

Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.40/2023

Reserved on : 14.05.2024

Pronounced on: 08.07.2024

Shri Treda Sungoh

..... Appellant

Vs.

State of Meghalaya through the Commissioner and Secretary to the Government of Meghalaya, Department of Home (Police), Civil Secretariat, Meghalaya. Respondent

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. K.S. Kynjing, Sr.Adv with
Mr. G. Syngkrem, Adv

For the Respondent : Mr. K. Khan, AAG with
Mr. S. Sengupta, Addl.PP
Mr. K.P. Bhattacharjee, GA

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|---|-----|
| i) Whether approved for reporting in Law journals etc.: | Yes |
| ii) Whether approved for publication in press: | Yes |

J U D G M E N T

(Made by the Hon'ble Chief Justice)

This Criminal Appeal is directed against the judgment and order dated 13.02.2023, passed by the Special Judge (POCSO), West Jaintia Hills District, Jowai in Special Sessions Case No.23 of 2021, by which the accused / Appellant herein was convicted by the Trial Court for the offence under Section 5(1)/6 of The Protection of Children from Sexual

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Offences Act, 2012 (in short 'POCSO Act, 2012') and Section 506 IPC as follows:

Sl.No.	Offence	Conviction and Sentence
1.	Section 5(1) / 6 of the POCSO Act, 2012	To undergo Twenty Years Rigorous Imprisonment with a fine of Rs.10,000/-in default to undergo Simple Imprisonment for 3 months and to pay a compensation of Rs.1,50,000/- payable by the District Legal Services Authority and recoverable from the accused.
2.	Section 506 IPC	To undergo One Year Simple Imprisonment

The Trial Court held that the convict is entitled to the benefit of Section 428 Cr.P.C. and the period already undergone in prison was ordered to be set off. Aggrieved by the judgment and order of the Special Judge (POCSO), West Jaintia Hills District, Jowai, dated 13.02.2023, the Appellant has preferred this Criminal Appeal before this Court.

Brief Prosecution Case:

2. A complaint was lodged by the mother of the victim girl on 23.08.2021 before the officer-in-charge, Women Police Station, Jowai, West Jaintia Hills, stating that her daughter was raped by the accused on 22.08.2021. On receipt of the complaint, the officer-in-charge, Woman Police Station, Jowai registered a case vide Jowai PS Case No.91 (8) 2021 under Sections 3(a)/4 of the POCSO Act, 2012 read with Section 506 IPC and endorsed to one WPSI I. Kharpran for the conduct of further investigation.

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3. After a thorough investigation, a Charge Sheet No.67 of 2021 dated 09.09.2021 under Section 5(1)/6 of the POCSO Act of 2012 r/w Section 506 IPC was laid and the Special Judge (POCSO) thereafter proceeded for trial and arguments after receipt of written arguments from the parties. The prosecution, in order to substantiate the commission of the offence against the accused, examined as many as 4 witnesses and marked 6 exhibits and Paper Mark-1 (Birth Certificate). The accused neither produced witnesses nor marked any document in support of his defence. Statement under Section 164 Cr.P.C. was obtained from the victim girl (P.W.2). The accused was questioned under Section 313 Cr.P.C. and he denied the charges levelled against him. The Trial Court, after analyzing the evidence let in by the prosecution, found the accused guilty of the offence under Section 5(1)/6 of the POCSO Act, 2012 and under Section 506 IPC and convicted him as stated supra.

4. Learned Senior Counsel for the appellant submitted that though the complaint was lodged in the name of the mother (P.W.1) of the victim girl (P.W.2), pursuant to her illiteracy, the Headman had written the complaint on her behalf without even explaining about the contents thereof. P.W.1 (Mother) deposed that the victim girl was working in a tea stall and as such, the age of the girl is highly doubtful, despite production of birth certificate to prove her date of birth as

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26.02.2006. Learned Senior Counsel for the appellant further submitted that there were inconsistencies, contradictions and improvements in the evidences of P.Ws.1 & 2 and especially, the evidence of the victim girl does not inspire confidence in convicting the appellant. Even as per the evidence of the Doctor (P.W.3), there was no bleeding from the hymen during medical examination and was also not sure whether tear in the hymen was the recent one or the old. Thus, it can be inferred that the entire prosecution case was a cock and bull story with an intention to book the appellant under the POCSO Act, 2012. Learned Senior Counsel for the appellant also submitted that the chain of event had not been established by the prosecution beyond reasonable doubt, as the samples were not sent for DNA analysis for the reason that it had already expired and there was a violation of procedural law and the appellant has been made as a scapegoat and convicted by the Trial Court by surmises. Hence, learned Senior Counsel for the appellant sought interference by this Court in the conviction and sentence awarded by the Trial Court.



5. Per contra, learned Additional Advocate General appearing for the State contended that as per the statement of the victim girl (Ex.P3), under Section 164 Cr.P.C., the accused, in the guise of dropping the victim girl (P.W.2) in a shop, forcibly took her to a jungle, where the accused, aged about 35 years, had undressed her and raped her twice

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brutally throughout the night. He further contended that the evidence of P.W.2 was duly corroborated by the Medical Report (Ex.P2), which states that the recent sexual assault cannot be ruled out. He also contended that the age of the victim girl was clearly proved by production of her birth certificate duly issued by the Department of Health & Family Welfare, Government of Meghalaya. Thus, in all probabilities, the prosecution has proved the guilt of the accused without any room for suspicion through oral and documentary evidences. Hence, it was prayed that the present Criminal Appeal is liable to be dismissed.

6. We have carefully considered the submissions made on either side and perused the material documents available on record.

7. It was alleged by the prosecution that the accused, in order to satiate his sexual appetite, had spoiled the life of the victim girl (P.W.2) to the hilt and he had taken her to a secluded place / jungle and committed the offence of aggravated sexual intercourse with the victim girl, who was a minor at the time of incident, attracting the provisions of the POCSO Act, 2012. Learned Senior Counsel for the appellant vehemently argued that the mother (P.W.1) of the victim girl, without even knowing the contents in the FIR, had simply signed thereon and thereafter, the case had been developed by the Police. However, on a perusal of the statement of the victim girl (Ex.P3) under Section 164

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Cr.P.C., the factum of sexual intercourse had been duly established by the prosecution. In the statement, the victim girl had stated as follows:

“The incident took place on 22nd August 2021. I left home to buy something from Madan. I met Tre Sungoh and he asked me where was I going. I told him I was going to buy something. He asked me if I know a shop nearby to which I replied that you go ahead and ask around. He requested me to accompany him as I scared of my parents. He insisted and as such I gave in and went along with him in his car. He kept on driving and I do not know the destination. He stopped the car in the roadside. I did not want to get down from the car. Tre pulled me out forcefully from the car to the forest. He held my hand and pushed me to the ground. He laid on top of me. He took off my pants and my underwear. He took off his pants and inserted his penis inside my vagina. Once he’s done, I begged him to drop me home. He refused and we stayed the night in the forest. That night, he raped me again. The next morning-early morning, he dropped me at Lumpyrtuh Community Hall. I ran home and informed my parents about what happened. My parents called Tre and we all went to the Police Station and filed an FIR.

That is all I have to say.”



8. The version of the victim girl appears to be real and natural and there is no cloud of suspicion over her evidence and does inspire confidence in the minds of this Court and we have no good reasons to doubt her assertions. Moreover, P.W.3 / Doctor, in her deposition, had categorically stated as under:

“Details regarding sexual violence, there was penetration into the genitalia area by penis and also by finger. There was penetration into the anus by penis. There is force masturbation of self by survivor. There is masturbation of assailant by survivor, force manipulation of genital of assailant by survivor. There is kissing, licking or sucking of survivor body. There is touching/fondling of survivor’s body. According to the survivor she had changed her clothes, undergarment, passed urine, stool

and rinsing of mouth after the incident. According to the victim there was bleeding from the vagina after the history of sexual violence. There is history of pain while passing urine.

On examinations there was abrasions, two linear lines on the right zygomatic bone area of the victim. Genital examination – there is tear at multiple sides in the hymen, no active bleeding, there is 2cm linear tear with bleeding in the perineum. Sample was collected for HIV, VDRL, HbsAg. Urine test for pregnancy was conducted. Swabs from stains on the body was collected. Scalp hair was collected and oral swabs was collected. Pubic hair was collected. Two vulval swab were collected, two vaginal swabs were collected and two anal swabs were collected. All the samples were handed over to the Police.”



9. It was the statement of the Doctor (P.W.3) before the Court that there is 2cm laceration of perineum with active bleeding with unintact hymen. Her medico-legal report was marked as Ex.P2, wherein, based on the medical examination on the victim girl (P.W.2), the following final opinion had been given in the report (Ex.P2):

“Recent Sexual intercourse cannot be ruled out.”

10. Even in her cross-examination, she had stated that there was a tear in the hymen, but she was unable to identify whether the tear occurred recently or already existed in it. Be that as it may, it was obvious that there was an aggravated sexual assault on the victim girl, which is evident from the detailed medical examination under Column 15F and the same are reproduced hereunder:

Oral sex performed by assailant on survivor	Y	N	Don't know (DNK)
Forced Masturbation of self by survivor	Y	N	DNK
Masturbation of Assailant by Survivor, Forced Manipulation of genitals of assailant by survivor	Y	N	DNK

Exhibitionism (perpetrator displaying genitals)	Y	N	DNK
Did ejaculation occur outside body orifice (vagina/anus/mouth/urethra)?	Y	N	DNK
If yes, describe where on the body	-	-	-
Kissing, licking or sucking any part of survivor's body	Y	N	If yes describe
Touching/fondling	Y	N	If yes describe
Condom used*	Y	N	DNK
If yes status condom	Y	N	DNK
Lubricant used*	Y	N	DNK
If yes, describe kind of lubricant used	-	-	-
If object used, describe object:	-	-	-
Any other forms of sexual violence	-	-	-

11. The sexual abuse of the victim girl by the accused was duly established by the prosecution through medical evidence and thus, there was proper corroboration of the evidence of P.Ws.1 & 2 with the medical documents. Above all, the answer given by the appellant, when he was questioned under Section 313(1)(b) Cr.P.C., is only the *ipse dixit* of the appellant and no attempt was made by him to disprove the version of the prosecution and the victim girl as well.

12. It was not in dispute that the victim girl (P.W.2) was born on 26.02.2006 as per the birth certificate marked as Paper Book-I, as per which, the age of the victim girl was around 15 years only on the day of occurrence. Thus, we are convinced that the prosecution was able to prove the guilt of the accused beyond reasonable doubt both through ocular and medical evidence. As per the dictum laid down by the Supreme Court in the case of Ganesan vs. State, reported in AIR 2020 SC 5019, the statement of the prosecutrix, if found to be worthy of

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credence and reliable, requires no corroboration and the court may convict the Accused on the sole testimony of the prosecutrix.

13. In yet another case, the Apex Court in Rai Sandeep alias Deepu v. State (NCT of Delhi), reported in (2012) 8 SCC 21 elaborately dealt with the reliability of "sterling witness", by observing as follows:

22. In our considered opinion, the "sterling witness" should be of a 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 correlation 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



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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.”

14. On evaluating the deposition of the victim on the touchstone of the law laid down by the Apex Court, we are of the opinion that the sole testimony of the PW3-victim is absolutely trustworthy and unblemished and her evidence is of sterling quality. In this case, in addition to the deposition of the victim girl (P.W.2), this Court do not find any prevarication in the version of P.W.1 (mother of the victim girl). The evidences of P.Ws.1 & 2 had duly been fortified by the medical examination. The Apex Court in the case of State of U.P. Vs. Babul Nath, reported in 1994 (6) SCC 29 observed that even an attempt to penetration will constitute the offence.

15. At this juncture, we want to necessarily reiterate the observations made by the Supreme Court in State of Punjab v. Gurmit Singh, reported in (1996) 2 SCC 384, to the extent that the physical sexual assault not only leaves worst memories, but also ruins the entire life of the victim and while the murder shatters the body of a person, the rape is destructive of personal liberty of a helpless / noble creature. The relevant passage of the judgment is extracted hereunder:

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“21....We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably cause serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim a rapist degrades the very soul of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. 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 case involving sexual molestations.”



16. Though learned Senior Counsel for the appellant pointed out that some of the vital witnesses had not been examined in this case, it is pertinent to mention here with reference to the judgment of the Supreme Court in the case of State of Himachal Pradesh vs. Raghbir Singh, reported in (1993) 2 SCC 622 that evidence has to be weighed and not counted and 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.

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17. Finding that the prosecution has established the charges against the appellant, we do not find any ground to interfere with the judgment and order passed by the Court below.

18. In the result, this **Crl.A.No.40/2023** stands dismissed and the judgment and the order passed by the Special Judge (POCSO), West Jaintia Hills District, Jowai is hereby upheld.

Sd/-
(W.Diengdoh)
Judge

Sd/-
(S.Vaidyanathan)
Chief Justice



PRE-DELIVERY JUDGMENT IN
Crl.A.No.40/2023

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