



Serial No.01
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No. 41 of 2024

Date of Hearing: 25.03.2025

Date of Decision: 02.05.2025

Shri Tarsis Wanniang
Son of (Late) Hadrian Lyngkhoi
of Seinduli village, Nongstoin
P.S, West Khasi Hills District,
Presently lodged in District Prison
and Correctional Home, Shillong.

Vs. The State of Meghalaya represented
by Commissioner & Secretary
Home, Shillong.

..... Appellant.

.....Respondent.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

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

For the Respondent(s) : Ms. S. Ain, GA.

(JUDGMENT AND ORDER)

This appeal is preferred against the Judgment and Order of conviction dated 16-04-2024 and the Order of Sentence of even date passed by the Court of the Special Judge (POCSO), West Khasi Hills District, Nongstoin



in Special POCSO Case No. 20 of 2022 under Section 7/8 POCSO Act, whereby the appellant was sentenced to undergo 3 years rigorous imprisonment with fine of Rs. 10,000/- and in default of payment to undergo further one month's simple imprisonment.

1. The prosecution story of the case is that on 02-12-2021 at about 7.30 p.m. a telephonic information was received at the Women PS, Nongstoin from the Civil Hospital, Nongstoin to the effect that a 15 year old girl was brought to the hospital with complain of suspected case of sexual assault. Accordingly, a preliminary investigation was initiated by WP/SI S. Siangshai, who was deputed to submit medical requisition. On the same day, an FIR was lodged by PW-1, the mother of the survivor, at the Nongstoin PS alleging that on 30-11-2021 at midnight her 15 year old daughter was undressed while asleep and when she woke up, she found herself naked and the appellant was sleeping next to her also naked in the same bed and she experienced pain in her private part. The FIR was registered as Nongstoin P.S. Case No. 88 (12) 21 under Section 3/4 POCSO Act and the appellant was arrested on 03-12-2021. Upon completion of the investigation, a charge-sheet vide CS No. 30/22 dated 27-05-2022 was filed against the appellant under Section 7/8 POCSO Act as no evidence was found under Section 3/4 POCSO Act. The charge against the appellant under Section 7/8 POCSO Act was framed on 01-09-2022, to which the appellant pleaded not guilty and claimed to be tried.

2. During the trial of the case, the prosecution examined 5 witnesses and exhibited 10 documents and 1 paper-mark in support of its case. After completion of the evidence of the prosecution witnesses, the statement of the appellant was recorded on 30-05-2023 under Section 313 Cr.PC. The



appellant declined to adduce any defence witness. The learned Trial Court after hearing the parties convicted the appellant under Section 7/8 POCSO Act and sentenced him to rigorous imprisonment for 3 years with fine of Rs. 10,000/- and in default of payment, to undergo further period of simple imprisonment for one month.

3. Mr. S. Pandit, learned Counsel for the appellant submitted that the appellant was convicted on the basis of mere presumption as there exist no incriminating evidence against him. He submitted that even the charge framed by the learned Trial Court against the appellant did not speak of any wrong doing on the part of the appellant. He submitted that the entire prosecution evidence does not show existence of any guilty intention on the part of the appellant and in absence of any such intention, the Trial Court was wrong in convicting the appellant. The learned Counsel contended that the evidence of PW-2, the survivor nowhere makes any disclosure that the appellant undressed her. He submitted that the learned Trial Court failed to appreciate the fact that if the appellant had committed any crime of sexual offence, he would not have remained naked in the place of occurrence for long time after committing the crime. He submitted that the 9 year old son of the appellant, who was present in the place of occurrence, was not examined by the prosecution and, hence, the evidence of PW-2 was not corroborated by any other evidence. The learned Counsel further contended that the prosecution case is not supported by medical and FSL evidence and the evidences of PW-1 and PW-3 are not relevant to the accusation made by the prosecution in the case. He submits that in view of the numerous illegality and infirmities on



the part of the prosecution, the conviction of the appellant cannot be sustained in law and is liable to be interfered with by this Court.

