



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 22 of 2025

Date of Decision: 20.03.2026

Shri. Chanky Shadap
 Son of (L) Krot Suna,
 Resident of Mukhla Village, Umsuwe,
 West Jaintia Hills District, Meghalaya.

..... **Appellant**

- Vs-

1. The State of Meghalaya through the
 Superintendent of Police, West Jaintia Hills
 District, Meghalaya.
2. The Office Incharge, Jowai Police Station,
 West Jaintia Hills District, Meghalaya.

..... **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Marpan, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
 Mr. E.R. Chyne, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |



JUDGMENT AND ORDER

1. An incident concerning an act of rape perpetrated on the minor daughter of the complainant, wherein an FIR was filed on 29.07.2010, before the Officer In-charge, Jowai, Police Station, then Jaintia Hills District, has set into motion the prosecution case against the accused/appellant herein.

2. It is the case of the prosecution that the complainant in the said FIR had informed the Officer In-charge, that on 25.07.2010 at about 08:30 PM or so, when her said minor daughter aged about 14 years was returning from an evening Church service in their village, the accused/appellant had met her on her way and had pulled her into the jungle after which he had raped her.

3. Accordingly, the case was registered as Jowai P.S Case No. 125 (7) 2010 under Section 376 IPC, and a women Police Officer was tasked with the investigation of the case.

4. The said Investigating Officer (I/O) had immediately arrested the accused/appellant on 29.07.2010 at about 03:00 PM or so, and on the same day, he was sent for medical examination, which was done so at about 06:40 PM, the same being conducted by Dr. J. Buam.

5. The I/O had also recorded the initial statement of the complainant, the accused as well as the victim. The statement of the victim girl was also recorded by a First-Class Magistrate as required under Section 164 Cr.P.C.



On completion of the investigation, the I/O has found a prima facie case against the accused/appellant made out under Section 376 IPC and he was sent to face trial before the competent court of jurisdiction.

6. At the commencement of the trial, it is noticed that the Trial Court vide order dated 05.11.2013 has recorded that the charge under Section 376 IPC has been framed against the accused/appellant, the same on being read out and explained to the accused person, he declined to confess and claim to be tried. Thereafter, the prosecution has examined as many as five witnesses, including the complainant and the victim girl and has also exhibited the FIR, the Medical Report of the doctor, who has examined the victim girl and the statement of the victim girl made under Section 164 Cr.P.C. On the conclusion of recording of evidence, the court has then noted the statement of the accused person as provided under Section 313 Cr.P.C.

7. Thereafter, the argument of the respective parties was heard by the learned Trial Court, and on consideration of the same, including the relevant materials available on record, the impugned judgment dated 25.11.2021 was passed finding the accused/appellant guilty of committing rape on the victim on 25.07.2010, which offence is punishable under Section 376 IPC.

8. When the learned Trial court heard the parties on the issue of sentence, the learned Trial Court has reiterated that the accused/appellant was convicted for an offence punishable under Section 376 IPC, and upon



weighing the mitigating and aggravating circumstances, has found it fit to impose a sentence of imprisonment of 7 years with fine of ₹ 10,000/- (Rupees ten thousand), failing payment of fine, the convict shall undergo simple imprisonment for another 2 months.

9. Heard Mr. S. Marpan, learned counsel for the appellant, who has submitted that apart from the fact that the testimony of the victim upon which the learned Trial Court had strongly relied upon to convict the appellant, it is seen that such testimony does not befits the standard of a '*sterling witness*' and therefore, reliance on the same has resulted in a serious miscarriage of justice.

10. Apart from this, the learned counsel has also submitted that allegedly the incident of rape took place on 25.07.2010 at about 08:30 PM, when the victim was sexually assaulted by the appellant at a jungle near her village, while she was returning from an evening church service. The FIR was lodged only on 29.07.2010, on the matter being reported to the Officer In-Charge, Jowai Police Station by the mother of the victim as the complainant.

11. It is also on record that no FIR was lodged on 25.07.2010. However, it appears that the victim had informed her father of the said incident on 27.07.2010. Here to, no FIR was filed on that date, it was only after a village meeting was convened at the Headman's house on 29.07.2010, after discussion were held involving family members, the village Headman and an



NGO, was the decision made to file the FIR. Since there was no explanation as to why the FIR was lodged after a delay of four days, such an unexplained delay would give rise to suspicion of embellishment, afterthought and false implication, submits the learned counsel. The case of *Thulia Kali v. State of Tamil Nadu* (1972) 3 SCC 393, para 12 has been cited in this regard.

12. The learned counsel has also submitted that there was no credible corroboration of the evidence of the victim inspite of the fact that the alleged incident had taken place at a nearby jungle, near the house of the appellant and the victim, which according to the I/O has already been disturbed by the public. Therefore, though the place of occurrence is regularly frequented by the public, yet the said incident has not been witnessed by any person, even the church members who has attended the evening service. No photographs or sketch map of the P.O was drawn by the I/O.

13. Coming to the medical report of the victim at Exhibit-1(v), the learned counsel has submitted that the same does not reveal any injuries suggestive of forceable sexual intercourse, nor any external or internal sign of struggle has been detected. Apart from absence of injuries, no spermatozoa were detected in vaginal swabs. This is contrary to the ocular version of the victim who has alleged that she was forcefully dragged into the jungle with a scarf covering her mouth. On the other hand, though the appellant was also medically examined on 29.07.2010, his medical examination shows that there



were signs of recent sexual intercourse, however, there is nothing in evidence to establish connectivity between the appellant and the alleged offence.

14. The learned counsel has also submitted that the alleged offence has taken place in the year 2010, when the age of consent was 16 years. In this respect, the prosecution has asserted that the age of the victim girl was 14 years on the date of the incident, however, the medical assessment has placed her age between 15 to 17 years. Even the dental report dated 30.07.2010 has showed her age as approximately 16 to 17 years, though the said dental report has not been produced and exhibited by the prosecution in course of trial. The victim in her statement recorded before the Magistrate under Section 164 Cr.P.C on 19.12.2010, has given her age as 14 years, however, after five years or so, when she was called to give her evidence before the court on 21.01.2015, she has stated her age as 21 years. This is clearly a misinterpretation of facts as regard her age, as such, her testimony cannot be believed because of such inconsistency.

15. The learned counsel has reiterated that at the relevant point of time, sexual intercourse with a woman above 16 years cannot be considered rape unless absence of consent is proved. Since the exact clause of Section 375 IPC have not been specifically mentioned when the alleged charge was framed, the accused/appellant could not have maintained his defence in course of trial



in response to the prosecution assertion to say that whether the allegation of forcible rape or non-consensual intercourse can be sustained.

16. The truthfulness and veracity of the statement of the victim have also been questioned by the learned counsel herein, when it is submitted that the victim in her statement under Section 164 CrPC has stated that on her way home, while she was alone, suddenly, the appellant came out from a nearby jungle and caught hold of her and thereafter, he pushed her down the road in the jungle and forcefully made her lay down on the ground and pulled at her skirt and panty and sexually assaulted her for almost half an hour, whereas in her evidence before the court, she has stated that the appellant grabbed her from behind her back, dragged her forcefully to the jungle, pushed her down on the ground and then sat on top of her by force. These two versions of the victim's story are not consistent, apart from the fact that her statement under Section 164 was recorded on 09.12.2010, four months after the alleged incident, most probably, the likelihood of the victim being tutored and not spontaneous is very much apparent. Therefore, the testimony of the victim is unreliable. The victim cannot be called or considered to be a sterling witness under such circumstances, as has been held in the case of *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21, at para 22 and 23, submits the learned counsel.



17. It is also the contention of the learned counsel that the appellant has been prejudiced as regard the charge framed against him in, inasmuch as, firstly, the Trial Court is said to have framed the charge under Section 376 IPC, in a very cryptic and mechanical order without specifying the particular clause of Section 375 IPC alleged to have been violated by the appellant. Since Section 376 is only punitive, the ingredients of the offence lie in Section 375, the failure to specify, whether the case of the prosecution rested on absence of consent, or of force or coercion or of statutory rape, has deprived the appellant of fair notice of the accusation. Thus, the provision of Section 464 Cr.P.C come into play as far as the case of the appellant is concerned, further submits the learned counsel. In this connection, the case of Willie (William) Slanney v. State of Madhya Pradesh, (1955) 2 SCC 340, para 16, 17, 18 and 19 has been cited in support of this contention.

18. In fine, the learned counsel has submitted that this is not the case where the testimony of the victim is been disbelieved lightly. It is a case where delay, embellishment, medical contradiction, absence of forensic linkage age misrepresentation and grave prejudice under Section 464 Cr.P.C, has cumulatively rendered the conviction unsafe, the same resting on assumption rather than legally tested proof, and as such, the impugned judgment and the related sentence may be set aside and quashed, the appellant to be released forthwith.



19. Per contra, Mr. N.D. Chullai, learned AAG along with Mr. E.R. Chyne, learned GA appearing for the State respondent would submit that there is no legal infirmity with the impugned judgment and sentence and the same may be upheld by this Court.

20. In response to the contentions raised by the learned counsel for the appellant, the learned AAG has submitted that on the issue that there has been a delay in lodging of the FIR, the incident having taken place on 25.07.2010 and the FIR was lodged only on 29.07.2010, the case in hand involves sexual offence, and as such, this is not the case where there is in-ordinate delay in filing of FIR. The case of *Marbet Nongsiej v. State of Meghalaya* reported in 2020 SCC Online Megh. 12, para 18, 51, 71 and 72 has been cited in this regard.

21. The learned AAG, has also submitted that this issue has been extensively dealt with by the Trial Court in the impugned Judgment at para 62 and 67 thereof.

22. As to the factum of rape, the learned AAG has submitted that the evidence of the victim when she has deposed before the court as PW-2 is very clear and distinct, inasmuch as, she has stated that the appellant had raped her, after that, he released her and then she went to her house. Even, in her cross-examination, she did admit that she did not scream after the accused/appellant took of her underwear since she could not fight him and that he has closed her



mouth with her shawl and thereafter, he had raped her. This piece of evidence could not be contradicted by the appellant, and as such, it has to be accepted as the truth. The case of State of Himachal Pradesh v. Raghubir Singh and Ors, reported in 2024 SCC Online SC 940, para 10 have been referred to in support of this contention.

23. The learned AAG, has further submitted that the factum of rape as far as the victim herein is concerned, has also been further proved by the medical evidence through the medical report produced by the doctor (PW-3), who has stated that on his examination of the victim, there is found tear on the outer vaginal surface near clitoris (left side), a tear on the vaginal introitus posterior side, hymen not intact.

24. On the contention that no charge has been framed, the learned AAG has submitted that the records would show that on 05.11.2013, the court has framed the relevant charge against the accused/appellant, which is reflected in the order of even date passed by the said court. However, even assuming, but not admitting that no charge has been framed, reference may be made to Section 215 Cr.P.C (effects of errors) read with Section 465 Cr.P.C (finding or sentence when reversable by reason of error, omission or irregularity) to overcome such defect, if any. However, the appellant was well aware of the nature of the charge as he has ample opportunity to cross-examine the victim and the other prosecution witnesses, which was not done so as far



as this contention is concerned. The case of Mohanraj and Anr v. State Rep. by the Dy. Superintendent of Police, CB CID, 2024 SCC Online Mad. 3467, para 8 was cited in this regard.

25. The learned AAG, has reiterated that the findings and observations made by the learned Trial Court in the impugned judgment are legally sound, and as such, may not be disturbed with by this Court. This appeal being devoid of merits, is liable to be set aside and quashed.

26. This Court has carefully considered the argument advanced by the learned counsel for their respective parties, and have also perused the relevant records, including the impugned judgment.

27. The facts of the case having been set up hereinabove, the same may not be repeated, except, if circumstances so require. Suffice it to say that the case of the appellant is that, he has been wrongly accused and convicted for an offence which he has not committed, and for which the prosecution has also failed to prove its case to bring out the guilt of the accused/appellant beyond reasonable doubt.

28. Since it is a case involving sexual assault or rape, the evidence of the victim would be of grave importance and to test the authenticity and veracity of the same, the requirement of looking into the medical evidence and/or corroboration of such evidence by reliable witnesses, would also be necessary to find out the truth.



29. The victim in her deposition before the Court as PW-2 has narrated the sequence of events which took place on the 25.07.2010. In her own words, she has stated that on that day, there was a home service in the house of the appellant which she attended. After the service, she was asked by an elderly woman to help in washing the utensils, which she did so. After that, at about 8.30 PM, she went back home. It was on her way home that she encountered the appellant who came from behind her and who gagged her mouth with her shawl before dragging her to the jungle, where he forcefully pushed her on the ground and sat on top of her. He then took off her underwear as well as his own and raped her. When she was released, she went home. In her cross-examination, she has asserted that she did not scream after he took off her underwear and could not fight him as he was sitting on top of her and had closed her mouth with a shawl.

30. A look at what the victim has stated before the Magistrate when her 164 statement was recorded, would reveal that basically, she had related whatever happened to her on 25.07.2010 in near details to what she has stated before the court in her deposition as PW-2. That after the church service, on her way home, the accused suddenly came out and caught hold of her, gagged her mouth with her clothes, pushed her down the road to the jungle and there, he forced her to lie down in the ground and then he pulled her skirt and panty and had intercourse with her. This statement matched whatever was said in



court, though there are some minor and trivial discrepancies which did not materially affect the core or fundamental recital of the facts of the narration of the victim. It can also be seen that the statement of the victim made under Section 164 was produced as exhibit-3 in court by the Magistrate himself. Cross-examination of this witness was declined by the defence/accused, therefore, the said statement has to be accepted as it is without there being any contradiction of the same.

31. Only on the basis of the evidence of the victim alone, the case of the prosecution has passed muster the scrutiny of law. The evidence of the victim is found to be reliable and believable. To further support the case of the prosecution or rather the stand of the victim, the medical report filed by the Doctor, who has examined the victim on her being sent for the same, has also revealed that there were signs of recent forceful intercourse with multiple bruises on both buttocks, right outer thigh, left posterior thigh and right posterior thigh, both calf muscles and cut mark on left wrist 2.5 cms. There was tear on the outer vaginal surface near clitoris left side, tear on vaginal introitus-posterior side, hymen not intact with the tear of about 3-5 days old. This can only suggest that the victim has been subjected to forceful sexual assault a few days ago, and such, an assault can only be connected to the appellant being the perpetrator. The fact that she was found injured on her



back side including her buttocks, has further strengthen the case of the prosecution that she was thrown to the ground by the appellant.

32. On the question of delay on filing the FIR, on an overall appreciation of the evidence as well as the materials on record, though it is seen that the incident happened on 25.07.2010, but the FIR was lodged only on 29.07.2010, the contention of the appellant is that such delay has not been explained and has thereby allowed doubt to creep in, not disregarding the fact that it could be an afterthought or a well tutored narrative to the detriment of the accused/appellant, this contention is also not acceptable by this Court since, evidence would suggest otherwise.

33. In this regard, the reliance of the State respondent in the case of Marbet Nongsiej (supra) is also found to have credence, wherein at para 51, 52, 53 and 54 of the same, this Court has referred a number of authorities on the subject, which is found relevant to the facts and circumstances of this case.

The same is reproduced herein as under:

51. The victim has also stated that *"After the date of incident, I first informed about the rape of the accused on me to the accused's wife and after that, I informed my mother after which my mother spoke to the accused's wife and later went to the Police Station and took me along with her"*.

52. On the delay of filing of the FIR, the learned Special Judge in the impugned judgment had observed that *"It is also not uncommon especially for simple and illiterate villagers especially children to hesitate or pause in reporting a crime of rape as it leaves them initially in a state of dilemma"*. It is only after the



victim could meet her mother on 15.11.2014 that she could informed to her about the commission of rape on her.

53. In the case of *Tulshidas Kanolkar v. State of Goa*: (2003) 8 SCC 590 at paragraph 5 relied upon by the State respondent, the Hon'ble Supreme Court in dealing with the issue of delay of filing of the FIR has observed as follows:-

"5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstances for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

54. Again in the case of *State of Himachal Pradesh v. Sanjay Kumar Alias Sunny*: (2017) 2 SCC 51, the Hon'ble Supreme Court dealing with the case of a minor victim of sexual assault who had withheld the disclosure of the said incident for about three years and after the same was found out, the mother (P.W. 1) after sharing the information with her husband had lodged a complaint after three days on receipt of the said information. The Hon'ble Supreme Court at paragraph 29 of the same has held that:

"29. Likewise, delay of three days in lodging the FIR by PW-1, after eliciting the information from her daughter PW-2, is inconsequential in the facts of this case. It is not to be forgotten that the person accused by the prosecutrix was none else than her uncle. It is not easy to lodge a complaint



of this nature exposing the prosecutrix to the risk of social stigma which unfortunately still prevails in our society. A decision to lodge FIR becomes more difficult and hard when accused happens to be a family member. In fact, incestuous abuse is still regarded as a taboo to be discussed in public. This reticence hurts the victims or other family members who struggle to report. After all, in such a situation, not only the honour of the family is at stake, it may antagonise other relations as well, as in the first blush, such other members of family would not take charge of this nature very kindly. We also find that the so-called dispute between the parties was so trivial in nature that it would not have prompted PW-1 to lodge a false complaint, putting her minor daughter of impressionable age to risks of serious kinds, as pointed out above."

34. In view of the above observations, this Court finds that the delay in filing the FIR under the circumstances has been explained and no negative impact has been noticed qua the accused/appellant.

35. There is also the contention of the appellant that he was prejudiced in course of trial as no specific charge or charges have been framed against him as regard the offence alleged to have been committed by him. Instead, only the punitive section of law was cited, being Section 376 IPC. This contention has been raised in the context of the ingredients found in Section 375 IPC, wherein it is provided that a man is said to commit rape against a woman under six circumstances, inter alia, against her will, without her consent, with or without her consent, when she is under 16 years of age. Since, the age of the victim has not been specifically proved, the doctor and dental evidence putting her age in the bracket of 15 to 17 years on the date of the



occurrence, therefore, it can be said that she was above 16 years of age at the relevant time. Therefore, a specific charge under Section 375 IPC ought to have been framed and duly explained to the accused/appellant.

36. To answer this contention, it is agreed that the exact age of the victim on the date of the said occurrence have not been proved. However, the provision of Section 375 IPC cited by the appellant at exception 'sixthly' refers to a situation where the victim is 16 years and above, and that the act of sexual intercourse is one of consent. Even, if we assume for the sake of argument that the victim herein is about 16 years or so, in her evidence, she has clearly stated that the act perpetrated upon her by the appellant is not one of consent. Therefore, it would be immaterial to even consider this line of argument to favour the appellant.

37. The reference of the appellant to Section 464 Cr.P.C which speaks of effect of omission to frame, or absence of, or error in, charge would also not help the appellant's case, since, firstly, it is noticed that vide order dated 05.11.2013, the learned Trial Judge had recorded that the charge have been framed against the accused/appellant under Section 376 IPC which was explained to him in his native language, on understanding the implication thereof, he denied such charge and claim to be tried.

38. In course of proceedings during the period when the prosecution witnesses were examined in court, the accused/appellant has not raised any



objection in this regard, and had participated in the trial. This shows that he is very much aware of the nature of the allegation against him, as such, he cannot claimed prejudice at this point of time. In fact, the authority cited by the appellant in the case of Willie (William) Slanney (*supra*) at para 18 and 19 of the same, what is apparent is that, if no formal charge is framed, that is, the charge framed is not made out in the proper format, yet the same would not be an incurable error, provided the accused has in fact been misled by it and that it has occasioned a failure of justice which is not the case herein. Therefore, this contention too cannot be accepted by this Court.

39. On an overall consideration of this case, this Court finds that the appellant has not been able to make out a case for the impugned judgment and sentence to be set aside and quashed. The same is hereby upheld.

40. Consequently, this appeal is hereby dismissed as devoid of merits and is accordingly disposed of. No costs.

41. Send back the Trial Court case records.

Judge