



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

Dated : 29th May, 2023

**DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**

Crl.A. No.04 of 2022

Appellant : Nanda Lall Sanyasi

versus

Respondent : State of Sikkim

**Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973**

Appearance

Mr. Umesh Ranpal, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor with Mr. Shakil Raj Karki, Assistant Public Prosecutor for the State-Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Court of the Learned Special Judge (POCSO), West Sikkim, at Gyalshing, vide Judgment dated 16-12-2021, in Sessions Trial (POCSO) Case No.12 of 2020, convicted the Appellant under Sections 376(2)(n), 376(3), 506 of the Indian Penal Code, 1860 (hereinafter, the "IPC") and under Section 6 of the Protection of Children from Sexual Offences Amendment Act, 2019 (hereinafter, the "POCSO" Act). The Convict was sentenced under Section 6 of the POCSO Act to undergo rigorous imprisonment for twenty years, with fine of ₹ 20,000/- (Rupees twenty thousand) only, for the offence committed under Section 5(l) of the POCSO Act, duly invoking Section 42 of the POCSO Act as Section 6 of the POCSO Act provided for higher penalty than those under Section 376(2)(n) and Section 376(3) of the IPC. Under Section 506 of the IPC, he was sentenced to undergo simple



imprisonment for a period of two years with fine of ₹ 1,000/- (Rupees one thousand) only. The sentences of imprisonment were ordered to run concurrently, setting off the period of imprisonment, in terms of Section 428 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."). The sentences of fine bore default stipulations.

2. Aggrieved thereof, the Appellant is before this Court assailing the Judgment and Order on Sentence. Canvassing the contentions for impugning the Judgment of the Learned Trial Court, the Learned Legal Aid Counsel for the Appellant submitted that, although it was alleged that the incident took place on 08-05-2020, the First Information Report (for short, the "FIR"), Exhibit 2 was lodged only on 27-05-2020 and the delay of 19 days went unexplained by the Prosecution. That, although the FIR drawn up on Exhibit 19, records that the incident occurred in the midnight of 23-05-2020 and the information was received at the Police Station on 27-05-2020, at 1400 hours, however, the victim, P.W.3 in her evidence did not mention the exact dates of the incident, raising doubts about the veracity of the Prosecution case. The seizure or contents of the Birth Certificate, Exhibit 4, have not been proved neither has P.W.11, the Investigating Officer (I.O.), affixed his signature on the document to indicate that he had seized it. Besides, only one witness to the seizure of Exhibit 4 was produced before the Court, whereas the second witness, one Jiwan Kumar Chettri was not produced leading to an adverse inference against the Prosecution case. The Medical Report, Exhibit 1, of the victim does not reveal sexual assault.

3. However, Learned Counsel fairly conceded that Exhibit 8, the School Admission Register indicating the victim's date of



admission to the school and her age and Exhibit 12, the extract of the Register of Births, are genuine documents, thereby indicating that the victim was born on 01-08-2006. It was contrarily urged that, despite the said circumstance, the Registrar of Births and Deaths was not summoned as witness by the Prosecution to prove the contents of Exhibit 12. The evidence of P.W.5, the wife of the Appellant reveals that the victim's father and the Appellant had acrimonious relations, which is asserted by the Appellant in his Section 313 Cr.P.C. statement, in his responses to Question Nos.32 and 35. That, the Appellant is the landlord of the victim's father, P.W.2 and the entire case is based upon the fact that P.W.2, as the Appellant's tenant failed to pay the requisite house rent. That, in fact no offence was committed by the Appellant and hence, he deserves an acquittal from all the charges against him.

4. Learned Additional Public Prosecutor for the State-Respondent, *per contra* contended that, the Birth Certificate Exhibit 4 was seized from the possession of the father of the victim and P.W.6 who witnessed the seizure of the document was examined hence, there are no doubts about the contents of Exhibit 4. That, the Appellant admitted before the Panchayat and the "*Samaj*" that he had committed the offence and was willing to take the responsibility for the victim, as appears in the evidence and cross-examination of the victim's father, P.W.2. The date of birth of the victim has been duly proved by P.W.2 and P.W.8, who had checked the birth and death records for the year 2006 and found the victim's name registered therein, her date of birth being 01-08-2006. No discrepancies were found in the date of birth of the victim as recorded in the Birth Certificate, the School Admission Register as well as in the Register of Births. That, the delay in the



lodging of the FIR has been explained by the victim's father, P.W.2 and P.W.11, the I.O. That, the deposition of the Prosecution witnesses including that of the victim proves the Prosecution case, hence, the impugned Judgment and Order on Sentence brooks no interference.

