



Serial No.06
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.7/2024

Reserved on : 06.06.2024

Pronounced on: 08.07.2024

Shri Edison Nongrum

... Appellant

Vs.

1. State of Meghalaya (represented by Chief Secretary of Meghalaya).

2. The Investigating,
Mairang P.S. Case No.47 of 2013.

..... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W.Diengdoh, Judge

Appearance:

For the Appellant : Mr. P. Yobin, Legal Aid Counsel

For the Respondent : Mr. N.D. Chullai, AAG with
Ms. R. Colney, 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

(Made by the Hon'ble Chief Justice)

“Sir Thomas Alva Edison, a great American Inventor and Businessman invented Electric Bulb and other electronic devices so as to bring brightness to the life of people, whereas the accused bearing his name partly, namely, Edison, brought darkness to the life of the victim girl and made a scar in her heart through forcible shock.”



This Criminal Appeal is directed against the judgment dated 27.05.2022 and the order of sentence dated 03.06.2022, passed by the Special Judge (POCSO), Shillong in Special (POCSO) Case No.4/2015 and the accused/Appellant herein was convicted by the Trial Court for the offence under Sections 3(a)/5(l)/6 of the Protection of Children from Sexual Offences Act, 2012 (in short “the POCSO Act, 2012”) and under Sections 321 / 323 / 340 / 342 / 361 / 363 / 366A / 375(a) IPC and was sentenced as under:

Provision under which convicted	Sentence
Section 376(2)(j)(n) IPC (alternate punishment in the place of the provisions of POCSO, Act, 2012)	Twenty years of Rigorous Imprisonment with fine of Rs.1,00,000/-, in default to undergo one year imprisonment
Section 323 IPC	One Year Imprisonment
Section 342 IPC	One Year Imprisonment
Section 363 IPC	Five Years with fine of Rs.50,000/-, in default to undergo six months imprisonment
Section 366-A IPC	Nine Years with fine of Rs.50,000/-, in default to undergo six months imprisonment
Section 506 IPC	Seven Years Imprisonment

All the sentences were ordered to run concurrently. The Trial Court also recommended for consideration of restoration and rehabilitation of the survivor by the State Legal Services Authority under Section 357A Cr.P.C.

**Brief Prosecution Case:**

2. A complaint was given by the sister (P.W.1) of the victim girl (P.W.2) on 20.06.2013 before the Officer-in-Charge, Rynjah Police Station, stating that her sister was raped by the accused on 18.06.2013 and on receipt of the FIR, the Officer-in-Charge, Rynjah Police Station registered a case vide Rynjah PS Case No.47 (06) 13 under Section 3(a) of the POCSO Act, 2012 and under Sections 376/362/363/506/324 IPC and entrusted the case to one WPSI B. Karakor for further investigation.

3. After investigation, a Charge Sheet No.28 of 2014 dated 28.03.2014 under Sections 363/342/324/506 IPC was laid before the Court of Chief Judicial Magistrate and the case was committed to the Special Judge (POCSO) for trial, who framed the charges against the accused under Sections 5(1)/6 of the POCSO Act, 2012 read with Sections 363/342/324/506 IPC. The prosecution, in order to substantiate the commission of the offences against the accused, examined as many as 12 witnesses and exhibited 11 documents and one Exhibit-C1-Certificate of the victim. Statement under Section 164 Cr.P.C. was obtained from the victim girl (P.W.2). 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 offences



under Sections 3(a)/5(l)/6 of the POCSO Act, 2012 and under Sections 321/323/340/342/361/363/366A/375(a) IPC and convicted him as stated supra.

4. Learned Legal Aid Counsel for the Appellant submitted that there was a contradiction in the statements of P.W.1 (sister of the victim girl) between her 161 Cr.P.C. and 164 Cr.P.C. and even though the Doctor (P.W.3) opined that the hymen of the victim girl (P.W.2) was not intact, the finding was given that there was an Old Tear at 3'o clock and 6'o clock. He further submitted that as per the Doctor's evidence, the age of the victim girl was assessed as 17 years and on perusal of the School Leaving Certificate, the age of the victim girl is shown as 16 years, which is contrary and inconsistent. The Doctor (P.W.3) in her deposition stated that she was unable to predict whether there was any penetration and even before receipt of forensic report, she opined that there is a sign of recent sexual intercourse, which was a predetermined one. He also submitted that the statement made by the appellant under 161 and 313 Cr.P.C. had not been taken note of by the Trial Court, in which, the appellant indicated about his previous relationship with the victim girl and convicting him on the basis of the sole testimony of the victim girl without any collaboration is contrary to the law. Finally, he prayed for reduction of the sentence imposed on the



appellant, taking into consideration the age of the appellant as 22 years at the time of incident.

5. Per contra, learned Additional Advocate General appearing for the State contended that by no stretch of imagination, it can be said that the evidence of P.Ws.1 to 3 is inconsistent, as the prosecution had, beyond reasonable doubt, established its case that it was the accused, who had committed aggravated sexual penetration on the victim girl on several occasions, which is evident from the deposition of the victim girl, which had been duly proved by the prosecution by means of both oral and documentary evidence. He further contended that in terms of the judgment of the Apex Court in the case of *Ganesan vs. State*, reported in *AIR 2020 SC 5019*, wherein it was categorically held that there can be a conviction on the sole testimony of the victim / prosecutrix, when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. He also contended that the accused proposed his love to the victim girl, which was not accepted by her and infuriated by the same, he had kidnapped the victim girl and committed the offence of forcible penetration upon the minor girl. Thus, the accused does not deserve any leniency and he prayed that the present Criminal Appeal is liable to be dismissed.



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

7. The case of the prosecution was that the victim girl (P.W.2), who was a minor at the time of incident as per the Second School Leaving Certificate marked as Ex.C1, was abducted by the accused in a cab, while the victim girl was on the way from her tuition class, took her to a far off place and sexually abused her, taking advantage of her pusillanimity. The sister (P.W.1) of the victim girl had preferred a Police complaint on coming to know of the molestation of the accused, on the basis of which, Police registered an FIR (Ex.P1) against the accused. P.W.1 in her 164 Statement reiterated the same contents found in the FIR.

8. The victim girl (P.W.2), whose statement was recorded under Section 164 Cr.P.C. had stated that the accused pulled her inside the car and raped her and also threatened her in dire consequences. The 164 statement (Ex.P3) given by the victim girl is extracted below:

“I was going for tuition & one boy Edison Nongrum use to trouble me. He use to stay as a tenant in my aunt’s house. One day while I was coming back from tuition he called me & told me to have tea with him. This happened last year. I went with him & he took me to Mawlai & stopped the car at a jungle. Before that he took me to Nongthymmai & tried to rape me. I called out for help but no one came & he raped me & threatened to kill me. Thereafter the next day he took me to Mawlai & again raped me. This continued for four to five times. After that he did not contact me.



This year again he called me up & I do not know from where he got my number. He asked me to collect my memory card from him & he told me that he would not trouble me again. It was around 7:30 Pm. I went to collect the memory card. He came by a local taxi & pulled me inside the car & locked the car. He also made the music loud. He took me to same place & got out of the car. I tried to escape by running away but he came & hit me by the car. He pulled me inside the car & raped me. I told him that I will not keep quiet this time & tell to the police. He threatened me that he would not let me reach home safe.

Somehow later I could manage to escape from the car. I also called up my niece's husband. They saw me jumping from the car & tried to chase the car but failed. Thereafter I came home.

This is all I have to say.”

9. The victim girl was medically examined by Dr.P.Manners (P.W.3) on 20.06.2013 and after her examination, she had submitted her report (Ex.P4), wherein it was indicated as follows:

“15. Clinical Opinion

After performing the above mentioned clinical examination the findings are

- a) Consistent with recent sexual intercourse/assault.
- b) Not consistent with recent sexual intercourse/assault.
- c) Opinion reserved pending availability of reports of the sample sent.”

On her (P.W.3) directions, various clinical tests were performed. The victim girl (P.W.2) was subjected to radiological test to ascertain the exact age of the victim girl and Dr.Labalin War (P.W.4) had deposed before the Court that the age of the victim at that relevant point of time was approximately 16 to 17 years old and her report was marked as Ex.P5.



10. Similarly, the accused was also medically examined by Dr.M.Syiem (P.W.5) on 21.06.2013 and the Doctor issued the medical examination certificate (Ex.P6), wherein, he had given the following opinion:

1. No smudge present on his private part.
2. No abrasion laceration or scratch mark present on his private part.
3. There is no external injury on his body.
4. No blood stain found on his body.

11. The core argument put forth by the learned Legal Aid Counsel for the appellant was that conviction was inflicted on the appellant, owing to the sole testimony of the victim girl and the said testimony is not properly corroborated with the medical evidence. The said submission cannot be accepted for the reason that apart from the evidence of the victim girl (P.W.2), her sister (PW.1) had also deposed in her 164 Statement as under:

“On that day I had stayed with my mother-in-law as she was unwell. “Meiduh” called me up the next day & told me to come back home immediately. After finishing all my work at my in-laws house I went home, but till I reached, they already left home & were at Rynjah Police Station. So I went to Rynjah PS & I came to know that my youngest sister, Vanita Kharshiing was raped. She confessed about all the incident that had happened to her in front of the police. Meiduh told me about the incidents, that while my sister was coming back from the tuition classes. One boy called her for tea who is known to us. So my sister went with him



& instead of taking her for tea he took her to NEHU, Nongthymmai and raped her. I also knew from Meiduh that this boy had threatened my sister. My sister also later told me about all this. Out of fear my sister could not tell us on that day. She thought that he would not trouble her again but this boy kept on repeating this act & raped her again. This continued for quite sometime. One day he called my sister to collect her memory card. My sister went as he had assured her that he would not trouble her anymore. When she went he pulled her inside the car & put on the music loud, so that no one could hear her scream. He took her somewhere to Nongrah & tried to rape her but my sister could escape as he had come out of the car while escaping my sister fell down. This boy saw her & dashed her with the car. He pulled her back to the car & threatened her that he would kill her if she told anyone about all this. In this meantime my sister could somehow call my daughter's husband from her mobile & told him that she is in danger. On getting the call they proceeded to Nongrah as told by my sister. They saw her jumping from the car and also saw the car. My son-in-law could not seek the number of the car properly but just saw two numbers of the vehicle. He punched the glass of the vehicle. After that my sister was brought home & it was then only that she had told about all the incidents to Meiduh & our parents Meiduh called all the relatives on that night & our brothers came home on that night. After talking about everything they decided to file the FIR. On this day as said earlier. I was in my mother-in-law house. The next day we all went & gave the FIR which is signed by me.

This is all I have to say”

12. To corroborate the statements of P.Ws.1& 2 medically, the Doctor (P.W.3) was examined, who had clearly deposed in her cross examination as under:

“I have conducted the examination of the victim personally myself. It is fact that I have found injuries on the victim which are 2 abrasions on the left knee, one abrasion on the right knee and one abrasion on the base of the small toe on the right side. There was no bleeding in the vagina except a



small abrasion on the fourchette. I cannot say whether there is any penetration or not. I have deposed the truth before the Court and I have not deposed falsely.”

On a glance at the medical report of the victim girl coupled with the deposition of the Doctor (P.W.3), the possibility of recent sexual assault cannot be ruled out. Moreover, when the testimony of the victim child inspires the confidence of this Court and is found to be reliable, there is no necessity for this Court to look for other corroborations. Even the answer given by the appellant, when he was questioned under Section 313 Cr.P.C., is only the *ipse dixit* of the appellant and he had not answered anything to rebut the presumption / accusation levelled against him, in the absence of which, this Court has no other option, but to presume that the offence has been committed.

13. Learned Legal Aid Counsel strenuously argued that even though the accused is said to have indulged in the commission of offence on the victim girl since 2012 (as deposed by her) before the Court, she did not reveal it to anyone about the incident till 2013 and therefore, her testimony is doubtful, as the complaint was preferred only in the year 2013, which discloses the fact that the victim girl had also maintained relationship with the accused as spoken out by the accused, while he was questioned under Section 313. Thus, learned Legal Aid Counsel for the appellant pleaded for



reduction in sentence, taking note of the fact that the appellant was only 22 years on the day of incident.

14. Though we are unable to agree with the above submission of the learned Legal Aid Counsel for the appellant in *toto*, for the reason that the victim girl might have apprehended fear in her mind that there is a possibility for the appellant to disclose her relationship with him to her parents and that is the reason for her remaining tight-lipped, at the same time, a close scrutiny of her deposition in the cross examination creates slight doubt in the minds of this Court about the possible cordiality between the accused and the victim girl and she, having meted out torture at the hands of the accused, ought not to have waited till 11th hour to report his menace to her family members. The extract of her cross examination is reproduced hereunder:

“I know the accused Edison Nongrum. He approached me but I did not accept. I have stated that he has rape me since the year 2012 but I did not disclosed the matted to my parents only when they find me in the year 2013 that **I was with him when I got down from his vehicle then they start asking me. Out of fear I narrated the whole story.** After a year my eldest sister has lodged the FIR to the police. Then the Police took me for medical check-up where I had already took a bath and change my clothes. I have completed my XII Std. It is not a fact that I am having any relationship with the accused.”



15. The period of punishment for the offence committed under Section 6 of The POCSO Act, 2012, prior to the amendment dated 16.08.2019 has been prescribed as under:

“6. Punishment for aggravated penetrative sexual assault – Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term **which shall not be less than ten years** but which may extend to imprisonment for life and shall also be liable to fine.”

Subsequently, the Parliament in its wisdom modified the period of punishment for the offence committed under Section 6 of The POCSO Act, 2012, by way of substitution and amendment by Act 25 of 2019, which is extracted hereunder:

“6. Punishment for aggravated penetrative sexual assault –

(1) Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”

16. Admittedly, in this case, the incident had taken place in the year 2013, i.e., much prior to the amendment being brought into force. The Trial Court had convicted and sentenced the accused to undergo Imprisonment



for twenty years (by way of alternate punishment under Section 376(2) IPC by invoking Section 42 of the POCSO Act, 2012). Learned Legal Aid Counsel for the appellant stated across the bar that the appellant got married and gave birth to a male child in the year 2015. On a close scrutiny of the deposition of the victim girl (supra), it can be noticed that there is a slight reluctance seen in her deposition. Moreover, the complaint was lodged by the sister of the victim girl and that the accused was 22 years old at that time.

17. As per a policy brief on the Implication of the POCSO Act in India on Adolescent Sexuality, authored by Raha & Ramakrishnan, the ostensible objective may be to protect the children below 18 years from sexual exploitation, but the law's unintended effect has been the deprivation of liberty of young people in consensual relationships. Sexual behavior in adolescents, particularly from the onset of puberty is established as being natural, normative, and an integral part of adolescent development and their transitions into adults in terms of the judgment of the Supreme Court reported in *AIR 2017 SC 4904*, and by equating consensual and non-exploitative sexual acts with rape and (aggravated) penetrative sexual assault, the law undermines the bodily integrity and dignity of adolescents. The lack of recognition of consensual sexual behavior of older adolescents



has resulted in their automatic criminalization as well as a conflation of consensual acts with non-consensual acts.

18. According to the reformatory theory, the intention of punishment must be to transform the culprit through the individualization approach and a wrongdoer cannot simply cease to be a living human being just because he committed crimes. The theory aims to re-educate and try to reform them. Most of the offences occur on account of the temptation, which is greater than the character that is obviously weak and as such, the punishment, should be restorative than a deterrent.

19. For the foregoing discussions, we are of the view that interests of justice will be served, if the Rigorous Imprisonment for twenty years imposed on the accused is reduced to 10 years.

20. In the result, this Criminal Appeal is allowed in part and the judgment dated 27.05.2022 and the order of sentence dated 03.06.2022, passed by the Special Judge (POCSO), Shillong in Special (POCSO) Case No.4/2015 in respect of Section 376(2) IPC alone is modified to the extent that the Appellant shall undergo Rigorous Imprisonment for ten years and the rest of the judgment of the Trial Court holds good in all respects. 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.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
Crl.A.No.7/2024

