

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

Dated : 3rd July, 2024

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

Crl. A. No.07 of 2023

Appellant : Mahesh Chettri

versus

Respondent : State of Sikkim

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

Appearance

Mr. D. K. Siwakoti, Advocate (Legal Aid Counsel) for the Appellant.

Mr. Shakil Raj Karki, Additional Public Prosecutor for the Respondent.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Appellant herein, aged about twenty-four years, was convicted for having raped his maternal grandmother, aged about eighty years. The Learned Judge, Fast Track (S/W), West Sikkim, at Gyalshing, on appreciation of the evidence of seven witnesses furnished by the Prosecution, convicted the Appellant under Section 376(2)(f), Section 376(2)(n) and Section 506 of the Indian Penal Code, 1860 (hereinafter, the "IPC"), vide the impugned Judgment, dated 28-02-2023, in Sessions Trial (Fast Track) Case No.03 of 2022, (*State of Sikkim vs. Mahesh Chettri*). For each of the offences of rape that he was convicted under, the Appellant was sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹ 10,000/- (Rupees ten thousand) only. Under Section 506 of the IPC he was sentenced to rigorous imprisonment for two years and to pay a fine of ₹ 1,000/- (Rupees one thousand)

only. The sentences of imprisonment were ordered to run concurrently and the sentences of fine bore default stipulations.

(i) The facts as they unravel are that the victim PW-2 was living with her daughter PW-3, son-in-law PW-4 and their son the Appellant, her grandson. On 22-04-2022, PW-3 went to visit a relative in West Bengal leaving the victim PW-2 with the Appellant. PW-4 being a mason worked outside his home and returned occasionally. PW-3 returned home on 06-05-2022 after her visit and did not find PW-2 at home. On enquiry she learned that PW-2 was living in the house of one Kamal Rai, their neighbour, she accordingly went to fetch PW-2, who refused to return home and revealed to PW-3 the acts of rape perpetrated on her repeatedly by the Appellant. On 08-05-2022 PW-3, accompanied by PW-2, went to the Police Station, where PW-2 lodged the FIR, Exbt P3. She stated therein *inter alia* that the Appellant consumes substances had previously been incarcerated and while in an inebriated condition would chase and touch her inappropriately. When she used to be alone, he would disrobe her, take her to his bed and sexually assault her. He also threatened to kill her if she disclosed such facts to anyone including her daughter (PW-3). The same year the Appellant had already sexually assaulted her three times. About fifteen days prior to the lodging of Exbt P3, when she was again raped by the Appellant she left the house and stayed in the house of Kamal Rai, hence her refusal to return home with PW-3. The case was registered against the Appellant under Sections 376/506 of the IPC and endorsed to PW-7, the Investigating Officer (IO), who investigated the matter and submitted Charge-Sheet

before the Court against the Appellant under Sections 376/506 of the IPC.

(ii) Charge was framed against the Appellant under Section 376(2)(f), Section 376(2)(n) and Section 506 of the IPC. Trial commenced after the Appellant pleaded "not guilty" to the offences charged with. The Prosecution furnished seven witnesses to establish its case and an opportunity was extended to the Appellant to explain the incriminating evidence against him, under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter, the "Cr.P.C."). His response *inter alia* was that he was innocent. On analysing the evidence on record the Learned Trial Court convicted and sentenced the Appellant as already seen *supra*. Aggrieved, thereof the Appellant is before this Court.

2. Learned Counsel for the Appellant while assailing the impugned Judgment and Order on Sentence, contended that, the victim was not eighty years old and hence the finding of the Learned Trial Court on this aspect was perverse. That, the delay in the lodging of Exbt P3 has not been explained by the Prosecution. That, the evidence of the victim's daughter is not trustworthy. That, after the alleged incident occurred at night, the victim took shelter in the house of her immediate neighbour, who however was not arrayed as a Prosecution witness, raising doubts about the veracity of the allegations of PW-2, added to which her wearing apparels were not seized, while the medical evidence indicated no injury on her person. Besides, the Learned Trial Court failed to obtain a psychiatric evaluation of the Appellant, considering that the Prosecution allegation is that the Appellant is a habitual drinker who had assaulted his father in the past and committed sexual

assault on the victim. That, the Appellant for the afore cited reasons deserves an acquittal.

3. Resisting the arguments (*supra*) Learned Additional Public Prosecutor submitted that there is no reason to disbelieve the Prosecution case in light of the consistency in the statements of PW-2 in Exbt P3, her Section 164 Cr.P.C. statement and the facts duly corroborated by her daughter PW-3 and by PW-5 the person in whose house she had stayed till PW-3 returned home. Consequently, the impugned Judgment and Order on Sentence of the Learned Trial Court brooks no interference.

4. To examine whether the Judgment of conviction and Order on Sentence were correctly handed out by the Learned Trial Court, it is essential to walk through the evidence of the Prosecution witnesses. PW-2 before the Court unequivocally reiterated the facts stated by her in Exbt P3. She elucidated in her deposition that the first incident of rape occurred in the Nepali month of *Magh* (January-February) of that year (2022), when she was alone in the house. The Appellant taking advantage of the situation, during the night forcibly removed her clothes and committed penetrative sexual assault on her. She tried to resist him but she being physically weak, he overpowered her. Being ashamed of the act committed on her by her own grandson she did not disclose the incident to anyone, apart from the threats of dire consequences held out by him. That, the next incident took place in the Nepali month of *Chaith* (March-April) of the same year, when her daughter and son-in-law were away from home. The Appellant again dragged her to his room, forcefully removed her clothes and committed penetrative sexual assault on her despite her protests.

Once again she did not disclose the incident to any person being concerned about the reputation of her family and also having been threatened with dire consequences by the Appellant on such disclosure. That, the third incident was in the Nepali month of *Baisakh* (April-May), when her daughter and son-in-law went to West Bengal and she was left alone with the Appellant. She escaped on the pretext of attending nature's call after the incident and took shelter in her neighbour's house located above her house, where an old lady Devi was found residing. That, the next morning she went to the house of Kamal Rai and stayed there for 16-17 days, but refused to return with her daughter who came to fetch her and told her that the Appellant had been repeatedly committing penetrative sexual assault on her. That, she wanted to report the matter to the Police. Her daughter on hearing her accompanied her to the Police Station where she lodged her Complaint verbally. She identified Exbt P2 as her statement, recorded by the Police as narrated by her. She was taken to the hospital for medical examination where she informed the doctor that she had already taken a bath after the incident. She deposed that her statement was recorded by a male Judge during investigation. Her cross-examination did not decimate her entire evidence in chief. PW-3 corroborated the evidence of PW-2. PW-5 corroborated the evidence of PW-2 with regard to her having stayed in her house for about sixteen days in the Nepali month of *Chait-Baishak* that year. The Doctor, PW-6 who examined the victim on 08-05-2022, around 05.00 p.m., testified that she had been brought with an alleged history of sexual assault by her eldest grandson, breast groping and vaginal penetration multiple

times by the Appellant. Exbt P1 the medical examination report of the victim reveals *inter alia* that sexual assault could not be ruled out.

5. After meticulously examining the evidence on record as well as the impugned Judgment and Order on Sentence, we find that the Learned Trial Court in the impugned Judgment has carefully analysed and appreciated the evidence on record. It has also been noted by the Learned Trial Court in Paragraph 34 as follows;

"34. Needless to say the law is well laid down today that if a Court finds that the testimony of a prosecutrix inspires the confidence of the Court and is found reliable and trustworthy, the Court can rely on her sole testimony for convicting the accused and need not look for corroboration of her testimony elsewhere. In this case, apart from the victim who is the grandmother of the accused, even the mother of the accused herself, has come forward to report the matter against her own son. It is thus evident that it is under sheer compulsion being subjected to rape repeatedly by her accused grandson that PW-2 has mustered the courage to finally approach the police. This is evidently due to the support of her daughter (PW-3). Thus, both PW-2 and PW-3 have lodged the report against their own grandson/son, which unless it was for genuine reasons, no grandparent or mother would have done otherwise. Thus, I am inclined to find the testimony of PW-2 reliable."

6. The Learned Trial Court has also discussed the delay in lodging of the FIR and observed that it has been stressed in a plethora of cases by the Supreme Court that delay in reporting of cases of rape and sexual assault need not necessarily be fatal to the Prosecution case established in a case such as this, where the Appellant is the victim's own grandson. That, it would naturally explain the victim's reluctance to talk about the incident, leave alone the daunting task of reporting the matter to the Police. That, PW-2 has stated that she was too ashamed and did not tell anyone about the incident which is absolutely understandable under the

said circumstances. The Learned Trial Court therefore found no reason to disbelieve the victim a senior citizen, who at her age was unlikely to make such allegation against her own grandchild unless she was left with no option.

7. This Court having carefully perused the evidence on record, the facts and circumstances of the case and arguments advanced, we are of the considered opinion that the Learned Trial Court has examined the matter meticulously and we do not see any reason to differ from the findings of the Learned Trial Court.

8. Both the impugned Judgment and the Order on Sentence, are accordingly upheld.

9. Appeal dismissed and disposed of accordingly.

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

(Bhaskar Raj Pradhan)
Judge
03-07-2024

(Meenakshi Madan Rai)
Judge
03-07-2024

Approved for reporting : **Yes**