



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 5 of 2024

Date of Decision: 22.04.2026

Shri. Rijied Nongphlang,
 S/o Shri. Orin Nongrum,
 Resident of Mawtari Village, Umsning,
 Ri-Bhoi District, Meghalaya.

.... **Appellant**

Vs.

1. The State of Meghalaya
 Through its Superintendent of Police,
 Ri- Bhoi District, Meghalaya.
2. The Officer-in charge
 Umsning Police Station,
 Umsning, Ri-Bhoi District, Meghalaya.
3. Smti. Waniar Tangsang
 W/o Shri Romeo Thabah
 R/o Downgate, Nongpoh,
 Ri Bhoi District, Meghalaya

.... **Respondents**

Coram:

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

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

Appearance:

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

For the Respondent(s) : Mr. R. Gurung, GA.



JUDGMENT AND ORDER

1. What started as a missing person information dated 13.04.2016, filed before the Officer In-charge Nongpoh, Police Station, Ri-Bhoi District, wherein the informant therein said to be the mother of a minor girl aged about 14 years old has reported that her daughter was found missing since 12.04.2016, eventually turned out to be a case where allegations of kidnapping and sexual assault has been directed against the appellant herein, who has been impleaded as the accused person responsible for the commission of the said offence against the minor daughter of the informant.

2. It is also noticed that on receipt of the said information, an enquiry was conducted, and the Investigating Officer (I/O) has reported that the appellant herein had taken the said minor girl to his residence at Mawtari Mardon, Umsning, whereupon a regular case was registered being Nongpoh P.S Case No. 55 (4) 2016, under Section 363/376(2)(i) IPC read with Section 4/6 of the POCSO Act.

3. On investigation being carried out, the appellant was arrested on 14.04.2016 in connection with the said case, and in due course, was also enlarged on bail. The I/O has then filed the charge sheet on 24.05.2016 with the remark that the accused/appellant is send to face trial in the court of law, under the aforesaid sections of law.



4. On cognizance being taken by the Court of the learned Special Judge (POCSO), Ri-Bhoi District Nongpoh, a case was registered as Special (POCSO) Case No. 6 of 2016. On 03.01.2017, four charges have been framed against the accused/appellant, as has been pointed out, such charges being under Section 363/376(2)(i) IPC and Section 4 as well as Section 5 of the POCSO Act. The accused/appellant pleaded not guilty to all the charges and claim to be tried.

5. The court then proceeded with the trial, and as many as seven prosecution witnesses were called to the witness stand and the accused/appellant on his part, has also brought two witnesses in his support being DW-1 and DW-2 respectively. The FIR, statement of the informant as well as statement of the victim made under Section 164 CrPC, Medico-Legal Examination Report and many other documents have been exhibited in course of trial.

6. After the recording of the evidence of the witnesses was completed, the statement of the accused appellant made under Section 313 CrPC was also recorded. Thereafter, parties were heard, and on consideration of the argument advanced before the Trial Court, and also on the basis of the materials on record including the evidence of the parties, the Trial Court has passed the impugned Judgment dated 13.12.2022, finding the



accused/appellant guilty of the charges framed against him. Upon conviction, the court has also passed an Order of Sentence dated 22.12.2022, taking recourse to the provision of Section 42 POCSO Act, 2012, the convict/appellant has been sentenced to undergo rigorous imprisonment for a period of 8(eight) years and fine of ₹10,000/- (Rupees Ten Thousand) only, under Section 366 IPC, rigorous imprisonment for a period of 8(eight) years and fine of ₹10,000/- (Rupees Ten Thousand) only, under Section 366A IPC, rigorous imprisonment for a period of 10(ten) years and fine of ₹10,000/- (Rupees Ten Thousand) only, under Section 376(2) IPC, such sentences to run concurrently. In default of payment of fine, another period of one month of imprisonment for each default to be faced by the convict.

7. The accused/appellant being aggrieved and dissatisfied with the said judgment and sentence, has now approached this Court with this instant appeal, with a prayer to set aside and quash the impugned judgment and order of sentence passed by the learned Trial Court in Special (POCSO) Case No. 6 of 2016.

8. Heard Mr. K. C. Gautam, learned counsel for the appellant, who has submitted that the case of the appellant herein is made out on three grounds, the first ground is on the factual aspect of the case between the parties, particularly the relationship between the survivor and the



accused/appellant. The learned counsel has led this Court to the evidence of the survivor, when in her deposition as PW-2, she has stated that her relationship with the accused/appellant is a love relationship. In fact, on 12.08.2016, she has decided to flee with the accused/appellant to Umsning, whereupon, he came to pick her up from Downgate (Nongpoh) in an auto-rickshaw. From there, they proceeded to Umsning and then by a local taxi, they went to Mawtari which is where the accused/appellant is residing with his family. The survivor has also stated that she stayed with the accused/appellant out of her own will and that they had sexual intercourse with her consent since she liked and loved the accused/appellant. On being cross-examined, the survivor has also admitted that she made the accused/appellant believe that she was above 18 years of age at the relevant point of time.

9. The learned counsel has further submitted that the I/O in her deposition before the Trial Court, has admitted in her cross-examination that the survivor (victim) has stated to her that she went willingly with the accused/appellant to his house (voluntarily). Even the medical doctor who had examined the survivor on 14.04.2016, has stated before the court that *“I also clinically examined the victim, on my physical examination of the victim I did not notice any abnormality, such as injuries, I also examined the body of the*



victim very minutely to see that there was any evidence of any sexual assault and I did not find any evidence of any sexual assault on the body of the victim". The accused/appellant not being aware or made known that the survivor was below 18 years of age at that point of time, therefore, it cannot be said that he has knowingly or intentionally taken advantage of a minor girl or has committed sexual assault in this regard.

10. The learned counsel has further submitted that the prosecution through the I/O who was examined on three different dates before the Trial Court, has also tried to improve its case by introducing the birth certificate of the survivor as a piece of evidence at the stage of the trial without affording any opportunity to the accused/appellant to be made known of such introduction so as to be able to refute the same at the relevant point of time.

11. In this regard, the learned counsel has submitted that the I/O when she had deposed before the Court on 10.02.2020, on being cross-examined as far as the age of the survivor is concerned, she had stated that *"I have not filed any age prove of the victim with my charge sheet. (vol.) It was inadvertently left and misplaced and I found that document very recently and I want to produce the same before Court"*. On 15.02.2022, the I/O has been re-examined by the learned Special Public Prosecutor, wherein, she has stated that she has submitted the supplementary charge sheet on 10.02.2020 and that



she has seized the original birth certificate of the victim girl from her mother, the seizure list drawn up on that day has been introduced in court as a document being Exhibit-12 and the original birth certificate was also produced as Material Exhibit-10.

12. The learned counsel has submitted that the conduct of the I/O as far as the said seizure and production of the birth certificate is questionable, and it has been done so without following due procedure. The fact being that the I/O when she was examined in court on 10.02.2020, has stated that the said birth certificate was already in her possession, that is, in her personal file, but that she had inadvertently failed to produce the same before the court on that day, for which the court has allowed her to produce the same on the next date. However, the fact is that as soon as she left the court on 10.02.2020, she went to the house of the survivor and seized the said birth certificate, the step-father of the survivor, who has also deposed in court, in this regard as PW-6, being made one of the seizure witnesses.

13. The action of the I/O in this regard, is contrary to the procedure laid down under Section 173(8) CrPC, which provides that, though, further investigation in respect of an offence is allowed to be carried out inspite of such investigation being closed upon the filing of a charge sheet, such evidence on the basis of further investigation has to be presented in court by



way of a supplementary charge sheet following the provision of sub-Section (2) to (6) of Section 173. Apparently, this has not been done so in the case involving the accused/appellant herein. This aspect of the matter as regard filing of a supplementary charge sheet or report in the prescribed form, has been duly noted by the Hon'ble Supreme Court in the case of **Mariam Fassihuddin and Anr. Vs. State, (2024) 11 SCC 733**, at para 38 and 39, submits the learned counsel.

14. The learned counsel has also submitted that on 10.02.2020, the I/O has given the impression that she is in possession of the said birth certificate which was not filed with the charge sheet, however, instead of producing the said birth certificate said to be in her possession, the I/O had, as an afterthought, seized the said birth certificate on 10.02.2020 itself. This was done without seeking any formal permission from the court for conducting further investigation. The case of **Vinay Tyagi v. Arshad Ali (2013) 5 SCC 793** has been referred to by the learned counsel, wherein the Hon'ble Supreme Court, has observed that the Investigating Agency has adopted a legal practice to seek permission of the court to conduct further investigation and file supplementary report with leave of the court, which has not been done so in this case.



15. The last ground raised by the learned counsel is that the learned Trial Court in the impugned judgment has mostly relied on the said birth certificate (Material Exhibit-10) to form the basis of the conviction of the accused/appellant, however, the accused/appellant has not been confronted with the very evidence/circumstances upon which the order of conviction and sentence was passed, which ought to have been afforded to him at the stage of his examination under Section 313 CrPC. In this connection, the learned counsel has referred to the case of **Samsul Haque v. State of Assam, (2019) 18 SCC 161**, at para 22 of the same, wherein, the Hon'ble Supreme Court has observed that “*...if a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial....*”.

16. The learned counsel as a final thrust to state the case of the accused/appellant has submitted that the prosecution having failed to establish the age of the survivor beyond reasonable doubt, there is therefore, a complete lack of *mens rea* to attract Section 363/366/376 IPC as well as the provisions of the POCSO Act, to convict and sentence the accused/appellant herein. In



this regard, the case of **State v. Kaishar Ali, 2019 SCC Online Del 9875**, para 10 and 11, has been referred to as relevant to the case of the accused/appellant herein.

17. It is prayed that the impugned judgment and order of sentence be set aside and quashed and the accused/appellant be released and discharged from all liabilities as far as this case is concerned, submits the learned counsel.

18. While resisting the argument advanced by the learned counsel for the appellant, Mr. R. Gurung, learned GA appearing for the State respondent has defended the impugned judgment and sentence.

19. It is the contention of the learned GA that as far as the act of sexual assault or sexual intercourse between the survivor and the appellant is concerned, the same has been proved by cogent evidence and have also been admitted by the accused/appellant in his statement under Section 313 CrPC.

20. The learned GA has submitted that the statement of the survivor made under Section 164 CrPC is that, she voluntarily went to the house of the accused/appellant and slept with him because she wanted to as he is her boyfriend, she has also stated that the accused appellant did not force me to sleep with him. In her evidence before the Court, the survivor has reiterated the same statement. The fact that the accused/appellant and the survivor has engaged in sexual intercourse, was also proved by medical evidence when the



doctor who has medically examined her has stated that *“I also examined the private part of the victim and found that the hymen was torn”*.

21. The learned GA has further submitted that since the sexual encounter has not been disputed either by the survivor or by the accused/appellant, what remains to be decided in this case is, whether the survivor was capable of giving consent.

22. As regard the proof of age of the survivor, the learned GA has submitted that in the evidence of the I/O as PW-5, in her cross-examination she has stated that *“It is a fact that the xerox copy of the birth certificate was collected from the possession of the mother of the victim but due to oversight it was never reflected in the case diary, however, on 10.02.2020 I collected the original birth certificate of the victim from the mother of the victim and the same was forwarded before the court”*.

23. In this context, the learned GA has submitted that the law as regard production of new evidence after the charge sheet is filed, is primarily governed by Section 173(8) of the CrPC. Under Section 173(5), the same provides that the police officer must forward all documents they are relying on to the Magistrate along with the police report. This, according to the Supreme Court is directory and not mandatory, as such, failure to comply with the same, for example, if there is inadvertent omission, it does not invalidate



the entire charge sheet or bar later production of documents. The case of **Central Bureau of Investigation v. R. S. Pai, (2002) 5 SCC, 82**, para 7 has been cited in support of this contention.

24. The second limb of argument advanced by the learned GA is on the significance of consent as regard a minor in cases involving sexual relationship. It is reiterated that the law is clear that according to the POCSO Act, a child is defined as anyone below the age of 18 years and any sexual act with a child/minor is considered a sexual offence. The law also operates on the principle that a minor is incapable of giving valid consent to sexual activity, as such, as in this case, even of the minor willingly participated or lied about their age, this '*consent*' is not a legal defence for the accused.

25. Having heard the learned counsels for the parties, we are seized of this matter, the narrative initiated on the lodgement of a missing person report by the mother of the survivor, which upon investigation, turned a case of sexual assault directed against the accused/appellant herein, eventually resulting in the Trial Court finding him guilty of the offence alleged.

26. As admitted by the appellant, that the survivor had accompanied him when they went to his place of residence at Mawtari Mardon on 12.04.2016 and there they had spent two days together even indulging in sexual intercourse, are matters of record.



27. What the appellant would maintain is that the conduct of the survivor is one of consent, since she had willingly gone with him to his residence, claiming that she is in love with him. The appellant has also pointed out that he is not aware that the survivor was a minor since she has clearly expressed to him that she was above 18 years of age when she met him or when she had the relationship with him. This is the foremost ground of defence relied upon by the appellant in these proceedings.

28. The prosecution has sought to dilute this assertion by insisting that the survivor was a minor at the relevant point of time, which fact has been proved by production of her birth certificate. It is the manner in which such birth certificate has been introduced in evidence, the same being resisted by the appellant, that this Court has to decide as to whether such birth certificate can be accepted as a reliable piece of evidence or not.

29. A perusal of the deposition of the I/O as PW-5 would show that on 15.02.2022 when she was further cross-examined, she has admitted that “...*It is a fact that the Xerox copy of the birth certificate was collected from the possession of the mother of the victim but due to oversight it was never reflected in the case dairy...*” It was further stated that “...*however, on 10.02.2020 I collected the original birth certificate of the victim from the mother of the victim and the same was forwarded before the court...*”



30. What could be understood from the above is that, the I/O, on 10.02.2020, have stated before the court on oath that the birth certificate has been seized by her, but through inadvertence, the same could not be produced in court on that day. The court under the impression that the said birth certificate was in her possession, has allowed the same to be exhibited on the next date of hearing. The fact is that it was only on 10.02.2020 itself that the I/O went to the house of the mother of the survivor (victim) and had seized the original birth certificate, which in all probability, would have been introduced as primary evidence. The seizure of the same in course of trial after the investigation is over, when apparently no supplementary charge sheet has been filed and no copy was supplied to the accused/appellant in advance, there is therefore a clear deviation made from what has been stipulated under sub-Section 8 of Section 173 of the Code.

31. What transpired from the above is that the introduction of the birth certificate at such a late stage of the proceedings without following due process, the same has caused prejudice to the accused/appellant and therefore, this Court would consider such related evidence as not admissible under the circumstances. In the face of the assertion of the accused/appellant that such incriminating evidence has not been put to him in his statement under Section 313 CrPC, would further compound the prejudice caused.



32. This leads us to another aspect of the matter. In the absence of clear evidence as regard the age of the survivor (victim), the fact that she has represented herself before the accused/appellant as one being above 18 years of age, no negative inference can be drawn, if one is to assume that the accused/appellant has accepted the same as gospel truth. In this respect, even if a contrary view is to be taken, the one which favours the accused/appellant has to be adopted, which is a mandate of criminal jurisprudence.

33. Consequently, this Court is of the view that under such peculiar circumstances, the aspect of ‘consent’ becomes an important component to be considered to determine the fate of the accused/appellant. Such consent being manifestly voluntary on the part of the survivor, therefore the ingredients of the offences charged against the accused/appellant are not found well-established.

34. In the final analysis, we find that the impugned judgment and the related sentence cannot be legally sustained. The same is hereby set aside and quashed.

35. The accused/appellant is hereby directed to be discharged forthwith with all liabilities against him similarly discharged, if he is not in custody in some other cases.

36. Sent back the Trial Court records.



37. Appeal disposed of.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge