

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.26/2022 with
Crl.M.C.No.54/2022

Date of Order: 28.03.2023

Sonibarson Marwein Vs. State of Meghalaya & anr

Coram:

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

Appearance:

For the Appellant : Mr. K. Sunar, Adv with
Ms. L. Biswa, Adv

For the Respondents : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl.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 appellant has been sentenced to suffer rigorous imprisonment for 20 years for offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and fined Rs.25,000/-. In default of payment of the fine, the appellant is to undergo three further months of simple imprisonment.

2. The first information report was lodged in this case at the Nongstoin Police Station in West Khasi Hills on February 12, 2020 by the mother of a 12-year-old girl and two others. According to the FIR, the survivor had been continually raped by the appellant for a substantial period of time in the year 2019 and up to January, 2020. The appellant is the maternal uncle of the survivor.

3. In her initial statement to the investigating agency recorded under Section 161 of the Code of Criminal Procedure, 1973, the survivor narrated that the appellant had “sexually assaulted” her several times when she was alone at home. She recounted that the appellant “used to come to my bedroom and touch me inappropriately and inserted his penis inside my private part.” She could not indicate the exact date or month when the incident first occurred but she maintained that the appellant committed the act several times, including when she was at home or in the jungle searching for wood or fetching water. The girl narrated that in the month of January, 2020 “my uncle again committed the same act upon me inside the toilet at my grandmother’s house.” She claimed that she was too afraid to report the matter to anybody initially, but she could not bear it anymore and told her mother.

4. In her statement recorded before a Magistrate under Section 164 of the Code, the survivor described the first time that she was violated without being able to remember the exact date:

“One night around 8 pm my maternal uncle came back home... After having our dinner together I went to bed at around 9:30 pm. There I slept with my two younger sibling and one younger maternal cousin. Around midnight, I was still awake but not the other ones in the bedroom. Then I saw my maternal uncle coming into the room and without saying anything he climbed up in bed with me. He did not say anything but just took off his pants and took off my pants and penetrated me.”

5. The girl-child remembered that the experience was both “painful and scary” for her and she warned the appellant not to repeat the act but she was, nonetheless, subjected to the same suffering intermittently. She went on to add:

“I don’t remember when did it stop but it did stop after an in-house church service at my grandmother’s house was had. I informed a neighbour of what had happened and she in turn informed my mother who asked me why I didn’t tell her sooner and I replied that it was because I was scared.”

6. Following the FIR being made on February 12, 2020, the survivor was medically examined. The history of the incident was written down by the medical examiner to the effect that the survivor claimed to have been sexually assaulted many times by her maternal uncle in the year 2019, but she did not remember the dates and that the survivor reported the matter to her mother on or about February 3, 2020, but she could not

remember the exact date. On the basis of the survivor's description of the suffering that she underwent, the medical examination report recorded that she was penetrated in her vagina and anus by the appellant's penis. The girl-child was unable to indicate whether there was any discharge of semen. The doctor did not find any recent penetration injury but reported that the hymen of the survivor was not intact.

7. The doctor was examined in course of the trial and she substantiated the views expressed in the medical report and the findings recorded. Since the doctor had indicated that the hymen of the survivor was not intact, the only question put to her in course of the cross-examination was whether the hymen may also be torn by undertaking other activities like bicycle-riding and extreme exercise without there being any penetration in the vagina. Quite naturally, the doctor acknowledged the possibility of the hymen being ruptured due to riding bicycles and undertaking extreme exercises. However, no attempt was made on the part of the appellant to even suggest that the survivor was given to riding bicycles or any form of extreme exercise.

8. The survivor came in as PW-2 and narrated her suffering at the behest of her maternal uncle in the same tune as she had indicated in her previous statements recorded under Sections 161 and 164 of the Code.

Some murmurs are made on behalf of the appellant at this stage that though the survivor had earlier indicated that she had been initially violated inside the house, she narrated at the time of her testimony at the trial that she had also been assaulted outside the home.

9. There does not appear to be any anomaly in the survivor's consistent stand that from some time in the year 2019 till or about January, 2020, she was sexually assaulted on several occasions by the appellant herein whether when she was alone at home or she had gone to the jungle to fetch water or firewood and even in the toilet of the grandmother's house on one occasion.

10. The mother of the survivor narrated how she had been told of the incident by a friend and by the survivor. The relevant friend and neighbour was examined as PW-3 and she claimed that she found something unusual about the survivor and she pressed the survivor for an appropriate answer, till one day the survivor blurted out that the survivor had been violated by the appellant herein.

11. The prosecution also proved the age of the survivor to be around 13 years at the time of the incident and a specialist in such regard was examined as PW-6. The investigating officer was examined as PW-7. She

indicated what was told to her by the young survivor and the mother of the survivor.

12. Location maps were prepared and it is evident that even the survivor was required to identify several areas on the sketch maps. At the end of the day, the survivor's description of her suffering rings true and the trial court cannot be faulted for relying thereon notwithstanding the persistent denial of the charges brought against the appellant by the survivor. It must be noticed that the appellant made no attempt to adduce any evidence or examine any person or even remotely suggest that his sister, the first complainant in the FIR, or his sister's daughter had any enmity with him for them to resort to making out a false case against him.

13. The material that panned out before the trial court, including the opinion of the medical practitioner who examined the survivor immediately after the FIR was lodged, revealed that the survivor had been subjected to sexual intercourse. The survivor's description of her traumatic experience was accepted by the trial court in the absence of any alibi being set up by the appellant herein or any attempt to explain away any of the material against him.

14. There appears to be very little that the appellant can legitimately question regarding the manner in which the evidence was received or the

same was read and interpreted against him. It would defy logic and reason as to why a niece would make up allegations against the appellant, particularly when, ordinarily, a nephew or a niece enjoys one of the sweetest relationships with a maternal uncle. In the absence of the appellant demonstrating that the appellant may not have been present at home or otherwise during the relevant point of time or that the appellant had been wrongfully proceeded against, there was little option for the trial court other than to convict the appellant and sentence him to the appropriate tenure in prison.

15. This was a case of aggravated penetrative sexual assault covered by Section 5(l) and (m) as the girl-child was subjected to several independent acts of assault for which the appellant has been appropriately convicted and sentenced under Section 6 of the Act of 2012 for a term of not less than 20 years. The fine also appears to be reasonable and the order also provides for substantial compensation.

16. There was little choice that the trial court enjoyed in awarding the sentence in view of the binding statutory command. The appellant may not have confessed to having committed the offence on repeated occasions, but his total failure to adduce any evidence to the contrary left the trial court with little choice but to convict the appellant and sentence him as done.

Neither the impugned judgment nor the sentence pronounced thereon on July 19, 2022 calls for any interference.

17. Crl.A.No.26 of 2022 is dismissed.

18. Crl.M.C.No.54 of 2022 is disposed of.

19. 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
28.03.2023
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