Serial No.03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.16/2021

Date of Order: 13.06.2022

Armishal L. Marshillong 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. H.R. Nath, Adv with
Mr. A.Sharma, Adv
Ms. B. Sun, Adv

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

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

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

Though one or two feeble grounds are urged to assail the judgment of conviction of April 27, 2021 finding the appellant guilty under Section 376(2) of the Indian Penal Code, 1860, the main thrust of the argument is against the sentence of 20 years' rigorous imprisonment awarded along with the fine of Rs.50,000/-.

2. The appellant was taken into custody, as indicated in the impugned judgment, on September 6, 2009 and obtained bail after three

months and two days. The period of detention already undergone by the appellant was required to be set off against the sentence. As to the judgment of conviction, the appellant complains that the survivor did not issue any statement and, in a sense, no case was made out by the prosecution, as a consequence. The appellant also contends that the eye-witness accounts by two young boys, both aged about seven at the time of the incident, should not have persuaded the trial court to find the appellant guilty as there was no other material brought by the prosecution in such regard.

3. However, what the appellant overlooks is the rather candid confession made by the appellant under Section 164 of the Code of Criminal Procedure, 1973 without any attempt to retract the same. The appellant confessed that on September 4, 2009, when the survivor was alone, the appellant picked her up and took her to a bedroom. He went on to add as follows:

> " ... I pinned her down and removed her cloths *(sic clothes)*. I took out my penis and tried to penetrate the girl. However, as I could not penetrate her properly as the girl was screaming, I removed my penis and put my finger (middle right finger) inside the girl's vagina to which *(she)* screamed and cried loudly. My sisters who were in the other room called out to her when they heard the noises. Immediately, I removed my finger from her vagina. *(The survivor)* climbed down from the bed crying and rushed outside ..."

4. The survivor was all of three years and a half at the time of the incident and the evidence of the medical practitioner who examined her immediately after the first information report was lodged was that she was young, unable to speak and had a condition that impaired her speech. Even the investigating officer testified at the trial that he tried to elicit information from the survivor, but failed since the survivor was unable to speak clearly. The survivor was not called as a witness at the trial. In addition to the unequivocal confession of the appellant, the medical examiner reported and, later, testified that he found the hymen torn, that the area around the vagina was swollen and it was his opinion that the survivor had been subjected to forcible intercourse within a few days of the survivor being examined on or about September 7, 2009.

5. The two young boys were the only eye-witnesses and testified at the trial. Both the boys were aged about seven at the time of the incident. One of the boys was a brother of the survivor and the other boy was a brother of the appellant herein. The common version of both the boys was that they were sent on an errand by the appellant herein to get the appellant a bottle of liquor. When the two boys returned after purchasing the bottle they found the survivor not playing with the other children outside and the appellant was inside a room that was bolted from within with the survivor alongwith the appellant. The brother of the appellant also rendered a

statement under Section 164 of the Code and confirmed in course of his testimony at the trial that he had made such statement. He identified his signature on the relevant document. As per such statement which was corroborated by the testimony of the survivor's brother, after purchasing liquor for the appellant when they found the bedroom bolted from within, they peeped in from a window. Both the witnesses asserted that they could see what was going on inside the room through a crack and where the curtain in the room did not fully cover the crack. It is true that the two seven-year-old witnesses did not clearly narrate that they saw the survivor being raped by the appellant herein, but in course of answering a question in the cross-examination, the brother of the survivor asserted that the appellant had committed rape on the minor girl.

6. The trial was conducted before a Fast Track Court but the matter was later dealt with by a regular court. Before the Fast Track Court, the oral evidence had been completed and even the statement of the appellant herein under Section 313 of the Code was recorded. However, when the matter was resumed before a regular criminal court, the trial judge deemed it appropriate to record a fresh statement of the appellant herein under Section 313 of the Code after summarising the evidence against him and putting the same to the appellant herein.

7. At no stage before the trial court did the appellant make an attempt to disown the statement that was attributed to him as being recorded under Section 164 of the Code; nor did he retract therefrom in course of any of his answers to the questions put by the Fast Track Court or the subsequent regular court under Section 313 of the Code.

8. In the light of the material that was before the trial court, the commission of the offence under Section 376(2) of the Penal Code by the appellant stood established beyond reasonable doubt. The testimonies of the two seven-year-old boys coupled with the confessional statement of the appellant herein clearly made out that the appellant had committed rape on the minor victim.

9. The only issue which is of any relevance is as to the sentence awarded against the appellant. The trial court has discussed the extent of the sentence in some detail in appreciating the aggravating circumstances and the mitigating factors, inter alia, at paragraphs 14 to 16 of the order of sentence of April 27, 2021. As to the aggravating circumstances, the trial court noted that the appellant knew the minor survivor and took advantage of her when she was barely three and a half years old. In so acting, the trial court perceived that the appellant had belied the trust that the survivor had placed on the appellant and the incident had a traumatic impact on the survivor. As to the mitigating factors, the appellant found that the only

relevant consideration was that the appellant was aged about 27 years at the time of the sentence being passed and this was the only offence of which the appellant had been accused. Upon weighing the aggravating and the mitigating factors, the trial court perceived that 20 years' R.I. with Rs.50,000/- as fine would be the most appropriate.

10. However, it is evident in this case that the conviction primarily rests on the confessional statement of the appellant herein. There is no doubt that there is an element of remorse that comes out from the statement. It is also apparent that it was a matter of the moment when the appellant may have been overcome with lust, but the appellant may not have been cruel in dealing with the minor girl and may have realised his mistake within a short time as he did not detain the minor girl for any great length of time. Considering the conduct of the appellant and his confession made at the earliest stage from which he has not retracted, the sentence stands reduced from 20 years' R.I. to 15 years' R.I. together with the fine of Rs.50,000/-. The order of punishment is modified accordingly without interfering with the fine imposed. It is also made clear that in default of payment of the fine, the appellant will undergo a further three months of simple imprisonment.

11. Accordingly, Crl.A.No.16 of 2021 is disposed of by not interfering with the judgment of conviction of April 27, 2021 but by

reducing the sentence from 20 years' R.I. to 15 years' R.I. together with the same fine as imposed by the trial court. A default clause has been added to ensure the prompt payment of the fine.

12. 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
13.06.2022
"Lam DR-PS"