



Serial No.01
Supple List 1

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. A. No.9 of 2024

Date of Hearing: 18.02.2025

Date of Decision: 28.03.2025

Shri Parinder Rai S/o – Shri. Paltan Rai R/o- Amsing Jorabad Police Station – Satgaon District: Kamrup (Metro), (Assam) Presently lodge in District Jail, Ri-Bhoi serving sentence.	Vs.	State of Meghalaya
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..... Appellant.

..... Respondents.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T. J. Ahmed, Adv.

Mr. H. Miah, Adv.

For the Respondent(s) : Mr. H. Kharmih, Addl. PP with

Mr. R. Gurung, GA

(JUDGMENT AND ORDER)

This appeal is directed against the impugned Judgment and Order of conviction dated 19-12-2023 and order of sentence dated 22-12-2023 passed by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh in Special (POCSO) Case No. 34 of 2015 whereby the appellant was sentenced under Section 10 POCSO Act for seven years imprisonment with fine of Rs. 50,000/- and in default of payment to undergo another



four months imprisonment. The appellant was also sentenced under Section 354 IPC for five years imprisonment with a fine of Rs. 10,000/- and in default of payment to undergo another two months imprisonment. In addition, the appellant was sentenced under Section 451 IPC for two years imprisonment with fine of Rs. 5000/- and in default of payment to undergo another one month's imprisonment.

1. The prosecution story of the case is that a telephonic information was received by the Umiam Police Station on 26-01-2015 at about 6 pm from the villagers of Lum Nehru Park, Umiam that one non-tribal person was caught red handed while he forcibly entered inside the house of the complainant and molested his 17 years old mentally and physically challenged daughter. On receipt of the information, the investigating officer along with one Sub-Inspector Mr. L. Lynrah visited the place of occurrence and found the non-tribal person (appellant) was kept in the verandah of the complainant's (PW- 1) house with injuries on his person inflicted by an angry mob. The Sub-Inspector Mr. S. Lyngrah brought him to the Umiam PS for safe custody and interrogation and later took him to the Civil Hospital, Shillong for medical examination. The Investigating Officer took the survivor, accompanied by her mother, to the Ganesh Das Hospital, Shillong for medical examination. On being asked, the survivor stated that the unknown person forcibly entered inside the house while she along with her sibling were watching television. He took her hand and led her to the bedroom where he started taking off her clothes. She resisted but he touched her private parts and at that time the villagers came and rescued her. The accused was admitted to the Civil Hospital, Shillong as the per advice of the Medical Officer.



2. On 27-01-2015 at about 1.30 pm, the complainant lodged a written FIR to the effect that on 26-01-2015, at around 5.15 pm, the appellant forcibly entered inside his quarter at Lum Nehru Park, Umiam and molested his minor daughter who was a mentally retarded and physically challenged child. On the basis of the FIR, the Umiam PS Case No. 07 (01) 2015 under Section 452/ 354A (1) (i) IPC read with Section 8/10, POCSO Act, 2012 was registered and the matter was investigated into. During the investigation, the Investigating Officer examined the appellant who denied the allegations. It was disclosed by the brother of the appellant that the appellant was suffering from Schizophrenia and submitted a medical certificate issued by one Dr. Pankaj Lochan Sarma wherein it was shown that the appellant was under his treatment for about a year. The said medical certificate was seized by the Investigating Officer and the appellant was taken to MIMHANS under the order of the Court, for psychiatric evaluation. The Medical Officer therein advised the Investigating Officer to come with near relatives of the appellant for history of mental illness of the appellant and the related documents thereof. However, no relative of the appellant came forward in spite of the passing of the information to the brother of the appellant by the Investigating Officer. Upon completion of the investigation and observance of all the formalities, the charge-sheet No.33/2015 dated 08-06-2015 was filed against the appellant under Section 452/354A (1) (i) IPC read with Section 8/10 POCSO Act, 2012.

3. During the trial, charge under Section 452/354A(1)(i) IPC and Section 8/10 of the POCSO Act, 2012 was framed against the appellant on 20-09-2016 to which the appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 8 (eight) witnesses and exhibited 9 (nine) documents in support of its case. Ext- X was also



brought into the record to establish the death of the survivor. In addition, Ext-C1 to C12 were exhibited before the learned trial Court at the time of holding enquiry under Section 34 (2) of the POCSO Act conducted on the basis of an application filed on behalf of the appellant. The evidences of CW-1 to CW-4 were recorded by the learned trial court for the purpose of the said enquiry. Though, the evidences were recorded for the purpose of the enquiry, it transpires that the matter was taken up and decided along with the final argument made by the parties in the trial. After the completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.PC on 11-12-2023. The appellant declined to adduce any defence witness. The learned Trial Court, after hearing the parties, passed the impugned judgment and the order of conviction and sentenced the appellant under Section 354/451 IPC and Section 10 of the POCSO Act, 2012.

