



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No.4 of 2024

Date of Decision:16.07.2025

Shri Shaniah Langtang Son of Shri Wan Shyrmang Resident of Jalaphet Bri Sumer, Lum Lakba Village, East Jaintia Hills District, Meghalaya.	Vs.1.The State of Meghalaya through its Superintendent of Police, East Jaintia Hills District, Meghalaya. 2.The Officer-in-Charge Khliehriat Women Police Station, Khliehriat.
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3. Kem Shyrmang
W/o Staling Biam
R/o Jalaphet, East Jaintia Hills
District, P.O. and P.S Khliehriat,
Meghalaya.

..... Appellant.

.....Respondents.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge.

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. C. Gautam, Adv.

For the Respondent(s) : Mr. K. Khan, PP with
Mr. S. Sengupta, Addl. PP.



(JUDGMENT AND ORDER)

Per. B. Bhattacharjee, Judge:

Judgment and Order dated 28-02-2022 and related order of sentence of even date passed by the Special Judge (POCSO), East Jaintia Hills District, Khliehriat in Special (POCSO) Case No. 4 of 2020 is under challenged in this criminal appeal.

1. Brief fact of the case is that on 21-02-2020, PW-1, the complainant, lodged an FIR before the Khliehriat Women Police Station alleging that the appellant along with another Child in Conflict with Law (CCL) raped her minor son, aged about six years on 14-02-2020 at Lum Lakba, Jalaphet. The said FIR was registered as Khliehriat Women P.S. Case No.4 (2) 2020 u/S 377 IPC r/w Section 5 (1)/6 POCSO Act and the matter was investigated into. After completion of the investigation, a charge-sheet u/S 377 IPC r/w Section 5 (1)/6 POCSO Act was presented in the Trial Court and the appellant was put to trial.

2. The Trial Court framed charges on 18-02-2021 u/S 377 IPC r/w Section 5 (1)/6 POCSO Act to which the appellant pleaded not guilty and claimed to be tried. In the course of the trial, the prosecution examined 6 (six) witnesses in support of its case and exhibited as many as 4 (four) documents and 1 (one) paper-mark. After closure of the prosecution evidence, the statement of the appellant u/S 313 Cr.PC was recorded on 31-01-2022. The



appellant did not adduce any defence witness. The learned Trial Court after hearing the prosecution and the Legal Aid Counsel for the defence appointed by the State, by impugned judgment and order dated 28-02-2022 convicted the appellant u/S 377 IPC and Section 5(m)/6 of the POCSO Act, 2012 and thereafter by order dated 28-02-2022 sentenced the appellant to undergo 20 (twenty) years of rigorous imprisonment with fine of Rs.3,00,000/- and in default of payment to undergo simple imprisonment for five months.

3. Mr. K. C. Gautam, learned Counsel for the appellant, at the outset, without referring to the merits of the appeal, expressed his concern about the manner in which the appellant was defended in the Trial Court. It is submitted by the learned Counsel that because of the inability to appoint a counsel of his choice, the appellant was provided with a State appointed Legal Aid Counsel to defend him at the trial. He submits that the record of evidence would show that there was hardly any effective cross-examination of the prosecution witnesses on behalf of the appellant. He submits that vital prosecution witnesses have been let off without any challenge to their crucial testimony in the cross-examination. He contends that the legal aid provided to the appellant was only for namesake and not at all effective. He submits that the presence of Legal Aid Counsel on behalf of the



appellant in the Trial Court was symbolic rather than a genuine meaningful one. He contends that if legal aid is provided only for the sake of providing, the right of the accused to defend himself in a criminal trial guaranteed by Article 21 of the Constitution of India gets defeated. The learned Counsel places reliance on the decision of the Apex Court in *Sovaran Singh Prajapati Vs. State of Uttar Pradesh, (2025) SCC OnLine SC 351* and submits that it is the duty of the Court to see and ensure that an accused put on a trial is effectively represented by a defence Counsel and failure to do so would result in denial of fair trial to the accused. He submits that in the present matter, the appellant was provided with an ineffective legal aid which resulted in denial of fair trial to the appellant and prays for quashing and setting aside of the conviction and sentence of the appellant and remand of the matter to the Trial Court for re-trial.

