



Serial No. 05
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 394 of 2018

Date of order: 08.11.2018

Smti. Salma Khan Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice

Appearance:

For the Petitioner/Appellant(s) : Mrs. T. Yangi B, Adv.

For the Respondent(s) : Mr. S. Sen, Sr. GA

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: No

Oral:-

1. Instant petition is filed by mother of the minor victim of rape seeking termination of pregnancy. The victim allegedly, is 15 years old which fact is supported by copy of birth certificate issued by the Senior Medical & Health Officer and Registrar of Births and Deaths, Shillong Municipal Board wherein the date of birth is recorded as 22.04.2003.

2. Vide order dated 01.11.2018, the Director Health Services, Meghalaya was directed to constitute Medical Board of registered medical practitioners for examining the victim in tune with requirement of Section 3(2)(b) of The Medical Termination of Pregnancy Act, 1971[hereinafter referred to as the Act of 1971]. In compliance whereof, the Board has been constituted comprising of nine members which include (1) Dr. T.S. Nongkhlaw, Director of Health Services (MI), Meghalaya, Shillong, (2) Dr. O. Lamare, Joint Director of Health Services (SS), Civil Hospital, Shillong, (3) Dr. (Mrs.) N. Wanswett, Medical Superintendent (Jt. DHS), Ganesh Das Govt. MCH Hospital, Shillong, (4) Dr. M.R. Basaiawmoit, District Medical & Health Officer, East Khasi Hills District, Shillong, (5) Dr. (Mrs.) W. Shangpliang, Gynaecologist, Ganesh Das Govt. MCH Hospital, Shillong, (6) Dr. (Mrs.) Y. Shabong, Paediatrician, Ganesh Das



Govt. MCH Hospital, Shillong, (7) Dr. L. Slong, Radiologist, Ganesh Das Govt. MCH Hospital, Shillong, (8) Dr. B. Sohliya, Pathologist, Ganesh Das Govt. MCH Hospital, Shillong, and (9) Dr. S. Tariang, Medical Specialist, Ganesh Das Govt. MCH Hospital, Shillong. They have prepared a report as is produced by the learned Sr. GA., wherein, it is mentioned that examination reveals, pregnant female is with gestational age of approximately 16 (sixteen) weeks. The gynaecologists are of the opinion that she can undergo termination of pregnancy carrying risks like Haemorrhage (Bleeding), Shock, Infection, retained products of conception, Cervical & Uterine injuries, Embolic Phenomena, Secondary Infertility (due to tubal Blockage), Hazards of Anaesthesia as per the gestational age. It is also mentioned that termination of pregnancy at this stage if unsuccessful by medical methods may need major surgical procedures requiring General Anaesthesia.

3. **The Board has recorded its opinion as under:**

“The Board is of the opinion that the termination of pregnancy can be carried out in the present case, at the earliest, as:

- 1. The age of the patient is about 15 (fifteen) years.**
- 2. The gestational age of pregnancy is 16 (sixteen) weeks.**

Moreover, as the pregnancy has already reached 16 weeks it is advisable that if termination of the pregnancy has to be carried out it has to be carried out at the earliest in view of the fact that the higher the period of gestation the more the complications that may arise.

Furthermore, the condition of the pregnant female will be reviewed again before any procedure is initiated regarding termination of pregnancy.”

4. Learned Sr. GA has also produced a copy of a Notification dated 09.10.2017 issued by the Health and Family Welfare Department No. Health.225/2001/67, in terms whereof, Permanent Medical Board in accordance with Government of India’s instructions with the following members has been constituted:

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| 1. Director of Health Services (MI),
Meghalaya , Shillong | - Chairman |
|--|------------|



2. Joint Director of Health Services (SS)
Civil Hospital, Shillong - Member Secretary
3. District Medical & Health Officer,
East Khasi Hills District, Shillong - Member
4. Medical Superintendent (Jt. DHS)
Ganesh Das Hospital, Shillong - Member
5. Senior most Gynaecologist, Ganesh
Das Hospital, Shillong - Member
6. Senior most Paediatrician, Ganesh
Das Hospital, Shillong - Member
7. Radiologist, Ganesh Das Hospital,
Shillong/Civil Hospital Shillong - Member
8. Pathologist, Ganesh Das Hospital,
Shillong/Civil Hospital Shillong - Member
9. Medical Specialist, Ganesh Das
Hospital, Shillong/Civil Hospital
Shillong - Member

5. It is the same Board which has examined the rape victim (minor girl).

6. Learned counsel for the petitioner has produced a copy of the order dated 06.09.2017 passed by the Hon'ble Supreme Court in Writ Petition (s) (Civil) No(s). 749 of 2017 titled "Murugan Nayakkar v. Union of India & Ors. In the said case, 13 years old girl, a victim of alleged rape and sexual abuse got examined by the Medical Board and on the basis of the opinion of the Medical Board as well as on the basis of the age, trauma caused by sexual abuse and the agony she had undergone, the termination of pregnancy was permitted. Learned counsel would submit that the case of the petitioner is squarely covered by the said order.

7. Section 3 and explanation 1 of the Act of 1971 for facility of reference is quoted hereunder:

"3. When pregnancies may be terminated by registered medical practitioners
(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), a registered medical practitioner shall not be guilty of any offence under that Code or under any other law for the time



being in force, if any pregnancy is terminated by him in accordance with the provisions of this Act.

(2) Subject to the provisions of sub-section(4), a pregnancy may be terminated by a registered medical practitioner,-

- (a) Where the length of the pregnancy does not exceed twelve weeks if such medical practitioner is, or
- (b) Where the length of the pregnancy exceeds twelve weeks but does not exceed twenty weeks, if not less than two registered medical practitioner are, of opinion, formed in good faith, that-
 - (i) The continuance of the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical or mental health; or
 - (ii) There is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities to be seriously handicapped.

Explanation 1 – Where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman.”

8. Keeping in view the provisions of the Act of 1971, coupled with the opinion of the Medical Board, the rape victim (minor girl) who is having 16 weeks pregnancy is required, to be permitted termination of pregnancy.

9. The advice of the Medical Board is to the effect that the termination of pregnancy has to be carried out at the earliest in view of the fact that higher the period of gestation, more complications may arise. Learned counsel for the petitioner submits that the petitioner will ensure presence of the allegedly rape victim (minor girl) before the Board on the date as shall be fixed by the Director in consultation with the concerned registered medical practitioners.

10. For the stated reasons petition is allowed, based on the opinion of the Medical Board, Director Health Services, Meghalaya to take necessary steps in accordance with Section 3 of the Act of 1971 and the rules framed, for termination of pregnancy of the rape victim (a minor girl). Date as may



be fixed for doing the needful be conveyed to the petitioner as well through her counsel.

11. Copy of the order be sent to the Director Health Services Department.

12. Disposed of as above.

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
08.11.2018
"Sylvana PS"