4. Assailing the conviction, the learned Counsel for the appellant submits that the entire prosecution case is an outcome of manipulation and the appellant has been falsely implicated in the matter. Drawing attention of this Court to the FIR recorded under Section 154 Cr.PC, the learned Counsel submits that the FIR was registered on 24-01-2015, whereas, the alleged occurrence took place on 26-01-2015 and written information was lodged on 27-01-2015. The FIR, as such, was registered before the alleged incident and the prosecution has not thrown any light on the above aspect of the matter. The learned Counsel further submits that though the prosecution alleged that the survivor was mentally retarded, no medical certificate to that effect was ever produced at the trial despite the fact that a medical certificate was shown to have been seized vide seizure list dated 28-02-2015 (Ext -8). The learned Counsel contends that the finding recorded by



the Trial Court with regard to the determination to the age of the survivor is totally erroneous as the learned Trial Court has given priority to the Baby Report (Ext–C1), which was apparently manipulated by addition word ‘Fe’ before the word ‘male’, by ignoring the official Birth Registered (Ext –C6) maintained by the hospital. The learned Counsel also contends that the prosecution story of the case projected one ‘Bah Raja’ as the sole independent eye-witness to the incident, however, the said witness was not examined and the prosecution has not given any reason or justification for not examining the said witness. The learned Counsel further submits that the evidence of PWs 1, 2& 3, are totally contradictory to each other and also to their previous statements recorded under Section 164 Cr.PC. He submits that the learned Trial Court has totally overlooked the glaring contradictions in the prosecution evidence and mechanically convicted the appellant basing solely on the prosecution version of the case.

5. The learned Counsel for the appellant further submits that the evidence of PW-8, the Investigating Officer of the case, confirms that the appellant was found injured on 26-01-2015 when the Investigating Officer visited the place of occurrence and had to be admitted to hospital for treatment. The prosecution has never tried to find out who was responsible for inflicting the injury on the appellant and, to cover up the entire issue, framed the appellant in the case. He submits that even the PW-1, in his evidence stated that the FIR was written by the Headman and he did not know the content of the FIR. He never instructed the Headman to file a complaint that the appellant had molested his daughter.

6. It is also the submission of the learned Counsel for the appellant that the Trial Court framed charge against the appellant under Section 452/354A(1)(i) IPC and Section 8/10 of the POCSO Act, 2012, but



convicted the appellant under Section 354/441/442/451 IPC and under Section 7/9 (k)/ 10 POCSO Act, 2012 without any prior notice to the appellant as per mandate of Section 216 Cr.PC, causing serious prejudice to the appellant. He further submits that in the absence of any convincing proof that the survivor was a minor, no order of conviction could have been passed under provisions of the POCSO Act, 2012. In support of his submission, the learned Counsel has placed reliance on the decisions reported in (2010) 1 SCC 742, *Sunil V. State of Haryana*, Crl. A. No. 1 of 2021 *Shri Ami Kumar Gupta V. State of Meghalaya & Ors.*, and Crl. A. No. 1898 of 2023 *Shri P. Yuvaprakash V. State Rep. by Inspector of Police*. He submits that the impugned judgment and order of conviction and related sentence cannot be sustained in law and is liable to be set aside and quashed.

7. The learned Addl. PP., on the other hand, supports the conviction and sentence and submits that the Court can and may act on the testimony of single eye-witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. He contends that the evidence of PW-3 is wholly reliable requiring no further corroboration and the learned Trial Court was right in convicting the appellant by placing reliance on the testimony of the said witness. He further contends that non-examination of 'Bah Raja' as witness during the trial or at the time of investigation would not make the prosecution case weaker or ineffective as law does not require any particular number of witnesses to prove a fact. He submits that prosecution case cannot be rejected on the ground that all witnesses to the occurrence have not been examined. In support of the contention, the learned Addl. PP relied on the decisions of (2003) 11 SCC 367, *Sunil Kumar V. State of Govt.*



of NCT of Delhi, 2022 SCC Online SC 1424, State through the Inspector of Police V. Laly alias Manikandan & Anr., 1995 SCC (Cri) 160, Jagdish Prasad v. State of M.P. and (2020) 19 SCC 165, Amar Singh V. State (NCT of Delhi).

8. It is further submitted by the learned Additional PP that the age of the survivor was proved at the trial by the mother of the survivor examined as CW-1, who deposed that the survivor was born on 29-05-1997 at Ganesh Das hospital and a baby report to that effect was exhibited as Ext- C1 by the said witness. The defence declined to cross-examine the witness. On the issue of manipulation of the Ext-C1 (baby report) where word 'Fe' was added before 'Male', he submits that it was a mistake which stood corrected by the hospital official and the omission to correct the related hospital birth register (Ext-C6) was due to oversight. He submits that small mistake will not render the evidence invalid. Insofar as, the question of non-adherence to the principle of provision of Section 216 Cr.PC is concerned, the learned Addl. PP relying on the decision of this Court in *Shri Wanlang Phawa V. State of Meghalaya (Crl.A. No. 16 of 2023)*, submits that the Trial Court is well within its power to alter charge. He, therefore, submits that this appeal is devoid of merit and liable to be dismissed.