4. Per contra, Mr. K. Khan, learned PP appearing for the State-respondent submits that the contention raised on behalf of the appellant is not sufficient to direct retrial. He submits that retrial of a criminal case can be ordered only in exceptional cases where the trial was undertaken by the Trial Court having no jurisdiction or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceeding. He submits that in the present case there is no



illegality or irregularity in the conduct of the trial of the case. He further submits that it is not the case of the appellant that there was wrong admission or wrong rejection of evidences by the Trial Court or that there was a refusal on the part of the Trial Court to hear the defence before the judgment was pronounced. In support of his contention, the learned PP places reliance on the decision of the Apex Court in *Nasib Singh Vs. State of Punjab & Anr.*, (2022) 2 SCC 89 and submits that at para 33.6 of the said judgment some instances are provided where retrial may be ordered and the case of the appellant does not fall in any of the instances mentioned therein. He, therefore, prays that prayer for retrial of the case be rejected and the appeal be heard and decided on merit.

5. Before we take a call as to whether the appellant was denied a fair opportunity in the trial, we deem it appropriate to refer to the authorities relied upon by the parties in their arguments. In the case of *Sovaran Singh Prajapati (supra)*, the Apex Court while elaborating the Rights of the Accused at para 23.2 held: -

“23.2. In Chaluvegowda v. State, this Court discussed extensively the right of representation by counsel. The relevant paragraphs are reproduced with profit as under:

“18. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for an accused is presumed to be innocent until proved to be otherwise in a fairly conducted trial. This right would include that he be defended by a competent counsel. The provision of an amicus curiae for an accused, in case the accused is unable to engage an advocate



to conduct his defence, is to ensure the goal of a fair trial which is a guarantee provided in the Constitution. We may recall the often quoted passage of Potter Stewart “Fairness is what justice really is”.

19. The right to be represented by a lawyer must not be an empty formality. It must not be a sham or an eyewash. The appointment of an amicus curiae for the defence of an accused person must be in true letter and spirit, with due regard to the effective opportunity of hearing that is to be afforded to every accused person before being condemned. The due process of law incorporated in our constitutional system demands that a person not only be given an opportunity of being heard before being condemned, but also that such opportunity be fair, just and reasonable.

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4 Further, at para 23.6 of the same judgment it was held: -

“23.6. A recent judgment in Suhas Chakma v. Union of India, highlighted the legal aid defence counsel system, observing that the objective of the scheme is to provide quality legal aid to all those in need. Herein, reference was also made to Ramanand @ Nandlal Bharti v. State of U.P., while discussing the quality of legal aid and in para 120, it was held:

“120. It is by far now well-settled for a legal proposition that it is the duty of the court to see and ensure that an accused put on a criminal trial is effectively represented by a defence counsel, and in the event on account of indigence, poverty or illiteracy or any other disabling factor, he is not able to engage a counsel of his choice, it becomes that duty of the court to provide him appropriate and meaningful legal aid at the State expense. What is meant by the duty of the State to ensure a fair defence to an accused is not the employment of a defence counsel for namesake. It has to be the provision of a counsel who defends the accused diligently to the best of his abilities. While the quality of the defence or the caliber of the counsel would not militate



against the guarantee to a fair trial sanctioned by Articles 21 and 22 respectively of the Constitution, a threshold level of competence and due diligence in the discharge of his duties as a defence counsel would certainly be the constitutional guaranteed expectation. The presence of counsel on record means effective, genuine and faithful presence and not a mere farcical, sham or a virtual presence that is illusory, if not fraudulent”.

5 Thus, it is clear from the above that the right of an accused to defend himself in a criminal proceeding is an integral facet of the right to life and personal liberty as enshrined under Article 21 of the Constitution of India. The guarantee of a fair trial inherently includes the provision of legal assistance to an accused who is unable to afford legal representation. The denial of effective legal aid in such circumstances would amount to a violation of the fundamental rights of the accused under Article 21. It must be emphasized that the mere formality of appointing a legal aid counsel, without ensuring the efficacy and competence of such representation, cannot be held to satisfy the constitutional mandate. Legal aid must be real, substantial, and meaningful. The counsel so appointed must possess adequate knowledge and understanding of criminal law, the law of evidence, procedural statutes, and other relevant legal provisions. Hence, the constitutional entitlement to legal aid attains significance only when the aid rendered is of acceptable quality and competence. Any deficiency of the legal aid counsel to



conduct the trial effectively would, in effect, defeat the right of the accused to a fair trial and constitute a breach of his fundamental rights.

6. In the case of *Nasib Singh (supra)* relied on by the learned PP, the Apex Court at para 33.6 observed as under: -

“33.6. The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:

(a) The trial court has proceeded with the trial in the absence of jurisdiction;

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.”

7. Perusal of the foregoing makes it evident that the observations and instances cited are merely illustrative and not exhaustive in nature. This clearly implies that the power of the appellate court to remand a matter for retrial is not limited solely to the circumstances expressly mentioned therein. Significantly, the Hon’ble Supreme Court in *Nasib Singh (supra)* has not laid down that a denial of a fair trial amounting to a violation of the mandate enshrined under Article 21 of the Constitution of India and thereby resulting in the infringement of a fundamental right, cannot be regarded as an exceptional circumstance justifying the



exercise of appellate jurisdiction under Section 386 of the Code of Criminal Procedure for remanding the case for retrial.

8. Coming to the case at hand, record reveals that as many as 6 (six) prosecution witnesses were examined by the Trial Court. For the sake of facility, the evidence of all the prosecution witnesses, including their cross-examination, is reproduced below: -

(i) PW-1

ON OATH

Examination-in-Chief by the Learned Special Public Prosecution by Miss. Shimnika Dkhar.

1. I received Summon to appear before this Court today.
2. I know of the instant case as the minor victim boy is my son.
3. One day in the month of February I saw my son's (minor victim boy) lips was dry and i asked him if he is not keeping well or not and told me that he is having headache and I took him to take medicine. On 22/02/2020 at around 10:00 PM one male person who was from CHILDLINE came to my village and enquired about my residence and there were four or five people from the same village, one of them is assistant rangbah shnong of Jalaphet, Bri Sumer, who took them to my house and on entering my house the workers of CHILDLINE asked me if I am Smti Kem Shyrmang and if I have a child by the name (minor victim boy), then I told them yes and then they again asked me if it is true that my son had been raped by Shri Shaniah Langtang (accused person) and Shri. Nathan Dkhar (CCL) and told them I do not know anything about the incident.
4. The workers in the CHILDLINE asked me in order to ascertain the truth the minor victim boy should be taken to hospital for medical examination I along with the assistant rangbah shnong and the workers in CHILDLINE took my son (minor victim boy) to Khliehriat CHC (Community Health Centre) on the next day and on reaching there, there was no Doctor available on duty and we were asked to come back on the next day and on the next day I took my son to Khliehriat CHC and on being examined it is found that my son has been raped.
5. I was present in the emergency room when the Doctor examined my minor victim boy and the doctor who medically examined my victim son showed me there is a tear on the anus of my son.
6. On receiving the medical report I along with my minor victim boy went to khliehriat Police Station and showed the Police the medical report and asked them in this kind of Incident what should I do? and they advise me to lodge an FIR and accordingly I file the FIR on 21/02/2020. Exhibit P1 is the FIR form and Exhibit P1 (1) is my signature.
7. My son was born on 12/10/2013 and I am in possession of the birth certificate of my minor son. Paper Mark P1 is the photo copy of the birth certificate of my minor victim son (Paper Mark P 1 is compared with the original and found to be true and correct).
8. My statement was recorded by the Police.
9. After few days of filing of the FIR, my daughter Miss. Lana Shyrmang told me that one day while she was cleaning the compound she overheard that Nathan (CCL) told my victim son not to tell me about the incident or else he will kill him and throw him in the jungle.
10. After the accused Shri. Shaniah Langtang (accused) and the CCL were arrested, then my minor son told me about the incident, where he said that Nathan (CCL) took off his pants and inserted his male organ inside his anus and cried as he was in pain and after that Shri Shaniah Langtang (accused) also



inserted his male organ inside his anus. After committing the offence both of them threatened not to inform me or else they will kill him and throw him in the jungle.