5. It is relevant at this juncture to summarise the Prosecution case. P.W.2 lodged an FIR, Exhibit 2, before the concerned Police Station on 27-05-2020, informing that the Appellant had sexually assaulted his daughter. Based on Exhibit 2, a case was registered under Section 376 of IPC read with Section 6 of the POCSO Act, against the Appellant and taken up for investigation by P.W.11. On completion of investigation, Charge-Sheet was submitted against the Appellant, under Section 376 of the IPC read with Section 6 of the POCSO Act. On receipt of the Charge-Sheet and taking cognizance of the matter, the Learned Trial Court framed charge against the Appellant under Section 376(2)(n), Section 376(3) and Section 506 of the IPC and Section 5(l) of the POCSO Act, punishable under Section 6 of the same Act thereof. On his plea of "not guilty", trial commenced with the Prosecution examining 11 witnesses, in a bid to prove its case beyond a reasonable doubt. The examination of the Appellant under Section 313 Cr.P.C. followed, to afford an opportunity to him to explain the incriminating circumstances appearing in the evidence against him. He claimed that the allegations were false and the case was fabricated by P.W.2 who was reluctant to pay the rental dues to the Appellant. He had no witness to examine, hence the arguments of the parties were heard by the Learned Trial Court, who on consideration of the entire evidence on record, convicted the Appellant and sentenced him as detailed *supra*.



6. The only question that is to be determined by this Court is;

- (i) Whether the Appellant had sexually assaulted the victim or did the Learned Trial Court reach an erroneous finding on that count?

7. In order to address the question, the evidence of the witnesses are to be carefully examined. In the first instance, it is necessary to consider whether the Prosecution has proved that the victim was a minor, at the time of the alleged offence. P.W.2, the victim's father has stated that his daughter was born in August, 2006 although he failed to recall the exact date. He identified Exhibit 4, the Birth Certificate of his daughter, which he had obtained from the concerned Primary Health Centre (PHC) after her birth and which was seized vide Exhibit 3, Property Seizure Memo, by the Police, during investigation, as proved by P.W.6, Seizure witness and P.W.11, the I.O. His cross-examination could not decimate the evidence pertaining to the victim's age. In view of the fact that the Learned Counsel for the Appellant admitted that Exhibits 8 and 12 are genuine, no further discussions with regard to the victim's age in fact need ensue on this facet, nevertheless it may relevantly be noted that P.W.8, the Technical Officer-cum-Dealing Assistant, Births and Death Cell, posted at the concerned PHC was directed by his senior officer to verify the date of birth of the victim. He accordingly checked the Birth and Death records for the year 2006 and found that the victim's name was entered at sl./registration no.378. Her birth was found registered on 17-08-2006 and her date of birth was recorded as 01-08-2006. The witness deposed that the entries in the Register had been made by him and he had been maintaining the Register since 1992, when he was posted at the concerned PHC. The details of the birth were



entered as per information furnished by the Aganwadi Workers of the Integrated Child Development Scheme (ICDS) Centre, based on the details provided by P.W.2. The witness had also brought the related records i.e., the original Register marked as Exhibit 11 and certified copy of Exhibit 11, being Exhibit 12. The details of his evidence in chief could not be demolished, despite the lengthy and grueling cross-examination. Accordingly, the date of birth of the victim was proved by P.W.8 the person who made the relevant entry in the Register Exhibit 11 and her father P.W.2. This is in consonance with the ratio of the Division Bench of this Court in ***Sancha Hang Limboo vs. State of Sikkim***¹. It thus stands established that the victim was a minor at the time of the incident, her date of birth being 01-08-2006 while the alleged offence took place for the last time on 08-05-2020.

(i) Now, while considering the delay in the lodging of the FIR, it emerges from the facts placed before this Court that the victim did not report the incidents of sexual assault to anyone. The evidence of P.W.2, the victim's father reveals that he learnt of it from the "Samaj" on 25-05-2020. Subsequent thereof, he lodged the FIR on 27-05-2020. It is settled law that the delay in lodging FIR in such cases does not vitiate the Prosecution case. In ***State of Himachal Pradesh vs. Prem Singh***² the Supreme Court held as follows;

"6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR."

¹ SLR (2018) SIKKIM 1

² (2009) 1 SCC 420



(ii) On the anvil of the above observation, this Court is of the considered opinion that the delay in lodging of the FIR in the matter at hand has been duly explained.

(iii) Now, while examining the evidence to assess as to whether the offence indeed occurred or not, it is relevant to notice that the Prosecution case pivots around the sole testimony of the victim. She has unwaveringly stated that the Appellant had committed the offence of penetrative sexual assault on her as evident from the answer to Question No.4, put by the Learned Trial Court to her, when her evidence was being recorded. It is her specific deposition that the Appellant had committed the act when there was no one at her home and she identified the Appellant as the perpetrator of the offence. She described at length the sexual act perpetrated on her, by him. There is no reason to doubt the cogent and consistent evidence of the witness, who had to bear the ignominy of the sexual assault and her defilement by an adult married man. P.W.1, the Gynecologist, who medically examined P.W.3 stated that, she was brought to P.W.1 on 27-05-2020, at around 07.10 p.m., chaperoned by her maternal aunt. The victim gave a history of the perpetrator having fondled her breasts and committing penetrative sexual assault on her, for the last 2-3 months. She informed P.W.1 that the last sexual contact was on 08-05-2020, at around 01.00 p.m., at her residence, in the absence of her parents. The Doctor opined that the local examination showed old hymen tear, there was absence of spermatozoa, no redness or bleeding and her urine pregnancy test was negative. She admitted under cross-examination that she could not say whether the old hymen tear was due to sexual assault. While considering the evidence of this witness it must be



borne in mind that signs of sexual assault and redness in her vagina would not be visible as the last sexual assault had taken place several days before the medical examination was conducted. P.W.2, the victim's father lodged the FIR on 27-05-2020, when he came to learn from the villagers that the Appellant had raped his minor daughter. On 25-05-2020, the village "*Samaj*" met at the house of the Panchayat Member, P.W.4, where P.W.3 was also present. Although, the "*Samaj*" had also summoned the Appellant, he arrived at around 04.00 p.m. only. On P.W.3 being questioned by the "*Samaj*", she informed the gathering that the Appellant had entered her room in the night and forcibly raped her. Accordingly, the matter came to be reported to the Police, he identified Exhibit 2 as his Report. Under cross-examination he stated that the Appellant admitted to having committed the act and undertook to be responsible for his victim daughter. The prolix cross-examination failed to decimate his evidence in chief. The evidence of P.W.4, the Panchayat Member supported the Prosecution case to the extent that P.W.2 had sought her help as the Appellant had sexually assaulted his daughter. That since, the matter could not be settled at the Panchayat level, she had advised him to report the matter to the Police. The Appellant's wife produced as P.W.5, turned hostile and her evidence in chief and cross-examination shed no light on the Prosecution case. No discussions are necessary regarding the evidence of P.W.6, a Seizure witness to the seizure of Exhibit 4 or that of P.W.7, the Headmaster of the victim's school considering that the victim's age of minority was established by the evidence of P.W.8 and P.W.2. P.W.11, the I.O. stated that his investigation revealed that the victim had been sexually assaulted by the Appellant.



8. The Learned Trial Court in the impugned Judgment has discussed in detail the evidence of the victim and opined that, under cross-examination the victim has admitted that she had not stated the exact date when the incident occurred, that however, the rest of her evidence with regard to rape and sexual assault committed on her remained totally firm when tested in cross-examination. The Learned Trial Court further opined that the testimony of the victim leaves no doubt whatsoever that the Appellant committed aggravated penetrative sexual assault on the child, in her house, on more than one occasion. That, the explicit statement of the victim as to how the Appellant had committed penetrative sexual assault on her and how he had fondled her breasts leaves no requirement of further proof with regard to the commission of the offence, by the Appellant, as Charged.

9. On carefully walking through the Prosecution evidence, this Court is of the view that the Learned Trial Court had reached a correct finding with regard to the offence perpetrated by the Appellant on the victim.

10. In light of the foregoing discussions, we are of the considered opinion that the findings and observations of the Learned Trial Court were correct, which thereby answers the question formulated *supra*.

11. The impugned Judgment and Order on Sentence warrants no interference.

12. The Appeal deserves to be and is accordingly dismissed.

13. No order as to costs.



14. Copy of this Judgment be transmitted to the Learned Trial Court for information along with its records.

(**Bhaskar Raj Pradhan**)
Judge
29-05-2023

(**Meenakshi Madan Rai**)
Judge
29-05-2023

Approved for reporting : **Yes**