

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.M.C. No. 61 of 2022 with
Crl.M.C. No. 63 of 2022
Crl.A. No. 27 of 2022

Date of order: 10.10.2022

Bikonia Sutnga vs Woodland Khongthiem & anr

Coram:

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

Appearance:

For the Applicant : Mrs R. Dutta, Adv.
Mr S. Thapa, Adv.

For the Respondents : Mr N.D. Chullai, AAG with
Mr S. Sengupta, Addl Sr GA

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| 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)

The application is for leave to prefer an appeal against a judgment and order of October 31, 2019 by which the accused has been acquitted of charges, inter alia, under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The applicant seeking leave to appeal claims to be an aunt of the alleged survivor. She is the sister of the mother of the alleged survivor. It is evident from the impugned judgment that the acquittal is based on the evidence of the alleged survivor. The alleged survivor clearly and

categorically testified at the trial that the accused had not committed rape on her.

3. There are serious anomalies in the matter, not the least of them being that the alleged survivor, then admittedly a minor, was impregnated and she could not indicate who was the father of the child. No attempt appears to have been made to conduct a DNA test to ascertain who may have been the father.

4. In this case, the accused was the step-father of the alleged survivor. It is well known that incidents of incest and sexual abuse on minors are rife and, more often than not, it is a person in the position of a guardian who commits the offence. Again, the distressing Indian psyche is such that it is the survivor who is blamed and shamed and made to feel that it was the survivor's fault that brought her suffering upon her.

5. Wives of sexual offenders tend not to depose against their husbands, whether for physical fear or the fear of being abandoned. Similarly, step-children who are abused are reluctant to complain, since they may have no alternative means of sustaining themselves.

6. These are matters where the State should be proactive and whenever there is a whiff of coercion or threat on the survivor or the informant, the State should step in to ensure that justice is done, whether by giving protection to the victim or by counselling the victim and other

relatives. The State commission for women may also have a role to play in such cases.

7. It is somewhat surprising that the State did not prefer an appeal or try to get to the bottom of the matter by insisting on a DNA test to be conducted. Sexual abuse of children is a social malaise that is deep-rooted and if the State does not treat the matter seriously and confines its role to the mere prosecutor's job that it has to discharge in law, the larger menace may not be arrested.

8. It is an admitted position that the alleged survivor in this case is now 21 years old and an adult. She has not stepped forward to prefer an appeal, for reasons that may not be difficult to gauge. However, the law does not permit any surmise or conjecture and the alleged survivor's statement has to be taken at face value.

9. There is no doubt that the applicant in this case seeks to espouse the cause of justice and take up cudgels on behalf of the alleged survivor as the alleged survivor may be in a situation where she cannot choose as she wants. Nevertheless, since the applicant seeking leave to appeal is neither the informant nor the alleged survivor and the order of acquittal is based on the alleged survivor's complete denial of the incident, no leave can be granted to the applicant to prefer the proposed appeal.

10. It is hoped that the applicant pursues the good cause otherwise in accordance with law. It is also hoped that the State has an adequate explanation to justify its failure to prefer an appeal or take appropriate measures in the matter.

11. Accordingly, Crl.M.C. No. 61 of 2022 is dismissed. Crl.M.C. No. 63 of 2022 and Crl.A. No. 27 of 2022 are rejected without going into the merits thereof.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
10.10.2022
"Sylvana PS"

