



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No. 35 of 2022 Reserved on : 10.07.2024
Date of Decision: 25.07.2024

Shri. Arindom Das,
S/o (L) Akshaya Kumar Das
R/o village Chaipani,
P.O. Kilapara, P.S. Dalu,
West Garo Hills District,
Meghalaya.

Vs. State of Meghalaya,
represented by the
Ld. Special Public Prosecutor
(POCSO) for the State.

::::APPELLANT.

::::RESPONDENT.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. S. Deb, Adv.

For the Respondent(s) : Mr. N. D. Chullai, AAG with
Mr. E. R. Chyne, GA.

(JUDGMENT & ORDER)

This appeal is filed against the Judgment and Order of conviction dated 11-10-2022 and the order of sentence dated 13-10-2022 passed by the learned Special Judge (POCSO), West Garo Hills, Tura in



Special (POCSO) Case No. 22 of 2016 (G.R. No. 132/2016) under Section 8 read with Section 18 of the POCSO Act, whereby the appellant was convicted and sentenced to undergo simple imprisonment for one and half year with fine of Rs. 20,000/- and in default of payment to undergo further simple imprisonment for six months.

1. The fact of the case, as can be gathered from the materials available on record, is that the appellant was a teacher in Dalu Bengali Secondary School wherein the survivor was a student of class VII in the said school. The survivor used to go for private tuition to the appellant. On 21-05-2016, a written FIR was lodged by PW 1, the father of the survivor, alleging that on 16-05-2016 (Monday) after completion of tuition, the appellant dropped the survivor back home and finding no one in the room, he started molesting the survivor. The PW 4, the mother of the PW 1 (grandmother of the survivor), who was in the adjacent room, thought that there was something wrong and secretly saw the appellant molesting the survivor. Seeing this, she became nonplussed and the appellant somehow managed to leave the place. The matter was informed to the committee member of the school for taking necessary action, but nothing was done. On the basis of the FIR, Tura Women PS Case No. 18 (05) 2016 under Section 7/8 of POCSO Act was registered and the matter was investigated into. Upon completion of the investigation, a charge-sheet was filed against the appellant on 29-11-2016 under Section 7/8 POCSO Act. Thereafter, charge under Section 8 read with Section 18 of the POCSO Act was framed against the appellant by the Trial Court



on 10-03-2017 to which the appellant pleaded not guilty and claimed trial. The prosecution in support of its case examined 11 (eleven) witnesses and exhibited 8 (eight) documents. After completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.PC on 17-01-2022. The appellant also examined 4 (four) witnesses in his defence. The case was thereafter heard and vide impugned Judgement and Order dated 11-10-2022, the appellant was convicted under Section 8 read with Section 18 of the POCSO Act and by order dated 13-10-2022 sentenced to undergo imprisonment for a period of one and half year with fine of Rs. 20,000/- and in default to undergo another period of six months imprisonment.

2. Mr. S. Deb, learned Counsel appearing for the appellant submits that the FIR was filed on 21-05-2016 after a delay of five days from the date of incident which allegedly took place on 16-05-2016 and the prosecution has not explained the reason for such delay. He submits that unexplained delay makes the FIR suspicious and unworthy for legal consideration. The learned Counsel further submits that the FIR mentioned about the occurrence of a single incident whereas the deposition of the survivor speaks of occurrence of multiple incidents, which is nothing but an exaggeration of the alleged incident. He submits that the alleged fact and the date of incident mentioned in the FIR is totally contradictory to the fact narrated in the evidence of the survivor. The finding recorded by the Trial Court as to the occurrence of 16-05-2016 is not in the line of what has been stated by the survivor in her deposition. He also submits that the evidences of DW1 and



DW2 show beyond doubt that the appellant did not even enter the place of occurrence on the day of the alleged incident. He further submits that the statement of the appellant under Section 313 Cr.PC and the deposition of DW 3 make it clear that there was a dispute between the appellant and the PW 1 with regard to payment of tuition fees and the FIR was lodged by the PW 1 to seek revenge against the appellant for demanding tuition fees and for refusing to provide further tuition to the survivor in case of non-payment of tuition fees. He contends that the learned Trial Court discarded the defence evidence without any valid reason and proceeded to hold that the prosecution version of the case stood established for the reason of non-reliability of the defence evidence. He submits that the prosecution has failed to establish a case of its own and the evidence of the prosecution witnesses are self-contradictory. The learned Counsel submits that the PW 4, who claimed to be an eye-witness of the incident, in her deposition stated that she saw the incident through a window hung with a curtain, whereas the sketch-map of the place of occurrence (Exhibit 3) does not show existence of any window on the wall between the place of occurrence and the adjacent room from where the PW 4 asserted to have seen the incident. He submits that the evidence of PW 4 suffers from serious contradiction and is totally unreliable for proving the prosecution case. He submits that the conduct of the PW 1 in first approaching the Managing Committee of the school seeking action against the appellant, and after failing in his effort, filing of the FIR dated 21-05-2016 and supplementary FIR dated 23-05-2016 by exaggerating the allegation, is clear indication of vindictive mindset of the PW 1 to wreak vengeance against the



appellant. The learned Counsel submits that the Trial Court has ignored the evidences which were in favour of the defence and proceeded to convict the appellant solely on the basis of the prosecution version of the case without any supporting evidence. He submits that the conviction recorded by the Trial Court is not sustainable in law and the impugned Judgment and Order and the order of conviction are liable to be set aside and quashed.

3. Per contra, Mr. N. D. Chullai, learned AAG submits that there was no inordinate delay in filing the FIR as the offence alleged is with regard to sexual offence concerning a minor girl and question of delay is not at all material in cases of such offence. He submits that the prosecution case cannot be thrown out merely on the ground that there was some delay in lodging the FIR. The learned AAG contends that there is no major contradiction in the evidence adduced by the prosecution and the sole testimony of the survivor is enough for basing conviction in a case involving sexual offence. By referring to the evidence of the survivor, the learned AAG submits that the incidences which are narrated therein have occurred on 16-05-2016, and minor confusion, if any, is due to the reason that the survivor was only about 12 years old at the time of the incident. He submits that the Court should examine the broader probabilities of a case and not get swayed away by insignificant discrepancies in the statement of the survivor. He submits that the supplementary FIR dated 23-05-2016 has not been acted upon and has no significance in the trial and conviction of the appellant. In response to the argument of the appellant that the evidence of the PW 4 is contradictory to the Exhibit



3, the learned AAG refers to the evidences of PW 5 and PW 6 and submits that both the witnesses have stated that there is a bamboo wall between the place of occurrence and the adjacent room and the PW 4 peeped through the gap on the bamboo wall and saw the appellant committing the crime. On the question of delay and reliability of evidence of the survivor, the learned AAG places reliance on a decision of the Apex Court reported in (2020) 10 SCC 573, *Ganesan Vs. State represented by its Inspector of Police* (para 10.1) and the Judgment of this Court rendered by a Division Bench in *Crl. A. No. 31 of 2023, Shri. Mihkahtngen Sarubai Vs. State of Meghalaya & Anr.* (para – 13). He submits that there is no merit in the present appeal and prays for dismissal of the same.

4. The submissions made by the respective parties are carefully considered and also perused the materials available on record.

