

Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.2/2023

Date of Order: 07.06.2023

Arjun Das Vs. State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. P.T. Sangma, Adv

For the Respondents : Mr. R. Gurung, GA with
Ms. S. Shyam, GA

- 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) (Oral)

Two principal grounds are urged in this appeal. The first is that the trial court erred in completely relying on the statement of the survivor to convict the appellant herein under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 506 of the Penal Code, 1860.

2. The second ground raised is that several other persons who would have been key witnesses were not examined by the prosecution, including another student who apparently attended the tuition classes

along with the survivor. The appellant also says that the brother of the appellant should have been examined.

3. The first information report in this case was lodged by the father of the survivor on April 10, 2017 at the Pasteur Beat House in Shillong. The de facto complainant asserted that his son, then aged 9 and a student in Class III at St. Xavier Secondary School, Polo Hills, Shillong, had been sexually molested by the appellant herein, to whom the survivor used to go for tuition.

4. According to the FIR, on April 10, 2017, when the boy's mother asked the boy to go for tuition and he was not interested to go, the mother enquired of the boy and discovered that the appellant herein would keep the survivor back at the end of every session and sexually abuse him. The FIR also referred to the boy complaining of pain in his rectum.

5. The nine-year-old survivor rendered a statement on oath under Section 164 of the Code of Criminal Procedure, 1973. He recollected that he went for tuition every day to the house of the appellant herein and the appellant herein "does dirty acts with me only." He recounted that there were two students in the tuition, the other being a boy by the name of Babuji. He asserted that the appellant would tie his hands with a

handkerchief, cover the survivor's mouth with his hand and "penetrated his penis into my anus."

6. The boy narrated that he had complained to his mother but the mother did not give him any attention or take note of his grievance. He claimed that every time he went for tuition, the act was repeated whenever the appellant's mother was not around. He recalled that he had been threatened by the appellant to not reveal the matter to any person, or else the boy would be beaten up. Indeed, the boy recounted that he had actually been beaten up by the appellant herein and this scared him from revealing the matter to others. He stated that since it was getting very painful for him and he felt a burning sensation, he had to tell his mother.

7. The survivor was medically examined at Ganesh Das Hospital, Shillong on the same evening that the FIR was lodged. Before conducting the medical examination, the description of the incident in the words of the survivor was recorded. As per such recording, on Saturday, April 8, 2017 the survivor had gone for tuition and the accused penetrated his penis into the survivor's anus after covering the mouth of the survivor with the hand of the accused so that the survivor could not shout. The survivor also stated that he was sexually assaulted for the past two months and he reported the matter to his mother but the mother did not react to the same till he recounted the latest incident which had taken place.

8. In course of the examination, the medical expert found a laceration and tear in the anus. This was indicated both in the sketch and in words. The opinion rendered by the medical examiner was as follows:

“Sexual assault may have taken place.”

9. In course of the trial, the survivor repeated, in substance, what he had indicated previously in his statement under Section 164 of the Code and in his brief description to the medical practitioner at the time of his examination. No anomaly of any kind is pointed out on behalf of the appellant in the evidence.

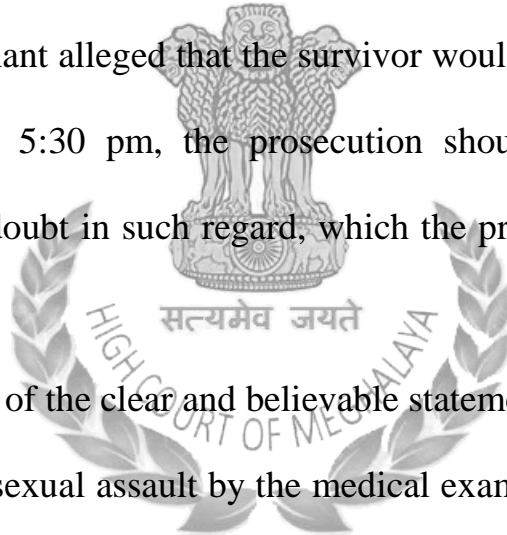
10. However, the appellant suggests that despite the de facto complainant indicating that the boy would go for tuition at around 5 or 5:30 pm and return at 9 or 9:30 pm and the appellant herein asserting that he started the tuition only at around 8 pm, no attempt was made by the prosecution to reconcile the contradiction in the timing. The further point made by the appellant is that the boy named Babuji who would be in tuition together with the appellant was neither examined by the investigating officer nor he was presented at the time of the trial.

11. According to the appellant, it may not be clear from the statements of the survivor as to whether Babuji would be sent home before the appellant allegedly attacked the survivor. At any rate, it is submitted that Babuji would have been able to corroborate whether the

survivor in this case was detained after Babuji was released from tuition. The appellant submits that in the absence of Babuji being presented as a witness, the little chance of corroboration of the survivor's statement has been lost.

12. The appellant seeks to rely on one of his responses to the questions put to him in course of the appellant's examination under Section 313 of the Code. The appellant claims that since the appellant denied that he conducted tuition prior to 8 or 8:30 pm in the evening and the de facto complainant alleged that the survivor would attend the tuition class from or about 5:30 pm, the prosecution should have made an attempt to clear the doubt in such regard, which the prosecution failed to do.

13. In the light of the clear and believable statement of the survivor, the corroboration of sexual assault by the medical examination conducted on him and nothing brought by the appellant to establish to the contrary, this was a rather an open and shut case for the trial court. Merely because Babuji had not been cited as a witness by the prosecution or the father of the survivor may have exaggerated the duration of the tuition class would not detract from the eminently believable account of a nine-year-old survivor in course of his statement under Section 164 of the Code and the description of the incidents at the time of his medical examination.



14. Indeed, while the survivor deposed at the trial, he substantially repeated what he had stated in his statement under Section 164 of the Code. His assertion was clear and unequivocal that the appellant herein would insert the appellant's penis into the survivor's anus. The medical report confirmed the laceration and tear of the anus and it was the considered opinion of the medical examiner that sexual assault may have been the likely cause for the laceration or tear in the survivor's anus.

15. In course of the cross-examination on behalf of the appellant herein, no contradictions or loopholes in the testimonies of the survivor or the medical examiner could be brought out. In such circumstances, based on the material before the trial court, it was perfectly justified for the appellant to be convicted for aggravated penetrative sexual assault, inter alia, under clauses (l) and (m) of Section 5 of the Act of 2012. As a consequence, the appellant has been appropriately punished under Section 6 of such Act and sentenced to 15 years in prison, together with a fine of Rs.1 lakh.

16. The appellant does not bring out any anomaly in the judgment of conviction dated September 29, 2022 or the sentence pronounced on September 30, 2022. The judgment of conviction dwells at length on the evidence, particularly the three statements of the survivor and the complete failure of the appellant herein to demonstrate to the contrary.

17. As to the appellant's assertion that both Babuji and the appellant's brother should have been examined as witnesses in course of the trial, it may be said that there was no impediment on the part of the appellant to call for such persons as defence witnesses. In the absence of the appellant calling such persons as defence witnesses despite having due opportunity therefor, the appellant cannot surmise as to what such persons may have stated to detract from the consistent version of the survivor.

18. It is time to completely discredit a routine line of defence often taken by an accused facing a charge of rape or sexual assault. The general refrain is that since the decision hinges on the uncorroborated allegation of the survivor and the complete denial thereof by the accused, in the absence of any ocular witness, the allegation of the survivor should not be accepted as gospel truth.

19. For a start, however depraved a person may be to sexually molest another person, he may not be foolish enough to indulge in such act in open public view. Such offences are committed stealthily or surreptitiously when the survivor is alone or by luring the survivor to a secluded spot. It is for such reason that the law that has developed requires the allegation of the survivor to be taken seriously and, if found to be credible, to accept the same. There are, of course, recognised

exceptions; as when there are serious contradictions or a motive for leveling the allegation is clearly made out.

20. A further aspect may be specifically noticed in this context. When the survivor is a child, it is difficult to imagine that a story would be conjured up out of nothing and the same would be consistently repeated. Thus, when the survivor is a child of, say, up to 11-12 years of age, unless the court finds the child to be precocious enough to make out a story and consistently repeat the same, the fact that there may not have been any witness to the incident of sexual assault may not, by itself, let the accused off the hook.

21. There is absolutely no merit in the appeal. There is no legal or factual basis to question the fundamental premise of the impugned judgment or the consequent order.

22. Accordingly, Crl.A.No.2 of 2023 is dismissed.

23. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
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