



Serial No. 01 & 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No.10 of 2024

Date of Hearing: 06.05.2026

Date of Decision: 06.07.2026

Shri. Pynshngainlang Nongrum
S/o Shri. K.J. Singh Dhar
R/o Bhoirymbong, Ri-Bhoi District,
Nongpoh Meghalaya.

.....Appellant

-VERSUS-

1. The State of Meghalaya,
Through the Superintendent of Police,
Ri-Bhoi District, Meghalaya.

2. Office in-charge Umiam Police Station
Nongpoh, Ri-Bhoi District, Meghalaya.

.....Respondents

Appearance:

For the Petitioner/Appellant(s) : Mr. K.Ch. Gautam, Adv
Ms. G.C. Marboh, Adv

For the Respondent(s) : Mrs. T. Yangi B, AAG with
Mr. E.R. Chyne, GA

Crl.A No.11 of 2024

Shri. Kontishon Mukhim
S/o Shri. Jar Jar Shylla
R/o Bhoirymbong, Ri-Bhoi District,
Nongpoh Meghalaya.

.....Appellant

-VERSUS-



1. The State of Meghalaya,
Through the Superintendent of Police,
Ri-Bhoi District, Meghalaya.

2. Office in-charge Umiam Police Station
Nongpoh, Ri-Bhoi District, Meghalaya.

.....Respondents

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Ch. Gautam, Adv
Ms. R. Kharshiing, Adv

For the Respondent(s) : Mrs. N.G. Shylla, Sr.GA with
Ms. I. Lyngwa, GA

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Judgment and Order

Per. B. Bhattacharjee, Judge:

1. These two criminal appeals arising out of the impugned judgment of conviction dated 21.06.2023 and related order of sentence dated 30.06.2023 passed in Special (POCSO) Case No.32 of 2018 by the Special Judge (POCSO), Ri-Bhoi District, Nongpoh are taken up together for disposal.

2. The appellant (A-1) in Crl.A. No.10 of 2024 was found guilty and convicted for committing offences u/s 354/354B/366/366A/375(a) falling under 375(sixthly)/376(2)(n)/376D/503/506 IPC, 1860 and u/s 3(a)/5(g)(l)/6/7/8 POCSO Act, 2012 and was sentenced in the following manner: -

- (i) U/s 8 POCSO Act, 2012 to imprisonment of 5 years with fine of Rs.1,00,000/- and in default of payment of fine be imprisoned for a further one year;



- (ii) U/s 366 IPC, 1860 to imprisonment of 10 years with fine of Rs.2,00,000/- and in default of payment of fine be imprisoned for a further one year;
- (iii) U/s 366A IPC, 1860 to imprisonment of 10 years with fine of Rs.1,00,000/- and in default of payment of fine be imprisoned for a further one year;
- (iv) U/s 376(2)(n) IPC, 1860 to imprisonment for 25 years with fine of Rs.2,00,000/- and in default of payment of fine be imprisoned for a further 2 years;
- (v) U/s 376D IPC, 1860 to imprisonment for life (as given in the statute) and fine of Rs.2,00,000/- and in default of payment of fine be imprisoned for a further 2 years;
- (vi) U/s 506 IPC, 1860 to imprisonment for 7 years with fine of Rs.20,000/- and in default of payment of fine be imprisoned for a further two months;

3. The appellant (A-2) in Crl.A. No.11 of 2024 was found guilty and convicted for committing offences u/s 109 r/w section 366 IPC, 1860; u/s 375(a) falling under 375 (sixthly)/376D IPC, 1860 and u/s 3(a)/5(g)/6 POCSO Act, 2012 and was sentenced in the following manner: -

- (i) U/s 109 r/w section 366 IPC, 1860 to imprisonment of 10 years with fine of Rs. 1,00,000/- and in default of payment of fine be imprisoned for a further one year;
- (ii) U/s 376D IPC, 1860 to imprisonment for life (as given in the statute) and fine of Rs. 3,00,000/- and in default of payment of fine be imprisoned for a further 3 years;

4. All the sentences were to run concurrently. The entire amount of fine was directed to be paid to the survivor. The time spent in custody during the investigation and the trial was directed to be set off from the total period of sentence.

5. The fact of the case is that on 28.08.2017, an FIR was lodged by the



mother of the survivor to the Officer In-Charge, Umiam Police Station, alleging that the appellants, A-1 and A-2, forcibly took her daughter (survivor) to Madan Kurkalang and sexually assaulted her on 27.08.2017 at around 5:30 PM and later dropped her back home. Basing on the FIR, a case was registered as Umiam PS Case No.57(8)2017 u/s 376D IPC r/w section 5(g)/6 POCSO Act and the matter was investigated into. Upon completion of the investigation, the investigating authority being satisfied that a *prima facie* case had been established, filed a charge sheet dated 08.11.2017 u/s 376D IPC, 1860 and u/s 5(g)/6 POCSO Act against A-1 and A-2. Charges were framed on 30.05.2018 under the aforesaid sections of law against A-1 and A-2, who pleaded not guilty and claimed trial. The prosecution examined 8 (eight) witnesses and exhibited as many as 11 (eleven) documents in support of its case. After conclusion of the prosecution evidence, statements of both A-1 and A-2 were recorded u/s 313 CrPC on 26.05.2023. No defence witness was adduced on behalf of the appellants. The learned Trial Court, thereafter, heard the final arguments of the respective parties and passed the impugned judgment of conviction on 21.06.2023 and thereafter, sentenced the appellants by the impugned order of sentence dated 30.06.2023. The present set of two appeals has been filed by A-1 and A-2 challenging their conviction and sentence.

