



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CrI.A. No. 15 of 2023

Date of Decision: 18.06.2025

Shri Phidalis Lamare,
 Aged about 27 years
 S/o Shri Shanter Langstang,
 R/o Thadsning Village,
 West Jaintia Hills District, Meghalaya

.....Appellant

- Versus-

The State of Meghalaya
 Represented by the Public Prosecutor

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

For the Respondent(s) : Mr. K. Khan, P.P
 Mr. S. Sengupta, Addl. P.P
 Mr. A.H. Kharwanlang, Addl. P.P

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

J U D G M E N T

1. This appeal is preferred against the Judgment and Order of conviction dated 24.04.2023 and the order of sentencing dated 24.04.2023



by the Ld. Sessions Judge, Khliehriat in Sessions Case No. 6 of 2020 wherein the Ld. Trial Court convicted the accused/appellant under Section 376 IPC and sentenced him to undergo 7(seven) years rigorous imprisonment and a fine of ₹ 5000/- (Rupees Five Thousand) only and in default to undergo 1(one) month simple imprisonment.

2. The factual matrix of the case is that on the 30.01.2017 an FIR was lodged before the Officer-in-Charge, Khliehriat Police Station by the victim-cum-complainant against the accused/appellant person alleging that on the 29.01.2017 the accused person had sexually assaulted the victim at her residence at Lad Sutnga.

3. FIR was registered as Khliehriat P.S. Case No. 30(01) of 2017 under Section 376 IPC, an Investigating Officer (IO) was assigned to the case, and the IO started the investigation and arrested the accused person on the 30.01.2017. During the initial stage of investigation, the IO recorded the statement of the victim under Section 161 Cr.P.C. Thereafter, the statement of the victim and the accused/appellant was also recorded under Section 164 Cr.P.C by a Magistrate. Medical examination of both the victim and the accused was also conducted by the doctor at Khliehriat CHC, the biological samples were collected and the clothes of the victim were seized and sent for FSL.

4. On completion of the investigation the IO submitted the charge sheet vide C.S. No. 91 dated 12.09.2017 after taking all the necessary steps for investigation with the opinion that a prima facie case is found well-established against the accused/appellant who is said to have committed an offence under Section 376 IPC.



5. The Ld. Sessions Judge took cognizance of the said offence and framed the charge against the accused/appellant under Section 376 IPC and trial against him proceeded. 5(five) prosecution witnesses were examined and material exhibits including the medical report were produced before the Trial Court.

6. The Ld. Sessions Judge on conclusion of the recording of evidence of the prosecution's witnesses then recorded the statement of the accused/appellant under Section 313 Cr.P.C and on the accused/appellant calling 2(two) witnesses on his part, who were examined as DW-1 and DW-2 respectively, on conclusion thereof, argument of the parties was heard. On consideration of all the relevant evidence, the impugned judgment and order was therefore passed.

7. Mr. S. Deb, learned counsel for the appellant has maintained that the impugned judgment and order of sentence cannot be sustained as from the evidence and the materials on record, including the medical report based on the medical examination of the appellant and the victim, the same would indicate that the entire episode was not an act of rape or sexual assault upon the victim, but was actually an act of mutual consensual sex.

8. It is not denied that the victim and the appellant are known to each other since from the evidence of the victim as PW-1, she has admitted that the appellant used to come to her teashop for tea, submits the learned counsel.

9. To solidify his contention that what happened was consensual sex, the learned counsel has referred to the medical report which was exhibited in court to say that the record of injuries present in both the victim and the appellant would point to the fact that there was consensual



sexual pleasure in the act of the parties and the victim's testimony that she was pulled and strangled by the appellant cannot be proved in absence of injuries like bruises and ligature marks on her body. Even the evidence of the PW-2 who was the Doctor who has examined the victim and the appellant, in deposition before the trial court has opined that *"It is a fact that the injury, bleeding, tenderness and tear at the fourchette could be due to forceful pleasure."*

10. The learned counsel has further submitted that from the statement of the accused/appellant made under Section 164 Cr.P.C as well as from his response to the court's questions put to him under Section 313 Cr.P.C, he has been consistent to clarify that the incident was not a case of rape but one of consent between the parties.

11. On lack of corroboration, the learned counsel has submitted that PW-1 (victim) in her deposition before the court has stated that after the act was done, she had called her husband over the phone who called one Kleh from Thadsning village and Shri Kleh then came to the house and asked the appellant why he was doing such a shameful act. After that the accused/appellant left the house and Kleh also left at about 12.00 am. However, this person, that is, Kleh was never brought to the witness box to give his version of the story and if he had done so, it would probably negate the prosecution's case.

12. Again, the learned counsel has submitted that the fact that the accused/appellant was drinking alcohol on the day of the incident after which the victim had seduced him can be ascertained from the statement made by the appellant before the concerned Magistrate under Section 164 Cr.P.C. This Magistrate in his deposition in court as PW-4 has also



categorically stated that “*The accused confessed that he had taken alcohol in her shop to which later she took him to her house and she tried to seduce him and when he tried to make love with her and she refused to do so, so he left the house and went back to the truck and slept there.*” The said statement was also exhibited by PW-4 as P Exhibit 7.

13. Even the IO in her deposition before the court as PW-5, on being cross-examined has admitted that “*It is a fact that the accused was falsely implicated in this case due to the refusal of the inducement being done by complainant.*” As such, the denial of the victim in her deposition before the court that there was no consent or seduction by her in view of the contradictory evidence in this regard would cast some doubt on the prosecution’s story.

14. In this regard the learned counsel has submitted that it may be pointed out from the statement of the victim (PW-1) that there are a number of contradictions and unanswered questions which cannot be proved by the prosecution, for example, when she had stated that after the incident the appellant had given her ₹ 1000/- which money she returned to his father and also that the father was the first person she had reported about the incident, when actually she had also deposed that after the appellant finished to commit the offence she had called her husband through phone to inform him about the incident. The case of *Abbas Ahmad Choudhary v. State of Assam*, (2010) 12 SCC 115 as well as the case of *Rajoo & Ors. v. State of M. P.*, AIR 2009 SC 858 was relied upon by the appellant as far as the quality and character of the victim’s testimony is concerned.



15. The learned counsel has submitted that as pointed out, the prosecution has failed to cite the father of the appellant and also her husband as witnesses in the case, as such, the case of the prosecution on this score stands weakened. Therefore, the process of investigation has completely broken down which has severely prejudiced the appellant in so far as material witnesses were never examined. In this connection, the case of *Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors.*, (2001) 6 SCC 145, para 16, 17 and 18 was relied upon by the appellant.

16. The learned counsel has also reiterated that the explanation given by the appellant/accused under Section 313 Cr.P.C have not been considered by the learned Trial Judge and this too, has caused prejudice to the case of the appellant. In this regard, the case of *Punjabroa v. State of Maharashtra*, (2002) 10 SCC 371 as well as the case of *Ajay Singh v. State of Maharashtra*, (2007) 12 SCC 341, para 12, 14, 19 and 22 was cited to support this contention.

17. Finally, the learned counsel has submitted that from the comprehensive appreciation of the evidence on record, the guilt of the accused/appellant cannot be proved beyond reasonable doubt and the appellant cannot be convicted on the principles of preponderance of probability, as such, the impugned judgment and sentence is liable to be set aside and quashed and the appellant/accused be acquitted and set at liberty.

18. Mr. K. Khan, learned P.P in his submission has defended the impugned judgment and sentence saying that there is no infirmity found therein as the prosecution has proved its case beyond reasonable doubt on the basis of the statement of the victim, the medical evidence and even



from the corroboration found in the statement made under Section 164 Cr.P.C of both the victim and accused/appellant. The allegation of the appellant that whatever happened was one of a consensual act, more so, that the victim had seduced him into having sex, this has been refuted by the victim in her deposition before the Trial Court in no uncertain terms.

19. It is the submission of the learned P.P that it is a fact that the learned Trial Judge in the impugned judgment has ignored the statement of the accused/appellant made under Section 164 Cr.P.C when at para 39 of the said judgment, the learned Trial Judge had chosen to ignore the contents and purport of the statement of the accused/appellant made under Section 165(5) Cr.P.C on the ground that the same was taken on oath and has thus violated the provisions of Article 20(3) of the Constitution. However, the learned P.P has submitted that this aspect of the matter has been decided by this Court in the case of Demansing Kynter v. State of Meghalaya reported in 2022 SCC Online Meg 217 at para 14 wherein this Court has observed as follows:

“14. In the context of Section 164 of the Code, the mandate therein is to scrupulously follow the safeguards to ensure that the confession is voluntarily made. The safeguards indicated in the provision are the substantive content of the law laid down therein and the exemption of the maker of a confessional statement from being administered oath is merely procedural so that any part of the confession, if subsequently discovered to be false, leaves him immune to prosecution for perjury. If the statutory safeguards as enumerated in Section 164 of the Code are followed while recording a confessional statement, the mere fact that oath may have been administered to the maker of the statement would not vitiate the same or rob the confession of its evidentiary value. However, the immunity against perjury would still be in place despite the confessional statement being obtained under oath.”



20. This being the case, this Court can reverse the said finding and take into cognizance the statement made by the accused/appellant under Section 164 which would corroborate the testimony of the victim inasmuch as he has admitted that after having consumed alcohol with his two friends at the shop of the victim, when he asked for some more alcohol and she said that there is no more in the shop he followed to her house and there, he had one or two pegs of alcohol after which he claimed that she started seducing him and since she showed no resistance he tried to have sex with her and on being rebuked by her, he stopped and sat on her bed. She then scratched his chest and bite around his shoulder and in return he bit her back around her stomach. Thereafter she called her husband and told him that he had raped her. This, accordingly to the learned P.P is a corroboration of whatever has been stated by the victim in her deposition in court except for the fact that she had categorically stated that the said act was not consensual and that it is not a fact that she had seduced him.

21. To further solidify this contention, the learned P.P has led this Court to the provision of Section 80 of the Evidence Act, 1872 which speaks of any document produced before any Court be it a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken. In this case, the said statement of the accused/appellant made under Section 164 having been brought into evidence by the PW-4 the same would corroborate the statement made by the victim and can be accepted as the truth.



22. The learned P.P went on to submit that the fact that the appellant and the victim had engaged in sexual intercourse cannot be denied. As to the assertion of the appellant that it was consensual, such assertion was refuted by the victim when in her cross-examination she has stated that “*It is not a fact that I seduce the accused person.*” and further “*I did not consent with the accused person.*” This according to the learned P.P would put the case to rest as far as the guilt of the appellant is concerned, as such the impugned judgment and sentence may not be disturbed by this appellate court.

23. This Court on consideration of the contention and submission of the learned counsels for the parties is made to understand that the accused/appellant was convicted for an offence under Section 376 of the India Penal Code and was sentenced to undergo rigorous of 7(seven) years with fine of ₹ 5000/- (Rupees Five Thousand) only, in default thereof, to undergo further imprisonment of 1(one) month.

24. The impugned judgment as well as the evidence on record including the materials found therein was also scrutinised by this Court to get to the root of the matter. Basic facts not being controverted, the version of the victim as to what actually transpired on the day of the incident is contrary to what the appellant would assert inasmuch as both the victim and the appellant did not deny that they had sexual intercourse, however, the victim asserts that it was rape whereas the appellant reiterated that it was consensual in nature.

25. This Court would also seek to find substance to the rival contentions of the victim and the accused/appellant by sifting through the evidence and the materials on record. It is a fact that the victim in her



deposition on being cross-examined has denied that the said sexual act was consensual, but had insisted that it was the accused/appellant who had forcefully sexually assaulted her, therefore, the core issue to be decided herein is whether such act of sexual intercourse between the two was consensual or not. The learned counsel for the appellant has sought to cast doubt on the testimony of the victim by asserting that her evidence is not strong enough to procure the result it had, that is, the conviction of the appellant.

26. Before proceeding further, it would be relevant to discuss the objection raised by the learned counsel for the appellant, firstly, that the statement of the appellant under Section 164 as well as that made under Section 313 while answering the query of the court qua the incriminating evidence found against him from the records was not taken into account, which would sustain his assertion that the version of the victim as to what happened on the day of the incident was not entirely true.

