

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

DATED : 20<sup>th</sup> of April, 2021

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

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Crl.A. No.06 of 2020

**Appellant** : Maheshwar Singh

**versus**

**Respondent** : State of Sikkim

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

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**Appearance**

Mr. N. Rai, Senior Advocate with Ms. Malati Sharma, Advocate for the Appellant.

Ms. Pema Bhutia, Assistant Public Prosecutor for the Respondent.

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## J U D G M E N T

Meenakshi Madan Rai, J.

**1.** The Appellant is aggrieved by the impugned Judgment and Order on Sentence, both dated 26.02.2020, of the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act"), West Sikkim at Gyalshing, in Sessions Trial (POCSO) Case No.09 of 2019 (*State of Sikkim vs. Maheshwar Singh*), by which the Appellant was convicted for the offence under Section 354A(1)(i) of the Indian Penal Code, 1860 (for short, "IPC") and sentenced to undergo Rigorous Imprisonment for a period of one year and six months and to pay a fine of Rs.25,000/- (Rupees twenty five thousand) only. No default clause of imprisonment is reflected.

**2.** Before this Court, Learned Senior Counsel for the Appellant advanced the argument that Exhibit 3, the First Information Report (for short, "FIR") is suspicious as there are unexplained subsequent insertions on it pertaining to the age of the victim and the period of offence. As per Exhibit 3, the offence purportedly took place between June, 2018 to May, 2019 but the Charge specifies the date of offence as "28.05.2019" on which date the Appellant was on Casual Leave, hence the alleged offence cannot be foisted on him. Exhibit 5, the Medical Report of the victim reveals no injuries on her person while the evidence of P.W.20 is unreliable as he bore animosity towards the Appellant having been caught cheating in Class by the Appellant when he was a Student. P.Ws.13, 14, 17 and 18 are four close friends of the victim and therefore interested witnesses, rendering their evidence unreliable. P.Ws.14 and 15 are minor witnesses whose competence to testify was not considered by the Learned Trial Court. P.Ws.2 and 4, the parents of the victim neither witnessed the incident nor were they informed of it by the victim, as their evidence is hearsay it ought to be ignored. That, the Prosecution alleges that Minutes were drawn up after a Meeting took place between the Teachers, victim's parents, the victim and her friends following the incident. The Minutes being unavailable in the records casts doubts on such a Meeting having been convened. P.W.21, the Investigating Officer (for short, "I.O.") failed to explain this shortcoming. The Attendance Register of 28.05.2019 has also not been submitted by the Prosecution to fortify the presence of the victim in School on that day. P.W.4 was disinterested in the matter as reflected in the

evidence of the School Principal, P.W.10 and the delay in lodging the FIR is unexplained. On this count, reliance was placed on ***Mohd. Ali alias Guddu vs. State of Uttar Pradesh***<sup>1</sup> and ***Rajesh Patel vs. State of Jharkhand***<sup>2</sup>. The Scribe of the FIR was not examined making the contents suspicious. That, the victim falsely implicated the Appellant as she was weak in Physics, the Appellant's subject and his constant monitoring irked her. That, the victim having earlier obtained the benefits of compensation in a POCSO matter is attempting to obtain an identical benefit herein. That, the Learned Trial Court failed to appreciate the evidence in its proper perspective and erroneously convicted the Appellant. Hence the impugned Judgment and Order on Sentence be set aside.

**3.** Vehemently repudiating the arguments set forth by Learned Senior Counsel for the Appellant, Learned Assistant Public Prosecutor contended that the evidence of P.Ws.13, 14, 17 and 18, colleagues of the victim duly corroborate her evidence pertaining to the Appellant's conduct towards her. The victim has revealed that he was luring her with the promise of good marks and under such guise, touching her inappropriately. P.W.20, a Teacher of the School, who was informed about the incident, substantiated the Prosecution case. That, the delay in lodging of the FIR was on account of the victim harbouring the anxiety that it would adversely affect her studies, the Appellant having threatened to give her low marks. Such threat held out is corroborated by the evidence of P.Ws.7, 11 and 12. The other

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<sup>1</sup> (2015) 7 SCC 272

<sup>2</sup> (2013) 3 SCC 791

reason for the delay was that on her complaint at the Parent Teacher Meeting of her inability to understand the Appellant's teaching, the School authorities had leaned in his favour, therefore, she assumed that they would take a similar stand. The emotional and mental trauma on account of the conduct of the Appellant towards her was another relevant issue for the delay. That, it is now settled law that delay in lodging the FIR in such matters ought not to adversely affect the Prosecution case. To buttress this submission, reliance was placed on the Judgment of this High Court in **Lakhi Ram Takbi vs. State of Sikkim**<sup>3</sup>. That, it is unexplained as to why the Students used to be called individually to the Physics Laboratory by the Appellant if he was taking classes. That, non-filing of the Minutes of the Meeting does not adversely affect the Prosecution case as the persons who were present at the Meeting have been duly examined as witnesses and have supported the Prosecution case. That, the admission of the Appellant that he had touched the victim inappropriately was buttressed by the evidence of P.W.10. The Appellant's family made concerted efforts through cell phone calls to amicably compromise the matter which was refused by the victim. That, the victim has given consistent evidence and minor discrepancies, if any, will not affect the Prosecution case. To fortify this submission, reliance was placed on **Vijay alias Chinee vs. State of Madhya Pradesh**<sup>4</sup>. That, it is now well established that a Teacher should be like a parent and not harass the Student, this submission was buttressed by the ratio

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<sup>3</sup> 2019 Cri.LJ 2667

<sup>4</sup> (2010) 8 SCC 191

in *State of Sikkim vs. Sashidhar Sharma*<sup>5</sup>. That, outraging modesty is a heinous crime, as laid down by the Hon'ble Supreme Court in *Ajhar Ali vs. State of West Bengal*<sup>6</sup>. Hence, the Learned Trial Court was justified in convicting and sentencing the Appellant, accordingly the Appeal merits a dismissal.

**4.** In rebuttal, Learned Senior Counsel for the Appellant posited that the evidence of P.W.10 regarding the admission of the Appellant at the Meeting that he had touched the victim cannot be relied on as it traverses beyond his Section 161 Cr.P.C. Statement and his apology to P.W.4 is unproved. The allegation that the Appellant's family tried to compromise the matter with the victim is also unsubstantiated, devoid as it is of documents or call details.

**5.** The rival submissions canvassed by Learned Counsel for the parties were heard at length and due consideration afforded thereof. All evidence and documents on record were thoroughly examined and the impugned Judgment and citations made at the Bar perused.

**6.** The question that falls for consideration before this Court is whether the Learned Trial Court was in error in having convicted the Appellant and sentencing him as per the impugned Judgment and Order on Sentence.

**7.** In this context, it is relevant to advert briefly to the facts of the case. On 15.06.2019, the Station House Officer (for short, "SHO"), Naya Bazaar Police Station, West Sikkim, received Exhibit 3, lodged jointly by P.Ws.2 and 4, parents of the victim,

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<sup>5</sup> (2020) 209 AIC 635 (SIK.H.C.)

<sup>6</sup> (2013) 10 SCC 31

informing therein that their minor daughter, P.W.1, the victim, aged 17 years, studying in a Government Secondary School, in Class XII was molested by the Appellant from June, 2018 to May, 2019. Zero FIR of the same date under Section 354A of the IPC read with Section 10 of the POCSO Act was registered against the Appellant and forwarded to Soreng Police Station which had territorial jurisdiction in the matter. Soreng P.S. Case bearing FIR No.07(06)2019, dated 15.06.2019, under the same provisions of law *supra* was registered. Investigation revealed that the Appellant, a resident of Bihar, was appointed as a Mathematics Teacher in a Government Senior Secondary School on 10.05.1988. The victim was a Science Student in the same School. That, the Appellant had inappropriately touched the victim on several occasions. Consequently, Charge-Sheet came to be filed against him under Section 354A of the IPC read with Section 10 of the POCSO Act.

**8.** The Learned Trial Court framed Charge under Section 354 A(1)(i) of the IPC and Section 9(f) of the POCSO Act. On his plea of "not guilty," the Prosecution proceeded to examine twenty one witnesses including the I.O. of the case on closure of which, the Appellant was examined under Section 313 Cr.P.C. where he claimed to have been falsely implicated in the case by the victim with the help of P.W.20 and other Teachers of the School. The Learned Trial Court, after considering the entire evidence on record, concluded that the Prosecution had established its case under Section 354A(1)(i) of the IPC. It also observed that the Prosecution failed to prove that the victim was a minor as defined under Section 2(1)(d) of the POCSO Act.