5. The PW 1, the complainant and the father of the survivor, in his examination-in-chief before the Trial Court stated that the occurrence took place on 16-05-2016 in his mother's (PW 4) house at about 8.30 pm and on that date, he was not at home and had gone out along with his wife. He stated that his mother's house is situated near his house. On the day of the incident, the survivor had gone to the house of the appellant for private tuition and was dropped back home by the appellant. The appellant told his mother that further teaching was required and wanted to teach the survivor in his mother's house. His mother asked them to study in the room of his brother while she was in the adjacent room. After noticing some sound coming from the room where the survivor was taking tuition from the appellant, his



mother entered the room and at that time the appellant quietly ran away. PW 1 further deposed that later he was informed by the survivor that the appellant used to teach her separately in his house and the other students used to study at the verandah. The appellant had threatened the survivor prior to the incident that if she revealed anything to anyone regarding anything wrong which he would commit against her, he would get the survivor failed in class and also kill her brother. The PW 1 also stated that he came to know about the incident on 18-05-2016 and thereafter informed the School Managing Committee on the same date. As the School Managing Committee did not take any action against the appellant, he filed the FIR before the Dalu Police Station on 21-05-2016 and exhibited the said FIR as Exhibit-1. PW 1 stated that on the basis of the information received from his wife basing on the narration made by the survivor at the time of her medical examination, he filed the supplementary FIR exhibited as Exhibit-2. He stated that the police visited the place of occurrence and had drawn the rough sketch map of the place of occurrence and exhibited the sketch map as Exhibit -3.

In his cross-examination, the PW 1 stated that the appellant was his best friend for a long time and her daughter used to take tuition from him. Since the appellant was his friend, no tuition fee was fixed but the appellant told him to pay as per his wish. He did not pay tuition fee for more than last one year to the appellant. He denied that he lodged a false case against the appellant as the appellant demanded tuition fee and there was an altercation between him and the appellant. He admitted that there was a delay in lodging the FIR but denied that



it was afterthought and conspiracy against the appellant just to implicate him in a false case.

6. The PW 2, the survivor, in her examination-in-chief stated that on 16-05-2016 the appellant called her in his home to give her private tuition. When she reached the house of the appellant, his niece was also studying there. The appellant sent his niece on the pretext that she was called for food by her mother. The appellant, thereafter, asked the survivor to promise not to reveal anything to anybody and if she revealed, her brother would be dead and she would be detained in the class (not promoted). She promised not to reveal anything thinking that the appellant was going to give her question paper for exam. On her promise, the appellant asked her to sleep with him to which she replied that she would reveal the matter to her mother. The appellant quietly came out of the room. She did not reveal the matter to anybody and as usual used to go for tuition. After few days of the first occurrence, on the fateful day, the date which she did not exactly remember, she went to the house of the appellant for the tuition and after the tuition was over, the appellant came to drop her home along with two others. After dropping the other two students, the appellant came with her in her house and her grandmother (PW 4) made him seat in her room as her parents and her younger brother was not present at home. Then, in the room of her grandmother the appellant asked her to write a note from the rough copy. While she was writing the note, the appellant put his hand on her breast. She pushed away his hand but again he put his hand on her breast. At that moment, she found one scale nearby and struck him with the scale. Thereafter, the



appellant made her lie down on the bed and covered her mouth with his hand and he tried to insert his private part into her private part but his private part could not reach her private part. Her grandmother hearing some sound entered the room and on seeing her grandmother, the appellant fled away from the room. Her grandmother asked her as to what the appellant was doing and she narrated everything to her what the appellant had done to her. Thereafter her father, on being informed of the incident reported the matter to the police. She was taken for medical examination to hospital at Tura. Her statement was also recorded by Magistrate at Tura which was exhibited as Exhibit-4. She stated that she was studying Class VIII and was going to the same school. After the incident she did not see the appellant coming to the school.

In her cross-examination, the survivor stated that she used to go to take tuition to the house of the appellant thrice in a week i.e. Monday, Wednesday and Friday. She stated that she could not say the time of the incident and when it took place but the incident took place in her house in the room of her grandmother. At the time of the incident her aunt and her grandmother were present in the house. She admitted that during the course of the ordeal, she did not scream, shout or resist the appellant but denied that no such incident had occurred. She also denied that there was a hot altercation between her father and the appellant because of demand of payment of tuition fees by the appellant which resulted in institution of the false case against the appellant.



