

GAHC030005202022



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

Case No. : CRL.A(J)/10/2022

Sh. H. Lalrova
S/o Thangchungnunga
R/o Khawzawl Dam Veng
Convict - Central Jail

VERSUS

The State of Mizoram and Anr.
Aizawl2:Smt. C. Vanlalhang

Advocate for the Petitioner : Mr T Lalzekima, Amicus Curiae

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte, Addl. PP, Mizoram

ORDER

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE NELSON SAILO

07.08.2023

(M. Zothankhuma, J)

Heard Mr. T. Lalzekima, learned Amicus Curiae and Ms. Mary L. Khiangte, learned Addl. Public Prosecutor.

2. This appeal has been preferred against the Judgment & Order dated

30.11.2017 passed by the Special Court (POCSO), Champhai in S.C. No. 190/2016 arising out of Criminal Trial No. 9850/2016, by which the appellant has been convicted under Section 6 of the POSCO Act, 2012 and sentenced to undergo Rigorous Imprisonment for a period of 20 years with a fine of Rs. 9,000/-, in default to suffer Simple Imprisonment for a further period of 2 months.

3. The prosecution case in brief is that pursuant to an FIR dated 21.07.2016 submitted by the informant/Prosecution Witness-1 (PW-1), Khawzawl P.S. Case No. 29/2016 under Section 6 of the POCSO Act was registered. The FIR stated that on 08.07.2016, between 8:30 p.m and 9:30 p.m, the informant's husband threatened their minor daughter and raped her while they had attended Church. Prior to the said incident, the appellant had been touching their daughter. The said incident had been told to her (PW-1) by their victim daughter.

4. After the Investigating Officer completed his investigation, Charge-sheet was filed, as a prima facie case under Section 6 of the POCSO Act, 2012 had been found against the appellant. After the case was committed to the learned Sessions Court, charge was framed under Section 6 of the POCSO Act against the appellant, to which he pleaded guilty.

5. The learned Trial Court proceeded with the Trial proceedings, wherein 6 (six) Prosecution Witnesses were examined. The learned Trial Court thereafter examined the appellant under Section 313 Cr.PC, wherein he admitted to the evidence adduced that he had raped his daughter. The learned Trial Court thereafter came to a finding that the appellant was guilty of having committed the offence under Section 5 of the POCSO Act and convicted him under Section

6 of the POCSO Act, 2012.

6. The learned Amicus Curiae submits that the statement of the victim girl has to be recorded by a women officer under Section 24(1) of the POCSO Act and the evidence of the victim girl has to be recorded by the learned Trial Court within a period of 30 days, after having taking cognizance of the charge against the appellant, in terms of Section 35(1) of the POCSO Act. However, the said provisions have not been complied with by the Police and the learned Trial Court.

7. The learned Amicus Curiae also submits that while the FIR had been filed on 21.07.2016, the evidence of the Medical Officer (PW-5) is to the effect that the victim girl had been medically examined on 20.04.2016, i.e., prior to the date of filing of the FIR. Though PW-3 and PW-4 were seizure witnesses of the Birth Certificate, there is no proof that the victim girl was a minor. He accordingly submits that the impugned Judgment & Order should be set aside and the appellant should be acquitted of the charge under Section 6 of the POCSO Act.

8. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor, on the other hand submits that the facts of the case clearly show that the appellant had admitted to having raped his own daughter. Further, the examination of the appellant under Section 313 Cr.PC also shows that he admitted to the evidence that had been adduced against him in the testimony of the Prosecution Witnesses. She accordingly submits that there is no ground to interfere with the impugned Judgment & Order and the same should be upheld.

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

10. The evidence of PW-1, who is the mother of the victim girl, besides being the informant who submitted the FIR, is to the effect that her daughter, who was born in the year 2003 had informed her in the year 2012 that her father used to make her touch his penis. As such, she scolded the appellant on 3 (three) occasions. However, on 08.07.2016, when she went to Khawzawl Vengthar to attend Church service and returned home at around 10:00 p.m., her daughter informed her that her father had sexually assaulted her, by inserting his penis inside her anus and her vagina the night before.

11. The evidence of PW-2, i.e., the victim girl is to the effect that she is studying in Class-VI and that her father used to sexually abuse her in the year 2013. He also threatened his daughter not to tell anybody about the incident or he would beat her. She also stated that her father used to penetrate her private parts, i.e., anus and vagina with his penis. He used to penetrate her during the day and night, when her mother was away from the house. The last time when her father sexually penetrated her private parts was on the night of 08.07.2016.

12. The learned Amicus Curiae also submits that there is discrepancy in the evidence of PW-1 and PW-2, inasmuch as, PW-1 had stated that her victim daughter had informed her in the year 2012 that her father had made her touch his penis. On the other hand, the testimony of the victim girl is to the effect that her father had started sexually abusing her in the year 2013.

13. The evidence of PW-3 & PW-4, who are the seizure witnesses to the seizure of the Birth Certificate of the victim girl is only to the effect that they

were seizure witnesses, which was exhibited as Exbt. M-1. Exbt. M-1 shows the date of birth of the victim girl to be 14.09.2003.

14. The evidence of the Medical Officer is to the effect that on 20.04.2016, while he was on duty at CHC, Khawzawl, the victim girl was brought before him and on examination, he found the following:-

- “1. Bruising/Laceration of external genitalia. I found bruise one each on both side of Levia Minora (old injury).*
- 2. Hymen was completely ruptured.*
- 3. No sign of infection was seen.*
- 4. Laboratory test was note down (not done) as the incident has occurred long time back”.*

15. The evidence of PW-6, who is the Investigating Officer, is to the effect that on 21.07.2016 at around 9:30 a.m, a written FIR was received from PW-1 to the effect that the appellant used to rape the victim girl inside their residence. On taking up the investigation, he visited the place of occurrence and examined the complainant and all the witnesses. He also recorded the statements, besides examining the victim girl and recording her statement. He also forwarded the victim girl to the Medical Officer, CHC, Khawzawl for medical examination and received the medical examination report of the victim. He also seized the Birth Certificate of the victim girl for proof of age of the victim. He interrogated the appellant, wherein he admitted his guilt. He also exhibited various documents including the Charge-sheet.

16. The evidence of the victim girl clearly shows that she had been sexually abused by her father. This fact has not been disputed by the appellant in his examination under Section 313 Cr.PC, where he has fully admitted that he used to make his daughter hold his penis and also made her help him masturbate. He also did not deny the evidence that his private parts penetrated the vagina of his daughter on 2 or 3 occasions. The appellant had also admitted that he had sexually assaulted his daughter during framing of charge by the learned Trial Court under Section 6 of the POCSO Act. The above have been duly corroborated by the evidence of PW-1, the victim and the evidence of the Medical Officer, wherein the Medical Officer stated that the hymen of the victim girl was completely ruptured.

17. With regard to the discrepancies pointed out by the learned Amicus Curiae in relation to the examination of the victim girl by the Doctor on 20.04.2016, while the FIR had been filed on 21.07.2016, we have noticed that the Investigating Officer (PW-6) in his testimony has stated that after the FIR was registered, he had examined the victim and recorded her statement and thereafter, forwarded her to the Medical Officer at the CHC, Khawzawl, for medical examination. As such, as per the evidence of the Investigating Officer, the medical examination could only have taken place after the FIR had been filed.

18. On the other hand, the testimony of PW-5 is to the effect that she examined the victim girl on 20.04.2016. This discrepancy requires us to look into the requisition made by the Officer-in-charge, Khawzawl Police Station (PW-6) to PW-5, wherein he had asked that the victim girl should be medically examined, vide letter dated 21.07.2016, which is exhibited as Ext. P-3.

19. The above clearly shows that the requisition for medical examination had been made after the FIR had been registered. However, there is another discrepancy with regard to the Medical report made by PW-5, which is exhibited as Ext. P-8, wherein he has stated that the date of medical examination was 20.07.2016. In our view, the date written in the medical examination report of the victim is a mistake committed by PW-5 due to carelessness, as the requisition was done on 21.07.2016. In any event, the discrepancy herein does not go to the root of the prosecution case, on the basis of which it can be said that the trial was vitiated, keeping in mind the fact that the requisition for medical examination had been made on 21.07.2016.

20. With regard to the discrepancy of the “year” when the sexual assault first started, in terms of the testimony of PW-1 and PW-2 wherein, PW-1 has stated that the sexual assault started in 2012, while PW-2 stated that the sexual assault started in 2013. We are of the view that the said discrepancy is also a minor discrepancy and does not go to the root of the prosecution case. As such, it can be ignored.

In the case of *Sunil Kumar Sambhudayal Gupta (Dr.) Vs. State of Maharashtra*, reported in *2010 13 SCC 657*, the Supreme Court has held that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters, without effecting the core of the prosecution case, should not be made a ground to reject the evidence in its entirety. The trial court, after going through the entire evidence, must form an opinion about the credibility of the witnesses and the appellate court in normal

course would not be justified in reviewing the same again, without justifiable reasons.

21. With regard to the stand taken by the learned Amicus Curiae that the statement of the victim girl was not recorded by a female Police Officer, a reading of Section 24 (1) shows that the statement of the child shall be recorded as far as practicable by a woman Police Officer. The above clearly shows that there is no bar for a male Police Officer to record the statement of the child and as such, the same in our view does not vitiate the prosecution case.

22. Section 35(1) provides that the evidence of the child shall be recorded within a period of 30 days of the Special Court taking cognizance of the case and reasons for the delay, if any, shall be recorded by the recorded by the Special Court. Though the statement of the victim had been recorded beyond the period of 30 days and no reason for the delay has been made by the learned Trial Court, there is nothing shown by the learned Amicus Curiae that the same had caused any prejudice to the appellant. We are accordingly of the view that the delay in recording the statement of the victim child does not vitiate the prosecution case.

23. On considering the admission made by the appellant at the time of framing of charge that he had raped his daughter, coupled with the testimony of the prosecution witnesses and the reply given on being examined under Section 313 Cr.PC, we are of the view that the prosecution has been able to prove the guilt of the appellant beyond all reasonable doubt.

24. In view of the reasons stated above, we do not find any ground to interfere with the impugned Judgment of the learned Trial Court. The appeal is accordingly dismissed.

25. Send back the LCR.

26. In appreciation of the assistance provided by the learned Amicus Curiae, the appropriate fees payable to the learned Amicus Curiae shall be paid by the Mizoram State Legal Services Authority.

JUDGE

JUDGE

Comparing Assistant