

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.18/2022

Date of Order: 17.05.2023

Md. Monnaf Ali alias Munna Ali Vs. State of Meghalaya

Coram:

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

Appearance:

For the Appellant : Mr. S. Deb, Adv with
Ms. S. Marpna, Adv

For the Respondent : Mr. R. Gurung, GA with
Ms. A. Thungwa, GA
Ms. S. Shyam, GA

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |
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JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is more in desperation by a perpetrator of a heinous offence who has married, apparently under pressure, an underaged woman who he had raped when she was about eight years old.

2. Most of the facts stand virtually admitted, notwithstanding the de facto complainant and the principal eye-witness retracting their original statements at the time of the deposition at the trial and being declared hostile.

3. The incident is of May 26, 2014. In the survivor's statement recorded under Section 164 of the Code of Criminal Procedure, 1973 before the Judicial Magistrate, First Class, West Garo Hills, she said that on the relevant day, the appellant, who was a neighbour, had come to the survivor's house at a time when no one was at home except an infant brother. The survivor claimed that she was playing outside the house with her infant brother when the appellant came to her and gagged her mouth and took her inside the house. Once inside the house, the appellant apparently took off the survivor's clothes, laid her down and inserted his penis into her vagina. She recalled that she could not raise a hue and cry as her mouth was gagged. She also claimed in such statement that after some time her paternal grandmother came inside the room and shouted at the appellant whereupon the appellant pushed the grandmother away and fled. She recounted that she was bleeding in her private parts over the next four days.

4. The first information report came to be lodged only on May 30, 2014 and a medical examination was conducted on the survivor long thereafter on June 12, 2014. The medical examiner noted that the survivor had been accompanied by her grandmother. In recording the history of the case, the medical examiner wrote out that the survivor was outside her house eating mangoes, when the appellant, who was known to her,

grabbed her and took her inside her house and molested her before her parental grandmother appeared on the scene following which the appellant disengaged and fled. The medical report indicated that there was no sign of recent sexual intercourse “but in view of the hymen being torn and the vagina being lax for her age, sexual intercourse cannot be ruled out.”

5. It appears that by the time the matter reached the trial stage of evidence being recorded, there may have been some sort of an agreement between the families of the appellant and the survivor for the appellant to marry the survivor. It is not uncommon, even today, for girl children who are raped of being made to feel ashamed and led to believe that it was their fault that they had been raped.

6. Both the de facto complainant and the paternal grandmother of the survivor turned hostile. In particular, the paternal grandmother claimed that there was a commission at her house on the relevant date following which she was taken to the police station and was required to append her thumb impression to some form of statement that was written out by the police.

7. However, the survivor stuck to her statement, though there were minor departures in course of her deposition at the trial from the original statement that she had rendered under Section 164 of the Code. These

minor aberrations are the principal thrust of the appellant's argument now as the appellant claims that the quality of the oral evidence of the survivor was not such that it could be made the basis for the appellant's conviction. The survivor claimed, in course of her deposition at the trial, that on the day of occurrence her parents were in the paddy field and other brothers and sisters were playing outside while the survivor was having a mango. She also claimed that she was playing with her younger sibling and a cousin by the name of Rofija Begum was also near the survivor's house plucking mangoes from a tree when the appellant arrived on the scene and dragged the survivor inside the house by "closing my mouth." In the survivor's words,

"He took me inside the house and threw me on the bed and remove my wearing garments and as well as his own clothes and lay on top of me and inserted his private part into my private part. I tried to scream but he close my mouth with his palm. In the meantime, my grandmother arrive there and shouted at Munaf Ali. Thereafter Munaf Ali fled away. ..."

8. There was no effective cross-examination of the survivor except that a suggestion was put to her that she had deposed incorrectly, which she completely denied. Thus, it is evident from the two statements rendered by the survivor that there was a minor variation in the second statement to the effect that in the first statement she claimed to be playing with her younger sibling and in the statement in court she claimed to have been eating a mango. However, it may be noticed that she had also

referred to the fact that she was having a mango to the medical examiner who had examined her on June 12, 2014. Indeed, it is also not difficult to imagine a young girl having a mango and also playing with her younger sibling just outside their house.

9. Notwithstanding the mother of the survivor and the grandmother of the survivor turning hostile at the trial, the medical expert who had examined the survivor stuck to her statement. Such medical officer, examined as PW-4, asserted to the trial court that the history of the incident was recounted by the survivor. The exact words used by the medical examiner in course of her deposition at the trial were as follows:

“... The brief history was narrated by the child to me and at times some assistance was sought from the grandmother and other available staff due to language problem. According to the victim while she was having mangoes outside the house, the accused grabbed her and took her inside her house and sexually molested her. In the meantime, the grandmother appeared at the spot and saw the incident. ...”