Consequently, the Appellant was acquitted of the offence under Section 9(f) of the POCSO Act and convicted and sentenced for the offence under Section 354 A(1)(i) of the IPC, as per the impugned Judgment and Order on Sentence.

**9.** The offence of sexual harassment and penalty thereof find place in Section 354A of the IPC. Section 354A(1)(i) of the IPC with which we are presently concerned *inter alia* provides that a man committing any of the following acts, "(i) *physical contact and advances involving unwelcome and explicit sexual overtures; .....*" shall be guilty of the offence of sexual harassment. Section 354A(2) *inter alia* lays down that any man who commits the offence specified in Clause (i) of Section 354A(1) shall be punished with Rigorous Imprisonment for a term which may extend to three years, or with fine, or with both. It is imperative to carefully walk through the evidence of the Prosecution Witnesses to assess whether the Prosecution has indeed established its case beyond a reasonable doubt.

**10.** The evidence of P.W.1, the victim, that her father had complained at a Parent Teacher Meeting in 2018 that she did not understand Physics, the subject taught by the Appellant was corroborated by the evidence of P.W.15 and investigation conducted by P.W.21, the I.O., revealed as much. This fact withstood the cross-examination of the witnesses.

**11.** Now to deal with the incident alleged to have taken place on 28.05.2019. The Defence Counsel submitted that the Appellant was absent on the date of the alleged incident i.e. 28.05.2019. Since the Appellant asserts that he was absent on 28.05.2019, the date of the alleged incident, the onus falls on

him to establish the assertion. He failed to buttress the assertion by any documentary or other evidence save his verbal claim under Section 313 Cr.P.C. A suggestion was made to P.W.20 under cross-examination that on the relevant day, P.W.20 was in charge of teaching Physics Practicals to insinuate that the Appellant was absent. The witness denied this suggestion. In the absence of proof, the claim of the Appellant cannot be countenanced. According to P.W.1, the Appellant made her bolt the door from inside when she was alone with him attending tuitions in the Physics Laboratory where he fondled her breasts, rested his head on her chest and kissed her despite her protests. That, on 27.05.2019, the Appellant had taunted her for sitting with some boys of her Class while doing Maths. On the next date i.e. 28.05.2019 during the fourth period, when they had a Chemistry Class with the Appellant, he called the Students to the Physics Laboratory. He enquired from her whether she was offended with his reprimanding her the day before and told her not to sit with other boys as that made him jealous. He also told her that he gave her good marks because he cared for her and promised to give her very good marks in her Practical Lessons. Thereafter he began rubbing her thighs, touching her body and kissing her cheeks. She crossed her arms across her chest to protect herself but he forcefully tried to remove her arms with the assurance that nothing would happen. She collected her books, left the room and told her four friends viz. P.Ws.13, 14, 17 and 18 of the incident. These four witnesses deposed that she came out of the Physics Laboratory crying and narrated to them that the Appellant had touched her inappropriately. On the next



date i.e. 29.05.2019, she informed P.W.20 of the incident, who told her that the matter ought to be reported. Their Examinations started soon after in which she was engrossed. On 13.06.2019, she was asked by P.W.20, P.W.10 and a lady Teacher to report to the Reading Corner, which she accordingly complied with and narrated all the incidents to them. On enquiry by P.W.10 as to why she had not informed them earlier, she told them that earlier when she had complained about not understanding the way the Appellant taught, P.W.10 and the School authorities had leaned in his favour and she anticipated the same response. P.W.10 suggested transferring the Appellant to solve the problem but she insisted on making a complaint against the Appellant. She informed her mother who told her to take steps as advised by the School. On the next date i.e. 14.06.2019, P.W.10 again asked her to rethink about her complaint whereupon she requested that her father be called. P.W.10 extended to her the option of calling all the Science Students or only her four friends who were familiar with the incident, she opted for the latter. At the Meeting held in the Auditorium on the same day i.e. 14.06.2019, the Teachers, the Appellant, her father and her four friends were present in whose presence she narrated the incident. That, although at the Meeting, the Appellant initially denied the allegations, he finally admitted he had made a mistake and asked to be forgiven for his acts. She then called the Child Helpline and furnished all details to them. She also stated that the wife and daughter of the Appellant requested her not to lodge the Complaint and the father of P.W.13 also discouraged her from lodging a Report as it

would damage her reputation but she was insistent in her stand of lodging a Complaint. The cross-examination conducted did not decimate any of the evidence of the victim reflected *supra*.

**12.** P.W.2, the victim's mother, stated that she was informed of the incident by her daughter. That, the victim, out of fear, did not disclose the matter to anyone. P.W.1 had also informed P.W.2 that the Appellant had told her that he would favour her with good marks in her Practical Classes to enable her in her College admissions. Her evidence stood the test of cross-examination. P.W.4, the victim's father, attended the Meeting convened on 14.06.2019. His evidence supported that of P.Ws.1 and 2. He also stated that the Principal reprimanded the Appellant for his behaviour upon which he apologized to P.W.4. P.W.7 was the Social Worker under the District Child Protection Unit of the relevant area who was informed by the victim that she had been molested by the Appellant from June-July, 2018 when she was studying in Class XI. She was apprehensive and crying when brought to the Counselling Centre and worried about the impact of the incident on her academics after the inappropriate acts of the Appellant perpetrated on her. Her evidence was not demolished under cross-examination. P.W.8, the Principal of the Senior Secondary School which the victim had earlier attended, testified that she was a brilliant Student. P.W.10, while supporting the evidence of P.Ws.1, 2 and 4 regarding the inappropriate acts of the Appellant as informed by P.W.1, stated that towards the end of the Meeting, the Appellant admitted that he had touched the victim. His evidence remained unscathed by cross-examination. P.Ws.11, 12, 15, 16 and 20 are

Teachers of the same School, who were present at the Meeting held on 14.06.2019. They were given an inkling of the offence committed by the Appellant on the victim by P.W.20 to whom P.W.1 had narrated the incident in the company of P.W.13, her friend. The evidence of the Prosecution Witnesses corroborated the evidence of P.W.1. The evidence of the Prosecution Witnesses that the Appellant had admitted to committing a mistake by touching the victim inappropriately has not been demolished. The evidence of P.W.20 corroborates and substantiates the evidence of P.Ws.1, 11, 12, 13, 15, 16, 17 and 18. Nothing inconsistent was stated in the cross-examination of the Prosecution Witnesses to cast doubts on the veracity of their evidence, nor was their evidence-in-chief decimated.

**13.** Although the Appellant had sought to make out a case that P.W.20 had acrimonious relations with him and stated as much in his Statement under Section 313 Cr.P.C., elaborating that P.W.20 used to be a Student in the same School in 2009. That, the Appellant had caught him cheating in Class upon which P.W.20 had threatened him, and after Examinations he saw him on the road with two-three boys. He continued to threaten the Appellant thereafter. It is not the Appellant's case that he reported the misbehaviour of P.W.20 to the Principal or to his colleagues at any point in time nor did he report the matter to the Police. His allegation being devoid of evidence fails to inspire the confidence of this Court.

**14.** The argument of the Appellant that Exhibit 3 is unproved as the Scribe was not examined holds no water for the fact that P.Ws.2 and 4 who have signed on Exhibit 3 have not

only identified their signatures on the document but have also vouched for and proved the contents thereof. The insertions on Exhibit 3 with regard to the age of the victim and the period of molestation does not prejudice the Appellant.

**15.** The allegation that the victim falsely implicated the Appellant as she was weak in his subject is not garnered by any evidence. Furnishing of Answer Sheets of the victim of two dates i.e. 16.02.2019 and 25.03.2019 by the Appellant, does not suffice to establish that she was either weak in the subject or that she would falsely implicate him only for this purpose.

**16.** The argument raised by Learned Senior Counsel that P.Ws.14 and 15 are minors and their competence to testify was not examined by the Court, is a rather frail argument apart from which even if their evidence is blindsided, the evidence of the other Prosecution Witnesses have withstood cross-examination and substantiate the Prosecution case with regard to the inappropriate acts perpetrated by the Appellant on the victim by touching her private parts.

**17.** While observing that the evidence of the victim herein is cogent, consistent and cannot be said to be untruthful or motivated, it is appropriate to refer to the decision of the Hon'ble Supreme Court in **State of Maharashtra vs. Chandraprakash Kewalchand Jain**<sup>7</sup> wherein it was held *inter alia* as follows;

"**16.** A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution

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<sup>7</sup> (1990) 1 SCC 550

must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. ....”

**18.** The argument that the Attendance Register was not submitted to establish that the victim was present in School on the relevant day, is preposterous in the face of the evidence given by the victim herself that she was present on that day. The Appellant has failed to furnish any evidence in contradiction thereof. It was also contended that no injuries were found on the victim’s body as per the Medical Report. This is an incongruous argument as the victim has nowhere stated that there was use of physical force on her save to the extent that he made efforts to remove her arms from across her chest.

**19.** The non seizure of the Minutes of the Meeting may be a shortcoming committed by the I.O. but it in no way demolishes the Prosecution case as the participants to the Meeting have deposed as Prosecution Witnesses unravelling what transpired at the Meeting. In this context, relevant reference may be made to the ratio in *Karnel Singh vs. State of*

**Madhya Pradesh**<sup>8</sup>, wherein the Hon'ble Supreme Court, while expressing dissatisfaction at the investigation conducted, observed *inter alia* as follows;

"5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. ...."

In **State of Karnataka vs. K. Yarappa Reddy**<sup>9</sup>, it was held *inter alia* as under;

"19. ....even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case. ...."

The evidence on record in the instant matter having been thoroughly examined, no contradictions appear therein to demolish or lend doubt to the Prosecution case.

**20.** The reasons for the delayed lodging of the FIR have been enumerated by the victim. I find no reason to disbelieve the victim that she was apprehensive of the outcome of such a step on her academics. The Hon'ble Supreme Court in **Gangabhavani vs. Rayapati Venkat Reddy and Others**<sup>10</sup> has *inter alia* observed as under;

"19. The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR. The court has to examine the explanation furnished by the

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<sup>8</sup> (1995) 5 SCC 518

<sup>9</sup> (1999) 8 SCC 715

<sup>10</sup> (2013) 15 SCC 298

prosecution for explaining the delay. There may be various circumstances particularly the number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of the incident that has taken place. If the prosecution explains the delay, the court should not reject the case of the prosecution solely on this ground. Therefore, the entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into consideration whether it can be termed as abnormal. ....”

**21.** The allegation that the victim’s father did not take the matter seriously is only a perception of the Appellant, besides, this Court has oft referred to the ratio in **State of Himachal Pradesh vs. Prem Singh<sup>11</sup>**, wherein the Hon’ble Supreme Court *inter alia* laid down as follows:

“6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR. ....”

**22.** The fact that the Prosecution chose only four friends of the victim as witnesses cannot be termed as cherry picking as the protection of the identity of the victim is of paramount importance in such offences and all efforts ought to be made to ensure confidentiality as done in the instant matter, to prevent stigmatization and ostracization of the victim for no fault of hers. Merely because the victim’s friends were produced as witnesses, it cannot be said that their evidence is unreliable. Their evidence consistently supports that of P.W.1. Apposite reference on this aspect may be made to the ratiocination of the Hon’ble Supreme

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<sup>11</sup> (2009) 1 SCC 420

Court in ***State of Rajasthan vs. Kalki and Another***<sup>12</sup> wherein it was held *inter alia* as under;

"7. As mentioned above the High Court has declined to rely on the evidence of PW 1 on two grounds: (1) she was a "highly interested" witness because she "is the wife of the deceased", and (2) there were discrepancies in her evidence. With respect, in our opinion, both the grounds are invalid. For, in the circumstances of the case, she was the only and most natural witness; she was the only person present in the hut with the deceased at the time of the occurrence, and the only person who saw the occurrence. True, it is, she is the wife of the deceased; but she cannot be called an "interested" witness. She is related to the deceased. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested". In the instant case PW 1 had no interest in protecting the real culprit, and falsely implicating the respondents. ...."

**23.** In the light of discussions that have emanated above, in my considered opinion, no reason emerges to disturb the conclusion arrived at by the Learned Trial Court vide its impugned Judgment and Order on Sentence.

**24.** Consequently, the Appeal fails and is accordingly dismissed.

**25.** The Appellant shall surrender before the Court of the Learned Special Judge, Protection of Children from Sexual Offences Act, 2012, West Sikkim at Gyalshing, today i.e. 20.04.2021, to undergo the Sentence imposed on him by the impugned Order on Sentence, duly setting off the period of imprisonment, if any, already undergone by him during investigation and as an Under Trial Prisoner. The Learned Special Judge shall take appropriate steps should the Appellant fail to appear as directed hereinabove.

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<sup>12</sup> AIR 1981 SC 1390



- 26.** No order as to costs.
- 27.** Copy of this Judgment be transmitted to the Learned Trial Court, for information and compliance.
- 28.** Records of the Learned Trial Court be remitted forthwith.

**( Meenakshi Madan Rai )**  
**Judge**  
20.04.2021