

GAHC030001572020



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

Case No. : CRL.A(J)/4/2020

Ramchuhzauva
Mizoram

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Ms. Rosalynn L Hmar (Amicus Curiae)

Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.PP, Mizoram)

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGEMENT

Date : 07-02-2024

Heard Ms. Rosalynn L. Hmar, learned Amicus Curiae appearing for the appellant along with Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This is a jail appeal filed for setting aside the judgment and order dated 13.08.2019 passed by the learned Judge, POCSO Act, Champhai District in

Criminal Trial No. 970/2016 wherein the appellant was convicted under Section 4 POCSO Act and was sentenced to undergo Rigorous Imprisonment for a period of 5 years with a fine of Rs. 8000/-, i.d. Simple Imprisonment for another 5 months.

3. Facts of the case in brief is that an FIR was filed by the informant on 02.07.2015 to the effect that on 11.10.2014 one minor girl aged 10 years named 'X' was sexually assaulted by Mr. Ramchuhzauva (appellant) inside his residence. The incident came to light much later due to the victim being threatened by the accused/appellant. Accordingly, Khawzawl Police Station registered a case vide KZL PS Case No. 41/2015 dated 02.07.2015 under Section 4 of the POCSO Act against the accused/appellant. After due investigation, wherein the statement of the witnesses was taken and the victim was sent for medical examination The medical examination report revealed that the hymen of the prosecutrix/victim was not intact. The case I.O arrested the accused on 03.07.2015 and during interrogation, the accused was said to have admitted the charge made out against him. Accordingly, on finding *prima facie* case against the accused/appellant charge sheet was filed. The learned Trial framed charge against the accused under Section 4 POCSO Act, to which the accused pleaded not guilty and claimed for trial. During trial, as many as 13 prosecution

witnesses were examined and after the examination of the accused under Section 313 Cr.P.C. wherein the plea of the accused was of complete denied, 2 (two) defence witnesses were also examined. The learned Trial Court after hearing both the parties and on considering the evidence on record, found the accused/appellant guilty under Section 4 of the POCSO Act and sentenced him to undergo the punishment as stated above.

4. Aggrieved by the judgment and order and sentenced passed by the learned Trial Court, the instant jail appeal has been filed through Spl. Superintendent, Central Jail.

5. Ms. Rosalynn L. Hmar, learned Amicus Curiae for the appellant submits that the appellant is innocent of committing any offence under section 4 POCSO Act. She has produced a letter written and signed by the victim/prosecutrix duly witnessed by the President, MHIP, Kawlkulh Branch, President, YMA, Kawlkulh Branch and President, Village Council Court, Kawlkulh. The contents of the letter states is reproduced hereunder:-

“TO WHOM IT MAY CONCERN

I am (X) (name concealed) and I would like to tell the truth today. There is nothing going on between Mr. Ramchuhzauva who is imprisoned on my account. Initially, my maternal uncle beat me up while he was drunk and he probed me further and when I mention the name of my friends, he would not

accept it. As he continued to beat me up, I mentioned the name of the first person on my mind i.e. Mr. Chuhzauva. I do not know that things would happen like this. I am a bit older now and when I think back about this issue, I do not feel that it is right. My statement before Champhai Court where I stated that he raped me is not true. This is the actual truth and the truth is that there is nothing going on between us.

*Sd/-
(X)
Khuanglak*

WITNESSES

*Sd/-President
MHIP, Kawlkulh Branch*

*Sd/-
(V. NGHAKSANGA)
President*

Young Mizo Association 29/1/2020

*Sd/-
(R. LALRINTHANGA)
President
Village Council Court
Kawlkulh"*

6. The learned Amicus Curiae submits that the said letter was written after the prosecutrix became a major and was able to understand the implication of her wrongful deposition in the court. She submits that what is stated in the said letter is supported by the statement made by the appellant/accused in his examination under Section 313 Cr.P.C.

7. The learned Amicus Curiae further submits that the prosecutrix/victim was below the age of 12 years when she deposed before the Trial Court on 04.09.2017. The learned Trial Court did not asked the preliminary questions to

ascertain whether the child was able to understand the implication of what she was stating before the Court. The learned Amicus Curiae therefore submits that the deposition of the victim/prosecutrix cannot therefore be relied upon since the learned trial court failed to ascertain whether the child was speaking the truth or not. She further submits that there were no eye witnesses to corroborate what was stated by the victim as PW-2. Further, the delay in filing the FIR has not been properly explained. For the above reasons, the prosecution has failed to prove beyond any reasonable doubt, the guilt of the appellant under Section 4 POCSO Act. She has relied on the Judgment of the Apex Court in **Pradeep Vs. State of Haryana** in Criminal Appeal No. 553/2012.

8. Mrs. Mary L. Khiangte, learned Additional Public Prosecutor submits that in view of the letter produced by the learned Amicus Curiae, wherein it appears that the prosecutrix has retracted her statement made against the appellant and also in view of the fact that the appellant has now almost completed his terms of sentence to undergo Rigorous Imprisonment for a period of 5 years, this Court may exercise its inherent power under Section 482 Cr.P.C. and release the appellant even though the section under Section 4 POCSO Act is not a compoundable offence.

9. I have heard the submissions made by the learned counsels for both the parties, I have also perused the documents on record. From the evidence adduced by the prosecution, it is seen that PW-1, VL Chama Hnamte is the Chairman, CWC, Champhai District who stated to the effect that while the victim was in their shelter house, she disclosed that she was raped by the appellant inside the residence of the accused/appellant. She also disclosed that she was also raped by another person, 16 years of age, who was at present being tried by the JJB. From the information received, he has filed the FIR.

10. PW-2 is the victim girl, who had stated that she does not remember the date or the month but it was in the year, 2014 when the appellant had sexually molested her in his house. PW-3, Laldingzeli and PW-5, Hmingduhawmi are the seizure witness, to the seizure of the birth certificate of the prosecutrix. PW-4, Lalhmachhuana is the uncle of the victim girl and he came to know of the incident through some villagers. PW-6, Dr. Laltlanzovi is the doctor who performed the medical examination of the victim girl. She deposed that the incident was states to have occurred on 11.10.2014 and she had medically examined the victim girl on 02.07.2015. She found no injuries on her body but found that her hymen was ruptured. PW-7 is the case I.O, who found *prima facie* case against the accused based on the statement made by the victim girl,

the statement made by the accused on interrogation and also from the medical report. However, on the examination of the appellant under Section 313 Cr.P.C., the appellant has denied the charges made out against him but had explained that the victim had simply mentioned his name when she was beaten up by her relatives to name a person who had sexual intercourse with her. He stated that she had mentioned his name along with other persons and that he was innocent of committing any sexual intercourse with the victim/prosecutrix. 2 (two) defence witnesses were also examined. Both of them have vouched on the good character of the appellant.

11. The Apex Court in **Pradeep Vs. State of Haryana (*Supra*)** had held that *"Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that*

the Appellate Court can go into the correctness of the opinion of the Trial Court."

12. With reference to the above observation of the Apex court, it is seen that that the victim/prosecutrix, who deposed as PW-2 was only 10 years of age when she gave her deposition in the court. She was not asked any preliminary questions by the learned Trial Court to ascertain that she was capable of understanding the nature of the deposition made by her before the Court.

13. The appellant had denied the incriminating evidence made out against him in the court and had stated that "*on the night of the alleged complain I was attending church service. Meanwhile, the alleged victim was being beaten by her uncle and relatives enquiring as to who had sexual intercourse with her. As she was beaten up again and again, she was interrogated. In the case of such interrogation, she had named certain persons. Among them, my name was also mentioned as to who had sexual intercourse with her.*"

14. The admissibility of the letter produced in the appeal by learned Amicus Curiae has not been objected by the learned Addl. PP. The truthfulness of the letter has also not been questioned. In the letter, the prosecutrix has denied the involvement of the appellant and had stated that she had simply named the

appellant to avoid the continued beating from her maternal uncle, who was drunk and had probed her to name some person. That she had named the first person who had come to her mind who was the present appellant. This court however notes that this letter was not available before the learned trial court for consideration. Such types of letters only accentuates the necessity of asking a child the preliminary questions to a child witness to ensure that the child is able to understand the importance of speaking the truth.

15. An analysis of the prosecution evidence shows that no preliminary questions were asked by the trial court to ascertain that the child understands the importance of speaking the truth. There were no eye witnesses to the incident. The learned trial court had also relied upon the medical report of the prosecutrix, however it is seen that the medical examination was done after almost a year had lapsed from the date of the alleged incident and furthermore, the deposition of the prosecutrix also mentions another person who was supposed to have sexually assaulted her.

16. In view of the above findings, this Court finds that the prosecution has failed to prove beyond any reasonable doubt the guilt of the appellant under Section 4 POCSO Act and find it fit to give the benefit of doubt to the appellant. Accordingly, the judgment and order dated 13.08.2019 passed by the learned

Judge, POCSO Act, Champhai District in Criminal Trial No. 970/2016 is set aside and quashed. The appellant Ramchuhzauva is set at liberty forthwith, if not required in any other case.

17. Accordingly, Crl.A. No. 4/2020(J) stands allowed and disposed of.

18. In appreciation of the assistance provided by the learned *Amicus Curiae*, his/her fee is fixed at Rs. 7,500/- (*Rupees seven thousand five hundred*) only to be paid by the Mizoram State Legal Services Authority.

JUDGE

Comparing Assistant