

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

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

Crl. A. No. 31 of 2023

Dhan Kumar Chettri @ Kumar Chettri
Son of late Kharka Bahadur Chettri,
Resident of Amba,
District Pakyong.

(at present in State jail, Rongyek, East Sikkim) Appellant

versus

State of Sikkim Respondent

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

*[against the judgment dated 11.09.2023 passed by the learned Special Judge
(POCSO ACT, 2012) Gangtok, Sikkim in State of Sikkim vs. Dhan Kumar
Chettri]*

Appearance:

Mr. R.C. Sharma, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S.K. Chettri, Additional Public Prosecutor with Mr. Sujan
Sunwar, Assistant Public Prosecutor for the Respondent.

Date of Hearing : 19.05.2025
Date of Judgment : 09.06.2025

J U D G M E N T

Bhaskar Raj Pradhan, J.

The appellant was convicted and sentenced under
section 3(b) of the Protection of Children from Sexual
Offences Act, 2012 (for short, the POCSO Act) punishable

under section 4 thereof. He was not punished for the same offence under section 9(l) and 9(m) punishable under section 10 of the POCSO Act and under section 354 of the Indian Penal Code, 1860 (for short, the IPC). The appellant was acquitted for the charge under section 3(a) punishable under section 4 and under section 5(l) and 5(m) punishable under section 6 of the POCSO Act, 2012 and under section 376-AB, 376(2)(n) of the IPC.

2. The FIR was lodged on 15.04.2020 against the appellant under section 354 of the IPC and section 8 of the POCSO Act on a complaint made by the victim's mother (PW-2). After the charge-sheet was filed, the learned Special Judge framed eleven charges under sections 3(a), 3(b), 5(m), 5(l), 9(l), 9(m) of the POCSO Act and under sections 376-AB, 376(2)(n) and 354 of the IPC. The appellant pleaded not guilty and claimed trial. During the trial, the prosecution examined twelve witnesses including Tara Sharma (PW-12)-the Investigating Officer. The appellant's statement under section 313 Cr.P.C. was recorded on 12.07.2023 when he stated that he was not aware of or that the circumstances against him were not true. He claimed to be innocent and falsely implicated.

3. The learned Special Judge examined the evidence and concluded that the deposition of the victim was corroborated by the medical evidence as well as the evidence of the victim's mother (PW-2), the appellant's friend (PW-4) and the landlord (PW-7).

4. Heard Mr. R.C. Sharma, learned Counsel for the appellant. He contends that the evidence of the victim is unreliable as the victim's mother (PW-2) gave a different version of the incident. He also contends that although the learned Special Judge convicted and sentenced the appellant under section 3(b) of the POCSO Act for penetrative sexual assault, the medical evidence does not support the victim's version. On the other hand, the learned Additional Public Prosecutor supported the impugned judgment submitting that the victim's deposition is cogent and reliable. The victim's deposition according to him is corroborated by the depositions of PW-3, PW-4, PW-5, PW-8, PW-9 and PW-11.

5. Although, the learned Counsel for the appellant did not raise the issue of minority of the victim, we find that the deposition of the victim's mother (PW-2) and of the victim about her minority was not questioned by the defence

during the trial. The victim's mother (PW-2) also deposed that she had lost the victim's birth certificate. As such, we confirm the finding of the learned Special Judge about the minority of the victim based on the deposition of the victim's mother (PW-2) as well as the ossification test report (exhibit P-3) conducted by Dr. Kharananda Sharma (PW-6) who opined that based on the X-rays done on the victim, he was of the opinion that the bone age of the minor victim was between 7 to 10 years on the date of her examination on 15.05.2020.

6. The FIR (exhibit P-1) lodged on 15.04.2020 by the victim's mother (PW-2) narrates the sequence of events leading to the commission of the offence exactly as she deposed before the Court on 28.09.2022. The appellant was known to the victim's mother (PW-2) as well as the victim. Both identified the appellant in Court. The victim had deposed that she had gone to the house of the appellant on the relevant day. During the night, the appellant slept beside her and his son. At night he inserted his finger into her anus. She came out of the room and sat on the staircase where she met one 'uncle'. She told him about the incident. Many people gathered. Police also arrived and took the appellant.

