

(2025) 06 MEG CK 0328

In the Meghalaya High Court

Case No : Criminal Miscellaneous Case No. 93 Of 2024 In Criminal Appeal No. 43 Of 2024

Sheldar Syiemlieh

APPELLANT

Vs

State Of Meghalaya

RESPONDENT

Date of Decision : 13-06-2025

Acts Referred:

Protection Of Children From Sexual Offences Act, 2012 — Section 3(a), 4
Juvenile Justice Rules, 2007 — Rule 12, 12(3)

Citation : (2025) 06 MEG CK 0328

Hon'ble Judges : W. Diengdoh, J;B. Bhattacharjee, J

Bench : Division Bench

Advocate : P. Chettri, R. Gurung

Final Decision : Allowed

Judgement

W. Diengdoh, J

1. The appellant in the related appeal preferred against judgment and sentence dated 18.08.2023 passed by the learned Special Judge, (POCSO), West Khasi Hills, Nongstoin in Special (POCSO) Case No. 18 of 2018 whereby he was sentenced to undergo 10(ten) years rigorous imprisonment with fine of ₹ 20,000/- (Rupees Twenty Thousand) only, in default thereof to undergo further simple imprisonment of 2(two) months, the appeal has been admitted and registered as Crl.A. No. 43 of 2024.

2. However, Ms. P. Chettri, learned Legal Aid Counsel appearing for the appellant, at the outset has raised the plea of juvenility of the appellant and has prayed to be heard on this issue at the first instance.

3. It is the submission of the learned Legal Aid Counsel that from the FIR dated 15.11.2017 lodged before the Officer-in-Charge Women P.S., Shillong, the same found at page-3 of the paper-book, what is noticed is that the complainant had made an allegation that a minor girl who is her ward had complaint of suffering

from the genital area. On being taken to the Civil Hospital Shillong, the medical examination confirmed that the same was due to sexual intercourse. It was then that the said minor girl stated that she had sexual intercourse with 8(eight) persons, including the appellant herein about 3(three) years ago.

4. On the FIR being registered as Nongstoin P.S. Case No. 118(11) 2017 under Section 3(a)/4 of the POCSO Act, the appellant was arrested by the police on 06.12.2017. In the arrest memo his age was listed as 19 years.

5. The learned LAC has further submitted that such record would show that at the time of his arrest, the appellant was 19 years of age, the allegation of sexual assault relates to an alleged incident which took place three years ago. Therefore, it can safely be said that the appellant was about 16 years or so when the incident happened.

6. This being the case, he was a juvenile on the alleged date and period of the incident. To further strengthen this contention the learned LAC has submitted that two vital documents have been produced before this Court, annexed in this petition as Annexure-A which is the Birth Certificate issued by the Medical & Health Officer-Cum-Registrar Birth and Death, I/c Markasa PHC wherein the date of birth of the appellant was noted as 22.01.1998. Another certificate being the Baptismal Certificate issued by the Khasi Jaintia Presbyterian Assembly dated 30.03.2016 also gave the date of birth of the appellant as 22.01.1998.

7. The learned LAC has further submitted that in terms of Rule 12 of the Juvenile Justice Rules, 2007 as well as on the strength of a catena of judgments passed by the Hon'ble Supreme Court in this regard it is imperative that the age of the appellant may first be determined before proceeding any further with the appeal.

8. It is prayed that this Court may be pleased to remand the matter to the Trial Court with a direction to take on the exercise of age determination of the appellant. In this regard, the learned LAC has referred to the case of Sanjeev Kumar Gupta v. State of Uttar Pradesh & Anr., (2019) 12 SCC 370, para 10 and 11 as well as the case of Ashwani Kumar Saxena v. State of Madhya Pradesh, (2012) 9 SCC 750, para 32.

9. Per contra, Mr. R. Gurung, learned GA appearing for the State respondent while opposing to the prayer made by the learned LAC has submitted that the appellant has approached this Court with the two certificates, that is, the Birth Certificate and the Baptismal Certificate only at this stage of the proceedings, thereby proving that the same is an afterthought, such certificates being procured only after the case before the Trial Court has been concluded and the judgment and order of conviction passed, therefore, such documents has to be looked into with suspicion and may not be accepted offhandedly.

10. In this connection, the learned GA has referred to the case of Narayan Chetanram Chaudhary v. The State of Maharashtra wherein in Criminal Miscellaneous Petition No. 157334 of 2018 vide judgment dated 27.03.2023, the

Hon'ble Supreme Court at para 35 had discussed on the validity of acceptance of documentary proof of age produced after conviction, if the same does not inspire confidence or even prima facie satisfaction of the court is not made out, such plea has to be discarded.

11. The learned GA has submitted that there is no attending evidence in form of entries in the relevant register to support the plea of the appellant vis-à-vis the production of the said two certificates (supra), therefore this petition may not be allowed and the appeal may be heard on merits.

12. We have considered the case of the parties and firstly, convinced that there is no bar for raising the plea of juvenility even at the appellate stage. As such, the petition of the appellant is found valid.

13. Looking at the prayer of the appellant and the annexed certificates (supra), we are prima facie satisfied that the issue of juvenility as far as the appellant is concerned has substance. The case of Sanjeev Kumar Gupta (supra) at para 11 mandates that when a claim is raised that an accused was a juvenile on the date of the commission of the offence, the court is required to make an enquiry, take evidence and to determine the age of the person. Thereafter, to record a finding whether the person is a juvenile or a child, stating the age as nearly as maybe. Rule 12(3) of the said JJ Rules, 2007 provides for such procedure.

14. The Hon'ble Supreme Court in the case of Ashwani Kumar Saxena (supra) at para 32 has also referred to the same procedure for age determination and has held that in such process the court can obtain the matriculation or equivalent certificates, or in the absence of relevant certificates, a birth certificate given by a corporation or a municipal authorities would also suffice.

15. We do not find substance in the contention of the learned GA inasmuch as the authority cited by him is not relevant to the issue in hand since in our opinion, we have no doubt or suspicion as far as the conduct of the appellant is concerned and would rather leave it to the court of competent jurisdiction to determine the age of the appellant.

16. Under such circumstances, this petition is allowed. We hereby direct that the issue of juvenility of the appellant be first decided by the concerned Trial Court and based on the result thereof the Trial Court is at liberty to decide the case of the parties herein.

17. If the issue of juvenility is decided in the negative as far as the appellant is concerned, the impugned judgment and sentence may not be disturbed and the appellant is at liberty to approach this Court for consideration of the same, if so desired and the period of delay would stand condoned.

18. The operation of the impugned judgment and sentence shall stand suspended till such decision is reached by the Trial Court.

19. Let copy of this order be issued upon the learned Trial Court for compliance.

20. This petition is accordingly allowed and disposed of.