Serial No.07
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.30/2022

Date of Order: 08.06.2023

King Victor Ch. Marak 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. S. Deb, Adv with
Mr. L. Nongtdu, Adv

For the Respondent : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Addl.PP
Mr. A.H. Kharwanlang, Addl.Sr.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)

The appeal is directed against a judgment of conviction of June 29, 2022 and the resultant order passed on July 4, 2022.

2. The appellant herein has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 read with Section 376(2) of the Penal Code, 1860 and sentenced to rigorous imprisonment for 10 years and fined Rs.40,000/-. In default of payment of the fine, the appellant has been sentenced to further simple imprisonment for six months.

3. The appellant denies having committed rape or aggravated penetrative sexual assault. According to the appellant, it was clearly brought out in course of the evidence adduced on behalf of the appellant that the survivor had not come to the appellant's house on the relevant date. The appellant also claims that there was a motive for the survivor's family to prompt the survivor to cook up the allegations against the appellant, since there was a quarrel pertaining to a boundary dispute between the properties of the appellant's family and the survivor's family.

4. The survivor was all of four years and two months old on the date of the alleged incident on November 6, 2014. The first information report came to be lodged on November 8, 2014. Sufficient explanation is found in the evidence of the father of the survivor, who is the FIR-maker, and the mother of the survivor as to why the FIR was lodged on November 8, 2014.

5. According to the mother of the survivor, she had left her two young children at home and had asked them to go to their neighbour's house while the mother along with the oldest child went to the market. By the time the mother returned in the evening on November 6, 2014, she found that her two children were back home. She claimed that sometime later, the survivor complained that she could not urinate properly and the mother paid no heed to the same for the first time but when, on the following day, she cried and complained that she could not urinate as she

experienced pain, the mother inspected the survivor's private parts and found some swelling and tenderness together with possible semen around the vagina.

6. It was the mother's consistent statement in course of her description of the incident to the police under Section 161 of the Code of Criminal Procedure, 1973 and the subsequent statement rendered under Section 164 of the Code and her deposition at the trial that upon enquiring of the child as to how she suffered such injuries to her private parts, the girl claimed that the appellant herein had done "khasia" to her. It has been explained that the word would mean "dirty things" or, in effect, rape.

7. The mother claimed that she immediately tried to contact her husband who was posted with his battalion in Meghalaya Police at Mendipathar. The husband advised the mother to inform the mother of the appellant and to seek medical assistance. From the mother's account as to what transpired thereupon, it is evident that the mother immediately got in touch with the mother of the appellant whereupon, the mother of the appellant asked the mother of the survivor to have the survivor medically checked but to not accuse any person. It appears that the mother of the appellant accompanied the mother of the survivor when the survivor was taken to the Dalu primary health centre. The examination revealed possible sexual assault and the survivor was referred to a hospital in Tura. It further appears that after the survivor had been medically checked at the

Dalu PHC, relatives of the appellant forced the mother of the survivor to take the survivor for a second examination at Dalu PHC. It was also the mother's recollection that the relatives of the appellant threatened the mother if any complaint was made against the appellant herein. Since the father of the survivor was away in Mendipathar and the survivor was to be taken to a hospital in Tura, the FIR was made in Tura by the father of the survivor.

8. A short statement was rendered by the survivor to the investigating officer which was sufficiently corroborated in her statement recorded under Section 164 of the Code. What the victim narrated in course of her deposition at the trial was substantially similar to the two previous statements that she had made.

9. The father and the mother of the survivor were also called to the box by the prosecution. Though it appears that a suggestion may have been put to the mother about some enmity between the two families, it does not appear that a specific suggestion was given to the mother to the effect that there was a boundary dispute between the two families. No such suggestion appears to have been put to the father of the survivor either.

10. The survivor was examined at the government hospital in Tura upon the medical examiner recording a brief description of the incident. It is evident that her parents had accompanied the survivor and they

informed the medical examiner that the survivor had been complaining of pain and discomfort in her private parts since November 6, 2014 whereupon they took the survivor to the Dalu PHC on November 7, 2014. At Dalu, the medical examiner apparently found or suspected sexual assault having been committed on the survivor whereupon the survivor was referred to the District maternity and child hospital in Tura.

11. The medical examination on the survivor at Tura revealed the swelling of her labia majora, but no bleeding in the fourchette though the same was found to be reddish in colour. The hymen was found to be partially torn and the medical examiner recorded tenderness found on the vaginal examination "because of which the victim was not allowing for proper examination." Vaginal swabs were taken and handed over to the police for submission to the forensic science laboratory. The undergarments worn by the survivor were also apparently handed over to the police. The clinical opinion rendered by the medical examiner was that what was discovered in course of the examination would be consistent with recent sexual assault.

12. The medical examiner later deposed at the trial and repeated most of the observations recorded in the report. Indeed, in the cross-examination, he asserted that the survivor had been recently sexually assaulted at the time that she was examined at the hospital in Tura.

13. The FSL report did not indicate anything conclusive and it transpires both from the deposition of the representative from the FSL and of the investigating officer that only the biological samples were sent for forensic examination and the garments or underwear of the survivor were not forwarded. The only point of note in the evidence of the FSL representative who was examined at the trial is that there was a trace of blood found on the vaginal wall but it was too insufficient for analysis. At the same time it was the categorical submission of such representative from the FSL that no semen was discovered from the vaginal swabs.

14. The testimonies of all of the witnesses called by the prosecution were summarised and explained to the appellant, who appears to be a BA graduate, and the appellant's response was sought. Though it is evident that the appellant completely denied having committed the offence, it is of some significance that the appellant did not assert in course of such examination that the survivor did not visit the residence, whereat the incident is alleged to have occurred, on the relevant day. Further, what is singularly absent in the appellant's answers is the suggestion of any enmity between the two families and, least of all, on account of any boundary dispute between them.

15. It is of great importance that despite the entirety of each prosecution witness' deposition being explained to the appellant, he did not deny his presence at the place of occurrence nor did he deny that the

survivor had come to his residence in the morning or afternoon of November 6, 2014. In a sense, it can be said to be the tacit admission of the appellant that the appellant was at home at the time that the incident is alleged to have occurred and the survivor was also present at the appellant's residence at the same time. He, however, maintained that the incident of rape or sexual assault did not take place. Similarly, no motive was attributed by the appellant to the survivor or to the survivor's family in course of his response to the questions put to him during his examination under Section 313 of the Code. However, he indicated that he would call witnesses on his behalf.

16. Three witnesses were called by the defence. The first witness was the mother of the appellant, the second witness was a brother of the appellant and the third witness was a maternal cousin sister of the appellant.

17. The mother of the appellant sought to make out a story that the survivor did not come to her residence on the relevant date. The mother also attempted to speak at length of a boundary dispute between the two families to insinuate that false charges had been levelled against her son. However, in her description of her property, she indicated that the house was in three different parts or lots with the mother of the appellant along with the father and a younger brother occupying a portion of the premises while the two other portions were occupied by the family of a relative and

the other children of the appellant's parents. From the description of the property by the mother of the appellant herein, it would seem possible for someone to have come into one lot of the property without anyone in another lot noticing the same.

18. A brother of the appellant, who was called as DW-2, claimed to have been in the house for the whole day on November 6, 2014. However, in course of his cross-examination, he admitted that he was not at home the whole day on the relevant date. DW-3 was the maternal cousin sister who narrated that the survivor had not come to the relevant premises on November 6, 2014.

19. The trial court dwelt at length on the evidence before it, particularly the several statements of the survivor and her mother juxtaposed against the bare denial of the charge by the appellant.

20. The trial court reasoned that it would have been only natural for a person to indicate that neither he was at the place of occurrence at the alleged time of occurrence nor the survivor had not come to his residence on the relevant date, if such was really the case. The trial court found that upon the appellant herein not specifically denying his presence at the place of occurrence and not denying that the survivor had visited the place of occurrence at that time, the primary facts stood established that the survivor did visit the appellant's residence in the morning or afternoon of November 6, 2014. Further, the trial court noticed that neither did the

appellant herein assert nor was any suggestion put to the prosecution witnesses that there was any ongoing quarrel between the family of the survivor and the family of the appellant or that there existed any boundary or property dispute. Indeed, the trial court was perfectly justified in disregarding the rather concocted version presented by the appellant's mother in her desperate attempt to rescue her recalcitrant son. The deposition of the brother of the appellant can be disregarded since he admitted that he was not at the place of occurrence on the relevant date. The testimony of the maternal cousin sister of the appellant does not inspire any confidence for such statement to be relied upon and the consistent versions of the survivor's pain and suffering to be disregarded.

21. It is also appropriately pointed out on behalf of the State that despite the survivor's mother describing what she did on November 7, 2014 in great detail, there was no evidence brought to the contrary by the defence. It may be recalled that the survivor's mother had indicated that the appellant's mother had accompanied her to the Dalu PHC and that other relatives of the appellant forced the survivor's family to take the survivor for a second check-up at the Dalu PHC. The portion in the deposition of the survivor's mother that she had been threatened by the appellant's relatives also went unrebutted. In the light of the appellant not asserting that the survivor had not come to the appellant's residence on the relevant date, the afterthought on the basis of which the three defence

witnesses were tutored and made to say in court that the survivor did not come to their residence, was obvious. In fact, in a situation like the present, the trial court upon disbelieving the evidence of any person on cogent grounds, should also take steps for perjury. Unless Indian judges get serious with litigants and witnesses, the present trend of false affidavits being filed and false evidence being given may one day render the judiciary irrelevant. In the light of the evidence that was before the trial court, including the completely believable statements of the survivor and her mother, there does not appear to be any error committed by the trial court in discarding the evidence sought to be adduced by the defence witnesses.

22. One of the arguments on behalf of the appellant is that despite the assertion by the mother of the survivor that she found semen around the vagina of the survivor, vaginal swabs sent for forensic examination did not corroborate such position. In the same vein, the appellant complains that if the undergarments or clothes worn by the survivor at the time of the alleged incident had been sent for forensic examination, something conclusive would have emerged. According to the appellant, if traces of semen were found in such clothes, it would have corroborated the survivor's version; otherwise, it would have discredited the allegation against the appellant.

23. It is a fact that despite the medical examiner at Tura handing over the girl's clothes to the police, the clothes were not sent for forensic examination. That was, indeed, a serious lapse. However, if the circumstances and evidence otherwise reveal the commission of the offence and the involvement of the appellant therein, the serious lapse on the part of the investigating agency would matter little.

24. As to the vaginal swab samples not revealing any trace of semen, it must be remembered that the incident took place on November 6, 2014 and the mother discovered what appeared to be semen on the morning of November 7, 2014 after which the survivor was examined twice at Dalu PHC when she must have been touched around her genitals. The final examination was conducted late in the day on November 8, 2014 by which time the remnants of all semen may have gone.

25. There is hardly any dispute as to the age of the survivor and the birth certificate demonstrating that the survivor was born in the year 2010 had also been produced before the trial court. Thus, in the light of the report upon the medical examination of the survivor being conducted, it was fit and proper for the trial court to conclude that the appellant had raped the young girl and was guilty of committing an offence under Section 376(2) of the Penal Code as also liable to be punished under Section 6 of the Act of 2012.

26. The trial court also deemed it fit to impose a fine of Rs.40,000/- which will go to the survivor by way of compensation to assuage her pain and suffering. In the event the fine is not deposited, the appellant will suffer a further six months of simple imprisonment.

27. On the basis of the analysis of the evidence by the trial court and the application of the law relevant to the matter, a just conclusion has been reached upon rendering due reasons therefor. It is clear that all relevant factors were taken into consideration by the trial court before finding the appellant herein guilty. The sentence was pronounced several days later after the trial court having enough time to reflect on the judgment of conviction that has been passed earlier. Neither the judgment of conviction nor the consequent sentence passed against the appellant calls for any interference.

28. Accordingly, Crl.A.No.30 of 2022 is dismissed.

29. The appellant will be immediately entitled to receive an authenticated copy of this judgment and order free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
08.06.2023
"Lam DR-PS