



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No. 6 of 2025

Date of Decision:19.08.2025

Shri Ronal Murmu,
Son of Shri Joseph Murmu
Resident of: Umran Dairy,
P.O: Nongpoh,P.S.: Nongpoh,
District:Ri-Bhoi, Meghalaya

Vs. State of Meghalaya through
Public Prosecutor.

Presently lodged in District
Prison & Correctional Home,
Ri-Bhoi District, Nongpoh.

..... Appellant.

.....Respondent.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge.

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. D. Upadhaya, Legal Aid Counsel
Ms. A. Synrem, Adv.

For the Respondent(s) : Mr. R. Gurung, GA
Mr. S. Sengupta, Addl. PP.



(JUDGMENT AND ORDER)

Per. B. Bhattacharjee, Judge:

The Judgement dated 12-03-2020 and related order of sentence dated 10-07-2020 passed by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh, in Special POCSO Case No. 54 of 2015 is under challenge in this criminal appeal.

1. The brief fact of the prosecution case is that on 25-09-2015 an FIR was lodged by PW-1 alleging that her daughter, the survivor, aged about 13 years was missing from home. After enquiry it was learnt that the appellant came and took her daughter from their resident to his resident at Umlur, Umron Dairy, Ri-Bhoi District and had physical relationship and sexual intercourse with her. As her daughter is still under age, a request was made to take necessary action. The FIR was registered as Nongpoh PS Case No. 199 (9) 2015 u/S 363/376(2) (i) (n) of the Indian Penal Code (in short IPC) read with Section 4/6 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act). Upon completion of the investigation, a charge-sheet vide charge-sheet No. 153/2015 dated 12-11-2015 under the aforesaid Sections of law was submitted before the Court against the appellant for trial.

2. On 24-06-2016, the charge against the appellant was framed by the learned Trial Court u/S 363/376(2)(i)(n) IPC and Section 4/6 of POCSO Act to which the appellant pleaded not guilty and claimed



trial. During the course of the trial, the prosecution examined five witnesses and exhibited as many as seven documents marked as Exhibit 1 to Exhibit 7. The statement of the appellant u/S 313 Cr.PC was recorded on 19-11-2018. The appellant did not adduce any defence witness. The learned Trial Court, after hearing the prosecution and the defence acquitted the appellant of the charge u/S 363 IPC, but convicted him u/S 363/376(2)(i) IPC and Section 4 of POCSO Act by the impugned judgment dated 12-03-2020 and by order dated 10-07-2020 sentenced the appellant to undergo 10 (ten) years rigorous imprisonment and to pay a fine of Rs. 25,000/-, and in default, to undergo further 6 (six) months simple imprisonment. Hence, this appeal.

3. Mr. S. D. Upadhaya, learned LAC for the appellant submits that the learned Trial Court has miserably failed to notice the glaring contradiction in the evidence of the prosecution witnesses and thereby came to a wrong conclusion resulting in conviction of the appellant. He submits that admittedly there is no eye-witness in the case and the deposition of PW-3, the survivor, does not speak of commission of any sexual offence on her by the appellant. He contends that the evidence of PW-1 as well as PW-2 is totally silent as regard to allegation of sexual offence against the appellant. The allegation of kidnapping of the survivor, he submits, also stood negated as the Trial Court has exonerated the appellant of the charge U/s 363 IPC. He submits that the evidence of PW-3 speaks only of her having physical relationship with the appellant and the extent of



‘physical relationship’ has not been explained. The learned LAC referred to a decision of the High Court of Sikkim in *Crl. A. No. 02 of 2019, Depesh Tamang V. State of Sikkim (2020:SHC:47-DB)* to contend that the term ‘physical relationship’ cannot be construed to mean sexual assault. He further submits that the learned Trial Court erroneously came to the conclusion that the survivor was 14 (fourteen) years old at the time of the commission of the alleged offence without any supporting materials on record as the prosecution failed to adduce any evidence in that regard. He, therefore, submits that the conviction and the sentence of the appellant is not sustainable in law and is liable to be set aside and quashed by this Court.