6. Assailing the conviction and sentence, the learned counsel for the appellants submits that the conviction of A-1 and A-2 is not legally tenable as the testimony of the survivor is not reliable. Referring to the statement of the survivor u/s 161 and 164 CrPC, he submits that the testimony of the survivor is fraught with material contradictions, inconsistencies and improvements rendering her evidence unworthy of any credence. The learned counsel submits that the evidence of PW-2, the survivor, is contradictory right from the stage of her entry in the vehicle alleged to have been used in the commission of the crime. According to him, the contradiction in the version of the survivor is apparent as the survivor in her



statement under 161 CrPC stated that A-1 forced her to enter the vehicle, whereas, in her statement u/s 164 CrPC, she stated that A-1 pulled her inside the car and finally, in her evidence before the Trial Court, she stated that she resisted to go with A-1 but he managed to pull her inside the vehicle. That apart, he submits that there is also inconsistency in the statements of the survivor with regard to her relationship with A-1 prior to the alleged incident inasmuch as the duration of continuance of such relationship has been stated to be different in her statement u/s 161 and 164 CrPC and her evidence before the Trial Court. Hence, he submits that the survivor's testimony must be viewed with caution and should not be relied upon without corroboration.

7. The learned counsel for the appellants submits that the disclosure made by the survivor for the first time in her evidence that there was another incident of sexual assault on her by A-1 prior to the incident narrated in the FIR amounts to a deliberate embellishment to strengthen the prosecution case. He submits that absence of any such disclosure in the earlier statement of the survivor u/s 161 and 164 CrPC is nothing but an instance of exaggeration and afterthought improvement of the prosecution case and as such, her testimony is totally unreliable. The learned counsel further contends that the disclosure of sequence of events with regard to the occurrence of the incident on 27.08.2017 by the survivor is also totally inconsistent. Drawing attention of this Court to the statements of the survivor u/s 161 and 164 CrPC and also the evidence before the Trial Court, the learned counsel contends that there is a huge inconsistency with regard to the alleged consumption of alcohol by the appellants and the survivor and also the manner in which A-1 and A-2 allegedly committed sexual assault on her. He submits that the disclosure made by the survivor at the stage of investigation and before the Trial Court with regard to the commission of offence are at total variance and hence, unsafe to form the foundation of guilt against A-1 and A-2. To buttress his argument and to impress upon this Court as to when can the sole testimony of the prosecutrix be relied upon to



render a conviction, the learned counsel places reliance on a number of decisions reported in i) *Sadashiv Ramrao Hadbe v. State of Maharashtra & anr*, 2006 (10) SCC 92, ii) *Ramdas v. State of Maharashtra*, (2007) 2 SCC 170, iii) *Raju v. State of Madhya Pradesh*, (2008) 15 SCC 133, iv) *Tameezuddin @Tammu v. State (NCT of Delhi)*, (2009) 15 SCC 566 and v) *Rai Sandeep @Deepu v. State of NCT of Delhi*, (2012) 8 SCC 21.

8. The learned counsel for the appellants further contends that the medical evidence adduced in the matter is of no help to the prosecution case as the medical examination of the survivor was not conducted in accordance with the prescribed guidelines u/s 164-A CrPC. He submits that the medical report in the present case suffers from serious deficiency as no final observation or conclusion was recorded to indicate whether there was any sign of sexual assault. Absence of conclusive medical opinion, according to the learned counsel, weakens the prosecution case and as such, the benefit of doubt must go to the accused. The case of *Tameezuddin @Tammu (supra)* and the decision of this High Court dated 07.08.2023 in *Crl.A. No.37 of 2022, Betstarling Basan v. State of Meghalaya & anr* are cited to support his contention. Additionally, the learned counsel contends that there is a total misapplication of presumption u/s 29 and 30 of the POCSO Act by the Trial Court inasmuch as the learned Trial Court invoked the statutory presumption without there being any materials on record supporting the prosecution case. By relying on the decision reported in 2021 SCC online Tri 176, *Joubansen Tripura v. State of Tripura*, the learned counsel submits that without the prosecution proving the foundational facts, there cannot be application of section 29 and 30 of the POCSO Act. The learned counsel further submits that the offence involved in the present case carry extremely severe penal consequence and hence, the matter requires stricter degree of scrutiny and proof. Mere presumption, he submits, cannot be a basis for holding someone guilty in the criminal trial involving serious offence. He refers to the decision of *Mousam Singha Roy & ors v. State of W.B.*, (2003) 12 SCC 377



and submits that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is needed for recording conviction. He also refers to the decision of *Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808 to contend that when two views are possible, one pointing to the guilt of the accused and the other to his innocence, the view which favours the accused should be adopted. He submits that in the present case, the conviction recorded by the learned Trial Court does not satisfy the test of proof beyond reasonable doubt and thus, liable to be interfered with.

9. In addition to the above, insofar as A-2 is concerned, the learned counsel for the appellant submits that the survivor in her examination-in-chief before the Trial Court failed to identify A-2. The failure of the survivor to identify A-2 at the trial indicates that A-2 was not at all connected with the commission of the alleged crime. In such a scenario, he submits that the learned Trial Court has committed a gross error in convicting A-2 without an iota of evidence to link him with the commission of the alleged offence. He contends that mere seizure of the vehicle by the police is not sufficient to prove A-2's involvement in the alleged incident. He, therefore, prays that the impugned judgment of conviction and the related order of sentence be set aside and quashed.

10. The learned AAG appearing for the State, on the other hand, supports the conviction and sentence and submits that there is no illegality or infirmity in the judgment and order of the Trial Court. She submits that the statement of the survivor has all along been consistent and she confirmed her previous statement made u/s 161 and 164 CrPC in her evidence before the Trial Court. She submits that the evidence of the survivor stood unshaken and the defence was unable to extract any contradiction. The learned AAG contends that the evidence of the survivor highlighted a clear picture of what had happened on the day of the incident and her statement u/s 164 CrPC and evidence before the Trial Court established that A-1 forced her into the vehicle and took her to the place of occurrence against her will. She submits



that it is also clear from the testimony of the survivor that after they reached the place of occurrence, A-1 pulled her, lay her on the ground and raped her and thereafter, aided A-2 to also commit the same offence. She, therefore, submits that it is apparent that both the appellants took part in sexually assaulting and raping the survivor. She further submits that the evidence of PW-1, the mother of the survivor, fully corroborates the evidence of the survivor.

11. The learned AAG next submits that the presence of A-1 and A-2 in the house of the survivor on being called by PW-3 on the day of the incident after the occurrence is a clear proof of their involvement in the commission of crime. She submits that both the appellants had made extra judicial confession before PW-3, the brother of the survivor, as it is evident from the deposition of PW-3 that on enquiry by him, both the appellants agreed to have sexually assaulted (raped) the survivor but at the same time they were not regretful about it. Referring to the medical evidence, the learned AAG submits that PW-6, the medical expert, in her evidence stated that on general examination of the survivor, there was a bruise over the right side of the neck, scratch mark on the right shoulder and there was also a bruise on inner side of her left upper arm. Above medical finding, she submits, unequivocally establish the use of force upon the survivor and corroborate the presence of resistance and physical struggle of the survivor during the ordeal. She submits that mere absence of any injury mark in the private part of the survivor will not vitiate the case of the prosecution when there are consistent and credible testimonies of the survivor and other prosecution witnesses.

12. The learned AAG further argues that the identification of the appellants is established through the unimpeached testimonies of the survivor, her family members and by seizure of the vehicle used in the commission of the crime. She submits that in absence of any challenge to the age of the survivor by the defence and the fact that she was a minor at the time of the



incident, the contention raised on behalf of the appellants before this court with regard to the application of sections 29 and 30 of POCSO Act is not tenable as the foundational fact of the case stood well established by the prosecution at the trial. She submits that inconsistencies pointed out on behalf of the appellants with regard to the duration of relationship between the survivor and A-1 prior to the incident and the consumption of alcohol at the time of occurrence are very trivial in so far as the core allegation of the case is concerned having no bearing in the conclusion recorded by the Trial Court. The learned AAG, therefore, submits that the impugned judgment of conviction and the order of sentence passed by the learned Trial Court are well reasoned and warrant no interference by this Court.

13. The learned AAG places reliance on the following decisions: -

- i) *Piara Singh & ors v. State of Punjab (1977) 4 SCC 452 (Para 10).*
- ii) *State of Punjab v. Gurmit Singh & ors (1996) 2 SCC 384 (Para 21).*
- iii) *Ranjit Hazarika v. State of Assam (1998) 8 SCC 635 (Para 6).*
- iv) *Vijay alias Chinev v. State of Madhya Pradesh (2010) 8 SCC 191 (Para 9 to 14 and 25).*
- v) *State of Uttar Pradesh v. Chhotey Lal (2011) 2SCC 550 (Para 32 and 35).*
- vi) *Madan Gopal Kakkad v. Naval Dubey & anr. (1992) 3 SCC 204 (Para 20).*
- vii) *Motilal v. State of Madhya Pradesh (2008) 11 SCC 20 (para 11, 12 and 13).*
- viii) *B.C. Deva @ Dyava v. State of Karnataka (2007) 12 SCC 122 (Para 12 to 15, 17, 18).*
- ix) *State of Himachal Pradesh v. Sanjay Kumar alias Sunny (2017) 2 SCC 51 (Para 30, 31, 32).*
- x) *Raju alias Umakant v. State of Madhya Pradesh (2025) 8 SCC*



281 (Para 16, 17, 22 and 30).

14. The learned Senior GA representing the State in CrI.A. No.11 of 2024 endorses the submission made by the learned AAG and further submits that Exhibit-P5 and Exhibit-P6 disclosed that the appellants have voluntarily admitted to having physical contact with the survivor. She submits that the physical examination of A-1 revealed presence of abrasion on the right upper chest wall and left chest wall below the nipple which is consistent with the survivor's version of the incident and no explanation for such injuries was provided by the defence. She further submits that non-mention of the name of A-2 in the FIR and non-holding of Test Identification Parade (TIP), cannot be ground for rejecting the prosecution case. With regard to the evidence that the survivor had continued physical relation with A-1 after the incident in the month of June or July, 2017, she submits that even if it is found that the survivor was habituated to sexual intercourse, that alone cannot be ground to absolve the appellants from the charge. She submits that victim of sexual assault is not treated as accomplice and hence, her testimony does not require corroboration from any other evidence including medical evidence. In addition to the authorities relied upon by the learned AAG, the learned Sr.GA places reliance on the decisions reported in *Amish Devgan v. Union of India*, (2021) 1 SCC 1 and *Raju Manjhi v. State of Bihar*. (2019) 12 SCC 784.

15. We have given our careful consideration to the submissions made on behalf of the parties and also perused the materials available on record.

16. At the outset, it would be imperative to note that the charges against A-1 and A-2 were initially framed u/s 376D IPC and u/s 5(g)/6 of the POCSO Act. However, the learned Trial Court convicted A-1 u/s 354/354B/366/366A/375(a) falling under 375(sixthly)/376(2)(n)/376D/503/506 IPC,1860 and u/s 3(a)/5(g)(1)/6/7/8 POCSO Act, 2012 by adding some more charges and also convicted A-2 u/s 109 r/w



section 366 IPC, 1860; u/s 375(a) falling under 375(sixthly)/376D IPC, 1860 and u/s 3(a)/5(g)/6 POCSO Act, 2012 by adding more charges. The said addition of charges by the Trial Court has not been questioned in the present set of appeals by the appellants. Further, the finding of the Trial Court that the survivor was born on 13.09.2000 and at the time of the occurrence of the alleged offence, she was around 16 years old, has also not sought to be challenged by the appellants in these appeals.

17. PW-1, the mother of the survivor and the informant, in her evidence before the Court identified A-1 and A-2. She stated that she has a shop in front of her residence and she sits in the shop. On 27.08.2017, the survivor came to see her in the shop at around 5:30 to 6:00 PM before entering home. The eyes of the survivor were swollen and it appeared that she had cried. After closing the shop, PW-1 went home and served food to her younger children and put them to sleep. Afterwards, when she was in the kitchen, she heard voices in the compound and wanted to go out to see what was happening. At that point of time, the survivor came running to her, held her and told her not to allow her brother to go out and narrated the incident to PW-1. The survivor stated how she was picked up by her ex-boyfriend (A-1) and forcibly taken to Madan Kurkalang at Bhoirymbong in a vehicle and thereafter, raped by A-1 and A-2 and was also dropped back to the spot from where she was picked up. Thereafter, PW-1 went outside and saw both the appellants along with their three other friends quarrelling with her eldest son. PW-1 intervened and the appellants were called inside the house to have a talk. There PW-1 was told by A-1 that he was no longer in a relationship with the survivor, but A-2 liked the survivor and he was going to give her to him. PW-1 told the appellants that the survivor was not for sale and asked her elder son to catch hold of them, but A-1 broke the centre table and both the appellants were able to run away. The survivor was thereafter, taken to Bhoirymbong CHC by PW-1 and her husband and as it was a rape case, the doctor advised them to file a complaint before the police. Thereafter, the



matter was informed to the Women Police Sub-Inspector and the survivor was taken to the Bhoirymbong CHC after recording her statement by the police. After medical examination, PW-1 filed a complaint before the Officer-in-Charge, Umiam PS. She exhibited the FIR as Exhibit P1.

In her cross examination, PW-1 stated that the survivor was about 16 years old at the time of the incident. She stated that prior to the incident, she was not aware that the survivor was in a relationship. Rest of the statements in the cross do not appear to be of much relevance.

18. PW-2, the survivor, in her evidence before the Court stated that she met A-1 through Facebook in the year 2017 and became friends. Subsequently, they met personally, exchanged phone numbers which resulted in proposal and acceptance by her. On the very first day of their meeting, they went to one house situated in a secluded area and inside the house A-1 embraced and kissed her and then raped her. The survivor struggled to free herself and shouted for help, but without any result. Thereafter, A-1 took her home.

After the incident, the survivor wanted to meet the mother of A-1, but he kept it on hold. Later when the survivor came to know that A-1 was having affairs with other girls, she ended her relationship with him. On 27.08.2017 in the evening, she received a call from A-1 whereby he persuaded her to meet him despite her reluctance. When she went to meet A-1, he caught hold of her arms and told her to sit in one car (Alto). On her resistance, he pulled her into the vehicle. There was one driver inside and on being directed by A-1, the driver drove to Kurkalang football ground. When they reached the football ground, A-1 took out one beer bottle and tried to force her to drink, but she refused. The driver (A-2) took the bottle from A-1. Then, A-1 asked her to go out as he wanted to talk to her. When she asked what he wanted to talk, he pulled her, lay her on the ground and raped her. After A-1 raped her, he held her hands and A-2 also raped her. At that point of time A-1 went away. She struggled to free herself, but was helpless and could not scream for help.



After A-2 raped her, A-1 came and pulled her into the vehicle and they left the place of occurrence. She was dropped near her house. Inside the vehicle she was crying all the way and A-1 told her not to inform to her parents. As she replied that she would inform her parents, A-1 held her arms and threatened to rape her again. She kept quiet and went home.

On reaching home, she went straight to the bathroom and washed herself while crying all along. After that she called her brother to her room and informed him about the incident. She, then received a message from A-1 asking if she had reached home and that A-2 likes her. Her brother saw the message, took her mobile and went outside. By that time her mother had closed her shop and came home. After giving food to her younger siblings and putting them to sleep, her mother peeped into her room and saw her crying. When her mother wanted to know the reason, the survivor told her about the entire incident. After some time, they heard a commotion outside the house and went out to see what happened. There they saw many boys gathered near their house and her brother was also standing along with them. On being called by her mother to come inside the house, only A-1 and A-2 came inside along with her brother to have a talk. When she saw them entering, she went back to her room but she was called by her mother. Her mother then wanted to know what happened and A-1 told her that he broke up with the survivor but A-2 likes her. Her mother told her brother to close the door so that they could call the police but A-1 created a scene inside the house and both of them fled away.

The brother of the survivor thereafter, went to call her father who was at a funeral service. After her father arrived, he was informed of the incident. Later, the matter was informed to the police. The police took her for medical examination to CHC, Bhoirymbong. The doctor examined her after taking her consent. She exhibited Exhibit P-2 as the medical report. The survivor stated that she was born on 13.09.2000 and exhibited her birth certificate as Exhibit P-3. She also stated that she had given a statement u/s 164 CrPC



recorded by the Magistrate and exhibited the same as Exhibit P-4. The survivor identified A-1 but could not identify A-2.

In her cross examination the survivor stated that she had a love relationship with A-1 for about one month prior to the incident. She did not inform about the first incident to her parents as A-1 told her that he truly loved her. The first incident took place somewhere in the month of June or July, 2017. She further stated that apart from the two alleged incidents, in between she had physical relation with A-1.

Apart from the above, nothing noteworthy was stated by the survivor in her cross-examination.

19. PW-3, the elder brother of the survivor, in his evidence before the Trial Court stated that on 27.08.2017 at about 6:30 PM, he was at home. After some time, his mother called him asking about the survivor as she was missing from the shop where she was helping the mother. The shop is situated close to their residence within the same compound. As the survivor was not home, they assumed that she might have gone to another nearby shop. When the survivor did not return for about one hour, they started looking for her. After the shop was closed and they went home, the survivor arrived and PW-3 saw her crying with swollen eyes. When he enquired as to why she was crying, after initial reluctance, the survivor told him that she went to meet her ex-boyfriend A-1. She told him that she was not willing to go but A-1 forcibly took her in a tourist cab (Alto) of yellow colour, the registration No. of which she did not remember. The survivor told him that she was taken to Bhoirymbong, Madan Kurkalang by A-1 and A-2 where they sexually assaulted (raped) her turn by turn and thereafter, dropped her back home. He then took the survivor's phone and called A-1 and asked him to come home and solve the matter. A-1 agreed to come as he told him that he would report the matter to police. At around 9:00 PM A-1 and A-2 came in the same vehicle i.e. Alto (tourist cab) along with three other friends. In the meanwhile, the survivor had informed about the incident to their mother.



PW-3 further stated that though at first A-1 and A-2 were not willing to come inside the house, they eventually came inside the house and talked about the matter. On enquiry, A-1 and A-2 agreed to have sexually assaulted (raped) the survivor but were not regretful about it. Then a quarrel started between them and PW-3 which eventually ended up in a fight but A-1 and A-2 managed to run away. PW-3 and their mother along with the survivor immediately informed the matter to the police on the same day at Khanapara Police Outpost. The survivor was taken for medical examination. Statement of PW-3 was recorded by the police. He identified A-1 and A-2 who were present in the Court room.

In his cross examination, PW-3 stated that he met A-1 and A-2 for the first time on the night of the incident. Prior to the incident he had no knowledge about the love relationship between the survivor and A-1. Rest of the statement of PW-3 did not make any noticeable disclosure.

20. PW-4, the father of the survivor, in his deposition stated that at the time of the incident he was residing separately from his wife. He did not remember the date, month and year of the incident, but PW-3 came to his house at around 7:00 to 7:30 PM and asked him to come as the survivor was sexually assaulted by A-1 and A-2. PW-4 immediately rushed to the residence of his wife and on reaching there he found that one glass table was broken in the drawing room and the survivor was crying in the bedroom. He enquired from the survivor about the incident whereupon, the survivor told him that she was taken by A-1 and A-2 in a yellow Alto vehicle to Madan Kurkalang at Bhoirymbong and was sexually assaulted there. After the incident she was brought back home. PW-4 discussed with his wife and decided to file an FIR against A-1 and A-2. He had never seen the accused persons, but knew their names as mentioned by the survivor.

In his cross examination, PW-4 stated that he was not aware as to whether the survivor had a boyfriend. He also stated that when he arrived in his wife's residence, A-1 and A-2 were not there.



21. PW-5, the brother-in-law of A-2, is a seizure witness. He stated that on 29.08.2017 some police personnel had come to the residence of A-2 and as he was residing in the neighbourhood, the Police called him to witness the seizure of the vehicle. He also stated that on the said date he drove the vehicle Alto 800 ML05 M2063, yellow colour and dropped it at Umiam Police Station after the same was seized from the residence of A-2. He signed the seizure list bearing No. MR No. 72/17 dated 29.08.2017.

In his cross examination, he stated that he did not know anything about the case.

22. PW-6, the Medical Officer who examined the survivor and A-1 and A-2, in her evidence before the Court stated that in the year 2017, she was posted in Bhoirymbong CHC as a Medical and Health Officer. On 28.08.2017 she received a requisition to examine the survivor of a sexual assault case. She obtained consent of the survivor and her mother for the medical examination. PW-6 stated that she was informed that the survivor was 16 years old. While taking the history of the case, the survivor said that she was taken forcefully by her ex-boyfriend in a car to Madan Kurkalang where she was sexually assaulted by her ex-boyfriend and one of his acquaintances at around 5:30 PM on 27.08.2017. While proceeding with the medical examination and on enquiry, the survivor confirmed that there had been penetration of her vagina by the penis and emission of semen on her abdomen. The survivor mentioned that there was kissing, licking and sucking of her neck. The survivor stated that she had changed her undergarments and washed her vaginal area and wore clean undergarments. The survivor stated there was vaginal discharge and painful urination post incident. On general examination, PW-6 found there was a bruise over the right side of the neck of the survivor and scratch mark on the right shoulder; there was also bruise on inner side of her left upper arm. On local examination of the private parts of the survivor, PW-6 did not observe any injuries and there were no abnormalities in the labia majora, minora,



fourchette, introitus, hymen perinium and external urethral meatus. PW-6 collected the biological samples from the survivor and handed them over to WPSI. She exhibited medical report of the survivor as Exhibit P-2.

PW-6 also conducted medical examination of A-1 and A-2 after receiving necessary requisition. She stated that history which she took from them, they voluntarily admitted that both of them had physical contact with the girlfriend of A-1. She stated that she did not find anything significant in the physical examination of A-2, however, in the physical examination of A-1, she found an abrasion at right upper chest wall and left chest wall below nipple. She exhibited medical reports of A-2 as Exhibit P-5 and A-1 as Exhibit P-6. She also collected biological samples of both the accused and handed them over to WPSI.

In her cross examination, PW-6 stated that she could not say whether there was penetrative sexual assault in the case and admitted that she has not given any opinion on that aspect. She also could not say whether the hymen was intact or not as there was no external injury present. She admitted that there was no external injury on the private part of the accused persons and admitted that the survivor did not disclose the name of the accused persons in her history. She also could not say whether the abrasions on the survivor were recent or old and admitted that there is no such mention in her report. She also could not say whether the abrasion on A-1 was recent or old. She stated that she conducted medical examination of the survivor approximately 12 hours after the incident.

23. PW-7, the Police Officer who received the FIR, in his deposition stated that he received the FIR vide GD Entry No. 09 dated 28.08.2017 and registered the case as Umiam PS Case No. 57 (08) 2017 u/s 376D IPC r/w section 5(g)/6 POCSO Act 201. He endorsed the investigation of the case to PW-8.

24. PW-8, the investigating officer, in her deposition before the Trial Court stated that on 28.08.2017, at around 2:15 AM, she received information from



PW-7 that there was a case of sexual assault. At 2:40 AM, the survivor and PW-1 appeared at Umiam Police Station and verbally reported about the incident. The survivor was examined and she stated that A-1 picked her up in one yellow vehicle No. ML 05M 2063 along with one unknown driver. The survivor stated that they forced her to take alcohol and thereafter A-1 and the driver, whose name she did not know, committed penetrative sexual assault on her. PW-8, took the survivor for medical examination and received the medical examination report. She also seized the biological samples of the survivor collected by the Medical Officer and exhibited Exhibit P7 as the seizure list.

PW-8 stated that she dropped the survivor to her residence and the survivor informed her that A-1 is a resident of Lum Mawria, Bhoirymbong. PW-8 went to the resident of A-1 but he was not present there. After ten minutes, A-1 returned home and she took him to Umiam Police Station. On the way to the Umiam Police Station, A-1 showed the residence of A-2 and PW-8 picked him up from his residence. She stated that both of them admitted to have committed the crime and they were taken for medical examination to Bhoirymbong CHC. At 10:30 AM, PW-8 received the medical examination reports of A-1 and A-2 as well as the biological samples handed over by the Medical Officer. The samples were seized vide Exhibit P8 dated 28.08.2017. PW-8 took A-1 and A-2 to Umiam Police Station and recorded their statement. After the relatives of the accused persons came to the Police Station, she instructed PW-5, the relative of A-2, to bring the vehicle which was produced and seized by Exhibit P9. PW-8 stated that on the same date at about 1:00 PM, the complainant arrived at the Police Station and filed the FIR which was registered and the investigation was endorsed to her. She immediately arrested A-1 and A-2 and produced them before the Court.

PW-8 stated that she made a prayer to record the statement of the survivor u/s 164 CrPC and went to the resident of the survivor and recorded



the statement of her father, elder brother, and the complainant. She produced the photographs and documents of the vehicle before the Court. The seized biological samples were sent to the Forensic Science Laboratory, Shillong. The original birth certificate of the survivor was seized by Exhibit P-10. After the conclusion of the investigation, she reviewed the evidence and was satisfied that A-1 and A-2 had committed the offence. Thereafter, she consulted her Supervising Officer who agreed with her and charge sheet was accordingly filed in the case. She exhibited the charge sheet as Exhibit P-11.

In her cross examination, PW-8 admitted that the appellants were taken into custody and the medical examination of the survivor as well as of the appellants were conducted before receiving the formal FIR. She also admitted that no Test Identification Parade (TIP) was conducted to identify A-2. The rest of the statements made in cross examination are of not much relevance.

25. Before proceeding further, at this juncture, it would be appropriate to take note of the different authorities relied upon by the rival parties in support of their respective arguments.

26. The decisions of *Sadashiv Ramrao Hadbe (supra)*, *Ramdas v. State of Maharashtra (supra)*, *Raju v. State of Madhya Pradesh (supra)*, *Tameezuddin @Tammu (supra)* and *Rai Sandeep @Deepu (supra)* relied on by the learned counsel for the appellants laid down that the conviction in a rape case can be based on the sole testimony of the prosecutrix if it is capable of inspiring the confidence in the mind of the Court, but that can be done in a case where the Court is convinced about the truthfulness of the prosecutrix. The accused must also be protected against the possibility of false implication and there is no presumption or any basis for assuming that the statement of the prosecutrix is always correct or without any embellishment or exaggeration. Further, the decision of *Betstarling Basan (supra)* observed that in the absence of the medical report showing any kind of injury being suffered by the survivor and in the absence of survivor



asserting or indicating how she had been violated except for using the word ‘rape’ in its several forms, the evidence before the Trial Court was not sufficient to come to a conclusion that there was any degree of penetration for an offence of rape or an offence of penetrative sexual assault.

27. In the case of *Joubansen Tripura (supra)* it was held that presumptions u/s 29 and 30 of the POCSO Act do not take away the primary duty of prosecution to establish the fundamental facts. This duty is always on the prosecution and never shifts to the accused. In *Kali Ram (supra)*, the Apex Court held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

28. In the case of *Piara Singh (supra)*, relied on by the learned AAG, at para 10, the Apex Court laid down that evidence of extra judicial confession need not in all cases be corroborated. In *Gurmit Singh & ors (supra)*, at para 21 it was held that in cases involving sexual molestation, the Court is duty bound to deal with such cases with utmost sensitivity. The Court should not get influenced by minor contradictions or insignificant discrepancies in the statement of the prosecutrix. In *Ranjit Hazarika (supra)* it was held that non-rupture of hymen or absence of injury in survivor’s private part does not belie her testimony and corroboration of testimony of prosecutrix by medical evidence is not always essential. In *Vijay alias Chinee (supra)* it is provided that holding of TIP is not a substantive piece of evidence, yet it may be used for the purpose of corroboration. Non-holding of TIP cannot be a ground to draw adverse inference against the prosecution. It is further held that when the statement of the prosecutrix is found to be worthy of credence and reliable, no corroboration is required, the Court can convict the accused on the sole testimony of the prosecutrix. The decision also provides that the absence on injury mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would



merely suggest want of violence resistance on the part of the prosecutrix. In the case of *Chhotey Lal (supra)*, the Apex Court held that the absence of injuries on prosecutrix is not sufficient to discredit her evidence. It is wrong to assume that in all cases of intercourse against will or without consent, there will be some injury on external or internal parts of survivor.

29. Further, in the case of *Madan Gopal Kakkad (supra)* relied upon by the learned AAG, it is observed that the extra-judicial confession of the accused need not in all cases be corroborated. If the extra-judicial confession made by the accused is not shown to have been obtained by coercion, promise of favour or false hope etc. and is plenary and voluntary in nature acknowledging the guilt, it can be acted upon. The decision of *Moti Lal (supra)* reiterates the principles enunciated by the Hon'ble Supreme Court in its various judgments as regards to sustainability of conviction on the sole testimony of prosecutrix. In the case of *B.C. Deva alias Dyava (supra)*, the Apex Court upheld the conviction based on sole oral evidence of the prosecutrix when medical evidence did not corroborate the alleged forced sexual intercourse. In *Sanjay Kumar alias Sunny (supra)*, the Apex Court reiterated the proposition of law that the Court should not find difficulty to act on testimony of survivor of a sexual assault alone to convict the accused if her testimony inspires confidence of the Court. While restoring the conviction recorded by the Trial Court, it was held that seeking corroboration to evidence of prosecutrix as a rule in all cases would literally amount to adding insult to injury. In *Raju alias Umakant (supra)*, it was held that a woman or a girl subjected to sexual assault is not an accomplice but a victim of another person's lust and it would be improper and undesirable to test her evidence with suspicion. It was further held that when no definite medical opinion is available, it would not mean that sexual assault was not committed on the prosecutrix. It is also well settled that where the ocular evidence is clear, it will prevail over the medical evidence.



30. In *Amish Devgan (supra)*, it was held that not naming an accused person in the FIR is not automatically fatal to the prosecution case as an FIR is intended to set the law in motion and is not required to be an exhaustive document. The omission is generally not considered a major flaw if the accused's name was initially unknown to the informant and was revealed later during the investigation or identified in court. In *Raju Manjhi (supra)*, it was held that TIP is not substantive evidence. There is no provision in CrPC which obliges the investigating agency to hold or confers a right upon the accused to claim a TIP. Failure to hold a TIP would not make inadmissible the evidence of identification in court.

31. An overall analysis of the prosecution evidence in the light of the above noted propositions of law laid down the Apex Court would undoubtedly bring to fore that the survivor and A-1 met each other through Facebook in the year 2017. Thereafter, they met each other in person and became friends. They remained in contact for some time and developed love relationship. However, after the survivor came to know about A-1's affairs with other girls, she ended the relationship. On 27.08.2017, on the pretext of personally meeting for a while, the survivor was taken to the place of occurrence by A-1 against her will in a vehicle (Alto) driven by A-2. On reaching the place of occurrence known as 'Madan Kurkalang', A-1 tried to force the survivor to take beer and then pulled her out from the vehicle in the guise of having a talk, lay her on the ground and raped her. After A-1, A-2 also raped her. The survivor struggled to free herself, but failed. Thereafter, the survivor was brought back by the same vehicle and dropped near her house. While returning, the survivor was crying in the vehicle where A-1 told her not to inform the incident to her parents otherwise he would rape her again.

32. The prosecution evidence further reveals that the survivor after reaching home took a bath and informed about the incident to PW-3, who in turn called A-1 asking him to come to their house. A-1 agreed to come as he



was informed that the matter would be reported to the police. Afterwards A-1 and A-2 came to the house of the survivor along with three other friends. In the meantime, PW-1 was also informed of the incident by the survivor after she had returned home from her shop. Both the appellants entered inside the house of the survivor and after having a talk, created ruckus and ran away from the scene.

33. The medical examination of the survivor disclosed that there was a bruise on the right side of the neck and scratch mark on the right shoulder. There was also bruise on inner side of left upper arm. No injury was found on examination of the private part. Nothing significant was found in the physical examination of A-2 by the medical expert. The physical examination of A-1 revealed an abrasion on right upper chest wall and left chest wall below nipple. No opinion was rendered by the medical expert as to whether there was penetrative sexual assault on the survivor or not. However, absence of such an opinion does not negate the prosecution case as the evidence of the survivor is clear enough to establish the charge of penetrative sexual assault in the case. Corroboration by medical evidence is not required.

34. Perusal of the statement of the survivor u/s 161 and 164 CrPC does not bring forth any notable contradiction with her evidence before the court. Instances cited by the learned counsel for the appellants with regard to the duration of survivor's relationship with A-1, manner of entry in the vehicle, use of alcohol and sequence of participation in the alleged offence, do not go to the core allegation made in the case. It is humanly impossible to reproduce the statement which was recorded at the stage of investigation in the same words while adducing evidence in a Court at the stage of trial, particularly when there exists a gap of considerable period of time in between. A human being cannot be expected to reproduce earlier statement like a recording device while deposing as witness in a judicial proceeding and there are bound to be some discrepancies. So long such discrepancies



do not go to the root of the allegation and unfold a different picture altogether, it cannot be said that there exists contradiction to land discredit to the prosecution case.

35. We are, therefore, convinced that notwithstanding the minor contradictions, the survivor's evidence inspires confidence and that she has clearly narrated about A-1 kidnapping her and also committing rape on her.

