

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 31st March, 2018

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No. 17 of 2017

Appellant : Subash Chandra Rai,
Aged about 39 years,
Son of Jeet Bahadur Rai,
R/o Homtang, Ward No.7,
Koshi Anchal, Nepal.
[Presently State Central Jail,
Rongyek, East Sikkim]

versus

Respondent : State of Sikkim

Appeal under Section 374 of the
Code of Criminal Procedure, 1973

Appearance

Mr. Gulshan Lama, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Karma Thinlay Namgyal and Mr. Thinlay Dorjee Bhutia,
Additional Public Prosecutors with Mrs. Pollin Rai, Assistant Public
Prosecutor for the State-Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Assailing the Judgment and Order on Sentence, both dated 19-04-2017, of the Court of the Learned Special Judge (POCSO), North Sikkim, at Mangan, in Sessions Trial (POCSO) Case No.01 of 2016, the instant Appeal has been preferred. The Appellant was convicted under Sections 9(l), 9(m) and 9(n) of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and Section 354 of the Indian Penal Code, 1860 (for

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short "IPC") and sentenced to undergo simple imprisonment for a period of 5 (five) years and to pay a fine of Rs.25,000/- (Rupees twenty five thousand) only, under each of the above offences with a default stipulation each. The sentences were ordered to run concurrently, duly setting off the period of imprisonment already undergone by the convict as an under-trial prisoner.

2. Claiming an acquittal for the Appellant, it was put forth by his Counsel that the evidence of the victim, P.W.3, is not creditworthy as her testimony given before the Learned Special Judge (POCSO), North Sikkim, at Mangan, bore substantial exaggerations from her statement under Section 164 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") recorded by the Magistrate. Her evidence lacked corroboration and being a child witness she was susceptible to influence from her mother, therefore, her evidence ought to have been evaluated carefully. Emphasising this point the attention of this Court was drawn to the decision in ***State of U.P. vs. Ashok Dixit and Another***¹, ***Darpan Potdarin vs. Emperor***² and ***Rameshwar S/o Kalyan Singh vs. The State of Rajasthan***³. That, P.W.4 deposed that she did not want to continue in the marriage with the Appellant thereby indicating a troubled marriage and likelihood that she had tutored the victim. Three other children of the Appellant and P.W.4 living along with them were not listed as witnesses to the instant case sans reasons, leading to an adverse inference against the Prosecution. Admittedly, the family shared a single room, but P.W.4 never witnessed a single sexual assault by

¹ (2000) 3 SCC 70

² AIR 1938 Patna 153

³ AIR 1952 SC 54

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the Appellant on P.W.3, leading to a high degree of improbability of the offence having been committed. The Medical Report of the victim fails to support the Prosecution case of sexual assault. That, the Learned Trial Court ought to have ignored the evidence of the minor victim living as she was admittedly with a police personnel at the relevant time thereby raising the degree of the probability of her being tutored by the Police. Hence, in view of the grounds put forth, the Appellant be acquitted. Strength was drawn from the ratio of ***Narain and Others vs. State of Punjab***⁴, ***Panchhi and Others vs. State of U.P.***⁵ and ***Rajoo and Others vs. State of M.P.***⁶.

3. Repelling the arguments of the Appellant, Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, would contend that the evidence of the victim establishes with clarity the commission of the sexual assault on her, duly corroborated by the evidence of her mother P.W.4 as well as P.W.1 and P.W.5, the Complainants, who were told of the incident by P.W.3, who had also previously narrated the incident to P.W.4. That, it is now well-established that the evidence of a victim of sexual assault requires no corroboration if the evidence given by her is cogent and consistent. That, in the instant matter, the evidence given by the victim has been consistent despite her age and in her cross-examination she did not vacillate. Besides, Section 29 of the POCSO Act clearly lays down that when the victim makes an allegation of sexual assault the Court shall presume that such an incident has indeed taken place. As the conviction meted out to the Appellant is

⁴ AIR 1959 SC 484

⁵ (1998) 7 SCC 177

⁶ AIR 2009 SC 858

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based on the evidence on record, the Appeal be dismissed. To buttress his submissions, reliance was placed on the decision of this Court in **Robin Gurung vs. State of Sikkim**⁷. Reliance was also placed in **State of Rajasthan vs. Chandgi Ram and Others**⁸.