10. It is evident, therefore, that the relevant grandmother of the survivor was present when the survivor was initially medically examined and the narration of the incident by the survivor was, if not completed or fashioned by the grandmother, at least not attempted to be denied. This would show that the grandmother of the survivor was instrumental in initially pursuing the matter, but had developed cold feet by the time the matter went to trial. The reason for such *volte face* is evident from the

answer to the fourth question put to the appellant in course of his examination under Section 313 of the Code:

“4. It is a fact that now I am married to the victim and that we have one daughter out of the wedlock. At the time I married the victim she was above 15 years. I was pressure (*sic, pressurised*) by the victim’s family to marry her or else they will not withdraw the case.”

11. It may do well to notice a few of the relevant dates. The survivor came to depose on November 2, 2016 and December 15, 2016. The appellant herein was examined under Section 313 of the Code on January 20, 2020, at the end of the trial. In between, in September, 2017, the grandmother of the survivor came to depose at the trial and was declared as a hostile witness.

12. Counsel on behalf of the appellant submits that the appellant and the survivor got married in the year 2017, the exact date being June 29, 2017. Even though PW-1 at the trial, the mother of the survivor had turned hostile by the time she was examined on August 31, 2016, the survivor’s grandmother’s deposition came only after the survivor had been married to the appellant herein. The fact that the appellant was forced to marry against his wishes is apparent from his examination at the trial as quoted above.

13. The appellant was charged, inter alia, under Section 376(2)(i) of the Penal Code, 1860 and under Section 5(m) of the Protection of

Children from Sexual Offences Act, 2012 for aggravated sexual assault on a child below 12 years of age.

14. One of the issues sought to be raised by the appellant is that the age of the survivor was not ascertained at the trial and even though the appellant may not have questioned the survivor's age in course of cross-examining the survivor, yet such ground was taken at the final hearing stage before the trial court.

15. Though the appellant seeks now to question the age of the survivor at the time of the incident, particularly since the age was not separately proved in course of the trial, it does not appear that the appellant questioned the survivor as to her age despite the survivor having asserted, at the time of her deposition at the trial, that she was about 10 years old then. At any rate, age becomes an important consideration when it is perceived by the court that the victim could be an adult or approaching adulthood. In some cases, 14 or 16-year-old girl children look older than they actually are and it becomes necessary to assess the age of the victim in such a scenario. However, when a survivor claims to be eight years old and she was medically examined by an expert examiner who did not doubt the statement that the survivor was about eight years old and even the court which did not doubt the age of the survivor when the matter progressed to trial, it was for the appellant herein to rely on

cogent evidence to demonstrate the age of the survivor. The appellant made no attempt in such regard.

16. No attempt was made in this case for the survivor to disown her initial statement recorded under Section 164 of the Code or her deposition at the trial. Considering the fact that rape is an offence that is generally committed in private and the rapist does not, ordinarily, risk taking a chance of committing rape in open view of others, the statement or accusation made by a survivor has to be given substantial credence unless the defence is able to pick holes in the survivor's statement for such statement or any part thereof to be disregarded. The survivor in the present case made categorical statements describing the incident. The part of her statement where she claimed that her grandmother intervened was corroborated by the initial statement made by the grandmother and even the statement made by the survivor before the doctor on June 12, 2014 was in such grandmother's presence as the grandmother had accompanied her while she was medically examined. The medical examiner remembered the grandmother's stand and referred to it in her report. In such circumstances, there is nothing to detract from the survivor's assertion of what transpired.

17. The fact that the offender and the survivor are now married is of little consequence in the present context. Section 6 of the Act of 2012

makes no distinction between a rapist simpliciter and a rapist who has subsequently married the survivor. At any rate, it appears that it weighed with the trial court that the appellant and the survivor are married since the trial court rendered the least term of imprisonment permissible under Section 6 of the Act of 2012 as it stand prior to its 2019 amendment.

18. The trial court was perfectly justified in reading the statements of the survivor and giving full credence to such survivor. In course of the trial and even at the appellate stage, the appellant has not been able to discredit any part of the survivor's statement. As noticed above, there was very little attempt on the part of the appellant to question the survivor's version of things at the trial or even thereafter. In the circumstances, the trial court was perfectly justified in convicting the appellant herein and in sentencing him.

19. However, it appears that the time spent in custody prior to the order of conviction has not been excluded from the sentence suffered by the appellant. It is made clear that the time spent in jail by the appellant prior to the order of conviction, which the State claims is 80 days, will be set off against the sentence pronounced against him. The order of fine does not call for any interference and the entirety of such fine of Rs.21,000/- shall be made over to the survivor.

20. Crl.A.No.18 of 2022 is disposed of by upholding the judgment of conviction and by modifying the order passed by the trial court by requiring the number of days spent in custody prior to the order of conviction being pronounced to be excluded from the sentence awarded by the trial court.

21. The appellant will immediately be forwarded an authenticated copy of this order.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
17.05.2023
"Lam DR-PS