36. Insofar as the question of involvement of A-2 is concerned, we find that the survivor during her evidence before the Trial Court failed to identify him. The prosecution has not assigned any reason as to why the survivor declined to identify A-2 before the Trial Court. When it is clear from the evidence of the survivor that A-1 and A-2 came to her residence on 27.08.2017 after being called by PW-3, her refusal to identify A-2 in the course of the trial creates a serious doubt about his involvement in the matter. There is nothing on record to indicate that such refusal on the part of the survivor stemmed from fear, trauma or external coercion/threats.

37. The learned Trial Court declined to give any credence to the survivor's refusal to identify A-2 by holding that identification of accused is not normally required because of Section 36 of POCSO Act, 2012 and PW-1 and PW-3, the mother and brother of the survivor, clearly identified both the accused. We are not inclined to accept such reasoning. Section 36 of POCSO Act, 2012 does not create any embargo on the identification of the accused by the child survivor. The provision only ensures that the child is not exposed in any way to the accused at the time of recording of the evidence. Law does not create any bar if the prosecution in the course of a trial desires to get the accused identified by the child survivor without exposing the child to the accused. Hence, once the prosecution chooses to go through such process, the evidence extracted thereof would naturally have a bearing on the overall appreciation of the prosecution case. In the present matter, as it is an admitted fact that none of PW-1 or PW-3 was an eyewitness to the crime and they did not know A-1 and A-2 personally prior to their meeting in the



survivor's residence, their evidence before the Trial Court with regard to identification of A-2 cannot have overriding effect over the evidence of the survivor.

38. As the survivor's refusal to identify A-2 in the course of the trial appears to be completely voluntary, legal consequences shifts in favour of A-2. The involvement of A-2 in the commission of the crime becomes doubtful. We, therefore, feel it totally unsafe to uphold the conviction and sentence of A-2.

39. Insofar as the conviction and sentence of A-1 u/s 376(2)(n) IPC and u/s 5(l) POCSO Act is concerned, we find that such conviction is recorded by the Trial Court on the basis of the disclosure made by the survivor for the first time before it that she was also raped by A-1 on a previous occasion in the month of June or July, 2017, prior to the incident mentioned in the FIR. The materials on record reveal that no such statement was ever made by the survivor before any authority prior to the disclosure before the Trial Court in her evidence. The FIR was not lodged or the investigation of the matter was not conducted on the above factual background. The chargesheet filed also did not contain any allegation alleging repeated rape on the survivor by A-1. No charge also was framed to that effect. It is only in the final verdict of the Trial Court, A-1 was held guilty u/s 376(2)(n) IPC and u/s 5(l) POCSO Act. It is, therefore, clear that A-1 did not get sufficient opportunity to defend himself against such accusation. The addition of this charge has caused serious prejudice to A-1 as the factual foundation for the offence was not known to him. Hence, the conviction and sentence of A-1 u/s 376(2)(n) IPC and his conviction u/s 5(l) POCSO Act stand interfered with.

40. As A-1 is found guilty of offence u/s 5(g) of POCSO Act and also u/s 376D IPC, he is convicted for major offence and thus, did not additionally require to be convicted for section 7/8 POCSO Act as the lesser act of sexual assault is subsumed by the greater crime of gang penetrative sexual assault. Section 5 of POCSO Act is essentially an aggravated form of penetrative



sexual offence and acts as an enhancement when the crime involves specific aggravating factors, the offence u/s 7/8 POCSO Act gets overlapped for a single criminal act. The conviction and sentence of A-1 u/s 7/8 POCSO Act, as such, is not tenable in the eye of law and is hereby interfered with. For the same reason, the conviction of A-1 u/s 354/354B IPC is also set aside on his conviction u/s 376D IPC arising out of the same single criminal act.

41. The conviction of A-1 with regard to other sections of law requires no interference. However, taking into consideration the age of A-1, who was around 24 years old at the time of the conclusion of the trial, and that he was not found involved in any other criminal case, we deem it appropriate to reduce the quantum of sentence awarded to him. The learned Trial Court has awarded maximum possible sentence in total disregard to the age of A-1 and that he was a first-time offender. We, therefore, alter the sentences awarded to A-1 and reduce the same as under: -

- i) u/s 376D IPC, 1860, imprisonment for 20 (twenty) years with fine of Rs. 50,000/- and in default of payment, imprisonment for 3 (three) months.
- ii) u/s 366 IPC, 1860, imprisonment for 2 (two) years with fine of Rs. 10,000/- and in default of payment, imprisonment for 1 (one) month.
- iii) u/s 366A IPC, 1860, imprisonment for 2 (two) years with fine of Rs. 10,000/- and in default of payment, imprisonment for 1 (one) month.
- iv) u/s 506 IPC, 1860, imprisonment for 2 (two) years with fine of Rs. 10,000/- and in default of payment, imprisonment for 1 (one) month.

All the aforesaid sentences shall run concurrently. The period of detention undergone by A-1 during the investigation and trial is set off from



the total period of sentence. The amount of fine imposed shall be paid to the survivor.

42. Resultantly, Crl.A. No.10 of 2024 stands partly allowed. The conviction of A-1 u/s 354/354B IPC and u/s 5(l) POCSO Act and conviction and sentence of A-1 u/s 376(2)(n) IPC and u/s 7/8 POCSO Act is set aside. However, conviction with regard to other sections of law is upheld with modification of sentences as indicated above.

43. The Crl.A. No.11 of 2024 stands allowed. The conviction and sentence of A-2 is set aside. He is directed to be released forthwith if not required in connection with any other case.

44. Let a copy of this order be forwarded to the learned Trial Court and also to the learned counsels appearing for the parties.

45. Trial Court record be returned forthwith.

(B. Bhattacharjee)
JUDGE

(W. Diengdoh)
JUDGE

Meghalaya
06.07.2026
"Shrity,PS"