

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

Dated: 30th NOVEMBER, 2018

D.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE.

Crl. L.P. No. 08 of 2018

Appellant : State of Sikkim

Versus

Respondent : Arpan Limboo,
S/o Janga Bahadur Limboo,
Resident of Kumuk,
West Sikkim.

Appearance:

Mr. Karma Thinlay, Addl. Public Prosecutor for the
appellant.

Ms. Gita Bist and Ms. Puja Lamichaney, Advocates for the
respondent.

ORDER

Chief Justice

Appeal is filed against the judgment and order dated 31.03.2018 passed by the learned Special Judge (POCSO), West Sikkim at Gyalshing in Sessions Trial (POCSO) Case No. 09 of 2016 – State of Sikkim versus Arpan Limboo, by which the learned Judge acquitted the accused/respondent. Along with the appeal, Criminal Leave Petition has also been filed with the prayer that leave to appeal

against the impugned judgment and order dated 31.03.2018 be granted.

2. Allegation against the accused/respondent is that a minor victim was raped by the accused/respondent on 12.12.2015, in the house of her elder sister at Kumuk Busty, West Sikkim. Facts, in brief, are that on 12.12.2015, the victim had gone to the house of her elder sister at Kumuk Busty, West Sikkim to attend the birthday party celebration of the son of one Jas Bahadur Rai of Jhakri Dhung, West Sikkim, which was scheduled to be held on 13.12.2015. On the night of 12.12.2015, the minor victim stayed in the house of her elder sister. After dinner, everyone present in the house including the elder sister of the minor victim and her children went to sleep. The elder sister of the minor victim was drunk and fell asleep with her son. The minor victim went to sleep on another bed in the same room. At around 09.00 pm, the accused came inside the house, went to the bed of the minor victim and raped her after forcibly removing her clothes. The minor victim did not reveal anything to anybody. However, on 13.05.2016, when the ASHA workers, Smt. Prithi Kumari Rai and Gaw Maya Limboo, suspected the minor victim to be pregnant, they got conducted pregnancy test and found that the victim was pregnant. They informed the guardian of the minor victim about the same. Due to the sexual assault, the minor victim became pregnant and delivered an infant baby at District Hospital, Namchi, South Sikkim.

3. On being asked, the minor victim told about the sexual assault on 12.12.2015 by the accused/respondent. Matter was investigated and charge sheet was filed. Trial was conducted and the learned trial Judge acquitted the accused/respondent from the charges under Section 5(j)(ii) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO') and under Section 376 (2) (i) of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

4. Mr. Karma Thinlay, learned Additional Public Prosecutor for the appellant-State submits that the minor victim, in her statement, categorically stated that it was the accused/respondent, who committed penetrative sexual assault on her. He submits that the learned Special Judge (POCSO) erred by not relying on the testimony of the victim. He submitted that in case of sexual offence, the court is bound to rely on the testimony of minor victim. Such testimony should not have been disbelieved.

5. Heard the learned counsel for the parties.

6. We have considered the submissions of learned counsel for the parties and considered the judgment dated 31.03.2018 of the learned trial Judge.

7. Learned trial Judge in his judgment observed that the victim, in the case, has not stated anything regarding her date of birth and about the birth certificate. PW-1 and PW-11, the parents of the

victim, have also not deposed anything about the date of birth of the victim. In cross-examination, PW-1 has conceded that he does not know the date of birth of his victim daughter. He does not know the age, date of birth and year mentioned in the school record. The birth certificate was also obtained in the year 2015. The trial Court has also observed that the prosecution has not examined any person from the Registrar of Births & Deaths, Dentam PHC, which has issued the birth certificate, as a witness to prove the same. The trial Court found that the birth certificate is not admissible in evidence and disbelieved the same and concluded that the prosecution has failed to establish/prove that the victim was below 18 years of age at the relevant point of time. The more important thing in the present case is that the blood sample of the accused, victim and her infant baby were collected and sent to CFSL, Kolkata for DNA analysis. The Investigating Officer of the case has also proved that he collected the blood samples and sent the same to CFSL, Kolkata for DNA analysis. The Investigating Officer has also proved that Exhibit-13 is the DNA analysis report received from CFSL, Kolkata. On perusal of DNA analysis report, Exhibit-13, it is found that the accused/respondent is not the biological father of the baby given birth by the victim.

8. It is the case of the prosecution that the girl was raped by the accused/respondent on 12.12.2015. The victim alleged that it is the accused/respondent who committed rape on her and due to that sexual assault she became pregnant. The learned trial Court observed that DNA analysis report is the best corroborative evidence which can

corroborate and support the improbable evidence of the victim to come to a finding that it was none other than the accused who sexually assaulted the victim as the result of which she became pregnant. But DNA analysis report is against the testimony of the victim.

9. In view of the above, we do not find ourselves in a position to accept the submission of learned Additional Public Prosecutor that it was the accused/respondent who raped the victim on 12.12.2015. Findings recorded by the trial Court are correct. Trial Judge has rightly granted benefit of doubt to the accused/respondent.

10. In view of the above discussions, we are of the view that it is not a fit case, where leave to appeal should be granted to the appellant-State.

11. Thus, the Criminal Leave Petition is dismissed. Consequently, the appeal also stands dismissed.

Judge
30.11.2018

Chief Justice
30.11.2018

Index: ~~Yes~~/No
Internet: Yes/~~No~~
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