4. Ms. S. Ain, learned GA for the respondent, on the other hand, supported the conviction and submitted that there is no illegality or infirmity in the Judgment and Order of the learned Trial Court. She submitted that there is no inconsistency or contradiction in the evidence led by the prosecution in support of its case before the Trial Court. She submitted that the evidence of PW-2, the survivor, could not be impeached by the defence and in that view of the matter, the sole testimony of PW-2 is sufficient to convict the appellant. The learned GA further submitted that the medical report does not in any way weaken the prosecution case as the same is inconclusive. Referring to the statement of the appellant recorded under Section 313 Cr.PC, the learned GA submitted that even the appellant did not specifically explain his position in the matter and, hence, there is no merit in the present appeal and the same is liable to be dismissed.

5. Heard learned Counsels for the parties and perused the material available on record.

6. The learned Trial Court in its Judgment and Order dated 16-04-2024 while dealing with the issue of age of the survivor, came to a finding that the survivor was 15 years 4 months old at the time of the occurrence of the incident having her date of birth on 23-07-2006 and she was a child as per the definition of Section 2 (1) (d) POCSO Act. The appellant has not raised any challenge to the age of the survivor at the trial and the finding recorded by the learned Trial Court to that effect has not been disputed in this appeal.



7. PW-1, the complainant and mother of the survivor, in her deposition stated that the survivor during that relevant point of time was staying with the wife of the appellant, who was known as 'Bakha', for two months for looking after her minor children. One day, while the survivor was still staying with 'Bakha', PW-1 received a phone call from the survivor informing that the husband of 'Bakha Lung' (the appellant) committed penetrative sexual assault on her. On the same day of receiving the information, PW- 1 came to Nongstoin and went to the house of 'Bakha Lung' and met her, however, the appellant was not there. She enquired from the survivor who stated that she found slimy substance on her thigh. Later, with advice from her cousin brother, she took the survivor to the Civil Hospital, Nongstoin where the survivor was medically examined. She identified her signature on Exhibit-P1, the Medico Legal Examination Report. She stated that the police came to hospital and took her and the survivor to the Nongstoin PS and identified her signature on Exhibit-P2, the FIR. She also exhibited her statement recorded under Section 164 Cr.PC as Exhibit-P3. In her cross-examination, the PW-1 stated that she did not know the content of the FIR and who drafted the FIR. She stated that she was instructed to lodge the FIR by her relatives. She also stated that she took the survivor to the hospital as advised by the wife of the appellant since the appellant denied the allegation. In reply to the question put by the Trial Court, she stated that she had never met or seen the appellant till that day.

From the above, it is clear that PW-1 was not present in the place of occurrence and she had no direct knowledge of the incident. However, her evidence established that immediately after the incident, she was informed



by the survivor whereupon she rushed to Nongstoin and took the survivor to the Civil Hospital for medical examination and, thereafter, proceeded to the Nongstoin Police Station to lodge the FIR.

8. PW-2, the survivor, in her deposition before the Trial Court stated that on 30-11-2021 she was staying with the wife of the appellant at Nongstoin and on that particular night the wife of the appellant did not return home. The survivor was there only with two minor children and shared a bed with them. Later, the appellant along with his father came home late at night and she opened the door for them and returned back to sleep with the minor children. In the morning, she woke up and found her pants and undergarments on the floor and the appellant sleeping on the bed next to her without any pant and undergarment and she found her legs between the thighs of the appellant. The minor children were still asleep. She saw liquid white substance on her thigh and went to wash herself immediately. At that moment, she was also experiencing pain in her lower abdomen. Thereafter, she went to prepare tiffin box for the minor children and after some time the appellant left with his father, the minor children went to school and she returned backed to the bed. Later, she borrowed a mobile phone from a neighbour 'Mei dang'(PW-3) and narrated the incident to the wife of the appellant, who immediately came home and again enquired the incident from her. After the appellant returned home at night, the wife of the appellant confronted the appellant about the incident who denied and the survivor said that she would go for check-up to civil hospital but the appellant told her to go to private clinic of Dr. Pariong. On 02-11-2021. The appellant and his wife took the survivor to Dr. Pariong, however, they returned back home after they were informed by



the appellant that there were many patients in the clinic. The survivor, was thereafter told by the wife of the appellant to contact her parents and upon being informed about the incident, the mother of the survivor came to Nongstoin on the same day and thereafter the survivor was taken to the Civil Hospital and was medically examined there. From the hospital the survivor was taken to police station and her statement was recorded. On the same day, police came to the place of occurrence and took photographs which were exhibited as Exhibit-P4 to Exhibit-P8. The statement of the survivor was recorded during the investigation under Section 164 Cr.PC and the same was exhibited as Exhibit-P9.

9. In cross-examination, PW-2 stated that she stayed in Nongstoin with the minor children of the appellant and the wife of the appellant used to occasionally visit them as she was staying at Seingduli village since she was in her advance stage of pregnancy and looking after a shop. The PW-2 stated that she did not realize who removed her pant and undergarment. She further stated that on the date of the incident, she slept toward the aisle and the minor children were sleeping in the corner and she was not aware that the accused was sleeping in the same bed. She stated that she did not know how her legs were between the thighs of the appellant. She stated that she did not remember at what time she slept at night and when she woke up, the appellant was still asleep. She stated that she did not know if the appellant did anything to her.

The evidence of PW-2 makes it clear that on the day of the incident, the survivor was sleeping along with the minor children of the appellant in the same bed. Although, she had no knowledge as to how and when the appellant came to her bed to sleep near her, the appellant did not



refute the statement of the survivor that he was sleeping with her. Also, the crucial statement of the survivor that the appellant was found without any pant and undergarment, and the legs of the survivor, without any clothes from waist down, were found between the thighs of the appellant in the morning, was not sought to be disputed by the appellant while cross-examining the survivor.

10. PW-3, in her deposition before the Trial Court stated that she knew the appellant since she was a co-tenant and operated a rented shop next to the house of the appellant. She stated that the survivor used to reside with the appellant and his family. She stated that she could not recollect the date, but one particular day in the morning, the survivor came to her shop attached to the residential house of the appellant to borrow a phone on the ground that she wanted to call the wife of the appellant to report that the appellant had committed penetrative sexual assault upon the survivor. She, accordingly, gave her phone to the survivor. Later, in the afternoon at about 4.00 pm, she saw the wife of the appellant returning from village. In the cross-examination, she stated that she did not hear any hue and cry from the survivor and that she did not know if the offence was committed by the appellant. She further stated that the accused had no criminal antecedents.

The evidence of PW-3, though not relevant to the actual occurrence of the incident, confirmed that after the occurrence of the incident the survivor came to her to borrow a phone to make a call to the wife of the appellant to report the incident. The fact that the survivor borrowed a phone from PW-3 to make a call to the wife of the appellant was not contradicted in the cross-examination.



11. PW-4, the Medical Officer, in her evidence stated that on 02-12-2021 at about 6.15 pm, the survivor was brought to the Civil Hospital, Nongstoin by her mother accompanied by a police woman. She narrated the incident as told to her by the survivor. She stated that she examined the survivor and opined that there was no sign of recent sexual activity. She exhibited the medical report of the survivor as Ext-P1. Nothing notable is found in her cross-examination.

The evidence of the PW-4 is not much relevant as the medical evidence has no bearing in the present case taking into consideration the offence for which the appellant was charged in the trial.

12. PW-5, the Investigating Officer in her deposition before the Trial Court stated that on 02-12-2021 a telephonic information was received from Civil Hospital, Nongstoin with regard to the sexual assault of the survivor and on the same day the mother of the survivor (PW-1) submitted a written FIR which was registered at the Nongstoin police station and was endorsed to her for investigation. She stated that during the investigation of the case she interrogated the appellant and also recorded statement of witnesses under Section 161 Cr.PC. She also visited the place of occurrence and found that place of occurrence was already disturbed. She drew a rough sketch-map and took some photographs of the place of occurrence and exhibited the rough sketch-map as Exhibit- P10. At the place of occurrence, she seized one mixed-colour bedsheet with red, yellow and brown print. She also seized the biological samples which were collected and preserved by the Medical Officer from the survivor as well as from the appellant. The seized materials were sent for FSL examination and the report thereof was positive for seminal stain on the blue



undergarment of the appellant, but negative for seminal material collected from the survivor. The statement of the survivor was recorded under Section 164 Cr.PC. The original birth certificate of the survivor was seized during the investigation. After completion of the investigation, she filed the charge-sheet against the appellant based on the statement of the survivor recorded under Section 164 Cr.PC and circumstantial evidence. In her cross-examination, PW-5 stated that the FIR was drafted by relative of the survivor in her presence. She stated that on the night of the incident, the survivor shared her bed with a 9 year old boy and the appellant. The boy was not aware of the incident since he was asleep and, therefore, was not cited as a prosecution witness. She stated that she also made an enquiry about the incident from the neighbour.

The evidence of the Investigating Officer confirmed that a telephonic information was received from the Civil Hospital Nongpoh on 02-12-2021 and the FIR to the incident was lodged by PW-1 on the same day. During the course of the investigation, she recorded the statements of PWs-1 & 3 and the matter was charge-sheeted basing on the statement of the survivor recorded under Section 164 Cr.PC and the circumstantial evidence. In her cross-examination, she stated that the appellant was sleeping with the survivor on the night of the incident.

13. The survivor in her statement recorded under Section 164 Cr.PC on 05-01-2022, exhibited as Exhibit- P9, also narrated the same fact which she stated before the Trial Court in her evidence with regard to the incident. The statement under section 164 Cr.PC, though not substantive evidence, can be utilized to corroborate or contradict the witness vis-à-vis statement made in the case.



14. As per Section 30 of the POCSO Act, culpable mental state is defined to include intention, motive, knowledge of fact and the belief in, or reason to believe, a fact. Law requires that the fundamental fact of the prosecution case must be established by legally admissible evidence before statutory presumption can be invoked by a Court and the accused shall have a right to rebut it. The present case is not a case where prosecution has failed to establish foundational facts. The prosecution version of the case is firmly established by the evidence of PW-2, the survivor, and well-supported by the evidences of PW-1 & PW- 3 insofar as the post incident conduct of the survivor is concerned. The evidences of PW-1 & PW-3 lend assurance to the evidence of the survivor that immediately after the incident she informed the wife of the appellant and PW-1 about the incident. The appellant did not contradict or try to discredit above aspect of the prosecution evidence in cross-examination. Once the prosecution is able to establish foundational facts of the case beyond reasonable doubt by legally admissible evidence, Section 30 of the POCSO Act allows a court to presume the existence of a culpable mental state when an offence under the said Act requires it. Hence, the contention of the learned Counsel for the appellant that no intention on the part of the appellant was proved does not stand scrutiny of law.

15. 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)

“9.....



10.....

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.....

8.....

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. Raghubir 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.....”

16. The position which emerges from above is that 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. Thus, the contention of the appellant that the 9 year boy was not examined by the prosecution as a witness, is also of no help to the appellant.

17. 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.

18. In view of the discussions made above, the appellant has failed to make out a case for interference with the Judgment and Order of conviction dated 16-04-2024 and the Order of Sentence of even date passed by the Court of the Special Judge (POCSO), West Khasi Hills District, Nongstoin in Special POCSO Case No. 20 of 2022. There is no merit in this appeal and the same stands dismissed.



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

20. The Trial Court Record be returned forthwith.

Judge

Meghalaya
02.05.2025
“Biswarup PS”

