



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Cr1.A. No. 26 of 2024

Date of CAV: 09.06.2026

Date of pronouncement: 18.06.2026

Mosabbir Alom

...Appellant

- versus -

1. The State of Meghalaya, represented by the Secretary to the Government of Meghalaya, Home (Police), Shillong.
2. The Superintendent of Police, West Garo Hills District, Meghalaya.

...Respondents

Coram:

Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr K. Ch. Gautam, Adv. with
Ms G.C. Marboh, Adv.

For the Respondents : Mr S. Sengupta, Addl PP with
Mr A.H. Kharwanlang, Addl PP

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| i) | Whether approved for reporting in Law journals etc.: | No |
| ii) | Whether approved for publication in press: | No |

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

By this appeal, the appellant has impugned the judgment and order dated 29.01.2024 and 30.01.2024 respectively, passed by the learned Special Judge (POCSO) West Garo Hills,



Tura in Special POCSO Case No. 15 of 2018, convicting and sentencing him for the offence punishable under Section 5(i) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) to suffer rigorous imprisonment of 12 years and with fine of ₹ 30,000/-, in default of payment of fine, to further undergo six months simple imprisonment; and for the offence punishable under Section 506 of the Indian Penal Code (IPC) to suffer two years imprisonment and to pay fine of ₹5000/-, in default of payment of fine to undergo further imprisonment of 1 month. Both the said sentences were directed to run concurrently.

The appellant was, however, acquitted of the offences punishable under Sections 366A and 368 of the IPC for want of evidence in support of the said charge.

2. Brief facts giving rise to the filing of the aforesaid appeal are as under;

According to the prosecution, the incident took place on 06.02.2018 at about 8 p.m. when the survivor (PW1), aged 11½ years went outside her house to go to the toilet. It is alleged that



the appellant took her, detained her in his house and raped her. The complainant (PW2) is alleged to have found his daughter after a search in the house of the appellant on 08.02.2018 at about 2 a.m. The survivor aged 11½ is alleged to have disclosed the incident of sexual assault on her by the appellant, pursuant to which PW2 lodged an FIR with the Phulbari Police Station, West Garo Hills, alleging offences punishable under Sections 366A and 368 of the IPC and Section 5(l)(m) read with Section 6 of the POCSO Act. During the course of investigation, the police sent the survivor (PW1) for her medical examination; recorded statements of the witnesses under Sections 161 and 164, and after investigation submitted charge-sheet against the appellant in the Court of the learned Special Judge, POCSO, West Garo Hills, Tura.

3. The trial court framed charge as against the appellant to which he pleaded not guilty and claimed to be tried. His defence was of alibi and false implication.



4. The prosecution in support of its case, examined the following witnesses:

PW1 – Survivor.

PW2 – Father of the survivor (complainant).

PW3 – Mohammad Shahjahan, a villager.

PW4– Dr Janki G. Momin, who medically examined the survivor.

PW5 – Motior Rahman, Gaonbura (Village Headman).

PW6 – WPSI G.T. Sangma, Officer-in-Charge, Tura Women P.S.

PW7 – WPSI Bedona Hajong, Investigating Officer.

5. The learned Special Judge after hearing the parties and considering the evidence on record, convicted and sentenced the appellant as stated aforesaid in paragraph 1 of this judgment.

Hence, this appeal.

6. Mr K. Ch. Gautam, learned counsel for the appellant submitted that the prosecution had failed to prove its case beyond reasonable doubt against the appellant. Learned counsel submitted that the prosecutrix's testimony does not inspire confidence, having regard to what has been deposed to, by PW3 and PW5. He submitted that there was a delay of two days in



registration of the FIR, from the date on which the survivor went missing, and as such, the possibility of false implication of the appellant cannot be ruled out. He submitted that neither was a missing report filed by the parents of the prosecutrix, though she had gone missing. He further submitted that neither had the prosecution proved that the survivor was kidnapped, resulting in the trial court acquitting the appellant from the offences punishable under Sections 366A and 368 of the IPC, for want of evidence. Mr Gautam, learned counsel further submitted that PW4, Dr. Janki Momin has not recorded the brief history of the incident either from the survivor nor from the police. Nor was the medical certificate so issued, in a proper format. Learned counsel further submitted that in view of the aforesaid and several other infirmities, the impugned judgment and order of conviction and sentence, be quashed and set aside.

7. Mr S. Sengupta, learned Addl PP supported the impugned judgment and order of conviction and sentence. He submitted that the evidence of the survivor (PW1) inspires confidence and is trustworthy. He further submitted that the said evidence of



the prosecutrix (PW1) is duly corroborated by the evidence of PW2, PW3 and the medical evidence of PW4.

8. We have perused the evidence/record with the assistance of the learned counsel for the respective parties. PW1 at the time of her deposition was aged 16 years of age and at the time of the incident, about 11½ years. She has deposed that her date of birth is 26.08.2006. According to the prosecutrix (PW1), the incident took place, when she had gone to answer the call of nature at about 8 to 8.30 p.m. and was returning home. PW1 has stated that one person came from behind, covered her mouth with his hand, dragged her to his house, which was near her house; that in his house she recognised the appellant when she saw his face; that the appellant covered her mouth again with a cloth, tied her hands behind her back, laid her on the floor; opened her shirt, pulled off her long pants and opened his clothes. PW1 has further deposed that when she saw one bucket near her feet, she tried to push the bucket down, so that it would make a sound, hoping that someone would rescue her, but she did not succeed, as the appellant threatened her with a dagger



and by telling her that if she did the same again, he would kill her; that the appellant then tied her feet; that as she was afraid she did not make any noise; that he laid on top of her and inserted his penis in her private part; that due to pain in her private part, she became unconscious; that when she regained consciousness, it was daytime and found herself lying on the floor; that her hands were still tied and feet untied and she was in a naked condition; that the appellant came from the other room and seeing her up, untied her hands and gave her clothes to wear, however, her mouth was still tied with a cloth.

9. PW1 has further deposed that when she wore her clothes again, the appellant tied her hands behind her back and left the room and closed the door; that after the appellant returned again, he told her that if her parents found her, she should not disclose that he had raped her and that if she did so, he would kill her. PW1 has further deposed that she gestured with a nod that she would not disclose, after which he left again. She has further deposed that at night she was rescued by her father, mother and some villagers; that they untied her mouth and took



her home; and that in her house, her father asked her, in the presence of her mother and other relatives what the appellant had done to her pursuant to which, she disclosed the incident to them. PW1 further deposed that her parents took her to Phulbari Police Station where she disclosed to the police what she has deposed in the Court today; that she was taken to Phulbari hospital by one policewoman and two policemen; that in the hospital, a lady doctor asked her to what had happened, pursuant to which she disclosed the incident; that the lady doctor examined her after which she returned back to her parents.

10. The prosecutrix in her cross-examination has admitted that the appellant's house was very close to her house; that the appellant was married and was staying with his wife; that although the appellant had three rooms, she was taken only to one room and that she had not seen any other room; and that she was not sure whether the appellant's wife was at home or not. To the question, whether she went to the house of the appellant as she wanted to marry him, though he had refused



as he was already married, and hence, was falsely implicating him, the prosecutrix has denied the same.

11. PW2, the father of the prosecutrix in his examination-in-chief has stated that on 06.04.2018 when he returned home from the bazar at about 8 p.m., his wife informed him that their daughter was missing from home; that pursuant thereto, they informed the people in the village and they all started searching for their missing daughter, however, they could not find her that night and hence, returned home. PW2 has further in his evidence stated that after two days, he was informed by Gaonbura, Pushkumipara (PW5) that his daughter was in the house of the appellant and that the same was informed to him by the appellant himself. He has stated that after getting the said information, he alongwith Gaonbura and other villagers went to the appellant's house; that the house was found locked from inside; that he does not remember who opened the door; that inside the house, there were two persons i.e., the appellant and his daughter; that he did not enter the house, but the villagers and Gaonbura entered the house and brought the prosecutrix



out; and that they returned home. PW2 has further stated that in the morning, he inquired with his daughter as to what had happened, pursuant to which she disclosed the incident after which he went to lodge an FIR with the Phulbari Police Station. He identified the FIR and his signature thereon. PW2 has further deposed that his daughter was taken to the hospital by the police and that he did not accompany her.

12. In his cross -examination, PW2 has admitted that the FIR was written by one Advocate, named Jahinger Hussain; that he did not file any missing report for two days, though his daughter was missing; that he did not take his daughter to the hospital immediately, though her condition was not good when found; and that his wife was not sleeping at the time when his daughter went missing. Suggestions made to PW2; (i) that his daughter was not willing to go home, as informed by the Gaonbura, and (ii) that he was falsely implicating the appellant as his daughter wanted to marry the appellant and hence, he lodged a false FIR, have been denied by him. PW2 has also admitted that everyone in the house was awake when his daughter went missing.



13. Having minutely perused the evidence of PW1 and PW2, we find that there are material contradictions/inconsistencies in their evidence, inter se and between them and PW3 and PW5. PW1 has stated that initially the appellant had tied her hands behind her back and left the room and closed the door from outside; and that later the appellant came home, threatened her and then left. She does not say, whether the door was locked from outside or inside. PW1 further states that she was rescued by her father, mother and villagers, whereas, PW2 has deposed that on reaching the appellant's house, they found that the door was locked from inside and that he had gone with the villagers. He does speak about his wife accompanying him. We find it rather strange and unnatural that if the prosecutrix was kidnapped, and the door was locked from inside and not outside, what prevented her from going out; that PW2, her father did not enter the house of the appellant; that the prosecutrix was not taken to the hospital immediately, though allegedly raped, but was taken to the hospital on the next day, and that too, she was not accompanied by her parents/family but by the police, more particularly, when the girl was around 1 1/2 years of age.



Thus, we find;

(i) PW1 in her testimony has stated that she was alone, tied in a room and the appellant had left her there, whereas, PW2 states that there were two persons in the house i.e., the appellant and his daughter.

(ii) We also find it strange and unnatural that the prosecutrix (PW1) was not taken immediately to the hospital but was taken by the police on the next day unaccompanied by PW2 or any family member. PW1 also states that she was accompanied by no family member but only by the police to the doctor.

(iii) With respect to the presence of the appellant at home, when PW2 went there, none of the witnesses speak of the same.

14. The aforesaid evidence and material contradictions/ inconsistencies that have come in the evidence of PW1 and PW2, will also have to be considered keeping in mind what the prosecution witnesses i.e., PW3 and PW5, have deposed. Both these witnesses do not support the evidence of by PW1 and PW2.



15. PW3, Mohamad Shahjahan Sk, in his evidence has deposed that he received a phone call from Motior, the Gaonbura (village headman) of Pushkumipara (PW5) asking him to accompany him to the house of the appellant; that when he reached the house of the appellant, they found three women already present, however, the appellant was not present at home; that he was told by Motior, the Gaonbura of Pushkumipara (PW5), that the prosecutrix was inside the room and the room was locked from inside; that the Gaonbura knocked the door and the victim herself opened the door, pursuant to which the Gaonbura (village headman) and three women entered the room. PW3 has deposed that he did not know what happened inside the room, as he was waiting outside the room. He has stated that he did not know where the appellant was at that time. He has further stated that he had not made any inquiry from the prosecutrix.

16. PW5, the Gaonbura of Pushkumipara has deposed that on the day of the incident, the appellant's wife came to his residence and informed him that somebody was inside the house and was



locked from inside; that before going, he asked PW3 to accompany him to go to the appellant's house, pursuant to which they both went; they knocked the door and asked who was inside but received no reply; that he asked the person inside to open the door, as he was the Gaonbura of the village; that the door was opened, pursuant to which he alongwith two-three women entered inside the house and saw one girl inside the house; that he asked the girl why she did not reply, pursuant to which she disclosed that she was scared; that on inquiry why she was scared, she replied that her parents used to assault her; that when she was asked why her parents would assault her, she replied that her parents made her work in the bakery of her father and when she refused to do so, the parents would assault her; that he inquired from the women who entered the house of the appellant alongwith him to which, they replied that the girl was staying next to the house of the appellant; that he told one of the women to call the mother of the girl, pursuant to which the mother came and the survivor (PW1) was handed over to her.



17. In his cross-examination, PW5 has accepted that the girl was hiding in the appellant's house out of fear from her parents and that she did not narrate anything about the appellant. PW5 has also accepted that the door of the house was opened by the prosecutrix herself.

18. It is pertinent to note that the testimonies of both, i.e., PW3 and PW5 had not been challenged by the prosecution. The aforesaid evidence of PW3 and PW5 completely contradicts the story of the prosecutrix i.e., PW1 and her father, PW2. In these circumstances, it is difficult to place implicit reliance on the testimony of PW1 (prosecutrix) with respect to her disclosure of sexual assault by the appellant.

19. As noted above, PW5 has categorically stated that the prosecutrix's mother was called and she took the survivor. The prosecutrix's mother had not been examined by the prosecution. Infact, the testimonies of PW1 and PW2 do not reveal that the prosecutrix's mother had come or was present, when the prosecutrix opened the door of the appellant's house. In light of



the evidence that has come on record in particular, that of PW3 and PW5, which has gone unchallenged, we find it difficult to place implicit reliance on the testimony of PW1 and PW2. We also find it rather strange that the parents of the prosecutrix, who was allegedly about 10-11 years of age, would be sent alone on the next day to the hospital for her medical check-up, only with the police, considering allegations of sexual assault on her.

20. PW4, Dr Janki G. Momin attached to Phulbari Hospital has categorically stated that she did not take brief history of the victim as there was no prescribed medical format, for recording her observation. She has deposed that the prosecutrix was accompanied by the police. Although, PW4 has stated that the prosecutrix had some injury in the fourchette and her hymen was not intact, she has not been able to state whether the tear was old or new. She has also admitted that she was not given any birth certificate to give the correct age of the prosecutrix. She has further admitted that the injury of the fourchette could be because of other reasons like scratching, falling, etc. Admittedly, the medical report is not in the format as is required



and no history was taken from the victim nor any history recorded in the medical note.

21. It is also pertinent to note that the trial court having regard to the evidence that had come on record, acquitted the appellant of the offences punishable under Sections 366A and 368 of the IPC, on the premise, that the prosecution had failed to prove the said charges against the appellant.

22. Having noticed material discrepancies and inconsistencies in the evidence of the prosecutrix-PW1, PW2, PW3 and PW5, we find that we cannot place implicit reliance on the testimony of the prosecutrix vis-à-vis sexual assault on her by the appellant. In this view of the matter, we deem it appropriate to give benefit of doubt to the appellant.

23. Accordingly, the appeal is allowed and impugned judgment and order dated 29.01.2024 and 30.01.2024 respectively, passed by the learned Special Judge (POCSO), West Garo Hills, Tura in Special POCSO Case No. 15 of 2018, stands



quashed and set aside and as such, the appellant is acquitted of the offences for which he was convicted and sentenced. The appellant be released forthwith if not required in any other case. Fine, if any, paid, be returned to the appellant.

24. The appeal is allowed on the aforesaid terms.

25. All parties to act on the authenticated copy of this order.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice