Cr.P.C. is that in answer to question No.3 he clearly stated that he never used a stethoscope for checking the victim and that it was just a study material which was not in a working condition – stating further that he is a science teacher and he kept

the stethoscope to use a study material. In answer to question No.8 the appellant stated that he did not touch the victim. These two answers prove to be false in view of the clear testimony of the victim supported by other parts of the prosecution evidence that the appellant put on the stethoscope on his ears on the pretext of medical examination but proceeded to touch the victim girl inappropriately over her abdomen, breast and private parts. Therefore, it is quite clear that putting on the stethoscope was a mere pretext of giving an impression of medical examination though the actual intent and act of appellant was to inappropriately and sexually touching the victim girl.

39. From the testimony of PW 11, the MO, it is revealed that no injuries were found on her body including private parts but considering the nature of acts attributed to the appellant this is compatible with the cogent testimony of the victim. In fact, in her cross-examination, the victim has clarified that the appellant did not press or touch her very hard. It has emerged from the testimony of the IO (PW13) and several other prosecution witnesses that apart from the stethoscope, medicines and some medical equipments were also seized from the room of the appellant and PW13, the IO also testified that the appellant did not produce any documentary evidence to show that he was medically qualified to examine any person. The fact that the stethoscope was a mere pretext is also fortified by the statement of the IO (PW) 13 in his cross-examination that he found that the stethoscope was not in working condition. In any case the same is also stated by the appellant in his examination under section 313 Cr.P.C. in answer to question No. 3 as already discussed.

40. Thus, I find from the perusal and appreciation of the prosecution evidence that the testimony of the victim is found to be clear and cogent. The testimony of her mother (PW 1), the informant and the accompanying cousin brother (PW 3) lend support to the facts and circumstances surrounding the incident. Though PW 4, PW 5, PW 6 and PW 7 are not eyewitnesses and they have been reported to about the incident but nevertheless, their testimony lends broad corroboration to the incident and the nature of the incident testified to by the victim girl. These witnesses have also stated about knowing the appellant and identified him during the trial.

41. Upon considering and appreciating the entire prosecution evidence especially, the testimony of PW 1, PW 2 and PW 3, it is proved beyond reasonable doubt that on the day of the incident, when the victim girl along with her cousin brother went to the house of the appellant as called by him for the purpose of admission, he on the pretext of subjecting her to medical examination using a stethoscope exposed her abdomen, touched her inappropriately on the abdomen, breast, private parts and even inserted his finger in her private parts. On the basis of the evidence on record, the ingredients of section 354 IPC and Section 8 of the POCSO Act had been proved during the trial. However, unfortunately the trial court overlooked the said aspect and did not convict and sentence the appellant under section 354 IPC and Section 8 of the POCSO Act. The prosecution also did not choose to prefer an appeal against the acquittal of the appellant for the penal provisions of section 354 IPC and section 8 of the POCSO Act.

42. As stated at the outset, the learned trial court despite the said acquittal proceeded to convict the appellant for the offence of sexual harassment under the IPC and the POCSO Act. Going back to the statutory provisions under section 354(A)(i) IPC under which the appellant was convicted and sentenced, a man committing an act of physical contact and advances involving unwelcome and explicit sexual overtures would be guilty of the offence of sexual harassment under the IPC. Similarly, under Section 11(ii) of the POCSO Act, if a person with sexual intent makes a child exhibit his body or any part of the body so that they are seen by that person or any other person, he would be said to commit sexual harassment. In the context of these ingredients, when the improper act of the appellant is considered, it can also be said to fall within the ambit of sexual harassment under the IPC as well as under the POCSO Act, at least within the ambit of Section 11 (ii) of the POCSO Act. It is clear that the ingredients of section 11 (ii) of the POCSO Act would be satisfied as the appellant on the pretext of medical examination made the child victim expose her abdomen and thereafter, proceeded to touch her inappropriately on breast, abdomen and private parts. The subsequent acts clearly indicate that the act of the appellant in exposing the abdomen of the child was with a clear sexual intent to commit these sexual acts. Therefore, I do not find infirmity in the

conviction of the appellant under Section 12 of the POCSO Act, 2012 read with section 354(A)(i) of IPC.

43. The decision in *Main Pal (supra)* relied upon by the appellant side would not come to the aid of the appellant in defeating the impugned judgment and order. The said judgment discussed the aspect of fair trial and prejudice to the accused in certain situations. The decision in *Sangar Aboina Sreena (supra)* is about alteration of charge and conviction for minor offence and in that case section 306 IPC was held to be not a minor offence to section 302 IPC. The decision in *Shamnsahed M. Multtani (supra)* discusses the ambit of section 222 of the Cr.P.C. regarding the test of minor offence. The decision in *Sujit Biswas (supra)* discusses the aspect of two views especially, in cases based on circumstantial evidence. These decisions in my considered view would not come to the aid of the appellant – as I have found that the ingredient of section 11(ii) of the POCSO Act of making the child exhibit a body to be seen by that person and such act done with sexual intent comes within the definition of sexual harassment and in the instant case, it has been found that the acts of the appellant would also fall within the ambit of said ingredient.

44. The learned amicus Curiae for respondent No. 2 relies upon the decision of *Dehal Singh (supra)* which is pertaining to the well settled principle that the statements under section 313 Cr.P.C. are not evidence as they are not tested by cross-examination. In *Ranjit Singh (supra)* rendered by the Himachal Pradesh High Court, a conviction under 307 IPC was converted into a conviction under section 326 IPC considering it a minor offence. The decision in *Shamnsahed M. Multtani (supra)* rendered by the Karnataka High Court proceeds on a different trajectory as in that case the court held that the person cannot be convicted and sentenced for a major offence punishable with higher imprisonment than one for which he is charged.

45. Coming back to the facts of this case and to conclude, I find that there is no infirmity in the conviction of the appellant recorded by the learned trial court and the same is **upheld and confirmed**. The offence of sexual harassment under the POCSO

Act is punishable with imprisonment up to 3(three) years and also fine. It is submitted at the bar during the hearing that appellant has already undergone the sentence of one year, one month and three weeks imposed by the learned trial court. In any case, I do not find any scope for interference with the sentence imposed by the learned trial court as it is already on the lower side considering the despicable act of the appellant upon a minor child who had gone to him to seek admission in the school in which he was a teacher. Consequently, the impugned judgment and order dated 11-04-2023 passed by the learned Special Judge (POCSO), Mon, Nagaland in G.R. Case No. 12 of 2022, arising out of Mon Women P.S. Case No. 1 of 2022 is **upheld and confirmed**.

46. Resultantly, the criminal appeal stands dismissed and disposed of.

47. Returned back the original TCR.

JUDGE

Comparing Assistant