7. The appellant questions the truthfulness and the veracity of the victim's statement. Nothing substantial to demolish the prosecution version was brought out during her cross-examination. The victim's deposition is substantially corroborated by the victim's mother in her deposition as well as by the FIR (exhibit P-1) lodged on 15.04.2020 on the basis of the recorded statement of the victim's mother (PW-2). It is true that the FIR (exhibit P-1) records that the victim had informed the victim's mother (PW-2) that while she was asleep the appellant had touched her 'pisab garne' at the first instance and when she went to a different side to sleep, he again came and did the same thing. This statement of the victim to her mother is slightly different to the deposition of the victim when she said that the appellant had inserted his finger into her anus. However, we find that the defence did not confront the victim as well as the victim's mother (PW-2) on this aspect. The discrepancy is explainable as the FIR was not lodged by the victim but by her mother.

8. PW-4 is a vital witness who also corroborated the deposition of the victim. PW-4, who was the appellant's friend and neighbour, confirmed that the appellant had in his presence taken the victim along with him to his house

from the victim's mother's (PW-2) house. PW-4 had also met the victim - who was crying, and the appellant immediately after the incident. According to PW-4, the victim did not disclose why she was crying and the appellant denied of any wrong doing.

9. PW-5 confirmed that he had met the victim crying and in a state of panic along with the appellant immediately after the incident. PW-5 was the IRBn personnel who informed the police about the incident.

10. PW-8 - the Head Constable, deputed by Sub-Inspector Deepa Sharma (PW-10) who was the duty Officer of the Ranipool Police Station, confirmed that she had gone to the appellant's house where she had found the victim crying in the presence of the appellant. PW-8 was the police personnel who informed the victim's mother (PW-2) about the victim's state in the appellant's house.

11. Sub-Inspector Deepa Sharma (PW-10) confirmed having sent PW-8 to inquire about the incident.

12. After being informed by PW-8 about the victim, the victim's mother (PW-2), as per her deposition, went to the appellant's house where she met the victim and the appellant who was being interrogated by the police.

13. The above depositions confirm the facts deposed by the victim about the incident.

14. The learned Counsel for the appellant pointed out the discrepancies in the dates of the incident as narrated by some of the prosecution witnesses in their deposition as fatal discrepancies. The errors of the date of the incident in the deposition of some of the prosecution witnesses is not of much relevance as the FIR (Exhibit P-1), deposition of Sub Inspector Anil Subba (PW-3) - who was the Duty Officer who received the information about the incident on 14.04.2020, Deputy Superintendent of Police Bijendra Thapa (PW-9) who registered the complaint on 15.04.2020, Sub Inspector Deepa Sharma (PW-10) who instructed PW-8 to inquire about the incident on 14.04.2020, Dr. Uma Rai (PW-11) who examined the victim on 15.04.2020 and Tara Sharma (PW-12) - the Investigating Officer who took up the investigation after Sadar P.S. FIR Case No.63/2020 dated 15.04.2020 was endorsed to her, sufficiently proves beyond reasonable doubt that the incident occurred on 14.04.2020.

15. The victim's deposition about the actual act committed by the appellant which is sufficiently corroborated by the deposition of the prosecution witnesses

as above also find corroboration from the medical evidence available. Dr. Uma Rai (PW-11) who examined the victim on 15.04.2020, found that there was mild redness over her buttock region. She recorded that in her medical report (exhibit P-6) proved by her as well.

16. We are of the considered view that the substratum of the prosecution case has remained intact and the minor discrepancies pointed out by the learned counsel for the appellant would not demolish the prosecution version. We find no errors in the impugned judgment and sentence passed by the learned Special Judge.

17. Section 3(b) of the POCSO Act relates to penetrative sexual assault. A person is said to commit penetrative sexual assault under section 3(b) if he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or make the child to do so with him or any other person. The evidence of the victim which is found to be truthful and cogent confirms that the appellant had committed penetrative sexual assault upon her in his house on 14.04.2020.

18. The punishment prescribed under section 4 for penetrative sexual assault on a child below 16 years of age is imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine. The learned Special Judge has imposed the minimum sentence of twenty years and a fine of Rs.5000/- for the offence. We confirm the sentence imposed. We are also of the view that the compensation of Rs.1,00,000/- in terms of Schedule-I to *the Sikkim Compensation to Victims (or their Dependents) Scheme, 2021* ordered by the learned Special Judge is just and reasonable and accordingly confirm the same.

19. Accordingly, the appeal is dismissed and stands disposed of.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting : **Yes**
Internet: **Yes**

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