9. Heard submissions made by the learned Counsels appearing for the parties and also perused the materials on record.

10. PW-1, the father of the survivor and also the complainant, in his evidence before the Trial Court stated that he was working in the Forest Department and staying in the official quarter with his family inside the Nehru Park. He stated that when he used to go for his work, his wife used to stay back and take care of the house as his wife was a housewife. It is only after the incident, she started working as a master roll in NCERT,



Umium. He further stated that he had six children, five of whom used to go to school except one who used to stay at home as she was not well and suffering from epilepsy having complicacy right from her birth which affected her mental capacity. On 26-01-2015, at around 5.30 P.M. when he was on his way back home from work, he came to know that somebody had entered his quarter. He rushed to his quarter and upon entering there, he saw a person sleeping on the bed inside the room and covered with a blanket. All his children had come out of the quarter, nobody was there in the quarter. He uncovered the blanket and dragged the person outside the quarter. He could not recognize the person. He did not find the person doing anything to anybody in the house except was sleeping on the bed. The witness further stated that he filed the complaint before the police and the FIR was written by the headman. He did not know the content of the FIR and he never instructed the Headman to file a complaint that the appellant had molested the survivor. He exhibited the FIR as Ext-1. The cross-examination of the witness was declined by the defence.

11. PW-2, the mother of the survivor, in her deposition before the Trial Court stated that on 26-01-2015, she along with her children and husband were at Block V, her first and second child were back at home at Block I in the official quarter allotted to her husband. On their way back from Block V, on the way they met one 'Bah Raja', an employee of the Orchid Hotel. She and her husband both asked 'Bah Raja' as to where he was coming from and he responded that he was coming from their house at Block I and informed that one person forcibly entered their house and her son had sought his help. He rescued her son and locked the intruder in the house. The witness stated that when they reached their house at Block I, they found that the house was bolted from outside and when they opened the door, they



saw the appellant lying on the bed. They informed the village secretary and the matter was reported to the police. She stated that her statement was recorded by the Magistrate and exhibited the same as Ext.-2. In the cross-examination, the witness stated that she did not see the appellant assaulting her children but she found the accused inside her house and she was informed by her daughter who was there in the house that the accused dragged her to the bedroom.

It is interesting to note that the PW-2 was examined by the Trial Court on 01-06-2017 and was discharged. However, PW-2 was re-examined again on 31-10-2017 by the Court on which date she disclosed that the survivor had died on 30-03-2017 due to her ailment and exhibited the death certificate as Ext-X(1). Again, the PW-2 was examined by the Trial Court as CW-1 on 01-11-2023, 20-11-2023 and 01-12-2023 for recording her evidence in the enquiry under Section 34 of the POCSO Act 2012. The exhibits marked as Ext-C1, C2, C3 and Ext-C7 to Ext-C12 were exhibited before the Trial Court by the said witness.

12. PW-3, the brother of the survivor who was present at the place of occurrence, deposed before the Court that on the day of incident, he was at home along with the survivor and his younger brother. At around 3.30 P.M., he heard somebody knocking and pushing the door and the door got unbolted because of the pushing. He saw the appellant entering the house and sitting in the drawing room. He tried to chase him out, but the appellant pulled the survivor and tried to drag her to the bed room. He took his younger brother and went out to seek help. He did not confront the appellant because he was scared since the appellant was elder to him. When he went out, he saw one red alto vehicle parked with two persons sitting inside, one of them was known to him by the name of 'Bah Raja'.



He narrated about the incident and thereafter along with 'Bah Raja' and his friend came back to his house. On reaching his house, he saw the survivor was trying to rescue herself from the clutches of the appellant. He rescued the survivor from the clutches of the appellant and locked the appellant inside the house. After sometimes his mother and father arrived. He saw the survivor being taken for medical examination. His statement was recorded by the police and also by the Magistrate. He exhibited his statement recorded by the Magistrate as Ext-3. In his cross-examination, PW-3 stated that on the day of the incident a bandh was called, and, as such, there was nobody around. He also stated that the door of the house was kept open and the appellant did not forcefully open the door.

13. PW-4, the Medical Officer who examined the survivor, in her deposition stated that on 26-01-2015 at around 8.10 PM, the survivor was brought by the police for medical examination. She stated that as per the history narrated by the mother of the survivor, the survivor was a mentally challenged person having deafness but could understand the lip reading. On 26-01-2001 at around 5.00 PM, the appellant forcefully entered the survivor's house when she was watching T.V. with her brother. The appellant tried to molest the survivor and pulled her to the bedroom, her brother tried fighting but could not do so and went out and asked for help. The appellant tried to strangle the survivor and tried to molest her private part and just then the people came and rescued her and the appellant was apprehended and handed over to the police. PW-4 further stated that on physical examination, the survivor was found to be conscious oriented with mild retardation and could understand the lip reading. There was no external injury noted, the hymen was intact and ultrasound report was normal. The witness stated that as per her clinical



opinion, the survivor had tenderness in her neck, pain in the abdomen and thigh without any external injuries. She exhibited the Medical Report as Ext-4. In her cross-examination, the witness denied that she did not examine the survivor properly.

14. PW-5, the medical expert who examined the appellant, in his evidence stated that on 26-01-2015, the appellant was brought to the Civil hospital by police for medical examination. On examination, the appellant was found to be conscious oriented and cooperating and had abrasion in the left upper eye lid and swelling in the right leg. The appellant was sent for X-ray and then admitted at male surgical ward for observation. He exhibited the medico legal record of the appellant as Ext-5. In his cross-examination, the witness stated that the appellant told him that he was assaulted by the public. The abrasion found on the appellant was simple injury and that he did not submit a separate medical report regarding the injury before the Court.

15. PW-6, another medical expert who examined the appellant, in his deposition stated that on 09-04-2015 the appellant was brought to him by the police along with the certificate showing that the appellant was under treatment of a psychiatrist at Guwahati for schizophrenia. He stated that since there was no proper information as to the medical history of the appellant, he advised that the elder brother of the appellant or a proper informant to come with detailed history of the mental illness of the appellant along with documents. He stated that on examination, which lasted for about an hour, the appellant was found to be calm, cooperative and oriented and did not show sign of any mental disturbance and, hence, he could not come to any conclusion about mental condition of the appellant. The appellant was answering normally and was denying all the



allegations. The brother of the appellant or any informant did not report after that. He exhibited out-patient ticket of the appellant as Ext-6. In his cross-examination, he denied the suggestion that whatever he stated was false.

16. PW-7, a police officer, in his deposition stated that in the year 2015, he was posted at the Umiam Police Station as the Officer-in-Charge. On 27-01-2015, at about 1.30 PM, he received a written FIR vide GD Entry No. 8 dated 27-01-2015 filed by the complainant disclosing a cognizable offence. He registered the case as Umiam P.S. Case No.07 (01) 2015 under Section 452/ 354A (1) (i) IPC read with Section 8/10, POCSO Act, 2012 and endorsed the case for investigation. In his cross-examination, he agreed that the FIR was not written by the informant.

17. PW-8, the Investigating Officer of the case, in her deposition stated that on 26-01-2015 at 5.30 PM, she was directed by the Officer-in-Charge of the Umiam Police Station to proceed to Nehru Park, Umiam as there was a sexual assault case. She proceeded to the park along with Sub-Inspector Sunny Lyngrah and on entering the place found people gathered outside the quarter of PW-1. She saw the appellant sitting injured in the verandah of the house and sent him to Civil hospital, Shillong with SI Sunny Lyngrah. She spoke to PW-3 just outside the house and was told that he is the brother of the survivor, who explained what had happened. She saw the survivor, appeared to be a minor below 16 (sixteen) years, squatting in a corner of the room crying. The survivor appeared to be a person with special mental and physical needs and PW-3 confirmed it. She immediately informed PW-1 and PW-2 that the survivor would have to be taken for medical examination. Thereafter, the survivor along with her parents, were taken to Ganesh Das Hospital, Shillong where medical



examination of the survivor was conducted. When she returned to the police station, she was informed that the appellant had been admitted in Civil Hospital. On 27-01-2015, a written FIR was filed by PW-1 and the case was registered and endorsed to her for investigation. After reading the FIR, she proceeded to the house of the survivor but could not examine the survivor as she complained of neck and body ache. She prepared the rough sketch-map and exhibited the same as Ext-7. She recorded the statement of PW-3 in the residence of the survivor and thereafter left for Civil Hospital, Shillong to examine the appellant. However, the appellant was not in a position to give statement. On 28-01-2015, she informed the Court about hospitalization of the appellant and on the same day visited the place of occurrence again to examine the survivor. However, the survivor was not in a position to give statement as she was still traumatized. On 30-01-2015, she found that the appellant had partly recovered and she recorded the statement in the hospital. On 02-02-2015, the elder brother of the appellant came to Umiam police station and produced a medical certificate of the appellant showing that the appellant was a patient of Schizophrenia. She seized the document and recorded the statement of the brother of the appellant. On the same day she was informed by the hospital that the appellant was fit to be discharged from hospital. On 03-02-2015, she went to hospital along with the staffs and brought the appellant to the police station and interrogated the appellant but he refused to speak. She formally arrested the accused. On 22-02-2015, she made a prayer for recording the statement of the survivor and 3 (three) other witnesses. On 28-02-2015, she seized a photocopy of medical certificate of the survivor on being produced by the PW-2. She exhibited the seizure-list as Ext-8. She stated that as per the medical



report, the survivor was suffering from seizure disorder with mental retardation and was under treatment at Civil Hospital, Shillong since 08-10-2014. On 01-04-2015, she met the doctor who issued medical certificate of the appellant at Guwahati and recorded his statement that the appellant was under his treatment for past one year, last consulted him on 02-04-2014 and advised that the appellant be taken to MIMHANS, Shillong for psychiatric evaluation. Thereafter, on 06-04-2015, the Court allowed her to take the appellant to MIMHANS, Shillong and on 09-04-2015, the appellant was taken to MIMHANS, Shillong. After the evaluation, the doctor informed that he would require to consult with the family members of the appellant for determining the medical history as there was no sign of Schizophrenia seen on the appellant during evaluation. She, accordingly, informed the Court and made several efforts to inform the relatives of the appellant for consultation, but they did not cooperate and a report to that effect was submitted to the Court on 04-05-2015. On 12-05-2015, she received an order from the Court to file the final form in the case and thereafter, after reviewing her investigation, filed the charge-sheet on 09-06-2015. She exhibited the charge-sheet as Ext-9.

In her cross-examination, PW-8 stated that the FIR was written by the headman of Umiam and was lodged by PW-1. She denied that the case was filed to save the people who assaulted the appellant.

18. During the course of the trial, an application under Section 34 (2) of the POCSO Act, 2012 was filed on behalf of the appellant for conducting an enquiry for determination of age of the survivor which was allowed by order dated 18-10-2023. The learned Trial Court, thereafter, recorded the evidence of 4 (four) witnesses as CW-1, CW-2, CW-3 and CW-4 for



determining the age of the survivor. In the enquiry, PW-1 was called again and examined as CW-1 on 01-11-2023 and re-examined on 20-11-2023 and 01-12-2023.

19. CW-1, in her deposition recorded on 01-11-2023 stated that the survivor was her daughter and was born on 29-05-1997 at Ganesh Das Hospital, Shillong. She stated that she brought the photocopy of the baby report at birth issued by the hospital as she had lost the original and exhibited the same as Ext-C1. She further stated that the survivor was suffering from epilepsy and passed away on 30-03-2017 in Civil Hospital, Shillong. She exhibited the death certificate of the survivor as Ext-C2. She also exhibited her epic card as Ext-C3. Her cross-examination was declined by the appellant.

20. CW-2, in his deposition recorded on 09-11-2023, stated that he was the Medical Record Officer and exhibited his identity card as Ext-C4 and his authorization letter issued by the Medical Superintendent of Ganesh Das Hospital, Shillong as Ext-C5. He stated that he was the personnel responsible for maintaining the birth register in the hospital and the birth register is maintained by the Medical Records Department of the hospital. According to the records for the period of 20-04-1997 to 04-10-1997, at Entry No.417 and 418 for the month of May, 1997 pertaining to PW-2 (mother) and PW-1 (father), two male children were born to PW-2 on 29-05-1997 at 1.40 PM and 1.41 PM respectively. The witness exhibited the relevant page of the birth register as Ext-C6 and the relevant Entries No.417 and 418 as Ext-C6/1 and Ext-C6/2. The cross-examination of the said witness was declined.

21. CW-1, in her re-examination on 20-11-2023, stated that she is the mother of the survivor. She gave birth to twins at Ganesh Das Hospital,



Shillong on 29-05-1997. The first twin was a female and the second twin was a male. The male child passed away on 31-05-1997. She brought the original baby report at birth of her twins and exhibited the original baby report of the elder child as Ext-C1 and the original baby report of the younger child, a male, as Ext-C7. The male child passed away on 31-05-1997 at 1.25 AM and the fact of death is reflected in the baby report.

During the course of the re-examination, Ext-C1 was shown to the witness and the fact that the sex of the child is shown as 'FeMale' was brought to the attention of the witness. Ext-C6, C6/1 and C6/2 were also shown to the witness and the genders of the children are recorded as male was brought to the attention of the witness and was asked to explain it.

The CW-1, then, stated that she gave birth to a female child, the survivor. She had seven children including the male child who died on 31-05-1997. The survivor was her eldest child. She had two daughters and five sons. Her twins were born premature and one passed away. Her third child, a son, was born on 20-05-1999; fourth child, a son, was born on 08-12-2000; fifth child, a daughter, was born on 13-01-2002; sixth child, a son, was born on 02-07-2006 and seventh child, a son, was born on 01-03-2011. She stated that she has birth certificates for all her children and can produce those. She stated that she might not have mentioned the year of birth of all her children, apart from the first child, correctly, but all her children were born after the survivor. In her cross-examination, she denied that she gave birth to twins male babies on 29-05-1997 and stated that she gave birth to one female and one male child. She denied that the Ext-C1 was false and manipulated. To the questions put by the Court, the witness stated that she received the certificate from the



hospital in presence of her husband from the room provided for the nurse. She also stated that she did not ask for any correction to be made in Ext-C1 and Ext-C7. She stated that there were independent witnesses to verify that her first child was the survivor and that she had seven children. She named CW-3, who was working at Nehru Park, as the person who could verify the fact.

22. CW-1, in her further re-examination on 01-12-2023, stated about the date of birth of all her children and exhibited Ext-C1, C7, C8, C9, C10, C11 and C12 before the Court as the supporting documents.

23. CW-3, in her deposition, stated that she knew the mother of the survivor (PW-2) and her husband (PW-1) since before their first child was born. She stated that she thought their first child was a son and then twins were born to them. About 10-15 days after birth, the male twin passed away and only female twin survived. She did not go to hospital but after they returned, she went to see the child. After the twins, a son was born to them, then a daughter and thereafter again a son. She stated that since the PW-1 and PW-2 have shifted to a different place, her interaction with them reduced and that is why she cannot now remember all the details of the children. She stated that she did not remember the name of the female twin but used to call her Kong Kong as she was the eldest daughter. In her cross-examination, she stated that she did not remember when the twins were born. She also stated that she did not know about any medical document relating to the birth of the twins. She stated that she attended the funeral and went to the graveyard when one of the twins died but she did not remember the date.

24. CW-4, in his evidence before the Court stated that he was the Headman of Umiam village and he knew PW-2 as they reside in the same



village. He stated that he knew them well including their children from the eldest to the youngest. He stated that PW-1 is the husband of PW-2 and they had seven children, five boys and two girls. Their first children were twins, one male and one female. The male child died one or two days after birth and the female child died 30-03-2017. He stated that the survivor in this case was a child who was unhealthy since her childhood and he was sure that the first twins were male and female as they lived in the neighbourhood and were frequent visitor at each other's house. In his cross-examination, he stated that he did not visit the hospital when the twin babies were born but came to know from the villagers that twins were born. He also stated that he had not seen the birth record of the hospital where the details of birth of twin children were given.

25. After the completion of the prosecution witnesses, the statement of the appellant was recorded under Section 313 Cr.PC on 11-12-2023. In his statement, the appellant stated that he was on his way to Shillong and lost his way and that was the first time he had come to that side. He stated that he was on the road and did not understand the language of the people there. He stated that he was outside and never entered the house, people came and were hitting him and he lost his sense. He did not do anything wrong. He stated that he did not have any witness.

26. The charge-sheet and the fact of the case recorded by the learned Trial Court reveal that the investigation of the case was initiated on the basis of a telephone call received by the Umiam police station on 26-01-2015. PW-8, the Investigating Officer, who visited the place of occurrence on the same day accompanied by one SI Sunny Lyngrah, stated that she was directed by the Officer-in-Charge (PW-7) on 26-01-2015 at 5.30 PM, to visit the place of occurrence as there was a sexual assault



case. However, PW-7, the Officer-in-Charge, in his deposition, did not mention anything about receiving telephonic information from anyone on 26-01-2015. On the contrary, he stated that he received the written FIR filed by PW-1 on 27-01-2015 at 1.30 PM vide G.D. Entry No. 8 dated 27-01-2015 and thereafter, registered the Umiam P.S. Case No. 07 (01) 2015 and endorsed the investigation of the case to PW-8. There is nothing on record to show that any G.D. Entry was made on 26-01-2015 on the basis of any telephone call. The prosecution has not thrown any light into this aspect of the matter.

27. PW-8 stated in her deposition that on reaching the place of occurrence, she saw the appellant sitting injured in the verandah of the house, so she sent him to Civil Hospital, Shillong along with SI Sunny Lyngrah. Her statement further revealed that the appellant was admitted in Civil Hospital, Shillong where he stayed as indoor patient from 26-11-2015 till the time he was brought to the Umiam PS on 03-02-2015. The prosecution did not examine SI Sunny Lyngrah as a witness in the trial.

28. The evidence of the survivor could not be recorded by the Trial Court as according to PW-2, the survivor passed away on 30-03-2017 due to ailment. The statement of the survivor was also not recorded under Section 161 or 164 Cr.PC during the course of the investigation. PW-3 was the only eyewitness produced by the prosecution before the Trial Court.

29. The depositions of PW-1, the father of the survivor, and PW-2, the mother of the survivor, appear to be discrepant in many aspects. PW-1, in his deposition stated that when he used to go for his work, his wife (PW-2) used to stay back at home and take care of the house as she was a house wife. On 26-01-2015, at around 5.30 PM, on his way back home from



work, he came to know that somebody had entered his quarter, he rushed to his quarter and upon entering there, he saw one person sleeping on the bed inside the room covered with blanket. All his children had come out of the quarter, nobody was there in the quarter. He uncovered the blanket and dragged the person outside the quarter. Whereas, PW-2 in her deposition stated that on 26-01-2015, she along with her children and husband (PW-1) were at Block V, her first and second child were back at home at Block I. On their way back from Block V, they met one 'Bah Raja', an employee of Orchid Hotel. She and PW-1 both asked 'Bah Raja' as to where he was coming from, he responded that he was coming from their house at Block I and informed them that one person forcefully entered their house and their son had sought his help, he rescued their son and locked the intruder in the house. When they reached their house at Block I, they found the house bolted from outside and on opening the door, saw the appellant lying on the bed. They informed the village secretary and the matter was reported to the police.

The glaring discrepancy noticed from the above is that the PW-1, in his deposition, did not say that on 26-01-2015, he was coming back from Block V along with PW-2 and his children. He also did not state anything about meeting 'Bah Raja' on the way and that 'Bah Raja' rescued his son. Further, there is nothing in his deposition about informing the village Secretary and reporting to the police. In addition, PW-1, in his evidence stated that he filed the FIR before the police and the FIR was written by the Headman. He did not know the content of the FIR and had never instructed the Headman to file a compliant that the appellant had molested his daughter.



30. The evidence of PW-3, the brother of the survivor and the sole eye-witness, has a crucial bearing in the case and requires strict scrutiny, especially, when no direct statement of the survivor is available on record. PW-3 stated that after the appellant entered his house and dragged the survivor towards the bedroom, he went out looking for help and found one ‘Bah Raja’ sitting in a red alto car with another person. He narrated the incident to them and came back to the house and rescued the survivor from the clutches of the appellant. However, the statement of PW-3, in his cross-examination that there was a Bandh call on that day and there was no one around, stands contradictory to his statement of seeking help from ‘Bah Raja’. In addition, the version narrated by PW-2 disclosed that ‘Bah Raja’ rescued PW-3, not the survivor. Over and above, in the entire deposition of PW-3, there is no mention of commission of any sexual offence by the appellant. The evidence of PW-3, therefore, appears to be not above shadow of doubt and could not be solely relied upon without looking for corroboration from other prosecution witnesses.

31. The evidence of PW-4, the Medical Expert, does not help the prosecution case much as she did not say that the survivor was sexually assaulted. As per her statement, the survivor had tenderness in her neck and pain in the abdomen and thigh, but no other external injuries. She did not speak of existence of any visible injury on the private parts of the survivor. The evidence of PW-5, another Medical Expert, does not concern the survivor. He conducted medical examination of the appellant on 26-01-2015 and confirmed that the appellant was admitted at male surgical ward for observation. The evidence of PW-6, is not much relevant in the context of the present case as he examined the appellant only in order to ascertain whether the appellant was suffering from



Schizophrenia and as per his evidence, he could not come to any conclusion for want of detailed medical history of the of the appellant.

32. The evidence of PW-7, the Officer-in-Charge Umiam Police Station, does not support the prosecution version of the case insofar as it relates to initiation of investigation on 26-01-2015 by PW-8 on the basis of a report of occurrence of sexual assault case. His evidence makes it clear that investigation of the case was endorsed to PW-8 only after receiving the written FIR from PW-1 vide G.D. Entry No.8 dated 27-01-2015 and registration of the Umiam P.S. Case No. 07 (01) 2015. It appears that no discussion has been made by the Trial Court on this aspect of the matter.

33. The investigation by PW-8, insofar as it relates to the incident of 26-01-2015, appears to have taken place before the FIR of the case was registered on 27-01-2015. It is not clear as to how she received the information of a sexual assault case on 26-01-2015. The Sub-Inspector, who, as per the evidence of PW-8, accompanied her on 26-01-2015 to the place of occurrence, was not examined as a witness in the case. There is nothing in the evidence to show that PW-8 had tried to ascertain the age of the survivor before filing the charge-sheet under the provision of the POCSO Act, 2012. The medical certificate seized vide Ext-8 concerning the medical condition of the survivor, was not produced before the court at the time of the trial of the case. The evidence of PW-8, though, appears to be lengthy and elaborate, does not point out as to how a case of sexual offence has been made out against the appellant in the charge-sheet.

34. In the enquiry for determination of age of the survivor, the PW-2 was examined by the Trial Court as CW-1 on 01-11-2023. It was stated by CW-1 that the survivor was a minor at the time of the incident and her date of birth was on 29-05-1997. The CW-1 exhibited Ext C1, a baby report at



birth, issued by the hospital, in support of date of birth. Her statement while deposing as CW-1, reveals that she had given birth to twins, a female and a male, on 29-05-1997 at Ganesh Das Hospital, Shillong. The male child passed away on 31-05-1997. The female child was the survivor. Perusal of Ext C1, which concerns the survivor, would show that word 'Fe' was added before the word 'Male'.

CW-2, the official witness from the hospital, while deposing before the Trial Court on 09-11-2023, exhibited Ext C6 as the relevant page of the birth register maintained by the hospital from 20-04-1997 to 04-10-1997. He further exhibited Entry Nos. 417 & 418 for the month of May, 1997 pertaining to the record concerning CW-1 (PW-2) and PW-1, wherein it was recorded that two male children were born to CW-1 (PW-2) on 29-05-1997 at 1.40 PM and 1.41 PM respectively. The Entry Nos. 417 & 418 were exhibited as Ext C6/1 and C6/2 respectively. There was no mention of birth of any female child.

To clarify the above contradiction, CW-1 was re-examined again on 20-11-2023 where she reiterated that she gave birth to twins on 29-05-1997, the first twin was a female and the second twin was a male. The survivor was her eldest child. However, she did not say anything with regard to Ext C6, C6/1 and C6/2. CW-3, the independent witness named by the CW-1, did not support the statement of CW-1 as she stated that she thought that their (PW-1 & PW-2) first child was a son and then twins were born to them. The deposition of CW-4, the Headman of the village also did not throw any light in the matter as he stated that he was sure that the first twin children were Male and Female, meaning thereby that the male was the first twin and the female was the second.



35. It is surprising that though CW-1 exhibited Ext C1, during the course of recording of her deposition on 01-11-2023, the Ext C1 was not shown to CW-2, the Official Witness, who was examined on 09-11-2023 and exhibited birth register of the hospital as Ext C6 and Entry Nos. 417 & 418 as Ext C6/1 and C6/2 respectively showing that two male children were born to CW-1 on 29-05-1997 at Gensh Das Hospital, Shillong. Even the learned Trial Court also did not make any effort to seek clarification with regard to the addition of word 'Fe' before 'Male' in Ext C1 from the official witness, instead re-examined CW-1 to explain the discrepancies, who miserably failed to do so. The evidence of CW-2 was recorded on the basis the questions put by the prosecution and at no point of time any doubt was raised by any of the parties to lend discredit to the evidence of CW-2 and the documents exhibited by him. The learned Trial Court accepted that the survivor was born on 29-05-1997 by holding that it appeared plausible that an error was committed in the record of the Ganesh Das Hospital and both twins were recorded as male in the baby register whereas one child was female and the correction appeared to had been made in Ext C1 but not in the hospital record, without any evidence on record to support such reasoning. On the contrary, no question was asked to CW-2 with regard to possibility of occurrence of any error in the Ext C6, Ext C6/1 and Ext C6/2. Normally, a baby report at birth is issued on the basis of the related entry made in the birth register maintained by the hospital as the birth register is the primary official record of proof of date of birth. If any correction is required to be made in baby report, the same has to be done by first correcting the related entry made in the birth register. Failure to do so, will make the baby report invalid in law. In the present matter, there is no evidence to show at what stage and by whom



the word 'Fe' was entered before 'Male' in Ext C1. There is nothing on record to remotely suggest that the correction in Ext C1 was made by any authorised official of the hospital. Had there been any official correction in Ext C1, the same would have been endorsed by signature of the correcting official appearing beside the corrected entry. On the other hand, there is no evidence on record to show that the entries appearing at Ext C6/1 and C6/2 in Ext C6 are erroneous or fraudulent. It is very surprising that why PW-1, the father of the survivor, was not called to clarify the contradiction about the date of birth of the survivor. The learned Trial Court, therefore, committed an error by giving priority to Ext C1 by overlooking the Ext C6, C6/1 & C6/2 and, hence, the finding of the Trial Court in respect of age of the survivor cannot be accepted as correct.

36. As per the deposition of PW-1 and PW-2, none of them is an eye-witness and they came to know about the incident on 26-01-2015 on their way back home. While there is no mention of any 'Bah Raja' in the evidence of PW-1, PW-2 stated that they came to know about the forceful entry of one person in their house from 'Bah Raja'. It was 'Bah Raja' who rescued their son and locked the person inside the house. It is important to notice that there was no mention of any sexual assault to the survivor or that the survivor had to be rescued by 'Bah Raja'. The evidence of PW-3 that 'Bah Raja' had helped him in rescuing the survivor from the clutches of the appellant, therefore, becomes doubtful. The evidence of 'Bah Raja', thus, was essential for unfolding the actual prosecution case and for proving the allegations against the appellant. In absence of any such evidence, the statement of PW-3 cannot be relied upon for convicting the appellant.



37. Furthermore, the evidences of PW-1 and PW-2 reveal that when they arrived home, they found the appellant sleeping on a bed covered with blanket and PW-1 had dragged him out of the house. None of the witnesses stated that the appellant was having any injury on his person. There is also no statement by them that the appellant was assaulted by an angry mob after he was dragged out of the house. Therefore, it remains a mystery as to how the appellant received injury on his person for which he had to stay in hospital as an indoor patient for observation. In fact, the evidence of PW-8 that she recorded the statement of the appellant on 30-01-2015 in the hospital after he partially recovered would confirm the fact that the appellant had taken some time to recover from injuries. In such a situation, it cannot be ruled out that the appellant was assaulted by some persons as he was a stranger to that part the area and there was a Bandh call as per the statement of PW-3. Hence, it would be unsafe for the Court to act solely upon the evidence of PW-3 by ignoring the other material aspects of the matter to hold the appellant guilty of the offences.

38. The authorities cited by the learned Addl. PP are with regard to the settled law that the testimony or evidence of the sole eye-witness is sufficient for convicting the accused provided it is wholly reliable. However, the said proposition of law mandates that the Court has to consider whether it can be reasonably satisfied to act upon the testimony of single witness for the purpose of convicting the accused. In the present matter, as has been discussed above, the testimony of PW-3 is not sufficient to convict the appellant as it is clouded with grave suspicion and serious doubt. The authorities, as such, do not help the case of the prosecution in this matter.



39. In view of the observation made in the foregoing paragraphs, the question as to whether the Trial Court was right in convicting the appellant under Section 354/351 IPC without following the provision of law under Section 216 Cr.PC is not gone into by this Court.

40. In this matter, failure of the prosecution to clarify as to how the investigation of the case was initiated on 26-01-2015 and to produce 'Bah Raja' as a witness without any reason casts a serious doubt about the prosecution story of the case. There is also no clear evidence that the survivor was a minor at the time of the incident. In addition, the testimony of PW-3 did not point out any act of sexual assault by the appellant. The overall picture which emerges from the evaluation of the entire evidence on record does not inspire the confidence of this Court to hold the appellant guilty. The appellant, therefore, is entitled to benefit of doubt.

41. Resultantly, this Criminal Appeal succeeds. The impugned Judgement and Order dated 19-12-2023 and the related sentence dated 22-12-2023 passed by the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh in Special (POCSO) Case No. 34 of 2015 are set aside and quashed. The appellant is set at liberty forthwith if not required in connection with any other case.

42. The criminal appeal stands allowed.

43. Let authenticated copy of this judgment be furnished to the respective parties forthwith.

Judge

Meghalaya
28.03.2025
"Biswarup PS"

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