



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No.20 of 2024

Date of Hearing: 13.05.2025

Date of Order: 04.06.2025

Shri Hambiwell Paliar
Son of (L) S. Langrin,
R/o Nongtynniaw Village,
P.S Mawkyrwat, South
West Khasi Hills District,
Meghalaya.

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

.....Accused/Appellant.

.....Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Wahlang, Adv.

For the Respondent(s) : Mr. K. Khan, Sr. PP with
Mr. K. P. Bhattacharjee, GA.
Mr. R. Gurung, GA.

(JUDGMENT & ORDER)

The Judgment and Order dated 15-12-2023 and the related order of sentence dated 21-12-2023 passed by the Special Judge (POCSO), South West Khasi Hills District, Mawkyrwat in Special POCSO Case No. 03 of 2021 is under challenged in this criminal appeal.

1. The brief fact of the case is that on 08-07-2017, an FIR was lodged by PW-1, the mother of the survivor, alleging that in the month of



December, 2016 the appellant attempted to rape her daughter (the survivor), aged about 16 years, in the paddy field on her way back home in Nongtynniaw village, but the survivor could manage to free herself from the clutches of the appellant. On 23-06-2017, for the second time, the appellant again tried to commit rape on the survivor in her residence by covering her mouth with hands and threatened her, however, the survivor somehow could escape.

2. On the basis of the FIR, the Mawkyrwat PS Case No. 17 (07) 2017 was registered under Section 376/511/506 IPC r/w Section 7/8 POCSO Act and the matter was investigated into. On completion of the investigation, a charge-sheet was filed vide charge-sheet No. 18/2017 dated 23-10-2017 under Section 354/506 IPC r/w Section 7/8 POCSO Act. After the appearance of the appellant before the Trial Court, charge was framed against him under the aforementioned Sections of law on 10-01-2018. The appellant pleaded not guilty and claimed to be tried. The prosecution examined 3 (three) witnesses and exhibited 6 (six) documents and 1 (one) paper mark in support of its case. After the closure of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.PC on 27-07-2022. The appellant declined to adduce any defence witness. The learned Trial Court after hearing the final argument of both the parties, by Judgment and Order dated 15-12-2023 convicted the appellant under Section 7/8 POCSO Act and Section 354 IPC and by order dated 21-12-2023 sentenced the appellant to three years rigorous imprisonment with fine of Rs.5,000/- (five thousand rupees) and in default of payment to undergo simple imprisonment for one week. Assailing his conviction and the related sentence, the appellant has preferred this criminal appeal before this Court.

3. Mr. S. Wahlang, learned Counsel appearing for the appellant



submits that the FIR was filed after six months of the first alleged incident and after sixteen days of the second alleged incident and there is no explanation of delay by the prosecution. He submits that the delay in lodging the FIR makes the entire prosecution case suspicious as there is every possibility of concoction of the case. He submits that the prosecution examined only 3 witnesses out of 5 witnesses named in the list of prosecution witness and left out the medical witness and the Officer-in-Charge of the Mawkyrwat PS causing prejudiced to the defence of the appellant. He submits that there is also no specific mention of any sexual assault by the appellant in the chargesheet. He further submits that the evidence of PW-1 makes no disclosure of commission of any sexual offence on the survivor by the appellant. He contends that the evidence of PW-1 is contradictory to her own statement u/s 164 Cr.PC. The learned Counsel further contends that the allegation made in the FIR is totally false in view of the fact that PW- 1 in her cross-examination stated that there was a family meeting and a decision was taken that the appellant should pay Rs. 10-20 to the survivor but the appellant wanted to settle the matter without paying any money. Further, the PW-1 was unable to clear all the money which she borrowed from the appellant. He submits that the FIR was lodged by PW-1 alleging attempt to rape, but in her cross examination she admitted that she did not know the intention of the appellant.

4. The learned Counsel for the petitioner further argues that the deposition of PW-2, the survivor, is also lacking in many aspects and she cannot be regarded as a sterling witness. He submits that since PW-1 did not receive any injury on her person, her statement that the appellant grapped her hands near her shoulder and pushed her backward to make her lie on the ground and she fell down, cannot be believed. He submits



that PW-1 admitted that there is a discrepancy between her statement before the police and her evidence before the Trial Court and, hence, no credence can be attached to her evidence. The learned Counsel further contends that the Trial Court erred in convicting the appellant on the basis of the statements of PW-1 & PW-2 recorded under Section 164 Cr.PC as the same are not substantive piece of evidence. He submits that the impugned judgement of conviction is not tenable in law and prays for quashing and setting aside the same. To buttress his argument the learned Counsel has placed reliance on the decisions of the Apex Court in *Thulia Kali V. State of Tamil Nadu*, (1972)3 SCC 393, *Krishan Kumar Malik V. State of Haryana*, (2011) 7 SCC 130, *Raju and Others V. State of Madhya Pradesh*, (2008) 15 SCC 133, *Ram Kishan Singh V. Harmit Kaur and Another*, (1972) 3 SCC 280 and *Baji Nath Sah V. State of Bihar*, (2010) 6 SCC 736.

