

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.17/2022

Date of Order: 13.10.2022

Swill Lhuid Vs. State of Meghalaya & ors

Coram:

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

Appearance:

For the Appellant

: Mr. H.R. Nath, Adv with
Ms. R. Biswa, Adv

For the Respondents

: Mr. R. Gurung, GA

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

The appellant has been convicted under Section 5(m) of the Protection of Children from Sexual Offences Act, 2012 and sentenced to 15 years' rigorous imprisonment and a fine of Rs.10,000/-. In default in payment of the fine, the appellant is to undergo simple imprisonment for a further three months.

2. The judgment of conviction was passed on April 28, 2022 and the sentence was pronounced later on the same day.

3. The first information report in this case was lodged by the mother of the survivor. The mother claimed in the complaint that the appellant herein had raped her daughter who was seven and a half years old. The FIR lodged on March 4, 2018 claimed that the incident took place on March 2, 2018.

4. Prior to the lodging of the complaint, the girl child was taken to the district hospital at Ialong for medical examination. The report reveals that she was brought to the hospital at 4:30 pm on March 3, 2018 by her mother, aunt and another. The mother recorded in her statement given to the medical examiner that a 10-year-old neighbour informed the mother of the survivor that he saw the appellant was with the girl in the jungle near her residence. Upon being so informed, the mother reportedly asked her daughter and was told that the man “sexually assaulted her after luring her with Rs.10/- and bought ‘Rum Pum’.”

5. The medical examiner recorded in the report that the survivor had claimed that her vagina had been penetrated by the appellant’s penis and that there was ejaculation on her private parts. Upon the examination of the survivor’s genital parts, the medical report observed in connection with the examination of the survivor’s fourchette, introitus and hymen as follows:

“Laceration, red, tender on touch on Rt. side.”

6. Though the hymen was found to be intact but the laceration and tenderness was said to be as a result of penetrative activity within between 12 and 24 hours prior to the examination. The opinion expressed by the medical examiner in the report was that there were signs suggestive of recent vaginal penetration. However, the medical examiner issued a caveat to the effect that the final opinion would be expressed after receipt of the report from the forensic science laboratory. The forensic science report was

referred to since the vaginal swab of the survivor was obtained and sent for examination together with the clothes that the survivor claimed to have been wearing at the time of the incident.

7. It does not appear that any forensic science laboratory report finally arrived or was presented in course of the trial. It also transpires that the narration of the incident by the 10-year-old neighbour as reported by the mother of the survivor was quite at variance with the testimony of the concerned boy at the trial. The appellant contends that in the light of the exaggerated version of the neighbour's reporting of the incident by the survivor's mother, it is evident that the survivor and her family had some angst against the appellant to bring a completely baseless charge against him.

8. The appellant also maintains that the appellant was not medically examined to ascertain whether the appellant, said to be aged 60 at the relevant time, was capable of performing sex. The appellant suggests that apart from the fact that the hymen appears to have been intact in the present case, the medical examination was conducted more than 24 hours beyond the time of the incident and, as such, the tentative opinion expressed in the medical examination report to the effect that the survivor had been subjected to sexual assault within the previous 24 hours, would not cover the time of the incident.

9. Both the survivor and the young neighbour who reported the incident to the survivor's mother rendered statements under Section 164 of

the Code of Criminal Procedure, 1973. The survivor was consistent in the description of the material incident, though the appellant seeks to refer to perceived inconsistencies in her two statements. According to the survivor, the appellant apparently asked the survivor to come with the appellant on the relevant date when the survivor refused and the appellant, thereafter, offered to “buy snacks for me so I went with him.” The survivor then went on to recount the incident in the following words:

“He then took me to a forest which is far from my house and on reaching the forest he asked me to take off my pants and to lie down on the ground.

Later, he also took off his pants and insert his penis into my private part (vagina) and sexually assaulted me.

I cried and it was paining but he told me not to cry and also not to tell anyone at home.

After sexually assaulting me, he then took me to a nearby shop and bought 2(two) packets of Rum Pum for me and dropped me back home and saw him going to a wine store.

On reaching home, I shared the snacks bought by (*appellant*) to my siblings and did not tell anyone about the incident.

Mr. ... (*young witness*) who is my senior in school saw the incident that had happened to me in the place of occurrence and he told to other children about it who are also my relatives.”

10. In course of the trial, the young survivor claimed that the appellant came to her house and asked her to accompany him to buy eatables, but the appellant took her to a nearby jungle near the Civil Hospital, Ialong. The survivor continued, that on reaching the jungle, the appellant herein asked her not to inform anybody of the incident. She then recollected,

“Thereafter, he took off my pants and he also took off his pant and lie on top of me and he inserted his private part into mine

and I cried as it was paining and the accused person asked me to keep quiet and not to cry.”

11. The young girl went on to say that the appellant thereafter bought two packets of snacks and left her at her grandmother’s house. She recounted that on the next morning, the neighbour named Dayoodap “informed my mother as he saw the incident that happened in the jungle.” The girl remembered that she was taken to the Civil Hospital at Ialong where “I was informed that there is tear in my private parts ...”

12. Though it appears that the survivor was subjected to some searching cross-examination, she held firm, both as to the narration of the incident and the fact that the incident was witnessed by a young neighbour named Dayoodap.

13. By the time the young neighbour was examined at the trial, he was 14 years old. He claimed that he was on his way to buy biscuits on the relevant date when he saw the accused taking the survivor to the nearby jungle “and in the jungle I saw the accused person hugging the victim ...”

14. Though the young witness indicated in his cross-examination that he did not see the appellant herein committing penetrative sexual assault, but he maintained that he saw the appellant hugging the victim.

15. The rest of the evidence, including that of the medical examiner, does not add to or detract from the overall picture as made out. The only further thing of note is that in the young witness’s statement recorded under Section 164 of the Code, he indicated the time of the incident to be around 5 pm or thereafter.

16. The trial court referred to the entirety of the evidence, particularly the statements of the survivor, those of the 10-year-old witness and of the mother of the survivor who had lodged the complaint. The trial court referred to Supreme Court judgments to the effect that if the statement of the survivor appeared to be honest and acceptable, the fact that such statement was not corroborated by any other would not detract from the veracity or credibility thereof. In such light, the trial court went on to analyse what the young survivor had stated, both before the magistrate in course of her statement recorded under Section 164 of the Code and in course of her testimony at the trial. The trial court found no material inconsistency in the narration or description of the incident. The trial court referred to the mother's version of what the 10-year-old witness reported to her and the testimony of the then 14-year-old witness and found no anomaly or exaggeration that would diminish the acceptability of the complaint.

17. There is no doubt that in the evidence of the mother of the survivor, she claimed that the 10-year-old Dayoodap had reported to her that he had seen the appellant raping the survivor. However, in his own statements before the magistrate and at the trial, Dayoodap merely referred to the appellant hugging the survivor. Indeed, Dayoodap admitted in the cross-examination at the trial that he had not witnessed penetrative sexual assault by the appellant on the survivor. There is no doubt that the relevant boy did not assert in course of either statement that the appellant had raped

the survivor, but the boy maintained that the appellant had embraced the survivor. This would lend credence to the survivor's statement and the understanding by the mother of the survivor that the embrace that the young witness referred to was the act of the appellant raping the survivor.

18. The matter appears clear from the answer given by the appellant in course of his examination under Section 313 of the Code. In response to the first question put by the trial court as to the assertion of the complainant that the appellant had raped the complainant's daughter, the appellant claimed that on the relevant date, he was on his way to the Civil Hospital at Ialong when he met the survivor and the survivor asked the appellant to buy her some eatables for which the appellant gave her Rs.10/- and "I left her". Contrast the above version of the appellant with his answer to the third question put to him by the trial court. So that the appellant's words are not distorted, the entirety of his answer to the third question is extracted:

"I went to buy eatables for the victim and took her for a walk. When I attend nature call, suddenly the victim ran towards me as she is afraid of some people"

19. It may do well to notice at this stage that the third question put to the appellant in course of his examination under Section 313 of the Code pertained to the mother of the survivor asserting that she had confronted the appellant with the young witness and the appellant had violently reacted thereto. Clearly, the appellant's answer to the third question contradicted the appellant's answer of the first question when he claimed to have given

some money to the survivor upon being asked to buy eatables for her and having left her.

20. More contradiction is found in the answer to the fourth question. As noticed earlier, the third question pertained to the mother of the survivor confronting the appellant with the young witness. The fourth question pertained to the mother's assertion that the appellant had attempted to assault the young witness when the mother had confronted the appellant with the young witness. To the fourth question, the appellant answered thus:

“I denied it, in fact it was Ribha (*mother of the survivor*) who assaulted me three times. It was only me and Ribha who was present and Ioodap Pale (*the young witness*) was not present when she confronted me.”

21. The appellant's answer to the fourth question and the complete denial of the young witness being present when the mother of the survivor confronted the appellant, is in sharp contrast to the veritable admission of the presence of the young witness in the appellant's answer to the third question.

22. Thus, to start with, the appellant claimed that his interaction with the survivor on the relevant date was limited to the survivor requesting the appellant for some eatables and the appellant giving her Rs.10/- and walking away. He altered his stand to next say that he went to buy eatables for the survivor and took the survivor for a walk. As to the young witness's assertion that he hugged or embraced the survivor, the appellant made out a story that the survivor was afraid of some people and ran towards the

appellant even when the appellant was answering the nature's call. To top it all, the appellant denied having been confronted by the young witness, though the appellant had virtually admitted to the same in response to a previous question.

23. There is no doubt that the material collected in course of the medical examination should have been tested and the forensic report presented at the time of the trial. But judicial notice has also to be taken of the inordinate time – sometimes running into years – taken by the forensic science laboratories or of reports not being collected in the tardy process of investigation that is conducted in this country. Oftentimes, because of the lack of sufficient personnel, the investigating agency is severely handicapped in the conduct of the several investigations simultaneously.

24. Without attempting to fill in any lacuna that may have been left by the investigation, it is necessary to ascertain whether the mere failure to obtain or produce the FSL report would be fatal to the case made out by the prosecution here. Here was an 11-year-old girl recounting an incident that had taken place four years earlier and corroborating, almost to the finest detail, the statement that she had contemporaneously rendered under Section 164 of the Code. Apart from the fact that the statement of the survivor in this case comes through as natural and believable, there is no case of any motive made out against either the survivor or her mother. Indeed, not only did the appellant fail to explain his presence at the place of occurrence, but in the contradictory statements made by the appellant in

course of his examination under Section 313 of the Code, the guilt of the appellant clearly comes through.

25. Penetrative sexual assault, for the purpose of the relevant provision, does not require deep or complete penetration. The slightest amount of penetration would suffice for the purpose. The medical examination report revealed penetration, albeit at the level of the introitus. Even though the hymen may have been intact so as to indicate that the extent of penetration may not have been to any great length, the factum of penetration was medically established. There is no basis to the appellant's assertion that the examination was conducted on the survivor long after the time of the alleged incident, particularly since the young witness claimed the incident to have taken place at or after 5 pm on March 2, 2018 and the survivor was examined at or about 4:30 pm on March 3, 2018. It is true that the appellant ought to have been medically examined to ascertain whether he was capable of maintaining an erection, given the age attributed to the appellant at the time of the commission of the offence. However, merely because the investigating agency may not have been alert would not otherwise require the case made out against the appellant to be thrown out on such score.

26. The trial court viewed the incident on the basis of the oral evidence that was presented at the trial and in the light of the statements earlier recorded under Section 164 of the Code. The trial court was justified

in arriving at the conclusion that it was established beyond reasonable doubt that the appellant had sexually assaulted the minor survivor.

27. There is no merit in the appeal and no cause for interference with either the judgment of conviction or the consequent sentence awarded to the appellant.

28. Crl.A.No.17 of 2022 is dismissed.

29. 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
13.10.2022
"Lam DR-PS"