27. It is well settled that the statement under Section 164 can be used for corroboration of the evidence of a witness, or to contradict a witness. It is the insistence of the appellant that in his 164 statement he had given his side of the story to say that while he was drinking alcohol and had followed the victim to her house to get some more alcohol, it was then that she had seduced him. This statement was also repeated by him when he was confronted by the Trial Judge to explain the incriminating circumstances found in the evidence against him.

28. As to why the learned Trial Judge had not taken into account the statement of the appellant made under Section 164, as has been submitted by the learned P.P, the issue is now settled by reference to the case of



Dimansing Kynter (*supra*). In this context, even if the statement of the appellant is taken into consideration, on perusal of the deposition made by the victim as PW-1, it would appear that in her cross-examination, she was confronted by questions and suggestions to make her commit or to reveal the truth that the whole incident was one of a consensual act. But in many places of the cross-examination, she had maintained that she had not invited the accused/appellant to her house, that she had not undressed herself but the accused/appellant had undressed himself, that she had not given her consent to the accused and more particularly at para 17 she had said *“It is not a fact that I seduce the accused person.”*

29. In the light of what the victim has stated, there being no effective evidence by the appellant as even on perusal of the evidence produced by him through DW-1 and DW-2, nothing can be proved that there was consensual sex between the two.

30. As to whether the evidence of the victim if properly weigh can be considered as one of sterling quality, what is sterling quality as far as evidence of a witness is concerned has to be examined. There are a number of authorities on this, one of such being cited herein, that is, the case of Naresh alias Nehru v. State of Haryana reported in (2023) 10 SCC 134 at para 16 which is quoted herein below as:

“16. As noticed hereinabove, the evidence of the eyewitness should be of very sterling quality and calibre and it should not only instil confidence in the court to accept the same but it should also be a version of such nature that can be accepted at its face value. This Court in the case of Rai Sandeep v. State (NCT of Delhi) [(2012) 8 SCC 21] has held: (SCC p. 29, para 22)

“22. In our considered opinion, the “sterling witness” should be of very high quality and calibre whose version should, therefore, be unassailable. The court considering



the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

31. This Court is convinced that the evidence of the victim is reliable and believable since no one would deny an act done with consent (taking



into account the suggestion that there was filial relationship between the appellant and the victim), if the same is true. However, since the victim has vehemently denied such consent, therefore the contrary has to be the reason.

32. The objection raised by the appellant as to why some of the alleged vital witnesses have not been examined, again, it is well settled that it is for the Investigating Officer to cite witnesses in support of the prosecution case when the charge sheet is filed. If certain witnesses have not been cited, the court or the defence has the opportunity to have any such witnesses produced in course of trial. This is provided in Section 311 of the Code of Criminal Procedure. This process was not resorted to by the defence or by the appellant in course of trial. Be that as it may, in view of the finding of the learned Trial Judge and this Court as far as the quality of evidence is concerned, which evidence has gone in favour of the prosecution even if such witnesses, for example, Shri Kleh, the husband of the victim or the father of the appellant are produced before the witness box, it would not improve the case of the appellant. The authorities cited by the learned counsel for the appellant in this regard would not come to his rescue.

33. The only defence of the appellant that the said sexual act was consensual in nature is because of the presence of certain injuries on the person of the victim as well as on him as has been medically determined. These injuries include bite and scratch marks, which according to the appellant would only indicate that there was pleasurable sex between the two of them. However, it cannot be contemplated that every act of consensual sex has to be accompanied by such kind of injuries. On the other hand, the victim has stated that it was the accused who had bit the



upper parts of her body and hands and he has also tried to strangle her while threatening her that if she shouts, he will insert his male organ inside her mouth. There being no contradiction to this piece of evidence, the contention of the appellant in this regard cannot be accepted at this point of time. It is not a case where the victim has not been able to explain how she has sustained her injuries.

34. In view of the observations and findings made hereinabove, this Court can only come to the conclusion that the judgment and sentence passed against the appellant by the learned Trial Judge has to be sustained, with the modification made herein.

35. The authorities cited by the appellant, not specifically discussed would be considered not relevant to the particular facts and circumstances of this case.

36. In the final analysis, this appeal is hereby dismissed as devoid of merits and is accordingly disposed of with no costs.

37. Let the Trial Court records be sent back.

Judge