



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 22 of 2024

Date of Decision: 09.03.2026

Shri. Arnab Lamin,
Son of (L) Bidren Latam,
Resident of Lumshnong Village, P.S
Khliehriat, East Jaintia Hills, Meghalaya.

..... **Appellant**

Vs.

State of Meghalaya represented by the
Commissioner & Secretary to the
Department of Home (Police)
Government of Meghalaya, Shillong-793001.

..... **Respondent**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M. Sharma, Legal Aid Counsel.
Ms. T. Buam, Adv.

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

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

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



Per W. Diengdoh, (J):

JUDGMENT AND ORDER

1. On the basis of an FIR dated 17.06.2015, lodged before the Officer In-Charge, A.D. Camp Lumshnong by Smti. Dhunlang Patlong, wherein an allegation has been made that one person by the name Arnab Lamin, on 16.06.2015 at about 04:30 PM had invited her minor son aged about 8 years old to accompany him by offering corn, thereafter, he took him to one rented house belonging to his mother-in-law, and upon entering the said house, he locked the door and thereafter, he took off her son's clothes and committed sexual assault. After the act, he released her son and threatened him not to disclose the same to anyone or else he will beat him. When her son came home, she noticed he was suffering and could not sit properly. On being questioned, he related everything that had happened to him. The FIR was filed with a prayer to punish the said perpetrator in accordance with law.

2. The In-charge A.D. Camp Lumshnong forwarded the said FIR to the Officer In-Charge, Khliehriat, the same being received at about 03:45 PM on 17.06.2015, whereupon, a case being Khliehriat P.S Case No. 277 (6) 15 under Section 506 IPC read with Section 6 of the POCSO Act was registered. On the same day at about 01:30 PM, the alleged perpetrator, that is Shri. Arnab Lamin was arrested by the police and remanded to police custody.



3. Accordingly, investigation was launched and the Investigating Officer had carried out the investigation by following due procedure, that is, initially sending the victim as well as the accused person for their respective medical examination on 17.06.2015. In due course, the investigation on being completed, the Investigation Officer had filed the Charge Sheet with the remark that in course of investigation, a prima facie case under Section 506 IPC read with Section 18 of the POCSO Act, has been found well-established against the accused person, namely Shri. Arnab Lamin and he is directed to stand trial before the court of law.

4. On 24.05.2016, the case of the accused/appellant herein, came before the Court of the learned Special Judge (POCSO) in Special Sessions Case No. 25/2015, on which the charges against the appellant herein were framed being under Section 506 IPC read with Section 6 of the POCSO Act.

5. The prosecution has then brought to the witness stand as many as 10(ten) witnesses, including the complainant, who was examined as PW-1, and the victim who was examined as PW-3. The doctor who had conducted the medical examination upon the victim as well as the Investigating Officer, were also examined as Prosecution witnesses among others.

6. On the evidence of the prosecution witnesses being recorded finally, the learned Trial Judge had recorded the statement of the accused/appellant under Section 313 Cr.P.C on 12.01.2022. The appellant was



then called upon to adduce evidence, has rejected the offer, and accordingly, the final argument of the parties was heard by the court, eventually leading to the passing of the impugned judgment and order dated 07.03.2022, finding the accused/appellant guilty for having committed the offence under Section 5(m)/6 of the POCSO Act, 2012 read with Section 377 and Section 506 IPC. On the same day, that is, on 07.03.2022, the learned Trial Judge heard the parties on the points of sentence, and has accordingly awarded the quantum of punishment as:

- (i) for conviction u/s 5(m) punishable u/s 6 of the POCSO Act the accused is directed to undergo rigorous imprisonment for 10 years with fine of ₹ 2,00,000/- (Rupees two lakhs).
- (ii) for conviction u/s 377 IPC, rigorous imprisonment of 10 years with fine of ₹ 1,00,000/- (Rupees one lakhs).
- (iii) For conviction u/s 506 IPC, 2 years simple imprisonment.

The sentence to be served concurrently.

7. The accused/appellant being highly aggrieved by the said punishment and fined imposed upon him, has now approach this Court with this instant appeal, with a prayer to set aside and quash the impugned judgment and sentence. He is duly represented by a Legal Aid Counsel.



8. Heard Mr. M. Sharma, learned Legal Aid Counsel (LAC), who has narrated the brief facts of the case as has been indicated hereinabove. While assailing the impugned judgment and sentence, the learned LAC has submitted that the Trial Court has failed to appreciate the evidence in a correct manner, and has therefore, come to a wrong finding and conclusion thereof, leading to the conviction of the appellant herein.

