



Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CrI.A. No. 42 of 2024

Date of CAV: 03.06.2026

Date of pronouncement: 11.06.2026

Yowan O. Lamare

...Appellant

- versus -

1. The State of Meghalaya through the Superintendent of Police, East Jaintia Hills District, Meghalaya.
2. Officer-in-charge, Women Khliehriat Police Station, East Jaintia 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 : Ms G.C. Marboh, Adv.

For the Respondents : Mrs T. Yangi B., AAG with
Mr E.R. Chyne, Asst. PP

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |

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

By this appeal, the appellant has impugned the judgment and order dated 19.01.2023 passed by the learned Special Judge (POCSO), East Jaintia Hills District, Khliehriat, in Special



(POCSO) Case No. 15 of 2020, convicting and sentencing him for the offence punishable under Sections 5(m) read with Section 6 of the POCSO Act, 2012, to suffer minimum sentence of 10 years rigorous imprisonment and to pay a fine of ₹ 10,000/-, in default of payment of fine to further undergo simple imprisonment for five months.

The trial court also directed the appellant to pay compensation of ₹ 4,00,000/- to the survivor. Since the accused lacked financial means, being a daily wage labourer, the trial court directed the State to disburse compensation under Clause 4 of the Meghalaya Victim Scheme, 2022, which in turn was to be recovered from the appellant.

2. **The prosecution case in brief is as under:**

On 27.06.2019 at about 8.30 p.m. when the prosecutrix aged 9 years was asleep, the appellant aged 27 years is alleged to have sexually assaulted her. The said incident was witnessed by the survivor's mother who lodged an FIR as against the appellant alleging offences punishable under Section 5(m) read



with Section 6 of the POCSO Act. During the course of investigation, the prosecutrix was medically examined, the statements of witnesses were recorded under Sections 161 and 164 Cr.P.C. and after investigation, charge-sheet was filed in the said case in the Court of the learned Special Judge (POCSO), East Jaintia Hills, Khliehriat.

Charge came to be framed against the appellant to which, he pleaded not guilty and claimed to be tried.

The prosecution in support of its case, examined the following witnesses;

PW1 – Mother of the survivor (complainant).

PW2 – Survivor.

PW3 – Friend of the survivor.

PW4 – Dr. C. Sariang, who conducted the medical examination.

PW5 – Ms. Anuwa Lakiang, Nurse.

PW6 – WPSI E. Khardewsaw attached to Khliehriat Women P.S.

PW7 – WPSI S. Kharsati, second Investigating Officer attached to Khliehriat Women Police Station.



Thereafter, 313 statement of the appellant was recorded. The defence of the appellant was that of denial, alibi and false implication. The appellant examined three witnesses in support of his defence of alibi i.e., DW1, DW2 and DW3.

After hearing the learned counsel for the respective parties and after considering the evidence on record, the learned Special Judge (POCSO) convicted the appellant as stated aforesaid in paragraph 1 of this judgment.

3. Ms G.C. Marboh, learned counsel for the appellant vehemently submitted that the prosecution had failed to prove its case qua the appellant beyond reasonable doubt. She submitted that the prosecution had failed to prove the age of the prosecutrix that she was a minor at the relevant time, inasmuch as the original birth certificate of the prosecutrix was never produced by the prosecutrix. She further submitted that the evidence of the prosecution witnesses, if perused appears to be suspicious and untrustworthy. She submitted that even the eyewitness to the incident is unreliable and reliance cannot be



placed on her testimony. Learned counsel for the appellant further submitted that the possibility of the prosecutrix being tutored considering her impressionable age of 10 years could not be ruled out in the facts. She further submitted that the sister of the prosecutrix, who was sleeping next to the prosecutrix at the time of sexual assault by the appellant on the prosecutrix, was never examined. According to the learned counsel for the appellant, apart from the aforesaid infirmities, even the FSL report has come negative rendering the entire prosecution case suspicious.

