

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 19th June, 2025

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 2023

Appellant : Ram Bhakta Rai @ Ram Kumar Rai @ Bhakthey

versus

Respondent : State of Sikkim

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

Appearance

Ms. Gita Bista, Advocate (Legal Aid Counsel) for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor for the State-
Respondent.

JUDGMENT

Meenakshi Madan Rai, J.

1. The questions that fall for determination before this Court are, (i) whether the Appellant perpetrated sexual assault on the victim; (ii) whether such act could be described as a sexual assault; or (iii) whether it was consensual.

2. On 07-02-2022, Exbt 1, the FIR, was lodged by PW-1, the sister-in-law of the victim PW-2, informing the jurisdictional Police Station that, the Appellant had raped the victim on the same day, at about 01.22 p.m. She witnessed the incident while returning after completing an errand. On the basis of the FIR, the concerned PS registered the case against the Appellant, under Section 376 of the Indian Penal Code, 1860 (hereinafter, "IPC") and endorsed it for investigation to PW-7. Charge-Sheet was filed against the Appellant under Section 376 of the IPC.

(i) The Learned Trial Court proceeded to frame Charge against the Appellant under Section 376(2)(j) for raping a specially-abled person who was unable to give her consent. The second Charge was under Section 376(2)(l) for raping a person who suffers from mental or physical disability and thirdly, for committing the offence repeatedly on the same woman under Section 376(2)(n) of the IPC. The Appellant having understood the Charge, entered a plea of “not guilty” and claimed trial. The Prosecution examined seven witnesses, which included the Investigating Officer (I.O.) of the case. The closure of the evidence led to the examination of the Appellant under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter, “Cr.P.C.”), affording him an opportunity to explain the incriminating evidence appearing against him. While claiming innocence, he asserted ignorance of the incident and stated that he did not rape the victim.

(ii) The final arguments of the opposing parties were heard. The Trial Court on consideration and appreciation of the evidence on record came to a finding that, the Prosecution had proved its case beyond reasonable doubt under Section 376(1) of the IPC. While doing so, the Court reasoned that although no Charge had been framed under Section 376(1) of the IPC, against the Appellant, but he was aware of the basic ingredients of the Charge. As regards the Charges under Sections 376(2)(j), 376(2)(l) and 376(2)(n) of the IPC, the Trial Court opined that no credible evidence was adduced by the Prosecution, leading to the Appellant’s acquittal of the said Charges.

3. Learned Counsel for the Appellant contended that in fact no such act of sexual intercourse took place between the Appellant

and the victim. However, if indeed such an act did take place it was entirely consensual. Learned Counsel raised doubts about the date of offence and argued that the Prosecution has failed to establish the correct date of the offence. PW-1 in her FIR mentioned that, the offence took place on 07-02-2022 but the victim PW-2, during her medical examination told the Doctor that the offence took place on 06-02-2022, at 3 p.m. The date and time of the offence are contradictory in the evidence of PW-1 and PW-2. Although an abrasion was detected in the labia minora of the victim but the age of the injury was not discerned. Considering the age difference between the Appellant who was fifty-five years and the victim aged thirty-five years, she could well have defended herself, being younger and presumably physically stronger. The FIR was not scribed by PW-1, but the scribe was not examined for verification. The victim did not raise any hue and cry when the Appellant allegedly disrobed her, and since she was in a state of total nudity it implied her consent. Her Section 164 Cr.P.C. statement reveals that she was not aggrieved by the incident. Hence, the impugned Judgment of the Trial Court deserves to be set aside and the Appellant acquitted of the offence of rape.

4. Contesting the arguments advanced, Learned Additional Public Prosecutor submitted that, conviction can be based on the sole, evidence of the victim as done in the instant case by the Trial Court for which reliance was placed on a decision of a Division Bench of the Supreme Court in ***Sunil Kumar vs. State Govt. of NCT of Delhi***¹. That, besides the victim, PW-1 is an eye-witness to the incident, while others have corroborated the Prosecution case. In such

¹ (2003) 11 SCC 367

circumstances, the impugned Judgment of the Trial Court ought not to be interfered as the finding therein is correct.

5. The rival contentions of Learned Counsel were heard *in extenso* and all documents, evidence and the impugned Judgment and Order on Sentence perused. The reason put forth by the Trial Court for convicting the Appellant under Section 376(1) IPC despite no charge having been framed is not erroneous. The purpose of framing a charge is to give an accused Notice of the matter that he is charged with.

6. In ***Willie (William) Slaney vs. State of Madhya Pradesh***², the Court ruled that a mere defect in Charge is no ground for setting aside conviction. Procedural laws are designed to subserve the ends of justice and not to frustrate them by mere technicalities. The object of the charge is to give an accused notice of the matter he is charged with. If the necessary information is conveyed to him and no prejudice is caused to him because of the charges, the accused cannot succeed by merely showing that the charges framed were defective. In judging a question of prejudice, as of guilt, the Court must act with a broad vision and look to the substance and not to technicalities and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly.

7. In ***State of Sikkim vs. Kul Chandra Baral***³, this High Court observed that;

"6.The object of a charge is to warn the accused of the case he is to answer. In other words, charge is an accusation made against a person

² AIR 1956 SC 116

³ 2005 CRI.L.J. 1027

in respect of an offence alleged to have been committed by him. In order to hold that error, omission or irregularity in the charge is not curable, the accused has to show that by such error, omission or irregularity a failure of justice has in fact been occasioned. Whether there is a failure of justice or not is a question of fact. In the case at hand the respondent had opportunity to cross-examine the witnesses and in fact he cross-examined the PWs.”

The charges framed against the Appellant indicate that he has been made aware of the primary offence with which he is charged i.e., for the offence of rape.

8. A brief summary of the Prosecution case is that, on 07-02-2022, PW-1 the sister-in-law of the victim, while returning from a nearby shop, witnessed the Appellant raping the victim in the nearby field. She intervened and beat them both with a stick and reported the matter to the local Panchayat Member PW-3. Investigation revealed that, the Appellant had forcibly taken PW-2 to the field, disrobed himself and her and forcibly had sexual intercourse with her. A psychiatric evaluation of the victim was conducted by a Senior Psychiatrist PW-5, who opined that the victim was well-oriented to time, place and person and no active psychiatric intervention was required. The medical examination of the victim and the Appellant both by PW-6, led to the finding of the injury in the victim's genital.

(i) PW-1 claims to have witnessed the incident and stated that, on the 7th of a particular month, at around 01.22 p.m., she heard the victim screaming in the field. Recognising her screams, she went to ascertain what had caused her to scream and she saw both the Appellant and the victim naked with the Appellant forcing himself on the victim, who was pushing him and screaming. She pulled them apart and beat both of them with a stick. Then, she

called PW-3 and PW-4 and thereafter went to the PS to lodge Exbt P1. Her evidence stood the test of cross-examination.

(ii) The Trial Court while conducting the evidence of PW-2 permitted PW-1 to remain in the Court room in the event her assistance would be required for interpretation of the victim's statement as the Court found that the victim had Down syndrome, and also had difficulty walking. The Court put certain questions to PW-2 to test her capability to depose and found she was capable of testifying. Pausing here, it may pertinently be pointed out that these were the observations made by the Court on physical assessment of the victim. The Prosecution did not furnish any evidence to prove that PW-2 had Down syndrome. It appears with clarity from the evidence of PW-2 that she could identify the Appellant in the Court room by his name. Her evidence was to the effect that the Appellant came to her house and told her to accompany him to the fields. Although she was not willing to go, he forced her. In the said fields, he took off her clothes forcibly as well his own. He then committed sexual intercourse and also fondled her breasts. She described how the acts of sexual intercourse took place. It was her evidence that she tried to resist and pushed him, but she was unable to restrain him. She screamed and shouted to no avail and no one heard her for some time. However, later PW-1 arrived at the spot and beat both of them. After the Police came, they went to the PS and she was also sent to the Doctor. She also went to the Court and affixed her thumb impression after giving her statement before a Judge. The contents of her Section 164 Cr.P.C. statement (Exbt-4) was read over to her, she admitted that the statements were made by her and described in detail the offence

committed forcibly by the Appellant. Under cross-examination, she denied that she went willingly with the Appellant when he asked her to accompany him or that she had consensual sex with him.

(iii) PW-3 was the Panchayat Member who was informed by PW-1 that the Appellant forcibly had sex with the victim. He was not an eye-witness to the incident.

(iv) PW-5 the Senior Psychiatrist who examined the victim deposed; *"On examination she was well oriented to time, place and person. I evaluated her for her psychiatric problem and on her examination, I found no active psychiatric intervention was required after her examination."* His evidence reveals that she had an understanding of the events that unfolded.

(v) PW-6, the Doctor who conducted the medical examination of the victim, after the alleged sexual assault on 07-02-2022, at round 1940 hours, stated that, as per the victim, the incident occurred on 06-02-2022, around 3 p.m., while she was sitting outside her house in her village. The Doctor *inter alia* deposed as follows;

"....."

On local examination: there was an abrasion, reddish in colour with bluish contusion measuring 2cm x 1cm on her back. Abrasion around 2cm (clean, straight) on her right forearm and contusion (black) measuring around 3cm x 3cm over her right upper arm.

On the genital examination: pubic hair matted (black) present. No active bleeding. There was an abrasion on labia minora at 9'0 clock position.

....."

It is apparent that the injuries on the victim including her genital are indicative of her resistance to the act, perpetrated on her forcibly by the Appellant.

(vi) On the same day, PW-6 also examined the Appellant, who was brought for his medical examination with a history of committing sexual assault on the victim. As he was intoxicated, PW-6 was unable to opine whether he was able to perform sexual intercourse. Be that as it may, it must be borne in mind that the physical examination of the victim, conducted by PW-6, has to be read in tandem with her evidence and considered accordingly. The victim as already deposed by PW-5, the Senior Psychiatrist required no active psychiatric intervention revealing that she was in a position to understand her own actions as well as that of others. The evidence given by her is cogent and consistent as regards the incident. The evidence of PW-6 has shown abrasion on the labia minora of PW-2 and other injuries on her person. PW-1 has categorically stated that she saw the Appellant having forcible sex with the victim and the victim was pushing the Appellant and screaming. Although, an objection was made to this statement however, it is seen that her cross-examination did not demolish the statement of forcible sexual assault being committed by the Appellant, on the victim.

9. The Trial Court was of the view that the evidence of the victim was consistent, explicit and clear in her narration of how the Appellant had committed penetrative sexual assault on her against her will. After examining the evidence of the victim the minor anomalies regarding the date of the incident, pointed out by the Defence Counsel are being ignored as it does not change the Prosecution narrative of penetrative sexual assault.

10. The questions framed (*supra*) are determined accordingly. The evidence on record gives us no reason to conclude that the act was consensual.

11. In the said circumstances, we are of the considered view that the impugned Judgment of conviction and Order on Sentence, in ST (Fast Track) Case No.01 of 2022 (*State of Sikkim vs. Ram Bhakta Rai @ Ram Kumar Rai @ Bhaktey*), both dated 17-12-2022, of the Court of the Learned Judge (Fast Track), South and West, at Gyalshing, West Sikkim, brook no interference.

12. The Appeal is consequently dismissed.

13. Copy of this Judgment be forwarded to the Trial Court for information along with its records.

14. A copy of this Judgment be made over to the Appellant/convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority for information.

(Bhaskar Raj Pradhan)
Judge
19-06-2025

(Meenakshi Madan Rai)
Judge
19-06-2025

Approved for reporting : **Yes**