

GAHC030002872025



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

Case No. : CRL.A(J)/28/2025

VERSUS

The State of Mizoram
Aizawl

Advocates for the appellant : Mr. H. Zodinsanga,
Legal Aid Counsel.

Advocate for the respondent : Ms. Mary L Khiangte,
Addl.P.P., Mizoram.

:::BEFORE:::
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MR. JUSTICE BUDI HABUNG

Date of hearing and judgment : 29.07.2026

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

1. Heard Mr. H. Zodinsanga, learned Legal Aid Counsel for the appellant and Ms. Marry L. Khiangte, learned Additional Public Prosecutor for the State.

2. This appeal has been filed against the impugned judgment dated 05.07.2023 passed by the Additional Sessions Judge-1, Aizawl in S.R. No. 110/2019 (Criminal Trial No.1787/2019), arising out of Darlawn-PS Case No.5/2019 dated 23.07.2019, by which the appellant has been convicted under Section 376(2)(f) IPC and sentenced to undergo rigorous imprisonment for 15 years and to pay a fine of Rs.10,000/-, in default rigorous imprisonment for another 3 months, vide sentence order dated 07.07.2023.

3. The appellant has challenged his conviction by the learned Trial Court on the charge of having raped his own mother. The brief facts of the case is that an FIR dated 23/07/2019 was submitted by the prosecutrix to the Officer-in-Charge of the Darlawn Police Station, stating that on 23/07/2019 at around 4 p.m, her son had raped her inside their home. Pursuant to the FIR, Darlawn-PS Case No.5/2019 under Section 376(2)(f) IPC dated 23/07/2019 was registered.

4. After the prosecutrix was brought to the hospital for medical examination, the Investigating Officer had the prosecutrix's statement recorded under Section 164 Cr.P.C and examined the witnesses, charge-sheet was filed by the Investigating Officer (PW-5), on having found a *prima facie* case against the appellant under Section 376(2)(f) IPC.

5. Charge was framed by the learned Trial Court against the appellant under Section 376(2)(f) IPC, to which the appellant pleaded not guilty and claimed to be tried.

6. The learned Trial Court thereafter examined 5 Prosecution Witnesses and having come to a finding that the appellant had raped his mother, the appellant was convicted and sentenced under Section 376(2)(f) IPC.

7. The learned Legal Aid Counsel for the appellant submits that the only challenge that he could muster up against the impugned judgment, was that there were discrepancies in the Section 164 Cr.P.C statement made by the prosecutrix vis-a-vis her testimony before the learned Trial Court. He also submits that the sister of the appellant, who was listed as a Prosecution Witness in the charge-sheet, had not been examined by the learned Trial Court. The learned Legal Aid Counsel submits that the sister was the first person to whom the prosecutrix had confided to, regarding the prosecutrix being raped by the appellant. As such, the evidence of the sister of the appellant, who was listed as PW-5 in the charge-sheet, should have been recorded by the learned Trial Court, to prove the fact that the appellant had raped his own mother. He submits that in view of the above reasons, trial has been vitiated and accordingly the impugned judgment should be set aside.

8. The learned Additional Public Prosecutor on the other hand, submits that there is no discrepancy or contradiction in the statement of the prosecutrix made under Section 164 Cr.P.C vis-a-vis her testimony given during the trial before the learned Trial Court. She also submits that a reading of the statement of the prosecutrix and her testimony shows that there was no discrepancy that touched upon the core issue regarding the fact that rape had been committed by the appellant on the prosecutrix. Further, there was no reason provided by the appellant, as to why the appellant's mother would have made a fabricated

case against the appellant (son). The evidence of the neighbour of the appellant, i.e. PW-3, also implies that the appellant had raped his mother, inasmuch as, the prosecutrix had told PW-3 that "it is something like that", when asked if she was raped. She also submits that the medical evidence corroborates the testimony of the victim, as there was injury on the labia minora of the prosecutrix. As there is no reason to doubt the testimony of the prosecutrix, the appeal should be dismissed.

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

10. The evidence of PW-1, who is the prosecutrix, is to the effect that the appellant was her eldest son amongst five children. She and her husband had divorced a long time back when the children were small and she had been looking after all her children. In the year 2019, only the appellant was staying with her, while the rest of the children were away from home. The appellant occasionally drank and used to create trouble at home. On 23/07/2019, she went to the bank to withdraw money from her account. After withdrawing the money, she went to a tea stall and had lunch. Thereafter, she went home around 4 p.m. in the evening. As the appellant and his friend were drinking alcohol in her house, she scolded them. Except for one friend, her son left with his other friends. Her son came back while she was cooking dinner and asked her for Rs.200/-. When the appellant saw the Rs.500/- that the prosecutrix had, the appellant asked her to give him the Rs.500/- saying that he would return Rs.300/-. On giving the appellant Rs.500/-, the appellant left and came back home and gave back Rs.500/-. After this, the appellant broke the brite bucket

and filter and injured his hand while hitting the mirror. The prosecutrix then bandaged the bleeding hand of her son. The appellant slept on a long chair while the prosecutrix continued cooking. The appellant then called her to sit beside him. The moment the prosecutrix sat down, the appellant put his hand on her neck and made her bend down. The prosecutrix tried to break free and got up. The appellant also got up and locked the door. Though the prosecutrix tried to open the door, she was prevented by the appellant. The appellant then chased the prosecutrix inside the house and forced her on to the floor. The prosecutrix then reminded the appellant that they were mother and son. The appellant then said that it does not matter even if they were mother and son. He tried to touch her breast and the prosecutrix tried to stop him. As the appellant was very strong, the prosecutrix could not stop him. When the appellant pulled up her skirt and pulled down her underwear, the appellant then stuffed the edge of her skirt inside the private parts of the prosecutrix. The prosecutrix then told him that it was painful. The appellant then inserted his penis into the private parts of the prosecutrix 2/3 times. On the prosecutrix telling the appellant that it was painful, the appellant inserted his finger inside the private parts and the appellant ejaculated. After this, the appellant forcefully took the prosecutrix to the bed and tried to rape her again. But appellant's penis could not become erect. The prosecutrix then told her daughter who was in Aizawl over phone about the incident. The daughter kept on crying after hearing about the incident. The daughter then informed one _____, who took the prosecutrix to the residence of the Village Council President on the same night. The Village Council President informed the Police and an FIR was lodged on the same night. She was then taken to a Medical Officer for examination on the next day.

In her cross-examination, the prosecutrix denied the suggestion that the appellant did not rape her.

11. The evidence of PW-2, who is the Medical Officer posted at Darlawn PHC, is to the effect that on 24/07/2019, he received a request for a medical examination of the prosecutrix. On examining the prosecutrix, he found that there was fresh laceration on the labia minora of the prosecutrix.

12. The evidence of PW-3, who is the neighbour of the prosecutrix, is to the effect that she knew the appellant. On the night of 23/07/2019, at about 8 p.m the prosecutrix came to her house and knocked on the door. While opening the door, she found the prosecutrix looking very frightened. The prosecutrix came inside their house and asked for the husband of PW-3. However, PW-3's husband was not at home. PW-3 then stated that as the prosecutrix was very frightened, she asked the prosecutrix what had happened or if her son had assaulted her or created trouble at home. As the prosecutrix did not say much, PW-3 then asked her again if her son had done anything to her or had even raped her, to which she replied, "it is something like that". PW-3 also stated that while the prosecutrix was in her house, the prosecutrix's daughter called her from Aizawl. Thereafter, the prosecutrix handed over the phone to PW-3, who then spoke with the daughter, who was crying. The daughter of the prosecutrix then asked PW-3 if she had not heard her mother's anguished cry. PW-3 then told the daughter of the prosecutrix that they heard nothing as they were listening to the radio loudly. Then the prosecutrix's daughter asked PW-3 to let her mother stay over at their house. PW-3 also stated that the prosecutrix's

daughter told her that she had informed the leader of the MHIP, Ratu about the incident. Thereafter, the prosecutrix went home as she said that she had not had dinner yet. PW-3 then asked the prosecutrix to come back to their house. PW-3 further stated that she heard that the prosecutrix was then taken care of by the MHIP, Ratu and that the appellant had been arrested by the Police in the middle of the night. She also stated that the appellant was a daily labourer and a habitual drinker.

13. The evidence of PW-3 shows that when she was asked as to whether she had been raped by her son, she stated "*Chutiang deuh chu a ni mai*". The literal meaning of the above in the Mizo language is "it is something like that". However, manner of use of the said phrase is to be interpreted to mean that it had happened. MHIP is a woman organization in the State of Mizoram.

14. The evidence of PW-4, is to the effect that on the night of 23/07/2019 at around 8.50 pm, she received a call from the daughter of the prosecutrix, informing her that the appellant had raped the prosecutrix inside her mother's house. PW-4 and one other person then went to the house of the Village Council President and after informing him about the incident, the Darlawn Police Station was informed. The victim had also arrived by then and the victim was then taken to the house of the Village Council President and the Police arrived thereafter.

15. The persons who are listed as PW-5 and PW-6 in the charge-sheet, did not appear before the learned Trial Court to give evidence.

16. The evidence of PW-7, who is the Investigating Officer, is to the effect that on 23/07/2019 at around 12 midnight, a written FIR was received from the prosecutrix, who stated that on 23/07/2019 at around 4 pm, she had been raped by the appellant inside their residence. Hence, Darlawn PS Case No.5/2019 dated 23/07/2019 under Section 376(2)(f) IPC was registered. After investigating the case and examining witnesses, having the victim examined by a doctor and having her statement recorded by the Magistrate under Section 164 Cr.P.C, he submitted the charge-sheet as he found a *prima facie* case established against the appellant under Section 376(2)(f) IPC.

17. The examination of the appellant under Section 313 Cr.P.C shows that the stand of the appellant was that he was drunk on the evening of the alleged incident and he could not remember anything. He also stated that he did not believe that he was capable of doing such an act.

18. The statement made by the prosecutrix under Section 164 Cr.P.C is reproduced here-in-below as follows :.

"On the eve of 23/7/2019 when I returned from the bank, my son and his friends were drinking alcohol in our house. I scolded them and his friends left. After realizing that I have withdrawn money from the bank, he asked me for Rs.200/- and as I did not have any change he asked me for Rs.500/- instead. After he returned home, he told me that he did not use any of the money and he kept the Rs. 500/- on the table. In his drunken state, he got angry and he broke the mirror with his hands and damaged some of the goods that we own. I helped bandage his hand as it was bleeding profusely. I then went outside to cook a meal and as he kept calling me I went closer to him. He then told me that he

missed me and he invited me to lie down next to him. I told him that I was too busy to sleep. He however pinned me to bed when I was about to get up and he started touching my breasts. He said "I am your son and I would like to touch your breasts. He then took off my skirt, pants and clothes while pinning me down on the bed and he tried to copulate with me. I reminded him that I was his mother and that sort of behavior is unacceptable between a mother and her son. He however did not listen and he then raped me. He spread my legs and he inserted my petticoat and his fingers inside my private part. He again took me to the bed after raping me and he tried to rape me again here however he said "That should be enough" and he did not touch me again. His friend MST-a turned up and they left together. While he went out I called my daughter on the phone and told her about the incident. She informed others and we decided to lodge an FIR thereafter."

19. A reading of the testimony of the prosecutrix and the corroboration of the same by her statement made under Section 164 Cr.P.C, proves that rape had been committed by the appellant. Though the appellant's counsel has tried to make out a case that there was some discrepancy in the testimony of the prosecutrix vis-à-vis her statement made under Section 164 Cr.P.C, we are unable to find any discrepancy. In fact the testimony of the prosecutrix appears to be truthful and reliable and is corroborated, without any discrepancy.

20. The evidence of the doctor also corroborates the evidence of the prosecutrix that she had been raped. Further, there is nothing in the explanation given by the appellant in his examination under Section 313 Cr.P.C, which cast a doubt on the authenticity of the testimony of the prosecutrix. We are also of the view that the testimony of PW-3, regarding the behaviour and answer given by the prosecutrix to PW-3, also corroborates the crime and trauma suffered by the prosecutrix.

21. In the case of ***R Shahji vs. State of Kerala***, reported in ***(2013) 14 SCC 266***, the Supreme Court has held that statements made under Section 164 Cr.P.C can be used for both corroboration and contradiction.

22. In the case of ***Bhanei Prasad alias Raju vs. State of Himachal Pradesh***, reported in ***2025 SCC OnLine SC 1636***, which is with regard to upholding the conviction of the accused therein under Section 6 of the POSCO Act, regarding rape of a minor by the father of the victim, the Supreme Court held that incestuous sexual violence committed by a parent is a distinct category of offence that tears through the foundational fabric of familial trust and must invite the severest condemnation in both language and sentence. The home, which should be a sanctuary, cannot be permitted to become a site of unspeakable trauma, and the Courts must send a clear signal that such offences will be met with an equally unsparing judicial response. To entertain a plea for leniency in a case of this nature would not merely be misplaced, it would constitute a betrayal of the Court's own constitutional duty to protect the vulnerable.

23. In the present case, the perpetrator of the crime is the 33 year old son, who had committed the heinous crime of rape against his own mother. We are of the view that the observation made by the Hon'ble Supreme Court in the case of ***Bhanei Prasad alias Raju (supra)*** would also be applicable to a certain degree in the present case.

24. It is settled law that the evidence of a victim of rape and/or sexual assault is to be considered as equivalent to an injured witness, if not more. Further, conviction can also be made on the sole evidence of a rape victim, provided the Court finds the same to be truthful and inspires the confidence of the Court. In the present case, when there is no reason to show that the appellant would have fabricated a rape case against her son, which would not only tarnish her reputation, but also the reputation of the family, before the eyes of society, it cannot be said that the said case is a fabricated case.

25. With regard to the daughter of the prosecutrix not being examined by the learned Trial Court, we do not find that the same vitiates the trial or causes any prejudice to the appellant, as the said witness was not an eye-witness.

26. On considering all the above facts, we do not find any ground to interfere with the impugned judgment and order.

27. Appeal is accordingly dismissed.

28. Send back the TCR.

29. In appreciation of the assistance provided by the learned Legal Aid Counsel for the appellant, his fees should be paid the State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant