

GAHC030002752020



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

Case No. : CrI.A./14/2020

S.T.Lalngamzova
Sihtlangpui, Lawngtlai

VERSUS

State of Mizoram and Anr
Aizawl, Mizoram 2:Hasadi Esthe

Advocate for the Petitioner : Ms. Rosalynn L Hmar

Advocate for the Respondent : Ms Linda L Fambawl for R1

Linked Case : I.A.(CrI.).15/2020

S.T. Lalngamzova
Sihtlangpui
Lawngtlai

VERSUS

Hasadi Esther
Lungpuk
Saiha

Advocate for the Petitioner : Rosalynn L Hmar
Advocate for the Respondent : Ms Linda L Fambawl

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
JUDGMENT

Date : 01-02-2023

Heard Ms. Rosalynn L. Hmar, learned counsel for the appellant alongwith Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for respondent No.1 and Ms. Ruthi Vanlalhruii, learned counsel for respondent No.2.

2. This is an appeal under Section 374 Cr.PC against the impugned Judgment & Order dated 07.11.2019 passed by the Special Judge, POCSO Act, Lunglei in connection with CrI.Tr. No. 459/20196 arising out of Lawntlai PS Case No.47/2017 under Section 4 of POCSO Act, 2012.

3. The brief facts of the prosecution story is that a written FIR was filed at the Police Station on 23.8.2017 by one X, D/o Vanlalsanga, of Lungpuk, stating that at about 9:00 Pm on 19.8.2017, when she went outside to use the toilet, the accused, S.T. Lalngamzova, forcibly took her to his house where he kept her the whole night and raped her twice. The next morning she escaped from a window. The delay in filing the report, the informant stated in the FIR, was because she had waited for word from her father on how to proceed in the matter. Lawngtlai Police Station Case No. 47/2017 dated 23.8.2017 under Section 4 of the Protection of Children from Sexual Offences Act, 2012, was accordingly registered and investigated into. The alleged victim and a

number of witnesses were examined. X was forwarded to the District Hospital at Lawngtlai for a medical examination which showed that her hymen was ruptured. A pretrial statement she tendered was recorded by a judicial Magistrate. X's birth certificate, which was seized, showed that she was born on 5.5.2002 and was a child at the time of the alleged incident on 19.8.2017. It was concluded from the investigation that a prima facie case under Section 4 of the Protection of Children from Sexual Offences Act, 2012 was well-established against the accused and he was sent up for trial. The case was received by this Court on 14.12.2017 on commitment by the Chief Judicial Magistrate, Lawngtlai.

4. A charge was framed in writing against the accused on 5.2.2018 under Section 4 of the Protection of Children from Sexual Offences Act, 2012. He denied the charge and claimed to be tried. All the eight witnesses listed for the prosecution deposed and the accused was then examined on 24.07.2019 under Section 313 of the Code of Criminal Procedure. In explanation to the evidence adduced against him, he said that he was unsure of X's date of birth. He agreed that he had sex her but said that she was romantically involved with him and that he was in love with her. He declined to adduce evidence.

5. The learned trial court after hearing both the parties, convicted he appellant under Section 4 of the Protection of Children from Sexual Offences Act, 2012, for committing penetrative sexual assault as charged and accordingly sentenced to undergo Simple Imprisonment for 7 (seven) years and to pay a fine of Rs. 1,000/-

(Rupees one thousand). In default of payment of the fine, he shall undergo further imprisonment of 1 (one) week. The period of detention already undergone by the accused in connection with this case shall be set off against the sentences imposed. Aggrieved, the appellant has filed the instant appeal.

6. Ms. Rosalynn L. Hmar, learned counsel for the appellant submits that the Judgment & Order dated 07.11.2019 passed by the Judge, POCSO Act, Lunglei Judicial District in CrI. Trial No.495/2017 is liable to be set aside and quashed for following the reasons;

- i. that there was a delay of 4 days in lodging the FIR as a victim girl was waiting for word from her father which reveals that there were awaiting for a marriage proposal which is not a unusual practice as per the Mara customs. The incident is said to occur on 19.08.2017 and the FIR was submitted on 23.08.2017.
- ii. That the age of the alleged victim is not proved since the birth certificate seized is not reliable. The birth certificate exhibited as M-Ext-1 shows that the date of registration of the birth is 10.09.2015 while the date of birth is shown as 05.05.2002. The medical certificate also mentioned that the date of birth of the victim girl is 06.05.2002.
- iii. That the deposition of the victim girl in the Court is different from the FIR submitted by her since in the FIR she had mentioned only of the incident which occurred on 19.08.2017 while in her

deposition she had mentioned that the appellant had forcefully assaulted her when she went to take bath at Tuikhur (water point) and the next day at 7:00 pm he had again forcefully assaulted her. Thereafter, on 19.08.2017 the appellant had gone to answer the call of nature at the outhouse (latrine). The accused accosted her and forcibly took her to his house which is about 6 houses away. At his residence, he sexually assaulted her twice. In the morning while the accused had gone to answer the call of nature she had escaped from the window. She informed her uncle Lalhlira about the incident who in turn informed her father at Lungpuk. Because of these discrepancies the evidence of the prosecutrix cannot be relied upon.

7. That the medical report shows that there were no injuries found on her body and no spermatozoa was found, thus the medical report does not support the case of the prosecutrix. On the day after her father arrived at Sihtlangpui and they proceeded to Lawngtlai P/S where she submitted FIR. She was escorted to the District Hospital, Lawngtlai for medical examination. Her birth certificate was also seized by the police.

8. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor submits that there are no grounds to interfere with the Judgment of the learned Trial Court 07.11.2019 since the appellant himself had admitted that he had sex with the prosecutrix and it is proved that the prosexutrix is below the age of 18 years since her birth certificate shows that her date of birth is 05.05.2002.

9. Ms. Ruthi Vanlalhruii, learned counsel for the respondent No. 2 submits that the appellant on his examination under Section 313 Cr.P.C had admitted that he had sex with the prosecutrix, further with regards to the birth certificate there is no valid reasons to doubt the genuiness of the birth certificate which was issued on 10.09.2015 since the incident happen on 19.8.2017 and there is no reasons for the prosecutrix to manipulate or get a wrong birth certificate before the incident occurred. Further the delay in filing the FIR has been explained by her in the FIR itself where she has stated that the FIR was not filed immediately because there were awaiting for the decision of her father who resides at Lungpui. The father of the prosecutrix has also deposed in the Court as PW-4 Vanlalsanga that when he was informed of the sexual assault of his daughter he proceeded to Lakhi by foot and stayed overnight. On the next day, he proceeded to Sihtlangpui where he had to spend the night and the next day he proceeded to Lawngtlai and submitted the FIR. That the medical certificate proves that the appellant had sexual intercourse with the prosecutrix since her hymen was found ruptured. Spermatozoa cannot be expected to be found since the medical certificate mentions that the prosecutrix had taken bath.

10. The learned counsel for the respondent No.2 also submits that though there is slight discrepancy in the statement of the prosecutrix while deposing in the court and from her statement recorded under section 164 Cr.P.C, from both the statements there is ample evidence which indicates that the applicant had sexual intercourse with the prosecutrix. That slight discrepancies in her FIR with her deposition does not matter

since it is proved and the appellant had sex with her as also admitted by him on his examination under section 313 Cr.P.C. That the prosecutrix on her examination under section 164 Cr.P.C has also been consistent of the fact that the appellant had sexually assaulted her. The learned counsel for the respondent No. 2 has also relied on the Judgment of the Apex Court in the case of **Narender Kumar v. State (NCT of Delhi)** reported in **(2012) 7 SCC 171**.

11. Having heard the submissions made by both the parties, this Court finds that the reason for delay in filing the FIR has been explained in the FIR itself where it was mentioned that the delay was caused due to the fact that they had to await for her father who resides at Lungpuk. Her father PW-4 Vanlalsanga in his deposition has also explained how he had taken the journey from Lungpuk to Lawngtlai to submit the FIR, once he was informed of the incident. Further with regards to the birth certificate on scrutiny of the birth certificate exhibited as M-Ext-I. I find that there is no reasons to doubt the genuiness of the birth certificate which was issued on 10.09.2015. It is recorded in the birth certificate that the information was taken from the original record of birth which is the register for (local area) Khaikhy of Block, Tuipang of District, Saiha of Mizoram.

12. I also find no reason to not rely on the testimony of the prosecutrix wherein as PW1, she had clearly narrated how on on 19.8.2017 on her way to the toilet outside their residence the appellant had sexually assaulted her and how the next day she manged to escape through the window . This was also clearly stated by her in her

statement recoded under under section 164 Cr.P.C

13. This is corroborated by the statement of the appellant himself, on the examination of the appellant under section 313 Cr.P.C. the which is reproduced as follows :-

- Q. *It is in the evidence that X the daughter of Vanlalsanga was born on 5.5.2002. She was residing at Sihtlangpui with her uncle Lalhlira and pursuing her studies in August, 2017. What do you have to say in explanation?*
- A. *I am not sure of the date of birth of X but the other parts of the statement are true.*
- Q. *It is in the evidence that she had gone one day in August, 2017, to the water point to fetch water. You were present there and asked her what her name was and whether or not she was married. X told you that she had not yet married. What do you have to say in explanation?*
- A. *This is true.*
- Q. *It is in the evidence that the same night X went to the water point to bathe at around 7:00 Pm. You were there at the water point and sexually assaulted her, having sexual intercourse with X. What do you have to say in explanation?*
- A. *I agree that I had sex with X. She was romantically involved with me and I was in love with her.*
- Q. *It is in the evidence that again the next night when X went to the water point to bathe, you had sexual intercourse with her. What do you have to say in explanation?*
- A. *I did not have sex with X on the second night after we met.*
- Q. *It is in the evidence that on 19.8.2017, X was on her way to the toilet outside their residence. You accosted X and took her to your house which is about six houses away. At your residence, you had sexual intercourse with X twice. What do you have to say in explanation?*
- A. *I agree that I took X to my house. It was as per our plan and she had not*

been on her way to the toilet when I took her home. She stayed with me the whole night and we had sex.

Q. It is in the evidence that X slipped away in the morning when you went to answer the call of nature. She told her uncle about the sexual assaults and he informed her parents. X then filed an FIR at Lawngtlai Police Station. What do you have to say in explanation?

A. To the best of my knowledge, X had gone to the house of her uncle in the morning and then she spoke to her friend Valpuia. She told him that her uncle Lalhlira was very angry because she had spent the night away from home and Valpuia told me to be careful. I believe that the case was filed by them because I did not send an emissary immediately, as is the Mizo custom, to negotiate for marriage.

Q. It is in the evidence that a case was registered at the Lawngtlai Police Station. X was taken for a medical examination which showed that there was inflammation in her labia minora and her hymen was ruptured. You were also medically examined by a doctor. What do you have to say in explanation?

A. I believe that this is true.

Q. Do you have anything to say in Court now?

A. X had sex with me and stayed with me voluntarily. I never forced her to do anything.

Q. Do you want to adduce defense evidence?

A. No.

The appellant has not denied having sexual intercourse with the prosecutrix.

14. The medical evidence also corroborates with the prosecution case since the medical doctor who examined the prosecutrix has deposed as PW 2 had found the hymen of the prosecutrix ruptured at 6 o'clock position. The medical report is exhibited as Ext P-III.

15. In ***State of Punjab v. Gurmit Singh*** [***State of Punjab v. Gurmit Singh***,

(1996) 2 SCC 384], the Apex Court held that-

‘in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof.

The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.’

16. In view of the above findings of the Apex court which is also supported by a cantina of decisions of the Apex court , I find no reasons to discredit the testimony of

the prosecutrix which had also been corroborated by the medical report and also where the appellant himself has admitted to have sexual intercourse with the prosecutrix in his examination under section 313 Cr.P.C. Accordingly I find no grounds to interfere with the Judgment & Order of the Special Judge, POCSO Act, 2012 dated 07.11.2019.

17. For the reasons above the Crl. Appeal No.14 of 2020 stands dismissed and disposed.

JUDGE

Comparing Assistant