9. While referring to the evidence of the complainant, who is also the mother of the survivor, when in her deposition, she has narrated the event which led to her discovery of the alleged offence committed by the appellant, in that when she reached home at about 08:00 PM on 16.06.2015, she saw the survivor crying and was informed by her eldest daughter, that the survivor is unable to sit down as a result of what the accused/appellant had done to him. On examination of the survivor's back side, she saw that the anus has been sexually abused. Immediately, she informed her father's youngest brother as well as her mother, and together they went to the house of the mother-in-law of the accused/appellant to confront him. However, the prosecution has failed to produce the said uncle and the mother of the complainant as witnesses, and as such, the complainant's evidence has not been corroborated.

10. As to the evidence of PW-2, the sister of the survivor who has stated that on the day when the incident happened at about 04:00 PM, the accused/appellant came to their house and called the survivor to go with him



to pluck corn from his garden, when her brother did not return after a long while, she went to look for him and called out to him. Then, she saw her brother came out of an empty house, which was situated near the garden, such house being the house of the mother-in-law of the accused/appellant. She then took her brother home and when he cried, she asked him what happened, after which he related what the accused/appellant had done to him. The learned LAC has contended that this evidence cannot be relied upon since it was hearsay evidence, the said sister, not having witnessed the incident, but had heard it only from the survivor.

11. Learned Legal Aid Counsel (LAC), has further submitted that though the survivor in his evidence in court as PW-3, has narrated the sequence of event of what happened that day, that the accused/appellant had called him to go and pluck corn, but instead he had taken him to a house in the garden of his mother-in-law, and there, he has sexually assaulted him (survivor). He tried to free himself from the accused/appellant but failed, it was only when he heard his eldest sister (PW-2) calling his name that the door was open by the accused/appellant to let him out, not before he had threatened him (survivor) not to disclose the matter to anybody. However, the survivor has then revealed the incident to his sister and mother. In his statement, under Section 164 Cr.P.C, the survivor had not said anything about hearing his sister calling him. Therefore, since there is no detailed explanation of how the



incident occurred, the conviction of the accused/appellant being solely on the ground of the testimony of the survivor and his statement under Section 164 Cr.P.C, the case has not been proved beyond reasonable doubt.

12. It is also the submission of the learned LAC, that the prosecution has not been able to prove the age of the survivor, either through documentary or medical evidence. The observation of the learned Trial Judge at para 9 of the impugned judgment, that the age of the survivor, being 8 years at the time of the incident, has not been disputed by the accused, and cannot be accepted since such fact has not been corroborated by either in the statement made by the survivor under Section 164 Cr.P.C, or even by the doctor who had examined the survivor when he did not indicated anything about the age of the survivor. Merely, because the accused/appellant have not challenged the age of the survivor during the trial, the onus to prove such facts lies with the prosecution which has not been done so. This is relevant since the conviction of the accused/appellant has been made in relation to the corresponding age of the survivor, the quantum would have been different, if the survivor has not been proven to be below 12 years at the time of the incident, submits the learned LAC.

13. Going further on this issue, the learned LAC has submitted that, though, the doctor who has examined the survivor in his deposition as PW-4, has opined that he found tenderness, redness and stretch marks in the anus of



the survivor, however, this witness has not stated that the survivor was subjected to aggravated penetrative sexual assault. The doctor who has medically examined the accused/appellant at the relevant point of time, while observing that there was swelling in his scrotum and on the right inguinal (right side groin), nothing has been observed as to whether the accused/appellant could or could not have committed aggravated penetrative sexual assault on the survivor. On a cumulative appreciation of this piece of evidence, assuming, but not admitting, in the extreme case, the accused/appellant could have been punished at the most under Section 7 of the POCSO Act.

14. The learned LAC has also assailed the impugned judgment, wherein is found the action of the Trial Court, where for the first time in the proceedings the learned court has invoked Section 377 of the Indian Penal Code, read with Section 5(m) of the POCSO Act, to also convict the accused/appellant for the offences under such provision apart from those sections of law upon which charges have been framed. Even though, the learned Trial Court had elaborately sought to justify this recourse by citing the provision of Section 215, 216(1) and 464 Cr.P.C., to say that since under the facts and circumstances of the case of the prosecution, the accused/appellant is made aware of the substance of the allegation and the evidence against him, therefore, the addition of the said section, that is 377 IPC, cannot be termed



as a miscarriage of justice qua the accused/appellant. However, the addition of such new section of law to indicate a different nature of offence, without any justification and proof, the accused/appellant was therefore at a disadvantage without any opportunity given to him to re-strategize his defence. Even so, the fact that it has not been proven anywhere without reasonable doubt that there was penetrative sexual assault or carnal intercourse in view of the medical evidence, as such, the impugned judgment has to be set aside only on this ground alone, submits the learned LAC.

15. In support of the accused/appellant's case, the following case laws have been cited:

- i) **Central Bureau of Investigation v. Karimullah Osan Khan, (2014) 11 SCC 538, para 17, 18, 19;**
- ii) **DR Nallapareddy Sridhar Reddy v. State of Andhra Pradesh and Ors, (2020) 12 SCC 467, para 21 and 22.**

16. In support of the impugned judgment and sentence, Mr. S. Sengupta, learned Addl. P.P. for the State respondent, has reiterated the facts of the case and has once again led this Court to the evidence of the prosecution's witnesses. On the evidence of the complainant as PW-1, it was submitted that this witness has stated that she was informed about the incident by her eldest daughter as well as by the survivor himself, whereupon, she had inspected the backside of the survivor's body and found that he was sexually



assaulted in the anus which has caused him pain to the extent that he is not able to sit. That the accused/appellant is well known to the family, that children calling him uncle was also revealed from the evidence of this witness. Further, as to the age of the survivor, this witness who is his mother has mentioned that he was 8 years old at the time of the incident.

17. The learned Addl. PP has also submitted that, on perusal of the evidence of the other witnesses, it is apparent that PW-2 who is the eldest sister of the survivor has confirmed the fact that the accused/appellant, on the day of the incident had called the survivor to go with him to pluck corn from his garden. When the survivor took a long time to return, she went to look for him and on calling out his name, he emerged from an empty house which belonged to the mother-in-law of the accused/appellant. It was then that the survivor told her what had happened to him, that is, that the accused/appellant has sexually assaulted him.

18. Again, this fact was further confirmed by the survivor himself in his deposition before the court when he has related the sequence of events as has happened between him and the accused/appellant. Even in his statement given before the Magistrate under Section 164 Cr.P.C., the survivor has stuck to the same narrative, submits the learned Addl. P.P.

19. Medical evidence has also corroborated this fact, that the survivor was sexually assaulted since the findings of the Doctor who has medically



examined the survivor a day after the incident took place, has found signs of tenderness, redness and stretchmarks in the anus of the survivor which can only suggests that he has been sexually assaulted in the anus region.

20. The learned Addl. PP has then submitted that the Trial Court, while appreciating the evidence of the prosecution's witnesses as well as the documentary evidence, being the exhibited statement under Section 164 made by the survivor, has given a very elaborate and detailed explanation of the findings made thereof. A reading of the impugned judgment would therefore show that all aspects of the case has been covered which shows due application of mind by the learned trial judge while passing the said judgment and sentence. As such, on such distinct and unambiguous findings, the impugned judgment does not suffer from any legal infirmity. Therefore, this appeal is devoid of merits and is liable to be dismissed as such, submits the learned Addl. PP.

21. This Court has perused the impugned judgment and sentence, as well as the memo of appeal. Taking note of the submission of the learned counsel for the rival parties, on consideration of the same, the question as to whether such judgment and sentence can be sustained or not is required to be looked into herein.

22. Facts as has been highlighted by the respective parties need not be reiterated. What is understood is that the learned LAC has contended that the



learned Trial Court has failed to appreciate the evidence in its proper perspective and has therefore come to a wrong finding leading to the conviction of the appellant.

23. It is the contention of the learned LAC that the survivor's version of the incident is questionable, inasmuch as, he has narrated what had happened to him or rather what the accused/appellant had done to him on the day of the said incident, firstly, to his elder sister who was aware that the accused/appellant had gone with the survivor apparently to pluck corn from a place near his mother-in-law's house and since he had not come back after sometime, his elder sister had called up to him and upon hearing such call, the accused/appellant had open the door to let him out. This statement according to the learned LAC was not corroborated by the corresponding statement made by the survivor before the Magistrate under Section 164 Cr.P.C., when there was no mention that he heard his sister calling him.

24. It is correct to say that the defence while trying to find fault with the evidence of a witness, particularly one who has his or her statement already recorded under Section 164 Cr.P.C., could use the said statement to contradict whatever is deposed in court. This is meant to make out a case of inconsistent testimony of the witness as far as truth is concerned, and thereby, to discredit the evidence of such witness. In this case however, no such contradiction vis-à-vis as regard the evidence of the survivor, has been brought



out by the accused/appellant in the cross examination of the survivor. Even when the Magistrate who had recorded the said statement was brought to the witness box as PW-10 and he has also exhibited the said statement as Exhibit-5, here too, the accused/appellant has not been able to make out any contradiction as far as the statement of the survivor is concerned. Therefore, under such circumstances, it cannot be said that any contradiction or false narration has been committed by the survivor.

