Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.31/2023 with
Crl.M.C.No.94/2023

Reserved on : 20.06.2024
Pronounced on: 08.07.2024

Shri Mihkahtngen Sarubai ….. Appellant

-vs-

1. State of Meghalaya represented by Secretary Govt. of Meghalaya, Home (Police) Department, East Khasi Hills District, Meghalaya.

2. The Investigating Officer, Madanryting Police Station, East Khasi Hills District, Meghalaya. ….. Respondents

Coram:
Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. K.Ch. Gautam, Adv with
Ms. G.C. Marboh, Adv

For the Respondent : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA

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 dated 17.10.2022 and the order of sentence dated 31.10.2022, passed by the Special Judge (POCSO), Shillong in Special (POCSO) Case No.24/2015

and the accused/Appellant herein was convicted by the Trial Court for the offences under Sections 3(a)/4of the Protection of Children from Sexual Offences Act, 2012 and under Sections 328/354B/375(a) falling under Sections 375(sixthly)/376(2)(j)(n)/441/442/450 of the Indian Penal Code and was sentenced as under:

Provision under which convicted	Sentence
Section 376(2) IPC (alternate punishment in the place of POCSO, Act, 2012)	Twenty years of Rigorous Imprisonment with fine of Rs.1,00,000/-
Section 450 IPC	Five Years with fine of Rs.50,000/-
Section 328 IPC	Five Years with fine of Rs.20,000/-
Section 354B IPC	Seven Years with fine of Rs.20,000/-

All the sentences were ordered to run concurrently. The Trial Court also recommended for consideration of restoration and rehabilitation of the survivor by the State Legal Services Authority under Section 357A Cr.P.C.

Brief Prosecution Case:

2. An FIR was given by the parents of the victim girl on 17.04.2015 before the officer-in-charge, Madanryting Police Station stating that her daughter was raped on 14.03.2015. On receipt of the FIR, the officer-in-charge, Madanryting Police Station registered a case vide Madanryting PS Case No.47 (4) 15 under Sections 3,4,7 and 8 of the POCSO Act, 2012 read with Sections 506 IPC and endorsed to one WPSI P. Wahlang for carrying out the investigation.

3. After investigation, a charge sheet No.74 of 2015 dated 18.09.2015 under Section 3(a)/4 of the POCSO Act of 2012 was laid to the Court of Chief Judicial Magistrate committed the case for trial to the Special Judge (POCSO), who framed the charges against the accused under Section 3(a)/4 of the POCSO Act, 2012. The prosecution, in order to substantiate the commission of the offence against the accused, has examined as many as 10 witnesses and exhibited 11 exhibits and 8 material Exhibits. Statement under Section 164 Cr.P.C. was obtained from the victim girl (P.W.1). 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 Sections 3 under Section 3(a)/4of the Protection of Children from Sexual Offences Act, 2012 and under Sections 328/354B/375(a) falling under Sections 375(sixthly)/376(2)(j)(n)/441/442/450 of the Indian Penal Code and convicted him as stated supra.

4. Learned counsel for the appellant submitted that the victim girl and the appellant were friends and were in the habit of exchanging messages to each other through mobile. When the appellant proposed his love to the victim, she accepted his proposal, pursuant to which, they roamed around in the society as lovers. Learned counsel for the appellant

further submitted that the prosecution failed to establish as to how the ingredients of the offences under Section 3(a)/4 of the POCSO Act of 2012 and under Sections 328/354B/375(a) falling under Sections 375(sixthly) / 376(2)(j)(n) IPC and under Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2000 would get attracted against the appellant and as such, there were several discrepancies in the evidence of witnesses before the Trial Court. Learned counsel also submitted that there is a delay in filing the FIR and the Trial Court failed to address the same and the complaint culminated into FIR after the parents of the victim girl discover some love letters in the house of the victim girl. There was a possibility of tutoring / torturing the victim girl to make statement against the appellant and though love letters were also produced on the side of the appellant during the evidence of P.W.3, the same were objected to by the prosecution It was submitted by the learned counsel for the appellant that though P.W.8 in her statement under Section 164 Cr.P.C. stated that she had seen the appellant visiting the house of the victim, during her evidence before the Trial Court, P.W.8 turned hostile and therefore, her evidence cannot be given much importance. There were inconsistencies, anomalies, contradictions and improvements in the evidence of the victim girl and the act of the Trial Court in overlooking the omissions and solely relying upon

the evidence of the victim girl, is contrary to law, especially when the evidence of the victim girl does not inspire confidence in convicting the appellant. Hence, learned counsel for the appellant sought interference of 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.P1), under Section 164 Cr.P.C., the accused had mixed something in her tea and made her to go to the state of partly unconsciousness and though she was aware of what was happening around her at the time of his rape, she was unable to scream and move on account of her dizziness. He further contended that her evidence was duly corroborated by the Medical Report (Ex.P7), which states that the hymen is not intact and there was an old tear seen in the hymen. He also contended that the age of the victim girl was clearly proved through X-ray that she was between 14-15 years of age at the time of incident. It was stated that the offence of this nature involving the life of a minor girl cannot be slightly taken by way of hurried registration of FIR and completion of investigation and therefore, the plea of delay is not fatal to the case of the prosecution. Thus, in all probabilities, the prosecution has proved the guilt of the accused without any room for suspicion through oral

and documentary evidences. Thus, 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 the guise of loving the minor girl (P.W.1), had poured some intoxicating substance in the tea and made her to the unconscious state and thereafter, he had an aggravated sexual intercourse with the victim girl, who was a minor at the time of incident, attracting the provisions of Section 4 of the POCSO Act, 2012. Learned counsel for the appellant vehemently argued that the mixture of substance was the story developed by the parents of the victim girl, when they come to the fact that both the appellant and the victim girl loved each other and had an unbreakable bond. However, on a perusal of the statement of the victim girl (Ex.P.1) under Section 164 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:

> "I know the accused from 2014. Later we started dating since 31st Dec' 14. On 11th Jan' 15 we started a relationship and texted normally, he once texted regarding physical relationship. I agreed just to know his character through SMS. Then on 14th March' 15, he told me he wanted to get physical. After 12' o Clock I made tea and went upstairs to look for my brother. I came down, drank the tea and sat on bed downstairs in my maid's room. He was also there, I felt asleep, I was dizzy from the tea, I felt asleep. I was still partly conscious when I felt

him raping me but could not scream and could not struggle as my body felt so weak and immovable. When I regained consciousness, it was starting to get dark and the lights were off. My maid had then knocked on the door. I heard it. The accused put each on his clothes and then told me to take a pill so I wouldn't get pregnant. I took it and thereafter he left. On 7th March' 15 also, he had tried to have sex with me, but I refused."

8. The version of the victim girl is duly supported by the statement of one Smti. M.K. Lyngdoh dated 02.07.2015 under Section 164 of Cr.P.C. (Ex.P8) and she worked as housemaid in the house of the victim. The statement (Ex.P8) made by her is reproduced below:

"I worked in the house of Kong my owner and her name I do not know as when I asked her what shall I called her and she told me to call her Kong. The daughter of Kong whom I used to call Kong Kong has got a boyfriend and she called her boyfriend to come home. I do not know the name of the boyfriend as I never asked the name. Kong Kong Ke told me to make tea and I made tea and she took herself two cups. Kong Kong Ke and her boyfriend were inside my room and locked my room. I called Kong Kong Ke to asked her how many glasses should I cook rice and knocked at the door but she did not reply and her boyfriend opened the door and was hiding behind the door and he told me O! its you Ri and I replied yes its me. I went to the kitchen and when I came back to the room the boyfriend was not there. I woke up Kong Kong Re and I saw that she was drunk and she was crying and I saw that there was blood in the bed. I asked her what blood is this Kong Kong Re and she replied that her boyfriend has done bad thing to her and she told me also that just after drinking tea her head was going round and she fell asleep and her boyfriend has raped her. Kong Kong Re told me that her boyfriend has given her medicine to drink and when she asked what medicine her boyfriend told her that if you do not want to get pregnant then drink this medicine.

Only this much I have nothing more to say."

9. Apart from the above depositions, P.Ws.2 & 3, who are parents of the victim girl (P.W.1) had reiterated the same contents of the FIR (Ex.P2), which reads as under:

> "**To,**
> **The Officer in Charge,**
> **Madanriting Police Station,**
> **Shillong-21.**
>
> **Sub: Our Minor daughter 14 yrs was Raped.**
>
> **Sir,**
>
> We **Raju & Benisha Sing Kharbyngar** working with **Forever Living Products**, **Barik**, **Shillong**, promoting health products with a lot of team members together maintaining a friendly culture with everyone. Our daughter **Ms. Rabeclyne Sing Kharbyngar**, comes to the office daily after school waiting for us to come home together. In this process she is known to many of the team members for many years and no bad intention about any one.
>
> Recently a new team member joined our company by the name – **MIH (nick name), age 23 yrs, M.No.9774944198 (Residence of Lummawbah, Shillong)** to build his career and we trained and developed him with maintaining a friendly culture with him too. As like everyone he also knew our daughter and started sweet friendly communication with her from **31st Dec, 2014** with new year wishes and became extra close to her. Then he started sending SMS and contacted her on mobile as friend. We were not aware of this at all. He met her in the office, sometime in school and on the way as well. **My daughter 14 yrs old not matured mentally was proposed for an affair by this man on 11th January, 2015, she also accepted and things went on.**
>
> Last month (March, 2015) we saw a change in our daughter's attitude/behaviour and found some **love letters at home on 03, April**. After thorough enquiry, we found that this man had visited our residence (**Kynton-U-Mon, Laitkor, Shillong-21**) three **times** during our absence and our daughter also hide this matter from us. **First visit 3rd March, 2015, after 3 pm**, he came as a normal visitor, chat with my daughter and left.

Second visit 07th March, 2015, after 1 pm, he had come with full planning of having physical affair with her. He forced and molested her, but my daughter manage to run away and he failed.

Third visit 14th March, 2015, around 3 pm, this time with a concrete plan **to have physical relationship**. He must have brought some **toxic substance** because as soon as they had tea she was **unconscious**, later found herself in a naked condition & realize she was raped. Then he threatened her not to declare anything to anyone.

Therefore we request you to take strict action against this person as his intention is to attack minor innocent girls for physical desire fulfilment.

Yours faithfully,
Raju Singh Sd/- Benisha Sing Kharbyngar Sd/-"

10. Going by the depositions of P.Ws.1 to 3 & 8 coupled with the accused's statement under Section 313 Cr.P.C. it was duly established that the accused had acquaintance with the victim girl (P.W.1) and taking advantage of the same, he had physical relationship with the victim girl by way of administering some sedate drug in the tea to the victim girl. Now, let us analyse as to whether the prosecution had succeeded in proving the guilt of the accused through medical document.

11. The Doctor (P.W.7), in her deposition before the Court clearly stated that the hymen was not intact and since her deposition was taken in the year 2019 after a gap of nearly four years, she was unable to recollect as to the year of incident. Based on the medication

examination on the victim girl (P.W.1), the following final opinion had been given in the report (Ex.P7):

"**Reports**

23/4/15 - (1) VDRL-Non reactive
(2) ICTC (HIV)-Non reactive
(3) Age according to dental examination is between 15 to 16 years of age
(4) Age according to X-Ray is 14-15 years of age
(5) USG (W/A)-No abnormality

Place:

25. Final opinion (after receiving lab reports)
Finding in support of the above opinion, taking into account the history, clinical examination findings and laboratory reports of **(mentioned above)** and identification marks described above **1 month 4 days** hours/**days** after the incident of sexual violence. I am of the opinion that: **At the time of examination victim is conscious, oriented. No injuries seen on her body, hymen is not intact, old tear in the hymen at 8'o clock position is seen. Age according to dental and Xray examination is between 14-16 years of age VDRL & JCTC is Non-reactive-No-abnormality is seen in ultrasound report.**"

12. It was not in dispute that the victim girl (P.W.1) was born on 11.08.200 as per the birth certificate (Ex.C5) and it was also affirmed by the Doctor (P.W.6), who had conducted X-ray test on the victim girl and as per her deposition, the approximate age of the victim girl was 14 to 15 years 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. The next plea advanced by the learned counsel for the appellant in respect of the

delay in lodging the FIR, we find no force in the submission of the learned counsel for the accused for the reason that as rightly pointed out by the learned Additional Advocate General, the case relating to a minor girl must be handled with utmost care and there is no hard and fast rule in registration of FIR in a time framed manner.

13. The Hon'ble Supreme Court, in the case of ***State of Himachal Pradesh Vs. Prem Singh***, reported in ***AIR 2009 SC 1010***, had considered the issue of delay in respect of offences involving sexual assault at length and observed as under:-

> "So far as the delay in lodging the FIR in question is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. …"

14. People used to say that love is blind. In this case the accused has made the victim girl blind by way of intoxicating her temporarily so as to fulfil his sexual desire/lust.

15. Learned counsel for the appellant drew our attention to the earlier judgment of this Court rendered by us in Crl.A.No.10 of 2023 decided on 26.04.2024 to state that in that case, the conviction of twenty

years has been reduced to ten years on the ground of love affairs. In this case also, it is merely a case of love affairs and the appellant has been made as a scapegoat. It is true that this Court on earlier occasion reduced the sentence of imprisonment in that case, holding that the male member has been made to undergo imprisonment for the mistakes committed by the two, as the victim girl herself accepted the fact that there was a love affair, on account of which, there was a physical relationship, which was more or less a consent one and there was no conspiracy on the part of the accused to have sexual assault on the victim girl.

16. Certainly, this Court would have considered the reduction of punishment, if it falls under the category of mere love affair and sexual intercourse with consent. But, in this case, though there was a love affair between the accused and the victim girl, owing to the victim girl's repeated refusal to have a sexual intercourse, the accused had mixed some intoxicated element in the tea and made her asleep with part consciousness and thereafter, he had committed the offence of aggravated sexual assault on the victim girl, which is highly condemnable, amounting to betrayal of the girl. Thus, in our view, this Court does not find any serious infirmity in the judgment dated 17.10.2022 and the order of sentence dated 31.10.2022 passed by the trial Court, warranting interference. Though the Trial Court

convicted the accused under Sections 3(a)/4of the Protection of Children from Sexual Offences Act, 2012 along with other offences, by invoking the provisions of Section 42 of the POCSO Act, 2012, alternate punishment under Section 376(2) IPC for twenty years has been imposed on the accused, which is greater in degree.

17. In the result, this Criminal Appeal is dismissed and judgment and the order passed by the Special Judge (POCSO), Shillong is hereby upheld.

18. Crl.M.C.No.94 of 2023 stands disposed of.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
Crl.A.No.31/2023 with
Crl.M.C.No.94/2023