

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL
PRADESH)

Crl.A. No. 4 of 2021(J)

Appellant:-

Sh. N. Beilytu

-Versus-

Respondent:-

State of Mizoram

Advocate for the appellant : Mr. Joseph L. Renthlei.

Advocate for the respondent : Mr. C. Zoramchhana, PP.

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HON'BLE MRS. JUSTICE MARLI VANKUNG

Date of hearing : 13.01.2022.

Date of judgment : 21.01.2022.

JUDGMENT & ORDER (CAV)

(Michael Zothankhuma, J)

Heard Mr. Joseph L. Renthlei, the learned Legal Aid Counsel appearing for the appellant. Mr. C. Zoramchhana, learned Public Prosecutor appears for the State.

2. This appeal has been filed against the Judgment & Order dated 21.08.2018 passed by the Special Court, Siaha in SR No. 4/2018, by which the appellant has been convicted under Section 4 of the POCSO Act, 2012 and sentenced to undergo Rigorous Imprisonment for 20 years with a fine of Rs. 2000/-, in default Rigorous Imprisonment for 20 days, vide Order dated 24.08.2018.

3. The prosecution case is to the effect that a written FIR was submitted by one Mr. H. Lalmalsawma of Theiri village on 08.09.2017 at 12:30 noon to the

effect that the appellant had forcefully taken his daughter (13 years) in the evening of 06.09.2017 at around 5:30 PM to RMSA School compound, Theiri village and raped her there. The appellant thereafter forcibly took the victim to his house at Theiva village and made her spend the night there. The informant and his brother-in-law recovered the victim from the house of the appellant on 07.09.2017 at around 2:00 AM. As the victim informed the informant that she had been raped by the appellant, the informant lodged an FIR in the Tuipang Police Station on 08.09.2017. The same was registered as Tuipang P.S. Case No. 4/2017 on 08.09.2017 under Section 4/6 of the POCSO Act, 2012. The victim girl was produced before the Medical Officer on 08.09.2017 at 2:00 PM for medical examination, wherein it was found that the hymen had been torn. The appellant, who had in the meantime, absconded gave himself up before the Tuipang Police Station on 12.09.2017.

4. The I.O., after investigation of the case, having found a prima facie case under Section 6 of the POCSO Act read with Section 363 IPC, to be established against the appellant, filed the charge sheet. Subsequent to the above, the learned Trial Court framed charge under Section 4 of the POCSO Act, 2012 against the appellant on 05.03.2018, wherein the appellant pleaded not guilty and claimed to be tried. During the trial, 14 prosecution witnesses were examined and after the appellant had been examined under Section 313 Cr.P.C., the learned Trial Court came to a finding that the appellant had committed penetrative sexual assault upon the minor victim in the Theiri RMSA School compound and also in the house of the appellant at Theiva village on the same night and thus convicted the appellant under Section 4 of the POCSO Act, 2012. The appellant was thereafter sentenced to undergo Rigorous Imprisonment for 20 years with a fine of Rs. 2000/-, in default Rigorous Imprisonment for 20 days vide Order dated 24.08.2018.

5. The appellant, being aggrieved by the sentence imposed upon him, vide the Order dated 24.08.2018 made in pursuant to the Judgment & Order dated 21.08.2018, has filed the present appeal, wherein his only prayer is to reduce the sentence imposed upon him to the minimum sentence possible.

6. Mr. Joseph L. Renthlei, the learned Legal Aid Counsel submits that besides what the appellant has adverted to in the appeal petition, he would like to challenge the impugned judgment and order on two grounds. Firstly, though the seizure memo shows that the blue and white mixed underwear of the victim had been seized by the Police, the same was not produced during trial, in spite of the statement made by the victim/prosecutrix that there was blood stain in her private parts due to the rape committed upon her by the appellant. Secondly, there is inconsistency in the statements given by the victim before the Police and during the trial. He submits that while the victim had stated to the Police that the appellant had raped her near the gate of the RMSA School, the victim in her evidence before the Trial Court had stated that she had been raped inside the compound of the RMSA School. He submits that due to the non-production of the material exhibit penetrative sexual assault was not proved. Also, as there was inconsistency in the statements made by the victim, the testimony of the victim does not inspire confidence and as such could not be made the basis for convicting the appellant. In support of his submission that the victim was not a sterling witness and as such her evidence should not be relied upon by the learned Trial Court for coming to a finding that the appellant was guilty of committing penetrative sexual assault, he has relied upon the judgment of the Apex Court in the case of Ganesan Vs. State represented by its Inspector of Police, reported in (2020) 10 SCC 573.

7. The learned Legal Aid Counsel also submits that the statements made by the appellant in his appeal petition cannot be proof of his guilt or for coming to a finding that the appellant is guilty of having committed the offence under Section 4 of the POCSO Act, 2012, as the pleadings in the appeal petition cannot be put in the same category as statements made before a Judicial Magistrate under Section 164 Cr.P.C. He thus submits that the impugned judgment and order and the sentence Order dated 24.08.2018, passed by the learned Trial Court should be set aside.

8. Mr. C. Zoramchhana, the learned Public Prosecutor, on the other hand submits that the statement of the victim girl inspires confidence and can be the sole basis for convicting the appellant. He also submits that minor discrepancies

cannot be a ground for throwing out the evidence of the prosecutrix. He also submits that the medical examination report of the victim girl made by a Medical Officer, which shows that the hymen was freshly torn, clearly goes to show that the appellant had committed penetrative sexual assault upon the victim girl. He also submits that the appellant has clearly admitted to his guilt in the memorandum of appeal submitted by him and as such, there is no ground for setting aside the impugned judgment & order and the sentence order. In support of his submission that the evidence of the prosecutrix is sufficient to convict the perpetrator of a sexual crime, he has relied upon the judgments of the Apex Court in the case of State of Himachal Pradesh Vs. Sanjay Kumar alias Sunny, reported in (2017) 2 SCC 51 and State of Himachal Pradesh Vs. Manga Singh, reported in (2019) 16 SCC 759.

9. We have heard the learned counsels for the parties.

10. In the case of Ganesan Vs. State (Supra), the Apex Court relied upon another judgment of the Apex Court, i.e. Rai Sandeep Vs. State (NCT of Delhi), (2012) 8 SCC 21, wherein “sterling witness” was explained. It was explained that a “sterling witness” should be of a very high quality and calibre whose version should be unassailable. The Apex Court held that the version/testimony of such witness should be in a position to accept it for its face value without hesitation. It also held that there should be consistency in the statement of the witness from the starting point till the end. It further held that the version of the “sterling witness” on the core spectrum of the crime should remain intact.

11. In the case of Sanjay Kumar @ Sunny (Supra), the Apex Court held that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone, to convict the accused. No doubt, her testimony has to inspire confidence. The Apex Court further held that seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury.

12. In the case of Manga Singh(Supra), the Apex Court has held that minor contradictions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix and that conviction could be sustained on the sole testimony of the prosecutrix, if it inspires confidence.

13. Paragraph No. 2 of the appellant's appeal petition clearly shows that the appellant has admitted to being guilt of having committed penetrative sexual assault upon the 13 year old victim girl. Paragraph No. 2 of the appeal petition is reproduced below:-

“That Sir, the above stated Prisoner of Central Jail, Aizawl, through the years of my conviction undergone I have reformed mentally, physically, spiritually and fully admit my guilt and asked heartfelt forgiveness. I have wronged against the eye of the law and further have regretted for my wrongful deeds and sin. During my term of conviction i have been suffering from certain illness and my health have been declining from poroxysonel Nocturnal Dsypnoea and suffered from gastric and pruritus. I therefore, beg your Honourable Court to decline my term of conviction i.e. 20 years as per the law to its minimum or as convenient by the Honourable Court. If your Honourable Court could grant my petition, and set-off my term of conviction period i would be most grateful to you.”

14. The evidence adduced by the prosecution witnesses clearly shows that the appellant had taken the victim girl from Theiri village to his house in Theiva village and that the father of the victim girl had recovered the victim girl at 2:00 a.m on 07.09.2017 from the house of the appellant. It is also not in dispute that the appellant and the victim girl did not know each other prior to 6.09.2017. The evidence of the victim girl shows that sexual intercourse had been committed upon her by the appellant in the compound of the RMSA school and also in his house in Theiva village. The appellant has taken the stand that due to non production of the victim's underwear, penetrative sexual assault was not proved. However, we do not find any reason to accept the said submission, in view of the fact that the medical examination report of the victim's girl shows that there was a

recent tearing of her hymen, coupled with the testimony of the victim that she was raped by the appellant.

15. With regard to the stand taken by the appellant's counsel that there was inconsistency in the statement given by the victim with regard to whether she had been raped near the gate of the RMSA school or within the RMSA school compound, we are of the view that minor discrepancies in the statement of the victim girl cannot be a ground to disbelieve the testimony of the victim girl. This would be in consonance with the judgment of the Apex Court in *Manga Singh* (Supra). In any event, the appellant in his appeal petition has clearly admitted his guilt with regard to having had sexual intercourse with the victim girl. When the appellant himself has admitted to his guilt in his appeal petition and asked for forgiveness, we do not find any ground to disbelieve the truthfulness of the said pleading made by the appellant, especially when there is no denial by the appellant that such averments were made by him. There is nothing shown by the appellant's counsel that the averments made in the appeal petition by the appellant has been caused by any inducement, threat or promise. As such, we do not have any hesitation in holding that the averment made by the appellant in his appeal petition can be acted upon and can be considered to be the truthful submission made by the appellant. Further, as the appellant had admitted to his guilt in his pleadings, we are of the view that the admitted facts need not be proved as per Section 58 of the Indian Evidence Act, 1872.

16. The examination of the appellant under Section 313 CrPC shows that the appellant had admitted to taking the victim girl to the RMSA school compound and then to his house, as he alleged that they had fallen in love and had eloped. Though he had denied he had committed penetrative sexual assault upon the victim, the testimony of the appellant, which is corroborated by the medical report, leaves no room of doubt that the appellant had committed penetrative sexual assault upon the victim.

17. On considering the testimony of the victim/ prosecutrix, we find no reason to doubt her testimony as it inspires confidence. In view of the reasons stated above, we find no infirmity with the Judgment & Order dated 21.08.2018 and

Sentence Order dated 24.08.2018 passed by the Special Court, POCSO Act, Siaha in SR No. 4/2018. The appeal is accordingly dismissed.

Send back the LCR.

18. In appreciation of the assistance provided by the learned Legal Aid Counsel, his fee is fixed at Rs. 9000/- (Rupees Nine thousand) only, to be paid by the Mizoram State Legal Services Authority.

JUDGE

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