

JOHN FRANKLIN SHYLLA v. STATE OF MEGHALAYA. (2023-2)210 PLRIJ 014

POCSO Act, 2012, where the alleged victim was a minor of about 16 years of age. The act defines penetrative sexual assault under Section 3 and provides punishment under Section 4. The act also presumes the presence of mens rea in any prosecution for an offense that requires a culpable mental state on the part of the accused. Looking into the physical and mental development of an adolescent of that age group, would consider it logical that such a person is capable of making conscious decision as regard his or her well-being as to the actual act of sexual intercourse. However, the evidence of the alleged victim suggests that there was no force involved in the sexual act, and prima facie, it appears that there is no mens rea involved. Therefore, the proceeding of the case before the Trial Court would serve no purpose in the peculiar facts and circumstances.

(2023-2)210 PLRIJ 014

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(2023-2)210 PLRIJ 014 (Megh.)
HIGH COURT OF MEGHALAYA AT SHILLONG
Before : Hon'ble Mr. Justice W. Diengdoh, Judge
SHRI. JOHN FRANKLIN SHYLLA – Petitioner.
versus
STATE OF MEGHALAYA & Anr. – Respondents.
Crl.Petn. No. 3 of 2023

POCSO Act, 2012 S. 3 (a), 4 – Though the alleged victim girl is a minor, being about 16 years of age or so at the relevant point of time – Looking into the physical and mental development of an adolescent of that age group, would consider it logical that such a person is capable of making conscious decision as regard his or her well-being as to the actual act of sexual intercourse – Evidence of the alleged victim would suggest that there was no force involved in the sexual act – Prima facie, it appears that there is no *mens rea* involved – Proceeding of the case before the Trial Court would serve no purpose in the peculiar facts and circumstances. [Para 13, 14]

Held, This Court, has in similar matters of this kind, opined that in cases involving two young people, particularly if they are said to be boyfriend and girlfriend or said to be married, even though, that would be contrary to the related provisions of law, the fact remains that law must follow justice and in exercise of the inherent power under Section 482 Cr.P.C, it would be appropriate that ends of justice is met and that the said principle be applied considerably in certain relevant cases. *Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021, relied.*

Mr. S. Dey, Adv. For the Petitioner/Appellant(s) . Mr. S. Deb, Adv. For the Respondent(s) : Mr. H. Kharmih, Addl. PP. Mr. S. Sengupta, Addl. PP. Mr. K.P. Bhattacharjee, GA. for R 1. None for R 2.

JUDGMENT (ORAL)

W. Diengdoh, J. – (21.06.2023)– Heard Mr. S. Dey, learned counsel appearing on behalf of the petitioner as well as Mr. H. Kharmih, learned Addl. PP appearing on behalf of the State respondent No. 1.

2. The learned counsel for the petitioner has submitted that the petitioner is an accused in Special (POCSO) Case No. 5 of 2021 under Section 3 (a)/4 of the POCSO Act, 2012.

3. The background story of the case is that the petitioner at the relevant point of time, that is, in the year 2020 was working at various households, including the house of the maternal aunt of the respondent No. 2 herein and in the process, he came to be acquainted with the alleged victim who is a minor girl and is the daughter of the respondent No. 2.

4. In course of their acquaintance, the two became intimate and as is typical in a meeting of two young couples, feelings of love started to develop and as such, a relationship ensued in this connection. Again, the said relationship can be said to be that of boyfriend and girlfriend relationship.

5. On 18.01.2021, at about 4:00 PM or so, the alleged victim girl had gone shopping along with her cousin sister, where she met the petitioner/accused and the two of them then went to his house where he introduced her to his parents. After staying there for some time, the alleged victim girl along with the petitioner/accused left his parent's house and went to his uncle's house where they decided to spend the night there as it was too late to go back home. Inevitably, the petitioner and the alleged victim having slept together on the same bed, what happen between them is that they had sexual intercourse.

6. The next morning, the petitioner accompanied the alleged victim to her house, however, the respondent No. 2 who is the mother of the alleged victim had lodged an FIR on 19.01.2021 before the In-charge, Khapmara, Umroi PIC.

7. The FIR being registered as Women P.S. Case No. 11 (1) of 2021 under Section 363 IPC read with Section 3 (a)/4 POCSO Act, 2012. The matter on being investigated, the Investigating Officer (I/O) had then filed a charge sheet and finding that a prima facie case is well made out against the petitioner herein, had forwarded him to stand trial before the Court of the learned Special Judge (POCSO), Ri-Bhoi District, Nongpoh who had taken cognizance of the matter and thereafter, registered a case being Special (POCSO) Case No. 5 of 2021. The case is at the evidence stage.

8. The learned counsel for the petitioner has also submitted that the petitioner/accused had now approach this Court with an application under Section 482 Cr.P.C with a prayer to set aside and quash the entire proceedings before the Court of the learned Special Judge aforesaid.

9. The only ground raised by the learned counsel is that there is no element of sexual assault involved in the whole episode, inasmuch as, the alleged victim herself in her statement under Section 164 as well as in her deposition before the Court, has clearly stated that she is the girlfriend of the petitioner at the relevant point of time and that it was only on that fateful night on 18.01.2021 that they had sexual intercourse, but the same was with her consent and there was no force involved in it. Since there is no evidence of any penetrative sexual assault, the petitioner has therefore made a prayer before this Court for the proceedings against him to be set aside and quashed.

10. The learned Addl. PP in his submission, has fairly conceded that the evidence of the alleged victim would suggest that there was no force involved in the sexual act between the parties herein and that the alleged victim has also confirmed this fact in her evidence, therefore, this is a testimony that perhaps there may not have been any element of sexual assault as far as the incident is concerned. It is prayed that the discretionary power of this Court will be exercised accordingly.

11. This Court, on consideration of the submission made, has in similar matters of this kind, opined that in cases involving two young people, particularly if they are said to be boyfriend and girlfriend or said to be married, even though, that would be contrary to the related provisions of law, the fact remains that law must follow justice and in exercise of the inherent power under Section 482 Cr.P.C, it would be appropriate that ends of justice is met and that the said principle be applied considerably in certain relevant cases.

12. The Hon'ble Madras High Court in the case of *Vijayalakshmi & Anr. v. State Rep. By.*

Inspector of Police, All Women Police Station, Erode: Crl. O.P No. 232 of 2021, para 12 & 18 has observed as under:

"12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to Article 15 of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers involved in romantic relationships are concerned.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act. An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act."

13. Though the alleged victim girl is a minor as admitted by her in her statement under Section 164 as well as in her deposition before the Court being about 16 years of age or so at that relevant point of time, this Court, looking into the physical and mental development of an adolescent of that age group, would consider it logical that such a person is capable of making conscious decision as regard his or her well-being as to the actual act of sexual intercourse. Prima facie, it appears that there is no mens rea involved.

14. Be that as it may, at this juncture, this Court is of the opinion that the proceeding of the case before the Trial Court would serve no purpose in the peculiar facts and circumstances. On due consideration being given to the submission of the parties, the

prayer of the petitioner is hereby allowed.

15. Accordingly, the said FIR dated 19.01.2021 filed by the respondent No. 2 herein and also the consequent proceedings in Special (POCSO) Case No. 5 of 2021 are hereby set aside and quashed.

16. The petitioner is released and discharged from any liability as far as the said case is concerned.

17. In view of the above, this petition is accordingly disposed of. No costs.

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