11. The offence was committed on 14/02/2020 behind my house in a place called Lumlakba.

12. The reason for delay in filing the FIR was that I do not know about the incident as my son was scared to inform me until the CHILDLINE workers informed me then I lodged the FIR.

13. The Police visited the place of occurrence on being led by my minor victim son and prepared the rough sketch by the police Exhibit P 2 is the rough sketch map and Exhibit P 2 (1) is my signature.

14. I have given my consent before conducting the medical examination on my minor victim boy and I have put my signature on the medical report of my son Exhibit P 3 is the medical report and Exhibit P 3 (1) is my signature.

15. I can identify the accused person and he is present in Court today via V/C.

XXX: by Learned State Defence Counsel Shri. S Pdang.

1. From the day of the incident that is 14/02/2020 till date my victim son is staying with me.

(ii) P.W-2

THE CHILD WITNESS IS BELOW 12 YEARS

Examination-in Chief by the Learned Special Public Prosecution by Miss, Shimnika Dkhar.

1. At the time of the incident I was playing at home with Master Mewan my cousin brother, Shri. Shaniah Langstang (accused person) and Shri. Nathan Dkhar (Child in Conflict with Law) called me and took me to a nearby jungle. In the forest the CCL took off my pants and then he inserted his penis in to my anus. I was in pain and I was crying.

2. After the CCL was done, Shri. Shaniah Langstang (accused) inserted his penis into my anus and after he was done both of them left me in the forest. I returned back home alone.

3. The next date the CCL threatened me and told me not to inform anyone of the incident or else he will kill me and throw me into the forest.

4. I was taken to the hospital for medical examination.

5. The Police have taken my statement.

6. I have given my statement before the Magistrate where I have wrote my name on my statement. Exhibit P 4 is my statement and Exhibit P 4 (1) is my name.

7. I can identify the accused person and he is present in Court via V/C

XXX: by Learned State Defence Counsel Shri. S Pdang.

1. It is a fact that I was sexually assaulted by the accused person and the CCL from my anus.

(iii) PW-3

ON OATH

Examination-in-Chief by the Learned Special Public Prosecution by Miss. Shimnika Dkhar.

1. I have received summon to depose in Court today.

2. The minor victim boy is my youngest brother.

3. I do not remember the date and month of the incident, but, it was in the year 2020, while I was cleaning our compound in the house my brother (minor victim boy) went to buy snacks from the shop which is very near from our house and at that time I saw Shri Nathan Dkhar (Child in Conflict with Law) called my brother to the gate wall which is near our house.

4. I heard the CCL saying to my brother if he tells my mother he will kill him and throw him to the jungle.

5. When the CCL saw me, he ran away from there. On hearing that I asked my minor victim brother why did the CCL talked to him like that but, my minor victim brother did not say anything. On the same day in the evening time I told my mother what I heard from Shri. Nathan Dkhar (CCL) threatening my brother.

6. I know the CCL very well as he frequently visited our house and he is my close neighbour.



7. My statement was recorded by the Police.

8. I could identify the CCL if I see him.

XXX: by Learned State Defence Counsel Shri. S Pdang.

1. That I have heard the Child in Conflict with Law (CCL) threatening my victim brother but, I do not know for what reason he threatened him.

(iv) PW-4

ON OATH

Examination-in-Chief by Learned Special Public Prosecution Miss. Shimnika Dkhar.

1. I have received summon to depose in Court today.
2. I joined my service in the year 2018 as Medical and Health Officer at Khliehriat CHC and till date I am still serving as Medical and Health Officer at the said Hospital.
- 3 On 21/02/2020 at around 11:40AM a minor victim boy was brought by WPC Baiaishahlang Lapang at Khliehriat Community Health Centre (CHC) with a history of sexual assault and the medical examination of the minor victim boy was examined on the same day at around 2:30PM. The age of the minor victim boy is 6 years 4 months.
4. Before conducting the medical examination I took the consent of the mother of the minor victim boy Smti. Kem Shyrmang for medical examination and treatment as well as for Medico Legal Examination and samples collection for clinical and forensic examination and the same was explained to her in Pnar language.
5. Examination was done in the presence of Smti Karlin Pala (staff nurse) of Khliehriat Community Health Centre (CHC). The date of the incident reported is 21/02/2020 and the time of the incident is 14/02/2020 and the location is Jalaphet, behind the survivor's house near a bamboo shoot garden.
6. The estimated duration of time is 7 (seven) days and the episode is 1 (one) and the name of the assailant was Nathan Dkhar (CCL) and another is Shri. Shaniah Langstang (accused) who was also called as Shaniah Hep.
7. The assailant and the survivor are distant relative from paternal side.
8. History of sexual violence: the incident occurred on 14/02/2020 at Jalaphet village behind the survivor's house at their bamboo shoot garden. A 6 (six) years old boy was brought by women police and his mother for medical examination with a history of sexual assault on 14/02/2020. According to the mother of the minor victim boy on 17/02/2020 she heard few children (girls) talking about being scared to walk around as something bad will happen to them but, when she asked the children they ran away. She then asked around and heard about the rumour about what happened to her son. She then asked her son and he told her that on 14/02/2020 two boys Shri. Nathan Dkhar (Child in Conflict with Law) and Shri. Shaniah Langstang (accused) pulled his pant down and pushed their private parts into his anus. First the CCL did then Shri. Shaniah Langstang (accused) behind their house (bamboo shoot garden) On asking the survivor if there is pain after the incident, there is a pain in the anus. He did not bleed after the incident and had no painful defecation. On 20/02/2020 two people (male) came to her house to ask about her son and counselled her about what she could do then on 21/02/2020 she went to the Police Station and later to Khliehriat CHC for medical examination.
9. Post incident the survivor had changed clothes, changed undergarments, clean/washed clothes, clean undergarments, bathed, douched, passed urine and passed stool.
10. The time since the incident is 7 (seven) days and there is no history of anal oral bleeding or discharge prior to the incident.
11. No history of anal oral bleeding or discharge since the incident.
12. General Physical examination: (i) pulse-78 per minute, (ii) temperature-afebrile, (iii) pupils-bilateral equally reacting to light, respiratory rate: 24 per minute.
13. There is no external injuries seen on the body of the minor victim boy.
14. There is no external injury in his penis or scrotum or testes and there is two small tear present around 2 cm in the anus.



15. On local examination of the genital parts there was no injury seen on penis, scrotum, testes. However there are two small tear No.2 cm.

16. On systemic examination: (i) central nervous system-conscious and oriented, (ii) cardio vascular system-S₁,S₂ present, (iii) Respiratory system - bilateral chest clear and (iv) abdomen- soft and bowel was sound.

17. Samples collection for Hospital Laboratory: blood samples was collected and the report had been attached.

18. No samples were collected for forensic examination since it was around 7 days and the survivor wash and took bath multiple times.

19. Final Opinion: the above findings (history and physical) is consistent with sexual assault with anal penetration.

20. I have prepared the medical report (Exhibit P 3) and my signature are reflected at Exhibit P 3 (2) and Exhibit P 3 (3).

XXX: by Learned State Defence Counsel Shri. S Pdang.

1. The brief story of the incident was narrated to me by both the victim and his mother.

2. I have not mentioned on the medical report the time of completion of the examination.

3. In this instant case I medically examined the minor victim boy but the injuries are still present even it is after seven days.

4. It depends on case to case the size of the injuries.

5. I have mention the age of the accused as 17 (seventeen) years on being told by the mother of the survivor but, I did not medically examined the accused.

(v) PW-5

ON OATH

Examined-in-Chief by Special Prosecutor Smti. S Dkhar.

1. I have received summon to depose in Court today. I know of the instant case as I am a member of Childline Team Member, Khliehriat and as we received information from neighbours of victim boy of 6 (six) years old about the incident.

2. Information received from reliable source that Nathan Dkhar and Shaniah Langtang who are the neighbours of victim committed rape on the victim on date I do not recall but it was in the month of February 2020.

3. On the same date myself and the driver proceeded to the Place of occurrence at Lumlakba, Jalaphet village, and went to the house of the headman but was not found at his house at his house and his family member contacted him over phone who in turn contacted the village members. The two village members came to the headman's house and together with us proceeded to the house of the victim.

4. At victim's house on learning about the incident from us the mother of the victim wanted to report the matter to the Police. Immediately the mother and the victim boy accompanied by myself and one village member went to Khliehriat Women Police Station and the mother Smti. Kem Shyrmang lodged the FIR. After the lodging of the FIR I left for home.

5. Thereafter three to four days I was called over phone by the Police to accompany them for the arrest of the accused persons as because the incident was brought to light by myself otherwise I do not know the accused persons at that point of time but I was informed about their names and the act by the reliable sources whose name I cannot divulge as per rules of Childline.

6. I went with the Police to Lumlakba, Jalaphet village and on enquiring from the local people by the Police we found the house of accused Nathan Dkhar and found him in the house and Police arrested him and thereafter we proceeded to the house of accused Shaniah Langtang and also found him in the house and police arrested him also and both of the arrested persons were brought to Khliehriat Women Police Station. Thereafter I left for home after the work as a Childline member is done.

7. The arrested Nathan Dkhar is 14 (fourteen) years of age as learnt during his arrest I can identify both the arrestee as I still remember their faces and right now I could see only accused Shaniah Langtang appearing in the V/C screen from laptop.

8. That much I have to say.



XXX: by State Defence Counsel Shri. D Pachiang.

1. I could not remember since how many days since incident when we received information from the reliable sources.
2. On the date of lodging the FIR the Police have enquired from me about the source of information and I had narrated to them however, the Police also are not supposed to disclose the sources of information.
3. The Police did not record my statement.

(vi) PW-6,

ON OATH

Examined-in-Chief by Special Prosecutor Smti. S Dkhar.

1. I have received WT message to appear via V/C for this evidence today.
2. I joined my service on 17th September, 2012 and in the year 2017 I was posted at Women PS Khliehriat as Sub Inspector and I am the I/O in this case and the case was endorsed to me by O/C Insp. O Tyngkan. On receiving the endorsement I sent the victim for medical examination to Khliehriat CHC and after medical examination was done the medical report was also received.
3. I have examined the complainant Smti. Kem Shyrmang U/S 161 CrPC on examining her she has also produced the birth certificate of the minor victim boy of 6 years old.
4. During the course of investigation I have arrested the accused person Shri. Shaniah Langstang son of Wom Shyrmang resident of Jalaphet Bri Sumer.
5. After his arrest he was thoroughly interrogated to which he admitted of committing the offence as alleged against him but I have not sent for his statement U/S 164 CrPC.
6. I have also apprehended the CCL Nathan Dkhar son of Shri. Proswell Shyrmang of Jalaphet Bri Sumer of 14 years of age.
7. I have examined the CCL and taken his statement but he denied his involvement.
8. The accused person has been produced before the Court of District & Sessions Judge and was remanded to 14 days judicial custody. The CCL has also been produced before the JJB.
9. Further I have visited the PO on being led by the victim at Lumlakba Jalaphet Bri Sumer. The PO is in jungle with cultivating land nearby and it is approximately 1km from the house of the victim.
10. I have prepared the Rough sketch map of the PO in the presence of Smti Kem Shyrmang the mother of the victim who had also signed on the rough sketch map and the same is at Exhibit P 2 and Exhibit P 2(2) is my signature thereon I have also taken photographs of the PO and its printout copy from computer has been submitted to Court wherein I have indicated 'A' as entry to forest 'B' as the playground and 'C' as the Place of occurrence. Paper Mark 1 is the photo printout copy.
11. I have also examined the victim and his statement has been recorded U/S 161 CrPC and I submitted a prayer for recording the statement of the victim U/S 164 CrPC and accordingly his statement was recorded which is at Exhibit P4.
12. I have also examined one witness Ms. Lana Shyrmang sister of the minor victim boy and her statement has been recorded U/S 161 CrPC. Who stated she heard her victim brother talking with CCL and overheard the CCL threatening the minor boy.
13. As per the statement U/S 164 of the victim, his medical report I have submitted charge sheet against the accused person Shri. Shaniah Langstang to POCSO Court U/S 377 IPC R/W Sec 5(m)/6 POCSO Act vide CS No.7/2020 dated: 12/03/2020 and charge sheet against CCL Nathan Dkhar to JJB U/S 377 IPC/506 IPC R/W Sec 5(I)/6 POCSO Act and splitted the charge sheet accordingly.
14. I can identify the accused and he is the one with black shirt also wearing gamcha (assamese muffler) (she identified Shaniah Langstang who is standing amongst three prison inmates appearing via V/C).

XXX: by State Defence Counsel Shri. D Pachiang.

1. Yes, I am aware of the fact the FIR was lodged after delay of 7 days from the date of incident.
2. As per the FIR there is no mention regarding delay of filing the FIR.
3. I do not agree that the accused person did not commit aggravated sexual penetration on the victim.



9. It is apparent from the above that there was hardly any effort by the defence counsel to test the credibility and reliability of the testimony of the prosecution witnesses in their cross-examination. The cross-examination of the vital witnesses like PW-1(complainant), PW-2(survivor) and PW-3 (sister of the survivor) are very short consisting of only one line and do not appear to be adequate and effective. The cross-examination of PW-4 (doctor), PW-5 (Childline Team Member) and PW-6 (Investigating Officer) also appears to be very brief comprising of three to five lines. There is no indication that any effort was made in the cross-examination to look for inconsistencies in the prosecution evidence. No endeavor was made to challenge the truthfulness and memory of the prosecution witnesses in order to extract clear explanation of the facts. In the above circumstances we have no hesitation to hold that the legal aid provided to the appellant during the course of the trial was not effective at all.

10. In *Ashok V. State of Uttar Pradesh*, (2025) 2 SCC 381, the Apex Court while dealing with the issue of appointment of counsel through legal aid process, at paras 38.11 and 38.12 held:-

“38.11. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will



amount to infringement of his fundamental rights guaranteed by Article 21;

38.12. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated.”

The above proposition of law has been reiterated by the Apex Court in the case of *Sovaran Singh Prajapati (supra)*.

11. Considering the entire factual and legal position, we are constrained to hold that the role played by the legal aid defence counsel appointed on behalf of the appellant in the Trial Court was not at all effective or adequate. It is evident that the lack of effective legal representation has not only violated the fundamental rights of the appellant under Article 21 of the Constitution but also has seriously prejudiced his defence in the case. A retrial seems to be the only way to rectify the situation.

12. For what has been discussed above, the impugned Judgment and Order dated 28-02-2022 and related order of sentence of even date passed by the Special Judge (POCSO), East Jaintia Hills District, Khliehriat in Special (POCSO) Case



No. 4 of 2020 is set aside and the matter is remanded back to the Trial Court. The Trial Court shall now proceed afresh from the stage of framing of charge. The parties shall appear before the Trial Court on 05-08-2025 and cooperate during the trial to avoid further delay in the matter.

13. As the appellant is represented before this Court by his own appointed Counsel, we expect that he would be able to engage a counsel of his choice in the trial. In the event, the appellant fails to engage a counsel, the Trial Court shall ensure that the appellant is provided with an effective an adequate legal representation in the matter.

14. With the above, this criminal appeal stands disposed of.

15. The Trial Court Records be sent back forthwith.

(B. Bhattacharjee)
JUDGE

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Meghalaya
16.07.2025
"Biswarup PS"