

Serial No.04
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CrI.A.No.15/2021 with
CrI.M.C.No.49/2021

Date of Order: 20.04.2022

Sparding Nongbri Vs. State of Meghalaya

Coram:

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

Appearance:

For the Appellant : Mr. S.D. Upadhaya, Legal Aid Counsel
For the Respondent : Mr. N.D. Chullai, AAG with
Mr. S.Sen Gupta, Addl.PP

- i) Whether approved for reporting in Law journals etc.: Yes/No
- ii) Whether approved for publication in press: Yes/No
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JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appellant has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 for having committed aggravated penetrative sexual assault on his step-daughter of 14 years and sentenced to rigorous imprisonment for 20 years and a fine of Rs.30,000/-. In default of the payment of fine, the appellant is to suffer simple imprisonment for a further period of five months.

2. The appellant contends that the vague allegations of the alleged victim do not constitute any offence and the trial court erred in disregarding the unclear and somewhat fuzzy description of the incident by the victim to find that a case has been made out against the appellant for conviction under the most stringent provision. The appellant refers to his confessional statement recorded under Section 164 of the Code of Criminal Procedure, 1973, but submits that since the trial court did not go solely by the appellant's confession and called for evidence to be presented, the evidence adduced made out no case at all against the appellant.

3. Two persons were named as accused, based on the minor victim's statement. Since the appellant herein was the step-father of the minor victim, the appellant has suffered the more harsh punishment than the other accused who has got a lesser sentence. No appeal has been preferred by the other accused; or, at any rate, such appeal is not before this Court.

4. There is no doubt that in matters involving stringent punishments, trial courts do not go merely by the confessional statement of the accused and look at the evidence to otherwise assess the culpability of the accused. But that does not mean that the moment the

trial court requires the evidence to be presented, notwithstanding the confessional statement of the accused, the confessional statement loses all value or effect.

5. Indeed, if the confessional statement corroborates the complaint or if such confessional statement fills up any lacuna in the prosecution case or the evidence in such regard, the court can found the basis of conviction on the confessional statement upon relying on the overall evidence to be satisfied that the confessional statement was relevant.

6. The first information report came to be lodged at the Nongstoin Police Station on April 19, 2016. The mother of the victim, who is the wife of the appellant herein, asserted in the FIR that her second husband had raped her daughter since 2013 till the month of March, 2016 and that her daughter apparently informed her of the incidents only on April 15, 2016 that prompted her to file the FIR on April 19, 2016. In the statement of the victim recorded under Section 164 of the Code, she claimed that she had been raped twice by the appellant herein in 2013 and again in 2014, but was afraid to tell her mother as the appellant had threatened to kill her. According to the victim, the step-father attempted to rape the victim again sometime in the month of March, 2016, when

she managed to escape to a jungle. The victim went on to say that her step-father then sent Pherlin (the second accused) “to look for me in the jungle and when he found me he raped me in the jungle”.

7. In her testimony in court, the minor victim claimed without being specific as to the date of the latest incident that in the month of March, 2016, she was raped by her step-father in a jungle. The victim reiterated that when she had been raped earlier in 2013 and 2014, she was afraid to report the matter to her mother, particularly as the appellant herein had threatened to kill her if she reported the matter to any person.

8. The statement of the minor victim in her examination-in-chief does not indicate in any great detail as to when and how she was raped in March, 2016 and, by the time the victim was medically examined after the FIR was made on April 19, 2016, there were no signs of injury discovered on her person and the medical examiner concluded that there were no recent signs of the minor victim having had sex. However, in the detailed form that was filled up at the time of the medical examination on the victim, she indicated that the appellant herein had indulged in penetrative sexual assault with both his fingers and his penis and had also ejaculated inside her.

9. The appellant consciously made the confessional statement and clearly admitted the commission of the offence in the following words:

“I have made a mistake, I raped my step daughter twice as I was drunk/intoxicated both times this year.

“I don’t have anything else to say as I have made a mistake.”

10. In the impugned judgment of conviction dated November 26, 2020, the trial court has extensively dealt with the circumstances in which the charge-sheet came to be filed and all the material that was placed by way of evidence, to arrive at a conclusion that there was no doubt that the offence had been committed by, inter alia, the appellant herein.

11. This was not the everyday case of the complaint being confined to a solitary incident of rape. The victim complained of having been raped by the appellant several times since 2013. The victim only described the latest incident of March, 2016 and, her narration of the incident can, at best, be said to be somewhat vague and lacking in particulars. There is no doubt that she claimed penetrative sexual assault by the appellant herein and indicated that she reported the matter to her mother in March, 2016, but the mother did not believe her and admonished her before she complained to the Seng Longkmie, whereupon the mother lodged the FIR on April 19, 2016.

12. The FIR claimed that the mother was informed by the daughter for the first time on April 15, 2016, but it is evident from the victim's statement that she had brought the matter to the notice of her mother on March 16, 2016 itself.

13. Every matter has to be dealt with individually and on the basis of the material facts that emerge in the context of the applicable law. A complaint of a one-off case of rape has to be dealt with completely differently than a case of repeated rape over a long period of time. Indeed, even though the victim in this case recorded in her statement under Section 164 of the Code that she had been raped twice earlier in 2013 and 2014 and then in March, 2016 and the appellant also referred to having committed rape on the minor victim twice, the victim may have been subjected to repeated sexual assault over a period of time and, considering the trauma that the obviously uneducated victim suffered, she may not have been able to describe the saga in any great detail.

14. At the same time, in course of her medical examination on April 19, 2016, her statement recorded under Section 164 of the Code and in her later testimony in court, the victim clearly asserted having been subjected by the appellant to suffer penetrative sexual assault with penile penetration and discharge of semen. There is no dispute as to the

age of the victim, notwithstanding her assertion that she was told by her mother that she was 14 years old. In any event, it is the Judge who is the best person to assess the age of a victim and the trial court found the victim to be a minor and did not call for any medical examination in such regard. In the circumstances narrated by the victim, the confession was found to be sufficient for the appellant's conviction.

15. There is no real discrepancy in the victim's versions or any contradiction in the statements made by the witnesses called by the prosecution. To the extent that the victim's statement lacked in particulars, it had a natural flavour about it, including the fact that despite the victim having reported the latest violation of her on the day after the incident, her mother did not take her seriously.

16. It is equally possible that the mother being in a vulnerable economic position with no independent means to maintain herself and her minor daughter, may have dissuaded her daughter from pursuing the matter before it became public at the Seng Longkmie which constrained the mother to carry the complaint to Nongstoin Police Station. It may be the same story as in several other Indian homes where the complaints of sexual assault by children are brushed aside or ignored or even suppressed for one reason or the other, whether because of financial

disability or even the fear of publicity and its perceived adverse impact on the victim as the larger society still sees the victim as the culprit.

17. In the backdrop of the accusation of the victim in this case, the confession of the appellant herein as recorded in his statement under Section 164 of the Code completely corroborated what the victim had to say. The trial court, quite appropriately, did not rely plainly on the confessional statement to convict the appellant, but went through the rigmarole of a complete trial to satisfy itself that the acts complained of had actually happened and, inter alia, the appellant had committed the offence he was charged with.

18. For the reasons aforesaid, there does not appear to be any merit in the appeal. Once the appellant's confession is read in the context of the allegations levelled against him by his step-daughter, there is little to detract from the step-daughter's version of things, notwithstanding the earlier incidents of rape having been a few years prior to the FIR being lodged within four days of the latest incident of aggravated penetrative sexual assault suffered by the minor victim. The judgment of conviction took all relevant aspects into account. The evidence adduced and all relevant factors were taken into consideration and the applicable law referred to before arriving at the conclusion. There does not appear to be

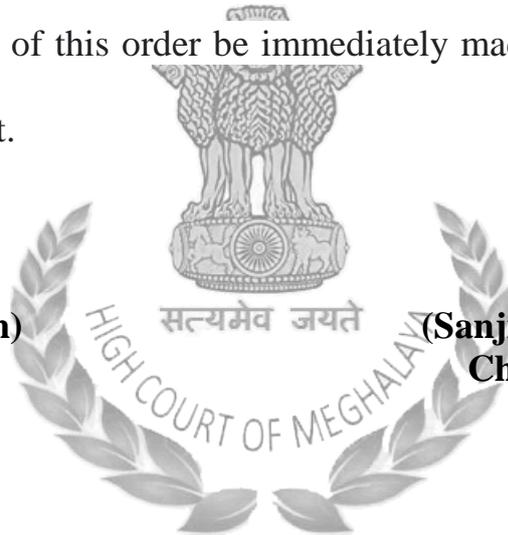
any infirmity in the judgment of conviction for the same to be interfered with. The sentence awarded follows by operation of law. There can be no doubt that this was a case of aggravated penetrative sexual assault since the appellant herein is the step-father of the victim.

19. CrI.A.No.15 of 2021 fails. The judgment of conviction and the order of sentence are upheld.

20. CrI.M.C.No.49 of 2021 is disposed of.

21. Let a copy of this order be immediately made available to the appellant free of cost.

(W. Diengdoh)
Judge



(Sanjib Banerjee)
Chief Justice

Meghalaya
20.04.2022
"Lam DR-PS"