

HIGH COURT OF SIKKIM
Record of Proceedings

Crl. A. No.05 of 2022

XXX

Appellant

VERSUS

State of Sikkim

Respondent

Date : **28-10-2024**

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

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

For Respondent Mr. Yadev Sharma, Additional Public Prosecutor.

ORDER

Rai, J.

The matter is posted for hearing on enhancement of Sentence.

Vide Judgment of this Court dated 25-09-2024, notice to show cause was issued upon the Appellant as to why his sentence under Section 376 of the of the Indian Penal Code, 1860 (hereinafter, the "IPC"), alone shall not be enhanced to Section 376AB of the IPC and Sections 5(l), 5(m) and 5(n) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter, the "POCSO Act, 2012").

Heard Learned Counsel for the parties.

Learned Counsel for the Appellant submits that the minimum imprisonment prescribed under the said provisions be imposed considering that the Appellant is only 34 years of age, has a mother of 80 years who is dependent on him and for whom he is the sole caregiver besides, there are no reasons to conclude that he would be a danger to the society if he is incarcerated for the minimum period prescribed.

Learned Additional Public Prosecutor on the other hand submits that the offence was a heinous one having been committed on a child of 5 years however, he has no objection to the submissions advanced by the Learned Counsel for the Appellant on the aspect of imposition of sentence.

Considered submissions.

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We have examined the evidence led by the Prosecution in detail and are satisfied that the essential ingredients of Section 376AB of the IPC as well as Sections 5(l), 5(m) and 5(n) of the POCSO Act, 2012, have been established beyond reasonable doubt. Therefore, we convict the Appellant under Section 376AB of the IPC as well as Sections 5(l), 5(m) and 5(n) of the POCSO Act, 2012.

The Appellant is accordingly sentenced to undergo rigorous imprisonment of 20 years under Section 376AB of the IPC and to pay fine of ₹ 5,000/- (Rupees five thousand) only, in default to undergo rigorous imprisonment of further 2 months.

For the offence under Sections 5(l) and 5(n) of the POCSO Act, 2012, the Appellant is sentenced to undergo rigorous imprisonment for a term of 20 years each and shall pay a fine of ₹ 5,000/- (Rupees five thousand) only, each under each of the offences, in default to undergo rigorous imprisonment of further 2 months each under each of the sections.

In view of the provisions of Section 71 of the IPC, no sentence need be imposed on the Appellant under Section 5(m) of the POCSO Act, 2012, punishable under Section 6 of the POCSO Act, 2012.

Appeal disposed of accordingly.

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

A copy of this Order also be made over to the Appellant/Convict through the Jail Superintendent, Central Prison, Rongyek and to the Jail Authority at the Central Prison, Rongyek, for information and appropriate steps.

Judge
28-10-2024

Judge
28-10-2024