



Serial No.02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.1/2024

Reserved on: 14.08.2024
Pronounced on: 16.08.2024

Shri Disroywel Wahlang Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. R.Debnth, Adv

For the Respondent : Mr. N.D. Chullai, AAG with
Ms.Z.E.Nongkynrih, GA

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| i) Whether approved for reporting in Law journals etc.: | Yes |
| ii) Whether approved for publication in press: | Yes |

J U D G M E N T

(By the Hon'ble Chief Justice)

This Criminal Appeal is directed against the judgment and order dated 26.07.2023 and the order of sentence dated 31.07.2023, passed by the Special Judge (POCSO), Ri-Bhoi District, Nongpoh in Special (POCSO) Case No.34 of 2018 and the accused / Appellant herein was convicted by the Trial Court for the offences under Sections 3(a)/4/7/8 of The Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act, 2012') punishable under Sections 319/321/323/354/354B/361/366/375(a) falling under 375(2)(i)(j) IPC,



1860 by invoking Section 42 of the POCSO Act, 2012 (alternative punishment) and sentenced as follows:

Offence	Conviction and Sentence
Section 323 IPC	To undergo one year imprisonment with fine of Rs.1,000/-, in default to undergo another one month imprisonment
Section 354B IPC	To undergo seven years imprisonment with fine of Rs.20,000/-, in default to undergo another three months imprisonment
Section 366 IPC	To undergo ten years imprisonment with fine of Rs.50,000/-, in default to undergo another six months imprisonment
Section 376(2) IPC	To undergo thirty years Rigorous Imprisonment with fine of Rs.2,00,000/-, in default to undergo another one year imprisonment
Section 8 of POCSO Act, 2012	To undergo five years imprisonment with fine of Rs.50,000/-, in default to undergo another six months imprisonment

The Trial Court held that the convict is entitled to the benefit of Section 428 Cr.P.C. and the period already undergone in prison was ordered to be set off. The sentences were ordered to run concurrently and the fine amount was directed to be paid to the victim girl. Aggrieved by the order of the Special Judge (POCSO), Ri-Bhoi District, Nongpoh, dated 26.07.2023 and the order of sentence dated 31.07.2023, the Appellant has preferred this Criminal Appeal before this Court.

**Brief Prosecution Case:**

2. A complaint was given by the mother / P.W.2 of the victim girl on 03.12.2016 before Umsning Out-Post Police Station, Ri-Bhoi District, stating that the accused, namely, Wahlang had committed aggravated penetrative sexual assault on her daughter aged about 13 years and also raped her on 01.12.2016. Based on the complaint, FIR (Ex.P6) in Nongpoh P.S.Case No.212 (12) 2016 came to be registered on 04.12.2016 against the accused under Sections 363, 323, 376 (2) (i) and 506 IPC r/w Section 4 of the POCSO Act, 2012.

2.1. After investigation, a Charge Sheet No.65 of 2017 dated 29.06.2017 was laid under Sections 363, 323, 376 (2) (i) and 506 IPC r/w Section 4 of the POCSO Act, 2012 and the Special Judge (POCSO), Ri-Bhoi District, Nongpoh had taken cognizance of the case in Special (POCSO) Case No.34 of 2018. The prosecution, in order to substantiate the commission of the offence against the accused, had examined as many as 12 witnesses, exhibited 37 documents and marked 20 material objects. On the side of the accused, neither witnesses were examined nor documents marked. Statement under Section 164 Cr.P.C. was



obtained from the victim girl (P.W.1). The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offence under Section 8 of the POCSO Act, 2012 along with other IPC offences and convicted him as stated supra.

3. The learned counsel for the appellant submitted that a false case has been foisted against the appellant without any conclusive proof against the accused and there were several inconsistencies and discrepancies in the evidence of the victim girl, inasmuch as on one hand, she deposed that she knows the accused and on the other, during cross examination, she denied her personal knowledge about the accused. Above all, in her deposition in cross, she stated that the accused was her boyfriend. In many places during cross examination, she did not refuse her relationship with the accused. It was further submitted that the evidence of the victim girl (P.W.1) weighs more importance in a case of this nature and when inconsistencies were found in her statements, certainly, it can be inferred that there is a possibility of tutoring of the victim girl.



4. The learned counsel for the appellant also submitted that the prosecution failed to corroborate the evidence of the accused with the medical documents, as the Doctor (P.W.6) clearly deposed that there was no sign of any recent sexual intercourse and there was no external injury noted. As per the evidence of P.W.6 (Doctor), there was no visible injury in the private part of the victim girl, thereby contradicting the evidence of P.Ws.1 and 2. P.W.8 (grandmother of the victim girl) deposed that an unknown person raped her granddaughter, as she was not aware of the real episode. Though the appellant was convicted on the basis of the medical report, which was one of the base to convict the appellant, in the absence of sign of penetrative sexual assault, it does not support the case of the prosecution. Thus, there was no corroboration of evidences of P.Ws.1 & 2 with the medical documents. Thus, he pleaded that there were several contradictions in the case of the prosecution and sought for interference by this Court in the conviction and sentence awarded by the Trial Court.