5. Mr. K. Khan, learned Senior PP for the State-respondent submits that there is a delay of only 16 days in lodging the FIR and the delay has been properly explained by PW-1 and PW-3 inasmuch as it is evident from their deposition that the complainant (PW-1) being a villager had to sit for a meeting with the relatives prior to taking the decision to file the FIR. He contends that in matters involving sexual offence, the question of delay in lodging the FIR is not much relevant. He submits that the evidence of PW-2, the survivor, could not be shaken by the defence and the fact that the appellant had committed the offence stood clearly established at the trial. He further submits that the intention of the appellant to commit sexual assault on the survivor has been confirmed by the survivor in her cross-examination. He contends that the presumption of existence of culpable mental state of the appellant is automatic once the prosecution is able to establish the foundational fact of the case. The



failure on the part of appellant to rebut the occurrence of the incident as deposed by PWs-1 & 2 is sufficient to conclude that the appellant had committed the offence. Drawing attention of the Court to the statement of the appellant under Section 313 Cr.PC, the learned Senior PP submits that the appellant has not even rebutted the occurrence of the incident stated in the FIR and proved at the trial, and in that view of the matter there is no merit in the present appeal and the same is liable to be dismissed.

6. The learned Trial Court in its Judgment and Order dated 15-12-2023 while dealing with the issue of age of the survivor, came to a finding that the survivor was a minor at the time of the occurrence of the incident having her date of birth on 14-12-2002. The said finding was arrived at by the Trial Court on the basis of the photo-copy of the birth certificate marked as 'Papermark-1' which was exhibited after being compared with the original of the same. The appellant in the present appeal has not raised any dispute with regard to the age of the survivor.

7. PW-1, the complainant and mother of the survivor, in her evidence before the Trial Court stated that on 23-06-2017 while she was sitting at home with her children, the appellant came to her residence. The appellant was a frequent visitor to her residence as he was related to her as cousin. The time when she went to bed, the survivor was still sitting in the kitchen along with the appellant preparing to have her dinner. As she had no suspicion on the appellant, she told the survivor to prepare tea for him and went to bed. After having food, the survivor asked for betel nut and she directed her to get it from her bedroom. When the survivor went to give the betel nut to the appellant, she heard survivor crying loudly and she immediately got up from the bed to go to the kitchen. The survivor



also came out from the kitchen and ran to her bed room. She enquired from the survivor and was told that the appellant had touched survivor's shoulders and tried to squeeze her shoulder. After that PW-1 went to the kitchen and asked the appellant as to what he had done to the survivor. The appellant replied that he was just playing. She then gave him betel nut and sent him home.

8. PW-1 further stated that after 23-06-2017, she informed her relatives about the incident and there was a family meeting on the 06-07-2017 to enquire about the incident from the appellant and the survivor. In the meeting the appellant reiterated that he was playing with the survivor and had no bad intention, whereas, the survivor stated that she was against the way the appellant touched her and that was not the first time the appellant had done such acts. The survivor also stated that on previous occasions the appellant used some words and gestures which were not good. As the family meeting could not come to any solution, the mother of the appellant advised that the survivor be taken to the medical officer to find out the truth. The following morning, PW-1 along with the survivor and some of their relatives came to Mawkyrwat police station to lodge the FIR drafted by the brother of PW-1. The FIR was exhibited as Exhibit-PI. The photographs of the place of occurrence and the rough sketch-map prepared by the police were exhibited by PW-1 as Exhibit-PII, Exhibit-PIII and Exhibit-PIV. The statement of the PW-1 recorded under Section 164 Cr.PC was also exhibited as Exhibit-PV.

In her cross-examination, PW-1 stated that she used to take help from the appellant and that she also asked for financial help from the appellant. She admitted that a family meeting was called wherein it was decided that the appellant should pay Rs. 10 to 20 to the survivor but the appellant wanted to settle the matter without paying any money. She



stated that after the meeting the family members of the survivor decided to file a complaint against the appellant. She admitted that she was unable to clear the money which she borrowed from the appellant. She admitted that the doctor told her that the survivor was not sexually assaulted. She denied that the FIR was lodged because she could not pay the money to the appellant. Since the appellant had committed the offence twice, she thought it better to file a complaint before the police. She stated that she did not know the intention of the appellant when he touched the survivor. In addition, to a question put by the Court, she stated that she was told by the survivor that the appellant had held the survivor by her arms and covered her mouth with his hands when she started to shout. She also stated that when the survivor was struggling to free herself, PW-1 could hear the bang of utensils.

9. PW-2, the survivor, in her deposition stated that on 23-06-2017 she went for choir practice in the Church and returned home at about 11.00 PM. Her mother (PW-1) was sitting with the appellant at home. She went straight to the kitchen to have her dinner as she was hungry and her mother told her to prepare tea for the appellant. As it was late night, she offered dinner to the appellant instead of tea. After dinner, she cleaned the kitchen and told the appellant to leave as she wanted to go to sleep. The appellant told her that she could go to sleep and he would not disturb her. The appellant then stood up and was standing at the door. She told the appellant to move out of the way but he grapped her hands near her shoulder with both hands and pushed her backwards to make her lie on the ground and at that moment she fell down. She shouted for her mother but the appellant covered her mouth with his hands. She tried to remove his hands from her mouth and kicked him and hit him in the stomach and he immediately removed his hands and stepped aside. She then



immediately ran towards her bedroom and met her mother halfway to her bedroom. Her mother asked her what had happened and she told her everything. Her mother then went to confront the appellant who was still sitting in the kitchen. After a while, her mother came back from the kitchen and called the survivor to sleep with her. While the survivor was sleeping, her mother asked her if that was the first time the appellant had behaved that way. She told her mother that once few months back while she was returning from the paddy field along with the appellant and his daughter, on the way when the survivor took a shortcut route, the appellant pulled her from her shoulder and forcefully pushed her to sit on the grass and after she started screaming, the appellant let her go off and told her to stop screaming. The survivor then immediately ran towards the place where the appellant's daughter was walking and both of them went home without waiting for the appellant.

10. The survivor, further stated that their kitchen is separated from the main house having two bedrooms and one sitting room. On 23-06-2017 while the appellant was having dinner with the survivor, her mother went to sleep but she was not asleep and could hear survivor's voice easily as the kitchen is not too far from the main house. She also stated that her date of birth is 14-12-2002. The survivor further stated that she had given her statement to the police and also before the Magistrate at Nongstoin under Section 164 Cr.PC. She exhibited her statement before the Magistrate as Exhibit -PV. She stated that she accompanied her mother and other relatives to the police station when the FIR was filed. She was also taken for medical examination by a woman police officer to Mawkyrwat CHC accompanied by her mother.

In her cross-examination, the survivor stated that she knew the appellant as he was their relative. She denied that she asked the



appellant to buy a mobile for her when she was there with the appellant in the kitchen. She affirmed that the appellant had blocked her when she wanted to leave the kitchen. She also affirmed that the appellant tried to make her lie down on the ground and that the appellant had covered her mouth with his hands and he removed his hands only after she shouted for her mother. She admitted that she did not get any injury when she fell down backwards. She denied that the appellant had only made an attempt to hold her hands. She stated that she did not remember the date on which she gave her statement before the Magistrate and denied that she was tutored by her mother before giving such statement. She affirmed the incident in the paddy filed but stated that the statement made before the police in that regard was not correct. She denied that the appellant had no intention to commit sexual assault on her and stated that the intention was clear from the way the appellant had held her and tried to lay her down and covered her mouth.

The survivor was re-examined again for the purpose of producing her birth certificate. The photo-copy of the birth certificate of the survivor marked as 'Paper mark – 1' was retained in the record of the Trial Court after comparing with the original of the same.

11. PW-3, the Investigating Officer, in her deposition stated that PW-1 along with the survivor came to the police station at Mawkyrwat on 08-07-2017 to lodge the FIR against the appellant to the effect that the appellant had tried to commit rape on the survivor on 23-06-2017 at around 11:30 PM at their residence. The incident was the second incident and the first incident was in the month of December, 2016. The matter was endorsed to her by the Officer-in-Charge, Mawkyrwat PS on 08-07-2017 for investigation. She recorded the statement of the complainant and the survivor and sent the survivor for medical examination to



Mawkyrwat CHC accompanied by her mother and received the medical report on the same day. She stated that the statement of the survivor was taken by the Medical Officer. The medical examination did not show much, there was an attempt but no penetration. On 09-07-2017, she arrested the appellant from his residence and also visited the place of occurrence on the same date. She took the photographs of the place of occurrence and also prepared rough sketch-map and exhibited the same as Exhibit-PIV. The statements of the complainant and the survivor was recorded under Section 164 Cr.PC. She also interrogated the appellant. The survivor was 16 years old at the time of the incident and she was shown the birth certificate of the survivor by her mother. On 23-10-2017, she charge-sheeted the case under Section 354/506 IPC R/w Section 7/8 POCSO Act based on the statement of the survivor and the complainant under Section 164 Cr.PC and also the appellant under Section 161 Cr.PC. She stated that prayer was made for recording confessional statement of the appellant, but he declined.

In her cross-examination, PW-3 stated that she had gone through the statement of the survivor under Section 164 Cr.PC. She did not make the friends of the survivor witnesses as they had not seen the incident. She stated that as per the medical report, there was no evidence of sexual offence on the survivor but the doctor had noted down that there had been an attempt based on the statement of the survivor. No material evidence was collected from the place of occurrence. The occurrence of the first incident was revealed only after the second incident. She stated that the complainant had explained that there was a delay in lodging the FIR since they are villagers and they had to sit with the relatives for a meeting and only after arriving at a decision, they approached the police. In the FIR, it has been stated that the reason for delay was because of the



relatives staying far away.

12. Analysis of the prosecution evidence as discussed above reveals that the appellant was present in the house of the survivor on 23-06-2017 during the night time. The evidence of PW-1 and PW-2 makes it clear that on that night the appellant was present with the survivor in the kitchen of the latter's house and he had dinner there. After dinner, when the survivor wanted to go to sleep, the appellant blocked her way and held her below her shoulder with both his hands and pushed her backward to make her lie on the ground. At that moment the survivor fell down and started shouting for her mother but the appellant covered her mouth with his hands. He removed his hands only after the survivor kicked him and hit him on the stomach. The evidence of PWs-1 & 2 with regard to the incident of 23-06-2017 was not disputed by the appellant in their cross-examination. The appellant did not even deny the occurrence of the incident in his statement under Section 313 Cr.PC when the evidence of the said witnesses was put to him for his explanation.

13. The stand of the appellant that the evidence of the survivor cannot be believed in view of the fact that she did not receive any injury inspite of having a fall because of the pushing of the appellant does not appear to be very convincing. It is not compulsory that each and every fall will result in causing injury. A minor fall may not cause any injury. There is nothing in the evidence of PW-2 that she had a very serious or major fall because of the pushing of the appellant. Hence, the contention is not much significant in the facts and circumstances of the case.

14. The appellant contended that during the trial, the prosecution did not examine the medical witness and the Officer-in-Charge though they were named as witness in the chargesheet. The appellant was charged and tried under Section 354/504 IPC R/w Section 7/8 POCSO Act. None



of the above offences concern penetrative sexual offence and hence, the medical evidence was not very vital for the prosecution case. Thus, it can hardly be said that non-examination of the medical witness has caused prejudice to the appellant, particularly, when the finding of the Trial Court is not based on any medical evidence. The Officer-in-Charge of Mawkyrwat PS, who as per the evidence of PW-3 played a limited role of endorsing the investigation of matter to PW-3, was also not examined as a witness in the trial. It is not the case of the appellant that no case was ever registered or no investigation had ever taken place in the matter pursuant to the lodging of the FIR. No plea has been raised by the appellant that the investigation of the case was defective or without any sanction of law. In such a situation, non-examination of the Officer-in-Charge of Mawkyrwat PS cannot be said to have caused any prejudice to the appellant.

15. With regard to the contention of the appellant that he was playing with the survivor without any bad intention and there was no mention of commission of any sexual offence on the survivor, it is evident from the evidence of the survivor that the appellant had blocked her way after she expressed her desire to go to sleep. He held her and pushed her backward to make her lie down on the ground which made the survivor scream and shout for her mother. The appellant also covered the mouth of the survivor by his hand when she started shouting. Such acts on the part of the appellant do not resemble any light hearted playful action, instead demonstrate presence of guilty intention. Further, the survivor in her cross-examination stated that the way the appellant held her and tried to lay her down, it was apparent that the appellant had the intention of committing sexual offence on her. Section 30 of the POCSO Act permits a Special Court to presume existence of culpable mental state if the



foundational fact of the case is established by the prosecution beyond reasonable doubt. The appellant, in the present case did not dispute the occurrence of the incident to rebut the presumption of existence of culpable mental state.

16. The statement of PW-1 in her cross-examination that in the family meeting, it was decided that the appellant should pay Rs.10-20 to the survivor to settle the matter cannot be interpreted to hold that the amount was demanded to exonerate the appellant from the allegation made in the FIR. There is nothing in the evidence to show that there was an intention on the part of PW-1 to show that the appellant was not responsible for the incident alleged in the FIR in the event of payment of the aforementioned amount by the appellant. On the contrary, the statement would show that the family meeting decided to penalize the appellant for the wrong committed by him on the survivor. Furthermore, the admission of PW-1 that she used to avail financial help from the appellant and could not clear all the amount cannot be a basis for presuming the innocence of the appellant in the case. The entire evidence on record does not show what was the exact amount borrowed by PW-1 and whether the appellant demanded repayment of the amount from the complainant. There is nothing on record to show that the appellant had ever tried to build his defence at the trial by asserting that the FIR was lodged falsely because of demand of refund of money by him.

17. The decisions of the Apex Court in *Ram Kishan Singh (supra)* and *Baji Nath Sah (supra)* lay down that the statement under Section 164 Cr.PC is not substantive evidence. It can be used either to corroborate or to contradict a witness. In the present case, the learned Trial Court considered Exhibit -P V and Exhibit- P VI, the statements of PW-1 and PW-2 under Section 164 Cr.PC, while analyzing their evidence during the



course of the trial. The judgment and order of the learned Trial Court does not show that the Exhibit-PV and Exhibit-PVI were treated as primary evidence and no finding has been recorded on that basis. The aforesaid decisions of the Apex Court, as such, are not applicable in the present case.

18. The learned Counsel for the appellant has placed reliance on the decisions of the Apex Court in *Raju and Others (supra)* and *Krishan Kumar Malik (supra)* to contend that there is no basis for assuming that the statement of an injured witness is always correct or without any embellishment and exaggeration. In the present case, the crucial statement of PW-2 with regard to the incident which took place on the night of 23-06-2017 was not sought to be disputed by the appellant in the trial. Before this Court also the appellant has not taken a stand that the statement of PW-2 with regard to the occurrence of 23-06-2017 is not true. In the above circumstances, there is no reason for this Court to disbelieve the evidence of PW-2.

19. Insofar as, the question of delay is concerned, it appears that there was a delay of 16 days in lodging the FIR from the date of the incident of 23-06-2017. The evidence of PW-1 disclosed that a family meeting with her close relatives was held before the FIR was filed. PW-3, the Investigating Officer, in her deposition before the Trial Court while explaining the delay in lodging the FIR stated that the complainant, being a villager, had a meeting with her relatives and that the relatives were staying far away. The evidence of PW-1 reveal that the appellant was also present in the said meeting. Hence, the reason for delay was properly explained by the prosecution and appears to be natural in the facts and situations of the case. The decision of the Apex Court in *Thulia Kali (supra)* is rendered in a situation where the delay in lodging the FIR



remained unexplained and, thus, do not apply to the present case.

20. The Apex Court in *Ganeshan Vs. State represented by its Inspector of Police*, (2020) 10 SCC 573 : -

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

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*11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing **FIR** for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under.....*

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21.... The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestation.’



12.....

13. In State of H.P v. Raghbir Singh this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan.
 14.....”

21. The position which emerges from above is that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. In cases involving sexual offence, minor contradictions or insignificant discrepancies in the statement of a victim should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual offence is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The Court should examine the broader probability of a case and not get swayed away by minor contradiction or insignificant discrepancies to throw out and otherwise reliable prosecution case.

22. The appellant has not made any allegation of hostility or vindictiveness on the part of the survivor in making the accusation against him in order to render the statement of the survivor doubtful. The totality of the circumstances appearing in the case does not disclose that the survivor had a strong motive to falsely involve the appellant and, therefore, there should not be any hesitation on the part of the Court in accepting her evidence adduced during the course of trial.



23. In view of the discussions made above, the appellant has failed to make out a case for interference with the Judgment and Order dated 15-12-2023 and the related order of sentence dated 21-12-2023 passed by the Special Judge (POCSO), South West Khasi Hills District, Mawkyrwat in Special POCSO Case No. 03 of 2021. There is no merit in this appeal and the same stands dismissed.

24. Let an authenticated copy of this Judgment be furnished to both the parties, free of cost.

25. The Trial Court Record be returned forthwith.

Judge

Meghalaya
04.06.2025
"Biswarp PS"