25. The accused/appellant has also not been able to shake down the testimony of the survivor, when his deposition was recorded in court in course of trial, where the survivor had vividly narrated the incident in no uncertain terms and such narration being believable. There is nothing in the cross-examination of the survivor, where we could find that the accused/appellant had denied that the incident had ever happened. The survivor being steadfast in his narration of the incident, that the same was believed by the Trial Court, this Court would also concur with the finding on this count.

26. In this regard, it may not be out of place to refer to the case of **Rai Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC 21**, wherein at para 22 it was observed as follows:

“22*. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the



witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

27. As to the issue of corroboration, the survivor in his evidence has stated that after the accused/appellant has sexually assaulted him from his anus, he struggled to get away from the accused/appellant and it was then that he heard his sister (PW-2) calling him, upon which the accused/appellant opened the door to let him out, not before threatening him not to tell anyone



about the incident. The said sister of the survivor in her statement has also stated that the accused/appellant had called her brother to go with him to pluck corn from his garden and her brother went with him. However, when he took a long time to return home, she went to the garden to look for him and she called out to him. Then, she saw her brother coming out from an empty house which belong to the mother-in-law of the accused/appellant. Thereafter, when they reached home, her brother cried and on inquiry, he narrated what had happened to him. The evidence of the sister has also not been contradicted by the defence in the cross examination, and as such, the testimony of the sister would stand as a factual statement. The contention that there was no corroboration of the evidence of the survivor cannot be accepted by this Court.

28. This Court need not discuss the impact of the medical evidence in this case, as the testimony of the Doctor who has examined the survivor only a few hours after the said incident, in his medical report has stated that “...*there is tenderness, redness and stretch marks seen in the anus...*” To this, the accused/appellant in the cross-examination has not been able to refute or contradict such evidence, even to suggest that even, if there are such findings, the same could not be attributed to a sexual act committed on the anus of a person. In such a scenario, we are convinced that the accused/appellant had indeed committed the offence as alleged.



29. The evidence led by the prosecution has established that a case of penetrative sexual assault has made out. Without referring again to the narrative in this regard, the fact that such offence has been perpetrated upon a minor child, the ingredients of Section 5(m) of the POCSO Act, 2012 are found therein. Thus, the punishment under Section 6 of the POCSO Act is found justified.

30. As to the alteration or addition of charge to include Section 377 of the Indian Penal Code, to the extent of reiteration, the nature of the evidence, wherein, is found the manner in which the offence has been committed, would only lead to the conclusion that the accused/appellant had indeed committed carnal intercourse against the order of nature with any man(child). Therefore, the inclusion of this section too can be accepted. Even the authorities cited by the accused/appellant in this regard, on perusal of the same, the observations made therein is only to the power of the court to exercise the provision of Section 6 Cr.P.C for any charge to be altered or added. Para 17 and 18 in the case of Karimullah Osan Khan (supra) are reproduced herein to illustrate this point:

“17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in



the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See *Harihar Chakravarty v. State of W.B. AIR 1954 SC 266*). Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 CrPC and other related provisions.”

31. On the issue of determination of age of the survivor, the same was raised to support the contention of the learned counsel for the accused/appellant that since, there was no finding or process of determination of age of the survivor, therefore, it could not be said that he was below 12 years at the time when the incident happened, and as such, the charge under Section 5(m) of the POCSO Act, could not have been made out. This issue has not been raised at the trial and in the evidence of PW-1 who is the mother of the survivor where she has clearly stated that the survivor was 8 years old at the relevant point of time. This piece of evidence has not been contradicted in the cross-examination. Be that as it may, the argument of the learned counsel is that, if at all, the age of the survivor is found to be above 12 years at that



point of time, then the accused/appellant could have been convicted only for the offence under Section 7 of the POCSO Act, for which the punishment would only be for a term of 5 years maximum. Even, if this line of argument is accepted, the fact that the accused/appellant was also convicted for the offence under Section 377 IPC, which entails a punishment of 10 years imprisonment, therefore, the attempt of the learned counsel to canvass this contention, would be a futile exercise under the facts and circumstances of the case herein. This contention of the learned counsel is hereby disregarded.

32. On an overall consideration of the facts and circumstances of the case of the parties herein, we find no reason to interfere with the impugned judgment and sentence. This appeal being devoid of merits, the same is hereby dismissed.

33. Let the related Trial Court records be sent back.

34. Appeal disposed of. No costs.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge