

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.12/2022 with
Crl.M.C.No.25/2022
Crl.M.C.No.58/2022
Crl.M.C.No.28/2023

Date of Order: 22.03.2023

Nurul Islam Vs. State of Meghalaya

Coram:

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

Appearance:

For the Appellant : Mr. A.S. Siddiqui, Sr.Adv with
Ms. A. Kharmyndai, Adv
Mrs. M.K. Sah, Adv

For the Respondent : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Add.PP
Mr. A.H. Kharwanlang, GA

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)

This is a ghastly case of a policeman, an officer-in-charge of a police station no less, molesting and raping girl children with gay abandon.

2. The first information report in this case was lodged on June 1, 2013 by the father of two girls aged 13 and 17 at the time of commission of the offence, complaining that his two daughters had been molested by

the officer-in-charge of Ampati Police Station on March 13, 2013 after they had been detained in custody on some pretext and again on March 31, 2013 at his residence.

3. The entire exercise by the appellant in this case has been to demonstrate the circumstances in which the two principal survivors were brought to the police station on March 13, 2013. The impression that is sought to be given to the Court is that the two girl children may have been involved in prostitution and having sex at a place called Gasura Park on the evening of March 13, 2013 when they were apprehended and brought to the police station. The insinuation is that since the survivors were apparently prostitutes, their version should not be accepted.

4. The other attempt that is made on behalf of the appellant is to suggest that the appellant has been framed, particularly since the appellant may have taken steps in an unrelated case against an influential Garo businessman in the locality. Parts of the depositions are read out to suggest that there was a tension between the Muslim community and the Garo community in and around Ampati and the appellant herein may have been compromised or framed or sold out in such connection.

5. The final act of desperation on the part of the appellant is to suggest that the survivors may not have been below the age of 18 for the

provisions of the Protection of Children from Sexual Offences Act, 2012 to be applicable in the present case.

6. The matter has first to be put in some context. Following the FIR lodged by the father of the two survivors, the statements of the two survivors were recorded under Section 164 of the Code of Criminal Procedure, 1973. The younger of the two girls complained that she had been molested by the appellant herein in the police station on March 13, 2013. Such survivor narrated, in course of her statement before the Magistrate, that she along with some male relatives or acquaintances and her two sisters had gone to Gasura Park to relax in the evening and were having cold drinks and snacks when they were apprehended by six or seven police personnel and brought to the Ampati Police Station. She recounted that she was locked up with the two other girls in the toilet adjoining the OC's chamber and she was taken out individually from the toilet to the OC's chamber where the OC groped her and molested her without actually having sexual intercourse.

7. The older of the two girls narrated the similar circumstances in which they were discovered at Gasura Park. She also referred to being locked up in a dark toilet and taken out individually to the OC's chamber where the OC touched her breasts and put his hand inside her panties. The older girl also complained that on March 31, 2013, when there was no one

at home and she was sleeping, the appellant herein woke her up and raped her. The description of the incident is consistent in both the statement recorded under Section 164 of the Code and the deposition in court.

8. What further comes through from the statements of the two survivors is that it was only when the appellant herein visited their residence for a further time on May 26, 2013, when their father was either at home or returned home immediately upon the arrival of the police personnel, that they narrated how the appellant herein had molested them on March 13, 2013 and how the appellant herein had raped the older of the two sisters on March 31, 2013. Both the sisters recounted, in their statements under Section 164 of the Code and their testimonies in court, that the father immediately reported the matter to the Nokma whereupon meetings were held with the representatives of NGOs and such NGO personnel persuaded the father to report the matter to the police by lodging a complaint.

9. There is no doubt that there is a serious anomaly in how the two girls described the circumstances in which they were found in Gasura Park and the version of the police statements in such regard, including by a sentry then posted at the Ampati Police Station and driver-cum-PSO of the appellant at that point of time. Both the police personnel and, later, the appellant herein, indicated that they found the two survivors having sex or

in compromising positions with two adult male companions at Gasura Park when they arrested them and brought them to the police station; but the two girls maintained in their statements that they were only having cold drinks and relaxing. It is possible that the police version on such account of what transpired at Gasura Park on March 13, 2013 is the correct picture. It would be expected of the two girls to play down or deny their act of wrong-doing. However, the fact that the survivors played down or were less than truthful as to what they were doing, would not affect the veracity of their allegation against the appellant herein. Similarly, the fact that the survivors in this case may have been of “loose character” or may have indulged in prostitution, would give no right to the appellant to molest or abuse them or, in any manner, insult the two girls.

10. Indeed, a sentry then posted at the Ampati Police Station made a statement recorded under Section 164 of the Code to the effect that the appellant herein was given to misbehaving with girls or women and molesting or seeking to molest them. However, such part of the statement appears to have been, in a sense, disowned when the relevant witness was examined in course of the trial. Again, nothing much turns on the change of the tune of the concerned police personnel.

