Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA AT SHILLONG

Crl.A. No. 45 of 2024

Date of CAV: 04.08.2026
Date of pronouncement: 11.08.2026

Welcome Thongni

...Appellant

- **versus** -

1. The State of Meghalaya, represented by the Secretary, Home Department, Government of Meghalaya, Shillong.

2. The State of Meghalaya through Superintedent of Police, Nongstoin, West Khasi Hills District, Meghalaya.

3. The Officer-in-Charge, Women Police Station, Nongstoin, West Khasi Hills District, Meghalaya.

....Respondents

Coram:
Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. S. Thapa, Adv.

For the Respondents : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl PP

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

JUDGMENT: (per the Hon'ble, the Chief Justice)

The aforesaid appeal is directed against the judgment and order dated 27.03.2024, passed by the learned Special Judge (POCSO), West Khasi Hills, Nongstoin in Special POCSO Case No. 4 of 2020, by which the learned Judge was pleased to convict the appellant for the offence punishable under Section 5(n) read with Section 6 of the POCSO Act and sentence him to undergo rigorous imprisonment of 20 years and to pay fine of ₹30,000/- in default of payment of fine, to undergo further simple imprisonment of three months.

2. Under Section 357A Cr.P.C. read with Rule 9(2) of POCSO Rules, 2020, the learned Judge also recommended compensation of ₹1,50,000/- to be paid to the survivor by the Meghalaya State Legal Services Authority, for utilising the same exclusively for the welfare of the child-survivor. Interim compensation, if any and if paid, was directed to be adjusted against the final compensation.

3. It is the prosecution case that the appellant, uncle of the survivor committed aggravated penetrative sexual assault on the survivor, aged six years, at his residence. On the disclosure made by the survivor (PW2) to PW1(mother of the survivor), an FIR came to be lodged as against the appellant alleging the aforesaid offence. During the course of investigation, the Police recorded the statement of witnesses both, under Sections 161 and 164, and conducted other investigation, after which they filed charge-sheet as against the appellant in the Court of the learned Special Judge (POCSO).

4. The learned Special Judge (POCSO) framed charge as against the appellant on 25.03.2021 for the offence punishable under Section 5(n) read with Section 6 of the POCSO Act, to which the appellant pleaded not guilty and claimed to be tried.

5. The prosecution in support of its case, examined six witnesses. They are as under:

PW1- Smti. Brialsidoris Nongdkhar (Mother of the survivor).

PW2 – Child–Survivor.

PW3 – Shri. Shngainpher Lyngkhoi (brother of the appellant)

PW4 – Smti. Seltimoris Nongdkhar (Mother-in-law of the Appellant).

PW5 – Dr. Manjurika Surong, Medical & Health Officer, civil Hospital Nongstoin.

PW6 – W.P./S.I.,D.P. Nongbri, Ivestigating Officer.

6. Mr. S. Thapa, learned counsel for the appellant assailed the judgment and order on several counts. Learned counsel submitted that there were several inconsistencies in the evidence of the prosecutrix inter se and with other witnesses. He further submitted that the prosecution had failed to examine some material witnesses, who had either seen the sexual assault or who had informed of the disclosure made by PW2 to PW1 (mother of the survivor). He further submitted that the evidence of the survivor (PW2) does not inspire confidence nor is of a sterling quality, warranting placing implicit reliance on the same. He further submitted that even otherwise, taking the prosecution case as it stands, no offence under Section 5 is disclosed qua the appellant and that at the highest, the offence

would be one under Section 7 of the POCSO Act, punishable under Section 9 of the said Act, having regard to the evidence what has come on record, i.e., that the appellant had touched the private part of the prosecutrix and that there was no penetration warranting application of Section 5 read with Section 6 of the POCSO Act. He further submitted that the same is also evident from the evidence of PW5, the doctor, who medically examined the prosecutrix. Mr. Thapa, learned counsel relied on the following judgments in support of his submissions:

1) ***Criminal Appeal No. of 2025 (arising out of SLP(Crl.) No. 10377 of 2025 : Laxman Jangde*** v ***State of Chhattisgarh through the Station House Officer***.

2) ***(2012) 8 SCC 21 : Rai Sandeep alias Deepu*** v ***State (NCT of Delhi)***.

7. Mr. K. Khan, learned AAG opposed the appeal. Learned AAG submitted that the evidence of the survivor (PW2), who at the relevant time was six years and at the time of deposition was nine years, inspires confidence and as such, is duly

corroborated by the evidence of PW1 (mother of the survivor) and PW5, the doctor, who medically examined the survivor. He submitted that the evidence is clear and clinching qua the appellant and clearly shows the complicity of the appellant in the crime. He further submitted that, despite the prosecution having proved its foundational facts, as required, the appellant had failed to rebut the presumption cast on him under Sections 29 and 30 of the POCSO Act.

8. Having regard to the aforesaid submissions, we find that in the facts, the most material evidence is that of the survivor i.e., PW1 (mother of the survivor, who is the first informant), PW2 (survivor) and the evidence of PW5, the doctor, who medically examined the prosecutrix.

9. The prosecution examined the first informant as PW1 (mother of th survivor). PW1 in her examination-in-chief has disclosed that her daughter (PW2) was aged six years at the relevant time; that the appellant is her elder sister's husband and that he lived in the house adjacent to theirs. According to

PW1, the incident took place in November, 2019; that when she had returned home after cutting grass in the evening and was cooking, her niece came to their house and told her to ask her daughter (PW2) about the incident which had taken place; that her daughter started crying and hence, her niece asked her (PW2) to speak out and not be afraid; that on consistently making inquiry, her daughter (PW2) narrated that on one occasion, the appellant had called her, taken her to his house and thereafter, to his bedroom where he removed her trousers as well as his trousers and thereafter, inserted his finger in her private part. PW1 has further deposed that since, at that moment, her son called out to the survivor (PW2), the appellant and PW2 came out of the house and the appellant pretended to give sugarcane to her daughter (PW2) to eat.

10. According to PW1, when her husband returned home, she narrated the incident to him pursuant to which he became furious and wanted to confront the appellant, however, seeing his anger, she prevented him from confronting the appellant and

any untoward incident from happening. PW1 has further deposed that she waited for her elder sister (appellant's wife) to return home from Lawse village where she had gone to attend a funeral and when she returned, she informed the incident as was narrated by her daughter (PW2), however, her sister did not respond. PW1 has further deposed that on the next day, they waited for her elder sister to come home and discuss about the allegations, however, she did not turn up, pursuant to which, she went to her sister's house and confronted her whether she had asked the appellant about the incident; that her sister informed her that the appellant had denied committing any offence and further stated that if he had committed any such act, she would not have been alive; that since she was not content with the said response, she decided to take her daughter for medical examination to ascertain the truth; that she also informed her mother about the incident, who accompanied her alongwith her minor daughter (PW2) to the Civil Hospital, at Nongstoin.

11. According to PW1, the Medical Officer at the Civil Hospital, took her consent and conducted medical examination of PW2 and after the medical examination, asked her to lodge an FIR, however, she refused as she wanted to know the result of the medical examination and as such, returned home. PW1 has further deposed that on reaching home she found the appellant's parents present at the house of her elder sister. She has deposed that when the appellant was confronted by the family members, he denied committing the offence, but stated that if there was any injury on the minor victim girl (PW2), it was because he had slapped the private part of the girl and as such, sought forgiveness. From the evidence, it further appears that on the next day, members of the village came to PW1's house and advised her to lodge an FIR, pursuant to which she, her husband, her mother and her elder brother went to Nongstoin Police Station, pursuant to which the incident was reduced into writing by the concerned Police Officer.

