



# HIGH COURT OF SIKKIM : GANGTOK

( Criminal Appellate Jurisdiction )

Division Bench: HON'BLE MR. JUSTICE S. P. WANGDI,  
HON'BLE MRS. JUSTICE MEENAKSHI  
MADAN RAI, JJ.

**Crl. A. No. 28 of 2014**

**APPELLANT** - State of Sikkim

*Versus*

**RESPONDENT/** - Manna Das Bahun @ Manorath Upreti,  
**CONVICT** S/o Late Moti Lal Bahun,  
R/o Yangthang, Martam,  
East Sikkim.  
(A/P: Central Prison, Rongyek)

**Criminal Appeal u/S 377 of the Code of Criminal  
Procedure, 1973.**

**Appearance** :

Mr. J.B. Pradhan, Public Prosecutor with Mr. S.K. Chettri,  
Assistant Public Prosecutor for the Appellant/State.

Mr. S. P. Bhutia, Advocate for the Respondent/Convict.

**J U D G M E N T**  
( 11.06.2015 )

*Following Judgment of the Court was delivered by  
MEENAKSHI MADAN RAI, J.*

*1.* The Appellant, by filing this Appeal, assails the Order on Sentence dated 28.02.2014 passed by the Learned Judge, Fast Track Court of Sikkim at Gangtok in Sessions Trial Case (Fast Track) No.



53 of 2013, in the State of Sikkim vs. Manna Das Bahun @ Manorath Upreti & 5 Ors.

2. The Learned Public Prosecutor, Mr. J. B. Pradhan in the course of his submissions, contended that during the course of hearing of an Application, being Crl. Misc. Case No. 19 of 2013, filed by one Durga Prasad Sharma of Yangthang, Martam, East Sikkim and the Respondent/Convict under Section 482 of the Cr. P.C., 1973, this Court on 29.08.2013 issued a direction to the SHO, Singtam Police Station to register a Criminal Case against the Respondent/Convict to investigate into the matter of an alleged sexual molestation/rape of the minor daughter aged about 3½ years, of the said Durga Prasad Sharma.

3. In compliance thereof, Singtam Police Station Case No. 51/2013 dated 30.08.2013 under Section 376 of the IPC, 1860 was registered against the Respondent/Convict and under other Sections of law against five other accused persons. On completion of investigation, Charge Sheet was filed accordingly.

4. Trial commenced before the Learned Fast Track Court and on conclusion, the Learned Judge reached the finding that the Respondent/Convict had committed the offence under Section 376 of the IPC, 1860 for having committed the offence of Rape on the minor Victim aged 3½ years and sentenced the Respondent/Convict to undergo Simple Imprisonment for a period of seven years and to pay a



fine of Rs.500/- (Rupees five hundred) only. That in fact, since the Prosecutrix was a minor, aged about 3½ years at the time of offence and hence, the Respondent/Convict ought to have been convicted under Section 376(2)(f) of the IPC, 1860 and sentenced to undergo rigorous imprisonment for a term not less than ten years, but which may extend to life and fine. No adequate or special reasons were given by the Learned Trial Court for the lesser sentence imposed. Hence, the Appeal for enhancement of Sentence.

5. The Learned Counsel for the Respondent/Convict in his submissions, defending the Sentence imposed, put forth the argument that the Respondent/Convict is about 70 years of age. That infact, he has filed an Appeal being Crl. A. No. 05 of 2014 before this Court, in which he has sought an acquittal being aggrieved by the Conviction and Order of Sentence passed by the Learned Judge, Fast Track Court in the same matter and hence, this Appeal be dismissed.

6. The arguments put forth at the Bar were given careful and anxious consideration.

7. The limited question that arises for consideration before this Court is whether the Learned Trial Court has correctly sentenced the Respondent/Convict under Section 376 of the IPC, 1860 and convicted him for seven years or whether the Conviction should be under Section 376(2)(f) of the IPC, 1860 and the Sentence enhanced as per the penalty provided thereof.



8. On consideration of the rival contentions and perusal of the records of the Learned Trial Court, it is noted that the charge against the Respondent/Convict was under Section 376 of the IPC, 1860, and the charge reads as follows:-

*“I, Ms. Jyoti Kharga, Judge, Fast Track Court, East Sikkim at Gangtok, do hereby charge you Mana Das Bahun @ Monorath Upreiti, son of Late Moti Lal Bahun as follows:-*

*That you on 03.03.2011, at Yangthang Martam, East Sikkim, committed rape on one Miss Shreya Sharma 3 & ½ years minor girl and you thereby committed an offence punishable under Section 376 of the Indian Penal Code, 1860 within the cognizance of this Court.*

*And I hereby direct that you be tried on the aforesaid charge.*

*1) Have you understood the charge above?  
Yes.*

*2) Do you plead guilty or claim trial?  
I do not plead guilty and claimed trial. (sic)*

*Dated this 28<sup>th</sup> day of December, 2013.*

RO&AC

*Sd/-  
(JYOTI KHARGA)  
Judge, Fast Track Court,  
East Sikkim at Gangtok.”*

9. Section 228 of the Cr. P.C. 1973, deals with framing of charge. The Judge, while acting under Section 228, is to consider the matter on record meticulously, to assess as to what offence was committed on the facts placed before it. The charge should, therefore, specifically point to the offence committed by the accused. It cannot be a blanket charge under one main Section i.e. Section 376 of the IPC, 1860 as appears to have been done in the instant matter.



**10.** It is pertinent to mention that Section 376 IPC, 1860 consists of two sub-sections and the second sub-section has further sub-clauses from (a) to (g).

**11.** Section 376(1) deals with the offence of Rape simpliciter and lays down the penalty thereof, while Section 376(2) defines the offence of Rape and penalty thereof when committed by various persons or authorities.

**12.** The Victim is a child under 12 years of age, therefore, the appropriate Section under which charge ought to have been framed was under Section 376(2)(f) of the IPC, 1860. Thus, the charge in the first instance has been peremptorily framed without application of judicial mind. However, we hasten to draw attention to the fact that the age of the Victim has been mentioned in the charge, therefore the charge being framed only under Section 376 IPC, 1860 in no way causes any prejudice to the accused for the purposes of his defence. In any case, this is also not disputed by the Ld. Counsel for the Respondent/Convict.

**13.** In conclusion and on careful consideration of the submissions at the Bar and on perusal of the Prosecution evidence before the Learned Trial Court, this Court has reached a finding that although the Learned Trial Court has correctly convicted the Respondent for the offence of



Rape, it ought to have been under Section 376(2)(f) of the IPC, 1860, for the aforesaid reasons.

**14.** Hence, the prayer for enhancement made by the Learned Public Prosecutor is allowed and the Respondent/Convict is sentenced u/S 376(2)(f) of the IPC, 1860 to undergo rigorous imprisonment for a term of 10 (ten) years and to pay a fine of Rs.20,000/- (Rupees twenty thousand) only. In default thereof, to undergo simple imprisonment of 5 (five) years.

**15.** The period of imprisonment already undergone by him as Undertrial Prisoner and Convict be set off against the sentence imposed on him today.

**16.** The Conviction and Sentence imposed by the Learned Trial Court stands modified to the above extent.

**17.** Appeal succeeds.

**18.** Records of the Learned Trial Court be remitted forthwith.

Sd/-  
( **Meenakshi Madan Rai** )  
**Judge**  
11.06.2015  
11.06.2015

Sd/-  
( **S. P. Wangdi** )  
**Judge**

Approved for reporting : Yes/~~No~~  
Internet : Yes/~~No~~

bp