4. Mr. R. Gurung, learned GA appearing for the State-respondent supports the conviction and sentence of the appellant and submits that the learned Trial Court has not committed any irregularity or illegality in passing the impugned judgment. He submits that the evidence of PW-3, the survivor, clearly proves the guilt of the appellant and the evidence of PW-4, the medical witness, further corroborates the statement of PW-3. He submits that the statement of the victim of sexual offence can be a sole basis for conviction. He, thus, submits that no interference is called for with the impugned judgment of conviction and the order of sentence.

5. The submissions made by the learned Counsel for the parties are give due consideration and also perused the materials available on record.



6. The PW-1, the complainant and mother of the survivor, in her deposition before the learned Trial Court stated that she has two daughters, 16 years and 14 years respectively, followed by two sons 9 years and 8 years old (the names of the children were recorded). She stated that she came to Court to depose with regard to her 14 years old daughter (second) (survivor) who was forcefully kidnapped by the appellant on 25-09-2015 from her residence at Umdihar. After the incident, PW-1 informed the police station by lodging an FIR (Ext-1) and, thereafter, she along with the police personnel of Nongpoh PS proceeded towards Umran Dairy as per the information which was made known to her by one business woman of the village. Upon reaching Umran Dairy along with the police personnel, she found the survivor from the house of the appellant. After that, she along with the survivor came back to Nongpoh PS and her statement was recorded.

In her cross-examination, PW-1 stated that the FIR was written by the police personnel and was explained to her. She did not know the date of the FIR and also whether the survivor was having any affair with the appellant or not. The appellant was not a visitor to her house. She had given the birth certificate of the survivor to the police. She stated that she had not seen the appellant forcibly taking away the survivor and when she found the appellant at his home, he was along with his mother. She told the police that she would not allow the survivor to settle with the appellant as she was younger in age and still a minor.



7. PW-2, the father of the survivor, in his examination-in-chief stated that PW-1 is his wife and they have two sons and two daughters. He stated that he came to depose in the Court in connection with rape of his daughter (he named a different person) by the appellant. He stated that he came to know about the incident after the matter was reported to the police. After the FIR was filed, he had gone along with the police in search of the appellant and found the appellant from a tea garden at Umran Diary. He stated that he did not know the exact place of occurrence.

In his cross-examination, the said witness stated that the appellant was not acquainted to him and he did not know whether the appellant was acquainted to his daughter. He had not seen the appellant coming to his house. He stated that the survivor was found in the house of the appellant. When he went to the house of the appellant along with the police, he found the survivor, the appellant and the parents of the appellant in the house. The house of the appellant was situated in a tea garden. He asked his daughter if she was forcibly taken, but she did not answer. He stated that as per his understanding the appellant and the survivor left with mutual understanding.

8. PW-3, the survivor, in her examination-in-chief stated that she knew the appellant as they were school mates. They studied in the same school and the appellant was senior to her. When she was in class III and the appellant was in class V, both of them left the school



and went to some other schools. Thereafter, she did not meet the appellant for a quite long time. The appellant was working as a sales-boy in a garment shop at Nongpoh. Once, while shopping, she met the appellant in the shop and gave her mobile number to him. Thereafter, the appellant started calling her and wanted to have a relationship with her. After initial reluctance, she became friendly with the appellant. At that point of time, she was in Class VI and was 14 years old. She met the appellant twice while he came to her village. On 24-09-2015, the appellant called her and asked her to come to his place at Umran Diary and accordingly at around 4.30 PM he came to pick her up. She went along with the appellant in a Tata Sumo and when she reached the house of the appellant, she met his parents. The parents of the appellant asked her whether her parents were aware of her visit to the house of the appellant to which she answered in negative. On the asking of the parents of the appellant, she gave her mother's number to them but her mother could not be contacted due to network problem. At around 8.30 PM, her mother and father along with the police came to the house of the appellant and she was taken to the police station. The appellant was also taken to the police station along with them and was interrogated by the police. She was taken for medical examination and thereafter was sent back home. She was asked to appear before the Court for recording her statement which was recorded by a lady officer. She told the Magistrate about her visit to the appellant house and meeting his parents. She exhibited her statement as Ext-2.



In her cross-examination, the survivor stated that the appellant was her boyfriend and she went to his house willingly. She had physical relationship with the appellant and the appellant did not force her to have physical relationship with him. She admitted that she did not disclose to the Magistrate about the physical relationship and the contents of the Ext-2 was not explained to her by the Magistrate. She was only asked to sign the statement.

9. PW-4, the medical witness, in her examination-in-chief stated that on 24-09-2015, she had examined the survivor after taking consent in presence of witnesses. Before examining the survivor, she took the history of the case and as per the narration of the survivor, two months back the appellant had taken the survivor to nearby Presbyterian Church of the village and had consensual sex and two weeks later, they again had a physical relationship near the local school. On general physical examination, no abnormality was detected and she did not find any injury on the body of the survivor. On genital examination of the survivor, no abnormality was detected except that the hymen was perforated. She collected biological sample of the survivor and handed over to police who seized the samples. PW-4 stated that she also medically examined the appellant and did not detect any abnormality or find any injury on the body of the appellant. She collected biological sample of the appellant and handed over to the police who seized those samples. She exhibited Ext-3 as the seizure list. She prepared Medico Legal Report of the survivor and exhibited the same as Ext-4. She exhibited Medico



Legal Report of the appellant as Ext-5. She also exhibited Ext-6 which is the seizure list of the biological samples of the appellant.

In her cross-examination, PW-4 admitted that the perforation in the hymen of the survivor was not recent as there was no sign of redness, injury or any tear. She admitted that she had observed in her report that the survivor had consensual sexual relationship with the appellant and the observation made by her in the report was based on the narration made by the survivor.

10. PW-5, the Investigating Officer (IO), in is examination-in-chief stated that on 24-09-2015, a verbal information was received at the Nongpoh PS that the daughter of the complainant was missing from home. On being directed by the Officer-in-Charge she, accompanied by other staffs, left the police station to Umran Dairy on the leading of the complainant. During the search, the survivor was found in the house of the appellant and both the appellant and the survivor were brought to the Nongpoh PS where both of them were interrogated. The survivor, in her interrogation told that they were in love and eloped and they had physical contact. Later, the appellant and the survivor were medically examined at Civil Hospital, Nongpoh and their biological samples were collected. Thereafter, the survivor was allowed to go with her parents and the appellant was detained at the police station. During interrogation, the appellant stated that he was in love with the survivor and on the first occasion he went to meet her at Erpakon and had sexual intercourse with her. On 24-09-2015, both



of them decided to elope and the appellant took the survivor to Umran Dairy. When they were about to go to sleep police arrived and took them to the Thana. On 25-09-2025, the FIR (Ext-1) was filed and registered and endorsed to him for investigation. PW-5 stated that during her investigation she recorded the statement of the survivor, the complainant and the available witnesses. She recorded the statement of the appellant and arrested and forwarded him to the Court with a prayer for his remand to judicial custody. On the next day, the complainant produced the birth certificate and he took the photocopy and attached it with the CD. She had visited the place of occurrence and prepared a rough sketch-map in presence of witnesses and exhibited the same as Ext-7. She had sealed and packed the biological samples in the office of the Superintendent of Police, Nongpoh and sent them for forensic examination. On completion of the investigation, as there was a prima facie case against the appellant, she filed the charge-sheet u/S 363/376(2)(i)(n) IPC r/w Section 4/6 POCSO Act, 2012.

In her cross-examination, PW-5 admitted that the mother of the survivor knew that the survivor and the appellant were in love and had sexual intercourse. She also admitted that the survivor had stated in her statement u/S 164 Cr.PC that the appellant never raped her. She stated that there are no eye-witnesses in the instant case.



11. Analysis of the prosecution evidence would show that though PW-1 had filed the FIR (Ext-1) dated 25-09-2015 alleging commission of sexual offence by the appellant, her evidence before the Trial Court is totally silent with regard to the same. Her evidence only speaks of forceful kidnapping of the survivor (second daughter) by the appellant, which allegation, however, was not found to be true by the learned Trial Court as it was held that the prosecution has failed to prove that the appellant had enticed or forced to take away the survivor from her home. It was further observed that the ingredients of Section 361 IPC were not available to prove the charge of kidnapping against the appellant beyond reasonable doubt.

12. From the evidence of PW-2, the father of the survivor, it is clear that he accompanied the police on 24-09-2015 while they went to the house of the appellant where the survivor was found. However, his evidence creates more doubt in the prosecution case as he uttered the name of a different person as the victim of the alleged offence and did not name the survivor, who happens to be his own daughter. The prosecution has not made any attempt to clarify this aspect of the matter by adducing any further evidence or by offering any explanation in its argument before the court. Further, the evidence of PW-2 is also silent insofar as the allegation of commission of sexual offence by the appellant is concerned.

13. The survivor, who deposed as PW-3, in her examination-in-chief has not stated anything about the allegation of sexual offence



perpetrated against her by the appellant as per the prosecution version of the case. It is only in her cross-examination she stated that she had physical relationship with the appellant and further added that the appellant did not force her to have physical relationship with him. She, however, did not disclose or explain the extent of the physical relationship which she had with the appellant. 'Physical relationship' in the context of human interaction can be a part of a close friendship and family connection and may include various actions like holding hands, hugging, cuddling etc. Sexual activity cannot be only definition of physical relationship. Although, the survivor had given her statement u/S 164 Cr.PC and exhibited the same before the Trial Court as Ext-2 in her evidence, but she stated that she did not disclose to the Magistrate about the physical relationship. She further stated that the content of her statement in Ext-2 was not explained to her and she was only asked to sign the statement by the Magistrate.

14. The term 'physical relationship' has not been used in the definition of 'rape' provided in Section 375 IPC to mean and include it as sexual offence. Similarly, the definition of penetrative sexual assault in Sections 3 of the POCSO Act, 2012 also do not include the term 'physical relationship' to give it a colour of sexual offence punishable under the law. Hence, existence of 'physical relationship' between the appellant and the survivor, without availability of any direct evidence as to the nature and extent of 'physical relationship', cannot be construed to mean sexual offence within the meaning of Section 375 IPC or Section 3 of the POCSO Act, 2012. Somewhat



similar view has been taken by the High Court of Sikkim in the decision of *Depesh Tamang(supra)* cited by the learned Legal Aid Counsel appearing on behalf of the appellant. Consequently, the conviction of the appellant under Section 376(2)(i) IPC and Section 4 of the POCSO Act cannot be sustained in law.

15. Insofar as the question of determination of age of the survivor is concerned, it appears that the learned Trial Court, despite noticing the fact that the birth certificate of the survivor was handed over to the police but was not seized or produced before the Court, proceeded to determine the question on the basis of the oral evidence of PW-1 and PW-3 on the ground that the defence had not tried to produce rebuttal evidence or pleaded anything contrary in terms of Section 29 of the POCSO Act regarding the age of the survivor during examination of witnesses. It is settled law that the presumption u/S 29 is not available in determination of age of the survivor. The determination of age is guided by the provision of Section 34 of the POCSO Act. The presumption u/S 29 of the POCSO Act can only be raised after the prosecution establishes foundational facts, including the age of the survivor, on the basis of admissible and substantive evidence. Therefore, as per the established law, it was essential on the part of the Trial Court to determine the age of the survivor by following the procedure prescribed in Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.



16. From the judgment and order of the Trial Court, it transpires that the learned Trial Court has placed reliance on the statement of the medical witness to hold that the appellant had committed sexual offence. The evidence of medical witness/expert is relevant under Section 45 of the Indian Evidence Act, 1872, but it cannot take place of substantive evidence. The narration of factual aspect as to the incident in relation to the alleged offence recorded during the course of the medical examination and the opinion of a medical witness is not direct evidence, but it has corroborative value. It can only support the grounds of an eye-witness and prove the direct evidence. In the present case, the evidence of PW-3 is totally silent as to occurrence of any sexual offence against her and, therefore, the learned Trial Court was misled in placing reliance on the evidence of the medical witness.

17. From what has been discussed above, the impugned Judgement dated 12-03-2020 and related order of sentence dated 10-07-2020 passed by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh, in Special POCSO Case No. 54 of 2015 cannot stand scrutiny of law and is hereby set aside and quashed. The appellant is set at liberty forthwith if he is not wanted in connection with any other case.

18. The criminal appeal stands allowed.



19. Let an authenticated copy of this judgment and order be furnished to the respective parties forthwith.

(B. Bhattacharjee)
JUDGE

(H.S.Thangkhiew)
JUDGE

Meghalaya
19.08.2025
“Biswarup PS”