7. The PW 3, the mother of the survivor, in her examination-in-chief before the Trial Court stated that she received the information about the incident from her mother-in-law on 18-05-2016. On the date of the incident, she and her husband were not at home and only the survivor and her mother-in-law (PW 4) were present in the house when the incident took place. On hearing about the incident, she enquired it from the survivor who affirmed what was stated by her mother-in-law. She also stated that the next date they informed the matter to the school authorities and finding no response, they went to Dalu Police Station and lodged the FIR after two or three days. She accompanied the survivor for medical examination. The PW 3 also stated that during the course of medical examination, the survivor further revealed that the appellant wanted to rape her on the day of incident and had forcibly pulled down the undergarment of the survivor but due to the sudden intervention of her mother-in-law, the appellant could not succeed and escaped from there. In her cross-examination, the PW 3 stated that she received the information of the incident after two days as her mother-in-law out of fear could not inform the matter immediately. She admitted that her mother-in-law did not see anything regarding pulling of inner garment of the survivor by the appellant. She admitted that the appellant was the private tutor of the survivor at a monthly tuition fee of Rs.500/- and stated that she was not sure whether tuition fees for around one year was paid or not by her husband. She denied that when the appellant demanded his arrear tuition fees from her husband, a dispute had arisen, which led to the filing of the case against the appellant. She admitted that the survivor before the incident never lodged any complaint against the



appellant. She exhibited Exhibit-5, the seizure list, by which the copy of birth certificate of the survivor was seized.

8. PW 4, the grandmother of the survivor, in her examination-in-chief before the Trial Court stated that on the day of the incident, the appellant came to her house and chose to take tuition of the survivor in her living room. She saw the survivor sitting on a chair and the appellant sitting on the edge of the bed and despite her persuasion to get a chair, the appellant refused the request, she left the room and went to the other room of the house and while preparing tea for the appellant, she could clearly witness from the window hung with a curtain that the appellant had grabbed the breast of the survivor and he was pulling the pant of the survivor. On seeing the incident, she went to the tuition room and when she entered there, she saw the survivor hitting the appellant with a scale and on seeing her, the appellant left the place. The next day at around 10 a.m. she informed the incident to PW 6. She also deposed that the survivor told her that very evening of the incident that the appellant misbehaved with her at his tutorial place in the past and had warned the survivor not to disclose the same to others or else her education would be ruined.

In her cross-examination, she stated that she did not remember the date of the incident but stated that on the day of incident, PW 1 and PW 3 were not at home. She denied the suggestion that no such incident had taken place and stated that when she entered the room, both the appellant and the survivor were sitting on the bed. When the appellant tried to pulled down the pant of the survivor, she did not



raise her voice. She reported the matter to the parents of the survivor on the next day.

9. The PW 5, in his examination-in-chief stated that on 17-5-2016 his nephew told him about the incident of 16-05-2016. He stated that PW 4 saw the incident by peeping through the wall of the place of occurrence which was made of bamboo and there was a gap in between. He stated that he informed about the incident to the PW 1 on 18-05-2016 in the afternoon. He also stated that as soon as he informed the PW 1, he got angry. The witness further stated that he told the PW 1 to cool down as he was a committee member of the Dalu Bengali Secondary School and within 10 minutes, he informed the Secretary of the said school of the incident. Within 10 minutes, the Secretary came to meet him and PW 1 at Dalu Rama Krishna Seva Sanga. He narrated everything about the incident to the Secretary to which the Secretary said that he would hold enquiry about the incident as the appellant is working under him. In his cross-examination, the PW 5 stated that on 17-05-2016 he went to the house of his nephew where his sister-in-law narrated the incident to him. He also stated that at that relevant period, he was one of the members of Executive Committee of Dalu Bengali Secondary School and at his instance the appellant was put under suspension.

10. The PW 6, in his examination-in-chief also stated that the PW 4 saw the incident by peeping through the gap of the bamboo wall. He stated that he informed the PW 5 about the incident who, in turn, informed the parents of the survivor and, thereafter PW 5 and PW 1 informed the matter to the Managing Committee of Dalu Bengali



School where the appellant was a teacher. In his cross-examination, the PW 6 stated that he heard about the incident from his mother on 17-05-2016 at about 3.00 p.m. and, thereafter he informed the matter to his uncle, the PW 5, on 18-05-2016.

11. The PW 7 is a medical witness and the PW 8 is a seizure witness. Their evidences are found to be of not much relevance for deciding this appeal. The learned Counsel for the appellant has also not referred to the evidences of the said witnesses in his argument before this Court.

12. The PW 9 is the police officer who received the FIR on 22-05-2016 on being forwarded by Dalu P.S. to Women P.S. Tura and registered the case and endorsed to PW 10 for investigation. The said witness also had sent the survivor for medical examination to the Maternity and Child Hospital, Tura and exhibited P-Exhibit 7, the seizure list, before the Trial Court.

13. The PW 10, the Investigating Officer of the case, in her examination-in-chief stated that the survivor was sent for the medical examination. After the medical examination of the survivor, the appellant was arrested and forwarded to the Court. The statement of the complainant and other witnesses were recorded by her at Tura Women P.S. The statement of the survivor was also recorded under Section 164 Cr.PC. The birth certificate of the survivor was seized by her during the course of the investigation. After completion of the investigation, she submitted the charge-sheet against the appellant



basing on the statement of the survivor, complainant and other witnesses and exhibited the charge-sheet as P-Exhibit 8.

In her cross-examination, she stated that the FIR was filed on 21-05-2016 without explaining delay. There was a supplementary FIR dated 23-05-2016 filed by the complainant but it was not registered and no separate investigation was made on the basis of the allegation made therein. She admitted that as per the rough sketch of the place of occurrence drawn by the PW 11, there was no window in the particular room. The biological samples collected from the survivor were not sent for FSL examination as she found that it was a case of molestation. She denied that she has not done the investigation properly and filed a false charge-sheet against the appellant.

14. The appellant, in his statement under Section 313 Cr.PC has denied the entire allegation against him and claimed the case to be a false case. The appellant stated that 16-05-2016 when he went to drop the survivor there was other students present along with him. He also stated that on 19-05-2016 at around 5.30 p.m. he had a quarrel with the PW 1 regarding payment of tuition fee for one year five months which was long overdue. When he asked for payment, the PW 1 refused to pay, for which he said that he would not be taking tuition of survivor anymore. Then the PW 1 threatened him and stated that he would not be able to take tuition of others and also would not be able to teach in the school.

15. The DW 1, in her examination-in-chief stated that on 16-05-2016 she along with six other students including the survivor were



dropped by the appellant. When they reached to the residence of the survivor, she called her mother but her mother was not available at home, however, her grandmother came out and took the survivor inside. Thereafter, the appellant dropped her at her resident. There were still five students remaining to be dropped and saw the appellant went to drop them. She stated that while dropping, the appellant did not enter the residence of the survivor. In her cross-examination, she stated that she did not know whether after dropping all the students the appellant had returned back to the house of the victim or not.

The DW 2, also deposed in the line of DW 1 and in her cross-examination stated that she did not know after dropping her whether the appellant had returned back to the house of the victim or not.

16. The DW 3, in her deposition stated that on 19-05-2016 she along with four-five friends were standing in front of the house of the appellant. The appellant was also present there and he met with PW 1. There was heated argument and altercation between them with regard to the error of tuition fees for more than one year of the survivor who is the daughter of the PW 1. When PW 1 said that he would not pay any tuition fee, the appellant told that he would not give any further tuition to the survivor. Then PW 1 threatened the appellant that he would not allow taking of tuition of any student and he would further make the appellant terminated from school as his relative was in the Managing Committee of the School. In her cross-examination, the said witness stated that she knew the survivor but her tuition timing was different. On 19-05-2016, she along with her friend were waiting



for tuition as they came early at 5.30 p.m., half an hour early to the scheduled time.

17. An analysis of the evidences as summarized above would undoubtedly establish that on 16-05-2016, the survivor went for tuition to the place of the appellant and she was brought back home by the appellant. The survivor and the PW 4 in their evidences before the Trial Court clearly stated that on the day of incident the appellant was there in the place of occurrence on the pretext of giving tuition to the survivor. The appellant in his cross-examination of both the aforesaid witnesses has nowhere disputed his presence in the place of occurrence. The cross-examination of the said witnesses was confined only to the questions relating to the commission of actual crime. Although, the appellant subsequently tried to dispute his presence in the place of occurrence by adducing evidence of DW1 and DW2, but the said defence witnesses in their cross-examination categorically stated that they did not know whether after dropping them, the appellant went back to the place of occurrence or not. That apart, the survivor in her evidence before the Trial Court specifically stated that on the day of the incident, the appellant came to drop her along with other two students and after dropping the other two, came with her to her house. The said evidence of the survivor was not challenged by the appellant in her cross-examination. Thus, the evidences of DW1 and DW2 do not create any doubt over acceptability of the evidences of the survivor and the PW4 with regard to the appellant's presence at the place of occurrence on the day of the incident.



18. The DW 3 was examined on behalf of the appellant to support his stand that there was a heated argument and altercation between him and the complainant which resulted in filing of a false case against the appellant. The DW 3, a student of the appellant, in his deposition stated that on 19-05-2016 he arrived half an hour early for tuition and was standing in front of the house of the appellant along with the appellant and other friends. There they met the complainant and a heated argument and altercation ensued between the appellant and the complainant over payment of tuition fee of the survivor. The learned Trial Court did not accept the evidence of the said witness on the ground that the evidence was not above suspicion. Out of the many reasons given by the Trial Court, the arrival of the said witness for tuition half an hour before the scheduled time without any specific reason inspite of the fact that he was staying in the same locality has been held as one of the reasons for not believing his evidence. The creation of suspicion in the mind of the Trial Court while dealing with the evidence of DW 3 does not seem to be unjustified. The evidence of the DW 3 revealed that they were standing in front of the house of the appellant and the appellant was standing with them. While it is understandable that because of early arrival before the scheduled time for tuition, the DW 3, being a student was waiting outside, but what made the appellant to wait outside along with the student is beyond any logical explanation. The evidence of DW 3 did not indicate that the complainant was supposed to come there and the appellant was waiting outside to meet him. The evidence of the DW 3, therefore, is highly doubtful and not worth acceptance.



19. Moreover, the appellant did not put any specific question with regard to the incident of 19-05-2016 to the PW 1, the complainant, while he was cross-examined. The appellant did put some questions concerning non-payment of tuition fees by the complainant and demand of tuition fee by the appellant which resulted in altercation and heated argument between them, but without specifying any date or time. There is also nothing on record to suggest that the appellant had informed about the incident of 19-05-2016 to the Investigating Authority at the stage of investigation. No assertion has been made that the appellant was prevented from disclosing the occurrence of 19-05-2016 to the Investigating Authority. In addition, the PW 10, the Investigating Officer, was also not cross-examined on the point that the FIR filed by the complainant was an outcome of the altercation and the heated arguments between the appellant and the complainant. In fact, the mention of occurrence of 19-05-2016 does not find place anywhere in the entire record of the case prior to the recording of statement of the appellant under Section 313 Cr.PC. If there was at all an incident of 19-05-2016, the appellant would not have remained silent for such a long time and would have definitely disclosed it before the Investigating Authority at the time of the investigation of the matter. The appellant's version of the case, as such, is not at all believable.

20. The PW 1, in his evidence has stated that he came to know about the incident on 18-05-2016 and on the same day informed the School Managing Committee. The PW 5, in his evidence stated that he was informed about the incident by the PW 1 on 18-05-2016 and



on the same date informed the Secretary of the Dalu Secondary Bengali School about the incident. The Secretary came to meet him and the PW 1 at the Dalu Ramkrishna Seva Sanga within 10 minutes of the information. The above evidences were not disputed by the appellant while cross-examining the said witnesses. The appellant examined the DW 4, the Secretary of the School, to bring on record the complaint filed by the complainant to the Managing Committee of the school apparently to project that the complaint of the PW 1, exhibited as DExhibit-1(OSR), was made on 20-05-2016, i.e., after the date of taking place of the incident of 19-05-2016. The DW 4, in his evidence stated that the complaint was received by the previous Secretary of the School. Hence, the disclosure made by the DW 4 was from the information derived from the school record and not from his personal knowledge. The mention of the date on the complaint would not necessarily mean that the then Secretary of the School did not receive any information with regard to the incident of 16-05-2016 on 18-05-2016 as stated by the PW 1 and PW 6. Receiving information does not always mean receiving written information, it can well be verbal. The evidence of DW 4 at the best would prove that the written complaint from the complainant was received on 20-05-2016, but no way would disprove the evidences of the PW 1 and the PW 6 that the information was given to the then Secretary of the School on 18-05-2016. The appellant has not examined the person who was function as the Secretary of the School at that relevant point of time of the incident to disprove the evidences of the PW 1 and the PW 6 and, hence, the contention that the FIR was lodged as an outcome of the incident of 19-05-2016 cannot be accepted.



21. The PW 4, in her deposition stated that she saw the incident on 16-05-2016 from a window hung with a curtain. The appellant challenged the said version of the evidence by contending that the Exhibit-3, the sketch map of the place of occurrence, showed that there exists no window on the wall between the place of occurrence and the adjacent room from where the PW 4 has claimed to have seen the occurrence. The record of evidence reveals that the sketch map of the place of occurrence was exhibited by the PW 1 during the course of his examination before the Trial Court on 12-05-2017. The PW 4 was examined by the Trial Court on 14-05-2019, much after the evidence of the PW 1, but the Exhibit-3 was not put before her to confront her when she was cross-examined. The depositions of PW 5 and PW6 revealed that there exists a bamboo wall between the place of occurrence and the room from where the PW 4 had seen the occurrence and there were gaps on the bamboo wall. The above depositions of the PW 5 and PW 6 were not disputed by the appellant while cross-examining the said witnesses. In the circumstances, it cannot be said that the evidence of PW 4 is in total contradiction of the Exhibit-3 and it was impossible for her to see the occurrence on 16-05-2016.

22. The learned Counsel for the appellant is correct in his contention that the facts stated in the FIR speaks of occurrence of one incident whereas the statement of the survivor under Section 164 Cr.PC as well as her evidence before the Trial Court discloses occurrence of more than one incident. The statement of the survivor under Section 164 Cr.PC and her evidence before the Trial Court are



not confined to the incident stated in the FIR. The statement under Section 164 Cr.PC of the survivor did not refer to any particular date of incident. The survivor stated that she did not remember the date. In her evidence before the Trial Court, the survivor mentioned about 16-05-2016, but wrongly stated the date to be the date of occurrence of the first incident which took place at the residence of the appellant. While narrating about the incident which actually took place on 16-05-2016, she stated that she did not remember the date. Apart from the above discrepancy in the date of occurrence, there appears to be no other major contradiction having bearing on the material aspect of the prosecution case. The survivor, in her evidence before the Trial Court stated that on the day of incident the appellant put his hand on her breast and made her to lie down on the bed and attempted to touch her private part. The grandmother (PW 4) of the survivor hearing some sound entered the room which made the appellant ran away from the place. In her statement recorded under Section 164 Cr.PC, the survivor narrated the same incident. The evidence and the statement of the PW 2 under Section 164 Cr.PC are in the line of the allegation made in the FIR and stood unshaken at the trial. Just because the evidence of the prosecution made disclosure of more facts beyond the facts stated in the FIR, the entire prosecution case cannot be rejected. The additional fact revealed by the survivor at the trial did not dilute or alter the allegation made in the FIR. What matters most in a criminal trial is that the fact basing on which the accused was charged and made to face the trial, has been proved beyond reasonable doubt or not. A comparative reading of the statement under Section 164 Cr.PC and the evidence of the survivor recorded during the course of



trial does not point out any serious contradiction leading to formation of doubt in the prosecution case. Having regard to the fact that the survivor was less than 13 years old at the time of the occurrence of the incident, a wrong statement with regard to the date of occurrence of the incident is considered to be insignificant. The evidence adduced by the survivor fully support the material fact of the prosecution case and the defence has failed to rebut same.

23. The decisions relied upon by the learned AAG relate to the question of delay in lodging FIR and importance and weightage of evidence of victim in a case involving sexual offence. In the case of *Shri. Mihkahtngen Sarubai Vs. State of Meghalaya & Anr. (supra)*, a Division Bench of this court while deliberating on the issue of delay in lodging FIR in respect of sexual offence held that: -

*“13. The Hon’ble Supreme Court, in the case of **State of Himachal Pradesh Vs. Prem Sing**, 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 in question 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...”.



24. Further, the Apex Court in the case of *Ganesan Vs. State represented by its Inspector of Police (supra)* observed as under: -

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay v. State of M.P., it is observed in paras 9 to 14 as under : (SCC pp.195-98)

“9.....

10.....

*11. In State of Punjab v. Gurmit Singh, this 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 Court observed as under.....*

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21.... 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 molestation.'

12.....

13. In State of H.P v. Raghubir Singh this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan.

14.....”

25. The position which emerges from above is that the delay in filing FIR for sexual offence cannot be equated with the case involving other offences. The delay in case of sexual assault may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. Furthermore, in cases involving sexual offence, minor contradictions or insignificant discrepancies in the statement of a victim should not be a ground for throwing out an



otherwise reliable prosecution case. Evidence of the victim of sexual offence is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court should examine the broader probability of a case and not get swayed away by minor contradiction or insignificant discrepancies to throw out an otherwise reliable prosecution case.

26. In the present case, the incident took place on 16-05-2016 and the FIR was lodged on 21-05-2016 i.e. after four days of the incident. The delay, as such, is not very long and cannot be termed as unreasonable or unnatural requiring proper explanation under law in the factual background of the case. Further, the discrepancy in the evidence of the survivor with regard to the date of occurrence which has been pointed out by the appellant does not go to the root of the prosecution case. The Trial Court also has based its judgement and order of conviction on the facts on which the charge against the appellant was framed at the trial and not by placing reliance on any other additional fact.

27. Insofar as, the contention of the appellant of exaggeration of allegation on the basis of the supplementary FIR (Exhibit 2) is concerned, the PW 10 in her deposition stated that the said FIR was not registered and no separate investigation was conducted on the allegation made therein. Hence, the contention appears to be of not much relevance as there is nothing to show that the allegation made in the supplementary FIR has been relied on by the Trial Court to record any finding against the appellant.



28. For what has been discussed above, no ground has been made out by the appellant to interfere with the Judgment and Order of conviction and Order of Sentence passed by the learned Special Judge (POCSO), West Garo Hills, Tura in Special (POCSO) Case No. 22 of 2016 (G.R. No. 132/2016) and the appeal stands dismissed. The bail bonds of the appellant, if any, are hereby cancelled. The appellant is directed to surrender before the Trial Court and be taken into custody forthwith to serve the sentence.

29. Let an authenticated copy of this Judgment and Order be furnished to both the parties immediately, free of cost.

JUDGE

Meghalaya
25.07.2024
"Biswarup-PS"