12. PW1 has further deposed that before she could sign the FIR, she received a phone call from the appellant asking for forgiveness; and that he cried, and told her that if anything happened, it was due to a mistake, pursuant to which she did not sign the FIR and proceeded to the Civil Hospital, Nongstoin with her mother to collect the medical report of her daughter (PW2). PW1 has stated that on reaching the hospital they were informed that the medical report was sent directly to the Police Station, since it related to an offence against a minor and hence, they returned home. PW1 has further deposed in her examination-in-chief that on the next day, members of the village, came again to their house and inquired whether they had lodged an FIR, pursuant to which she informed that she did not desire to lodge an FIR since the appellant had sought forgiveness and she felt pity for him. She has stated that the villagers told her that if she did not lodge the FIR, the Police will register a case against them and hence, she alongwith her mother, elder brother and her uncle went to the Police Station and narrated the incident, which was reduced into writing and the FIR (Exibit-

P2) was registered. PW1 has also deposed that she was taken by the Police to the Court, where her statement was recorded by the Magistrate under Section 164 Cr.P.C. (Exhibit-P3).

13. There is nothing substantial that has come in the cross-examination of PW1 to disbelieve her testimony. Infact, it is pertinent to note that there is no cross-examination with respect to the disclosure made by PW2 to her mother i.e., paragraph 10 of the evidence; that he sought forgiveness from PW1 i.e., evidence that has come in paragraphs 19, 20 and 21 of the examination-in-chief. PW1 has categorically disagreed that the statement recorded before the Police, the Magistrate and the statement recorded in Court were different in any way. It is also pertinent to note that in paragraph 17 of the cross-examination of PW1, it has come as under:

> "*17. It is a fact that my minor victim daughter narrated to me that the accused initially inserted with his finger in the private parts of my minor victim daughter and thereafter attempted penetrative sexual assault upon my minor victim daughter.*"

14. PW1 produced the original birth certificate of her daughter (PW2) to show that she was a minor, aged six years old at the relevant time. The said birth certificate was exhibited and that there is no challenge to the same.

15. PW2, the survivor, aged about six years at the relevant time and about nine years when she deposed before the Court. She was asked certain questions by the learned Judge to understanding her ability to depose. The learned Judge though did not administer oath to PW2 as she was nine years of age has observed that the child appeared to be bright and capable to understand all types of questions put to her and could also give rational answers. PW2 identified the appellant as her uncle and deposed that she would see him everyday since he lived close by. When asked what did the appellant do to her, she deposed as under:

> "*Q8. What did the accused do to you?*
>
> *Ans. One day while I was in th house of Meideng (residence of the accused) there was no persons during day time, Padeng took me to the bed of 'ka Bih' (daughter of Meideng) and he opened my pant, he also opened his pant and put*

his private parts (ong jung) in my private parts (ong jung). He laid on top of me for sometimes and I could feel the pain in my private parts at that point of time. After that he went to cut sugarcane.

Q10. What were you doing in the house of Padeng (accused)?
Ans. On that day I went to cut sugarcane from the garden of Padeng (accused) and after cutting sugarcane, Padeng (accused) called me inside his house.

Q. What happened thereafter?
Ans. Thereafter accused committed penetrative sexual assault upon me."

16. There is no cross-examination with respect to what is deposed to by PW2 to question Nos. 8 and 10. PW2 has admitted that she had narrated the incident to her mother and father and also to one Ka Lit. She has denied that she had asked for ₹10/- from the appellant or that the appellant used to beat her or she was tutored by her mother. The said evidence of PW2 not only inspires confidence, but also appears to be credible and trustworthy. No reason is forthcoming in PW2's cross for her to falsely implicate the appellant. As noted aforesaid, there is no cross with respect to sexual assault by the appellant on PW2, and as such, the same has gone unchallenged.

17. The said evidence of PW2 is duly corroborated by PW5, Dr. Manjurika Surong, who medically examined PW2. PW5 in her evidence has stated that on 13.12.2019, the survivor was brought to Civil Hospital, Nongstoin at about 7 p.m. by her mother and one lady police personnel for medical examination; that before conducting the medical examination, she took the consent from the mother after which, she recorded the sexual assault history as narrated by the survivor. Paragraph of the examination-in-chief of PW5, Dr. Manjurika Surong is as under:

> "*5. The survivor stated before me in the presence of her mother that on 28/11/2019 at about noon her uncle Shri Welcome Thongni called her from outside and led her to the bedroom where he took off her pant and underwear and then he took off his trousers and underwear. He then laid on top of her and touch her private parts with his fingers and according to the survivor attempted penetration was done. After that he put his trousers and she put on her underwear and pant. He then went out of the room on hearing her elder brother (Name withheld) called out her name.*
>
> *6. ...*
>
> *7. Date and time of assault was on 28/11/2019 at Nongjyllieh village at noon.*
>
> *8. During the course of examination I put some more questions to the survivor wherein she narrated that there*

was no verbal thread (sic), no physical violence and no weapons or objects used to threaten her. The survivor narrated that the accused touched her vulval area and that there was attempted penetration by penis and finger in her vagina.

9. In general physical examination the survivor was conscious and oriented and there was no abnormality detected physically.

10. In genital examination no abnormality detected except fourchette and introitus erythema was found which means that the area is red."

18. Again, it is pertinent to note that there is no cross-examination with respect to what is deposed to by PW5 i.e., the history given by the survivor to her. Although, the doctor has in her cross-examination stated that there were no visible injuries on the survivor, that necessarily does not lead to a conclusion that there was no sexual assault on the girl child, inasmuch as the allegation is, of inserting finger and of partial penetration. The doctor has categorically deposed that the fourchette and introitus erythema area were found to be red. Thus, not only the evidence of PW2 inspires confidence and appears to be of a sterling quality but the said evidence is duly corroborated by her

mother, PW1 and the doctor, PW5. There is nothing on record to show as to why PW2 or PW1 would falsely implicate the appellant, more particularly when he was related to PW2 i.e., he was PW2's uncle.

19. As far as non-examination of certain witnesses mentioned to by PW2 is concerned, we do not find the same to be fatal in the facts. It is not the number but the quality of evidence that is material.

20. As far as applicability of Section 5(n) of the POCSO Act is concerned, we find having regard to the evidence that has come on record and also having regard to the definition of 'penetrative sexual assault' as defined in Section 3 of the POCSO Act, that the case would squarely fall under Section 5 read with Section 6 and not under Section 7 (sexual assault) read with Section 9 of the POCSO Act. In order for a case to come under Section 7, one of the ingredients is touching certain parts of a child's body with sexual intent, which is not the case and as such, Section 7 will have no application.

21. Considering the aforesaid evidence on record, we find that the prosecution has not only laid the foundational facts as required to prove its case, but we also find that the appellant has miserably failed to rebut the presumption cast on him under Section 29 and 30 of the POCSO Act, more particularly, when the prosecution had proved the foundational facts. In this view of the matter, no infirmity can be found in the impugned judgment and order of conviction and sentence dated 27.03.2024, passed by the learned Special Judge (POCSO), West Khasi Hills, Nongstoin in Special POCSO Case No. 5 of 2020 and as such, the said judgment and order stands confirmed.

22. Since, the trial court has also recommended compensation of ₹1,50,000/- to be given by the Meghalaya State Legal Services Authority to the child-survivor, a report to be submitted by the Secretary, District Legal Services Authority, West Khasi Hills, Nongstoin. Member Secretary, Meghalaya State Legal Services Authority, as to whether the said amount

has been disbursed to the child-survivor or not. The said report to be submitted before this Court within six weeks.

23. The Registry to forward forthwith a copy of this judgment and order to both, the Member Secretary, Meghalaya State Legal Services Authority and the Secretary, DLSA, West Khasi Hills District, Nongstoin, to enable them to submit their report.

24. Although, the appeal stands disposed of, place the aforesaid appeal for recording compliance of paragraph 2 of the judgment on **24th September, 2026**.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice

Signature Not Verified
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Date: 2026.08.11 17:13:34 IST