5. Per contra, learned Additional Advocate General appearing for the State contended that the victim girl (P.W.1) in her examination-in-chief had clearly deposed that the accused pulled her into a jungle and committed the offence of rape. The Doctor (P.W.6) in her examination categorically deposed that after clinical examination, the findings were



that there were multiple injuries on the body of the victim girl and genital injury are consistent with recent sexual assault. Thus, the evidence of P.Ws.1 and 2 had duly been fortified by the medical examination. The Apex Court in the case of **State of U.P. Vs. Babul Nath**, reported in **1994 (6) SCC 39** observed that even an attempt to penetration will constitute the offence. The relevant Paragraph No.8 is extracted below:

“8.....From the explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of I.P.C. nor the explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. ***In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen of even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of I.P.C. that being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains....***”

6. Learned Additional Advocate General appearing for the State further contended that when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and of sterling quality in terms of the judgment of the Apex Court in the case of **Ganesan vs. State**, reported in **2020 (10) SCC 573**, there is no other corroboration required to prove the



guilt of the accused. The prosecution was able to prove the presumption clause provided under Section 29 of the POCSO Act beyond reasonable doubt through various depositions and evidences. As per Section 29 of the POCSO Act, 2012, burden shifts on the accused to prove his innocence and there was no explanation offered by him to the questions posed to him under Section 313 Cr.P.C., as his answers to the questions were mostly stereotyped, such as “I do not know” and “I have no knowledge” and there was no attempt made by the accused to disprove the allegations leveled against him. He drew the attention of this Court to the judgment of the Apex Court in the case of **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat**, reported in **1983 (3) SCC 217**, wherein it was categorically held that the evidence of victim to the offence is of paramount importance and the Court cannot shrug off the case of the prosecution merely for want of strict corroboration.

“11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.

On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. ***Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an***



independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence.

It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World, Obeisance to which has perhaps become a habit presumably on account of the colonial hangover. We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities-factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune.

Thus, it was prayed that the present Criminal Appeal is liable to be dismissed.

7. We have carefully considered the submissions made on either side and perused the material documents available on record.

8. The victim child in this case was aged about 13 years, at the time of the incident as stated by the mother of the victim girl (P.W.2) in the complaint (Ex.P6). The incident had taken place on 01.12.2016 and on that day, when the victim girl had gone out to bring her relative home, the accused had pulled her into a jungle and raped her by sealing her mouth



with his hand. The victim child was examined as P.W.1, who stated in her evidence-in-Chief as follows:

“2. In the jungle he laid me on the ground and opened both my underwear and my pant and he also opened his pant and he raped me. I tried to free myself from his clutches but it was in vain. I could not scream for help as he covered my mouth with his hand.

3. After he finished to commit the offence he let go of me and I went home, I could not collect my clothes but I just covered with my shawl that I had with me. When I reached home my mother saw my condition and inquired from me what had happened to me and I told her about the incident. At the time of the incident my back, buttock, thighs and legs were all bruised.”

The complaint was given by P.W.2 (mother of the victim girl) on 03.12.2016, based on which, a case was registered in Nongpoh P.S. Case No.212 (12) 2016. P.W.2 had deposed before the Court in his examination-in-chief as under:

“6. Later my victim daughter came home and she was half naked and covered herself only with a shawl. My husband on seeing this he was about to beat her but her uncle prevented him. We then asked her what happened to her but she could not speak. After about half an hour she was able to inform us about the incident but she could not tell the name of the perpetrator. Next morning when we keep on asking her about the perpetrator and she then told that his name is Bu Wahlang.”

9. In addition to the above, the victim child's statement under Section 164 Cr.P.C. was recorded, wherein she had deposed as under:



“On the night of 1-12-16, at around 7:00pm, I went out of my house to fetch my Meiduh’s daughter from Meiduh’s house. One person namely Bu Wahlang pulled me from Meiduh’s compound and took me to the jungle. He opened my pant and raped me there in that jungle. He opened all my clothes and forced himself on me. Thereafter Bu left me alone in the jungle and left. I could not find my clothes in the jungle as it was dark, so I came back home naked. My parents asked me as to why I was naked and where I had been. I told them that Bu had forcefully pulled me from Meiduh’s compound and that he had taken out all my clothes and raped me.

That is all I have to say.”

10. To corroborate the evidence of P.Ws.1 and 2 medically and scientifically, it is worthwhile to analyse as to what was the deposition of P.W.9 (Deputy Director, Forensic Science Laboratory) and the result of examination was as follows:

“After thorough and careful examination of Ex.A1, Ex.A2, Ex.A3, Ex.A4, Ex.A5, Ex.A6, Ex.A7, Ex.A8, Ex.A9, Ex.A10, Ex.A11, Ex.A16, Ex.A17, Ex.B4 and Ex.B5, seminal material was not detected. Blood material was detected only on Ex.A5, Ex.A6, Ex.A7 and Ex.A8. Blood group ‘B; was detected on Ex.A14, Ex.A15, Ex.A5 and Ex.A6 and blood group ‘A’ was detected on Ex.B1 and Ex.B2.”

12. There is no conclusive opinion rendered by the Scientific Officer (P.W.9) as there were no semen samples found in the clothes of the victim girl and there was a doubt with regard to sexual intercourse, but, however, stated that the blood group belonged to the victim girl. The



Doctor (P.W.6) also opined that there were injuries found on the body of the victim and had given the Medical Report marked as Ex.P1 to that effect. In her cross examination, P.W.6 stated that the cause of the injury is due to forceful penetration, by further deposing as under:

“Genital Injury – Cruciate tears over the hymen consistent with any forceful penetration, bleeding minimal on swab collection consistent with recent timeline of injury sustained of 2 (two) days back.”

13. The next plea advanced by the learned counsel for the appellant in respect of the delay in lodging the FIR, we find no force in the submission of the learned counsel for the accused for the reason that as rightly pointed out by the learned Additional Advocate General, the case relating to a minor girl must be handled with utmost care and there is no hard and fast rule in registration of FIR in a time framed manner.

14. The Hon'ble Supreme Court, in the case of *State of Himachal Pradesh Vs. Prem Singh*, reported in *AIR 2009 SC 1010*, had considered the issue of delay in respect of offences involving sexual assault at length and observed as under:-

"So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India,



more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

15. From the above, this Court finds no missing link or discrepancy in the case of the prosecution and there was a proper corroboration of statements of witnesses with the documentary evidence. Therefore, no other inference can be drawn than the one that it was the accused, who molested the victim girl. The evidence of P.W.1 before the Court was quite natural and cannot be said to be a tutored one.

16. However, the learned counsel for the Appellant prayed for reduction of sentence, by submitting that the proved facts show that the victim girl (P.W.1) and the accused were in relationship, which was admitted by the victim girl in her cross examination, which reads as follows:

"11. At the time of the incident I was in a relationship with the accused person."

17. The incident had taken place in the year 2016 and at that time, the accused was aged about 21 years, which was after the Criminal Law (Amendment) Act, 2013 that came into existence with effect from 03.02.2013 after receiving assent of the President, vide which the punishment for rape under Section 376 IPC has been increased as under:



"376. Punishment for rape - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine."

18. Even the said punishment was subsequently increased to ten years with effect from 21.04.2018 by Act 22 of 2018. Since Statute had given liberty to extend the punishment for life, it does not mean that all accused persons must be imprisoned for life irrespective of the facts and circumstances involved. The Trial Court sentenced the accused to undergo thirty years Rigorous Imprisonment with fine of Rs.2,00,000/-, in default to undergo another one year imprisonment under Section 376 IPC, which, in our considered opinion, was on the higher side and the accused will not get any chance to repent himself for commission of the offence. That apart, the deposition of the victim girl that she was in relationship with the accused, cannot be brushed aside. Thus, taking into consideration the entire facts and circumstances of the case, we are of the view that interests of justice will be served, if the life imprisonment imposed under Section 376 IPC that has been awarded on the appellant is reduced to the minimum sentence of 7 years.

19. In the result, this Criminal Appeal is allowed in part and the judgment and order dated 26.07.2023 and the order of sentence dated 31.07.2023, passed by the Special Judge (POCSO), Ri-Bhoi District,



Nongpoh in Special (POCSO) Case No.34 of 2018 in respect of Section 376 IPC alone is modified to the extent that the Appellant shall undergo Rigorous Imprisonment for seven years and to pay a fine of with fine of Rs.2,00,000/, in default to undergo another six months imprisonment. As ordered by the Trial Court, the Sentences shall run concurrently and the total fine amount awarded as compensation is directed to be paid to the victim girl, if not already paid. It is made clear that the appellant shall be entitled for set off in accordance with Section 428 of the Code of Criminal Procedure for the period of detention already undergone by him. It is reiterated that except the reduction in the quantum of punishment in respect of Section 376 IPC, the rest of the judgment of the Trial Court holds good in all other respects.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
Crl.A.No.1/2024