4. Learned counsel for the appellant relied on the judgments of the Apex Court in ***Mousam Singha Roy & ors. v. State of W.B.*** reported in ***(2003) 12 SCC 377***; ***J. Yashoda v. K. Shobha Rani*** reported in ***(2007) 5 SCC 730***; ***K. Venkateshwarlu v. State of Andhra Pradesh*** reported in ***(2012) 8 SCC 73***; ***Rai Sandeep alias Deepu v. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***; ***Krishnegowda & ors. v. State of Karnataka by Arkalgud Police*** reported in ***(2017) 13 SCC 98***; ***Agniraj & ors. v. State through Deputy Superintendent of***



Police CB-CID reported in **2025 SCC OnLine SC 1203**; judgment of the High Court of Tripura in the case of **Joubansen Tripura v. State of Tripura** reported in **2021 SCC OnLine Tri 176**; judgment of the High Court of Delhi in the case of **Ram Nawal v. State** passed in **Crl.A. 705/2018**; and, judgment of the High Court of Meghalaya in **Anwar Hussain Sheikh v. State of Meghalaya & anr** reported in **2022 SCC OnLine Megh 429**.

5. Mrs T. Yangi B, learned AAG submitted that no interference was warranted in the impugned judgment and order of conviction and sentence. She submitted that the evidence of the prosecutrix is of a sterling nature, inspiring confidence and that the said evidence is duly corroborated by her mother (PW1), an eyewitness to the sexual assault and PW3, a friend of the prosecutrix, who had seen the appellant in the house at the time of the incident. Mrs. Yangi, learned AAG further submitted that the FIR lodged against the appellant was prompt and not an afterthought, giving credence to the incident. She further submitted that the conduct of the appellant and his family



members in seeking forgiveness from the prosecutrix's family speaks volumes and shows that the incident in question had indeed taken place. She further submitted that there is no suggestion or motive that has come on record for the prosecutrix and her family members to falsely implicate the appellant. She further submitted that there is no challenge to the birth certificate by the appellant, much less, any challenge to the age deposed to by PW1, PW4 and PW7. She further submitted that the medical evidence reveals that the prosecutrix's hymen was torn, corroborating the testimony of the prosecutrix.

6. Having heard learned counsel for the respective parties and having perused the evidence on record, we find that the prosecution has proved its case beyond reasonable doubt qua the appellant and as such, there is no ground to interfere with the judgment and order of conviction and sentence imposed by the trial court on the appellant for reasons to follow.

7. The prosecution examined the survivor as PW2, who at the relevant time was about 9 years of age. She has stated that



in June, 2019, the incident took place in the night when she was sleeping with her elder sister. She has stated that the appellant came, picked her up from the bed where she was sleeping, put her on the floor of the TV room, pulled her panty, pulled his pants down and put his male organ in her private part. She has stated that her mother witnessed the incident. She has stated that her mother saw the incident pursuant to which the appellant was shocked and sought apology from her mother; that her mother called her father; that she was very scared and hence, did not scream; that on her father reaching home, her mother narrated the incident to him, pursuant to which her father went to the accused person's house; that her father informed the incident to other co-villagers and also to the police at Lumshnong; that they went to Khliehriat Police Station and thereafter, to the doctor at Khliehriat.

8. At the outset, we may note that there was no cross-examination with respect to the actual sexual assault disclosed by PW2 in her examination-in-chief. Although, certain questions were put to PW2, nothing material has come on record to



discredit or disbelieve her testimony. Much ado has been made by the learned counsel for the appellant that PW2 was tutored by her mother, inasmuch as PW2 in her cross-examination has stated that it was a fact, that her mother had told her what to say before the Magistrate. Infact, the cross-examination of PW2 reveals that PW2 had disclosed that her mother had told her only to say the truth as to what happened. The same cannot be construed as tutoring by the mother of PW2.

9. The aforesaid evidence with respect to sexual assault on PW2 by the appellant having gone unchallenged is duly corroborated by PW1 i.e., the mother of the prosecutrix. PW1 has stated that the incident took place on 27.06.2019. She has, in her examination-in-chief stated that on the day of the incident she was sleeping with her son in the bedroom; that at around 8.30 p.m. whilst she was sleeping, one girl Miss K (PW3) came to visit their house to watch T.V.; that when the girl left her house, she woke up to close the door of the house which is in the kitchen; that when she entered the kitchen to close the main door, she saw from the kitchen that the appellant had laid on



her daughter on the floor of the T.V. room which was attached to the kitchen which had no curtain; that the appellant's pants were down and the panty of the victim girl was down to her knee; that on seeing this she screamed and called her husband; that when the appellant got up, her daughter came straight to her and cried; that when her husband reached home, the appellant had ran away and that she narrated the incident to her husband; that her husband on learning the incident, went to the house of the appellant which was behind their house and informed the mother of the appellant; that her husband also informed the headman of the village; that when her husband returned home, the appellant and his mother came to their house and both asked for forgiveness; that on seeing blood stains on the panty of her daughter, she took her to Khliehriat CHC for medical check-up on the same day at around 9.30 p.m.; that as the doctor was not available, they returned home; that they informed the police; that thereafter, her daughter was taken to Khliehriat CHC for medical check-up. PW2 has further deposed that her daughter was 9 ½ years at the time of the incident. PW1 identified the appellant who was present in Court.



10. There are certain minor omissions in the cross-examination of PW2, however, they are not material omissions which would go to the root of the matter. Again, it is pertinent to note, that there was no cross-examination whatsoever, with respect to what was deposed to by PW1 in her examination-in-chief i.e., with respect to the incident of sexual assault by the appellant on her daughter on 07.06.2019 and with respect to forgiveness sought by the appellant and his mother post the incident. There is also no challenge to the age of the victim girl by the appellant.

11. The aforesaid evidence is again, corroborated by the evidence of PW3 Miss K, who was watching T.V. at the house of PW1 at the relevant time. PW3 aged 15 years has stated that on 27.06.2019, she had gone to watch T.V. at PW1's house; that whilst watching T.V. with PW3 and others, PW2 started feeling sleepy and hence, went to sleep; that her sister also went to sleep; that after some time PW2's brother also went to sleep and that she was sitting alone watching T.V. She has further stated



that at around 7.30 p.m., the appellant came to PW1's house and watched T.V.; that as she too was feeling sleepy, she told the appellant to leave the house, however, the appellant did not listen and kept silent and so she asked the appellant to close the door before he leaves the house and thereafter, she left the house of PW1. PW3 has identified the appellant in Court.

12. Again, nothing material has come in the cross-examination of PW3 to discredit her testimony with respect to the appellant's presence in the house at the relevant time. On the contrary, it has come in the cross-examination, that at the time when the appellant entered the house of the prosecutrix (PW2), the front door was ajar and that she was not aware whether the appellant was drunk or not when he came to the house. Thus, from the aforesaid evidence that has come in the cross-examination, it is evident that the appellant does not dispute his presence in the house at the relevant time.

13. The evidence of the aforesaid three witnesses again is, duly corroborated by the medical evidence of PW4, Dr. C.



Sariang, who was at Khliehriat CHC at the relevant time. She has stated that on 28.06.2019 at around 1.15 p.m., a minor victim girl was brought to Khliehriat CHC as she was sexually assaulted; that she medically examined the victim girl and recorded the brief history of sexual violence. The brief history of sexual violence reads thus;

“The incident took place on the 27/06/2019 at around 8.:30PM at Lumshnong village the estimated during is 17 hours ago with one episode, the nine (9) years old girl was sexually assaulted by Yoowan-O Lamare, 30 years old man and was found by her mother and the incident was also narrated by the mother.”

The threat that was given to the victim girl was “***don’t scream.***” On examination of the victim girl, it was found that in the vulva region, there was a mild swollen bilaterally with hymen torn. Clinical findings revealed recent sexual intercourse had occurred. In the cross-examination of the said witness, it has come that during examination of the victim girl, PW4 did not find any injury mark on any part of the body except the vulva part and that there was vaginal bleeding; that the hymen was torn



due to penetration and further the injury, in her findings was due to sexual assault.

14. Thus, the aforesaid evidence as has come on record, we find that the prosecutrix's evidence inspires confidence, is of sterling quality and is trustworthy. The said evidence is also duly corroborated by the evidence of her mother, her friend (PW3) and the medical doctor (PW4).

15. It is pertinent to note that throughout the cross-examination, there is no suggestion to any of the witnesses that the appellant was not present at the spot, nor was it suggested that he was not the author of the sexual assault. Nor was the age of the victim challenged. It is also pertinent to note, that it is only in the 313 statement for the first time, that the appellant had denied having gone to the prosecutrix's house. In support of the same, the appellant examined three witnesses i.e., DW1- Shri. Rimiki Lamare, DW2 – Shri. Dakaru Lamare and D3 – Smti. Pinky Lamare.



DW1 in his evidence has stated that on 27.06.2019 at around 7 to 7.30 p.m., he and the appellant were returning home and they reached the village at 8 p.m.; that on reaching the village, the appellant got down from his vehicle whilst he had proceeded to his house. He has stated that whilst he was parking his car at the roadside near his house, he received a call from the appellant's sister disclosing to him that the appellant had raped the victim girl. The said witness has admitted that he is the cousin of the appellant; that prior to the incident, he and the appellant would frequently visit the victim's house.

DW2 has stated that he rushed to the appellant's house after learning of the incident at around 8.30 p.m.; that there was commotion; that he heard and saw the mother of the appellant seeking forgiveness from the prosecutrix's mother telling her that she could not accept that her son had done such act.

In the cross-examination, DW2 has stated that on his arrival at the house of the victim, the appellant and his mother were present and that they were both seeking forgiveness from



the mother of the victim. The said evidence of DW2 in fact, supports the testimony of PW1 wherein, she has categorically stated that after the incident both, the appellant and his mother sought forgiveness.

DW3 has stated that on the day of the incident her brother i.e., the appellant had come home at around 8.30 p.m. from work. Her testimony does not in any way further the appellant's case with respect to his plea of alibi i.e., that the appellant was not present at the spot of the incident or the plea of alibi.

16. It is also pertinent to note that there are no suggestions or any evidence brought on record as to why the witnesses would falsely implicate the appellant.

17. As far as the age of PW3 is concerned, the fact remains that the defence has not challenged her age (10 years) or that she was not a minor.



18. As far as the submission of the learned counsel for the appellant that no preliminary questions were put to PW3 is concerned, we find that under Section 118 of the Evidence Act, 1872, the child witness is competent to depose unless the court is of the opinion that he/she is not capable of understanding the questions put to him/her because of his/her tender age. Section 4 of the Oaths Act, 1969 is the relevant provision with respect to administration of oath to all witnesses, including a child witness. Under the proviso of sub-section 1 of Section 4, it is laid down that where the child witness is under 12 years of age, unless satisfaction as contemplated by the said proviso is recorded, oath cannot be administered to a child witness. The proviso of Section 4(1) of the Oaths Act categorically states that in the absence of an oath or affirmation, any evidence given by the child witness below 12 years or age will not be rendered inadmissible. As is evident, the child witness in the present case was about 10 to 11 years at the relevant time i.e., time of deposition. Admittedly, no oath was administered to PW3. Infact, under Section 118 of the Evidence Act, the trial Judge is under a duty to record its opinion by putting questions to a child



where he is able to understand the questions put up to him and is able to give rational answers to the said questions. The trial Judge is expected to record his opinion, that the child witness understands his duty to speak the truth and state why he or she arrived at the said opinion, that the child understands the duty of speaking the truth. The reason for carrying out the said exercise is to exclude the possibility of the child witness being tutored.

19. Thus, it is evident that before recording evidence of a child witness (minor), it is the duty of the Judicial Officer to ascertain whether the minor is able to understand the questions put to him and is in a position to give rational answer; that the Judicial officer must be satisfied that the minor is able to understand the questions and respond to them; and that the child understands the importance of speaking the truth. Thus, the role of the judge who records the evidence of the child witness is extremely important and crucial. In the facts of the case, preliminary examination of the minor has not been done. There is nothing to indicate in the recording of the evidence of the child witness,



that this exercise as required was carried out. Thus, the learned trial judge has not performed his duty as required. Nevertheless, we have carefully and minutely scrutinised the evidence of PW3. As discussed hereinabove, we find that the evidence of the minor victim i.e., PW2 inspires confidence and is trustworthy. The said evidence of PW2 is duly corroborated by the evidence of her mother (PW1) and a friend (PW3).

20. We may also note, that it is not necessary to refer to each of the judgments relied upon by the learned counsel for the appellant, inasmuch as there is no dispute with respect to the propositions laid down in them. Suffice it to state that, the judgments are in the facts of those cases and are clearly distinguishable and do not apply to the facts in hand.

21. In view of the aforesaid, we find that no interference is warranted in the impugned judgment and order convicting and sentencing the appellant. The appeal being devoid of merit, stands dismissed.



22. The Secretary, Meghalaya Legal Services to submit a report, as to whether the State of Meghalaya had disbursed compensation to the survivor (PW2) of ₹ 4 lakhs, as directed by the trial court (mentioned in para 1 of the Judgement). Report to be submitted within six weeks.

23. The Registry to forward forthwith a copy of this judgment and order to the Secretary, DLSA, East Jaintia Hills District, Khliehriat, to enable the Secretary to submit the report.

24. We record our appreciation for the painstaking efforts put in by learned counsel, Ms Marboh and for arguing the appeal with tenacity and diligence.

25. Place the aforesaid appeal for recording compliance on **23rd July, 2026.**

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice