Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 39 of 2024

Date of CAV: 08.10.2026
Date of pronouncement: 29.10.2026

Millingstone Khardewsaw,
S/o Shri. Nolling Kharjahrin,
Village:Laitjynrai Rangblang,
District: South West Khasi Hills,
Meghalaya.
Presently lodge in District Jail, Nongpoh serving sentence.

...Appellant

- versus -

1. State of Meghalaya (represented by Chief Secretary of Meghalaya.

2. The Investigating, Mawkyrwat P.S. Case No. 26(9) of 2016.

....Respondents

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

Appearance:

For the Appellant : Mr. P. Yobin, Legal Aid Counsel

For the Respondent : Mr S. Sengupta, Addl PP

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 06.05.2021, passed by the learned Special Judge (POCSO), South West Khasi Hills District, Mawkyrwat, in POCSO Case No. 16 of 2016, convicting him for the offences punishable under Sections 5(m)(n)/6 of POCSO Act, 2012 and sentencing him, to suffer rigorous imprisonment of 24 years.

The court also in exercise of its power under Section 33(8) of the POCSO Act, 2012 read with Rule 7 of POCSO Rules, 2012 recommended compensation of ₹3 lakhs to be paid to the survivor by the Meghalaya State Legal Services Authority, Shillong. The compensation was awarded for rehabilitation of the survivor and treatment for her mental health.

2. Factual matrix of the prosecution case in brief is as under.

It is the prosecution case, that the PW2 (survivor) aged 10 years was sexually assaulted by her stepfather, i.e., the appellant on 04.09.2016, at their residence. When PW3 (mother of the survivor) returned home she saw that PW2 (survivor) in

an unconscious condition, pursuant to which she splashed water on her face; on regaining consciousness, her daughter (PW2) disclosed that the appellant had committed penetrative sexual assault on her. PW3 (mother of the survivor) thereafter, informed her brother (PW1), who had lodged an FIR with the Mawkyrwat Police Station on 06.09.2016 pursuant to which, the appellant was arrested and investigation commenced.

The Police during the course of investigation, recorded the statements of witnesses under Section 164 Cr.P.C., collected medical documents from the doctor, took photographs of the spot where the incident took place and also produced the appellant before the Magistrate (PW7), who recorded the confession of the appellant. After investigation, charge-sheet was filed in the said case in the Court of the learned Special Judge (POCSO), South West Khasi Hills, Mawkyrwat.

The prosecution in support of its case examined as many as eight witnesses. The said witnesses are as under:

PW1 – Uncle of the survivor.

PW2 – Survivor

PW3 – Mother of the survivor.

PW4 – Dr. Badira Mawlong, Senior Medical and Health Officer.

PW5 – Smti. I. Warlarpih, Staff Nurse.

PW6 – Dr. G. Wahlang, Gynaecologist Specialist.

PW7 – Mr. A. Nongbri, Magistrate.

PW8 – WPSI J.M. Kurbah, Investigating Officer.

3. The defence of the appellant was contradictory. While the tenor of the cross-examination of the witnesses points to the presence of the appellant, in the 313 statement, the appellant has denied the allegations.

4. The learned trial Judge after hearing the parties, was pleased to convict and sentence the appellant as stated aforesaid in paragraph 1. Hence, this appeal.

5. Mr. P. Yobin, appointed Legal Aid Counsel appearing for the appellant submitted that the prosecution had failed to prove its case beyond reasonable doubt and that the evidence of the witnesses does not transpire confidence and as such, the appellant be acquitted of the offences for which he was convicted.

6. Mr. S. Sengupta, learned Addl. PP supported the judgment and order of conviction and sentence dated 06.05.2021 and submitted that no interference is warranted in the same. He submitted that the evidence of the survivor (PW2) inspires confidence and that the said evidence is duly corroborated by her mother (PW3) and the doctor (PW4). He further submitted that the prosecution had also proved the confession made by the appellant to PW7 (Magistrate).

7. Having heard learned counsel for the respective parties and having perused the evidence with the assistance of both the learned counsel, we are only of the opinion that no interference is warranted in the said impugned judgment and order of conviction and sentence, for reasons to follow.

8. PW2 (survivor) was over 10 years old at the time of the incident and about 11 years of age at the time of her deposition. PW2 (survivor) has deposed that the appellant was her stepfather and that the incident took place on a Sunday, when her mother (PW3) had gone out in search for money and she was alone at home with the appellant. She has deposed that she was

planning to take a bath before going to the Church; that when she took out fresh clothes for bathing and was about to go for a bath, the appellant grabbed her, carried her to the bed, laid her on the bed; that the appellant opened her pant; that he also opened his pant up to his thigh and committed penetrative sexual assault on her; that she cried in pain but the appellant gagged her mouth with a cloth; that after completing the act, he threatened her not to disclose the incident to anyone or he would kill her; and thereafter, he tied both her hands from behind on a wooden pole inside the house and left the house. PW2 (survivor) has further deposed that after the incident, her mother came home and untied her; that she narrated the incident to her mother and then to her relatives as well as the doctor with respect to what had happened to her.

9. It is pertinent to note that there is no absolutely cross-examination with respect to the evidence deposed to by PW2 as stated aforesaid. Infact, the only cross-examination is as under:

> *"I felt pain on my private part when the accused person raped me. Whatever I have narrated in Court it is a fact."*

10. Thus, the appellant has in his cross-examination accepted that he had sexually assaulted PW2 survivor and whatever was narrated by her in Court was the fact.

11. The aforesaid evidence is duly corroborated by PW3 (mother of the survivor). PW3 has in her evidence deposed that the survivor was her biological daughter and that the appellant was her second husband and as such, a stepfather of her daughter. She has deposed that the incident took place on the Sunday morning when she had gone out to collect her dues from a person, who had given her work and as such, had left her daughter alongwith the appellant at home. She has stated that she had asked them to get ready to go to Church; that when she returned home at around 12 noon, she found her daughter unconscious, that both her hands were tied behind her back on a wooden post outside the house; that there was blood on her mouth and her legs; that she untied the hands of her daughter and splashed water on her face; that when her daughter regained consciousness, she carried her daughter to her sister's house, where her daughter disclosed that the appellant had committed penetrative sexual assault on her. She has stated

that on checking the private part of her daughter, she saw that her daughter was bleeding. She has further deposed that she stayed that night with her daughter (PW2) at her sister's house and thereafter, sought financial help on the next day, i.e., on Monday and after collecting the amount, she took her daughter to Mawkyrwat CHC for medical treatment. She has stated that when she reached the Mawkyrwat CHC, it was already night time and that that she informed the doctor that her daughter was unable to urinate and had stomach pain; that when the doctor inquired from her daughter about the pain, her daughter narrated that she was sexually assaulted by the appellant.

12. PW3 has further deposed that the doctor from Mawkyrwat CHC told her to take her daughter to Shillong for proper treatment on the same night. However, due to financial constraint she requested the doctor to keep her daughter for one night until her relatives could come; that on the following day, she transferred her daughter to Ganesh Das Hospital, Shillong in the Ambulance of Mawkyrwat CHC and thereafter, her daughter was under medical treatment for about one week in the said hospital.

13. PW3 has further deposed that when her daughter (PW2) was in the hospital, she had no proper knowledge as to with whom to lodge an FIR. However, she learnt on her return from Shillong that the appellant had already been arrested.

14. Again, there is no cross-examination of the said witness about the disclosure made by the PW2 (survivor) to her (PW3) or to the doctor (PW4) with respect to sexual assault by the appellant on PW2. Infact, in the cross-examination of PW3 it has come "*the accused person tied my minor victim daughter in a pole that supports the house near the bed.*" Thus, there is nothing substantial that has come in the cross-examination of PW3 to disbelieve her testimony or much less any suggestion as to why she would falsely implicate the appellant.

15. The aforesaid evidence is again, duly corroborated by the evidence of PW4, Dr. Badira Mawlong. PW4, in his evidence has stated that he was working in Ganesh Hospital, Shillong as a Senior Medical and Health Officer at the relevant time; that on 06.09.2016, the survivor alongwith her mother and uncle reached Ganesh Das Hospital; that before conducting the

medical examination, he recorded the brief history or the survivor and also her mother, and took the mother's consent for medical examination of the survivor. PW4, Dr. Badira Mawlong has further deposed that the survivor disclosed to him that on 06.09.2016 when her mother was not at home at about 8 to 8.30 a.m., the appellant asked her to lie down on the bed; took out her underwear and forcefully had sexual contact with her, and after the incident, he threatened her not to disclose the same. PW4 has further deposed that the mother of the survivor also disclosed to him that when she reached home, she found her daughter complaining of pain in the abdomen and bleeding in the private part; and that the mother had taken the survivor to Mawkyrwat CHC and had brought her from the said Mawkyrwat CHC to Ganesh Das Hospital.

16. PW4 has further deposed that the mother of the survivor had also disclosed to him that the Mawkyrwat Police had been informed of the incident. PW4 has also deposed that local examination of the survivor could not be done as the survivor was crying and refused to be examined due to pain, pursuant to which she was referred to a Gynaecologist for further

examination. However, the survivor refused to be examined due to pain. PW4 has further deposed that one of the doctors advised that the examination be done in the operation theatre and accordingly, on 07.09.2016, the genital part of the survivor was examined in the operation theatre under sedation. The examination reveals that the labia were inflamed and there was a hymenal tear at 5 O'clock position. PW4 has further deposed that the survivor was admitted at the Ganesh Das Hospital and was discharged only on 15.09.2016. PW4 has produced all the medical documents in support of his deposition.

17. It is pertinent to note, that since this witness was not cross-examined, on an application made by the learned counsel for the appellant, we had remitted the matter back vide order dated 30.06.2026, to enable the defence to cross examine PW4. Pursuant thereto, PW4 was cross-examined and the cross-examination papers have been placed before this Court.

18. Having perused the cross-examination of PW4, Dr. Badira Mawlong, we find that there is nothing in the cross-examination

to disbelieve his testimony with respect to the fact, that he found that the PW2 (survivor) was sexually assaulted.

19. The aforesaid evidence is also corroborated by PW6, Dr. G. Wahlang, Gynaecologist Specialist, who had also examined the survivor in the operation theatre of Ganesh Das Hospital under sedation (Anaesthesia). He has deposed that on medical examination of the private part of the survivor, he found both, labia majora and labia minora inflamed and that there was a hymeneal tear at 5 O'clock position.

20. Thus, from a perusal of the evidence of PW2 (survivor), it appears that the evidence of the survivor is reliable, trustworthy and credible. Infact, there is nothing on record in the cross-examination to disbelieve the testimony of PW2 (survivor) with respect to sexual assault on her. Infact, there is no challenge with respect to what is deposed to by PW2 vis-à-vis sexual assault on her by the appellant. The aforesaid evidence, by itself, is sufficient to convict the appellant. However, in the facts, the aforesaid evidence is duly corroborated by the evidence of her mother (PW3) and the doctors, i.e., PW4 - Dr. Badira Mawlong

and PW6 - Dr. G. Wahlang. The medical evidence clearly establishes that the survivor was sexually assaulted.

21. Although, the aforesaid evidence is sufficient in itself to convict the appellant, it is pertinent to note that in addition to the aforesaid, there is confession of the appellant recorded under Section 164 of the Cr.P.C. by the Judicial Magistrate First Class, South West Khasi Hills, Mawkyrwat.

22. In order to prove the confession, the prosecution had examined Shri. A. Nongbri, learned First Class Magistrate, South West Khasi Hills, Mawkyrwat, who recorded the statement of the appellant under Section 164 Cr.P.C. The confession was exhibited as Exhibit P-VIII**.** In the confession it is stated that the appellant had admitted having sexually assaulted his stepdaughter, i.e., PW2 (survivor).

23. Again, in the cross-examination, the appellant has not denied making the confession.

24. Considering the aforesaid evidence on record, the fact that the appellant had sexually assaulted his stepdaughter, aged 10

years and having regard the evidence from record, no infirmity can be found in the impugned judgment and order of conviction and sentence. The appellant has completely breached the relationship of trust between him and his stepdaughter, and had taken undue advantage of his stepdaughter by sexually assaulting her when his wife was not at home. Having regard to the aforesaid, no interference is warranted in the impugned judgment and order of conviction and sentence and as such, the appeal is dismissed.

25. The appeal is disposed of accordingly.

26. Since, the trial court has also recommended compensation of ₹3 lakhs to be given by the Meghalaya State Legal Services Authority to the survivor, a report to be submitted by the Secretary, District Legal Services Authority, South West Khasi Hills, whether the said amount has been disbursed to her or not. The said report to be submitted before this Court within six weeks.

27. The Registry to forward forthwith a copy of this judgment and order to the Secretary, DLSA, South West Khasi Hills

District, Mawkyrwat, to enable the Secretary to submit the report.

28. Place the aforesaid appeal for recording compliance of paragraph 25 on **21st December, 2026**.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice

Verified
Digitally signed by: SYLVANA LIZ KHARBHIH
Signed On: 29-10-2026 17:44:57 IST