4. The rival contentions of Learned Counsel have been heard and the evidence and documents on record carefully perused. It would now be essential to determine whether the conviction handed out to the Appellant is justified on the anvil of the evidence on record. We may briefly advert to the facts of the case to appreciate the matter at hand.

5. On 14-04-2016, at around 0900 hours, the Mangan P.S., North Sikkim, received a First Information Report (FIR), Exhibit 2, from one Yeshey Ongmu Bhutia, P.W.5 and Anniela Bhutia, P.W.1, informing that the Appellant, a resident of Mangan, allegedly sexually assaulted the minor victim girl P.W.3, aged about 12 years, which was brought to the notice of Mingma Doma Bhutia, P.W.6 a Member of the Sikkim Juvenile Police Unit and a Para-Legal Volunteer, resident of Mangan Bazar on 11-04-2016. On receiving the Complaint, it was registered as Mangan P.S. Case No.6(4)016, dated 14-04-2016, under Section 354(A) of the IPC read with Sections 8/10/12 of the POCSO Act, against the Appellant Subash Rai and taken up for investigation. During investigation, the formalities thereof which included inspection of the place of occurrence, preparation of rough sketch map, recording of

⁷ MANU/SI/0048/2017 : 2017 SCC OnLine Sikk 160

⁸ (2014) 14 SCC 596

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statement of the witnesses, medical examination of the accused and the victim, seizure of relevant documents were completed and the statement of the victim and her mother were recorded under Section 164 of the Cr.P.C.

6. Investigation would reveal that the victim, P.W.4 and the Appellant were living in rented premises at Mangan. Prior to that, they had been living at Tumin village, East Sikkim, for close to 5/6 years. P.W.1 and P.W.5 both Social Workers were informed by P.W.6 that the victim was being sexually exploited by the Appellant. Accordingly, P.W.1 and P.W.5 met the victim on 11-04-2016 who failed to confide in them at the first instance. On 14-04-2016, they met the child for the second time when she disclosed to them that the Appellant used to sexually exploit her. It also came to light that not only was the Appellant guilty of such offences, but his friend one Hangjit Rai had also perpetrated such acts on the child. Consequently, on completion of investigation, Charge-Sheet was filed against the Appellant under Sections 8 and 10 of the POCSO Act and against Accused Hangjit Rai under Section 354 of the IPC read with Sections 4 and 12 of the POCSO Act.

7. In view of the fact that the offence committed by the Appellant was in the North Sikkim, while that of Hangjit Rai was in East Sikkim, the Learned Special Judge (POCSO) North Sikkim, at Mangan, vide Order dated 30-08-2016, separated the trial of the Appellant and Hangjit Rai. The trial against the Appellant proceeded in the Court of the Learned Special Judge (POCSO), North Sikkim, at Mangan. It may be mentioned here that so far as Hangjit Rai @ Raj

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Rai is concerned, the State was before this Court in a Transfer Petition being Tr.P.(Crl.) No.04 of 2016 wherein it was, *inter alia*, submitted that the Prosecution had bifurcated the trial against the Appellant and Hangjit Rai, however, it appeared that there was no FIR against the Accused Hangjit Rai and, therefore, the Prosecution be allowed to take necessary steps in this regard. Vide Order dated 06-10-2016 of this Court in the said Transfer Petition, the Prosecution was permitted to take necessary steps, as prayed.

8. The Learned Trial Court on 30-08-2016 after hearing the parties and considering the materials on record framed Charge against the Appellant under Sections 354A(1)(i) of the IPC and Sections 7, 9(l), (m) and (n) of the POCSO Act. The Charges under Sections 9(l), 9(m) and 9(n) of the POCSO Act were framed as one consolidated Charge instead of separate Charges. On 27-09-2016, the Learned Trial Court added a Charge under Section 3(a) of the POCSO Act against the Appellant. By an Order dated 25-10-2016 of the same Court, remedial measures was taken for separation of the Charges under Sections 9(l), 9(m) and 9(n) of the POCSO Act by framing them as individual and distinct Charges. On the same date, it was also ordered that Charge under Section 3(a) of the POCSO Act be altered to Sections 5(l), 5(m), 5(n) of the POCSO Act. Further, Charges under Sections 376(2)(n), 376(2)(i), 376(2)(f), 293, 354, 354A(1)(iii) of the IPC and Section 11(iii) of the POCSO Act were added. The said Charges were in addition to the Charges already framed under Section 7 of the POCSO Act and Section 354A(1)(i) of the IPC.

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9. The Charges so framed were read over and explained to the Appellant. On his plea of "not guilty", trial commenced with 12 (twelve) witnesses being examined by the Prosecution to establish its case beyond a reasonable doubt, on closure of which the Appellant was extended an opportunity under Section 313 of the Cr.P.C. to explain any circumstances appearing in the evidence against him. The final arguments followed and the trial concluded with the impugned Judgment and sentence.

10. What emanates from the evidence on record is that apart from the victim, P.W.3 there is no other witness to the sexual assault committed on her. The witness has categorically deposed that when she, her mother and the Appellant were living in Tumin, East Sikkim, the Appellant used to come to her bed, disrobe her and rub his genital on her anus. On his repeating the act several times, she informed her mother, P.W.4 of it, who asked the victim to sleep with her in the Kitchen. The Appellant however was prone to enter the Kitchen during the night and commit the same offence, besides he also showed her videos of naked boys and girls which were stored in his mobile. After they shifted to Mangan, North Sikkim, he continued with the offence, but her mother remained helpless despite knowledge of the perverse acts as she herself used to be physically assaulted by the Appellant. A careful perusal of the cross-examination which the victim was subjected to would reveal that no questions were put to the victim to contradict her evidence pertaining to the act of sexual assault on her. Thus, her evidence

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regarding the sexual act committed on her by the Appellant remained uncontroverted.

11. Having perused the evidence of this witness, it would be appropriate to turn to the evidence of P.W.1 and P.W.5. According to P.W.1 she was told by P.W.6 that the victim was repeatedly sexually assaulted by the Appellant. Later when P.W.1 herself counselled the victim P.W.3, she was told by her that the Appellant had on several occasions while they were sleeping touched her private part and rubbed his private part against her anus. The fact of such disclosure to P.W.1 by P.W.3 although tested under cross-examination remained steadfast. P.W.5 corroborating the evidence of P.W.1 reiterated that on enquiry from P.W.3 she told them that the Appellant used to come to her bed at night disrobe her and rub his genital on her anus. Her evidence-in-chief withstood the cross-examination and although a suggestion was put to her that the victim had falsely implicated the accused at the behest of P.W.4, this remained a mere suggestion as the victim asserted that it was not a fact.

12. Along with evidence of P.W.1 and P.W.5, it is indeed imperative to consider the evidence of P.W.6 who was informed on 08-04-2016 by the North Zilla Adhyaksha, that a minor girl had reportedly been raped at Mangan Bazar. The following day, she went to the Mangan Police Station (P.S.) and enquired about the matter, the P.S. negatived report of any such case till then. Later, the same day, when she was at Mangan Bazar, she came across P.W.4 and while conversing with her P.W.4 revealed that the victim,

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P.W.3 used to be sexually assaulted by the Appellant repeatedly on several occasions. Apart from rubbing his genital on the anus of the minor victim, he used to make the minor victim touch his genital. P.W.3 for her part told P.W.6 of the sexual assault perpetrated on her by one Hangjit Rai at Tumin. On 11-04-2016, P.W.6 reported the matter to P.W.1 and P.W.5, whereupon on the same date they all met P.W.3 and enquired into the matter. The victim was reticent and did not disclose anything, however, on 14-04-2016, after affording her time from 11-04-2016, on meeting the victim again, she confided to them about the repeated sexual assaults perpetrated on her by the Appellant and one Hangjit Rai. This disclosure led to the lodging of the FIR, Exhibit 2. The fact of disclosure by P.W.3 to P.Ws 1, 5 and 6 remained uncontroverted during cross-examination. Although Learned Counsel for the Appellant while relying on the Medical Report, Exhibit 11, canvassed that besides absence of external injury on the victim, her hymen was also found to be intact, thereby ruling out sexual assault, I am afraid this argument holds no water. In this context, it would but be appropriate to rely on the decision on **State of Rajasthan vs. N. K. The Accused**⁹ wherein it was, *inter alia*, held as follows;

"18. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix."

⁹ (2000) 5 SCC 30

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Besides the allegation of the victim is not of penetrative sexual assault by the Appellant into her genital, hence the condition of her hymen is irrelevant herein.

13. Related to the evidence of the above four witnesses is that of P.W.4, the victim's mother who while substantiating the evidence of P.W.1 confirmed that the victim had told her that the Appellant had sexually assaulted her by touching her private part and had even attempted to insert his genital into hers. Although it was admitted by her under cross-examination that she did not witness any of the alleged sexual assaults it is evident that her examination-in-chief remained undemolished during her cross-examination.

14. On an analysis of the evidence of the aforesaid witnesses, it is the constant refrain of the witnesses that the Appellant had sexually assaulted the victim by rubbing his genital against her anus. Although P.W.4 had gone further and stated that the Appellant had rubbed his genital against the private part of the victim, this is a minor aberration from the other evidence on record, but does not negate or affect the Prosecution case. The victim who had to suffer the ignominy of a sexual assault by the Appellant was but 12 years old at that time. Her evidence has been constant and unwavering and she has cogently as well as consistently described the sexual act committed by the Appellant on her.

15. I am not inclined to accept nor appreciate the argument of Learned Counsel for the Appellant that the child was susceptible

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to tutoring from her mother. The evidence of P.Ws 1, 5 and 6 reveal that besides the child disclosing the incidents of sexual assault to them in the absence of P.W.4, she was resolute in her stand that the Appellant had sexually assaulted her and described the reprobate acts perpetrated on her by him. Merely because P.W.4 was presumably not in a cordial relationship with her husband did not mean that she would have made the victim a bait to bail out of the marriage by accusing him of depraved and degenerate acts. Such accusations could not have assured her of an escape from her marriage without recourse to legal procedure. The evidence of the child being consistent is found to be beyond reproach by this Court, it would be beneficial to refer to the ratio in ***State of Madhya Pradesh vs. Ramesh and Another***¹⁰ where the Hon'ble Supreme Court held as follows;

"11. The evidence of a child must reveal that he was able to discern between right and wrong and the court may find out from the cross-examination whether the defence lawyer could bring anything to indicate that the child could not differentiate between right and wrong. The court may ascertain his suitability as a witness by putting questions to him and even if no such questions had been put, it may be gathered from his evidence as to whether he fully understood the implications of what he was saying and whether he stood discredited in facing a stiff cross-examination. A child witness must be able to understand the sanctity of giving evidence on oath and the import of the questions that were being put to him. (Vide *Himmat Sukhadeo Wahurwagh v. State of Maharashtra* [(2009) 6 SCC 712 : (2009) 3 SCC (cri) 1 : AIR 2009 SC 2292]"

In the matter under consideration, the Learned Trial Court had put certain questions to the victim before recording her evidence to test her competence to depose. On being so satisfied, the Court has proceeded to examine her which indicates that the Court was

¹⁰ (2011) 4 SCC 786

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satisfied that the child was able to discern right from wrong, no statement in her cross-examination would indicate that the child lacked competence to testify, this Court finds no reason to differ.

16. In *Shivasharanappa and Others vs. State of Karnataka*¹¹ it was held as hereinbelow;

"17. Thus, it is well settled in law that the court can rely upon the testimony of a child witness and it can form the basis of conviction if the same is credible, truthful and is corroborated by other evidence brought on record. Needless to say, the corroboration is not a must to record a conviction, but as a rule of prudence, the court thinks it desirable to see the corroboration from other reliable evidence placed on record. The principles that apply for placing reliance on the solitary statement of the witness, namely, that the statement is true and correct and is of quality and cannot be discarded solely on the ground of lack of corroboration, apply to a child witness who is competent and whose version is reliable."

The above decision would indeed lend succour to the matter at hand, testimony of the victim is found to be consistent with no evidence of tutoring and requires no corroboration.

17. I also deem it appropriate to refer to the ratiocination in *State of H.P. vs. Shree Kant Shekari*¹² wherein it was held by the Hon'ble Supreme Court in Paragraph 21 as follows;

"21. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her

¹¹ (2013) 5 SCC 705

¹² (2004) 8 SCC 153

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testimony. Assurance, short of corroboration, as understood in the context of an accomplice, would suffice.”

The victim herein has no reason to implicate the Appellant and it is but trite to mention that the nature of the act itself would ensure exclusion of other witnesses.

18. In *Dinesh alias Buddha vs. State of Rajasthan*¹³, the Hon’ble Supreme Court held as follows;

“**11.** In the Indian setting, refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sexual offence is entitled to great weight, notwithstanding the absence of corroboration. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar v. State of Rajasthan* [1952 SCR 377 : AIR 1952 SC 54 : 1952 Cri LJ 547] were: (SCR p. 386)

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...” ”

This speaks volumes on the question of the testimony of the victim, thus requiring no elucidation. The victim’s evidence in the matter is trustworthy and thus acceptable to the Court sans corroboration.

¹³ (2006) 3 SCC 771

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19. Counsel for the Appellant expounding the argument that the non-production of the other children of the Appellant and P.W.4 leads to an adverse inference, garnered strength from the ratio in *Narain (supra)* where the Hon'ble Supreme Court held, inter alia, as follows;

“(13) It is an accepted rule as stated by the Judicial Committee in *Stephen Seneviratne v. King*, (AIR 1936 PC 289) that “witnesses essential to the unfolding of the narrative on which the prosecution is based, must, of course, be called by the prosecution”. It will be seen that the test whether a witness is material for the present purpose is not whether he would have given evidence in support of the defence. The test is whether he is a witness “essential to the unfolding of the narrative on which the prosecution is based”. Whether a witness is so essential or not would depend on whether he could speak to any part of the prosecution case or whether the evidence led disclosed that he was so situated that he would have been able to give evidence of the facts on which the prosecution relied. It is not however that the prosecution is bound to call all witnesses who may have seen the occurrence and so duplicate the evidence. But apart from this, the prosecution should call all material witnesses.”

What this engenders is that material witnesses who are essential to the unfolding of the narrative on which the Prosecution is based must be called by the Prosecution. In the instant matter, non-production of the minor children of the Appellant and P.W.4 cannot be said to affect the Prosecution case as it is not their case that the minors had witnessed any sexual assault on P.W.3 nor did investigation in the matter lead to any such revelation.

20. The age of the victim has not been contested and, therefore, it is not necessary enter into a verbose discussion on this aspect suffice it to say that Exhibit 5 the Infant Immunisation Record of the victim reveals her date of birth to be “18-03-2006”

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duly verified by Exhibit 14, a copy of the page of the Admission Register of the School attended by the victim, pertaining to the year 2012, where, at Sl. No.7, her date of birth is reflected as "18-03-2006". She was thus a child on 12 years when she became the object of the lascivious acts of the Appellant.

21. I now turn my attention to the contention of Learned Counsel for the Appellant that there was an exacerbation of the victim's evidence before the Court vis-a-vis her statement under Section 164 of the Cr.P.C. While explaining the object of recording statements under Section 164 of the Cr.P.C. the Hon'ble Supreme Court in *R. Shaji vs. State of Kerala*¹⁴ observed as follows;

"27. So far as the statement of witnesses recorded under Section 164 is concerned, the object is twofold; in the first place, to deter the witness from changing his stand by denying the contents of his previously recorded statement; and secondly, to tide over immunity from prosecution by the witness under Section 164. A proposition to the effect that if a statement of a witness is recorded under Section 164, his evidence in court should be discarded, is not at all warranted. (Vide *Jogendra Nahak v. State of Orissa* [(2000) 1 SCC 272 : 2000 SCC (Cri) 210 : AIR 1999 SC 2565] and *CCE v. Duncan Agro Industries Ltd.* [(2000) 7 SCC 53 : 2000 SCC (Cri) 1275])

28. Section 157 of the Evidence Act makes it clear that a statement recorded under Section 164 CrPC can be relied upon for the purpose of corroborating statements made by witnesses in the committal court or even to contradict the same. As the defence had no opportunity to cross-examine the witnesses whose statements are recorded under Section 164 CrPC, such statements cannot be treated as substantive evidence."

22. It is an established legal proposition that Section 164 of the Cr.P.C. is to be used for the purposes of corroboration and contradiction apart from which it is intended to be a safeguard to

¹⁴ (2013) 14 SCC 266

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preserve the truth which has emanated in the course of an investigation before trial. Evidently, there are some statements made by the victim before the Court which found no place in her Section 164 of the Cr.P.C. statement, but there is no necessity in fact for Learned Counsel for the Appellant to raise this argument before this Court since it is clear that the Learned Trial Court has not taken such statements into consideration neither has the Prosecution insisted by way of an Appeal on a conviction of the Appellant under Sections 5(l), 5(m) and 5(n) of the POCSO Act which deals with the offence of aggravated penetrative sexual offence. The ratio in **State of Andhra Pradesh vs. Thadi Narayana**¹⁵ is appropriate for reference wherein it was held by a three-Judge Bench of the Hon'ble Supreme Court, *inter alia*, as follows;

"10. If an appeal is preferred against an order of acquittal by the State and no appeal is filed by the convicted person against his conviction it is only the order of acquittal which falls to be considered by the appellate court and not the order of conviction. Similarly, if an order of conviction is challenged by the convicted person but the order of acquittal is not challenged by the State then it is only the order of conviction that falls to be considered by the appellate court and not the order of acquittal. Therefore, the assumption that the whole case is before the High Court when it entertains an appeal against conviction is not well founded and as such it cannot be pressed into service in construing the expression "alter the finding"."

23. Taking into consideration the discussions hereinabove, it concludes that the Judgment and Sentence meted out by the Learned Trial Court warrants no interference.

24. Accordingly, the Appeal stands dismissed.

¹⁵ AIR 1962 SC 240

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25. The discussion that follows hereinafter being of relevance and importance is taken up before closing the matter. This Court in ***Budha Singh Tamang vs. State of Sikkim***¹⁶ and in ***Robin Gurung (supra)*** referred to the ratiocination in ***Premiya alias Prem Prakash vs. State of Rajasthan***¹⁷, wherein it was held as follows;

"3. We do not propose to mention the name of the victim.

"2. ... Section 228-A IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing the name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by the High Court or the Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, the High Court or the lower court, the name of the victim should not be indicated."

We have chosen to describe her as "the victim" in the judgment. (See *State of Karnataka v. Puttaraja* [(2004) 1 SCC 475], at SCC pp. 478-79, para 2 and *Dinesh v. State of Rajasthan* [(2006) 3 SCC 771]"

26. In the instant matter, I have to note that the Learned Trial Court has been largely circumspect with regard to the identity of the victim during the trial. However, it would be worthwhile to indicate here that Section 33(7) of the POCSO Act enjoins upon the Special Court to ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. The *Explanation* to the Section elucidates that the identity of the child includes the identity of the child's family, school, relatives,

¹⁶ MANU/SI/0008/2016 : 2016 SCC OnLine Sikk 48

¹⁷ (2008) 10 SCC 81

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neighbourhood or any other information by which the identity of the child may be revealed. There are a few slip-ups in this regard in the Order of the Learned Trial Court dated 30-08-2016 and the impugned Judgment. Besides ensuring that the Court does not disclose the child's identity, the Learned Special Court is also vested with the responsibility of ensuring that this does not occur during the investigation. In this context, it is for the Learned Special Court to devise methods for such steps. One would find on perusal of the Charge-sheet that the name of the victim, her address and detail of school has been revealed therein flagrantly by the Investigating Agency throwing caution and the mandate of the Statute to the winds. The provisions in law which seek to protect the identity of the child are for the purpose of sheltering her from curiosity and prying eyes which could further traumatize her psychologically creating insecurity and apprehension in the victim's mind. It is also an effort, *inter alia*, to protect her future, to prevent her from being tracked, identified and for warding off unwanted attention and to prevent repetition of such offences on her on the assumption that she is easy prey. The Investigating Agency for their part should ensure that the identity of the victim is protected and not disclosed during investigation or in the Charge-Sheet. A separate File may perhaps be maintained in utmost confidence, for reference, if so required. Statutes have been enacted to protect children of crimes of which the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "Juvenile Justice Act") and POCSO Act are of special relevance. These Acts impose an obligation not only on the Court and the Police, but also the Media and Society at large to protect

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children from the exponentially increasing sexual offences against children and to the best of their ability to take steps for prevention of such sexual exploitation of children.

27. Reference may necessarily be made to the Juvenile Justice Act, Chapter IX, "Other Offences Against Children", in Section 74, which reads as follows;

"74. Prohibition on disclosure of identity of children.—(1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:

Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.

(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of.

(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both."

The mandate of the provision requires no further clarification. Suffice it to say that neither for a child in conflict with law, or a child in need of care and protection, or a child victim, or witness of a crime involved in matter, the name, address, school or other particulars which could lead to the child being tracked, found and identified shall be disclosed, unless for the reasons given in the proviso extracted hereinbefore. The Police and Media as well as the

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Judiciary are required to be equally sensitive in such matters and to ensure that the mandate of law is complied with to the letter.

28. In addition to the above, Chapter V of the POCSO Act prescribes the procedure for reporting of cases. Section 19 which commences with a *non-obstante* clause envisages that any person which includes the child, has the apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to the Special Juvenile Police Unit or the local Police. The details have been laid down in this Section.

29. The POCSO Act also imposes an obligation on personnel of the media, hotel, lodge, hospital, club, studio, photographic facilities, to provide information to the Special Juvenile Police Unit or to the local Police if they come across any material or object which is sexually exploitative of a child. The relevant provision is as follows;

"20. Obligation of media, studio and photographic facilities to report cases.—Any personnel of the media or hotel or lodge or hospital or club or studio or photographic facilities, by whatever name called, irrespective of the number of persons employed therein, shall, on coming across any material or object which is sexually exploitative of the child (including pornographic, sexually-related or making obscene representation of a child or children) through the use of any medium, shall provide such information to the Special Juvenile Police Unit, or to the local police, as the case may be."

30. That apart, it would also do well to highlight here that Section 21 of the POCSO Act provides for penalty in the event of failure to report or record a case. Section 21 of the POCSO Act reads as follows;

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"21. Punishment for failure to report or record a case.—(1) Any person, who fails to report the commission of an offence under subsection (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions, of sub-section (7) shall not apply to a child under this Act."

These provisions ought to be borne in mind by all concerned to prevent any *faux-pas* with regard to the identity and other particulars of any victim, child or children as described hereinabove.

31. In addition to the above, the POCSO Act prescribes procedure for Media with a conjunctive penal provision for contravention of the provisions. Section 23 of the POCSO Act reads as follows;

"23. Procedure for media.—(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child:

Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to

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be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.”

The aforesaid provisions have been extracted and highlighted for the purpose of information and compliance of all concerned.

32. In the circumstances, no order as to costs.

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

34. The Judgment also be made over to Police Stations across the State for their information and compliance.

Sd/-
(Meenakshi Madan Rai)
Judge
31-03-2018

Approved for reporting : **Yes**

Internet : **Yes**