

GAHC030000532023



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

Case No. : CRL.A(J)/1/2023

Sh. Rosangpuia
S/o Dotawna
R/o Sertlangpui, Lunglei District, Mizoram.

VERSUS

The State of Mizoram and Anr.
Aizawl. 2:Sh. Lalruatdik

Advocate for the Petitioner : Mr. Victor L Ralte (Amicus Curiae)

Advocate for the Respondent : P.P./Addl.PP, Mizoram for R1

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
JUDGMENT & ORDER (ORAL)

Date : 05-11-2024

Heard learned Amicus Curiae Mr. Victor L. Ralte for the appellant, learned Public Prosecutor Ms. Linda L. Fambawl for the respondent State and Ms. Emily L. Chhange, learned Amicus Curiae for the respondent No. 2.

2. An appeal has been preferred by Sh. Rosangpuia (hereinafter referred as the appellant or accused) from the jail challenging the judgment and order

dated 18.02.2022 as well as the sentence dated 23.02.2022 passed by the learned Special Judge (POCSO), Lunglei Judicial District, Mizoram in connection with CrI. Tr. No. 353/2020, convicting the appellant under Sections 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short) and sentencing him to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.5000/- (Rupees Five Thousand) with default stipulation and for offence under Section 12 of the POCSO Act and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- (Rupees One Thousand) with default stipulation. The sentences are directed to run concurrently.

3. The genesis of the case was that on 10.03.2020 at about 6:00 PM, the victim 'X', aged about 10 years 9 months) was taken by the appellant to the ME School, Sertlangpui. Then, the appellant made her watch porn videos in his mobile phone and touched her breasts and inserted his hands inside her pants and poked his fingers into her private part. An FIR regarding this incident was lodged by 'Y', victim's father, which was registered as Lunglei PS C/No. 35/2020 under Sections 4 and 12 of the POCSO Act and investigation commenced.

4. The Investigating Officer (IO for short) embarked upon the investigation. He forwarded the victim for recording her statement under Section 164 of the Code of Criminal Procedure, 1973 (CrPC for short) and also forwarded her for medical examination. He recorded the statements of the witnesses and obtained the medico-legal report. On completion of investigation, charge sheet was laid against the appellant under Sections 6 and 12 of the POCSO Act. At the commencement of trial, a formal charge under Section 6/12 of the POCSO Act was framed and read over and explained to the appellant. The appellant abjured

his guilt and claimed innocence.

5. To substantiate its stance, prosecution adduced evidence of 8 (Eight) witnesses and defence cross examined the witnesses to refute the charges. The appellant also adduced evidence of two witnesses in defence. On the incriminating materials projected by the prosecution through the evidence of the prosecution witnesses, several questions were asked to the appellant.

6. The appellant has admitted that the victim is his niece, being his elder brother's daughter. He has vehemently denied that he has committed penetrative sexual assault on the victim. He has admitted that the victim used to visit them as she is his niece. He has denied that he gave her 10 rupees to buy eatables but he admitted that he sent her to buy 'kuva'. He has also stated under Section 313 of CrPC that he was intending to contest VC Election but he could not contest as he is being incarcerated in connection with this case.

7. Learned Amicus Curiae for the appellant laid stress in his argument that the incident occurred on 10.03.2020 whereas the FIR was lodged after a considerable period of more than one month i.e. on 18.04.2020. The reasons assigned to justify the delay cannot be considered due to the prolonged delay, which leaves sufficient scope for fabrication and embellishment. It is submitted that although it has surfaced through the evidence that due to the pandemic there was a delay in lodgment of the FIR, yet no cogent reasons were assigned to explain the delay in lodgment of the FIR in the FIR. It is further submitted that there are discrepancies in the statement of the victim under Section 164 of CrPC *vis-à-vis* her testimony in the Court. The victim has stated in her statement under Section 164 of CrPC that she informed about the incident to her cousin on the following day whereas in the Court the victim deposed that she informed

about the incident to her cousin after several days. There are other discrepancies as well. The victim has deposed as PW-2 that she was suffering from pain and there was blood in her urine in the morning whereas on the contrary her cousin deposed as PW-6 that the victim noticed blood in her urine in the evening. These discrepancies extend a benefit of doubt to the appellant. The evidence of the defence witnesses clearly reflects that the appellant was an active politician and this false case has tarnished his image and his political career due to the prevailing political rivalry between the appellant and the victim's father. Victim's father himself deposed as PW-1 that he as well as the appellant are the active members of MNF.

8. Learned Public Prosecutor Ms. Linda L. Fambawl laid stress in her argument that this is an open and shut case. Delay in lodgment of the FIR has been clearly explained. Due to the Covid-19 restrictions, victim's father could not lodge the FIR immediately after the incident, moreso when he was informed about the incident after several days. There is a minor contradiction in the statement of the victim under Section 164 of CrPC *vis-à-vis* her deposition in the Court which can be safely brushed aside. The contradiction relating to victim's statement under Section 164 of CrPC that she informed about the incident to her cousin on the following day and her deposition in the Court that she informed about the incident to her cousin after a few days does not cause a dent in the evidence as this is a trivial inconsistency.

9. Learned Amicus Curiae for the respondent No. 2 Ms. Emily L. Chhangte and the learned Public Prosecutor Ms. Linda L. Fambawl laid stress through their arguments that the appellant is related to the informant and the victim's grandmother has deposed as PW-5 that as the appellant is a relative, they

expected an apology from him, but as the appellant did not apologize this case was brought up against him. It is further submitted that this case cannot be considered to be a false case based on political rivalry as the appellant is closely related to the informant. It is also further submitted that the offence described by the victim has been corroborated by the evidence of all the witnesses and thus the defence failed to rebut the evidence relating to the incident.

10. It is apt to reiterate that as stated by the learned Amicus Curiae for the appellant, the learned Trial Court has relied on the evidence of the minor victim X and has convicted the appellant. It has been held by the learned Trial Court that it has emerged from the evidence that *the complaint was lodged over phone on 18.04.2020 with the help of an official who was on lockdown duty at Sertlangpui village. Although PW-1 intended to lodge the FIR he was unable to proceed to the Police Station due to the lockdown and with the guidelines he received, it was possible for him to contact the Lungleo Police Station over phone and lodge the complaint. It has also surfaced from the evidence that the victim informed about the incident to her father but he did not pay attention to her woes and under such circumstances, the victim disclosed the incident to her cousin. It was also held by the learned Trial Court that as the appellant is closely related to the victim, it was but natural to wait for an apology from the offender and this led to the delay in lodgment of the FIR. It was held by the learned Trial Court that the contention of the appellant that a false case was brought up due to political rivalry, was not tenable. The victim divulged about the incident on the following day to her cousin and later to the other witnesses i.e. to her father and her grandmother. It was held by the learned Trial Court that the offence as described by the witnesses are corroborating and defence failed to demolish the tenacious prosecution evidence. The robust circumstantial evidence as well the*

substantive evidence could bring home the charges levelled against the appellant.

11. Now the question that falls for consideration is whether the learned Trial Court has erred while convicting the appellant under the aforementioned Sections of Law. To decide this case in its proper perspective it is necessary to reappreciate the evidence.

12. Victim's father Y deposed as PW-1 that the appellant is his neighbour and both he and the appellant are members of MNF Unit of Sertlangpui. On 11.03.2020 at about 7:00 AM, his youngest daughter X awakened him from his sleep and informed him that there was blood in her urine and she was experiencing pain in her private parts. He did not bother because he thought that she was about to have her menstrual periods. After about a week, his daughter X informed her cousin John that she was sexually assaulted by the appellant and then John informed his mother-in-law about the incident. His mother-in-law then informed him (Y) about the incident.

13. PW-1 further deposed that his daughter informed him that the appellant asked her to buy 'kuva' and he waited for her at the Pavillion. He took her behind the Middle School and made her watch pornographic videos and assaulted her sexually by groping her breasts and by inserting his finger into her private parts. When he asked his daughter about the incident, his daughter described the entire incident to him. Due to the lockdown in the wake of Covid-19 pandemic, he was unable to approach the police. One of the officials who was on duty during the lockdown informed the police. Police from Lunglei Thana came and arrested the appellant. On the following day, he went to the Police Station along with X and lodged the FIR. He has proved the FIR as Exhibit P-1

and his signature as Exhibit P-1/1.

14. No contradictions could be elicited through the cross-examination of this witness as per Section 145 of the Indian Evidence Act, 1872 (The Evidence Act for short) qua Section 162 of CrPC.

15. PW-2 is the victim and she deposed that she used to address the appellant as 'U Sangpui'. She could recall that the incident occurred in the same year (2020) but she could not recall the date and month of the incident. PW-2 further deposed that on the evening of the incident, she had meal at U Sangpui's house. She went for a meeting after the meal and U Sangpui asked her to meet him after the meeting. He gave her 10 rupees and she along with U Sangpui went to the field and sat on the table outside the school. U Sangpui (appellant) made her watch a blue film and groped her breasts and inserted his finger into her private parts. She experienced pain. On the next morning while urinating she noticed blood in her urine. Thereafter, after several days, she informed John her aunt's son about the incident.

16. No contradiction could be elicited through the cross-examination of the victim as per Section 145 of Evidence Act vis-à-vis Section 162 of CrPC.

17. However, learned Amicus Curiae laid stress in his argument that the statement of the victim under Section 164 CrPC is not similar to the victim's deposition because the victim stated under Section 164 of CrPC that she informed her cousin John about the incident on the following day of the incident whereas, on the contrary, in her deposition she stated that she disclosed the incident to her cousin after several days.

18. Whether this contradiction thwarts the evidence?

19. At this juncture, it is pertinent to mention that no contradictions could be elicited through the cross-examination of PW-1 as well as the cross-examination of PW-2. The fact that there was a substantial delay in the lodgment of the FIR cannot be ignored. The incident occurred in the month of March, 2020. The fact that strict lockdown was imposed due to the pandemic cannot be ignored. The victim is a child aged about ten years. When she informed her father about blood in her urine, her father ignored her and then she informed her cousin John about the incident. The victim being a young child could not comprehend the seriousness of the offence. The entire incident described by the victim has been corroborated by the deposition of her father (Y). There appears to be no embellishment or exaggeration or fabrication in the FIR as well as in the evidence to extend a benefit of doubt to the appellant.

20. Reverting back to the evidence, the victim's grandmother Ronchhingpuii deposed as PW-5 that the incident occurred sometime before the end of March, 2020. Her daughter's son John Lalmuanzela, who resides with them in the same house, informed her that X told him that appellant sent her to buy kuva and asked her to give it to him at the Pavillion. X then purchased kuva and gave it to the appellant. The appellant then took X near the kitchen of the Middle School and made her sit on a dining table outside the kitchen and made her watch blue films in his mobile phone and inserted his hands inside her pants and his fingers into her private parts.

21. PW-5 further deposed that she asked the victim about the incident and the victim described the incident to her as described by John. PW-5 further deposed that the victim informed her father about presence of blood in her urine when she woke up in the morning of 10th March, 2020. The victim also

informed her (PW-5) about blood in her urine and she believed the blood to be menstrual discharge and she was unsuspecting. When John informed her about the incident, she called the victim's parents to her house and informed them about the incident. PW-5 further deposed that as the appellant is a relative, they expected an apology from him but as there was no apology from his side, they were hurt and aggrieved and they lodged the FIR.

22. The evidence of PW-5 also explains the reasons of delay in lodgment of the FIR. It is apparent that as the appellant is related to them, they waited for an apology which resulted in the delay in lodgment of the FIR. Therefore, the learned Trial Court has correctly held that due to the Covid pandemic and due to the fact that the appellant is a relative, the delay in lodgment of the FIR does not thwart the evidence. It is apparent from the evidence of PW-1, PW-2 and PW-5 and from the FIR that the incident occurred in the month of March, 2020 i.e. just before the Covid and by the time, the informant was apprised about the incident, lockdown was imposed. It has surfaced from the evidence of PW-1 that he had to inform the police and later after informing the police, the police came and arrested the appellant and thereafter he lodged the FIR, after the appellant was arrested.

23. Learned Amicus Curiae, representing the appellant has vociferously submitted that the appellant deserves a benefit of doubt due to the discrepancies in the time mentioned by the witnesses relating to presence of blood in the victim's urine. However, I do not find the differences relating to time mentioned by the witnesses to be a major discrepancy. This trivial discrepancy can be ignored. The victim is a child and her evidence has been substantiated by the evidence of PW-1 that she had noticed blood in her urine

in the morning, and thus the evidence of victim's cousin that the victim noticed blood in her urine in the evening does not thwart the evidence. Victim's cousin John is also a young boy who was only 12 years when his evidence was recorded.

24. John Lalmuanzela deposed as PW-6 that while he was washing clothes with the victim, she wanted to confide to him about the incident. Both he and the victim went to the bedroom but as U Roa was present, they went to the playground. Thereafter the victim confided to him that the appellant took her to the field from his house. He then sent her to buy kuva and gave her 10 rupees. After coming back, she was accompanied by the appellant to the Middle School and the appellant made her sit on the table which was used to distribute food. He made her watch blue films in his mobile phone. Meanwhile, he groped her breasts and inserted his finger into her private parts. She experienced pain. When she urinated in the evening, there was blood in her urine. He then informed about the incident to his grandmother.

25. No contradiction could be elicited through the cross-examination of this witness. Rather, the evidence of this witness corroborates and substantiates the evidence of PW-1, PW-2 and PW-5. This witness stated that the victim noticed blood in her urine in the evening. This minor discrepancy can be safely brushed aside. This discrepancy does not negate the fact that the victim noticed blood in her urine and she experienced pain in her private parts. The child witnesses who were under 12 years of age were unable to comprehend the nature and gravity of the offence. They described the incident according to their perspective.

26. It has been held by the Hon'ble Supreme Court in *Dattu Ramrao Sakhare*

vs. State of Maharashtra reported in (1997) 5 SCC 341 that :

“(5). The entire prosecution case rested upon the evidence of Sarubai (Public witness 2), a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (Public witness 2).

27. Reverting back to this case, it is held that the evidence of minor witnesses PW-2 and PW-6 stood firm. The trivial discrepancy relating to the time described as morning by one witness and evening by the other child witness does not at all thwart the evidence.

28. The evidence of PW-3 as well as the evidence of DW-1 and DW-2 is in favour of the appellant but the evidence could not exonerate the appellant. PW-3 Sri R. Laldawngliana deposed that he is the President of the Branch YMA, Sertlangpui. He was surprised to learn about the allegation against the appellant. The birth certificate of X was seized in his presence. He has proved his signature on the seizure memo as Exhibit P-3/1 and he has identified the birth certificate of X as Exhibit P-2.

29. On scrutinizing Exhibit P-2, it is clear that the victim's date of birth was 14.07.2009. Thus, the victim was ten years at the time of the incident. It has emerged from the evidence of PW-3 that the appellant had no criminal antecedent and thus PW-3 was surprised on learning about the allegation against the appellant.

30. DW-1 C. Lalnela has deposed that both the appellant and the victim are known to him. The appellant is a respectable member of the society and he was surprised to learn about the allegation leveled against him. The appellant has been selected as a candidate by the party to contest the village council election of 2020. The allegation against him is an attempt to tarnish his image in the society. At the time of the incident, the appellant was a Secretary of MNF, Sertlangpui Unit. He has further deposed that it has been falsely stated that there were restrictions imposed at the time of the incident due to the Covid-19 pandemic.

31. The President of YMA Sertlangpui Branch K. Vanengmawia deposed as DW-2 that this case was brought up against the appellant, possibility to tarnish his image as the appellant was supposed to be a candidate for the ensuing village council election in the year 2020 which was scheduled to be held in the month of August.

32. It would be apt to reiterate that the evidence adduced by PW-3, DW-1 and DW-2 does not exonerate the appellant. The appellant may have been an active politician but there appears to be no *mens rea* to tarnish the appellant's image by the victim and her family members. The un-rebutted corroborating evidence of two child witnesses PW-2 and PW-6 cannot be discarded. Evidence of DW-2 depicts that the name of the appellant was proposed to be a candidate

for the village council election 2020 but it is apparent that he was not nominated as a candidate for the village council election.

33. In the instant case the evidences of two child witnesses are found to be reliable. The evidences are corroborating. The evidence has been substantiated by the evidence of all the other witnesses. While recording her statement under Section 164 of CrPC, the learned Judicial Magistrate asked several questions to the victim and the answers given by the victim were found to be rational. The deposition of the victim is consistent to her statement under Section 164 of CrPC which fortifies the evidence against the appellant. The minor contradiction relating to the number of days after which the victim divulged about the incident to her cousin can be safely brushed aside.

34. PW-7 and DW-9 are official witnesses. DW-9 is witness No. 8 but has been wrongfully mentioned as DW-9. As the victim was examined after a month, no evidence of violence was detected on her examination. The Medical Examination Report has been proved by the Medical Officer PW-7 as Exhibit P-4 and his signature as Exhibit P-4/1.

35. The witness No. 8 Sri R. Lalhmingliani conducted the investigation. He has deposed that he received verbal information at Lunglei Police Station on 18.04.2020 from Y as he could not come to the Police Station to lodge the FIR owing to Covid-19 pandemic. The information was recorded in the General Diary Entry and Lunglei Police Station Case No. 35/2020 was registered. He conducted the investigation and on finding sufficient materials, submitted charge sheet against the appellant. He has proved the charge sheet as Exhibit P-9 and his signature as Exhibit P-9/1. He has identified the statement of the victim under Section 164 of CrPC as Exhibit P-6. He has proved his prayer for

recording the judicial statement of the victim as Exhibit P-5 and his signature as Exhibit P-5/1. He has identified the birth certificate of the victim as Exhibit-P/3.

36. Recapitulating the entire evidence, it is held that the victim was sexually assaulted by the appellant. She immediately did not inform any of her family members about the incident but when she noticed blood in her urine, she informed her father who misunderstood the blood in her urine to be a menstrual period. She also informed her cousin about presence of blood in her urine. She confided in her cousin and divulged about the incident and then her cousin confided to her grandmother about the incident. The grandmother then informed her parents about the incident and the victim's father realized much later that the blood in her urine was the result of injury which the victim sustained as a result of the sexual assault. Owing to the pandemic, there was a delay in lodgment of the FIR. This delay did not cause a dent in the evidence because the incident described by the victim has been corroborated by narration and deposition of the other witnesses. There is not even a minor deviation regarding the incident described by all the witnesses PW-1, PW-2, PW-4, PW-5 and PW-6. Truth prevails and certain discrepancies do not matter when the truth stands firm and cannot be shaken.

37. In the wake of the foregoing discussions, it is thereby held that the delay in lodgment of the FIR does not cause a dent in the evidence. It is held that there is clinching evidence against the appellant. The delay has been explained by the informant. It has surfaced through the evidence that the informant Y initially informed about the incident to the police over phone. After the arrest of appellant, FIR was lodged. The world is aware of the factum of lockdown imposed due to the Covid-19 as well as the period when lockdowns were

imposed owing to the pandemic. When assessing the evidence of two child witnesses, this Court has to carefully scrutinize the facts and circumstances of this case as well. The two child witnesses were unable to comprehend the entire incident. Victim X must have come across such a situation to her utter surprise and dismay. When the victim informed her father and her grandmother about presence of blood in her urine, they ignored her as they were unsuspecting. Thus, FIR was not promptly lodged.

38. I would like to gainfully refer to a decision of the Hon'ble Supreme Court in State of Chhattisgarh vs. Derha reported in (2004) 9 SCC 699, wherein it has been held that:

“We have noticed the fact that there has been some delay in filing the complaint which according to us has been explained by PW-1 mother. The fact that their father was out of station on the date of occurrence is not disputed. In such circumstances since it is a minor who was violated the possibility of there being hesitation on the part of mother to lodge a complaint cannot be over ruled. Even otherwise the mere factum of delay in filing complaint in regard to an offence of this nature by itself would not be fatal so as to vitiate the prosecution case. The fact that the accused did not suffer any injury on his private part also will not be of much help to him because he was medically examined 4 days after the incident in question. For the reasons stated above we are satisfied that the High Court was in error in taking a view different from that of the trial court and acquitting the accused.”

39. In the light of the decision of the Hon'ble Supreme Court, it is held that the decision of the learned Court does not require any interference. It is also held that the prosecution could prove this case beyond a reasonable doubt. Thus, the appellant has failed to rebut the presumption that he has committed

an offence under Section 6/12 of the POCSO Act and he has also failed to rebut the presumption of his culpable mental state.

40. The learned Trial Court has recorded sound reasonings while convicting the appellant. I record my concurrence to the decision of the learned Trial Court.

41. In the wake of the foregoing discussions, it is thereby held that this appeal is devoid of merits and is hereby dismissed. No order as to costs.

42. The services rendered by learned Amicus Curiae Mr. Victor L. Ralte for the appellant and Ms. Emily L. Chhangte for the respondent No. 2 have been appreciated by this Court and the honorarium at the rate fixed as per rules is to be paid to the learned Amicus Curiae Mr. Victor L. Ralte for the appellant and Ms. Emily L. Chhangte for the respondent No. 2.

43. In terms of above observation, this Appeal stands disposed of.

44. Send back the Trial Court Record.

JUDGE

Comparing Assistant