

Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.29/2022

Date of Order: 31.05.2023

Edansing Rani Vs. State of Meghalaya & anr

Coram:

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

Appearance:

For the Appellant : Mr. P. Yobin, Adv with
Ms. T. Lyngkhoi, Adv
Mr. S. Singpho, Adv

For the Respondents : Mr. B. Bhattacharjee, AAG with
Mr. S. Sengupta, Addl.PP
Mr. A.H. Kharwanlang, Addl.Sr.GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

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

This is a desperate attempt by a step-father of a minor survivor to escape the consequences of his wrongdoing.

2. According to the appellant, since there was no eye-witness to any of the alleged incidents and the medical report did not corroborate the allegations of the survivor, the trial court could not have convicted the appellant merely on the basis of the somewhat vague statements of the survivor. The appellant submits that it was the clear and categorical case

of the medical practitioner, who examined the survivor on the same day that the first information report was lodged, that the survivor had only an external injury on her forehead, her hymen was intact and there was no injury to or abnormality in her genitalia. The appellant suggests that on the basis of such medical report, the appellant could not have even been charged.

3. The first information report was lodged by a social worker on December 28, 2013. The FIR merely indicated that the minor girl named therein, said to be aged about 11 years, had been repeatedly raped for several months by her step-father. No further details were indicated.

4. The statements of both the minor survivor and the appellant herein were recorded under Section 164 of the Code of Criminal Procedure, 1973. In the minor girl's statement, she claimed that her step-father would take her to the fields on some pretext and would sexually assault her. She indicated that she did not feel any pain on the first occasion, but did not refer to any pain or the lack of it in course of the later sexual assaults that she claimed to have suffered.

5. On the other hand, when the appellant made a confessional statement upon the Judicial Magistrate satisfying himself that the accused was making a voluntarily statement, the appellant herein claimed that he was drunk on a particular evening and came home and attempted to rape the survivor, but upon the survivor waking up and resisting him, he

returned to his senses and desisted. Since the statement recorded was in the nature of a confession of sorts, no questions were asked and no attempt was made by the Judicial Magistrate to probe into the matter. The appellant did not refer to the several instances that the survivor talked of when the appellant had apparently sexually assaulted the survivor both at home and in the jungle or fields.

6. The first point that the appellant seeks to make is that there is a serious contradiction in the statement made by the FIR-maker and the one made by one of the relatives of the survivor through her mother. According to the appellant, even though the FIR-maker, as PW-1, claimed that she met the survivor at the hospital and came to know of the incident in course of such meeting, it is apparent that the survivor was taken to the residence of the FIR-maker by some other persons and it is from there that they went to the hospital. The appellant seeks to make out that if the survivor was brought to the residence of the FIR-maker, it would only be natural for the FIR-maker to speak to the survivor and find out the facts from her at her residence, rather than wait to ascertain the facts in the hospital.

7. What is not apparent from the statements or from any other evidence in such regard is the time when the survivor was brought to the residence of the FIR-maker and when the survivor was taken to the hospital. In the light of the evidence that is on record, it is difficult to

assume that the survivor, accompanied by some relatives first came to the house of the FIR-maker, spent some time thereat and, thereafter, they proceeded to the hospital. It is equally possible that the relatives of the survivor brought the survivor to the FIR-maker's residence only for the purpose of FIR-maker proceeding with them to the hospital. In such a scenario, there would not have been no occasion on the part of PW-1 to talk to the survivor or ascertain the facts from her at the time the survivor was at the residence of PW-1.

8. The next purported contradiction that the appellant seeks to bring out is in the statements of PW-5, who claimed that the survivor was her grand-niece and he was related to the survivor through the survivor's mother. The appellant seeks to place the statement rendered by PW-5 to the investigating officer under Section 161 of the Code and the subsequent testimony of PW-5 in Court to suggest that there are contradictions. However, on a meaningful reading of both statements, no contradiction is discovered. The essence of what PW-5 said is that he received a phone call from the survivor's mother to the effect that the survivor had been raped by her step-father, whereupon the survivor came to the residence of PW-5 at Nongmynsong in Shillong. The persons who accompanied the survivor and PW-5 then proceeded to meet the FIR-maker and the FIR-maker advised them that the matter should be brought to the notice of the police by lodging a formal complaint. It was also the

evidence of PW-5 that since the relatives of the survivor, including PW-5, were illiterate, they took the assistance of PW-1 to make out and lodge the FIR.

9. Though much stress has been placed on the evidence of PW-11, who was the medical practitioner who examined the survivor on December 28, 2013, the same day as the FIR was lodged in Mairang Police Station, all that can be gleaned from the testimony of such witness is that there was no apparent injury to the private parts of the survivor and that the survivor's hymen was intact. However, such medical practitioner did indicate that the survivor had narrated to him that the survivor had been sexually assaulted over a period of several months by her step-father.

10. In her deposition at the time of trial, the survivor, who was all of 13 years of age, indicated that she felt pain when the appellant herein forced himself on her. However, she did not indicate that she bled at any point of time. She also testified that she attained puberty only in the year 2015 and that was the first time that she noticed blood coming out of her vagina.

11. On an overall appreciation of the evidence, the appellant claims that, at the highest, the appellant could have been convicted of attempt to rape without there being any rape or any degree of penetration at all. According to the appellant, if the appellant had been raping the survivor

for a period of three months, it was impossible that the survivor would have no external injuries or abnormalities in her genitalia or that her hymen would be intact.

12. In anticipation that the State would seek to rely on a recent judgment of this Court in CrI.A.No.5 of 2020 rendered on March 14, 2022 (*Cheerfulson Snaitang v. State of Meghalaya*), the appellant seeks to suggest that even though it has been held at paragraph 8 of such judgment that any degree of penetration would suffice for the purpose of constituting the offence of rape in view of the definition in Section 375 of the Penal Code, 1860 and the same definition being incorporated in the Protection of Children from Sexual Offences Act, 2012, there is no evidence of penetration at all in the present case.

13. The appellant also relies on a judgment reported at 2006 SCC OnLine AP 1506 for the law recognised at paragraph 29 therein to the effect that in criminal matters, particularly when a charge of rape is brought, the medical evidence is crucial. In that case, as the preceding paragraphs of the report indicate, one of the witnesses who claimed to have witnessed the incident retracted her statement. The medical evidence did not indicate the survivor having been raped and there was an element of motive which was discovered as to why the minor girl in that case brought a charge against the accused therein.

14. The dictum in such Andhra case is clearly distinguishable, inter alia, since there is no attempt on the part of the appellant herein to ascribe any motive to the survivor, notwithstanding the reading of the cross-examination of one of the relatives of the survivor through her mother, who claimed that the mother's family was not in favour of the appellant herein marrying the survivor's mother. However, the marriage took place several years prior to the incident and even the survivor indicated in her deposition that she was quite a child when her mother married the appellant herein. No case of any motive is made out nor was any attempt made to ascribe any motive to the girl who was all of 11 years of age when the incidents took place.

15. In the appellant's examination under Section 313 of the Code, the appellant had a standard answer to almost every question to the effect that "It is not a fact". However, the appellant admitted that the appellant was married to the survivor's mother. It also appears to be the admitted position that the appellant was aware that the survivor was about 11 years of age at the time when she claimed to have been sexually assaulted by the appellant.

16. In the judgment of the trial court delivered on November 27, 2020 and the sentence pronounced on the same day, the trial court dwelt at length on the evidence and the credibility of the statements made by the survivor. The trial court made copious reference to several Supreme Court

judgments which instruct that merely because there was no corroboration of the statement of a survivor, it would not imply that such statement had to be doubted.

17. Much was attempted to be made of the FIR in this case being bare-bodied. The trial court discussed such argument at length and held that the FIR does not have to be an encyclopedia of the entire incidents or the charges and the FIR is intended only to furnish information of the commission of an offence and nothing more.

18. The trial court found that the manner in which the survivor made her statements inspired confidence and there did not appear to be any element of tutoring. On the basis of the survivor's statement that the appellant herein had repeatedly sexually assaulted the survivor, the trial court was happy to find that a case under Section 376(2)(f) of the Penal Code read with Section 5(l)(m) and (n) of the Act of 2012 had been made out.

19. The only aspect that requires to be taken note of in this case is as to whether there was or may have been any penetration for the charge of rape being found to have been proved. It must not be lost sight of that this was a case of a 40-year man trying to force himself into an 11-year-old girl. It is quite natural that penetration to any great degree may have been impossible, such that the appellant's penis may not have reached to the extent inside the vagina of the survivor so as to tear or disturb the

hymen. However, the description of the survivor that the appellant took off his underwear after undressing her and climbed on her and pushed himself into her would indicate some extent of penetration.

20. At the same time, the survivor was consistent in her statement that she went through her suffering since she had been threatened to be killed by the appellant if she whispered of the incident to any other person. In course of her lucid and credible statements, she also said that she was beaten up on several occasions by the appellant herein. In such circumstances, when the trial court had the benefit of noticing the demeanor of the 13-year-old girl who testified as to the incidents that she had suffered when she was 11 and the trial court had faith in the credibility of her assertion, there does not appear to be any reason to disturb the findings or the resultant order.

21. Accordingly, the judgment of conviction and the consequent sentence of November 27, 2020 do not call for any interference.

22. CrI.A.No.29 of 2022 is dismissed.

23. Let an authenticated copy of this judgment and order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
31.05.2023
"Lam DR-PS