

Serial No. 09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.10/2021

Date of Order: 27.03.2023

Perment Marngar Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. K.Ch.Gautam, Adv with
Ms. F. Langbnang, Adv

For the Respondents : Mr. K. Khan, PP with
Mr. S. Sengupta, Add.PP

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is directed against a judgment of November 19, 2020 and the consequent order pronounced on November 24, 2020 whereunder the appellant herein has been sentenced to 10 years' imprisonment with a fine of Rs.20,000/- upon his conviction for an offence punishable under Section 376 of the Penal Code, 1860. The fine has been directed to be paid to the victim upon realisation. In default of payment of the fine, the

appellant has been directed to a further two months' rigorous imprisonment. The appellant has also been convicted under Section 506, Part II of the Penal Code and sentenced to seven years imprisonment with the prison sentences running concurrently.

2. The first information report came to be lodged on July 15, 2010 at the Nongstoin Police Station where an uncle of the survivor, said to have been 14 years old at the time of the incident, complained that his niece had been raped by the appellant herein on July 9, 2010. For good measure, the complainant indicated that the delay in lodging the FIR was because he was away and it was only upon the complainant's return on July 14, 2010 that the complainant learnt of the incident.

3. The investigating agency immediately obtained a statement of the survivor and had her medically examined. In course of the medical examination, it was discovered that the hymen of the girl was ruptured and she complained of pain and tenderness near the vagina. The doctor who conducted the examination was of the opinion that there was evidence of recent sexual intercourse, though he added a caveat that a final word in such regard could be said only upon receiving the forensic science laboratory report.

4. The relevant medical practitioner deposed in court and sustained his opinion without any real doubt as to its veracity being brought out on behalf of the appellant herein.

5. The survivor also recorded a statement under Section 164 of the Code of Criminal Procedure, 1973 wherein she clearly asserted that on July 9, 2010, the appellant “gagged my mouth from the back with a bare hand and dragged me to a secluded space in the garden and sexually exploited me there...” The girl added that she tried to resist the appellant but she could not. However, she claimed that she was able to get rid of the appellant by biting him on his hand. She claimed to have narrated the incident to one person on the same evening and to her mother the following day. In course of her deposition in court, in the examination-in-chief, the material evidence of the survivor was as follows:

“(The appellant) suddenly came from my back and forcibly pulled me to a nearby maize garden located very near the house I was working at Umjakoit village. In the maize garden where he dragged me I resisted and bite his hands by my teeth on the right hand. The said accused then attempted to fell on me on the ground but because of my strong resistance and the bite I inflicted on him I luckily got myself relief from his clutches and returned to the house where I was working. The said accused person failed in his attempt to forcibly sexually ravish me...”

6. The records reveal that even before the witness could be cross-examined, the re-examination of the survivor was permitted. Ordinarily,

even if a witness has completed the examination-in-chief and the matter is adjourned to a later date thereupon, the witness may still offer to make some additional statements, subject to leave being granted by the court and the same would be recorded as a part of the examination-in-chief since it would precede the cross-examination. Usually, re-examination would come after cross-examination. Indeed, Section 137 of the Indian Evidence Act, 1872 describes the initial examination of a witness by the party who calls him as the examination-in-chief followed by cross-examination which involves the examination of such witness by the adverse party. The further examination of the witness, subsequent to the cross-examination, by the party who called him, is defined as re-examination.

7. Thus, the word “re-examination” used in recording the deposition of the survivor who was examined as PW-4 appears to have been erroneous. What may have transpired is that upon the prosecution indicating that the examination-in-chief of PW-4 had been completed, the matter may have been adjourned for the cross-examination to be taken up on a later date; but before the cross-examination could begin on the later date, a prayer may have been made on behalf of the prosecution to further examine PW-4. Such further examination ought to have been recorded only

as a part of the examination-in-chief, but was erroneously recorded by the trial court as re-examination.

8. However, notwithstanding the flawed procedure adopted by the trial court, what is undeniable is that in the first part of the examination-in-chief, the survivor clearly stated that the appellant herein was unable to have sexual intercourse with her because she bit him in the hand; and, in the later part of the examination-in-chief, erroneously recorded as re-examination on March 12, 2013, the survivor claimed that on the relevant date, the appellant had sexually ravished her. In her own words, “the said accused tore open my panty (underwear) and dragged me towards a maize garden, fell me on the ground (*sic, forced me on the ground*) and forcibly committed sexual intercourse on me.” It is difficult to reconcile the first part of the survivor’s statement that the appellant had been unable to sexually exploit her on the relevant date with the second part of the survivor’s assertion that the appellant had sexual intercourse with her. There appears, also, to be some form of suggestion by the survivor that some word that she had used in her dialect may have had a different meaning from how it is known in Khasi language.

9. Much is sought to be made out of the apparent contradictory statements made by the survivor at the time of the trial. However, the

survivor's initial statements under Section 161 and under Section 164 of the Code substantiate her later assertion in court in examination-in-chief at the trial that she was penetrated in her vagina by the appellant herein and she was raped. Further, the de facto complainant who lodged the FIR claimed that the survivor narrated the incident to her mother and also narrated the same incident to the de facto complainant. The investigating officer also perceived that the survivor had consistently maintained that she had been raped by the appellant. In such circumstances, the initial part of the survivor's examination-in-chief may be taken to be a somewhat erroneous recording or mistaken translation from the particular dialect of Khasi that the survivor spoke as was attempted to be indicated by the survivor in the later part of her testimony in court.

10. At any rate, there is a confession of the appellant herein recorded under Section 164 of the Code. Though the appellant claims that the alleged confession cannot be looked into since he was administered oath and then his statement obtained, since the appellant's description of the incident matches the survivor's description thereof, there is little need to look beyond such confessional statement.

11. In such statement rendered before an Executive Magistrate, the appellant herein claimed that after the survivor had relieved herself nearby,

the appellant caught hold of the survivor, “gagged her mouth and threatened that I will stab her with my knife if she screamed.” He went on to add that he “pulled down her undergarments and penetrated her vagina.” To boot, he repeated in a sentence or two later that “I raped her that night”. The appellant also confessed that he had told the maternal uncle of the survivor that he had violated her and then he surrendered at the Nongstoin Police Station on July 16, 2010.

12. When the matter was previously taken up, it was contended on behalf of the appellant that since the statement of the appellant under Section 164 of the Code had been recorded under oath, such statement could not be relied upon. In view of the recent judgment of this Court in Crl.A.No.6 of 2020 (*Shri Prosteroy Lyngkhoh v. State of Meghalaya*) delivered on April 26, 2022, to the effect that the mistaken administering of oath before recording a confessional statement would not, by itself, render the statement nugatory, such argument of the appellant is not acceptable.

13. It was further contended on behalf of the appellant herein that he clearly indicated to the trial court that he had completely denied having raped the survivor in course of his statement recorded under Section 164 of the Code. However, the relevant Magistrate, who was examined as PW-7,

was steadfast in his examination that the confessional statement had been made by the appellant herein and that such Magistrate had strictly complied with the requirements of Section 164 of the Code while recording the statement.

14. Apart from the fact that the relevant Magistrate was not cross-examined and, as such, the appellant has to accept his version of things, the appellant's assertion in course of his examination under Section 313 of the Code, that he did not make any confession, cannot be countenanced in the light of the deposition of PW-7 not being challenged.

15. It is submitted on behalf of the appellant in course of the hearing before this Court that the appellant was very poor and could not afford proper legal assistance. It is further submitted on behalf of the appellant that lawyer representing him may not have been present on that particular date. It is possible that lawyer representing the appellant may not have been present in court to take up the cross-examination of one or more witnesses called by the prosecution. In such a scenario, ordinary prudence would demand that an application would be filed to recall the relevant witness so that he could be properly cross-examined. Despite the appellant having an opportunity, if it is accepted that his lawyer was not present on the previous occasion, to apply to the trial court to cross-examine PW-7, no such attempt

was made in course of the trial. In such circumstances, it is no longer open to Counsel for the appellant to suggest that the appellant was prejudiced because of the some witnesses not being cross-examined.

16. No case was made out by the appellant to indicate why the relevant Executive Magistrate would have any axe to grind against him. After all, the Executive Magistrate was a responsible officer of the State, completely disinterested in the matter and with no motive against the appellant herein.

17. A last contention on behalf of the appellant is that the judgment in this case was delivered exactly 11 months after it had been reserved upon the conclusion of the hearing. The appellant refers to a recent line of judgments that requires a judgment to be delivered within a month or, within three or four months, at the latest, failing which the matter may be mentioned and an attempt may be made to remove the matter from the same judge. The appellant asserts that it is impossible for a human mind to remember exactly the subtleties of the argument on facts and law made on behalf of the parties after such long lapse of time. The appellant submits that in tune with a line of Supreme Court decisions, a judgment delivered 11 months after it being reserved should be set aside for the mere asking and the matter remanded for a fresh trial.

18. Whether a fresh trial is necessary or not is essentially a matter that may be considered by the appellate forum. On the basis of the material available, it does not appear that any serious prejudice has been occasioned to the appellant for this matter to be remanded back. There is corroboration of the incident in the appellant's description thereof in his statement recorded under Section 164 of the Code. In such circumstances, merely because the trial court was slow in delivering the judgment would not, by itself, warrant its annulment particularly as the evidence and the relevant considerations have been referred to in great detail therein.

19. It is suggested on behalf of the State that the long delay in the passing of the judgment may have been as a result of Covid-19 and the lockdown and disruption in life that it brought.

20. The first lockdown started in this country on or about March 23, 2020. Later in the year the lockdown was enforced much more strictly and sometimes there would be almost no activity. The courts continued to function in a restricted manner, though the court hours were much less and the time available to the concerned trial judge to finish the judgment was much more than usual. In such circumstances, the delay in delivering the judgment is not acceptable. After the hearing was concluded, the delivery of the judgment involved only the contribution of the trial judge and no

other stakeholder. Higher authorities instruct that judgment should be delivered within a month or, at the most, three months when huge and complex issues are involved. In a matter as the present one, there is hardly any justification for the judgment to have been delivered 11 months after the hearing was concluded. At any rate, the judgment should have carried an explanation regarding the delay in the delivery thereof.

21. However, the delay in pronouncing the judgment and the consequential prejudice, if at all, suffered by the appellant has to be assessed against the material that was available before the trial court. In the light of the categorical admission of the appellant of the accusation against him and the description of the incident of July 9, 2010 that matched the description of the incident by the survivor, a retrial is not called for.

22. Considering the clear case made out by the survivor, albeit a minor hiccup in the initial part of her statement in court, and the consistent manner in which she appears to have narrated the incident to others as reported by such others in course of their depositions at the trial and, in particular, the clear, unambiguous and unequivocal admission on the part of the appellant herein, the charges brought both under Section 376 and under Section 506, Part II of the Penal Code stood proved.

23. The sentences passed under Section 376 of the Penal Code and under Section 506, Part II thereof cannot be faulted. The trial court discussed the matter at length, including the sentencing, and found that there were no mitigating circumstances that could be taken into consideration to lessen the punishment of the appellant. The judgment of November 19, 2020 and the sentence pronounced on November 24, 2020 do no call for any interference.

24. Crl.A.No.10 of 2021 is dismissed.

25. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
27.03.2023
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