11. As far as the appellant is concerned, the appellant did not adduce any evidence. The appellant merely sought to give answers to questions put

by the trial court in course of his examination under Section 313 of the Code without seeking to establish any of the allegations made by him at such stage.

12. Much is sought to be made out on behalf of the appellant as to there being a crowd at the Ampati Police Station in the evening of March 13, 2013 when the three girls and the two adult males were brought from Gasura Park to the police station. Both the appellant's assertion that there was a crowd around the police station and the statements of some other police personnel are also sought to be relied upon in such regard. The attempt on behalf of the appellant is to convey that when there may have been several people crowding inside a small police station, it was hardly possible for the appellant herein to molest any person or to enjoy the freedom of doing so. However, there is no evidence of any crowd in the private confines of the OC's chamber for the survivors' allegations to be disbelieved.

13. The trial court found the statements of the two young survivors to be credible. Such girls do not appear to have had any axe to grind against the appellant herein and no motive was sought to be attributed to them for making false allegations against the appellant herein. Indeed, in respect of the older girl's assertion that the appellant raped her on March 31, 2013, the only defence of the appellant was that the appellant did not visit the

residence of the two girls on the relevant date and that it was a false accusation.

14. It is apparent that the same consistent line was maintained by the two girls while complaining of the incidents to their father for the first time on May 26, 2013 and again, possibly, before the Nokma and the NGOs soon thereafter and, after the FIR was lodged, by making statements under Section 164 of the Code and repeating the substance of their accusation in course of their testimonies in court. Both the survivors were grilled to the fullest in course of the cross-examination on behalf of the accused at the time of the trial. Both girls remained steadfast during such cross-examination. The younger girl did not attempt to describe what had been suffered by the other girl since the younger girl was neither in the know of the incident that took place on March 31, 2013 nor was the younger girl present at the chamber of the appellant when the older girl may have been molested on March 13, 2013.

15. As far as the older girl is concerned, she repeated all that she had asserted in her examination-in-chief in response to the questions put to her in the cross-examination. Nothing in the material statements made by the two girls appear to be false or made with any ulterior motive or the like. Quite understandably, they may not have been altogether truthful when recounting what they may have been doing when they were apprehended

by the police in Gasura Park; but that would not detract from the accusation made against the appellant herein or the manner of description of how the appellant committed the offences.

16. The appellant has referred to a judgment reported at AIR 2013 SC 3467 (*Jarnail Singh v. State of Haryana*) for the proposition that the age of a survivor in a POCSO case may be questioned at the appellate stage. For such purpose, the appellant places a sentence towards the end of paragraph 20 of the report:

“Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. ...”

17. Rule 12 that is referred to in the passage pertains to the Juvenile Justice (Care and Protection of Children) Rules, 2007. The relevant rule instructs that in every case concerning a child or a juvenile in conflict with law, the court or the board referred to in Rule 19 “shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose...”

18. In the present case, the appellant did not question the age of either survivor at the time of trial. Indeed, the cross-examination of both the survivors was lengthy and in great detail; but not one question was put to either girl as to their age nor does it appear that there was any argument to such effect. It is apparent that the appellant had accepted that the two

survivors were minors and the appellant faced the trial, including under the provisions of the Act of 2012, without any protest in such regard.

19. Two features stand out and go some distance in establishing the appellant's mental state and possible guilt. The appellant absconded for several months after the FIR was lodged and, according to the State, was apprehended close to a year thereafter. Here was a police officer who ran away from the law and had to be hunted out. A prudent person claiming innocence, in such circumstances, would scarcely have behaved in such manner, far less a police officer.

20. Further, the appellant has attempted to play the religion card. In the backdrop of the appellant not leading any defence to demonstrate that either his department or the local community bore any grudge against him, the appellant's conduct in such regard is like the devil citing the scriptures and an act of utter desperation in the absence of any defence.

21. The trial court has referred in great detail to the statements of the two survivors in the impugned judgment dated March 24, 2022. Given the nature of the evidence and the statements of several witnesses, including the investigating officers, the trial court did not find any reason to doubt the veracity of the accusations levelled by the minor girls against the appellant herein and the consistency in their narration of the relevant incidents. There was no credible defence put up by the appellant,

notwithstanding his eloquent denial of the charges and the evidence in course of his statement under Section 313 of the Code.

22. On the appreciation of the entire conspectus, particularly the statements recorded under Section 164 of the Code which were exhibited in course of the trial, and the deposition of the witnesses called by the prosecution, particularly the two survivors, there could not have been any reasonable doubt as to the culpability on the part of the appellant herein. Considering the circumstances and the office that the appellant held, the appropriate punishment has been awarded.

23. As a consequence, the impugned judgment dated March 24, 2022 and the resultant sentence pronounced on March 28, 2022 do not call for any interference.

24. CrI.A.No.12 of 2022 is dismissed.

25. CrI.M.C.No.25 of 2022, CrI.M.C.No.58 of 2022 and CrI.M.C.No.28 of 2023 are disposed of.

26. 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

22.03.2023

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