

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A.No.5/2020

Date of Order: 14.03.2022

Cheerfulson Snaitang

Vs.

State of Meghalaya

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. SD Upadhaya, Legal Aid Counsel

For the Respondent(s) : Mr. S Sengupta, Addl.PP with
Mr. AH Kharwanlang, GA

i) Whether approved for reporting in Law journals etc.: Yes/No

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

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

The principal ground urged in this appeal is that though the appellant has been found guilty of having committed rape and sentenced to ten years' imprisonment and payment of fine of Rs. 25,000/- (in default to suffer imprisonment for an additional six months), no case of penetration in terms of Section 375 of the Indian Penal Code, 1860 was made out.

2. The matter pertains to an incident of September 23, 2006 in respect whereof a complaint was lodged on September 30, 2006, whereupon the minor victim was medically examined on October 1, 2006. Such examination revealed that the victim's vagina was tender and red and her hymen was ruptured. The opinion rendered by the medical examiner was that the girl had been raped and was suffering from mental trauma. The medical examiner substantiated his opinion in course of his evidence at the trial and maintained that the nature of the tear of the hymen in this case

indicated that it was upon being pushed by a foreign body and not due to the victim being involved in any arduous sporting activity.

3. The first information report came to be lodged upon a women's organisation in the locality coming to know of the incident. Indeed, the complaint referred to the appellant herein having confessed to the commission of the crime before the local Dorbar. The investigating officer also deposed at the trial to the effect that the appellant had confessed that he had committed the offence. However, since such extra-judicial confession could not have been taken cognizance of, the trial court merely referred to the statement rendered by the appellant under Section 164 of the Code of Criminal Procedure, 1973, wherein he clearly admitted to having raped the victim.

4. In support of the appellant's case that there was no rape and the appellant's confession had to be discarded, it is the victim's oral evidence at the trial that is placed. In course of the examination-in-chief, the victim claimed that the appellant herein grabbed the victim and took the victim to a bed where he made the victim lie down before "he took off his pant and he pulled my under garments and then he raped me". However, in her cross-examination, the victim had this to say:

"... After the accused entered my house he caught hold of my hands, opened his long pants and mine, but he did not open my under wear, he then took me to the bed which was in the bedroom and then rape me. I did not scream for help when I saw the accused opened his under pant as I was scared of him. I did not feel pain after the accused had rape me. It is a fact that the accused person did not penetrate his male organ inside my vagina but he just rubbed from the top of my under wear. It is a fact that I was tutored by my mother before I came to the Court today".

5. According to the appellant, if the victim's underwear was not taken down and the appellant merely rubbed himself on the victim's crotch while she still wore her underpants, there would be no commission of any rape. The appellant also asserts that considering that the appellant is of average intellect with no formal education, his confession must be regarded as having committed a wrong, but merely because his translated statement reveals that he had confessed to having committed rape, it would not imply that there was penetrative sex, particularly since the victim's version is such that would rule out any element of penetration, which is the key to the commission of the offence of rape.

6. The appellant is critical of the impugned judgment of October 31, 2018 to the extent that the trial court has glossed over such aspect of the matter upon the trial court placing over-reliance on the purported confession. The underlying submission on behalf of the appellant is that since it was the Executive Magistrate who translated the answers given by the appellant into English, it is possible that the Executive Magistrate translated what he perceived the appellant had said, rather than what the appellant may actually have said. The appellant submits that when the victim claimed that the appellant merely rubbed himself on the victim's underwear and the victim felt no pain, as she categorically asserted in course of her cross-examination, no case of rape was made out for such harsh punishment to be imposed on the appellant.

7. One must read the evidence in its entirety and also be aware of the status of the persons involved, their levels of education, understanding and intellect. When it is evident that the ten-year-old victim, upon being medically examined about a week after the incident, still showed signs of

tenderness in her vagina and her hymen was torn, there is sufficient evidence of penetrative sex. The victim also indicated that the appellant herein pulled at her underpants. In the light of the victim's assertion in the examination-in-chief, what she said in her cross-examination must be seen in the appropriate perspective and a degree of latitude has to be granted to the victim, even though she was an adult when the trial was conducted, that she would be flustered, nervous and extremely uncomfortable in such details being sought.

8. Even if the victim's evidence in her cross-examination is taken at face value, it would not imply that there was no penetrative sex. If it be accepted that at the relevant time the victim was wearing her underpants and the appellant rubbed his organ from over her underpants, there was no difficulty in penetration. Penetration for the purpose of Section 375 of the Penal Code does not have to be complete. Any element of penetration would suffice for the purpose of the relevant provision. Further, Section 375(b) of the Penal Code recognises that insertion, to any extent, of any object into the vagina or urethra would amount to rape. Even if it be accepted that the appellant herein forced his organ into the vagina or urethra of the victim despite the victim wearing her underpants, it would still amount to penetration for the purpose of Section 375(b) of the Penal Code.

9. In any event, by virtue of Section 375(c) of the Penal Code, when a person manipulates any part of the body of a woman so as to cause penetration into, inter alia, the vagina or urethra, the act would amount to rape. There is sufficient evidence of such penetration in the present case.

10. Whatever may have been the reasons for the victim claiming that she did not feel any pain at the time, she complained of pain when she was medically examined on October 1, 2006 and the medical report confirmed

the same. The medical report also confirmed the tenderness in her vagina which also revealed redness and the ruptured hymen. In the absence of the appellant herein establishing any alternative reason for the victim suffering the tenderness in her vagina or ruptured hymen or pain that she complained of in the context of the physical abuse that she was subjected to, merely because the victim may have said that she did not endure any pain at the relevant time may not absolve the appellant herein of his guilt.

11. The trial court may have done better in focussing on such aspect of the matter. However, the Court cannot be blamed for overlooking such aspect in the light of the unequivocal statement of the appellant before the relevant Magistrate under Section 164 of the Code. After all, admission is the best form of proof. At any rate, there was no attempt to detract from the confession or explain the same. As to the ground urged that the appellant was not allowed sufficient time to reflect on his confession, the evidence of the Magistrate is a complete answer; and, a degree of sanctity has to be accorded to a statement recorded under Section 164 of the Code by a disinterested responsible official.

12. On an overall appreciation of the evidence, it does not appear that there was no penetration in course of the appellant forcing himself on the victim on the relevant date, warranting any interference with the judgment of conviction of October 31, 2018. Since the victim was a minor and since the appellant confessed that he lost control over himself and committed the offence, the punishment awarded to the appellant herein does not appear to be out of place.

13. Accordingly, Crl. A. No. 5 of 2020 fails. The judgment of conviction and the resultant sentence are affirmed.

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

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
14.03.2022
"Santosh-P.S."

